



## Editorial Summary

1. *Civil Appeal*
2. *Subject of Subordinate Court Case*

### *LAND*

- 2.1 *LR Ruiru/Ruiru East/Block1/1357 1.25 acres  
(original plaintiff/respondent)*
- 2.2 *LR Ruiru/East Ruiru/Block1/1356  
(original defendant/appellant)*
- 2.3 *Trespass*
- 2.4 *Allegation of unlawful interference with registration  
status of land ...appellant making effort to illegally  
register land as his.*
- 2.5 *Orders of eviction sought against appellant, agent,  
servant and or persons so claiming.*
- 2.6 *General damages for trespass*
- 2.7 *Land buying company Githunguri constituencing  
Ranching Ltd – original ownwer of Land not party  
to suit.*
- 2.8 *Plaint filed 5<sup>th</sup> August 2009.*
- 2.9 *Application dated 5<sup>th</sup> August 2009 certificate of  
urgency, seeking orders of injunction to restrain  
appellant from committing acts of waste on  
LR Ruiru/Ruiru East/Block1/1357 by respondent.*

- 2.10 *Reply by appellant; lived on parcel  
LR Ruiru/Ruiru East/Block1/1357 for 25 years  
or more. Parents and sister buried there.*
- 2.11 *Error by land buying company to allocate  
Ballot 736 Title No. 1356 when on the ground he is  
on land 1357.*
- 2.12 *Preliminary Objection raised by appellant:*
- a) *Court has no jurisdiction to hear land case  
on grounds that Section 159 of the  
Registered Land Act does not permit land  
matters to be heard by magistrate courts  
where value exceeds £2500/- or  
Ksh. 500,000/-*
  - b) *Reply – land was bought for Ksh. 3,950/- at  
10/- per share.*
  - c) *Lack of valuation report.*
  - d) *Valuers must attach “qualification certificate” to  
make a report.*

3. *Held by Hon. Magistrate*

- 3.1 *Ruling 29<sup>th</sup> October 2009.*
- 3.2 *Issue of jurisdiction relying on Sally Towett  
case, value of land purchased was 1.1 million.  
In this case the value held to be Ksh. 3,950/-*
- 3.3 *Measurement of value not determined by  
Section 159 of the Registered Land Act Cap 300.*
- 3.4 *It is a historical costs, current cost realizable  
(settlement) costs or present value.*

3.5 Valuation/financial statement.

a) Rolient – Vs – Anthony & another

Accounting Tax cases

McGraw Hull Publishing Co. Ltd

New Delhi 11<sup>th</sup> Edition – 2003.

b) W.D. Nzomo advanced Financial

Account KCB Nairobi 1992.

c) Glanter Mweb Underdown

Accounting Theory & Practice ELB

Pitorian 2001.

d) Jan R. Williams

Financial Managerial Accounting.

The basis for business decisions.

McGraw Hull Publishing Co. Ltd

Eldonshard Nesen & Michael V. Breda

Accounting Theory McGraw Hill

New York 1992.

3.6 Held correct value of land is historic at

Ksh. 3,950/-. Therefore Resident Magistrate's Court  
has jurisdiction.

3.7 Credibility of valuation report. Valuer failed to  
attach practicing certificate.

3.8 Preliminary Objection dismissed on 29<sup>th</sup> October 2009.

4. Appeal by original defendant

11<sup>th</sup> November 2009

The Hon. Magistrate erred in law and fact in

4.1 ... holding that the court had jurisdiction to hear and  
determine the matter between parties.

- 4.2 ...the Chief Magistrate's court or subordinate court had jurisdiction to determine the suit.
- 4.3 ...in considering the value of the property or suit property, the court should consider the historical value.
- 4.4 ...by disregarding the valuation report filed by appellant.
- 4.5 ...in relying on extraneous matters and facts that were not pleaded or relied on by the parties in making his decision and orders.
- 4.6 ... to appreciate merit of application 21<sup>st</sup> August 2009 filed on 24<sup>th</sup> August 2009.
- 4.7 ...to consider the submissions made by applicant appellant ... to consider or give due regard to authorities cited.
- 4.8 ...disregarding the market value of property in determining the value of property.
- 4.9 ...by holding valuation report was not admissible.
- 4.10 ...to appreciate appropriate provisions of Evidence Act and law regarding admissibility of documents.
- 4.11 ...to appreciate submissions and authorities filed ... seeking striking out of suit.

