

IN THE HIGH COURT AT MIGORI

SUCCESSION CAUSE NO. 400 OF 2014

IN THE MATTER OF THE

ESTATE OF FESTO MWITA MACHERA (DECEASED)

BETWEEN

PAUL MARWA ITEMBE APPLICANT

AND

ROBI MWITA RESPONDENT

RULING

1. The deceased in this matter, **Festo Mwita Macher**, died in 1989. His wife, Robi Mwita, applied for and obtained the grant of letters of administration in ***Kehancha Succession Cause No. 29 of 2013***. The grant was confirmed and certificate issued on 9th July 2014. As result of the confirmation she was became the absolute owner of **BUKIRA/ BUHIRINGERA/191** having inherited the half share of the property which was registered in her husband's name.
2. The application before the court is a summons for revocation of the grant by Paul Marwa Mwita. He seeks to revoke the grant on the ground that the deceased held the property known as **BUKIRA/ BUHIRINGERA/191** in trust for the family which was a matter was not disclosed by the respondent when she filed the succession cause. According to the applicant, the land was adjudicated upon when his father was away in Tanzania and he had left his mother on the suit land to take care of the family interests.
3. The respondent vehemently denied this fact and averred that the applicant only came onto the land two years ago and forcefully tried to take over the land. As a result the parties litigated over the land in the District Land Dispute Tribunal and the Provincial Land Disputes Tribunal which ruled in the respondent's favour.
4. From the decree issued by the court in **Kisumu Chief Magistrates's Court Land Case No. 42 of 2009, *Robi Mwita v Paul M. Itembe and Salim W. Itembe***, the dispute between the parties that reached the Provincial Land Appeal Committee for Nyanza Province. The Tribunal made an award ordering that Robi Mwita is to enjoy her property without interference from the defendants.
5. In the circumstances, I hold that since the Land Case dealt with the property rights as between the applicant and respondent, the application for revocation is a collateral attack on the said decision and I therefore decline to entertain the application for revocation.
6. The remedy which the applicant now seeks must lie elsewhere and I am therefore constrained to strike out the Summons dated 17th September 2014.
7. There shall be no order as to costs.

DATED and DELIVERED at MIGORI this 11th day of November 2014.

D.S. MAJANJA

JUDGE

Mr Kisera instructed by Omonde Kisera and Company Advocates for the applicant.

Respondent in person.