



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**

**AT NYERI**

**Civil Appeal 141 of 1996**

**IBRAHIM MULU M'INYINGI.....APPELLANT**

**AND**

**PETER M'ITABATHI.....RESPONDENT**

**(Appeal from a decree of the High Court of Kenya a MERU (Justice Ong'udi C.O) dated 19<sup>th</sup>  
October, 1995 IN H.C.C.A. NO. 15 OF 1995)**

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**JUDGMENT OF THE COURT**

This is a second appeal on an interlocutory application. There is no point of law raised within the meaning of Section 72 of the Civil Procedure Act (Cap 21). The plaint filed in the subordinate court did not identify the parcel of land upon which the respondent was alleged to have trespassed. We cannot tell from the pleadings whether the appellant was referring to the same parcel of land to which the counter-claim relates. In any event, both the subordinate and superior courts considered the issues and made a concurrent finding with which we can find no fault.

The appeal, therefore, lacks merit and it is hereby dismissed with costs.

Dated and delivered at Nairobi this 14<sup>th</sup> day of October, 1996.

R. O. KWACH

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JUDGE OF APPEAL

A.M. AKIWUMI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL