



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL SUIT NO.347 OF 1997

ABUGA BOGONKO PLAINTIFF

VERSUS

NYAMONGO ORINA

NYAMONGO BOGONKO

NYAOGA ORINA DEFENDANTS

NYACHEO ORINA

MARY ATURA

RULING:

The applicant/plaintiff seeks court to set aside the arbitrator's award filed in court and proceed to hear the suit.

The plaintiff filed this suit in 1997 seeking to have the partnership between him and the defendants dissolved and its assets sold.

On 14th May 2002 the matter was by consent referred to the arbitration of Assistant Chief NICHOLAS OKUMU ARAKA with help of six elders. The arbitrator eventually filed the award and it was read to the parties in presence of their counsels on 24th September 2002. The plaintiff being dissatisfied with the award filed this application on 23rd October 2002.

The main ground of the application is that the arbitrator misconducted himself. It was submitted that he failed to demand books of accounts from the respondent and that he failed to note the value of the land was not included.

Further it was said the respondent fraudulently concealed or misled the arbitrator. They failed to avail the books of account, failed to produce receipts.

The application was opposed. It was submitted that there was no misconduct on part of the arbitrator.

I have considered the arbitration award and the submission. There was no proof the arbitrator misconducted himself in any way. Every party was given an opportunity to be heard. Each party had appointed three elders. Nobody was stopped to give evidence. The applicant gave evidence. He did not talk of any books of account in his evidence. Infact he said he was disgusted when the house was sold and that is what he sought to stop through the lawyer. The respondents gave evidence and they were cross-

examined. The applicant did not demand that they produce any books or receipts. I agree with counsel for respondents that it was not for the arbitrator to go fishing for evidence. It was for the parties to produce the same.

There was nothing to show that respondent deliberately concealed any evidence before the arbitrator.

All in all I find the application has no merit and the same is dismissed with costs.

KABURU BAUNI

JUDGE

29/7/04

Dated 29th July 2004.

Mr. Otiso holding brief for Mr. Mainye for Respondent.

N/A for Applicant.

KABURU BAUNI

JUDGE