

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 49 of 1984

MUNENE IRANGIPLAINTIFF

Versus

NELSON GITHINJI DEFENDANT

RULING

The subject matter of this ruling is the summons dated 20th May 2008 in which Munene Irangi, the applicant herein has applied to have award of the provincial Land Disputes Appeals Committee read in court on 18th February 2008 to be adopted as the judgment of this court. The summons is supported by the affidavit of Munene Irangi sworn on 20th May 2008. Nelson Githinji, the Respondent herein filed a replying affidavit and grounds of opposition to resist the summons.

The applicant averred that he filed a complaint before the Land Dispute's Tribunal sitting at Baricho claiming a portion of L.R. No. Mutira/Kaguyu/875. The aforesaid tribunal delivered its judgment on 18th September 1998. The applicant was dissatisfied with the decision hence he preferred an appeal to the Provincial Land Disputes Appeals Committee which committee delivered its decision on 1st November 2000 whereupon the Respondent was ordered to transfer 1.0 acres to be excised from the suit premises. The Provincial Appeals Committee's decision was read on 18th February 2008. No Appeal has been preferred against the decision. The applicant has now come before this court seeking to have the award adopted as the judgment of this court. It is the submission of the Respondent that the award should not be adopted because the same is a nullity in view of the fact that the Court of Appeal set aside the elders award and ordered that the dispute herein to be heard by this court vide C.A. No. 133 of 1987. It is also said that the applicant had attempted to have the same award adopted by the Chief Magistrate's Court vide Nyeri C.M.C.C. No. 55 of 1999. The Chief Magistrate's Court dismissed the application. The Respondent further stated that the applicant attempted to even bring the same proceedings to the High court through Nyeri H.C.Misc. Application No. 189 of 2002. It is said the applicant has failed to disclose the aforesaid facts hence he is in abuse of the court process.

I have taken into account the competing arguments. The applicant does not dispute the facts deponed by the Respondent in his replying affidavit vizly: First, is that the Court of Appeal set aside the award of the Panel of elders vide C.A. No. 133 of 1987. Secondly, that the applicant had filed Nyeri C.M.C.C. No. 55 of 1999 seeking to have the award adopted which suit was dismissed. The record shows that the Hon. Mr. Justice Osiemo instead of hearing the suit as directed by the Court of Appeal referred the dispute to the Land Dispute's Tribunal, Kirinyaga on 31st July 1996 for hearing and determination. That referral order gave rise to the decision of Baricho Land Dispute's Tribunal dated 18th September 1998. The applicant successfully appealed to the Provincial Land Disputes Appeals Committee. The appeals committee's decision was read on 1st November 2000. The award was read before this court on 18th February 2008. It is obvious the Court of appeal directed that the suit be heard by this court. This court by the referral order of Justice J. Osiemo, instead referred the matter for hearing before the Baricho Land Disputes Tribunal. It would appear the Respondent has not appealed against the referral order nor the decision of the Provincial Land Disputes Appeals Committee. It is not true that the Court of Appeal dealt with the Provincial Land Disputes Appeals Committee's decision of 1st November 2000. After careful consideration of the material placed before this court, I am convinced that the issues raised by Respondent cannot be dealt with by this court. If well advised the Respondent's remedies lie elsewhere.

For the above reasons I find no merit in Respondents objection.

Consequently, I grant the orders as prayed in the Notice of Motion dated 20th May 2008.

Dated and delivered this 13th day of October of 2009.

J.K. SERGON

JUDGE