

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Civil Appeal 4 of 2010

PHILIP K. KIMANIAPPELLANT

VERSUS

GRACE MWAKIRIA MUGAMBI.....RESPONDENT

JUDGMENT

1.This appeal turns on only one question, in my considered opinion, namely, whether the learned trial magistrate was seized of the necessary jurisdiction to entertain the dispute giving rise to the appeal.

2. I have looked at the record of appeal. Up to the 9th June, 2009, the learned trial magistrate was entitled to proceed on the basis that he had the necessary jurisdiction in terms of Section 159 of the Registered Land Act. At any rate no objection had been raised. However, the moment he admitted the valuation report dated 19th April, 2009 as a defence exhibit, that assumption of jurisdiction stood challenged because the report assessed the value of the suit property in excess of Shs. 3million. No evidence was led to challenge the valuation report. The learned trial magistrate must have reviewed it at the time of writing his judgment. However his judgment does not show that he inquired into the matter of his jurisdiction.

3. Jurisdiction is everything and the learned trial magistrate ought to have satisfied himself that he was properly vested before proceeding to render his judgment. It appears that the court did not address itself to that matter. That failure is so fundamental as to render everything done in the Lower Court a nullity. Ground 2 of the Memorandum of Appeal has merit and the appeal must succeed. The proceedings and judgment of the Lower Court are set aside with costs to the appellants. Needless to say, the suit must recommence before another court with jurisdiction.

Delivered and signed at Malindi this **11th** day of **June, 2012** in the presence of: Mr. Omwancha for the Respondent, Ms. Oyugi for the Appellant. Cc- Evans, Leah.

C. W. Meoli

JUDGE