



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Civil Case 53 of 2011**

**WYCLIFFE MAKAMU ..... PLAINTIFF**

**V E R S U S**

**RUTH ANDOLE ..... DEFENDANT**

**J U D G M E N T**

The originating summons dated 13.5.2011 seeks to nullify the registration of the defendant as the proprietor of land parcel number **KAKAMEGA/CHEPTULU/505, 496 & 438**. The plaintiff would also like to have the titles revert to the names of the deceased **ANDOLE KHAMASI**. The defendant was served but did not enter appearance or attend the hearing. The plaintiff's evidence is that the three properties were registered in the names of the late **ANDOLE KHAMASI** who was his grandfather. The defendant was a second wife to the deceased. At the time of his death Andole Khamasi had not distributed his land to his children. The defendant conducted a succession cause which was not known to the first house and took over all the land. The plaintiff's father came from the first house. The plaintiff has been living on the suit land since childhood. He carried out a search and found that the properties were registered in the names of the defendant. It is indicated in the extracts from the land registry that the defendant is an administrator of the deceased's estate but the succession cause was not revealed. Despite requests to the defendant to distribute the estate, the defendant has refused to do so.

The extracts from the land registry show that the suit properties were registered in the names of **ANDOLE KHAMASI** in 1976. The defendant got herself registered between 1988 and 1989 as an administrator of the deceased's estate. With regard to plot number **KAKAMEGA/SEREMI/496** the official search shows that the land was registered in the defendant's name on the 7.12.1998. According to the plaintiff Andole Khamasi died in 1984. From the evidence on record I am satisfied that the defendant got herself registered as the proprietor of the suit land after the death of the original owner. Since the succession cause filed by the defendant is not revealed it will be impossible for the plaintiff to pursue the distribution of the estate in that cause. I do find that the plaintiff has proved his claim up to the required standard. His late father was a beneficiary to the suit land having been the son of Andole Khamasi. The defendant ought to have included all the deceased's families. Since there are other beneficiaries, the only logical solution is to have the property revert to the names of the deceased and the beneficiaries to pursue a fresh succession cause.

In the end, I do find that the plaintiff has proved his case and the prayers contained in the originating summons dated 13.5.2011, namely prayers **(a), (b), (c)** and **(d)** are hereby answered in the positive. The titles held by the defendant are hereby revoked and the suit land shall revert to the names of the deceased, **ANDOLE KHAMASI**. Each party shall meet his/her own costs.

Delivered, dated and signed at Kakamega this 13<sup>th</sup> day of February, 2013

**SAID J. CHITEMBWE**  
**J U D G E**