

REPUBLIC OF KENYA

REV. FRANCIS WANGUNYU NYOROPLAINTIFF

V E R S U S

1. SIMON CHEGE NYORO

2. FELIX MUTURI NYORODEFENDANTS

J U D G M E N T

The Plaintiff and the Defendants are brothers. The Plaintiff is the registered proprietor of parcels LR. No.

GATAMAIYU/GACHOIRI/1031 and GATAMAIYU/GACHOIRI/1032. He alleged in the plaint filed on 1st November, 2007 that the Defendants were cultivating on the suit premises with his consent until about January, 2005 when he gave them notice to leave but that they did not leave. Hence the suit for eviction and permanent injunction.

The Defendants filed a defence and counterclaim. They denied they were trespassers on the parcels and instead claimed a beneficial interest in them. Their case was that the Plaintiff, their elder brother, was registered in respect of their deceased father's land GATAMAIYU/GACHOIRI/593 as trustee under Kikuyu customary law on his behalf and on behalf of all his brothers and that each was entitled to equal portion. In 1965 the Plaintiff asked his father to give him land for having held the title above as trustee. That was when the land was subdivided into 1031 and 1032. The Plaintiff was given 1032 absolutely and he was asked to hold 1031 in trust for the Defendants. The Defendants claim they have developed 1031, have been using it and have even raised their children thereon. They denied the allegations in the plaint and sought a declaration that the Plaintiff holds 1031 in trust for them as beneficial owners. They asked that the land be transferred to them.

The Plaintiff denied the allegations in reply to defence and counterclaim. He denied he was registered to hold the parcels in trust for the Defendants or that the two parcels were derivatives of 593. His case was that he bought the parcels and they are his absolutely.

The Defendants were served through their advocates, M/s WAWERU GATONYE Advocates, but did not attend the hearing. Neither did their advocates. Only the Plaintiff testified. He told court that in 1958 he bought 3 acres from one uncle and 2 acres from another which parcels were consolidated and registered in parcel GATAMAIYU/GACHOIRI/50. He bought 5 acres from yet another uncle. It was registered as GATAMAIYU/GACHOIRI/59. In 1964 he combined the two parcels into one and became GATAMAIYU/GACHOIRI/593. He was able to pay for these lands because he was a teacher. He produced a register extract (Exhibit 12). In 1989 he sold a total of 3 acres and was left with 7.8 acres comprised in GATAMAIYU/GACHOIRI/956. In 1991 he sold another 2 acres and subdivided the balances into two which were registered as 1031 and 1032. He testified that these are his absolute parcels, and produced Exhibits 1 and 3 being title deeds. He denied that the parcels ever belonged to his father. He sued the Defendants because, court heard, they have illegally occupied 1031. He asked for their eviction and for permanent injunction.

The evidence above was not controverted. I accept it and find the Plaintiff to be the absolute owner of the two parcels. I find the Defendants have illegally occupied 1031 and therefore an order of eviction shall issue against them in regard to the parcel. In regard to both titles, a permanent injunction shall issue as prayed in the plaint. Costs shall follow the event. The counterclaim is dismissed with costs.

DATED AND DELIVERED IN NAIROBI THIS 9TH DAY OF MARCH 2010

A. O. MUCHELULE

J U D G E