



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Appeal 154 of 2011**

**JOSEPH MWANGI MWAURA. .... APPELLANT**

**VERSUS**

**DAVID MBURU MWAURA. .... RESPONDENT**

*(From the ruling of C Oluoch, SRM in Kiambu CMCC Number 269 of 2008)*

**J U D G M E N T**

This appeal arises from the ruling of the Senior Resident Magistrate, Kiambu. As this court understands it, the court accepted and endorsed the subdivision of the land in dispute being L.R. NO. Githunguri/Gathangari/2365, into two equal divisions.

The trial court based its ruling on the evidence of either party as well as that of the District Land Surveyor. I have carefully perused the evidence of either party and that of the District Land Surveyor.

The Appellant argued that those two roads, one below and one above the lands, are unnecessary as they occupy unnecessary land space. He prefers that I adopt the land division plan found on page 22 of the Record of Appeal. What is surprising however, is that the method of division on page 22 of the record is one that adopts two roads and with a possibility that one of the roads which also crosses parcel "A" at one end, will force the road to cross parcel No. 193 which belongs to a third party who is not a party. This is also so despite the fact that at the opposite end of the two divisions of land "A" and "B" the two parties have a common road.

The Respondent on the other hand, urged the court to adopt the division plan found on page 29. This one gets rid of the road which would cut parcel "A" across and also require to cut parcel No. 193 as well. As mentioned earlier, Parcel No. 193 belongs to a third party who is not a party.

I have carefully considered the evidence supporting the decision of the trial court. The District Land Surveyor recommended the same suggestion. The same was also backed by the Respondent herein. It is more appealing to this court because it removes the road which cut parcel "A" and threaten to cross parcel No. 193 that belongs to a third party. It also spares some land (0.11 ha) which would otherwise go to the road roads at the end of the land are allowed to stay.

In the circumstances, I find the trial magistrate's ruling to be sound and preferable. The survey plan found on page 29 of the Record of Appeal shall be adopted. Subject to the widening of the remaining road from 6 metres to 9 metres, I order that the said survey plan on page 29 of the Appeal record be immediately adopted and carried out by the District Land Surveyor. This appeal has, therefore, no merit. It is hereby dismissed with half costs. Orders accordingly.

Dated and delivered at Nairobi this 23<sup>rd</sup> day of October, 2012.

.....

**D A ONYANCHA**

**JUDGE**