

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL 16 OF 1994

PETER NJUGUNA MUCHIRA.....APPELLANT

Versus

MUGO MUCHIRA MUKANGU).....1ST RESPONDENT

FRANCIS NJIGOYA MUCHIRA.....2ND RESPONDENT

GLADYS WACHUKA MUCHIRA.....3RD RESPONDENT

(Being appeal from the Judgment of the senior Resident Magistrate Nyeri, J. S. Mushelle) dated 9th July 1992)

JUDGMENT

The Respondent in the lower court filed a claim against the appellant for Ksh.25,400. The Respondent's case was that the appellant agreed to buy from the deceased **MUCHIRA MUKANGU** two acres of property No. **KABARE/GAAGI/142** for the price of Ksh.30,400. It is alleged the appellant paid 15,000 of that purchase price and there remained a balance not paid of Ksh.15,400/=. The deceased subdivided the land and transferred two acres to the appellant. There were crops on that land which the deceased valued to Ksh.10,000. The total claim against the appellant was therefore Ksh.25,400. At the lower court on 14th July 1986 the parties consented to their matter being referred to arbitration. The award was to be filed within 90 days. When the matter came before court on 25th Sep. 1996 the court directed the District Officer to file the award by 23rd October 1999. On that date the court extended the time for filing the award to 11th Dec. 1999. The award was finally read on 15th May 1980.

The appellant filed an application seeking to set aside that award. The court in delivering its ruling to that application found that the arbitrators had not misconducted themselves and proceeded to enter judgment as per the award. The court on its own motion gave any party aggrieved 28 days within which to file an appeal. According to the computation of time from the date of reading the award such an appeal should have been filed by 6th Aug. 1992. The Memorandum of Appeal hereof shows that this appeal was filed on 1st March 1994. I was unable to find any evidence of the extension of the period in which the appeal could be filed. There is therefore no justification for filing the appeal on 1st March 1994. Accordingly the appellants appeal was filed out of time and without leave. For that reason the same is incompetent and on that basis alone the appeal is dismissed with costs to the Respondent.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 2nd day of November 2007.

By: M. S. A. MAKHANDIA

JUDGE