

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL APPEAL NO. 408 OF 1988

**MONICA WAMBUI RUA PLAINTIFF
VERSUS
STEPHEN NDUATI RUA DEFENDANT**

JUDGMENT

The Plaintiff by her further Amended Plaintiff claims the following relief

(a) A declaration that the Plaintiff has acquired title of two acres out of L.RNO.5/Kagumo-ini/431 and two acres out of L.R. Loc.5/Kagundu-ini/291 by way of adverse possession.

(b) Alternatively and without prejudice to (a) above, an order that the defendant was registered as a trustee in L.R.NO.Loc.5.Kagumoini/431 and Loc 5/Kagunduiini/291 to hold two acres each out of the said parcel of land as a trustee for the Plaintiff

(c) Costs of this suit

(d) Any other or further relief that this Honourable Court may deem fit and just to grant.

The issue in this case are as follows:-

1. Was the suit premises land belonging to the father of the parties.
2. If so was the Plaintiff a married woman not entitled to inherit the land under Kikuyu Law and Custom.
3. Has the Plaintiff been in advance possession of the suit premises for a period on excess of 12 years before the filing of the Plaintiff on the 3/2/1998.
4. If not is the Defendant a trustee for the Plaintiff of a half share on the suit premises.

Having heard the evidence I am satisfied that the Plaintiff is telling the truth when she says she is not married despite having 5 children. I do not accept the evidence of the Defendant nor his witness Samuel Njuguna Gathahwa that she was married to one Ndungu Gahambi. If she was there is no explanation as to

why she has lived alone since 1963 on the piece of land known as plot 291 which she has cultivated on since that time.

I find that the suit premises belonged to the father of the parties and that after his death the land was registered in the name of the Defendant being the eldest son, as is the custom. The Plaintiff has not been in advance possession on the land having lived on plot 291 with the permission of the Defendant. Until this case was filed. I suspect that the Plaintiff's children have instigated her into filing this suit but that is not of any material importance. Under Kikuyu Law and Custom unmarried woman is entitled to inherit her father's land with any other son equally.

In the result I find that the Defendant hold the said pieces of land in trust for the Plaintiff equally. I order that the land therefore be registered in their names jointly as tenants in commission.

I make no order as to costs, which will be paid by each party equally.

Dated and delivered at Nairobi this 4th day of May, 2004

P.J. RANSLEY
JUDGE