IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Kneller JA, Chesoni & Nyarangi Ag JJA)

CIVIL APPEAL NO. 19 OF 1982

BETWEEN

KANYI MUTHIORA.....APPELLANT

AND

MARITHA NYOKABI MUTHIORA.....RESPONDENT

(Appeal from the High Court at Nairobi, Muli J)

JUDGMENT

Mrs Kanyi Muthiora, the appellant, asks this court to set aside the judgment and decree of the High Court in Nairobi (Muli J) of February 15, 1980 and, instead, make an order that the suit of Miss Maritha Nyokabi Muthiora, the respondent, be dismissed with costs and the respondent opposes this and asks for the appeal to be dismissed with costs.

The judgment and decree ordered that the respondent, who was the plaintiff in the High Court should have 3 acres of some 12.5 acres known as Komothai/Karatina/63 and that the appellant, the defendant in the High Court, should transfer them when the three acres have been subdivided and then she was to sign all the relevant documents and if she did not do so then one of the Deputy Registrars was to do this. Each party was to bear its own costs of this litigation including those of the officials who surveyed and marked the three acres.

The appellant in her memorandum of appeal has taken four grounds in support of her submissions that the learned judge erred. She and her advocate claim that he lost sight of the fact that the appellant was the registered owner of this land and that the registration was a first registration under the Registered Land Act. He had applied customary law which was inapplicable if statute law covered the claim. He had found that there was a trust in favour of the appellant and the respondent in the absence of any evidence to support this. When he applied customary law, he erred in declaring that unmarried daughters were entitled to absolute ownership of land rather than a life interest in it. Two of these grounds were repeated in a slightly different form and this did not contribute to their weight or otherwise.

The respondent by her plaint began this action in February, 1978 when she claimed from the appellant half of these acres which she valued at Kshs 10,000 in those days. They both lived on this land in Komothai location Githunguri which is between Kiambu and Ruiru. She alleged that the appellant was registered as absolute owner of it and held it in trust for herself and the respondent who was her stepdaughter because the late Mr Muthiora married first the respondent's mother and after her death the appellant. Had the respondents mother lived then Mr Muthiora's land would have been divided between

the two wives and the respondent, although unmarried, would have inherited her mother's half because her mother had no sons but three daughters, two of whom were married so she was her only child without land and she had three children of her own including a boy.

The appellant in her defence in early January 1978, denied all that and had two further defences. First, the action was time barred under section 7 of the Limitation of Actions Act (cap 22). Secondly, the respondent had no cause of action because the appellant was the registered owner by authority of the first registration. There were various interlocutory applications for an injunction against the appellant to restrain her from interfering with the respondent's occupation and cultivation of part of the land which the learned judge resolved by making them promise not to cross over into the other one's garden and when it was alleged that one of them had broken this agreement there was an application to commit her for contempt which he dealt with in the same way.

The trial began in mid-March 1979 and the issues were, (in my revised form) –

1. Is the respondent an unmarried woman with children, entitled by customary law to any portion of her father's land?

2. If so, is it absolutely or a life interest?

3. Did the appellant hold this land in trust for herself and the respondent?

4. Was the claim of the respondent barred by limitation?

5. If so, can the appellant's title be varied although it sprang from a first registration?

The learned judge recorded the evidence from both parties and three witnesses for the respondent and two for the appellant.

The respondent's case was that Mr Muthiora died intestate in 1953 and he left the appellant and all his children including the respondent living on these 12 1/2 acres or his 17 acres at Riruta. The local committee for land adjudication decided they should all be registered in the name of the appellant. The respondent was too young when this happened to be considered. She has had three children since then but she has never been married. Mr Muthiora inherited the 17 acre plot Dagoretti/Riruta/80 which was also registered in the name of the appellant and she sold it in 1959. The respondent's mother had no sons and her other daughters were married while the appellant had two girls who had married and one son by Muthiora. There remained then 12 acres for the appellant and her son and the respondent, if entitled to any of them, and her sons and, maybe, unmarried daughter or daughters. Any girls who marry do not inherit according to customary law because they join other families.

Mr Muthiora did not apportion his acres before he died or give any directions that the appellant should hold them in trust for herself and his children by both wives. His family lived in reasonable amity on this land until about the end of 1977 when the appellant tried to evict the respondent. There were statements from one of these witnesses that according to Kikuyu customary law an adult unmarried girl could inherit land from her father because she is considered to be another son but she has no right to sell any of the land that she inherits. Her children, if any, will, in turn, inherit their portion from her father if they are not daughters who will marry, presumably, before their mother dies. One of the witnesses claimed he had expert knowledge of his own customary law and described the unmarried daughter's right as a life interest. The appellant's answer was that she owned a shop in the nearby trading center called Marigi which is where she lives and she together with Mr Muthiora purchased the suit land in 1943 for Kshs 1,800 and her contribution was Kshs 800 in cash. The appellant cultivated these acres and always has done so but she had allowed the respondent to occupy a small portion since 1974. Another woman called Gathoni is allowed to do some cultivation on another piece. All this is because she has a kind heart so far as relatives are concerned.

When Mr Muthiora married her he was a bicycle repairer and she was buying and selling maize in rural

markets. He was dead before the emergency began and she was registered as the owner because she was the only adult who survived him. She had one son by him and all this other relations were females. She held this land in trust for no-one.

According to their customary law unless a daughter was crippled and therefore unmarriageable she was supposed to marry and if she did not the family would let her cultivate some piece of land but she would have no right to own any portion of it nor could any child of hers inherit. This was the other expert's evidence on the point and put forward by Mr Wanyutu Waweru who is a farmer, a school master, local councilor and sometime member of Parliament from 1954 to 1961. He did not rule out an unmarried daughter acquiring an absolute interest in land from her father if he gave it to her while he was alive. The learned judge set out the evidence which he considered in greater detail than I have and he seems to have found the witnesses (though he has not in so many words said so) told the truth as they saw it.

He then set out the customary law for succession among the *Wa-Kikuyu* which applied to the land of Mr Muthiora in this way. His land would be divided in equal shares between his two wives if he had not disposed of it before he died. His two wives would later apportion their shares amongst their children by him. This was so, according to the learned judge, even if one of the two wives were dead before Mr Muthiora died. The children of the wife who predeceased him took her share. He went on to hold that by the same law females did not inherit property from their husbands or fathers save for a life interest over the land if there is no adult male relative to take a freehold interest in it. The children of the wife who predeceased her husband can still inherit the portion their mother would have had a life interest in if she had been alive when her husband and their father died. Finally, any female who marries before her father dies does not inherit land from him.

So he held by the customary law applicable to these parties the respondent who had never married succeeded just like a son to the land her mother would have, had she outlived her husband and the respondent's father. He had held this to be so in another action *Wamuru Njubi v Njubi Karungari* Nairobi Civil Suit 185 of 1977. The other sisters having married the respondent was now the sole beneficiary of her mother's estate to which a share of her father's estate passed as if she were a son.

He held that the appellant was registered as an absolute owner of this suit land but on trust for herself and the respondent. He described it as a resulting trust which rose from the customary law of succession of the *Wa-Kikuyu*. He went on to say that the land was purchased before registration and the respondent had lived on it since 1963 and built a house on it in 1977 and therefore she was entitled to that portion by prescription and by adverse peaceful enjoyment of it so the appellant was barred by limitation. There was no case for rectification of the register based on fraud, omission or mistake but the registration would have to be corrected to reflect the trust which he had just declared in favour of the respondent. He refused to award the respondent a half share but instead only three acres because she and her mother had not contributed to the purchase price of the land and the appellant had done so and she had been occupying and cultivating it longer than the respondent.

The first issue in the appeal, to my mind, is whether or not the respondent who is an unmarried woman with children, is entitled by the customary law of the Wa-Kikuyu to inherit a portion of the land that her father owned and did not distribute before he died? Muthiora, it will be remembered, died interstate leaving one widow, the appellant. He did not dispose of any of his land before he died. The appellant chose not to return to her father's home or be inherited by a brother of Muthiora but to remain in Muthiora's "house". This being so, according to *Cotran's Restatement of African Law: 2 Kenya The Law of Succession*, First Edn, 1969, pages 11 –15 the appellant as Muthiora's widow had a right of use during her lifetime of the land left by her husband. Had the respondent's mother, Muthiora's first wife survived Muthiora she and the appellant would have shared out Muthiora's land equally, provided she, too, remained in Muthiora's house.

When the widow dies the land belonging to Muthiora which she has had use of during her life and any land she has acquired privately are divided between her sons by Muthiora and any sons she may have had by a levirate union after Muthiora's death or in the absence of any sons the land of Muthiora goes back to Muthiora's father if he is alive or if he is dead Muthiora's full brothers or if there are none his half

brothers and so on.

