



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

**Misc Appli 29 of 2003**

**REPUBLIC OF KENYA.....APPLICANT**

**VERSUS**

**NYERI DISTRICT LAND DISPUTES TRIBUNAL...1ST RESPONDENT**

**(MUNICIPALITY)**

**CHIEF MAGISTRATE NYERI.....2ND RESPONDENT**

**JOHN NGUNJIRI MURAGE.....3RD RESPONDENT**

**JAMES WAHOME MURAGE.....4TH RESPONDENT**

**MURANGA WAMBARIA.....INTERESTED PARTY**

**R U L I N G**

Maranga Wambaria, the ex parte applicant seeks an order of certiorari directed to the Nyeri District Land Disputes Tribunal (Municipality) to quash its proceedings in case number 8 of 2002 and an order of prohibition directed at Nyeri Chief Magistrate's Court in CMCC Award No.54 stopping it from dealing with the award.

It is the applicant's contention that the dispute referred to the Land Dispute Tribunal by John Ngunjiri Murage and James Wahome Murage (hereinafter referred to as 3rd and 4th Respondents) was on a claim based on trust over land registered in the name of the exparte applicant i.e. Aguthi/Gatitu/561 (hereinafter referred to as disputed land) and that the tribunal acted outside its jurisdiction in entertaining the claim. He further contends that the award was a nullity and therefore ought to be quashed and the Chief Magistrate's Court prohibited from acting on it. It is further submitted that the dispute arbitrated upon by the tribunal was sub-judice as there was a suit filed by the 3rd and 4th Respondents' mother raising the same issues which suit is still pending in the court.

Both Respondents maintain that the Land Dispute Tribunal was right in entertaining the dispute as they had no money to come to the court and the tribunals were intended for indigent persons like them, and further all they were trying to do is to go by the will of their father in the distribution of the disputed land. Section 3(1) of the Land Disputes Tribunal Act limits the jurisdiction of the tribunal 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.”**

It is clear from the proceedings before the tribunal that the 3rd and 4th Respondents claimed that the ex-parte applicant was holding the disputed land in trust for himself and the 3rd and 4th Respondents. In the award the tribunal found in favour of the 3rd and 4th Respondents and ordered that the disputed land be divided into two equal portions. It is clear that the dispute involved title to the land and whether a trust existed or not. These were not matters covered within section 3(1) of the Land Disputes Tribunal Act. The tribunal therefore acted outside its jurisdiction. It is therefore appropriate that an order of certiorari do issue to quash the proceedings and decision of the tribunal.

I concur with the ex-parte applicant that the award is a nullity as the tribunal had no powers to entertain the dispute. I do therefore find that an order of prohibition restraining the Chief Magistrate's court from acting on the award would be in order.

In the premises I grant the orders sought by the ex-parte applicant and issue the orders of certiorari and prohibition as prayed.

I award costs to the ex-parte applicant as against the Respondents.

**Dated, signed and delivered this 28th July 2005.**

**H. M. OKWENGU**

**JUDGE**