

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 113 of 2005

GEORGE GITAU GAUMA.....PLAINTIFF

VERSUS

AUGUSTINO MBAI GATUMA.....DEFENDANT

RULING

The Applicant seeks an injunction to restrain the Defendant from interfering with the Applicant's possession of the suit premises pending the hearing of this suit.

It is not in dispute that the Defendant is the registered owner of the suit premises but that the Plaintiff has resided on the land since his birth 59 years ago.

Until this suit was filed seeking an order that the Defendant holds the suit premises in trust for the Applicant and himself and named beneficiaries, the Defendant has not objected to the Applicant being there.

Whether this was because it was by way of license or because the Defendant was aware of the trust alleged is a matter for the court at the hearing of this case.

Mrs. Wanjau relied on the cases of **Phillicery Nduku Mumo Vs Nzuki Makau C.A No. 56 of 2001** and **Limuli Vs Marko Sabayi (1976) K.L.R 251** for the proposition that a trust if proved can be in respect of land registered under the Registered Land Act (Cap 300).

In the result the Applicant has a prima facie case with a probability of success and in any event damages would not be an adequate remedy. Further, the convenience of the parties is that the status quo should remain until the matter in dispute is determined.

I therefore make the order sought in prayer 2 of the Chamber Summons of the 2/3/2005.

Costs in the cause.

DATED and DELIVERED at NAIROBI on 16th March 2005.

P.J RANSLEY

JUDGE