

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 204 OF 1997

MONICA WAMAITHA WAMANA.....APPELLANT

VERSUS

WAMANA MBURI

WANGAI.....RESPONDENT

J U D G M E N T

This appeal arises from the Judgment of the Resident Magistrate delivered at Muranga on 25th February, 1997 whereby he dismissed the plaintiff's suit with costs.

The subject matter herein Kiine/Thigirichi/137 registered in the name of the defendant.

Several matters that featured during the trial were not addressed by the learned trial magistrate in his judgment. There was a conflict as to the true names of the defendant. There was the unexplained allocation of the land to the defendant who was a minor of less than five years when his father was alive and his whereabouts known. The involvement of the elders was mentioned but not explored.

In my judgment, this appeal must be and is hereby allowed. This is a land matter and I believe a retrial is the most appropriate order in the circumstances of this case.

Accordingly while allowing the appeal, there shall be a retrial before another magistrate of competent jurisdiction.

Each party shall bear own costs of this appeal.

Orders accordingly.

Dated and delivered at Nairobi this 10th day of June, 1998

A. MBOGHOLI MSAGHA

JUDGE