## 5. Submissions on appeal

### By Appellant

- 5.1 Section 3 Registered Land Act Cap 300 Laws of Kenya defines court as the High Court.
- 5.2 Except on cases where properties do not exceed £2500

- 5.3 Value of land is above 500,000/- and stands at Ksh. 4 million.
- 5.4 Value of property and not historical value used.
- 5.5 Meaning of historical value is cost of assets when first purchased.
- 5.6 Current value be used.
- 5.7 Valuation report disregarded.
- 5.8 Valuers Registration Board keeps a register of valuers and gazette same.
- 5.9 Appeal be allowed.

*By Respondent:*

- 5.10 Section 159 Registered Land Act doesn't specify measurement of value of subject matter.
- 5.11 Sally Towett case held value is purchase price.
- 5.12 Respondent's value at purchase price being Ksh. 3,950/-
- 5.13 Standard valuation report must have certificate.
- 5.14 Section 159 of Constitution – justice be administered without regard to technicality.
- 5.15 Overriding objective Section 1A 1 &

2

*Civil Procedure Act.*

6. *Held:*

*Trial magistrate had no jurisdiction to hear suit.*

*Appeal allowed.*

*Judgment by Hon. Magistrate dismissed.*

7. Case Law:

*By appellant:*

a) Charles Wainaina Njehia  
Vs

Barclays Bank of Kenya

*Eldoret Misc Application 249/05*

*Ibrahim J*

b) Sally Towett & 10 Others  
Vs

Charles Cherutish & another

*Nairobi Misc Application 392/05*

*Kimaru J*

8. *Advocates* :

i) *M/s Muriu Mungai & Co Advocates for the appellant/  
original defendant*

ii) *M/s Oundu & Associates for the respondents/original plaintiff*

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**CIVIL APPEAL NO. 622 OF 2009**

MWAURA MUTUGI ..... APPELLANT/

ORIGINAL DEFENDANT  
VERSUS

ORIGINAL PLAINTIFF

*(An appeal from the Ruling of K. Muneeni Esq, Principal Magistrate delivered on 29<sup>th</sup> October 2009 in CMCC No. 214 of 2009 at Kiambu court)*

J U D G M E N T

I. INTRODUCTION

1. A land matter came before the magistrate's court at Kiambu. A Preliminary Objection was raised as to the jurisdiction of that court to hear the said matter under Section 159 of the Registered Lands Act Cap 300 Laws of Kenya. The Hon. Magistrate dismissed the Preliminary Objection on grounds that he did have jurisdiction to hear the matter.

II BACKGROUND

2. A brief background of the original case before the Hon. Magistrate is as follows: A land buying company (who are not party to the original suit) had issued ballot allocation numbers to the parties herein. This being ballot No. 737 and No. 736. Magdalene Wanjiku Chege the respondent original plaintiff alleged that ballot No. 737 issued on

5<sup>th</sup> September 2003 belonged to her. She was issued with title

LR Ruiru/Ruiru East/Block 1/1357. The respondent further alleged that the appellant original defendant had been issued with

LR Ruiru/East Ruiru Block 1/1356.

3. She had requested the appellant to vacate from the property and he refused to do so. She then filed a suit on 5<sup>th</sup> August 2009 seeking the subordinate court to "order [the] auction of the defendant [appellant], his agents/servants and or persons claiming under

LR Ruiru/Ruiru East/Block 1/1357. General damages for trespass and interest were also put.

4. The appellant filed defence and alleged that his late father had been allocated the suit land LR Ruiru/Ruiru East/Block 1/1357. This was as per his defence, a rectification from parcel No. 1356 to 1357.

5. When the suit was filed the respondent filed an application for injunction to restrain the appellant from having any dealings with the land. The appellant had stated in his reply that his parents (both deceased) and sister (also deceased) had been lived on the suit land. Both were persons who had lived on the land for 25 years.

6. All the above facts are yet to be proved at a full trial.

7. The issue then before the subordinate court arose in a Preliminary Objection by the appellant (original defendant as to the jurisdiction of the court to hear the matter as raised.)

III PRELIMINARY OBJECTION

8. The objection raised to the Hon. Court hearing the case is that under Section 159 of the Registered Land Act, it does not permit land matters to be heard by the magistrate's court where the value of the land exceeds Kenyan pounds £2500 or Ksh. 500,000/-

9. The respondent claimed that the land had been purchased for

Ksh. 3,950/- at Ksh. 10/- per share. The court should not take into account the valuation report put by the appellant as the valuer had in fact not attached to his report a qualification certificate that indeed he was a qualified valuer.

10. The Hon. Magistrate court in its ruling of 29<sup>th</sup> October 2009 held that it had jurisdiction to hear the matter. Relying on a case law put to the court of

**Sally Towett & 10 Others**

Vs

**Charles Chemtich & another**

Nakuru Misc Application 392/05

Kimaru J

In which the Hon. Judge ruled the subordinate courts had no jurisdiction to hear a land case because the purchase price of the said land was Ksh. 1.1 million

11. The Hon. Magistrate argued that if the above case was based on the purchase price, then the court should be guided by the purchase price of shares amounting to Ksh. 3,950/-

12. Nonetheless, the Hon. Magistrate further argued that Section 159 of the Registered Land Act Cap 300 in fact gave the measurement as how to value the property and at what stage? Namely should the measurement value be

i) *This is where assets are recorded at the amount of cash equivalent ... at the time of acquisition.*

ii) *Current cost “assets are carried at the amount of cash ... acquired currently”*

iii) *Realizable (settlement) “assets ... carried at the amount of cash ... obtained by selling the assets in an orderly disposal.”*

iv) *Present value “assets are carried at the present discounted value of the future net cash flows that the item is expected to generate in the normal course of business.*

13. The Hon. Magistrate obtained this reasoning from the following text books:

**13.1 Rolient – Vs – Anthony & Another**

**Accounting tax costs**

**Migraw Hall Publishing Co. Ltd New Delhi**

**11<sup>th</sup> Edition 2003**

**13.2 N.N. Nzomo advanced financial account KCB**

**Nairobi 1992**

**13.3 Glanten MWEB Underdown**

**Accounting Theory & Practice ELB's**

**Pitorian 2001**

**13.4 Jan R. Williams Etc**

## **Financial Managerial Accounting**

### **The basis for business decisions**

**McGraw Hiall Irish 2004**

#### **13.5 Eldons Handesen & Michael Van Breda**

##### **Accounting Theory**

**McGraw Hill**

**New Yard (1992)**

14. The Hon. Magistrate then came up with the conclusion that the historical costs of analyzing the value of land be taken. This would therefore mean the assets that are recorded at the amount of cash equivalent in this case the actual purchase price of Ksh. 3,950/-. This therefore meant he had jurisdiction to hear the case.

15. The Hon. Magistrate went further discredited the valuation report on grounds that the practicing certificate of the value had not been attached.

16. The Preliminary Objection was dismissed on the 29<sup>th</sup> October 2009.

17. Being aggrieved the appellant filed appeal as this High court against the said ruling.

18. The Hon. Magistrate is said to have erred in law and in fact in:

**18.1 ... holding that the court had jurisdiction to hear and determine the matter between the parties.**

**18.2 ...the chief magistrate's court or subordinate court had jurisdiction to determine the suit.**

**18.3 ...in considering the value of the property or suit property, the court should consider the historical value.**

**18.4 by disregarding the valuation report filed by appellant.**

**18.5 ... in relying on extraneous matters and facts that were not pleaded or relied on by the parties in making his decision and orders.**

**18.6 ...to appreciate merits of application 21<sup>st</sup> August 2009 filed on 24<sup>th</sup> August 2009.**

**18.7 ...to consider the submissions made by the applicant/appellant to consider or give due regard to authorities cited.**

**18.8 ...disregarding the market value of property in determining the value of property.**

**18.9 ... by holding valuation report was not admissible.**

**18.10 ...to appreciate appropriate provisions of Evidence Act and Law regarding admissibility of documents.**

**18.11 ...to appreciate submissions and authorities filed ...seeking striking out of the suit.**

#### **IV SUBMISSIONS**

##### **i) By the Appellant**

19. The law under the Registered Lands Act Cap 300 Laws of Kenya defines the court that should hear land matter where the value is above £2,500/- or Ksh. 500,000/- (rate of Ksh. 20/- per £) be at the High Court. The magistrate's court may hear the cases where the value is below this.

