



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 2810 OF 1984**

**KENYA AFRICAN OTHAYA BUS UNION..... PLAINTIFF**

**VERSUS**

**PUBLIC TRUSTEE.....DEFENDANT**

**JUDGMENT**

Plaintiff prays for judgment against defendant (Public Trustee) for:

- (a) A declaration that suit land Nyeri Municipality Block 11/26 is held by the registered proprietors on trust for plaintiff
- (b) An order that defendant do execute the transfer documents in favour of the plaintiff and all other legal documents
- (c) The suit land be registered in the name of the plaintiff
- (d) The Chief land Registrar do enter in the register the name of the plaintiff in place of the registered proprietors.

The suit land which was originally plot No.352 Nyeri is registered in the names of Gichuki Githinji, Kimondo Ngungu, Kingori Muriu, and Simon Muriithi. It is 0.0946 Hectares. The abstract of title shows that the plot was allocated by Commissioner of Lands and that it is a leasehold for a term of 99 years from 1/5/63 at annual rent of shs 400 The consideration was Ks 2000. Kingori Muriu died on 11.1.71. His widow Wangechi Kingori referred the administration of the Estate to the Public Trustee. The suit was brought against the public trustee on the basis, as averred in paragraph 8 of the plaint, that the other three registered proprietors except Wangechi Kingori had on 18.7.87 executed the transfer in favour of the plaintiff. However on 20.6.91 the other three registered proprietors applied to be joined as defendants in the suit. Their application was allowed on or about 20.9.92 but the court did not order the plaint to be amended. Thereafter on 12.11.92, Kimondo Ngungu ; Simon Muriithi and Gichuki Githinji filed their joint defence as 2nd, 3rd and 4th defendants respectively. They deny in the defence that plaintiff is the beneficial owner of the plot. They also deny executing the transfer in favour of plaintiff on 16.7.91 and aver that, if they executed the transfers the execution was obtained after misrepresentation and or by way of fraud and no consideration passed from plaintiff to the defendants.

The first defendant (public Trustee) filed a defence denying all contents of the plaint

.Two persons gave evidence on behalf of plaintiff - Douglas Kingori Muthua (PW1), director of plaintiff, and Lee Muthoga (pw2) an advocate of the High Court and a senior partner in the firm of Muthoga, Gaturu & Company Advocates. Wangechi Kingori (DW1) gave evidence on behalf of Public Trustee. The second defendant also gave evidence as DW3. The Third defendant gave evidence as DW2 The 4th defendant did not give evidence.

The parties did not frame issues. Six main issues emerge from the evidence of the witnesses namely:

1. Was the plot allotted to UHURU GARAGE or to the four registered proprietors?
2. Was plaintiff (KAOBU) a shareholder in UHURU GARAGE to the extent of 85% share holding?
3. Did KAOBU construct a garage and petrol station on the plot in dispute?
4. Did KAOBU take possession of the plot in dispute?
5. Did the 2nd, 3rd and 4th defendants execute a transfer in favour of plaintiff?
6. Is KAOBU the beneficial owner of the plot?.

Regarding the first issue PW1 testified that the plot was allotted to Uhuru garage by the Commissioner of Lands and not to the four registered proprietors and that Uhuru Garage had twelve partners. According to Wangechi Kingori (DW1), it is her husband who applied for the plot, and who was allotted the plot but later invited the other three registered proprietors as her husbands friends.

According to Simon Muriithi - It is deceased who was allotted the plot and paid for it but later invited the other three who refunded deceased the money paid to Commissioner of Lands. According to Kimondo Ngunju, the plot belongs to the four registered proprietors.

There is ample documentary evidence on this issue. The first is a letter dated 21.3.63 (Ex 4) I quote below the whole letter

Uhuru Garage

P.O. Box 165

NYERI

21st March, 1963

The Land Commissioner

P.O. Box 30089

NAIROBI

Thro'

District Commissioner Nyeri

Dear Sirs,

**ALIENATION OF PLOTS NYERI TOWNSHIP**

We wish to apply for plot L.R. 352 which has been advertised for alienation in the official Gazette.

In pursuance of the terms under which the applications are invited, enclosed is our cheque for shs 1000 - being the deposit required.

Yours faithfully

## UHURU GARAGE”

The letter Allotment was addressed to

“ K. Muriu Esq  
., Uhuru Garage,  
P.O. Box 105,  
NYERI.”

