



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU Civil Appeal 100 of 2000**

**GEORGE MAINA.....APPELLANT**

**VERSUS**

**WANDERI KABUGI.....1<sup>ST</sup> RESPONDENT**

**DANIEL GICHUNJI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

By a Plaint dated 5<sup>th</sup> September 1990 and filed in court on 18<sup>th</sup> September 1990 the Plaintiff (*now Appellant George Maina*) sued Wanderi Kabugi the 1<sup>st</sup> defendant and Daniel Gichunji 2<sup>nd</sup> defendant who are now 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively and (*collectively hereinafter referred to as the Respondents*). The appellant sought the following orders against the respondents-

1. A declaration that he is the sole legal owner of a portion of land comprised of one acre and 1<sup>3</sup>/<sub>4</sub> acres both annexed to Plot No. 44 Nyahururu Farmers Co-operative Society Ltd and that the defendants are trespassers in the said plots,
2. An order of eviction and ejection of the defendants from the said plots.
3. Costs and interest.

By notice of a Preliminary Objection dated 14<sup>th</sup> June 2000 the Respondents advocate sought one order to the effect that-

*“That a Magistrate’s Court has no jurisdiction to hear a land dispute pursuant to the Land Dispute’s Tribunal Act No. 18 1990 and hence the suit filed herein is incompetent and should be struck out.”*

By a Ruling dated 9<sup>th</sup> August 2000 the learned Senior Resident Magistrate Nyahururu upheld the Preliminary Objection raised by the Respondents Advocates and by decree issued on the 13<sup>th</sup> day of October 2000 the said learned magistrate ordered that:

1. the dispute falls under Section 3(1) of the Land Disputes Tribunals Act.
2. the defendants notice of preliminary objection be and is hereby upheld.
3. the suit filed herein be and is hereby struck out with costs to the defendants.

The matter having been transferred to the Nyahururu Land Disputes Tribunal the claim was heard by the elders under the Chairmanship of one J. G. Kobia District Officer Ndaragwa and at the end of the hearing made a finding and award in these terms-

*“It was established that Daniel Gichuhi Njengara owns 16 acres from one of the land parcels in dispute and Wanderi Kabugi owns 9 acres of another land parcel also in dispute.*

*A Government surveyor should physically visit the two land parcels to ascertain the truth of this matter. If the acreage will be more than what is mentioned above, the excess acreage should be transferred to the plaintiff and if the surveyor establishes that the above mentioned acreage is correct then it will be upon the management of Nyahururu Farmers Co-operative Society to allocate the plaintiff with alternative land parcel or refund his money with interest at the current rates.”*

The award of the tribunal was adopted by an order of court given and issued on the 14<sup>th</sup> day of July 1992.

The Appellant being aggrieved with the Ruling by the Senior Resident Magistrate in Nyahururu PMCC 300 of 1990 and has appealed to this court on four grounds namely-

1. The learned magistrate erred in law in holding that the Appellant’s suit which was essentially an action for declaration of title and legal ownership falls under Section 3(1) of the Land Disputes Tribunals Act, 1990.
2. The learned magistrate erred in law in treating the Appellant’s suit as an action for trespass which it was not.
3. The Learned Magistrate erred in law in upholding the Respondents preliminary objection and striking out the Appellant’s suit.
4. That the Learned Magistrate wrongly exercised his judicial discretion when he awarded the costs of the suit to the Respondents.

The issue raised by the appeal is basically one and that is whether a Land Disputes Tribunal established under section 4(1) of the Land Disputes Tribunals Act of the 1990 has jurisdiction to entertain a dispute over registered land.

