



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT 18 OF 2010**  
**IN THE MATTER OF: AN APPLICATION FOR VESTING ORDER**

**-AND-**

**IN THE MATTER OF: AN APPLICATION BY ALOIS KITSAGO MWANDEKA**

**-BETWEEN-**

**ALOIS KITSAGO MWANDEKA.....APPLICANT**

**-AND-**

**MWABOTO MWAMTSUMI.....RESPONDENT**

**RULING**

The applicant moved the Court by Originating Summons dated **27<sup>th</sup> January, 2010** and brought under ss.125 and 159 of the Registered Land Act (Cap. 300, Laws of Kenya) and s.79 of the Law of Succession Act (Cap. 160, Laws of Kenya). The Summons carries one main prayer, that –

***“The Plot No. Kwale/Golini/728 be vested in the name of the applicant, Alois Kitsago Mwandeka.”***

The application is founded on the following grounds:

(i) **Alois Kitsago Mwandeka** is the Administrator of the estate of **Mwandeka Bosso** (deceased);

(ii) pursuant to the Judgment issued on **23<sup>rd</sup> August, 2005** the suit property was passed on to **Alois Kitsago Mwandeka** as the Administrator of the estate of **Mwandeka Bosso**;

(iii) only through this application is it possible to vest the said plot, Kwale/Golini/728 in the name of **Alois Kitsago Mwandeka**.

The applicant, on **27<sup>th</sup> January, 2010** swore an affidavit giving evidence relating to the prayer herein. He deposes that he is the Administrator of the estate of **Mwandeka Bosso**, and in this regard, produces both the Grant of Letters of Administration Intestate, and the certificate of confirmation of the same. The deponent avers that his late father, **Mwandeka Bosso** was the owner of the parcel of land known as Kwale/Golini/728 which is registered in the name of **Mwamtsumi Mitusumi**, which parcel of land has been the subject of proceedings in the Land Disputes Tribunal at Kwale: Land Tribunal Case No. 3 of 2005, **Alois K. Mwandeka v. Mwaboto Mwamtsumi, Malitupa Mwamtsumi & Nizecha Mwamtsumi**. The Tribunal's award in that case was in favour of the claimant, and thereafter the same was adopted by Order of the Senior Resident Magistrate issued on **23<sup>rd</sup> August, 2005**. The deponent averred that "*no appeal has ever been lodged [against the said Order] or the said [Order] stayed or set aside.*"

The deponent deposes that, in his capacity as the administrator of his father's estate, he now lays formal claim to the parcel of land in question; and in that behalf he has already presented before the Land Registrar the confirmed Grant of Letters of Administration Intestate, but has been informed that a vesting Order should first be obtained from this Court.

A process server, **Mohamed Enos Kofa** has sworn an affidavit of service averring that, on **9<sup>th</sup> February, 2010** he duly served upon the respondent the Originating Summons herein.

When this matter came up for hearing on **30<sup>th</sup> August, 2010** the respondent was absent and unrepresented, whereas the applicant was represented by learned counsel, **Mr. Charles Opolu**. Counsel stated that this matter had already come by way of Chamber Summons, before **Mr. Justice Azangalala** on **19<sup>th</sup> July, 2010** and he had directed that it be disposed of on the basis of *viva voce* evidence.

The applicant, **Alois Kitsago Mwandeka** gave evidence as PW1, testifying that the subject property, plot No. Kwale/Golini/728 is registered in the name of **Mwamtsumi Mitusumi** even though it belonged to **Mwandeka Bosso** who died on **15<sup>th</sup> February, 2005**. PW1 had obtained Grant of Letters of

Administration Intestate, in respect of the estate of **Mwandeka Bosso**, on **2<sup>nd</sup> August, 2008**; and subsequently he had obtained a certificate of confirmation of the Grant. PW1 testified that the certificate of confirmation of Grant sets out in a schedule the list of beneficiaries of the estate, as follows: 1. **Alois K. Mwandeka**; 2. **Gube Mwandeka**; 3. **Sanzua Mwandeka**; 4. **Michael K. Mwandeka**; 5. **Kuvyoda Mwandeka**; 6. **Mwijo Mwandeka**; and 7. **Bemwadzombo Mwandeka** – all being brothers and the issue of the late **Mwandeka Bosso**.

PW1 testified that **Mwamtsumi Mitusumi** whose name appears as the registered holder of title for the subject parcel of land, Plot No. Kwale/Golini/728, is a *cousin* to the deceased: and the reason **Mwamtsumi Mitusumi's** name was registered against the property, was that **Mwandeka Bosso** had relocated from Kwale to Kinango, leaving **Mwamtsumi Mitusumi** as caretaker.

PW1 testified that the said **Mwamtsumi Mitusumi** is deceased; but the reason **Alois Kitsago Mwandeka** lodged Land Tribunal Case No. 3 of 2005, was that the deceased caretaker's son was making claims to the subject property. The Tribunal in its Ruling of **16<sup>th</sup> June, 2005** had found the applicant to be the one entitled to the suit property, an outcome which had been confirmed by the Senior Resident Magistrate's Court in Land Case No. 3 of 2005. The Orders of the Senior Resident Magistrate's Court were issued as follows:

*"IT IS HEREBY ORDERED –*

*(1)That the [Land Tribunal Ruling] dated 24<sup>th</sup> May, 2005 be adopted as [the] Judgment of this Court.*

*(2)That the inheritance of land parcel GOLINI PLOT No.728 be and is hereby given to **ALOIS MWANDEKA**.*

*(3)That the late **Mwamtsumi** was caretaker of Shamba No. 728, Golini.*

*(4)That **Alois Mwandeka** do inherit his father's shamba through the legal channel governing the inheritance because he is a real next-of-kin, [being a] son of the late **Mwandeka**."*

The basis of legal entitlement to the subject property, plot No. Kwale/Golini/728, emerges clearly from the Ruling of the Land Disputes Tribunal, to the Orders of the Senior Resident Magistrate's Court, to the

Grant of Letters of Administration, to the Confirmation of such Grant. The *Administrator* of the estate of **Mwandeka Bosso** is entitled to be registered as the title-holder for the said property.

**Consequently I hereby make Orders vesting the said Plot No. Kwale/Golini/728 in the name of the applicant, Alois Kitsago Mwandeka.**

**There will be no order as to costs.**

**SIGNED at NAIROBI .....**

**J.B. OJWANG**

**JUDGE**

**DATED and DELIVERED at MOMBASA this 19<sup>th</sup> day of March, 2012.**

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**M.A. ODERO**  
**JUDGE**