

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 53 of 2003

JULIA MUTHONI GATHEGO.....
.....APPELLANT

Versus

HENRY MUHIA KAMEKO Substituted by OBADIAH MACHARIA

MUHIA and JOSEPH NGUGI.....RESPONDENT

RULING

An application is made by the proposed Appellant by way of Notice of Motion dated 28th April 2003 seeking that the Applicant be given leave to file an appeal from the decision of the Provincial Land Dispute Tribunal Nyeri. The Applicant also sought that the court would certify that there is a point of law raised by the Applicant in her Memorandum of Appeal. In respect of the first prayer I find that I am in agreement with the Respondent's counsel when he said that such leave is not necessary because the Applicant was entitled to file an appeal within 60 days of the Tribunal's decision which decision was delivered on 25th March 2003. The Memorandum of Appeal herein was filed on 28th April 2003 which was within time of the period allowed for such an appeal. It therefore follows that the first prayer of the Applicant is superfluous and does not require this court's decision. In respect of the 2nd Prayer that the court do certify that a point of law is raised by the Applicant, the same can only be appreciated by considering the grounds raised by the Appellant. This is the ground that the Applicant has put in her Memorandum:

“THAT the Provincial and the District Lands Disputes Tribunal had no jurisdictions to entertain this matter touching as it is on issue of TITLE. Failure of justice was therefore occasioned.”

The jurisdiction of the Tribunal is to be found in *Section 3(1)* of the Land Dispute Tribunal Act 1990. That section provides as follows:

“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 Tribunal in its deliberation made a finding that the parties to the dispute had their own title. They determined that the dispute related to the boundary of the property. When one considers that finding in the light of the jurisdiction given by the Act it is clear that the Tribunal did not exceed their jurisdiction.

That being the finding of this court the court does not certify that the appeal raises a point of law. Accordingly prayer No. 2 of the application is dismissed. In view of the earlier finding of the court, the Applicant's application dated 28th April 2003 is hereby dismissed with costs to the Respondent.

Dated and delivered at Nyeri this 20th day of July 2007.

MARY KASANGO

JUDGE