



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

**Civil Appeal 130 of 1999**

**MUTHIGANI KABOTIA ..... APPELLANT**

**versus**

**IKINYA NJIGOYA ..... RESPONDENT**

**AND**

**CHARLES MWANGI MUTHIGANI ..... APPLICANT**

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

***Central Province in Land Case no. 145 of 1999 at NYERI)***

**JUDGMENT**

This is an appeal from the award of Provincial Land Disputes Appeals Committee at Nyeri in Land Dispute No. 145 of 1999 which was not dated. That award was to the effect that the appellant was to transfer 2 acres of his property **KIINE/ RUKANGA/239**. The brief summary of the evidence submitted before the tribunal was that the respondent agreed to buy that parcel of land from the appellant in 1967. Subsequently the appellant increased the purchase price from kshs.600 per acre to kshs.5000 per acres. That increment was acceptable to the respondent who had been paying the purchase price by installments. The respondent had finally paid kshs.13,050. He was willing to pay the balance on the transfer of the property. In his evidence the respondent stated that the appellant was reluctant in transferring the property stating that his identity card was not in order. The tribunal in making the award that the respondent be registered as an owner of two acres of that parcel of land was essential enforcing the contract between the respondent and the appellant. That is they were ordering for specific performance of the contract. It is that decision that aggrieved the appellant who has brought this appeal. The appeal is basically based on the ground that the tribunal lacked jurisdiction to make the orders that it made. As correctly stated in the appellants submission the jurisdiction of the tribunal is as set out in section 3(1) of the land disputes tribunal act. That section 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.”***

The dispute that the respondent took to the tribunal did not fall within the ambit of that section. The tribunal decision was without a doubt ultra vires to that section. 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 cases 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. The judgment of this court is that the decision of the Nyeri Provincial Land Dispute Appeals Committee in Land Dispute No. 145 of 1999 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**