

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: GICHERU, OMOLO & LAKHA, JJ.A.

CIVIL APPEAL NO. 79 OF 1997

BETWEEN

BEATRICE WANJIRU KIMANI APPELLANT

AND

EVANSON KIMANI NJOROGE RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nairobi
(Kuloba J) dated 14th day of November, 1996

in

H.C.C.C. NO. 1610 OF 1995 (O.S.))

JUDGMENT OF OMOLO, J.A.

I had the advantage of reading in draft form the judgments prepared by my learned brothers, Gicheru and Lakha, JJ.A. One feature common to both judgments is the conclusion that the learned trial judge appears to have been biased against the rights of this appellant and women in general over the issue of property acquired during the subsistence of a marriage. In my view, once it is accepted that a judge was in fact biased against a party, then the question of any notional fairness in the eventual outcome of the dispute becomes merely academic. I agree with Lakha, J.A. that this appeal is to be allowed in the terms proposed by him and that there be a retrial of the originating summons before a different judge.

Dated and delivered at Nairobi this 21st day of November, 1997.

R. S. C. OMOLO -----

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR