



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 418 of 2003**

1. Land and Environmental Law Division

2. Subject of main suit land.

a) Adverse Possession

LR Loc/8/Gataa/537

b) Plaintiff 1 – 4 and defendant are brothers

c) Suit property Loc/8/Garara/537 measuring 3 .0 acres registered in defendants name 1957-1962

d) Intention of father that son hold land in equal share

e) In possession since 1965 – cultivating

f) Intention of father – important to sons

3. Defendant – Land was his gift

4. Held:

a) The defendant holds the suit land in trust of the plaintiff

b) That the land be apportioned according to the intention of the father to parties wish namely 0.6 per person/son

5. Case law – nil

6. Advocate:

L. M. Kinuthia for L.M. Kinuthia & Co. Advocates for the plaintiff – present

Joseph Ndegwa Kariuki defendant in person – absent

**FRANCIS GACHIRA KARIUKI .....1<sup>ST</sup> PLAINTIFF**

**MACHARIA KAMAU ..... 2<sup>ND</sup> PLAINTIFF**

**JOHN MAINA KARIUKI ..... 3<sup>RD</sup> PLAINTIFF**

**EDWARD NJOROGE KAMAU .....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**JOSEPH N. KARIUKI .....DEFENDANT**

**RULING**

1: Background of case

1. The plaintiff No.1 – 4 are brothers. The defendant is also their brother. I am not told if there are any sisters in the family.

2. The father to the parties obtained land in his name. As he was not permitted to get this land during the demarcation period he registered a second piece of land in the name of his first born son then aged 8 years old. When the said son was old enough, the mother to the parties used the land in question to cultivate. This was Loc.8/Gatara/537. This land was also being cultivated by each of the brothers. Each party had a portion to both parcel of land.

3. When the parents died, the defendant claimed the land registered in his name. He refused to share the same although the brothers had cultivated the piece of land for 44 years undisturbed.

4. The matter was heard before various quasi judicial body and the same decisions were set aside due to lack of jurisdiction.

5. The defendant stated that the land was his and did not hold the same in trust.

6. The plaintiff filed this originating summons to sought for the determination of the question in issue.

II: Finding

7. In the case law of Mwangi and Another v Mwangi Hccc (1986) KLR 328.

8. The issue of trust was considered in this case law. The land was registered in the name of the defendants as a young man. The plaintiff remained in occupation for 20 years. That during the said 20 years he did not denounce the occupation of land by the other party. This meant that title had acquired by adverse Possession.

9. I hereby enter judgment for the plaintiff. I found and order that he did acquire title by way of Adverse Possession.

10 That each party be apportioned 0.6 acres of the land amongst the five sons. I understand, one died and or the father and mother. The land is said to be 3 acres.

11. I award the costs of this suit to the plaintiffs 1 – 4.

Dated this 31<sup>st</sup> day of July 2007 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**

L.M. Kinuthia for L.M. Kinuthia & Co. Advocates for the plaintiff – present

Joseph Ndegwa Kariuki defendant in person - absent