



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Civil Appeal 18 of 1999

GICHOVI RURIRI.....APPELLANT

VERSUS

GRACE WANGUI RURIRI.....RESPONDENT

JUDGMENT

This appeal arises from Judgment of *Principal Magistrate at Embu Civil Case No. 265 of 1990* in which case the Trial Magistrate decided that the plaintiff is entitled to one acre out of parcel No. Ngandori/Kirigi/1799. The Trial Magistrate failed to consider the relevant provisions of Registered Land Act regarding first registered title of proprietor of land. That Judgment was not written in accordance with the law and did not notice inconsistencies in plaintiff's case. And that the Judgment was against the weight of evidence. The facts were simple. Both Respondent and Appellant being mother and son resided and wholly occupied the suit land for a long period. The appellant was a small boy. Then the Appellant raised problems and the mother Respondent filed the suit claiming a declaration of trust and subdivision of the land and a portion he gave to her.

The suit was commenced by plaintiff and the dispute was referred to the elders who reported award which was not agreed. This was set aside on application of the parties. The suit was heard a fresh. The evidence before the Trial Magistrate was that the disputed land was given to the Respondent by her clan. At the time her husband had died many years ago and the Appellant was a minor. Later she got the land registered in the name of her son Appellant. They both lived on that land until the Appellant got married and the disputes arose. The appellant admitted that when he went to be registered as proprietor of the land he was taken by PW2. The facts were not disputed by the Appellants witnesses.

It is after hearing of the evidence that the Trial Magistrate found that the Appellant held the land in trust for himself and the Respondent and due to disputes that had arisen that the trust should be terminated and the Respondent be given one acre of the land. On grounds of Appeal the record shows that the issue of provisions of Registered Land Act were not raised before him. The trial was conducted by advocates for each party.

I find no inconsistencies of facts in the Respondents evidence. It was clear from the Judgment that the Trial Magistrate found the existence of a trust and proceeded to write Judgment accordingly.

On the whole I find no merits on the grounds of appeal the same is dismissed. The Appellant must comply with the Judgment in the lower court. The Appellant shall pay costs of this appeal and in the subordinate court.

It is so ordered.

Dated this 23rd April, 2008.

J. N. KHAMINWA

JUDGE

23/4/2008

Khaminwa – Judge

Njue- Clerk

Mr. Karuri

Read in open court

J. N. KHAMINWA

JUDGE