

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 5154 OF 1987

KENYA REINSURANCE CORPORATIONAPPELLANT
VERSUS
JOHN MURIUKI KIBUCHI & ANOTHER RESPONDENTS

R U L I N G

When the application filed herein on 22/11/2000 came up for hearing on 18th January, 2001, counsel for the respondent raised a preliminary objection over which notice had been filed on 8/12/2000.

According to his submission, though the application was to set aside a decree, there was no provision in law under which such application could be made. That if there was any quarrel with it, the only available remedy was an application for rTehvaite w.applicant had no right of audience and that Order XX1 rule 22 of the Civil Procedure Rules was inapplicable in this matter

Counsel prayed for the dismissal of the application for being fatally incompetent. Counsel for the respondent submitted that the decree was not extracted properly as parties had not agreed on the issue of interest which fact was not brought to the notice of the Deputy Registrar when the decree was being extracted.

That under Order 20 (7) this matter should have been referred to the same Deputy Registrar for Settlement as to terms of interest. That the court has interest powers to entertain an application of this nature - hence the application before the court. Having heard parties submit on this notice of a preliminary objection, I am not quite sure such notice was necessary as the issues pertaining to the dispute in the application dated 20th November, 2000 and filed in court on 22nd November, 20000 don't seem to have been exhaustively canvaTshsee d.issue of the disagreement on interest between the parties has been raised by counsel for the respondent in which case she is saying the decree was not ready for extraction. This issue has not been satisfactorily answered by the applicant in this notice of preliminary objection.

In my views this matter cannot be adequately settled at this stage and that parties should be given a chance to be heard on the merits of the application dated 20th November, 2000 since the court has interest powers to entertain it under Section 3(A) of the Civil Procedure Act. The notice of preliminary objection be and is hereby dismissed with costs.

Delivered and dated this 29th day of January, 2001.

D. K. S. AGANYANYA

JUDGE