



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Madan & Potter, JJ,A. and Hancox, Aq, J.A)

CIVIL APPEAL NO. 62 OF 1981

BETWEEN

GIDRAPH GICHINGIRI GACHOKA.....APPELLANT

AND

KARIUKI GACHOKA RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nyeri (O'kubasu, J.) dated 20th November, 1981

in

Civil Case No. 130 of 1974)

JUDGMENT OF THE COURT

MADAN, J.A.

The appellant and the respondent are brothers. On 19th August, 1959 they jointly agreed to buy parcel of land known as Title No. Ruguru/Gachika/ 624 for Shs. 1,100/- from Nderitu Githai in equal shares. The appellant paid Shs. 585/- and the respondent Shs. 515/-. The respondent produced in court the agreement of sale made with Nderitu Githai for the sale of the land to these parties. As the respondent was then engaged in the "Shifita Campaign" in the North Eastern Province of Kenya the land was registered in the appellant's name alone but in trust for the two of them, the appellant to transfer the respondent's half share to him on demand. The appellant having refused to do so the respondent sued him in the High Court and asked for a declaration accordingly which he was granted. The appellant had been living on his portion of the land for fourteen years when he filed his suit. He had also erected a semi-permanent house and planted coffee. The learned judge rejected the appellant's evidence that he had allowed the respondent to stay on the land until the respondent could buy his own land. The court also made an order that the suit land be subdivided into two equal portions so that the parties may be registered as owners of their respective portions.

This was not a transaction which fell under the Land Control Act. The trust was created personally between the parties. The evidence led to the only reasonable conclusion that the appellant held half portion of the land in trust for the respondent, The appeal is dismissed with costs.

Dated at Nairobi this 17th day of November, 1982.

C.B. MADAN

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JUDGE OF APPEAL

K.D. POTTER

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JUDGE OF APPEAL

A.R.W. HANCOX

.....

AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR