



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA OF KISII

Succession Cause 203 of 1999

IN THE MATTER OF THE ESTATE OF GESARE NYAMAICO DECEASED

AND

ELIJAH NYABUTO OKEYO PETITIONER/APPLICANT

VERSUS

DAVID MOTUKA MAYAKAOBJECTOR/RESPONDENT

RULING:

The applicant seeks the arbitrators' award filed in court on 23rd June 2005 to be set aside and the matter to be heard in court. Mr. Nyasimi submitted that the arbitrator misconducted himself in that he did not let the applicant appoint two elders. Instead he brought in the chairman of Land Disputes Tribunal. He further said award was filed without supporting documents.

Mr. Okeyo for the respondent opposed the application. He stated that it was filed out of time and that no corruption, fraud or misconduct has been alleged by the applicant.

I have considered the application and submissions. The application was filed within time. Award was read to the parties on 19th July 2005. Parties were given 30 days to file application for setting aside if not satisfied.

This application was filed on 9th August 2005. Obviously by then 30 days were not yet over.

True the applicant has not complained of any corruption on part of the arbitrator or fraud or lack of disclosure by any party. However he has stated that he was not allowed to appoint two elders to assist in the arbitration as directed and this was a misconduct. I do concur with him. The court referred the matter to arbitration on 15th February 2005. Infact the parties recorded a consent as follows:

“By consent the dispute in this cause is hereby referred to arbitration of D.O. Kiogoro Division and Land Registrar Kisii Central District assisted by two elders from each side.

Award be filed within 90 days. Mention on 16/5/05.”

It was clear that the arbitrators were to be the D.O. and Land Registrar assisted by four elders appointed by each party. The award filed in court on 23rd June 2005 shows as follows:

ARBITRATORS

1. A.K. SHADRACK – D.O. Kiogoro Division (Chair)
2. MR. JOSHUA OWOUR – District Land Registrar Kisii (Secretary)
3. MR. JOSHUA N. GETUGI – Charman Kiogoro Land Disputes Tribunal)
4. MR. JAMES M. SIRO – MEMBER Kiogoro Land Disputes Tribunal

Clearly the parties were not allowed to appoint elders to assist in arbitration. They were only allowed to call witnesses. The witnesses were not elders for the purpose of arbitration.

This was a misconduct on the part of the arbitrators. They had not been directed to have the chairman and a member of the Land Dispute Tribunal as members of arbitration panel.

In the circumstances I find the application is reasonable. The same is allowed and I hereby set aside the award filed herein. The matter be heard by the court.

Costs of the application to the applicant.

Dated 4th May 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

N/A for Applicant

Objector present

N/A for objector