



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL CASE 84 OF 2007**

**SEVERINUS MBAYAKI ..... PLAINTIFF**

**V E R S U S**

**FELIX MUNAMI NGAMIA ..... DEFENDANT**

**R U L I N G**

By his application dated 17<sup>th</sup> July, 2009 the applicant is seeking restraining orders of injunction against the defendant. The applicant contends that he is the registered owner of plot No. **BUNYALA/SIDIKHO/827** and the respondent intends to bury the remains of the late **JOSEPH WEKULO NGAMIA** on that parcel of land.

Mr. Nandi, counsel for the applicant submitted that the deceased is a brother to the respondent and the respondent had made arrangements to bury the deceased on the applicant's land. A copy of an official search for plot No. **BUNYALA/SIDIKHO/827** was annexed to the applicant's supporting affidavit sworn on 17<sup>th</sup> July 2009. The search shows that the registered owner is **SEVERINUS MBAYAKI SISA** who was registered on 25<sup>th</sup> June 1980 and a title deed was issued on 10<sup>th</sup> July, 1980. This was after the subdivision of **Plot No.368**.

In his supporting affidavit, the applicant contends that this court issued an injunction against the defendant on 21<sup>st</sup> April, 2008. Despite the court orders, the respondent is intending to bury his late brother on the applicant's land.

The respondent on his part contends that plot No. **BUNYALA/SIDIKHO/368** belonged to his late father. The deceased who he intends to bury was his brother and he registered himself as the proprietor on 19<sup>th</sup> August, 1970. Subdivision of the land was done on 18<sup>th</sup> December, 1979 and two titles were issued namely Plot No. **826** and **827**. The respondent further contends that his father's grave is on the suit land and the deceased used to live on the land and he died on the land. He has no where to bury the deceased.

The documents filed in this suit show that the late Joseph Wekulo Ngamia caused Plot No. **BUNYALA/SIDIKHO/368** to be sub-divided into two portions. Initially the plot was 7.2 Hectares. In an application dated 13/5/1978 the deceased applied to the Lurambi Land Control Board for the consent to sub-divide the land into two portions of 2.8 and 4.4 Hectares respectively. On 21<sup>st</sup> August, 1978 the Lurambi Land Control Board granted the consent to subdivide as well as to transfer a portion to Severinus Mbayaki Sisa for a consideration of **KShs.13,200/=**.

The respondent herein, **FELIX MUNAMI NGAMIA** filed Kakamega High Court Civil Suit No.77 of 2003 and sued his late brother Joseph Wekulo Ngamia, the plaintiff, Severinus Mbayaki Sisa and one Sebastian Wakholi Sorochi. In his plaint he contends that the property known as Plot No. **BUNYALA/SIDIKHO/368** belonged to their father **NGAMIA WEKULO**. Their late father had shown them their respective portions but his brother sold the land to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in that suit.

It is the body of Joseph Wekulo Ngamia the respondent intends to bury on the suit land. This is the same person who sold the land to the plaintiff. The land is registered in the plaintiff's name and he has been the absolute owner since 1980.

I do find that the applicant has established a prima facie case with probability of success against the respondent. By the time the late Joseph Wekulo Ngamia sold the land to the respondent, he was the registered owner. The applicant lawfully acquired the land and unless his title is nullified by the court, he remains the owner of the land.

The respondent herein is hereby restrained by an order of injunction either by himself, his agents, servants or representatives from burying the remains of the late **JOSEPH WEKULO NGAMIA** on parcel **No. BUNYALA/SIDIKHO/827**. The interim orders issued on 22<sup>nd</sup> July, 2009 are hereby confirmed. There shall be no order as to costs.

***Delivered, Dated and Signed at Kakamega this 15<sup>th</sup> day of October, 2009***

**SAID J. CHITEMBWE**

**J U D G E**