



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CIVIL APPEAL CASE NO. 151 OF 2010

MAURICE WAFULA WASIKE.....APPELLANT

VERSUS

RAJAB PEMBERE.....RESPONDENT

JUDGEMENT

[1] The appellant herein filed a plaint on 12th October 2011 which was amended on 29th June 2006. The pertinent claim in para 4 stated as follows:

4. The Defendant has been and is still illegally occupying land parcel No. Muchi/Ndivisi/1215 for quite sometimes and facts and details of this claim are well known by the defendant herein.

4. The defendant without any justifiable cause has been in illegal occupation and/or use of the said parcel No. Muchi/Ndivisi/1215 measuring approximately (1.1) Ha and that the plaintiff seeks a declaration from the Honourable court that the occupation is illegal and will demand mesne profits from the defendant made from the said parcel plus costs and interest of the case.

[2] The defendant filed a defence which was amended on 27th September 2005 denying the claim in para 5 of the amended defence. The defendant stated as follows:

5. The defendant avers that the plaintiff's suit is incompetent, frivolous, vexatious, ill-advised, mis-directed and improper for which the defendant hereby gives NOTICE that the defendant will at the 1st hearing hereof apply to have it struck out and dismissed with costs for non-compliance with section 3 of Land Disputes Act No. 18 of 1990.

[3] On 13/3/2008 the advocate for the defendant raised a Preliminary Objection that the court had no jurisdiction to hear the matter in view of the Provisions of Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990 which was then in force.

[4] The trial magistrate F. Kyambia ruled that the court had no jurisdiction because the case fell squarely under Section 3(1)(c) of the Land Disputes Tribunal Act No. 18 of 1990. The court then upheld the Preliminary Objection and struck out the suit with costs.

[5] It is against that ruling that the appellant filed this appeal. The applicant alleges on his ground of appeal that the trial magistrate ascended into the arena of the case and deliberated on the issue of jurisdiction of the Disputes Tribunal. An issue not cited by the respondent in his defence.

[6] I have perused the original record, the plaint and amended plaint, the defence and amended defence. From my reading of the plaint it is crystal clear that the plaintiff was complaining of trespass by the defendant. The law in force at the time, the Land Disputes Tribunal Act 18 of 1990 Section 3(1) (c) required that all disputes relating to trespass to land among other issues be dealt with by the tribunal.

[7] The magistrate did not descend in to the arena of Litigation. He was invited by the defendant to find that the court had no jurisdiction to deal with trespass to land. He had to make a finding on the Preliminary Objection raised on jurisdiction. He ruled that the court had no jurisdiction and that it was the Land Disputes' Tribunal that had jurisdiction. He came to the then correct legal position. He had no choice but to strike out the suit.

[8] This Appeal therefore has no merits. The same is dismissed with costs.

Dated, signed and delivered this 27th day of July 2016

S.MUKUNYA - JUDGE

In presence of

Madam Nanzushi for the appellant

Mr. Kraido for the respondent absent

Joy/Gladys court clerk