

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 14 of 2006

JOHN NJAGI NGURU.....APPELLANT

VERSUS

JULIUS WAMBIUMBA MURIMI.....RESPONDENT

JUDGMENT

This appeal arises out of a lower court Judgment in RMCC No. 16/2005 delivered on 23/2/2006. The subject matter of the suit is a Rice Holding No. 1734 in Mwea Irrigation Scheme. Matters of ownership of land and working of rice holdings is under the control and management of Irrigation Board established under Irrigation Act.

It is to be noted that the document produced by Defendant addressed to Manager Mwea Irrigation Settlement Scheme and dated 22/10/88 was a recommendation. There is no document from the Board dealing with ownership. That list shows the Number of Rice Holding to be 1748 not 1734.

Nevertheless the right to a Rice Holding is given by Irrigation Board under the terms dictated by the board in pursuance of Irrigation regulations made under the Act (Cap 347). The evidence before the court was that the plaintiff (Respondent herein) was allocated the plot in 1988 according to the chief's letter and presumably continued in occupation. The defendant says he purchased the plot in 2002 November 8th. And when he tried to build on it he was stopped by the plaintiff (Respondent herein). The defendant does not exhibit any agreement of sale. His witnesses made statements which were not substantiated and they did not know the number of the plot in question. DW3 said it was No.22281. All the same these are rural folk who probably never went to school.

My finding is that according to evidence placed before him (Trial Magistrate). It was proper for him to find on balance of probability that the possession being on the Respondent he was likely to be the owner. The adage that possession is 99% proof of ownership is apt. It is clear the land is not registered.

I therefore find that the Trial Magistrate was correct in this finding that the Respondent was entitled to injunction as prayed under prayer (a). Whereas there was evidence of possession of the land by Respondent there was no evidence of ownership hence the finding on the ownership of plot. There was no objection to the production of document produced by Respondent to support his case. The same is signed by the chief and it appears genuine.

It is my finding that the Trial Magistrate was right in his Judgment. I dismiss the appeal and order the Appellant to pay costs of this appeal.

Dated this 28th January, 2008.

J. N. KHAMINWA

JUDGE

28/1/2008

Khaminwa – Judge

Njue – Clerk

Mr. Kahiga HB for Maina Kagio

Read in open court.

J. N. KHAMINWA

JUDGE