



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Civil Appeal 6 of 1998

NICOLAS MURIITHI.....APPELLANT

VERSUS

MARGARET RUGURU.....1ST RESPONDENT

LINCOLN NYAGA.....2ND RESPONDENT

FREDRICK MUGO.....3RD RESPONDENT

ESTHER MUTHONI.....4TH RESPONDENT

PATRICK NJUE.....5TH RESPONDENT

JUDGMENT

This is an appeal against the ruling dated 9/4/1997 in Resident Magistrate Civil Case No. 68 of 1996 at Embu Resident Magistrate's Court.

The grounds of appeal are state:

The first ground is that the appellant wanted to divide his land according to his wish.

Secondly that the Trial magistrate failed to see that the land was registered in the appellants name.

Thirdly that the Trial Magistrate erred in dismissing the objections raised by the Appellant and lastly the Trial Magistrate erred in failing to consider the Act that a person cannot be forced to distribute his estate against his wishes.

The dispute arises from elder's award which was read to the parties on 20/12/1996 and parties given 30 days within which to file objections. The objection was filed by Defendant and ruling was given on 9/4/1997. The ruling was with regard to application dated 17/1/1997 where the Appellant sought to set aside the award of elders and that the case be heard de novo. The grounds which were relied upon by the Appellant was one. "that the arbitration did not give me enough time to express my views" The court has perused that ruling. The Trial Magistrate considered the issue and made a finding that the Appellant was given sufficient time to present his views before elders. He had even chosen two elders to form the panel of arbitrators. The court has perused the record and finds that the Appellant was given adequate opportunity to defend himself. The grounds of appeal set out do not arise out of the ruling or the arguments of parties. The duty of the Trial Magistrate was to record the award of arbitration which he

did. There was no appeal against the decision of the elders. It was not for Trial Magistrate to bring the case.

The provisions under Act 18/1990 removes the jurisdiction of Magistrate in disputes relating to land and although the Trial Magistrate did not expressly invoke the provisions of that Act, the objections should have been filed by way of appeal to the Appeal Committee established under that Act.

Nevertheless the Trial Magistrate finding on the application was correct and backed by the record. This appeal is therefore incompetent and same is dismissed.

Dated this 23rd April, 2008.

J. N. KHAMINWA

JUDGE

23/4/2008

Khaminwa – Judge

Njue – Clerk

Mr. Mogusu Respondent

Mr. Kiama HB for Kibicho

Read in open court.

J. N. KHAMINWA

JUDGE