



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 801 OF 2001

KITHOME WAMBITI APPELLANT

VERSUS

EDWARD MWAURA RESPONDENT

JUDGMENT

This is an appeal from the judgment of Mr. G.P. Ngari, District Magistrate II dated 16th October 2001 in Civil Suit No. 876 of 2000 in the Senior Principal Magistrate's Court at Thika.

The Respondent, then Plaintiff, sued the Appellant, then Defendant, claiming a portion of land measuring two acres from land parcel No. ITHANA/PHASE II/120 which the Respondent said had bought for Kshs 54,000/=, paid Kshs 35,000/= and balance Kshs 19,000/= to be paid on transfer. Evidence before the court was that the parties had even obtained consent of the land control board and had had the land sub-divided into ITHANGA/PHASE II/394 of two acres and ITHANGA/PHASE II/395 of three point two acres following mutation survey and that thereafter the Appellant refused to transfer the two acres portion to the Respondent.

The case was heard and decided in favour of the Respondent.

The Appellant is not happy. Hence this appeal. The Respondent did not care to come for the hearing of this appeal which has therefore gone on in his absence.

Mr. Kivuva has said much during the appeal and even touched on the issue of jurisdiction which did not feature before the trial magistrate and does not constitute any ground in the Memorandum of appeal filed in this court. However since the question of jurisdiction goes to the core of all proceedings in court, I had to listen to him, though the way he was putting it is not tenable as it is not true to say that the Land Disputes Tribunals Act has taken away the jurisdiction of magistrates concerning Registered Land in Chapter 300 Laws of Kenya and that section 159 of the Registered Land Act gives jurisdiction to the High Court only.

On the contrary section 159 gives jurisdiction to the High Court as well as Resident Magistrate's court. The Land Disputes Tribunals Act takes away, from both High Court and Resident magistrate's Courts, jurisdiction on certain disputes only, such as trespass to land, specified in the Land Disputes Tribunal Act.

Disputes relating to title to land are left under the jurisdiction of the High Court and Resident Magistrate's Court.

In this suit since it was filed in a Senior Resident Magistrate's Court, the suit had been filed in court with competent jurisdiction the value of the suit, two acre portion, not being more than Kshs 100,000/=.

However that court with competent jurisdiction committed a serious mistake when it gave this case to a District Magistrate II to hear. A District Magistrate II even if stationed at a Resident Magistrate's Court, does not have jurisdiction under section 159 of the Registered Land Act as under that section a magistrate to hear cases has to be from the grade of Resident Magistrate upwards.

There is no doubt therefore that the District Magistrate II who had this case had no jurisdiction and the proceedings before him were nullity.

That being the position, there is no need for me to go into the merits of the case as there has to be a re-trial.

Accordingly, this appeal is allowed. The proceedings before Mr. G.P. Ngari, District Magistrate II quashed and Thika Senior Resident Magistrate's Case file in Civil Case No. 876 of 2000 returned to that court for re-trial of the case before a Resident Magistrate or a magistrate of a higher grade.

As I consider this to have been a mistake of all that were concerned including the parties who raised no objection on the ground of jurisdiction, each party to bear own costs of this appeal and of what has gone on so far in the magistrate's court at Thika.

Dated this 6th day of June 2003.

J.M. KHAMONI

JUDGE