



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE 148 OF 2003

JOSEPHINE NTHENYA

MWANIA.....PLAINTIFF

V E R S U S

1. KINGOO MUTUNYU

2. MWALI MUEKE (Substituted by STEPHEN MBATHA  
MUEKE.....DEFENDANTS

R U L I N G

1. The Defendants have raised a **preliminary objection** to the Plaintiff's suit by notice in that behalf dated 18<sup>th</sup> June 2009. The legal point taken is that "the court is divested of jurisdiction to entertain (the) suit in view of the provisions of **section 3(1)** of the **Land Disputes Tribunals Act, No 18 of 1990** (recently repealed).

2. The preliminary objection was canvassed by way of written submissions. Those of the Defendants were filed on 20<sup>th</sup> December 2010; the Plaintiff's were filed on 7<sup>th</sup> January 2011. I have considered the submissions, including the cases cited.

3. The head note of Act No. 18 of 1990 states as follows-

**"An Act of Parliament to limit the jurisdiction of magistrate's courts in certain cases relating to land; to establish Land Disputes Tribunals and define their jurisdiction and powers and for connected purposes."**

4. Clearly, Act No 18 of 1990 was **not** intended to limit the original jurisdiction of the High Court in civil cases which, when the suit was filed, was unlimited under the **Constitution of the Republic of Kenya** then in place. The Act was meant only to limit the jurisdiction of magistrates' court in certain cases relating to land, and it did so in the following terms found in section 3(1) of that Act -

**"3.(1) Subject to this Act, all cases of a civil nature involving a dispute as to-**

- (a) the division of, or the determination of boundaries to, land, including land held in common;**
- (b) a claim to occupy or work land; or**
- (c) trespass to land, shall be heard and determined by a Tribunal established under section 4."**

5. This was a limitation of the jurisdiction of magistrates' courts in cases of a civil nature as described.

It was **not** a limitation of the jurisdiction of the High Court.

6. The preliminary objection is clearly misconceived and is overruled with costs to the Plaintiff. It is so ordered.

7. The delay in preparation of this short ruling is deeply regretted. It was caused, as in many other cases, by my poor state of health the last few years. But thank God I have now fully regained my health.

**DATED AT NAIROBI THIS 8<sup>TH</sup> DAY OF AUGUST 2012**

**H.P.G. WAWERU**

**JUDGE**

**COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER  
2012**

**ASIKE-MAKHANDIA**

.....  
**JUDGE**