



IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: KWACH, LAKHA & BOSIRE, JJ.A.)
CIVIL APPEAL NO. 111 OF 1999

BETWEEN
VIRGINIA WAMBUI CHEGE APPELLANT
AND
NYAMU WAITATHU RESPONDENT

(Appeal against the Judgment & Decree of the High Court of Kenya at Nairobi
(Mr. Justice Khamoni) dated 24th November, 1997

in

H.C.C.C. NO. 4787 OF 1998)

JUDGMENT OF THE COURT

The suit giving rise to this appeal was in trespass and ought to have been instituted by way of a regular suit. It clearly does not fall within the parview of Order 36 rule 3 under which it was purportedly commenced. This is unsustainable and clearly incompetent. Accordingly, the suit is incompetent. The appeal, therefore, succeeds.

The appeal, therefore, is allowed and the decree of the superior court is set aside and substituted by an order striking out the originating summons.
There will be no order as to costs.

Dated and delivered at Nairobi this 7th day of June, 2000.

R.O. KWACH
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JUDGE OF APPEAL
A.A. LAKHA
.....
JUDGE OF APPEAL
S.E.O. BOSIRE
.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR