

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 182 of 1994

HANNAH WANJIRU KURIA.....APPELLANT

VERSUS

WANGUI NJOROGE.....RESPONDENT

RULING

The dispute in this matter was referred to a panel of arbitration chaired by the District Officer, Githunguri, in Kiambu. An award was then made and filed in court. Before the award was read, one of the parties is said to have died. When the parties appeared before Mutungi J. for mention on 11th October, 2006 the learned judge made the following orders;

- 1. That the matter be and is hereby referred back to arbitration at District Officer's level where the elders can precisely identify if there are any next of kin of the appellant other than the respondent, who can be substituted in the deceased appellant's place. The same arbitrator/committee to also establish the death of the appellant.**
- 2. That after conclusion of (1) above, the matter be brought back to this court for the final award as recommended by the arbitrators/committee at District Officer's level.**
- 3. That the above process be completed within three (3) months from the date hereof.**

That order prompted another arbitration which was chaired by the District Officer, Githunguri Division. Another award was filed on 19th March, 2007. It is this award that has led to the present application.

By an application by way of Notice of Motion under Order XLV rule 15 or the Civil Procedure Rules the respondent has moved the court to set aside the award filed in court on 19th March, 2007. The ground upon which the order is sought is that the panel was guilty of misconduct having refused and or failed to adhere to the terms of reference given by this court on 11th October, 2006.

I have gone through the record before me. I am of the view that the ultimate decision in this application depends on the interpretation of the order of Mutungi J. dated 11th October, 2006. Both learned counsel have filed their submissions. As at the time Mutungi J. made the order referred to above, there was already on record an arbitration award pending reading. There was no application before the learned judge challenging the said award or seeking to set it aside. It is logical to conclude therefore, the learned judge by his order, and I get support from the language used, gave specific instruction for the elders to precisely identify if there is or there are any next of kin of the appellant that can be substituted in place of the appellant. The arbitrator or committee was also mandated to establish the alleged death of the appellant.

I have seen no direction to the committee to re-open and hear the dispute between the parties. Had the learned judge intended that to be the impact of the order, he would have said so clearly. In any case, the arbitration committee had already determined the dispute and was therefore factus officio. I see no other interpretation from the said order.

That being the case, I am persuaded that that award filed on 19th March, 2007 is not only misplaced, but contrary to the direction given by the learned judge. It follows therefore that the same must be set aside.

I note that there is another application seeking to enter judgment in terms of the earlier award, but that is not the basis of this ruling and I leave it to counsel to address the same. For now I allow the application dated 7th and filed on 8th May, 2007 with costs to the respondent/applicant.

Orders accordingly.

Dated, signed and delivered at Nairobi this 22nd day of September, 2010

A. MBOGHOLI MSAGHA

JUDGE