



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Civil Appeal 62 of 2002**

**JULIUS NJUKI MACHICHO.....APPELLANT**

**VERSUS**

**HARRISON NJOKA.....RESPONDENT**

**JUDGMENT**

This appeal arises out of Judgment and order of ***Hon. Resident Magistrate Siakago in Civil Case No. 10 of 2001*** where Appellant was plaintiff and Respondent was Defendant. The plaintiff's cause of action in the lower court was in custody law for balance of dowry of this sister married to Defendant being six cows and 5 goats. This claim was denied by the Respondent the dispute was placed before the elders for hearing at the request of Defendant. However the decision of elders was set aside and the Resident Magistrate heard the case himself and dismissed the plaintiff's case. The grounds of appeal are:

1. That the Trial Magistrate mis interpreted Appellants answer as to whether he had witnesses to call or not
2. That the Trial Magistrate erred in denying the appellant the right to call witnesses.

On these two grounds the record shows that when the Trial Magistrate ordered a full hearing before him the Appellant said "am ready to proceed with my case and no witness to call"

Thereafter Plaintiff/Appellant gave his evidence and closed his case after he was cross-examined by the Defendant/Respondent. I therefore do not find any support of the grounds (1) and (2) the same are dismissed.

On ground 3 that Order 45 Rule 10 A was not complied with the record shows that on 2/10/2001 the order to send the matter to arbitration was made and mention fixed on 2/11/2001. On 2/11/2001 the parties appeared for mention.

The Appellant reported to court what the elders had said. The Defendant /Respondent also addressed the court. In fact the elders award had been received in court on 1/11/2001 and it shows that the Respondent failed to comply with custom of Mbeere in the conduct of arbitration and he failed to attend before elders and therefore the elders gave award for plaintiff as any court or tribunal would do.

All the same Siakago Court proceeded to set aside the award and at the same time the Appellant was ready to proceed with his case and did not request for 30 days Notice. This ground has no merit.

Regarding ground 4 and 5 it was the Respondent who raised the issue of being required to take a month which the court regarded..... and repugnant. It was in order for the court to invoke inherent powers to quash such proceedings. The court was entitled to take objection on such repugnant practices which the Respondent said were against his religious beliefs. These grounds are therefore without merit.

Regarding ground (6) that the Judgment was not dated the record shows that the Judgment was ordered to be delivered on 14/11/2001. That is the day it was delivered and the decree shows that date. It is a ship that can be corrected under Section 99 Civil Procedure Code.

Upon considering the grounds of Appeal as stated above this appeal is dismissed with costs to Respondent.

Dated this 5<sup>th</sup> May, 2008.

**J. N. KHAMINWA**

**JUDGE**

**5/5/2008**

**Khaminwa –Judge**

**Njue –Clerk**

**Mr. Muraguri**

**N/A P. N Mugo**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**