When this matter was heard before me on 20<sup>th</sup> January 2010 Mr. Nderitu learned counsel for the Appellant urged that the Lands Disputes Tribunal has no jurisdiction to determine a matter under the Registered Land Act (RLA). He relied upon the following authorities:

1. Wamwea v. Catholic Diocese of Murang’a Registered Trustees [2003] KLR 389
2. Nyandarua District Land Disputes Tribunal and Meshack Mwangi Maina and Another Ex-

3. Republic v. Nyandarua District Land Tribunal, Nakuru High Court Misc. Appl. No. 79 of 1999 (unreported).
4. Republic v. Erishipher Wambui Mungai, Loise Wanjiku Maina, Ex-\_\_\_\_\_ parte Hanna Wanjiku Mwangi Nyeri High Court Misc. Application No. 11 of 2008 (unreported).
5. William Peter Mayaka v. Richard Kipkorir Mutai and 3 others, Nakuru High Court Civil Case 246 of 2004 (unreported)
6. Gibson Kiyai and Anor v. Loise Ogalla and Anor, Kakamega High Court Civil Appeal No. 66 of 1998 (unreported)
7. Mbugua Thiga v. Teresia Wangechi Macharia and 2 others, Nairobi High Court Civil Appeal No. 460 of 2000 (unreported).

On his part Mr. Karanja urged to the contrary and to effect that the Tribunal had jurisdiction to entertain the claim in respect of trespass. He relied on the decision of Tunya J. in Wamukoya v. Kipsaina Land Disputes Tribunal & Another [2003] KLR 59 to the effect that:

*“Section 3 of the Land Disputes Tribunals Act 1990 gives the Tribunal jurisdiction to determine whether or not a person is a trespasser. In such an instance, it is immaterial that the suit land is registered.”*

Counsel also relied on the decision by my sister Lady Justice Koome in Nakuru Misc. Application No. 612 of 2005 Elizabeth Wariara Muiri vs. Mary Wanjiru Kareithi that-

*“a decision by the tribunal and their declaration that the respondent’s right to occupying the suit land should not be disturbed is well founded. However, the Tribunal should not have ordered that the respondent be given title as that is outside the mandate of the Tribunal.”*

Mr. Karanja also relied on the Court of Appeal decision in Nairobi Civil Appeal No. 114 of 1997 Ernest Muiruri Njoroge & 28 Others vs. Kabiru Karanja & 4 others . The decision by the Court of Appeal in that case is with respect to counsel for the respondent irrelevant to the facts in this case. It is irrelevant because the land in that case was still held by the Co-operative Society unlike in this case where the land in issue is registered in the name of the Appellant.

In the case of Wamwea vs. Catholic Diocese of Murang’a Registered Trustees (*supra*), which is in my opinion a very well considered and balanced opinion on the jurisdiction of the Land Disputes Tribunal, Justice Khamoni held inter alia that:

*“Tribunals and Land Disputes Appeals Committees do not have jurisdiction to hear disputes over title to land. Disputes over contracts are also not under that jurisdiction.”*

The reason cited by the learned Judge and with which I again agree is the provision of Section 159 of the Registered Land Act which says as follows;

*“Civil suits and proceedings relating to the title to or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of*

*the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the disputes comes within the provisions of section 3(1) of the Land Disputes Tribunals Act in accordance with that Act."*

Section 3(1) of the Land Disputes Tribunals Act says;

*"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;*

*(c) trespass to land, shall be heard and determined by a Tribunal established under section 4"*

The Plaintiff in this case sought among other orders -

*"A declaration that the appellant was the sole legal owner of the land in question and an order for eviction and ejection of the respondents."*

Clearly Section 3(1) of the Land Disputes Tribunal Act does not confer upon a Land Disputes Tribunal any such jurisdiction. The decision by the learned Senior Resident Magistrate to refer the matter to the Land Disputes Tribunal was clearly wrong in law and the same is hereby set aside.

The award by the Tribunal and Elders signed by the District Officer Ndaragwa Division is hereby quashed and also quashed is the decision of the Resident Magistrate adopting the award.

In summary therefore the appellant's appeal dated 4<sup>th</sup> September 2000 succeeds and the appellant shall also have the costs in this court and the court below.

It is hereby ordered and directed that Nyahururu PMCCC No. 300 of 1990 be heard on its merits by a different magistrate. There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 29<sup>th</sup> day of January 2010

**M. J. ANYARA EMUKULE**

**JUDGE**