

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CORAM: D. S. MAJANJA J.

CIVIL APPEAL NO. 12 OF 2019

BETWEEN

SERAH WANJIRU KUNGU.....APPELLANT

AND

PETER MUNYUA KIMANI.....RESPONDENT

(Being an appeal from the Judgment and Decree of Hon.D. N. Musyoka, PM

dated 20th December 2018 at the Kikuyu Magistrates Court

in Civil Case No.230 of 2010)

RULING

1. This is an appeal against the judgment and decree of the trial court striking out the suit on the ground that an essential party who had a right to be heard was not joined to the suit. The plaintiff's claim was for trespass to land and that she was the registered owner of a parcel of land; MUGUGA/KANYARIRI/1245 and in the plaint dated 23rd July 2010, she sought a permanent injunction restraining the respondent from trespassing on the said property.

2. Without belabouring the point, it is clear that the cause of action, being an action for trespass, falls within the jurisdiction of the magistrate's court adjudicating on matters concerning land under **section 9** of the *Magistrates Court Act, 2015*. An appeal therefrom therefore lies to the Environment and Land Court under the provisions of **section 13** of the *Environment and Land Court Act, 2011* and **Article 162(2)(b)** of the Constitution.

3. This appeal is therefore transferred to the Environment and Land Court at Thika for hearing and disposal.

DATED and DELIVERED at KIAMBU this 6th day of JANUARY 2020.

D. S. MAJANJA

JUDGE

Mr Omondi instructed by M. Murimi and Company Advocates for the appellant.

Mr Bore instructed by M. K. Chebii and Company Advocates for the respondent.