The receipt dated 9.4.63 (Ex 8) from Commissioner of Land for receipt of shs 1000 read at the top right left hand corner

“RECEIVED FROM  
M/S UHURU GARAGE  
P.O. BOX 165, NYERI”

The subsequent receipt dated 6.5.65 from Commissioner of Lands (EX 9) shows that the money was received from Uhuru Garage. There is a letter dated 29.4.63 (EX 11) from Uhuru Garage asking Commissioner of Lands to address future correspondence to Uhuru Garage and not to K. Muriu. There is also a letter dated 31.5.63 (ex 10 from Uhuru Garage in answer to a letter from Commissioner of lands stating and I quote

“The NAME of plot no. 352 is UHURU GARAGE and therefore Mr. Kingori Mariu signed the letter on behalf of the company. He is not the owner of the plot but he is a member”

By a letter dated 14.6.63 (EX 12) the Commissioner of Lands inform Uhuru Garage that the details in the letter dated 31.5.63 (Ex 10) were not sufficient.

The Commissioner of Lands asked for names of the partners trading under the name of “Uhuru Garage” for purposes of preparing a draft Grant. By a letter dated 26.6.63 (Ex 13) Kingori Muriu gave the Commissioner of Lands the names of partners of Uhuru Garage as:

1. Gichuki Githinji
2. Kimondo Ngunju
3. Kingori Muriu
4. Simion Muriithi

The Grant in the name of the four persons “ trading under the firm name of “Uhuru Garage” was then issued in respect of plot L.R No. 1108/352 under the Registration of Titles Act (Ex2)

There is no dispute that Kingori Muriu signed all the correspondence to the Commissioner of Lands. Simon Muriithi (DW2) accepts that the partners in Uhuru Garage were 12 (or were they 13?) as shown in the minutes of the meeting of Uhuru Garage held on 18.6.72 (Ex 15).

These are:

1. Onesmus Ikiki - Chairman

2. Nderitu Gikaria
3. Gitau Njoroge
4. Paul Kimondo Ngunju
5. John Kabiro
6. S.M. Mamboo
7. Kiiru Gacuiga
8. Kinyua Ndegwa
9. Simon Muriithi
10. Ngoro Kabuthia
  
11. Kireru Kabuthia
12. Gituku Kamaitha
13. Kingori Muriu

Simon Muriithi (DW3) further accepted that, when Kingori Muriu applied for the plot, he applied for the plot on his own behalf and on behalf of Uhuru Garage. Paul Kimondo Njunju (DW3) also agrees that, other than the four registered proprietors, there were other partners of Uhuru Garage. The evidence of Wangechi Kingori is to the contrary. According to her, there were only four partners in Uhuru Garage. Although DW1, DW3, DW 3 testified that Kingori Muriu applied for the plot on his own behalf and later invited three others there is no concrete evidence on this. The evidence is not also consistent. DW2 testified that the other three refunded shs 1000 to Kingori Muriu. Wangechi Kingori testified that her deceased husband invited the three as friends to raise money for developing the plot. Paul Kimondo Njuguna testified that Kingori Muriu later asked every member of Uhuru Garage to pay him shs 500 as compensation.

DW” testified that after the plot was acquired the four formed “Githinji & partners” and that the plot is owned by the four registered proprietors as Githinji & Patners”

There is no documents to support this assertion and is not supported by any other witness. If so, the plot could have been registered in the name of four trading as “Githinji & Partners”

There is ample documentary evidence that although Kingori Muriu signed all the correspondence relating to the application and registration of the plot he did so on behalf of Uhuru Garage the 12 members of Uhuru Garage. There could be reasons why only four people were registered instead of all the 12 members.

The documents speak for themselves and the contents of the documents have been supported by evidence of PW1 DW2 and DW3. Consequently I find that the plot in dispute was allotted to the 12 partners of Uhuru Garage and not the four registered persons and that the four are registered as trustees for the 12 partners of Uhuru Garage.

I will consider issues no. 2, 3 and 4 together . PW1, DW2 and DW3 have given the history of Uhuru

Garage and KAOBU.

According to PW1 KAOBU was started in about 1959. Individual members owned buses which were operated in the name of KAOBU. Paul Kimondo Ngungu in his long affidavit sworn on 15.11.83 in High Court Civil suit No. 374/83 (O.S) agrees that the bus company was started by Onesmus Ikiki in 1959 who later invited other partners including Paul Kimondo Ngunju

He says in his evidence that the business name of the bus company was Othaya Bus services union, which was later incorporated on 29.5.64. The certificate of incorporation was produced by PW1 as exhibit (Ex 1).

