



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Civil Appeal 51 of 2007**

**JOHN MAINA GITHINJI ..... APPELLANT**

**versus**

**MARY WANGUI MAINA ..... RESPONDENT**

***(Being an appeal from award of Provincial Land disputes Tribunal –***

***Central Province in Land Case no. 18 of 1990 at NYERI)***

**JUDGMENT**

This appeal is against the award of Central Provincial Land Dispute Tribunal No. 18 of 1990. The tribunal on the 3<sup>rd</sup> may 2007 awarded the appellants land to his five children whereby each child was to get 1 acre of parcel no. THEGENGE/KARIA/ 1310/1311. The appellant being aggrieved filed the present appeal. The grounds of appeal can be collapsed into one that is, the tribunal had no jurisdiction to give the award they made on the 3<sup>rd</sup> May 2007. Before I begin to consider the appellants submissions it is essential to respond to the respondent submissions that the appellant had not obtained a certificate from the court that the appeal raises points of law as provided by Section 8(10) of the Land Disputes Tribunal Act. I have perused this file and it is apparent that this court not once but twice certified that the appeal raises points of law. The certificates were obtained on 21<sup>st</sup> May and 18<sup>th</sup> June 2008. The appellant and respondent are husband and wife. It seems as though there was marital dispute between them leading to the appellant's alleged removal of the respondent from the matrimonial home. That seems to be the background to the filing of the dispute before the land disputes tribunal. The appellant has argued and quite rightly so that the tribunal did not have jurisdiction to deal with the title of land. The appellant argued that the tribunal determined the matter under the pretext of dividing matrimonial property. The jurisdiction which affords the tribunal power to hear land disputes is set out in section 3(1) of the land disputes tribunal act. It provides:-

***“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.”***

As it can be seen from the provisions of that section the tribunal was not empowered to order the subdivision of the appellant's land and transfer to the children. Even if it had that power the matter before the tribunal essentially involved the appellant and the respondent. The children were not a party. Of more concern is that the children were not even named in the award. It was therefore not clear who was getting the appellant's land. It was argued on behalf of the respondent that the respondent was married to the appellant under the kikuyu custom. It was therefore argued that the tribunal had jurisdiction to consider the matter under the customary law. That submission has no basis in law. The

law is clear as stated above on where the jurisdiction of the tribunal lies. The tribunal erred and acted ultra vires to the Act by granting the orders it did. On that basis the award of the tribunal is null and void. It also contravened the provisions of Section 159 of the Registered Land Act which provides that it is only the High Court or in the case where the value of land so permits in the magistrate's court that can deal with the issue relating to title of land. The courts have on various occasions decided that orders made by the tribunal which are not supported by Section 3(1) are void and subject of being set aside. To quote just a few the following case provide as follows:-

***“In Miscellaneous Civil Application No. 314 of 2004 NYANDARUA DISTRICT LAND DISPUTES TRIBUNAL & ANOTHER vs MESHACK MWANGI MAINA & OTHERS the court held:-***

***“Further the tribunal did not have jurisdiction to make any determination as to title to land. The tribunal further went off target when it ordered the cancellation of a title and the consolidation of two parcels of land registered under the Registered Land Act. Obviously, the tribunal exceeded its jurisdiction. It acted ultra vires its jurisdiction.”***

***In Miscellaneous Civil Application No. 689 of 2001 REPUBLIC vs KAJIADO LAND DISPUTES TRIBUNAL & OTHERS the court held:-***

***“The court has no hesitation in stating that under Section 3 of the Land Disputes Tribunal Act the Kajiado Lands Tribunal had no jurisdiction to adjudicate on ownership of registered land. The award is ultra vires the Act.”***

For that reason the appellants appeal does succeed and the judgment of this court is the decision of the Nyeri Provincial Land Dispute Appeals Committee in Land Dispute No. 6 of 2003 is hereby set aside. The appellant is awarded costs of this appeal.

**MARY KASANGO**

**JUDGE**

***Dated and delivered this 14<sup>th</sup> day of May 2009***

**M. S. A. MAKHANDIA**

**JUDGE**