



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT ELDORET**

**Civil Appeal 113 of 2007**

**DANIEL MBUGUA KAIRU.....APPELLANT**

**VERSUS**

**GEORGE KUNGU GACHIRI.....RESPONDENT**

**JUDGMENT**

This is an appeal from the ruling of the Hon. G.A M’masi SRM delivered on the 9<sup>th</sup> August 2007.

The Respondents raised a Preliminary Objection to the Appellants suit on the issue of jurisdiction. The trial magistrate upheld the Preliminary Objection and struck out the Appellants suit and awarded costs to the Respondents.

The Appellant being aggrieved by the Ruling filed this appeal and listed seven (7) Grounds of Appeal in his Memorandum of Appeal. The Grounds of Appeal are as listed hereunder;

- 1) The Learned Resident Magistrate erred in law and in fact by upholding the preliminary objection that the court had no jurisdiction to order an eviction of an intruder on private property when it actually had it.
- 2) The Learned Magistrate erred in law by misconstruing section 3(1) of Land Disputes Tribunal Act 18 of 1990 and confused a prayer for an eviction based on title to be that based on trespass and refused to exercise jurisdiction, which she actually had to resolve the dispute before her.
- 3) The Learned Magistrate erred in-law by holding that Land Dispute Tribunal had jurisdiction over registered land and thereby wrongly declined to hear the suit on its merits.
- 4) The Learned Magistrate erred in law and fact when she misdirected herself by holding that the suit was incompetently before her and proceeded to allow the Preliminary Objection whose effect was to dismiss the suit.
- 5) The Learned Magistrate erred in law and in fact when she declined to hear and grant the injunction application, which cannot issue from the Land Disputes Tribunal.
- 6) The Learned Magistrate erred in law when she made an order on costs after making a finding that she had no jurisdiction.

7) The Learned Magistrate erred in law and in fact when she failed to discern the proper meaning of the words “**eviction**” and “**Trespass**” thereby misdirecting herself in treating the former as the latter when they are distinct words independent of each other and wrongly allowed the Preliminary Objection.

Counsels for both the Appellant and the Respondent opted to argue the appeal by way of Written Submissions.

It was the Appellant’s contention that the Learned Trial Magistrate erred in holding that the Land Disputes Tribunal had jurisdiction to entertain a matter concerning registered land.

That the Appellant was the registered owner of the parcel known as **UASIN GISHU/KONDOO/725** having purchased the same in the year 2004 for the sum of Kshs 303,000/=

The Appellant had a valid agreement made between himself and the Vendor. The Appellant also had a valid consent from the relevant Land Control Board and was duly registered as the proprietor of the land. The Appellant had an indefeasible right and title to the said parcel.

Whereas the Respondent had no title and the said Respondent was a licensee whose license was extinguished by the death of his father.

The Appellant argued that the subordinate court had jurisdiction to entertain the matter and by dismissing the suit, a miscarriage of justice was visited upon the Appellant.

The Appellant further argued that the Land Disputes Tribunal had no jurisdiction to entertain cases of such a nature nor did it have a mandate to grant injunctive orders.

The Appellant for the reasons stated above prayed that the appeal be allowed with costs.

The Appeal was opposed by the Respondent who argued that Section 3(1) of the Land Disputes Tribunal Act Cap 303 Laws of Kenya gave the Land Districts Tribunal jurisdiction to entertain cases of;

**“ a civil nature involving disputes as to the division of, or determination of boundaries to land, including land held in common, a clan to occupy or work hard or trespass to land”**

The Respondent further argued that Section 159 of the Registered Land Act Chapter 300 Laws of Kenya mandates the Land Disputes Tribunal to handle issues related to trespass, exclusively.

The Respondent contends that paragraph 8 of the Appellants Plaint and the prayer to restrain the Respondent from committing acts of trespass on the land clearly brought the suit within the mandate of the Land Disputes Tribunal.

The Respondent referred to the case of **KITALE H.C MISC. CIVIL APPLICATION NO. 91 OF 1999 WAMUKOTA –VS- KIPSAINA LAND DISPUTES TRIBUNAL & ANOTHER** where it was held that the Land Disputes Tribunal had jurisdiction to determine whether a person is a trespasser and **“it was immaterial whether the suit land was registered”**.

The Respondent prayed that the Appeal be dismissed with costs to the Respondent as the trial magistrate acted within her limits in upholding the Preliminary Objection.

Upon reading the Appellants and Respondents Written Submissions and upon perusing the Record of Appeal the court finds the following issues for determination;

- 1) Jurisdiction under the Registered Land Act Chapter 300 Laws of Kenya
- 2) Jurisdiction under the Land Disputes Tribunal Act No. 18 of 1990.

## **ANALYSIS**

The Respondent has referred to authorities which to this court are only persuasive and not binding. This court is of the humble opinion that the Lands Disputes Tribunal has no jurisdiction to hear or determine cases concerning "ownership and Title" especially where the land is duly registered in the name of one of the parties to the suit in conformity with an Act of Parliament.

The land in issue in this instance is registered under the Registered Lands Act Chapter 300 Laws of Kenya which allows the Appellant to file his suit either in the High Court or in the Resident Magistrates Court. In the latter court provided the value of the subject matter does not exceed the sum of Kshs 500,000/=.

I find that the consideration of the subject matter is Kshs 303,000/= which is not in excess of the stipulated sum of Kshs 500,000/= which therefore means that the Resident Magistrates Court had jurisdiction to hear and determine the Appellant's suit.

## **CONCLUSION**

The appeal is hereby allowed, the decision of the trial magistrate is hereby set aside. It is hereby ordered that the suit be heard and determined on merit by a magistrate of competent jurisdiction.

Each party shall bear their own costs.

Dated and delivered at Eldoret this 8<sup>th</sup> day of June 2012.

**A.MSHILA**  
**JUDGE**

Coram: Before Hon. A Mshila J  
CC: Andrew  
Counsel for the Appellant: Ngigi

Counsel for the respondent: Lagat holding brief for Terer.

**A.MSHILA**  
**JUDGE**