



REPUBLIC OF KENYA.
IN THE HIGH COURT OF KENYA
AT KITALE.
CIVIL SUIT NO. 4(5) OF 2005.

ZEPHANIA KHISA SAUL ::::::::::::::::::::::::::::::::::::::: PLAINTIFF.

VERSUS

THE BOARD OF TRUSTEES)

KAMUSINDE SALAVATION ARMY CHURCH)::: DEFENDANT.

J U D G M E N T.

1. Interlocutory Judgment was entered in favor of the plaintiff on 30th March, 2005. This matter proceeded for hearing and the plaintiff gave evidence in support of his claim as stated in the plaint. According to the plaintiff, he and the defendant are the joint Administrators of the Estate of the late **Saulo Fuchaka (deceased)** in that capacity both parties were issued with a grant of letters of administration which was confirmed on 12th April, 2000 in **Bungoma High court P & A Cause No. 184 of 1996.**

2. By virtue of the said grant, the defendant was entitled to 0.3 acres out of LR. No. **KIMILILI/SIKHENDU/447**, and the plaintiff was entitled to the balance of the land. The defendant caused the title to be subdivided and fraudulently registered itself as proprietor of **KIMILILI/SHIKHENDU/1302** measuring 1.15 acres instead of 0.3 acres as per the confirmed grant of letters of administration. The plaintiff testified that the transfer and registration of 1.15 acres in favor of the defendant was fraudulent, the defendant did not involve the plaintiff who is also a co-administrator of the deceased estate.

3. The plaintiff produced copies of the confirmed grant and the order that was recorded by **Mitey - J** on 9th June, 2003. He also produced a copy of the confirmed grant that provided a schedule of distribution. According to that confirmed grant, which was issued on 12th April, 2000, **Kamusinde Salavation Army** is supposed to get 0.3 acres out of LR. No. **SIKHENDU/KIMILILI/447**. The defendant was served but it did not enter appearance or file a defence. Thus the plaintiff's case is not controverted. Further the plaintiff has been able to prove his claim to the required standard and he supported it with a copy of the confirmed grant.

4. According to the confirmed grant, both the plaintiff and defendants are co- administrators. There is no way the defendant could have transferred a deceased estate without the signature of the co-administrator. Accordingly the defendant is hereby ordered to retransfer the portion of

KIMILILI/SHIKHENDU/1303 apart from 0.3 acres within 30 days to the plaintiff. In the event that the defendant fails to do so, the entry on LR. No. KIMILILI/SHIKHENDU/1302 shall stand cancelled. The Deputy Registrar will be at liberty to effect the transfer according to the confirmed grant.

The plaintiff shall have the costs of this suit.

Judgment read and signed on 9th December, 2010.

MARTHA KOOME.
JUDGE.