



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 63 of 1996

MARUKU MUGO.....APPELLANT

VERSUS

JANE MUTHONI.....RESPONDENT

JUDGMENT

This appeal arises from the Ruling of Senior Principal Magistrate Embu in Civil Case No. 139/1989 made on 16/2/1996. The matter arising in that case was involving land and Counsel for Plaintiff/Appellant requested for an arbitration order which the Resident Magistrate made. However when the arbitration award was filed the same was read to the parties but the Appellant was not satisfied. He made application to set the same aside. The lower court rejected the application saying "I cannot see any misconduct on the part of the arbitrator. There is no element of any bias" Order was made on 16/2/1996. The grounds of appeal are set out in the memo of Appeal:-

1. The learned Senior Principal Magistrate erred in dismissing the application even after the appellant had shown the D.O arbitrator had misconducted himself.

On this ground the application was argued on 16/8/1996. The appellant relied on his affidavit sworn on 1/2/1996. I have perused the said affidavit. I do not see any allegation that the Arbitrator misconducted himself. Paragraph 6 thereof says that the arbitrator chased his elders away. It will be noted that the Appellant did not bring his elders at the beginning of arbitration saying he was not notified. However when the Arbitration order was made, his advocate was present in court. He is the one who prayed for the order. I find this ground to be with no merit.

Regarding ground No. 2 that the learned Magistrate erred in ruling that the elders appointed by appellant were not barred from participating in the arbitration. It is clear as stated above the Appellant did not bring his elders at the commencement of arbitration but he says in the arbitrator got his witnesses to act as his elders, his allegation that on the day of award they were chased away cannot be true.

I have perused the record and I do not any evidence of such action. In the matter of Arbitration the court has no jurisdiction except to read and enter Judgment according to the award of the Arbitrator. There are specific grounds that could warrant setting aside the award of Arbitration. I find this appeal with no merit. The same is dismissed with costs to Respondent.

Dated this 13th of February, 2008.

J. N. KHAMINWA

JUDGE

13/2/2008

Khaminwa – Judge

Njue – Clerk

Mr. Utuku present

Read in open court.

J. N. KHAMINWA

JUDGE