



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA OF KISII

Civil Case 520 of 1993

ZABLON AGIRA MASENO PLAINTIFF

VERSUS

MARIKO OMOLO OCHUODHO DEFENDANT

RULING

The applicant filed an application dated 28th August 1998. The same was made pursuant to the provisions of **Order XLV rule 15(1)** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**. He urged that the arbitration award filed herein be set aside and the court proceeds to hear the suit.

The application was made on grounds that:

- (a) The award was not signed by the parties who made it.**
- (b) The witnesses were not allowed to testify at the arbitration proceedings.**
- (c) The arbitrator allowed the participation of the area Assistant Chief and Chief.**
- (d) There are two awards filed contrary to the terms and spirit of the consent order that was entered into before the arbitration was undertaken.**

The application was supported by an affidavit sworn by the applicant. He deposed that according to a consent order made on 20th November, 1997, the matter in dispute was referred to the District Land Registrar, Kisii, and the District Surveyor, Kisii, for arbitration. The award that was filed on 2nd July, 1998 was not signed by the two arbitrators, it was signed by the District Land Registrar, only. He further deposed that witnesses were not allowed to testify whereas the area Assistant Chief was allowed to participate in the arbitration.

Mr. Soire for the respondent opposed the application. He stated that the award was signed by the two arbitrators, but on different pages. He added that there was nothing to show that the applicant's witnesses were prevented from testifying.

I have looked at the award that was filed on 2nd July 1998. It shows that during the arbitration proceedings, the applicant had three witnesses and the respondent had three witnesses as well. They all testified including the area Chief and Assistant Chief. No prejudice was occasioned to either of the parties by the testimonies of those witnesses.

At some point, the Land Registrar requested the Deputy District Surveyor to use the area map to determine the boundary between the applicant's parcel of land and the respondent's parcel of land. The surveyor proceeded to take several measurements and was able to establish the true boundary. He signed his report that pertained to the technical work that he did. The Land Registrar also prepared his report and signed the same. The two Officers were in agreement as regards their findings over the boundary dispute.

I find no merit in the applicant's application and I dismiss the same with costs.

DATED, SIGNED and DELIVERED at **KISII** this 7th day of May, 2008.

D. MUSINGA

JUDGE

Delivered in the open court in the presence of:

Mr. Soire for the plaintiff

Mr. Ochwangi HB Mr. Ochillo for the Defendant

D. MUSINGA

JUDGE