20. The appellant was able to show that the land in question was valued at Ksh. 4 million. Even at the proceeding before the chief there was admission that the said valuation was in fact admitted to be Ksh. 3 million.

21. It was therefore an error on the part of the Hon. Magistrate to take the historical value namely the costs of the assets when first purchased instead of the court value used. The Hon. Magistrate also erred when he disregarded the valuation report on grounds that the valuer had not attached his certificate. The Valuers Act Cap 532 Revised Edition 1985 provides under Section 8(1) that the registrar shall publish a Gazette. Section 8(2), a list of all the names, addresses and qualification of all registered valuers appearing in the register is to be published in the Gazette. This is prima facie evidence that such person is registered. A certificate above is not the only option for proof of registration as a valuer.

22. The appellant prayed that the orders of the Hon. Trial Magistrate be set aside and orders striking out the plaint be allowed.

ii) By the Respondent:

23. The respondent in reply stated that the trial magistrate was correct in its findings. Section 159 of the Registered Lands Act does not specify the measurement of the value of the subject matter.

24. The Sally Towett case held that the land value as the purchase price. The respondent purchase price was Ksh. 3,950/-

25. A valuation report must have a certification of the valuer to it.

26. Turning to the Constitution of Kenya, under Section 159, it states that justice must be administered without regard to technicality. Further the overriding objective of the law is governed by Section 1A (1) & (2) of the Civil Procedure Act needs to be taken into account.

27. The respondent prayed the appeal be dismissed.

II OPINION

28. It is the issue of the court's jurisdiction that required to be determined herein. The Hon. Trial Magistrate held he had jurisdiction resolving the historical method of valuing assets – an accounting principle.

29. The case of Sally Towett (Supra) took Ksh. 1.1 million purchase price as a guide. It was not an historical method of assessing assets.

30. The valuation of land at times goes by the comparable purchase price of the area and time. That indeed, the correct market value of land being sold, signifies the value of land.

31. I would hold that the sum of Ksh. 3,950/- that was used to determine the value of land was used in error. This is because Ksh. 3,950/- actual purchased shares in a company. Its final realization was the subdivision of land and distribution to its members.

32. The actual value would be by comparable of sale of other land within the area at the time of filing suit. This figure most certainly cannot be Ksh. 3,950/-.

33. I would therefore reject the argument that the value of over 1¼ acres is Ksh. 3,950/-

34. As to the actual valuation submitted by the valuer a probable valuation exceeding Ksh. 500,000/- for 1¼ acres or more would be acceptable, than the sum of Ksh. 3,950/-

35. There was an argument by the respondent that the case before the magistrate concerned trespass and not land. The magistrate court therefore would hear such case.

36. Under Section 159 of the Registered Lands Act Cap 300, it is clearly stated that jurisdiction for land and trespass cases lies with the High Court and the Lands Disputes Tribunal respectively. This section reads:

**“Civil suits and proceedings relating to the title to, or the possession of land, or to the title to a lease or a change, registered under this Act or to any interest in the land, lease or change, being an interest which is registered or registrable under this act, or which is expressed this act not to require registration, shall be tried by the High Court and where the value of the subject matters in dispute does not exceed twenty five thousand pounds by the Resident Magistrate’s court, where the dispute comes within the provision of Section 3(1) of the Lands Disputes Tribunal in accordance with the act.”**

37. If it is the issue of trespass, the Lands Disputes Tribunal are the ones with the jurisdiction and not the magistrate’s court.

38. The land law nonetheless, have since been repealed. The new land law requires the jurisdiction to be with the High Court on all land matter.

39. In this appeal jurisdiction goes to the root issue of a case – without having jurisdiction to determine the matter the case becomes futile, null and void.

40. This appeal subject arose prior to the new land Law Act. This law does not act retrospectively unless otherwise stated.

## VI IN CONCLUSION

41. The appeal be and is hereby allowed (a,b,c,d) with costs to the appellant in this appeal. Costs in the subordinate court to the appellant/ original defendant.

DATED THIS 11<sup>TH</sup> DAY OF JULY 2012 AT NAIROBI

M.A. ANG’AWA

JUDGE

Advocates :

i) *M/s Muriu Mungai & Co Advocates for the appellant/  
original defendant*

ii) *M/s Oundu & Associates for the respondents/original plaintiff*