

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Misc Civ Appli 23 of 1995

MBUU MUNYUU)

MUEMA MUINDE) APPLICANTS

VERSUS

MWANGANGI NGOLANIA RESPONDENT

RULING

The amended Notice Motion dated 5.2.1999 was brought by Mwangangi Ngolania seeking orders that the arbitrators award read by the court to the parties on 30.10.1996 be set aside on account of misconduct of the arbitrators and that the case do proceed before this court. The grounds upon which the application is preferred are found in the body of the application. There is also filed, an affidavit sworn by Mwangangi Ngolania the applicant.

This matter came up for hearing on 9.3.2005. Mr. Mutinda who appears for the respondents was not present but sent Mr. Mutuku to hold his brief. The court did not allow Mr. Mutuku to proceed because there was no evidence that Mr. Mutinda had a practising certificate from the Law Society of Kenya which he had not had when the matter had last come up for hearing on 27.10.2004. Mr. Mutinda took over the conduct of this matter from Kilonzo and company Advocates who act for the plaintiffs.

I heard this application exparte in absence of Mr. Mutinda. I have however noted that no notice was ever effected on the arbitrator in the arbitration proceedings. Order 45 Rule 19 provides that an application under Rule 15 shall be served on the arbitrator or umpire. The application dated 5.2.1999 is brought pursuant to Order 45 Rule 15 Civil Procedure Rules. There is no evidence on record that the arbitrator has ever been served with the present application. On 10.5.2000 when this matter came up for hearing before Justice Mwera, he noted that only the plaintiffs had been served and directed Mr. Makau counsel for the applicant to serve the arbitrator too. That has never been done. The decision which is challenged was made by the arbitrator. It is only the arbitrator who can ably respond to the allegations levelled against the arbitrators. The application is improperly before the court as the order can not lie against the respondent alone. Even without going into the merits of this application the court will order the application struck out with the applicant bearing its own costs.

Dated at Machakos this 13th day of April 2004.

R. V. WENDOH

JUDGE