Daughters of Muthiora receive no share at first but if they grow up and remain unmarried they are allocated a plot by the *muramati*. Then when they died, if they were still unmarried, all that they owed including their lands are divided between their sons and if there are none by her father, or if he is dead, her brothers or in the absence of any of those then her halfbrothers and so forth.

The respondent's mother died before Muthiora did so she never had the use of any share of Muthiora's land for her life which the respondent and her sisters if they remained unmarried could have the use of for their lives.

This is what Cotran culled from the Kikuyu elders before 1969 but since then the land which the clan could allot has shrivelled away to almost nothing, many Kikuyu have been settled elsewhere, land adjudication has relentlessly re-ordered their system of land tenure so that by mid- 1969 when Muli J recorded evidence from witnesses who claimed some knowledge of the customary law on all this there was some variation of the pre-1969 rules.

Basically, however, there emerged from the evidence two simple rules. The respondent as a healthy unmarried daughter with children was entitled to a share of the lands her father left when he died and her children, even her sons, could not inherit it when she died. How much of this is a correct account of the relevant customary law is unclear and that is due to the fact that the witnesses are not asked the same clear questions and if they are need more time than they are given in a trial to cogitate before they answer them. At any rate there is not much change, so far, in the customary law as set out by Cotran.

The second issue in this appeal was whether the respondent was entitled to her share absolutely or to only a life interest in it? Again the pre-1969 panels and the witnesses in 1979 – 1980 unite in stating that it is only a life interest for her. Pre-1969 the clan would find land for her children who survived her and post-1980 the witnesses declared they would inherit from the respondent probably because there is no clan land left in Komothai for them to have.

The third issue was whether or not the appellant could be found to hold 12.9 acres of Muthiora's land in trust for herself and all his children including the respondent? I would declare she could, did and does so far as the respondent is concerned. Justice and good conscience require it. It would be inequitable for the appellant as the legal owner to be allowed to exclude the respondent from it. She ought to allow the respondent to have a share of it. A constructive trust arose when the lands of Muthiora were registered in the name of the appellant and it was in favour of the appellant, the children of Muthiora by both marriages and even his mother at Riruta. His sons and those of his daughters who did not marry, especially those that did not marry but had children, all required some part of Muthiora's land if they had not been given any before he died or had it willed to them by Muthiora. Later, when the appellant sold off the land at Riruta, which was land Muthiora inherited from his father, and the respondent had these children and was still unmarried a resulting trust arose so far as the Komothai land was concerned. See Lord Denning MR in *Hussey v Palmer*, [1972] 1 WLR 1286, 1289, 1290 (CA). I have not overlooked the fact that the appellant contributed cash from the profits of her shop at Marigi to the purchase of the Komothai parcel and the respondent and her mother did not do so. The respondent contributed her labour to cultivating it or part of it. Moreover, the Komothai land is now the only land left by Muthiora and in equity the respondent and her children must benefit from some of it. The fact that the appellant and respondent are not blood relations does not affect this. So far as their community is concerned they are mother and daughter.

The last issue in the appeal was what effect the provisions of the Registered Land Act (the act) have on this? The appellant is the registered proprietor of the Komothai plot so she has a title free from all other interests and claims whatsoever but subject to any lease, charge and encumbrances shown in the register together with such overriding interests that exists and are not required to be noted in the register. Sections 28 and 30.

Rights arising under customary law are not among the interest listed in section 30 of the Act as overriding

interests. Bennet J in *Obiero v Opiyo*, [1972] EA 227, 228 (K) pointed this out and added:

"Had the legislature intended that the rights of a registered proprietor were to be subject to the rights of any person under customary law, nothing could have been easier than for it to say so."

and 12 years later it still has not done so. This was followed in *Esiroyo v Esiroyo*, [1973] EA 388 (K) which was approved of by Law and Potter JJA (Madan JA *dubitante*) in *Kiama v Muthanya*, Civil Appeal 42 of 1978.

Registered land, however, by section 163 of the Act is subject to "the common law of England, as modified by equity" which brings in the equitable doctrines of implied constructive and resulting trusts arising out of the facts set out in the answer to the previous issue. And the appellant as proprietor by this first or any subsequent registration is not relieved by anything in section 28 from any duty or obligation to which she is subject as a trustee as its proviso declares.

