

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 30 OF 1990
SAMUEL MWAURA TUBA APPLICANT
VERSUS
RAPHAEL KARANJA TUBA RESPONDENT
JUDGMENT

The respondent filed a miscellaneous application in the Resident Magistrate court No.68 of 1992 at Kiambu. This was by way of a Notice of Motion / Chamber Summons to which he prayed for the following orders:-

“That this court be pleased to make an order and authorise its Executive Officer to sign all necessary documents to facilitate the transfer of Land Reference Ngenda/Nyamangara/1772 into our names as indicated in my affidavit herein.”

He prayed for costs. The Hon. learned magistrate then recorded on the 4th of December, 1992 what the applicant stated and what the respondent stated then proceeded to write a brief ruling that the executive officer to sign the necessary document order to partition the land in question.

This is a very drastic order to take and especially in the light of there being no suit before the trial magistrate. What the respondent applicant ought to have field was an Originating Summons.

The trial magistrate should have established thereafter from the affidavit and possible annexure that there was a map on record to show the exact area the sub-divisions ought to be effected.

The prayers could not be possibly granted by the very scanty information brought by the parties. I hereby allow this appeal and set the trial magistrates orders aside.

The parties if they wish may file fresh proceedings with the leave of this court which I hereby give. I award the costs of this appeal to the appellant.

Dated this 29th day of July, 1999 at Nairobi.

M.A. ANG’AWA

JUDGE