



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL APPEAL NO.48 OF 2002

JACKIM KITHINJI MUTUATHUKU.....1ST APPELLANT

LUCY KARIMI AMANDARA.....2ND APPELLANT

VERSUS

JULIUS GIKUNDA ATHILI.....RESPONDENT

*(An Appeal From the Judgment and Decree of the Learned Chief Magistrate Mr. A. O. Muchelule
Dated and Delivered on the 25th Day of April, 2002 in Meru CMCC No.401 of 1994)*

J U D G M E N T

The appellant in his Memorandum of Appeal dated 24th May, 2002 had the following grounds:

1. **The Learned trial magistrate erred in law in finding in favour of the Respondent when no particulars of trust were pleaded in his plaint.**
2. **The learned trial magistrate erred in law to find that the doctrine of TRUST did not apply in the circumstance of this case.**
3. **The learned trial magistrate erred in law in failing to appreciate the 1st Appellant's unfettered right to deal with his land parcel No. ABOGETA/U-CHURE/387 as he desired and in particular to transfer the same to his daughter, the 2nd Appellant..**
4. **The learned trial magistrate's judgment is against the weight of evidence on record.**

On 26.6.2014, advocates representing the parties told the Court that they had come up with a consent which settles this matter. The consent was signed by the firm of Kiautha Arithi & Co. for the appellants and the firm of Munga Kibanga & Co. for the respondents. The consent says:

“By consent of the parties and their respective advocates:-

- (a) **That one acre of L. R. No. ABOGETA/U-CHURE/387 be transferred to the respondent by the 2nd Appellant.**
- (b) **That the said one acre to encompass the Respondent's developments on the said land.**
- (c) **That the remainder of LR. NO.ABOGETA/ U-CHURE/387 to remain in the name of the 2nd Appellant.**
- (d) **That the appellants to cater for the sub-division fees and costs while the Respondent to cater for the fees required for the registration of a new title in his name.**

(e) That this matter being a family dispute each party to bear own costs.

(f) That there being no dispute existing between the family, all parties to co-exist peacefully.”

The terms of this consent are adopted as an order of this Court. This appeal is marked settled and may not in future be resurrected by the parties involved.

It is so ordered.

Delivered in Open Court at Meru this 26th day of June, 2014 in the presence of:

Cc Lilian/Daniel

Otieno h/b Kibanga for Respondent

Miss Mutinda h/b Arithi for Appellant

P. M. NJOROGE

JUDGE