Furthermore, the respondent under the trust which arose between her and the appellant in the circumstances of this case had rights against the appellant stemming from her possession and occupation of part of Muthiora's land though it was registered in the name of the appellant. This is an overriding interest which is not required to be noted on the register and the appellant's proprietorship is subject to it. Section 30 (g). The consequence, in my view, is that the respondent is entitled to a share of her father's land at Komothai and the learned judge was right to so find, albeit for different reasons, and to limit it to 3 acres.

He went on to make various orders for surveying, demarcating, transferring and registration of the 3 acres which it was said violated the terms of section 143 of the Act which forbids any rectification of the register at all if it concerns a first registration and it will be recalled the appellant's registration was a first one.

To rectify, however, is to correct or define something which is erroneous or doubtful. Rectification is often used for making an alteration correcting an entry in a register and that, in my judgment, is its meaning in section 143 of the Act. It is not defined in the Act itself.

Jessel MR in *Pulbrook v Richmond Consolidated Mining Co* [1878] 9 Ch D 610, 615 (CA) explained the consequences of a court order for the rectification of the registrar of a company in this way. "The name of Mr Cuthbert has been struck out of the register and the register rectified. The effect of that is exactly the same as if it had never been put in. That is the meaning of 'rectified'. You strike it out by way of rectification, and the court has therefore declared that it ought never to have been entered at all. They had struck it out from the very beginning."

This is different from making another entry recording a lawful transfer by a court order after a first registration. The first registration is not struck out. The register is not rectified at all.

So Lindley LJ in *Re National Bank of Wales* [1897] 66 LJ Ch 222 (CA) at pp 226, 227 made this clear for rectifying the register under section 35 of the then Companies Act 1862 by saying-

"... altering the register so as to make it conformable with a lawful transfer is not to rectify the register under section 35. The section only comes into operation when the company improperly puts on the register a name which ought not to be on it, or improperly refuses to put on the register a name which ought to be on it."

There are dangers, of course, in applying case law on one statute to another but the principle in those two authorities is appropriate for the Act and the circumstances of this appeal.

The first registration of the appellant as the proprietor was not doubtful. The words "as trustee" should have been entered but they cannot be put in now. There is no need to do so after all these years. The orders of Muli J do not require her name to be struck out. All that will happen is that another line will be

added to the register somewhere under the first registration making the register conformable with the transfer of the 3 acres to the respondent as ordered by the High Court. Nothing in the Act forbids this.

Accordingly, I would dismiss this appeal with costs. As Chesoni Ag JA and Nyarangi Ag JA agree, but for different reasons, so those will be the orders of the court.

Chesoni Ag JA. The appellant Janet Kanyi, is the widow and the respondent, Maritha Nyokabi, an unmarried daughter of the late Muthiora, who died in 1953. Muthiora owned twelve point five acres of land now known as Land Reference Komothai/Kiratina/63 (referred to as "the suit land"). Kanyi is Nyokabi's stepmother. The mother of Nyokabi predeceased Muthiora, who was survived by five daughters all, except Nyokabi, married and a son called Njenga Muthiora. Under the Kikuyu customary law Muthiora had two houses.

In early 1978 Nyokabi commenced a suit by way of plaint against her stepmother, Kanyi, praying the High Court to declare that she, Nyokabi, was entitled to inherit one half of the suit land which the appellant held in trust for her. The suit land is registered in the name of Kanyi. In her defence the appellant denied that she was the respondent's stepmother and that the respondent was entitled to inherit any part of the land. Section 7 of the Limitation of Actions Act (cap 22) was pleaded in aid of the defence case, and so was section 143 of the Registered Land Act (cap 300). She put Nyokabi to strict proof that the latter's mother was dead.

At the trial before Muli, J Kanyi accepted Nyokabi as her stepdaughter but said that she did not know what happened to the respondent's mother. The learned judge found that Nyokabi was, under the Kikuyu customary law relating to an unmarried daughter, entitled to inherit her father's land just as much as the son was, and awarded Nyokabi 3 acres. Kanyi appealed to this court from that decision on the following six grounds.

1. The learned trial judge erred in deciding that a 1/4 of the suit land should be transferred to the plaintiff in view of the fact that this was a first registration under the Registered Land Act.

2. The learned judge erred in not considering the principle of law that where statute law applies, customary law rights are extinguished.

