



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 198 of 1999**

**HIRAM KAGORI NDUNGU APPELLANT
VERSUS
JOSPHAT KAGORI NDUNGU RESPONDENT**

JUDGMENT

The Respondent herein brought a suit against the Appellant in the lower court vide SRMCC No.174 of 1991 at Thika complaining among other things that the Appellant breached a trust and registered some parcels of land in his name and denied the Respondent of his share and that of other beneficiaries of the estate of their late father.

The appellant denied the claim in the lower court and, among other things, raised the issue of the fact that the learned trial magistrate had no jurisdiction to adjudicate upon the said dispute as the same exceeded the value conferred by law.

In the judgment delivered on 30th April, 1999 the learned trial magistrate stated as follows:

“I have duly considered the evidence on record and my findings are as follows:

There is ample evidence on record from PW1, 2, 3 and even the defendant that land parcel No.Loc.4/Muruka/171 was registered in the name of the defendant and that this land was originally in their father’s name and further that their four mothers cultivated this land. There is also ample evidence that the consolidated land measured 10.5 acres and that 2 acres was registered in the name of the mother of the plaintiff hence 8.5 acres remained registered in the name of the defendant. I am of the view that land parcel No.Loc.4/Muruka/171 was held in trust by the defendant and he cannot purport to apportion himself the whole land.....”

The learned trial magistrate did not address the issue of jurisdiction raised in the defence in his judgment. In the Memorandum of Appeal before me and the submission raised by the learned counsel for the appellant this issue has been made a substantial matter and in my view can determine the appeal conclusively.

The hearing date of this appeal was taken ex-parte after the representative of the appellant’s advocate appeared in court and took the same in the absence of the other counsel’s representative but, the court being satisfied that they were properly invited to take the hearing date and that, they did not appear and further that, a hearing notice was duly served, the court decided to proceed with the hearing of the appeal.

The learned counsel for the appellant has made a written submission in the prosecution of the appeal.

I am of the view that the issue of jurisdiction is so important that, the finding of this court in respect thereof shall dispose of this appeal. The subject matter herein was registered land under the provisions of Registered Land Act Cap.300 Laws of Kenya. The learned trial magistrate appreciated as much. Section

159 of the Registered Land Act Cap.300 aforesaid provides the jurisdiction of the courts in relation to such property. It provides that any proceedings relating to title or possession of land shall be conducted by the High Court and where the value of the subject matter in dispute does not exceed ?25,000, the trial shall be before the Resident Magistrate.

The property herein was 8.5 acres whose value as set out in the defence was not disputed; and it is my view that the High Court would have been the right court to determine these proceedings. That alone ousts the jurisdiction of the learned Senior Resident Magistrate.

In addition, the present respondent pleaded trust and the learned trial magistrate also held that the appellant held the property in trust for the other beneficiaries of the estate of their late father. Order 36 of the Civil Procedure Rules specifically confers upon the High Court the jurisdiction to determine any matter related to trust and it is clear that the trial court in this particular case did not have any jurisdiction to handle this dispute.

I do not consider it necessary to address the merits or otherwise of the appeal herein based on the facts and the evidence because, whatever the learned trial magistrate decided was a nullity in view of the fact that, he had no jurisdiction whatsoever to determine the same. Any orders that flow from proceedings that were a nullity will by themselves be null and void for the same reason.

I do not therefore deem it necessary to go beyond what I have said, except to find that, the present appeal must succeed. It is so ordered.

The judgment of the learned trial magistrate is hereby set aside with costs to the Appellant.

Orders accordingly.

Dated, signed and delivered at Nairobi this 18th day of March, 2010.

A. MBOGHOLI MSAGHA
JUDGE