



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 3428 OF 1994**

**JOHN KARANJA GACHINA.....PLAINTIFF**

**VERSUS**

**WANGARI KONGU.....DEFENDANT**

**JUDGMENT**

This is a suit in which the plaintiff asks for declaration that the defendant has no proprietary interest over the suit property, that the plaintiff is the bona fide owner of the suit property and he should be registered as such and the defendant to deliver up possession to the plaintiff, and have the land registered in the name of the plaintiff.

The prayer for inhibition is spent, as the prayers for ejection, damages and costs are all abandoned at the hearing. Although silent on the prayer for orders restraining the partitioning and disposal of the suit land, from the evidence the plaintiff does not want such sub-division to occur and the land to be shared out between him and his aunt.

The history of the land ownership of the suit premises is clearly documented. From the abstract of title obtained from the District Land Registry, the suit land originally belonged to Gachina Kongu whom the plaintiff says was his father ( and the fact of paternity is not in issue as there is no material before me disputing it.)

Later, on 27th November, 1980, Wangari Kongu, the defendant herein was registered as the owner of the land, with an entry against her name specifically stating that she was so registered to hold the land “in trust for Karanja Gachina” The plaintiff says in evidence that he was the one on whose behalf the land was being held by the defendant in trust. I have no reason not to believe that the plaintiff John Karanja Gachina is the same person described in the records as “Karanja Gachina” without the Christine name “John”.

The copies of the proceedings and consent order of the principal Magistrate’s court at Kiambu, made on 31st January, 1980 by the District Magistrate, also leave no doubt that the land was to be registered in the name of Wangari Kongu “to hold in trust for Karanja Gachina” and, the entry of the defendant as the holder of the land in trust for the plaintiff followed the said court order.

At the time of the registration of the defendant as the legal owner in trust for the plaintiff, the plaintiff, his national identity card bears this out, was still a minor. He attained the age of majority some six years later.

There is no evidence that the trust was to be for the plaintiff and any other person in respect of this very suit land. For the land now to be subdivided and shared between the plaintiff and any other individual would be a breach of trust and against the order of the court at Kiambu and not borne out by

the register held at the District Land Registry.

On this evidence, the court is satisfied that the defendant is not entitled to deny the trust or to exercise her powers contrary to the established fact that so far as this particular property is concerned, the plaintiff is the sole beneficiary under that trust.

Accordingly, the defendant has no proprietary interest over the suit property, the plaintiff is the bona fid owner of the suit property; the plaintiff be and he shall be registered as such; The defendant shall deliver up possession of the suit land to the plaintiff, and have it transferred to the plaintiff; the defendant is restrained from partitioning and/or disposing of the property to any other person that to the plaintiff.

As the rest of the prayers have been abandoned, there will be no orders in regard thereto, and each party is to bear its own costs of the suit.

Orders accordingly. This judgment is delivered Ex tempore.

R. Kuloba

Judge

27.9.1999

**Mr. Ngatia**

May the Original of the National identity card produced as an exhibit be released to the plaintiff. A copy shall be furnished to be on the court file. I undertake to furnish it in the course of the day.

R. Kuloba

Judge

27.9.1999

Order: The national identity card serial number 206293251. No. 9266412, produced as exhibit PW4, is hereby released to the plaintiff; Counsel for the plaintiff to furnish the court with a photostat copy for this file.

R. Kuloba

JUDGE

27.9.1999