

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

civ app 43 of 96

MUTHOKA NGUMI :::::::::::::::::::::::::::::::::::: 1 ST APPELLANT

JOHN NDUNDA MUSYIMI :::::::::::::::::::::::::::::::::::: 2 ND APPELLANT

VERSUS

SAMMY K. MUTUNGA :::::::::::::::::::::::::::::::::::: RESPONDENT

R U L I N G

The applicant under O.41 rr. 1, 2 SS.3A, 79 G Civil Procedure Act and O.6 r. 13(b) (d) wants this appeal struck out because of, so Mr. Kisongoa submitted, a land adjudication officer's consent under S.30 of the Land Adjudication Act (Cap.284). The court heard that the consent (contained in the appeal record at pp.16) dated 4.4.95 only related to Civil Appeal L.17 of 1976 in respect of Plot No.610 IKALYONI ADJUDICATION SECTION, MAKUENI. That when that proceeding ended in the lower court with the judgement of 6.9.96, a fresh consent had to be sought to commence this appeal.

Mr. Makau clarified that their appeal is based on the judgement of the lower court dated 8.5.96. Such judgement, and that is what the preamble to the appeal herein stated, was nowhere on the record of appeal. At page 13 and 14 it can be read: "COURT. Judgement on 8.5.95" There then follows a RULING "Dated 8.5.96" Anyway Mr. Makau said that with the right of appeal from the lower court rulings and judgements, the consent of 4.4.95 was meant to extend and cover all stages in the proceedings in respect of the appeal No. L.17 of 1976. This court is inclined to agree with Mr. Makau, that all proceedings following Civil Appeal No. L.17 of 1976 were covered with the consent of 4.4.95. Therein the land adjudication officer enjoined: "2. In order to complete the Adjudication Register for the Ikalyoni Adjudication Section, I shall in due course require a copy of the final orders made in each of the cases listed (sic) in the schedule" (Underlining supplied) The case listed was No. L.17/1976. It was heard by the lower court. The dissatisfied party exercised the right to appeal here, and this is the appeal. It can be prudently considered that the consent of 4.4.95 is still operative until the machinery is exhausted and final orders issue for the land adjudication officer to take and therefore complete the relevant adjudication register.

Orders refused with costs. Parties to proceed to have the appeal heard.

Orders accordingly.

Delivered on 27th September 2001.

J. W. MWERA

JUDGE