



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Appeal 36 of 2002

CHARLES KIMAITA MWITHIMBU.....APPELLANT

V E R S U S

JOSEPH R.C. MWIRIGI MUGUNA.....RESPONDENT

R U L I N G

1. On 3.7.2003 Kasanga Mulwa J. in a Judgment in this matter said this at the end of the said judgment:  
**“I will sent (sic) the case back to the S.P.M. for hearing further evidence on whether the signatures appearing in the sale agreement dated 14.9.1979 and those appearing in the other documents acknowledging the receipts [of] the various amounts belonging to the appellant. The learned magistrate will send his finding to this court.”**
2. Pursuant to this direction, J.R. Karanja Esq. Chief Magistrate heard evidence on the one point raised by the learned Judge and concluded as follows (on 14.5.2006);  
**“The ultimate findings of this court in terms of the High Court Order made on the 3<sup>rd</sup> July, 2003 is that most likely than not the disputed documents i.e. the sale agreement (D.Exh.A) and the payment acknowledgements receipts (D.Exh.B) were signed by the plaintiff. His contention that he did not sign the said document and was incapable of doing so due to illness of the mind was undoubtedly intended to conceal the actual truth and defeat the course of justice.”**
3. The dispute thereafter reverted back to the High Court for determination of the Appeal. At first instance, I thought I should proceed and finalize the judgment-dated 3.7.2003 by Mulwa J. However, on retiring to write what I thought should have been a Judgment and having perused the record of hearing of the Appeal, it occurred to me that what I was required to do was to give directions on how to proceed and that parties would wish to agree on two things;
  - i) whether a final judgment should now be written on the matter taking into account the findings of the lower court.
  - ii) Whether the parties would like to make further submissions on the one point referred back to the lower court and thereafter a judgment can be given and bring the Appeal to an end.
4. I say this because one of the issues raised by the Appellant in his memorandum of Appeal is that he had no

opportunity to make submissions in the lower court and that court was denied the opportunity to see the case as it should have been. I do not wish to give the same impression whether that in fact was what happened or not. I did not hear the Appeal and parties may wish that whatever directions are given those directions do meet their approval in the special nature of the circumstances of this Appeal it being in a way partly heard and a partial judgment given.

5. In the event then, I will not give a final judgment in this matter until proper directions are given to the parties by court at the end of this Ruling.

6. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF JUNE 2006**

**ISAAC LENAOLA,**

**J U D G E**

In the Presence of

The Appellant in person

The Respondent in person

**ISAAC LENAOLA**

**JUDGE.**