



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 3620 of 1981**

**GEORGE NJAU MAICHIBU ..... PLAINTIFF**

**VERSUS**

**MUIGAI MAICHIBU ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KIMANI WAITHIMA.....2<sup>ND</sup> DEFENDANT**

**RULING**

This case has a very long and unfortunate history in that though it started in 1982, the same does not seem to have been finalized. It has been handled by many judges who have made various orders as the record shows.

The dispute was sent to arbitration by consent of both parties. This was in May 1982, by an order of this case, which was subsequently extended several times as it was not immediately acted upon by the then Chief or the District Officer – Githunguri Division, Kiambu.

The dispute was finally heard by the District Officer Githunguri Division, and the award filed in this court and read to the parties on 11<sup>th</sup> February 1988.

One of the parties to the dispute, Joseph Kimani Waithima, the second defendant was dissatisfied with the arbitration award and filed an application to set it aside on 9<sup>th</sup> March 1988. To date, that application has never been fixed for hearing.

The plaintiff did on 22<sup>nd</sup> March, 2006, filed an application seeking an order to act in person and again to have the arbitration award read out to the parties on 10<sup>th</sup> February 1985 be made the judgment of the court, and again, that the defendant **“do sign all documents to effect the transfer, failure to which the Deputy Registrar of the High Court be authorized to execute the said documents”**.

The affidavit in support of the application states at para 3 thereof,

**“That my advocate on record then had the conduct of this case till 11<sup>th</sup> November 1993 when he abandoned my case mid stream without informing me where the case had reached....”**

And para 4,

**“That I am now very old and wish to have this matter finalized instead of leaving it to my relatives who might not be aware of the facts of the case”**.

The plaintiff referred to the last order of Shields, J (as he then was) made on 11/XI/1993, about the filing of written submissions on the application for the setting aside of the arbitration award. He said that order was not complied with and the application was thereafter not heard.

The plaintiff was set to prosecute his application dated 22<sup>nd</sup> March, 2005, and also moved to withdraw the suit against the 1<sup>st</sup> defendant, his brother, who had died. The advocate for the 2<sup>nd</sup> defendant did not object to this, but said that he could avail to court the written submissions prepared at the direction of Shields, J in 1993, in respect of the application for setting aside the award. These were availed to the court at a subsequent mention date.

I have gone through them and noted that they were not filed in strict compliance with the Judge's orders in terms of the time frame. Besides, that application for setting aside arbitration award was not before me for hearing. What was before me was the plaintiff's application for entry of judgment in terms of the arbitration award, which application had come up for hearing twice before. The plaintiff whom I had allowed to act in person contended that he was entitled to the orders sought in his application because the defendant had failed to prosecute his application for the past 13 years.

Counsel for the plaintiff referred to the application filed by his client in March 1998, which was yet, to be determined, and further, that he had now availed all the relevant documents to enable that application to be finalized.

As I have stated, that application was not before me for hearing. The same has been pending for 13 years that is why the plaintiff moved the court to have judgment entered in terms of the arbitration award. I have not found any reply to this affidavit by the plaintiff.

I also consider a delay of 13 years in prosecuting the application to set aside arbitration award to be inordinate, and I refuse to consider it, as the same was not before me for hearing anyway.

The plaintiff has pursued this matter diligently in my considered view, even accepting to withdraw the case against the 1<sup>st</sup> defendant so as to speed up to hearing of his application.

I would find no reason in dealing with or even considering an application filed 13 years ago which application has not been fixed for hearing anyway. There is sufficient reason, in my view to grant the plaintiff's prayers in his application dated 22.3.2005, and I proceed to do so. These are prayers 2,3 and 4 as I had already granted prayer 1 of the same application.

Dated at Nairobi this 15<sup>th</sup> March, 2007.

**JOYCE ALUOCH**

**JUDGE**