

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

Civil Suit 412 of 2002

CHRISTOPHER KAGEMEA GICHUHI PLAINTIFF

Versus

LIVINGSTONE K. GITOME DEFENDANT

RULING

At the beginning of the hearing of this suit, counsel for the Defendant, Mr. Kanyi raised an objection saying that since the Plaintiff in this plaint has based his case on trespass, the plaintiff- should have filed this case in a Land Disputes Tribunal in accordance with the Land Disputes Tribunals Act Section 3. Having come to this court instead of going to the Tribunal therefore, this is incompetent, as this Court has no jurisdiction to grant the prayers sought especially since there is no prayer for a declaration of trespass. Mr. Nabutete, counsel for the Plaintiff, did not agree.

Briefly, the dispute between the two parties was taken to the Land Registrar at Kajiado under Section 21 of the Registered Land Act and he resolved it resolved on 27th July, 1999. It involves land parcel No. NGONG/NGONG/5862 and the Land Registrar decided the dispute between the parties against the Plaintiff now in this suit. The Plaintiff filed H.C. Civil appeal No.322 of 1999 in this High Court. But in the end that appeal was withdrawn on the ground that Mr. Nabutete who was handling the appeal for the Appellant wished to have further instructions from the Appellant. Following that withdrawal, this suit was filed.

Both sides agree that the case is a trespass case. At the end of their respective submissions, they were agreed that the case was not rejudicata. In the circumstances I do not see the basis of the disagreement whether or not the Plaintiff should have gone to file the case in the Land Dispute Tribunal. Section 3 of the Land Dispute Tribunal Act is clear and from the Plaintiff's claim in the plaint in this suit, this is a clear case of trespass under Section 3 of that Act.

The above being the position, Mr. Kanyi's preliminary objection is upheld and the Plaintiff's suit herein struck out with costs to the Defendant.

Dated and delivered at Nairobi this 19th day of March, 2007.

J.M. KHAMONI

JUDGE