3. The learned trial judge erred in holding that there was a trust in favour of the plaintiff in the absence of any evidence to support this finding.

4. The learned trial judge failed to appreciate that on registration of land, customary law rights are extinguished forever?

5. The learned trial judge erred by ignoring the principle of Kikuyu customary law that unmarried daughters are only entitled to a life interest in land and not to absolute ownership.

6. The learned trial judge erred in not holding that the plaintiff was only entitled to a life interest in the suit land and on her death the land to revert back to the defendant.

Grounds 2 and 4 can be merged and so can grounds 5 and 6.

Kanyi said that she had given the respondent a portion of the suit land to cultivate out of mercy and so she did not know the origin of the suit.

It was immaterial whether the suit land was inherited by Mathiora from his father or purchased by him. Upon his death whatever land he owned had to be inherited in accordance with the Kikuyu customary law unless he had disposed of it by a will before his death which he did not. It is settled Kikuyu customary law that the estate of a deceased intestate polygamous man is inherited according to the houses. Each house gets an equal share and a house is constituted by each wife. The children of each house then share their portion equally. It is true among the Kikuyu land is inherited by sons to the exclusion of married

daughters, but as the learned judge correctly held unmarried daughters are entitled to inherit land, save that if they have no child their share is for life, but if they have an illegitimate child then that child inherits their share. In the latter case the unmarried daughter acquires an absolute and not a life interest.

It was common ground that the late Muthiora had two wives so in the absence of a will as it was in this case, the suit land had to be shared equally by the two houses. Only the appellant spoke of having contributed towards purchase of the land, otherwise all the plaintiffs' witnesses, who included Muthiora's brother, testified that he bought the suit land before he married the appellant, but since there was no cross-appeal to the judge's finding of the appellant's contribution I would not disturb it. The share of Nyokabi's mother's house was to be equally divided amongst the children of the house excluding married daughters. Nyokabi's two sisters were both married so they were excluded and Nyokabi who was an unmarried daughter of that house, which had no son, was entitled to inherit the whole share of her mother's house. There was, again no cross-appeal from the learned judge's award of 3 acres to her, so I would not interfere with the award. As Nyokabi had two daughters and one son her interest was absolute and not for life.

Section 143 of the Registered Land Act did not apply as there was no question of rectification of the register but a transfer by a trustee to a beneficial owner. The registration of the suit land in the name of Kanyi under the Registered Land Act did not extinguish Nyokabi's rights under the Kikuyu customary law, Kanyi was not relieved from her duty or obligation to which she was as a trustee to Muthiora's land: See proviso to section 28, of the Act and *Gatimu Kinguru v Muya Gathangi* [1976] KLR 253. There was overwhelming evidence of a trust in favour of Nyokabi. I can see no merit in this appeal and would dismiss it with costs.

Nyarangi Ag JA. In her plaint the respondent as plaintiff claimed one half share in land No Komothai/Kiratina/63 measuring 12.5 acres or thereabouts. The land in question is situated at Githunguri in Kiambu District. The appellant's basis for the claim was that

(a) At all material time to this suit the defendant was her step mother and registered as trustee of her deceased father's land No Komothai/Kiratina/ 63 measuring 12.5 acres or thereabouts.

(b) That her mother was also deceased and she was the only daughter of her deceased mother.

(c) That she was an unmarried woman with three children and according to Kikuyu customary law she is entitled to inherit property of her deceased father, who had two wives namely her mother and the appellant herein.

In her defence the appellant as defendant denied that the plaintiff was entitled to inherit and contended that the plaintiff's right, if any, to sue for recovery of land was time barred under section 7 of the Limitation of Actions Act, (cap 22) and further that that was a first registration and so the plaintiff had no cause of action.

The agreed issues were

1. Whether there was a trust between plaintiff and defendant.

2. Whether as unmarried woman she is entitled as of right to 1/2 of her father's land.

3. Whether action is barred by the Limitation Act.

4. Whether a first registration can be varied to take account matters not noted in the register.

After hearing and considering the evidence, the trial judge ordered and directed the appellant to transfer to the respondent absolutely 3 acres of the suit land on a sub-division being made to effect the order. The appellant was further ordered to sign all the papers necessary for the sub-division and transfer and if she refused to do so, the Deputy Registrar would do that. Each party was to bear her own costs.

