



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 53 OF 1992**

**EPHANTUS MWAI MBOI ..... APPELLANT**

**VERSUS**

**FRANCIS MUIRI NGAACHA ..... RESPONDENT**

**J U D G E M E N T**

This appeal arises from the Judgement of the learned Trial Magistrate in Kerugoya.

RMCC No. 211 of 1999 originally 179 of 1989, the appeal was submitted with grounds of appeal. He inter alia challenged the learned Trial Magistrate's decision and contents that in respect of the application of adverse possession. The court reached a conclusion. I now perused the grounds of appeal and I have perused and fully considered the application submitted in support of this appeal as well as the submission in support of his appeal as well as the submissions made by the respondent. Having this in mind I have perused the entire record of the court below and the decision of the learned Trial Magistrate. This I have done as an appellate court of the first instance to dispute my even conclusion and a decision of a fresh date on the reality of the evidence submitted before the court below as well as to determine whether or not the learned Trial Magistrate applied the correct principles in respect of the issue raised having done so I have independently come to the same decision as the one arrived at by the learned Trial Magistrate.

The learned Trial Magistrate took into consideration all the evidence adduced fully. The appellant had caused to be transferred to his name fraudulently misrepresentation. His claim consequently for adverse possession is only aploy not only derived on Merit but is an attempt to hood wick work the process of law and is a flagrant abuse of the process of the court.

This appeal lacks merit it is consequently dismissed with costs. In the interest of justice it is endorsed that this matter be referred to the Senior Resident Magistrate Kerugoya to work out the modalities of time frame and compensation or otherwise to meet the ends of justice.

Order accordingly.

**S. AMIN**

**JUDGE**

30.7.2002

Coram : D.K.S Aganyanya, J

Baiya for Mwangi for applicant

Kanyi for respondent

Matu – Court Clerk

**ORDER**

Delivered and signed by Hon. Justice D.K.S Aganyanya this

30th day of July, 2002.

**SIGNED**

**D.K.S AGANYANYA**

**JUDGE**