



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
HC.CIV. APPEAL 52 OF 2003

JOSEPH KARIUKI1ST APPELLANT

BERNARD MBUGUA KIMANI.....2ND APPELLANT

KARIUKI MUGASI.....3RD APPELLANT

BENSON GICOBIL.....4TH APPELLANT

VERSUS

MIHIRIGA KENDA KIRINYAGA DISTRICT.....RESPONDENT

JUDGMENT ON APPEAL

This appeal arises out of judgment of learned Magistrate sitting in Wanguru Resident Magistrate Arbitration Case No. 24 of 2002.

The grounds of appeal are set out thus:-

1. The Trial Magistrate failed to find out the Respondent were not legally recognizable by law and cannot maintain a legal suit and he granted orders.
2. That the plots Gatitika/T.11 and Manganta/T.3 are non existent but that the existing land is plot No. Mwea/Tebera/B/1314 measuring 206 Hectares belonging to Government of Kenya and that no orders ought to have been granted as state was not a party
3. That the Trial Magistrate failed to find that the appellants have lived in the said land since 1957 which land forms part of National Irrigation Board Scheme where Appellants are tenants/licenseses of state under Irrigation Act.
4. The Trial Magistrate failed to analyze the evidence tendered before him and find that the Application before him was totally defective.
5. Trial Magistrate erred in failing to properly analyzing submissions tendered in favour of respondent.

Mr. Kahiga drew the attention of court to the decision in High Court Case, The Fort Hall Bakery Supply Co. vs Fredrick Mungari Wangore 1959 EA 474 where it was held that “**plaintiffs could not be recognized as having any legal existence, and were incapable of maintaining the action and the court would not allow the action to continue on the provisions of section 3 A of Cap. 21 is invoked**” and the inherent power of court the decision in the case of Namukisa vs Bukya E.A [1966] 433 was

referred to. The respondent is referred to is "**Mihiriga Kenda**" Kirinyaga . There is no description of the group. The plaintiff pleads that it was awarded parcels No. Katitika T.11 and T.3 and that "the said plots of land are enmeshed in land parcel No. Mwea/Tebere/B 1314 which parcel is registered as property of Kenya Government. The appellant admit the land in dispute is Government land and that they are all tenants of the Irrigation board established under Irrigation Act.

The grounds of appeal raises several issues all of which can be resolved by evidence. The authority cited for the proposal that the Respondents have no capacity to maintain a legal action is in respect of a business enterprises. In this case the plaintiffs are not in trade or business. They have claim for occupation rights of land. The appellants refer to plot No. Gatitika/T.11 and 13. The Appellants say their lands are enmeshed in Plot No. L.R Mwea/Tebere/B/1314 which appears to be registered as belonging to Kenya Government. There is also evidence that the land is occupied by many persons. These proceedings are conducted under land Disputes Tribunal Act and the learned Trial Magistrate issued an order to restrain the Appellants from committing acts of waste, building permanent structures and disturbing status quo pending the hearing of an appeal as provided under the said Act. The procedure of conducting such disputes is set out under that act (18 of 90). In the premises and upon considering the grounds of appeal and the submissions of Counsel. It is my finding that there is no merit in this appeal and the same is dismissed with costs to the Respondents.

Dated 15th March, 2007.

15/3/2007

Khaminwa

Judge

Njue - Clerk

Mr. Momanyi H/B

Judgment read in open court.

J. N. KHAMINWA

JUDGE