



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Civil Suit 190 of 1992**

**NGARI MWANGI.....1<sup>ST</sup> PLAINTIFF**

**IRERI MWANGI.....2<sup>ND</sup> PLAINTIFF**

***Versus***

**KAGWERU MWANGI.....DEFENDANT**

**JUDGMENT**

The Plaintiff in this action by their Plaint averred that the 1<sup>st</sup> Defendant entered into an agreement with KIMWEA NGOROMO whereby the Plaintiff agreed to buy from the said Ngoromo parcel No. BARAGWE/GUAMA/528 for Ksh.1,500/=. This was in 1960. The 1<sup>st</sup> Plaintiff contributed Kshs.1,000/= whilst the 2<sup>nd</sup> Plaintiff contributed Ksh.500/= towards the purchase price. That amount of Ksh.1,500/= was given to the Defendant to conduct the sale on behalf of the Plaintiffs. The Plaintiffs were by then working in Nairobi. The Plaintiffs further averred that they were in agreement that the suit property be registered in the name of the Defendant to hold in trust for them. Thereafter the Plaintiffs settled on the said land, which they have continued to occupy to-date with their family and have undertaken extensive development. The Plaintiffs further averred that the Defendants have refused to convey that parcel of land back to the Plaintiffs despite demands being made. The Plaintiffs therefore seek by their prayer that the court do declare that the Defendant holds the suit property in trust for both of them and that the court do further determine the trust and order the Defendant to transfer the suit property to the Plaintiffs. The Plaintiffs have also prayed in the alternative for a declaration for adverse possession of the suit property.

The Defendant by his defence simply denies the claim of the Plaintiffs and further states that the matters raised in this suit were the subject of an appeal in the Court of Appeal Civil Appeal No. 40 of 1991. The 1<sup>st</sup> Plaintiff in his evidence stated that he, at the material time, was working in Nairobi whilst the 2<sup>nd</sup> Plaintiff was working in Mombasa. He stated that Ngoromo agreed to sell to him and his brother the 2<sup>nd</sup> Plaintiff the suit property. He confirmed that he gave Ngoromo 1,000/= whilst the 2<sup>nd</sup> Plaintiff paid 500/=. He further confirmed that the money was transmitted through the Defendant. That he and his co-plaintiff allowed the Defendant to be registered as the owner to hold the property in trust. He also confirmed that he and his family and the 2<sup>nd</sup> Plaintiff's family to-date occupy the suit property.

P.W.2 was substituted for the 2<sup>nd</sup> Plaintiff after the death of the 2<sup>nd</sup> Plaintiff. He stated that the Defendant was at the material time the head of the family. He reiterated that the 1<sup>st</sup> Plaintiff contributed Ksh.1,000/= and his late father Ksh.500/= towards the purchase price. That it had been agreed on the 1<sup>st</sup> Plaintiff and his late father returning to the home that the Defendant would register the property in their names. That the Defendant despite being requested to return the land to the Plaintiffs he had failed to do so.

In respect of the appeal No. 190 of 1992 he stated that the orders of the lower court were set aside and the parties were granted leave to file this fresh suit. P.W.3 was the son of the 1<sup>st</sup> Plaintiff. He confirmed that he had lived on the suit land for 47 years. He also reiterated the evidence of P.W.1 and P.W.2 in respect of how the land was acquired. The Plaintiff after closing their case, the Defendant not being

before court, the court reserved its judgment.

The Defendant had been served with a Hearing Notice for the hearing of this case on 31<sup>st</sup> May 2007. He was served with that Hearing Notice on 10<sup>th</sup> May 2007. The Defendant failed to attend court to defend this suit. I confirm that I have gone through the evidence adduced by the Plaintiffs and their witness and I find that the Plaintiffs have proved their case on a balance of probability. Their evidence was uncontroverted in respect of how they acquired the suit property and on how they agreed to the same being registered in the name of the Defendant in trust for them. The finding of the court therefore is that there is a trust in existence in respect of the suit property and that the suit property is held in trust by the Defendant on behalf of the Plaintiffs. The judgment of this court therefore is that:

1. That the court does hereby declare that the Defendant holds title No. **BARAGWE/GUAMA/528** as trustee for the Plaintiffs.
2. That the court does hereby determine the said trust and does further order that the Defendant do transfer the property No. **BARAGWE/GUAMA/528** to the Plaintiffs.
3. The court awards the costs of this suit to the Plaintiffs.

*Dated and delivered at Nyeri this 20<sup>th</sup> day of July 2007.*

**MARY KASANGO**

JUDGE