

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL NO. 19 OF 2014

(An appeal from the Judgment of the Resident Magistrate, Embu in PMCC No. 462 of 1994 dated 12/11/2008)

CHRISPIN KENYU KANGETHE.....APPELLANT

VERSUS

EPHANTUS NJIRU MBOGO.....RESPONDENT

RULING

I have perused the record of appeal and made the following observations:-

1. That this case was heard and determined by Hon. E.K. Nyutu on 12/11/2008.
2. That the plaintiff's claim was for general damages, declaration that parcel No. Kagaari/Weru/1168 belonged to the respondent among other orders.
3. That the appellant filed a counter-claim seeking for transfer of 12.83 acres out of Kagaari/Weru/1168 and that the Executive officer signs all the relevant documents.
4. That the learned Magistrate dismissed the case which included both the respondent's claim and the appellant's counter-claim.

In view of these observations, I am of the considered opinion that the appellant's counter-claim converted the suit before the magistrate to a land matter. The counter-claim was for entitlement of 12.80 acres for orders for transfer to him.

Section 26(4) of the Environment and Land Act (ELC) No. 19 of 2011 provides that appeals from a Magistrates court on land issues lie to the ELC court.

This appeal was filed in 2014 after the Act had come into operation. It falls within the jurisdiction of the ELC court.

The appeal is hereby transferred to ELC court for disposal.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF FEBRUARY, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

P.N. Mugo for Respondent