



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA Civil Case 310 of 1993**

**AGGREY MARUNGU WAKHU.....PLAINTIFF**

**VERSUS**

**DAVID OTIENO OBULEMIRE.....DEFENDANT**

**JUDGEMENT**

The Plaintiff filed this suit in 1993 stating that it be declared that the owner of Plot No. **MARAMA/SHIKUNGA/1034**, who is the defendant, is holding the plot in trust for him, that the land register be rectified and the plaintiff be registered as the proprietor.

The case proceeded ex-parte as the defendant and his counsel was absent when the matter was being heard yet they had been served. The Plaintiff's testimony is that his late father owned plot Marama/Shikunga/507. The Plot was eight acres but was subdivided into two during adjudication and plot No. Marama/Shikunga/1034 measuring 4 acres was created and registered in the name of the defendant. The Plaintiff further testified that after the death of his father the defendant's father inherited his mother. This was in 1950 and they lived together in the suit property. The defendant's father had his own plot registered in his name this being Plot No. Marama/Shikunga/765 which is located about one kilometer from the suit property. The defendant's father registered Plot No.1034 in the defendant's name yet the defendant was only 12 years in 1965. He produced the adjudication records for all the three plots and contend that Plot number 507 was eight acres and not four acres. The matter was deliberated by the elders and the defendant agreed to move to his plot number 765 but later declined.

PW2, WELINGTON AMUBI testified that the defendant's father was called Obulemile and was related to the Plaintiff's father. He testified that the Plaintiff's father was called WAKHU and his Plot measured eight acres while Obulemile's plot was about 50 acres. The defendant is to inherit his father's plot which is plot number 765.

It is unfortunate that this matter took over fifteen years to be heard and that the same preceded exparte.

The Plaintiff's evidence is not controverted or challenged. The defence herein state that the contentions Plot number Marama/Shikunga/1034 is registered in the name of the defendant. The Plaintiff contends in his pleadings that he has been using both parcels of land, that is Plot number 507 and 1034 and that the defendant agreed to transfer Plot number 1034 to the Plaintiff but later failed to do so.

From the Plaintiff's evidence and that of PW2 I do find that the plaintiff has proved his case against the defendant as prayed. It is hereby declared that the defendant holds land title number MARAMA/SHIKUNGA/1034 in trust for the Plaintiff. The land registrar to rectify the record and have Plot number Marama/Shikunga/1034 registered in the name of the Plaintiff AGGREY MURUNGU WAKHU. Each party to meet his own costs.

**SAID J. CHITEMBWE**

**J U D G E**

*Delivered, Dated, and Countersigned at Kakamega this 16<sup>th</sup> day of March, 2010*

**ISAAC LENAOLA**

**J U D G E**

