REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

P&A NO.83 OF 2008

IN THE MATTER OF THE ESTATE OF ZEPHANIA WECHULI

ZEPHANIA WECHULI.....DECEASED

AND

SIMON TANIMWET SIOYI.....CITOR/APPLICANT

VS

STEPHEN WAFULA WECHULI.....1ST RESPONDENT

SAMUEL WANYAMA WECHULI.....2ND RESPONDENT

RULING

The deceased Zephania Wechuli died intestate on 29/12/1987 at Chesikaki. He left two sons, Stephen Wafula Wechuli and Samwel Wanyama Wechuli (the Respondents). He was the registered proprietor of land parcel Malakisi/East Sasuri/422 measuring about 7.5 acres. The Petitioner's evidence is that on 31/5/91 he bought 3 acres of the land from Stephen and on 29/8/1991 he bought from him a further 2 acres. Stephen and Samwel had sold two plots measuring 0.10 hectares of the suit land to Fredrick Simiyu Murwa and John Lasaro. The Petitioner bought the two plots from these buyers. In total he had bought 2.50 hectares of the deceased's land. He was put into possession and has extensively developed the portions. The Respondents did not file a succession cause to inherit their late father. The Petitioner filed a citation and eventually got letters of administration. He wants the grant confirmed and he be given 2.50 hectares of the deceased's land and that the balance goes to the Respondents.

Stephen swore a replying affidavit to deny that the Petitioner bought any land from him. His case is that the Petitioner is not one of the sons of the deceased and is therefore not entitled to benefit from the estate. He swore that the Petitioner was his father-in-law who was only left to protect the deceased's land during the tribal clashes in Mt. Elgon.

It is my considered view that the Respondents had no capacity to sell any portion of Malakisi/East Sasuri/422 to the Petitioner, or to any other person, as they did not own the land. The land belonged to their father, and they were only going to inherit it and own it following succession proceedings. Any

monies received from the Petitioner was in anticipation of their succeeding their father.

These are the reasons why I dismiss the application for confirmation as it seeks to give portions of the deceased's land to the Petitioner. I ask that given what has happened, costs be paid by the Respondents.

Dated, signed and delivered at Bungoma this 10th day of May, 2012.

A. O. MUCHELULE

JUDGE