



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA**

**Civil Suit 35 of 2006**

**FLORENCE NASIMIYU WEKESA..... PLAINTIFF**

**~VRS~**

**AMBROSE MULONGO KASAWA.....DEFENDANT**

**JUDGMENT**

The Plaintiff Florence Nasimiyu Wekesa brings this suit in her capacity as the personal representative of the deceased Saulo Wekesa Ndendela for the benefit of herself and other beneficiaries. In the plaint dated 7<sup>th</sup> June 2006, the Plaintiff seeks for orders of cancellation of register for parcel No. Bokoli/Mukuyuni/429 deleting the Defendant's name and inserting that of the Plaintiff. It is alleged that the Defendant fraudulently transferred the land of the deceased to his name. The Defendant was served with the Plaint and summons to enter appearance on the 8<sup>th</sup> October, 2006. He failed to enter appearance and to file defence.

The Plaintiff testified that the deceased Saulo Wekesa Ndendela was her biological father. He owned land Bokoli/Mukuyuni/429 during his lifetime. When he died in 1997, he left the Plaintiff living on the land with her children. The Plaintiff had joined deceased in 1976 on his invitation after she separated with her former husband. The Plaintiff is the only child of the deceased while the Defendant is a cousin to the Plaintiff and nephew to deceased. The Plaintiff discovered the fraud committed by the Defendant several years after the death

of the deceased. The Defendant has never occupied the land despite causing himself to be registered as proprietor. The Plaintiff who lives on the land with her children resisted any attempts by the Defendant to evict her from the land and at the time of hearing this suit, she was still in occupation. The Plaintiff is now aged around eighty (80) years.

A copy of the official search for land reference number Bokoli/Mukuyuni/429 shows that the Defendant Ambrose Mulongo became the registered owner on the 7<sup>th</sup> November 2000. The Plaintiff herein Florence Nasimiyu Wekesa lodged a caution against the title on the 10<sup>th</sup> December, 2001 claiming beneficial interest. The death certificate B no.577013 shows that the deceased Saulo Wekesa Mwendela died on the 23<sup>rd</sup> July 1997 at the age of 93 years. The evidence of the Plaintiff that she was the only child of the deceased and thus the only heir to her late father's estate was uncontroverted. She stayed on the suit premises with the deceased for about 20 years before his death, the Defendant has never occupied or used the land in question. The suit was not defended in order to lay a claim on the land by the Defendant. The Plaintiff was very categorical that no succession cause was filed by her or any other person to inherit the deceased's property. Whatever method, the Defendant used to obtain registration was fraudulent or through misrepresentation.

The Plaintiff has proved that she was entitled to inherit the deceased's property as the only heir and that the Defendant disinherited her through fraudulent means. The Defendant could not lawfully obtain absolute ownership rights of the land. From the year 2000, the Defendant held the land in trust for the Plaintiff. She has proved her case against the Defendant to the satisfaction of the court. I enter judgment in her favour as prayed in the plaint. The Land Registrar is hereby directed to delete the name of the Defendant from the register and substitute it with that of the Plaintiff. Costs of the suit to the Plaintiff.

**F. N. MUCHEMI**  
**JUDGE**

Judgment dated and delivered on the 8<sup>th</sup> day of July, 2010 in the presence of Mr. Situma holding brief for Mr. Wanyama.

**F. N. MUCHEMI**  
**JUDGE**