



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Civil Case 123 of 2010

**GLADYS WANGECHI GICHOHI
MAGDALENE WAMBUI
HELLEN WAHITO.....PLAINTIFFS
GRACE NYAWIRA
MAGDALENE NYAMBURA**

VERSUS

JOSEPH GATHECA GICHOHI.....DEFENDANT

J U D G M E N T

The subject matter of this judgment is the originating summons dated 21st September 2010 in which Gladys Wangechi Gichohi, Magdalene Wambui, Hellen Wahito, Grace Nyawira and Magdalene Nyambura, hereinafter referred to as the 1st, 2nd, 3rd, 4th and 5th plaintiffs respectively, applied for the following orders:

- 1. THAT the Defendant hold the land parcel number THEGENGE/IHITHE/767 wholly and one (1) hectare of land out of THEGENGE/IHITHE/768 in trust for the plaintiffs.**
- 2. THAT costs of this suit to be condemned to the Defendant.**
- 3. THAT any further or better relief which this Honourable Court may deem fit to grant.**

Gladys Wangechi Gichohi swore the affidavit filed in support of the Originating Summons. Joseph Gatheca Gichohi the defendant, filed the replying affidavit he swore to oppose the summons. When the Originating Summons came up for hearing, learned counsels appearing in the matter recorded a consent order to have the dispute disposed of by affidavit evidence and by written submissions.

I have carefully considered the grounds set out on the face of the summons plus the facts deponed in the affidavits filed for and against the summons. I have also considered the rival written submissions. It is the submissions of the plaintiffs that the defendant holds the parcel of land known as L.R. No.Thegenge/Ihithe/767 and an acre to be excised from L.R. No.Thegenge/Ihithe/768 in trust for them. The plaintiffs and the defendant are children of the late Kiumbani Kagunya. The plaintiffs have stated that they filed this action to enable them prompt the defendants surrender the aforesaid lands which he holds in trust for them. They allege that the Defendant succeeded their late father vide Nyeri H.C.S.C. No.48 of 2005, thus causing the aforesaid parcels transmitted to him. Annexed to the affidavit of Gladys Wangechi Gichohi are copies of the register in respect of the above parcels of land showing that the Defendant is the registered proprietor. Despite having registered himself as the proprietor of the aforesaid land, the plaintiffs aver that they live and occupy the land in question. In response to the

allegations, the defendant accused the plaintiffs of concealing material facts from the court. He stated that he was the absolute owner of L.R. No.Thegenge/Ihithe/768 and that he holds L.R.

No.Thegenge/Ihithe/766 in trust for the plaintiffs. The defendant averred that the position arose out of the distribution done vide Nyeri HC.SUCC. Cause No.48 of 1993. It is the defendant's argument that their deceased father made his wishes known while he was alive and that the clan members distributed the land after his death according to the deceased's wishes and no one objected to the arrangement. The defendant further stated that he was prompted to file citation proceedings when the plaintiffs' mother refused to cooperate to apply for letters of administration in respect of the estate of the late Kiumbani Kagunya Gichohi and that there was no protest filed against the application or confirmation for grant in which the deceased's parcel of land known as L.R. No.Thegenge/Ihithe/97 was distributed as follows:

Joseph Gichohi (Defendant) – 4.3 acres

Grace Gichohi (plaintiff's mother) – 5.5 acres

The Defendant averred that since Grace Gichohi was not willing to take up the title deed, the same was registered in the defendant's name in trust for her. The defendant indicated he was ready and willing to re-transfer the land to the plaintiffs on condition that they pay him the amount he incurred while pursuing the succession proceedings. The defendant has specifically pleaded that the late Kiumbani Kagunya Gichohi had made his wishes known on how his parcels land would be shared. He also stated that the clan elders effected the wishes of the deceased leading to the distribution of the estate vide Nyeri H.C.S.C. No.48 of 1993. The plaintiffs did not deem it fit to controvert the aforesaid averments which were made vide a sworn affidavit. The mode of distribution was not challenged. Having looked at the material presented to this court by the Defendant, I am convinced the estate of Kiumbani Kagunya Gichohi, deceased was distributed to the beneficiaries according to his wishes. The defendant admits that he holds L.R. No.Thegenge/Ihithe/767 in trust for the house of the plaintiffs' mother who has since then passed on. I find the plaintiffs to have proved their claim over the aforesaid parcel. I declare that the Defendant holds L.R. No.Thegenge/Ihithe/767 in trust for the plaintiffs. Consequently the defendant should execute the necessary documents to have the aforesaid land transferred and registered in the names of the plaintiffs. I find the plaintiffs' claim of 1 acre to be excised from L.R. No.Thegenge/Ihithe/768, unproved. I decline to grant them the order sought. The defendant had claimed he should be paid costs he incurred when pursuing Nyeri H.C.SUCC. Cause No.48 of 1995. I do not think this is the right forum for him to make such a claim. If well advised, he should file the necessary pleadings in the relevant file. I refuse to grant the order. Since the dispute involves members of the same family, I direct that each to meet his or her own costs.

Dated and delivered this 17th day of August 2012.

J.K. SERGON

JUDGE