



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CIVIL CASE NO.2416 OF 1995

HOSEA MWANGI GACHIRA.....PLAINTIFF

VERSUS

NEPHAT GACHUHI KIMANIDEFENDANT

RULING

Plaintiff prays that the Award of the Land Dispute Tribunal Muranga filed in court on 30.11.2000 be set aside for misconduct as the Tribunal failed to record fully the evidence of two of defendant's witnesses and also failed to record evidence of third witness for the defendant.

The evidence of Bernard Kimani Gachira – first defendant's witness is recorded. The records show that the 2nd witness for defendant Peter Mwangi Mwigwi was cross examined but the record does not include his evidence in Chief.

The record does not show that Wilson Muchiri – defendant's third witness gave evidence.

Applicant states that if Tribunal recorded all the evidence of the witnesses it would not have reached the decision it arrived at.

Firstly, the application was not served on the Tribunal. So the Tribunal has not been given an opportunity to explain the record.

Secondly, the proceedings before Tribunal shows that evidence of plaintiff and his three witnesses were recorded fully. There is no complaint by plaintiff/applicant that evidence from him or from any of his witnesses was not recorded.

Thirdly, although it is clear that the record with regard to evidence of defendant's 2nd witness may not be complete and although Applicant says that evidence of defendant's third witness was not recorded, it is clear that those were defendant's witnesses who went to support defendant's case and not the plaintiff's case. It is the defendant who should be complaining and not the plaintiff.

More importantly, plaintiff, Benson Chege Mwangi and Maina Githaiga who have filed supporting affidavit do not say that any of the defendant's witnesses gave any evidence favourable to plaintiff which was not recorded.

They do not refer to any specific evidence material to the dispute which was not recorded from defendant's witnesses.

Fourthly, the applicant does not say that the evidence which was not allegedly recorded did not support the conclusions that Tribunal arrived at.

Looking at the evidence as whole and considering the nature of the dispute which was before the Tribunal, I conclude that the decision of the Tribunal was supported by the evidence adduced by the witnesses and that on the whole, the Tribunal did substantial justice to the parties.

As respondents counsel correctly pointed out, the Tribunal is not bound by the strict Rules of Civil Procedure. It is sufficient that the Tribunal gives every party an opportunity to be heard and call witness and considers such evidence before reaching its decision.

Applicant does not complain that he was denied an opportunity to be heard and to call his witnesses or that his evidence and that of his witnesses was not considered. Indeed he was given full hearing.

The application has no merit and it is dismissed with costs to defendant.

E. M. Githinji

Judge

22.10.2002

Mr. Chege holding brief for Mr. Gachuki for defendant present

Mr. Gacheru for plaintiff absent (served)