

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO. 4040 OF 1986

DAVID WANJOHI MUGAMBI PLAINTIFF
VERSUS
JAMES MURIUKI KIAMBO1ST DEFENDANT
THE LAND REGISTRAR KERUGOYA2ND DEFENDANT

RULING

This suit was filed by way of a plaint dated 27th October, 1986. On 3rd September, 2008 the 1st defendant filed a Notice of Preliminary Objection dated 4th August, 2008 to the effect that this suit is incompetent and defective in that the court does not have jurisdiction to continue hearing and determining this suit as the court jurisdiction has been ousted by the Land Disputes Tribunal Act No. 18 of 1990 Section 3 and Section 21 (4) and Section 150 of the Registered Land Act Cap 300 Laws of Kenya. It is also stated by the 1st defendant that this suit is otherwise an abuse of the court process and should be struck out.

From the age of this dispute, this is a very old matter and which has been subject to intense litigation. I note from the record that the 1st defendant filed a defence dated 4th March, 1987 in which at paragraph 7 admitted the jurisdiction of this court. The plaint was amended subsequent thereto but the defendant never changed that position even in the amended defence dated 24th April, and filed on 13th May 1993. The Land Dispute Tribunal Act No. 18 of 1990 came into operation before the amended defence aforesaid and therefore when the said amended defence was being drawn and filed the said Act was in operation.

That notwithstanding, the 1st defendant admitted the jurisdiction of this court. I also note that this Notice has been filed close to 24 years from the time this suit was instituted. I am unable to comprehend the reasons for raising such a crucial issue relating to jurisdiction this late in the day and especially so, when I know also that the Land Disputes Tribunal has no jurisdiction to entertain any dispute relating to registered land. I find that the Notice is misplaced and if anything, has contributed to a further delay in this case. Accordingly the same is hereby dismissed with costs to the plaintiff.

Orders accordingly.

Dated, signed and delivered at Nairobi this 26th Day of July, 2011

A. MBOGHOLI MSAGHA
JUDGE