



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

**Civil Case 73 of 2006**

**JUSTIN MURIITHI NJERU.....PLAINTIFF**

**VERSUS**

**SAIRAS MURIMI KIRII.....1<sup>ST</sup> DEFENDANT**

**MUNENE MUNYI KIRII.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

The plaintiff purchased a piece of land parcel No. Ngiriama/Ngiriambu/1956 from Samuel Munyi Kirii and was registered as proprietor on 2/4/1998. He holds a title deed dated 27/5/1998. However it appears the vendor and his wife and children did not vacate the land after sale. Thereafter the plaintiff sued the vendor and his wife who had taken a dispute to Gichugu Land Disputes Tribunal being Tribunal Case No. 18 of 1998 in respect of the same land. That was in ***Embu HCC No. 45 of 2000 Justin Muriithi Njeru vs Lucy Wangui Munyi and Samuel Munyi Kirii***. The two defendants later died. It is alleged that the suit filed by the wife in the Gichugu Lands Disputes Tribunal was set aside in ***High Court Misc. Civil suit No. 22/2000 on 6/7/2000***. These suits have abated under civil procedure Rules Order 23. The plaintiff has now filed this suit against the two Defendants who state that they are the children of deceased Defendants in HCC No. 45 of 2000. The Defendants have refused to vacate and in their statement of defence they have raised a counter claim saying the plaintiff holds the land in trust for them and that he obtained the title by fraud the particulars of which they have set down. The defendants have prayed for declaration and costs of this suit.

Firstly, it is to be noted that this is a fresh case against the defendants who are now in occupation of plaintiffs land. The defendants were residing on the land as they say since their respective births. If that is correct they were residing there by virtue of their father being a proprietor of the land Ngariama/Ngariambu/1956. According to Exhibit D Exh. 2 the late Samuel Munyi Kirii became a proprietor of the land on 11/10/1996 and he transferred to the plaintiff on 2/4/1998 at the consideration of shs.50,000/= as recorded in that document. It is therefore quite clear that by the time the parents of the deceased passed on the defendants land no registrable interest on the suit land. And it is untrue the Defendants were born on the land. However the defendants Counsel has raised Preliminary Objection in the issue of jurisdiction she relies on the authority of Wanjiru Mutura (copy provided) this was a decision of the court of Appeal. In that case the litigation commenced in the court of Resident Magistrate and then moved to the High Court on appeal. The Trial Magistrate did not refer the matter to the Land Disputes Tribunal. The court of appeal said that that case being a trespass case fell under the jurisdiction of Lands Tribunal Act Section 3 (1) (c). The Court of Appeal quoted from the (Act 18/90) thus: "the intention of the legislature was to limit the jurisdiction of Magistrate Courts in certain cases relating to land, and to

establish Land Disputes Tribunals and to define their jurisdiction and powers” The Court of Appeal was able to note that the Trial Magistrate had no jurisdiction to hear a disputed on issues of trespass and should have referred the case to the relevant Tribunal. The Jurisdiction of the High Court is not limited by the Land Disputes Tribunal. And in this case then title of the plaintiff to the land was being challenged. The matter had already been referred to the Gichugu Land Disputes Tribunal. A close look at Section 60 of the constitution is clear. “There shall be a High Court which shall be a superior court of record, and which shall have unlimited original jurisdiction in Civil and Criminal matters and such other jurisdiction and powers as may be conferred on it by this constitution or any other law” The Jurisdiction of the High Court can only be added to not diminished or reduced. I therefore do not see any merit on the objection to the court jurisdiction. The allegations of fraud raised by the Defendant are not substantiated. It is clear the plaintiff purchased the property for valuable consideration and this must have been with the consent of their father the registered proprietor then. On the issue of trust there is nothing to show that any trust in favour of the Defendants was created or contemplated. The plaintiff was on related to the Defendants so as to give rise to a trust. The plaintiff has documentary evidence to prove his claim while the Defendants have no evidence to prove their counterclaim. A registered proprietor holds land and enjoys rights granted under statute namely Registered Land Act Cap. 300 Section 10 thereof states that title is conclusive proof of ownership and the rights granted are set out under Section 27 and 28 thereof. Therefore a person challenging such title must adduce credible evidence which I am convicted the Defendants have not demonstrated in court. They did not purchase the land, they simply enjoyed possession by kindness of their parents. Their father had not passed to them any interest and he did exercise his right of ownership to sell the land to the plaintiff.

Upon considering all the above, it is my finding that the plaintiff has proved his case in a balance of probabilities and he is entitled to Judgment as prayed in the plaint. The Defendants counter-claims are hereby dismissed. The Defendants shall vacate the plaintiffs land Ngariama/Ngiriambu/1956 within the next 60 days failing which the plaintiff shall be at liberty to execute decree. Defendants shall pay all costs of this suit to the plaintiff.

It is so ordered.

Dated this 10<sup>th</sup> April 2008.

**J. N. KHAMINWA**

**JUDGE**

**10/4/2008**

**Khaminwa – Judge**

**Solomon – Clerk**

**Ms. Fatuma**

**Mr. Muraguri**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**