

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO.75 OF 2001

PATRICK NJUI KIHUMBAAPPELLANT
VERSUS
STANELY MURIUKI MURAGE RESPONDENT

JUDGMENT

The Appellant appeals against the decision of the CM Nairobi in Civil Case No.4045 of 200 in which she gave Judgment for the Respondent herein as prayed in the plaint and general damages of Shs.50,000/=.

The simple issue in the case was whether or not the Appellant had trespassed into the Respondent's land. The dispute arose out of where the boundaries to the respective parties land was.

The Learned Magistrate found as a fact that the Plaintiff was the owner of plot No.1131, which was adjacent to the Appellants plot No.1129. The boundaries were shown clearly on a map from Survey of Kenya produced in evidence. Although the second defence witness had said the Plaintiff/Respondent would stop encroaching on the Appellants land the Magistrate found him to be biased. The magistrate had the advantage of seeing the witness and evaluating their creditability. The Magistrate was entitled on the evidence before her and indeed was bound to make findings of fact. I can see nothing in the Judgment in the nature of a misdirection as to the facts and her finding that the Appellant had trespassed on the Respondent's land.

With regard to damages, trespass is a tort for which the court will award general damages. Damages are within the discretion of the court hearing the matter and an appeal court will not interfere unless the damages are manifestly too high or too low. In this case I cannot say the damages awarded are too high.

In the result I dismiss this appeal with costs to the Respondent.

Dated and delivered at Nairobi this 25th November 2003
P.J. RANSLEY
JUDGE