

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Civil Case 60 of 2005

**CHARLES GICHANGO WANJOHI.....PLAINTIFF
VERSUS**

ANDREW KARIUKI.....1ST DEFENDANT

FRANCIS KIONE KIHUTA.....2ND DEFENDANT

RULING

In the Plaint dated 4th August 2005, **CHARLES GICHANGO WANJOHI**, the Plaintiff herein, sued **ANDREW KARIUKI MUTAHI** and **FRANCIS KIONE KIHUTA**, the 1st and 2nd Defendants herein, in which he prayed for *inter alia*: an order of permanent injunction to restrain the Defendants, their agents and or servants from trespassing upon the Plaintiff's parcel No. **GITHI/MUTHAMBI/988**. The Defendants filed a defence to deny the Plaintiff's claim. When this suit came up for hearing, the Defendants sought to argue the preliminary point raised in paragraph 3 of the defence. It is argued that the dispute relates to trespass to land hence this Court lacks jurisdiction to hear and determine the same.

The preliminary objection is the subject matter of this ruling. It is the submission of Mr. Kiminda, learned advocate for the Defendants, that the dispute which relates to trespass to land can only be determined by the Land Disputes Tribunal under *Section 3 (1)* of the Land Disputes Tribunal Act No. 18 of 1990. Mr. Kiminda urged this court to strike out the suit. Miss Keli on her part urged this Court to dismiss the Preliminary Objection because the issue in dispute had been determined by the Chief Land Registrar in 1991.

I have considered the rival submissions. There is no doubt that the issue in dispute relates to both trespass and boundary dispute. It is also not denied that such disputes can competently be heard and determined by the Land Registrar under *Section 21 (4)* of the Registered Land Act or by the Land Disputes Tribunal under *Section 3 (1)* of the Land Disputes Tribunals Act No. 18 of 1990. It is also not in dispute that the High Court has unlimited original jurisdiction to hear and determine any civil and criminal matters under *Section 60 (1)* of the Constitution. Therefore, the fact that a matter which was supposed to be heard by the subordinate court or a tribunal has been filed before this court is not fatal. The court retains a wide power to either hear the dispute or withdraw it and transfer to the relevant court or tribunal. The application for the striking out of the suit therefore cannot succeed. A fair order is to dismiss the Preliminary Objection and give either party the option to apply if any to have the suit heard in the relevant forum. That is the order of the court. Costs shall abide the outcome of the suit.

Dated and delivered at Nyeri this 21st day of May 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Kimunya holding brief Miss Keli for the Plaintiff and Kiminda for the Defendants.