

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: AKIWUMI, TUNOI & SHAH, J.J.A.)

CIVIL APPLICATION NO. NAI. 3 OF 1997 (3/97 UR)

BETWEEN

FREDRICK WACHIRA NDEGWA (substituted NDEGWA WACHIRA (DECEASED))
APPLICANT

AND

1. RICHARD WANJIRA NDANJERU

2. BEAUTTAH KANYORO MUTHUI RESPONDENTS

(Application for an injunction from an Appeal from a
Judgment and Decree of the High Court of Kenya at
Nyeri (Justice Osiemo) dated 18th November, 1996

in

H.C.C.C. NO. 300 OF 1996)

RULING OF THE COURT

The applicants' submissions as contained in his affidavit in support of his claims that the 2nd respondent had been given the suit property by the 1st respondent in order to defend the applicant's interest in the suit land, was not considered at all by the judge of the superior court when in his somewhat brief ruling dismissing the applicant's application, he held that the matter was res judicata. Since it is not denied that the suit property which had been registered in the name of the 2nd respondent, had been given to her by way of a gift, it would seem that the failure of the judge of the superior court to consider this point, is an arguable point.

This is particularly so when it is remembered that the applicant's caution which he had placed on the suit land, appears to have been wrongly lifted by the Land Registrar. But this was also an important issue which the learned judge completely failed to consider. The way in which the suit land seems to have passed from the 1st respondent to the 2nd respondent also fortifies the proposition that the suit land is likely to pass from the 2nd respondent to another. It is in these circumstances set out above that we think that the order that commands itself to us is that the prayers sought in the applicant's Notice of Motion dated 8th January, 1997 are hereby granted costs to abide the appeal.

Dated and delivered at Nairobi this 24th day of January, 1997.

A. M. AKIWUMI

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

I certify that this is a true copy of the original

. DEPUTY REGISTRAR.