The appellant (Kanyi) does not like the judge's decision and orders and in her memorandum of appeal she complains that

1. The learned trial judge erred in deciding that a 1/4 of the suit land should be transferred to the plaintiff in view of the fact that this was a first registration under the Registered Land Act.

2. The learned trial judge erred in not considering the principle of law that where statute law applies, customary law rights are extinguished.

3. The learned trial judge erred in holding that there was a trust in favour of the plaintiff in the absence of any evidence to support this finding.

4. The learned trial judge failed to appreciate that on registration of land, customary law rights are extinguished for ever.

5. The learned trial judge erred by ignoring the principle of Kikuyu customary law that unmarried daughters are only entitled to a life interest in land and not absolute ownership.

6. The learned trial judge erred in not holding that the plaintiff was only entitled to a life interest in the suit land and on her death the land to revert back to the defendant.

The facts of the dispute have been set out by Kneller JA in his judgment which I have read in draft.

There is evidence that Kanyi was the younger wife of Muthiora, the father of the respondent (Maritha). It must follow that Muthiora and Kanyi worked co-operatively together towards the common goal of their family welfare. That being so, neither Muthiora (if he were alive) nor Kanyi would be heard reasonably to claim the entire interest in family property to the exclusion of the other. But was the material parcel of land family property?

In her evidence, Kanyi said she bought the land the subject-matter of the suit. She added,

"I was married at that time. We paid Kshs 1,800. I contributed Kshs 800. I have been cultivating the land since we bought it. I am the registered owner of the suit land."

On an arithmetical calculation, Muthiora's contribution towards the purchase of the land was Kshs 1,000. Muthiora's contribution was on behalf of his family but excluding Kanyi. Muthiora had assisted Kanyi, his wife to raise Kshs 800. In return Kanyi helped Muthiora to raise the Kshs 1,000. So Kanyi could not properly claim any part of the Kshs 1,000 which Muthiora contributed because Muthiora had given his share of the Kshs 800 to her.

The material parcel of land was jointly owned by Muthiora and Kanyi. The estate of Muthiora in the property devolves to his houses and thereafter to the heirs of the houses. It is irrelevant whether the wives are alive or not. The houses never 'die' when there are heirs of the house(s). So Kanyi, could not under Kikuyu custom, have the entire property for herself and her children just because Muthiora and Maritha's mother are dead. If there was no heir in the other house, Kanyi and her children would have inherited the whole property. Now that Maritha has proved that she is unmarried she is entitled to inherit a share of her late father Muthiora's share of the land, just as Muthiora's son would have done, ie in absolute ownership.

After Muthiora died, Kanyi caused the land then jointly owned to be registered in her name. True, nobody objected. Maritha who was then a child could not have objected. The registration of the land under the name of Kanyi was on behalf of all the surviving children of Muthiora who had the capacity to inherit. There has always existed a trust in favour of the plaintiff and Kanyi's obligation as a proprietor continued notwithstanding the registration – section 28 of the Registered Land Act, cap 300, (the Act).

I doubt like Madan JA did in *Kiuma v Muthenya,* C A 42 of 1978, if rights under customary law are

excluded by section 30 of the Act. Had the legislature intended that customary law rights were to be excluded, nothing would have been easier than for it to say so. I would say any valid rights are included in section 30 of the Act just as a trustee referred to in section 28 of the Act could not fairly be interpreted and applied to exclude a trustee under customary law. Be that as it may, the trust, in favour of Maritha is a resulting one by virtue of section 163 of the Act. Besides, having been in occupation of a portion of the suit land and no enquiry having been made, Maritha had created rights of an overriding nature under section 30(g) to which the appellant as proprietor was subject.

I agree that the respondent is entitled to a share of her father's land and the trial judge was right in so finding. I see no reason for not upholding the trial judge's decision to give 3 acres.

Kanyi's first registration was not complete. She knew she did not own the whole land. She neglected to say so at the time of registration. The words 'as trustee' would have been inserted if Kanyi had been candid. I agree with Kneller JA that it is not now necessary to add the words 'as trustee' and that the addition of a line to the register to make it conform with the transfer is not rectification but an explanatory note covering the order of the High Court transferring the 3 acres.

I too would dismiss this appeal with costs.

Dated and Delivered at Nairobi this 11th day of June 1984.

A.A.KNELLER

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JUDGE OF APPEAL

AG. Z.R.CHESONI

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JUDGE OF APPEAL

AG. J.O.NYARANGI

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

DEPUTY REGISTRAR