According to DW2 and DW3 Peter Kingori Muriu and George Mugambi were running a business called economic Garage and after George and after George Mugambi left, other partners joined the business and it was renamed Uhuru Garage. According to the affidavit of Paul Kimondo Ngunju sworn on 15.11.83 (supra) this was in 1964. It is the evidence of DW3 that Uhuru Garage ceased business in 1971 after Peter Kingori Muriu died and later in 1980, KAOBU also ceased business. According to PW1 KAOBU contributed shs 33,000 to the Capital of Uhuru Garage while other partners contributed between shs 200 - 1,000 He produced minutes of the meeting of Uhuru and directors of KAOBU held on 10.9.7 which shows contribution of members. The minutes show that Kingori Muriu contributed shs 500/= According to him Mr. Paul Kimondo Ngunja (DW3) was not a shareholder in Uhuru Garage but only represented KAOBU in Uhuru Garage. Further, according to PW1, Uhuru Garage was formed for the purposes of preparing and servicing KAOBU buses. According to DW2 some members of KAOBU were members of Uhuru Garage but KAOBU was not a member of Uhuru Garage. He gave names of Onesmus Ikiki Suleiman Mwaniki Wambao as some of the members of KAOBU who were also members of Uhuru Garage.

The evidence of DW3 explains how a garage and a petrol station was constructed on the plot. The explanation given by defendants is that the garage and petrol station was constructed by KAOBU with a loan from Kenol on the understanding that, after completion, KAOBU would use the facility for its buses, pay the loan to Kenol and remain as tenants of Uhuru Garage. The evidence indeed show that the construction was done in 1965 and completed in 1966 after which both Uhuru Garage and KAOBU occupied the premises. DW3 agrees that the negotiation with Kenol was done by Onesmus Ikiki, Kingori Muriu and himself and that he and Onesmus Ikiki were representing KAOBU in the negotiations.

Further DW3 testified that after the completion of the construction:

- (i) He, Onesmus Ikiki, and Kingori Muriu agreed that KAOBU would be paying shs 2000 per month to repay the loans of shs 62,000 to Kenol
- (ii) The Petrol station and garage was being managed by the three of them
- (iii) Kingori Muriu was manager of both KAOBU and the plot on behalf of the owners (ii) It was agreed that KAOBU be formed instead of Othaya Bus Services Union and the buses were dissolved into KAOBU
- (iv) The three employed mechanics and stopped using the Uhuru garage
- (v) KAOBU started running the whole garage
- (vi) DW3 was employed by KAOBU until 1976; was manager of KAOBU and representing KAOBU in meetings of Uhuru Garage.

DW 2 in his affidavit sworn on 15.11.83 (Supra) deposed in para 20 that KAOBU was a member of Uhuru Garage among others. He states in para 32, 33 and 34 that the dispute about the plot between KAOBU and the registered proprietors started in the late 60s.

PW1 testified that KAOBU and Uhuru Garage were one and the same thing and that the petrol station and garage were constructed from profits made by KAOBU and from a loan from Kenol. The minutes of the meeting of Uhuru Garage held on 18.6.72 Ex 15 show clearly that it was recognized that the plot belonged to Uhuru garage but KAOBU had spent money on the plot and was owed sh 113,000. Kimondo Ngunju is recorded in the minutes as saying that personally he had no pecuniary interest on the properties and that he only represented KAOBU. The minutes of the meeting between KAOBU and Uhuru Garage held on 10.9.73 (EX 16) tried to resolve the dispute about the ownership of the plot. Simon Muriithi is recorded to have proposed that Uhuru garage do transfer the plot to KAOBU on condition that KAOBU refund share contributions to member of Uhuru Garage as Uhuru garage was unable to refund shs 150,000 to KAOBU.

There is a letter dated 7.1.65 between Kenol and KAOBU. It shows that the Agreement for construction on the premises was between KAOBU and Kenol. By that letter KENOL loaned shs 10,000 to KAOBU to construct a garage and KENOL was to provide a further maximum of shs 60,000 for construction of a petrol station.

From the above evidence, there is no dispute that it is KAOBU who constructed a garage and a petrol station on the suit premises. It is also KAOBU who repaid the loan through deductions of commission on sale of fuel supplied by Kenol. Wangechi Kingori and Simon Muriithi says that KAOBU became a tenant of Uhuru Garage after the Petrol station and garage was constructed. Wangechi Kingori says that the rent was shs 200 per month which KAOBU was paying to Kenol towards the loan.

