



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL CASE NO. 98 OF 2003**

**BONDI MAFWOYO.....APPLICANT**

**V E R S U S**

**ELIZABETH MUKO THELAWI**

**ENOS WANJALA .....RESPONDENTS**

**ISAAC JUMA**

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

1. In the Originating Summons dated 17.2.2003, Bondi Mafwoyo claimed that he was entitled to six (6) acres to be excised from land parcel no. **N/Kabras/Surunguai/36** which he claims to have occupied since 1974. Further that the interests of the Respondents be deemed to have been extinguished, twelve (12) years after that date and the Applicant be registered as the absolute proprietor of those six (6) acres.

2. I have read the Affidavit in support of the Summons which was sworn on 17.12.2003 and I have also read the evidence tendered by him at the hearing. His case is that on 17.7.1974, he executed a Sale Agreement with one Musungu Werichina (since deceased) and he was to purchase six (6) acres of land to be excised out of land parcel no.36 aforesaid. That he immediately took possession of the land and has been in uninterrupted occupation since then. That on 17.6.2003, the Respondents were registered as proprietors of the suit land after the 1<sup>st</sup> Respondent obtained letters of administration to the estate of Musungu (deceased) and the Applicant now desires to have his portion of land excised there-from.

3. I note that although all the Respondents were served, they have never entered appearance and they have failed to respond to the summons or an interlocutory application for orders that any dealings in the suit land be prohibited. G.B.M. Kariuki J. heard that Application and granted the orders as prayed.

4. I have seen the Agreement of Sale and although the land being sold is not identified, I have no reason to doubt the uncontested facts placed before me by the Applicant who has also shown that he has planted sugarcane, trees, beans and rears cattle and sheep on the land aside from building houses thereon.

5. I will allow the Summons with the consequence that the Applicant shall be registered as proprietor of six (6) acres of land to be excised out of land parcel no. **North Kabras/Surungai/36** and the Originating Summons dated 17.12.2003 is allowed in its entirety save that I shall make no order as to costs since the summons is undefended.

6. Orders accordingly.

*Delivered, dated and signed at Kakamega this 10<sup>th</sup> day of February .2011*

**ISAAC LENAOLA**

**J U D G E**