

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO.109 OF 1985

PETER GITHINJI MUCHIRI

WAIGIRI MUCHIRIPLAINTIFFS

VERSUS

MUCHIRI WAIRAGU

WAIRAGU MUCHIRIDEFENDANTS

RULING

Muchiri Wairagu , the Defendant/Applicant has moved this court under order XLV rule 1 of the Civil Procedure Rules seeking to have this suit referred to the District Lands Disputes Tribunal at Nyeri for arbitration.

The Plaintiff/Respondent is opposed to the application. I am satisfied and do find that this application is misconceived Order XLV rule 1 applies only where both parties consent to the suit being referred to arbitration which is not the case herein.

Secondly the jurisdiction of the Land Disputes Tribunals is clearly spelt out under Act Number 18/90 Section 3 (1).

That jurisdiction does not include determining issues of law such as this case which is based on trust.

For the above reasons I find the application misconceived and lacking merit. It is accordingly dismissed with costs.

Dated, Signed and Delivered this 23 rd day of December 2003.

H. M. OKWENGU

JUDGE