Simon Muriithi says that the shs 200 rent was being paid to Commissioner of lands to meet the land rent and land rates. Kimondo Ngunju says that the shs 200 rent was being paid to KENOL to clear the loan. The evidence is not consistent. In any case, it is clear from the Agreement between KAOBU and KENOL that the loan was to be recovered by crediting commissions earned by KAOBU to the loan account. So, there is no evidence that KAOBU paid any rent to Uhuru Garage for occupation of the premises. Further as the evidence of DW3 show KAOBU took exclusive possession of the premises. The garage and petrol station were being run by three persons Onesmus Ikiki who was both a member of KAOBU and Uhuru garage, Kingori Muriu who was a member of Uhuru Garage but as DW3 says as manager for KAOBU and DW3 who was a member of KAOBU and employee of KAOBU. There is no evidence that Uhuru garage was running any business on the premises from the time of construction to the time it ceased business in 1971.

DW3 has accepted in the sworn affidavit that KAOBU was a member of Uhuru Garage. He has accepted in writing that he has no proprietary interest in the plot and that he was only representing KAOBU. His evidence shows that from inception he was representing KAOBU in Uhuru garage in the construction of the garage and petrol station and in running the business of KAOBU thereafter. He was keeping the title deed for KAOBU. Even after KAOBU ceased business in 1980, it let the premises to Kenya Motor Garage as the letter dated 29.4.80 (Ex 24) shows KAOBU has been in possession of the premises since 1965 /1966 upto July 1992 when the Business premise Tribunal in Tribunal case no. 59/89 ordered that rent he paid to M/S Githinji & Partners and Wangechi Kingori. That order was made in the absence of KAOBU as the order (Ex D 5) itself shows.

PW1 explained that Gichuku Githinji; Kimondo Ngunja and Simon Muriithi signed the transfer dated 3.1.79 (Ex 20) in his presence in the offices of Mr. Muthoga Advocate.

Mr. Muthoga Advocate (PW3) testified that he witnessed the document and the three people were identified by Douglas Kingori.

Both DW2 and DW3 agree that the signatures on the document is their respective signatures. Their ID card numbers appear on the document.

DW2 says that he signed the document on being misled by Douglas Kingori that the purpose of the document was to transfer Kingori Muriu's share to Wangechi Kingori. DW3 explained that document was brought to him by Kega Muthua, a former M.P. of Othaya and brother of Douglas Kingori (PW1) and he

was misled to sign thinking that the purpose of the document was to transfer Kingori Muriu's share to his wife.

Gichuki Githinji did not give evidence. PW1 has shown by his evidence that the three persons were enlightened people. Gichuki Githinji was a manager of KCC Kimondo Ngunju was a councilor and a businessman Simon Muriithi was a prominent businessman. They new of all the previous disputes about the plot which has been raging since late 60s. It is incredible that they did not know what they signed for. The fact that KAOBU had constructed a petrol station, and a garage on the plot in dispute and the fact that there has been previous meetings and a previous attempt to have them convey the plot to KAOBU coupled with the foregoing evidence shows clearly that, they executed the transfer in favour of KAOBU with full knowledge that they were conveying the plot to KAOBU to end the long standing dispute. From all the foregoing evidence I find that KAOBU is a beneficial shareholder in Uhuru garage that KAOBU constructed the garage and petrol station on the plot; that KAOBU has been in possession of the plot from 1965/1966 to 1992; that KAOBU has been keeping the documents of title and that KAOBU is entitled to the share of the plot. KAOBU asks that the whole plot be conveyed to it.

But PW1 says that KAOBU is a beneficial owner of the plot to the extent of 85% PW1 further testified that KAOBU refunded contributions of some members of UHURU garage. Wangechi Kingori has not been refunded her husband's share. Her husband was not a member of KAOBU. So, if the whole plot is conveyed to KAOBU she will lose her husbands share. There is no certainty at the moment as to how many members of Uhuru Garage still claim the plot.

Considering all the circumstances of the case I agree that KAOBU'S beneficial interest in the plot is correctly assessed as 85%

Consequently I allow the plaintiffs claim to the extent that and I give judgment for plaintiff against the dour defendants for:

- (a) A declaration that suit land is held by the four registered proprietors on trust for plaintiff to the extent of 85%.
- (b) The four defendants do execute transfer documents and al other necessary documents in favour of plaintiff to transfer 85% share of the plot to the plaintiff.
- (c) If the defendants refuses to execute the transfer documents within 30 days, the Deputy registrar do execute the transfer documents on behalf of defendants.

I give 3/4 of the costs of the suit to the plaintiff.

**E. M. Githinji**

**JUDGE**

**7.4.2000**

**Miss Kamau for Kirundi for plaintiff present**

**Mr. Kibe for 2nd and 3rd Defendants present**

**Mr. Okello for first defendant present**

**Parties present**