



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL OF KENYA  
AT NYERI  
Civil Appeal 214 of 1995**

**LUCY WANGECHI NDIRANGU.....APPELLANT**

**AND**

**REUBEN IGWANYA KIRUTHU.....1ST RESPONDENT**

**DEDAN NDIRANGU KIRUTHU.....2ND RESPONDENT**

**SIMON GACHUHI KIRUTHU.....3RD RESPONDENT**

**(Appeal from the ruling and Order of the High Court of Kenya in Nyeri (Lady Justice**

**M.A. Ang'awa) dated the 30th March, 1995**

**IN**

**H.C.C.C. NO. 176 OF 1987**

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**JUDGMENT OF THE COURT**

Were there some lawful way by which this court could allow appeals summarily, we would have allowed this appeal in a summary way. There was absolutely no claim based on adverse possession; the concept of adverse possession was touched on in paragraph six of the plaint but no prayer was made based on adverse possession. The “green card” the learned Judge talks about was not part of the pleadings before her. At the most what the respondent was entitled to was to apply that paragraph six of the plaint be struck out. We are ourselves satisfied that the claim was based on a trust and the learned judge wholly misconceived the pleading and was in error in striking out the plaint. We allow this appeal, set aside the Judge’s order striking out the plaint and remit the suit to the High Court to hear and determine it according to law. We give costs of this appeal and the application in the High Court to the appellant. Those shall be our orders.

**Dated and delivered at Nyeri this 16th day of May, 1996**

**J.E. GICHERU**

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**JUDGE OF APPEAL**

**R.O. KWACH**

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**JUDGE OF APPEAL**

**R.S.C. OMOLO**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**