



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CIVIL APPEAL NO. 15 OF 2005.

(FORMERLY ELDORET CIVIL APPEAL NO. 18/1993)

JOSEPH WANYAMA KIBERENGEAPPELLANT.

VERSUS

KIBERENGE SICHULULU

CHISON NATE DEFENDANTS.

FRED KALIWANGA

J U D G M E N T.

1. This is a long standing appeal which was filed on the 8th March, 1993 when this court was situated at Eldoret. It arises from the ruling made on the 26th February, 1993 by the Senior Resident Magistrate in Kitale SRMCC No. 126A/90 in which an application by the appellant, **Joseph Wanyama Kiberenge**, for setting aside an award of a panel of elders was dismissed thereby paving way for the adoption of the award as a judgment of the court in favour of the respondents **Kiberenge Sichululu, Chilson Nate** and **Fred Kaliwanga**.
2. Being aggrieved by the ruling, the appellant preferred six (6) grounds of appeal contained in the memorandum of appeal dated 8th March, 1993. the purported additional grounds of appeal filed herein on 11th February, 2015, are in essence an attempt by the appellant to lead evidence in the appeal if not his submissions in support of the appeal. Be that as it may, the grounds filed and dated 8th March, 1993, may be treated as the actual and proper grounds of this appeal.
3. At the hearing of the appeal, the appellant appeared in person and relied on his grounds of appeal in support of his case. He urged this court to allow the appeal.

Other than the third respondent, the rest of the respondents did not appear.

The third respondent opposed the appeal and contended that the appellant's grounds of appeal are irrelevant but in a rejoinder, the appellant contended that he was the owner of the suit land.

4. The appellant essentially contends that the trial court erred in dismissing his application on insufficient grounds and failed to afford an extension of time when it was just to do so. That, the trial court erred in arriving at its decision when the (appellant) was not present during the reading of the elder's award. That, the trial court failed to appreciate that the award was on the face of it defective. That, the ruling of the court was unjust and unmerited in the circumstances and that he (appellant) was condemned unheard.
5. Having considered the foregoing grounds and/or arguments in support of the appeal against the disputed ruling of the court dated 26th February, 1993 and the application dated 27th March, 1992

leading to the ruling, it is apparent to this court that the disputed award of the elders was read and adopted as a judgment of the court on the 4th March, 1992 in the presence of both the appellant and the respondents. A decree dated 5th March, 1992, was accordingly issued ordering the first respondent (Kiberenge Sichululu) to sub-divide the suit land among his sons as he deemed fit and also ordering the appellant to stop disturbing his father (first respondent) in respect of the suit land.

6. The record shows that the disputed application was for the review of the order adopting the decision of the panel of elders as a judgment of the court and for an extension of time to enable the appellant file necessary objection to the award or alternatively, to have the award set-aside altogether.

The trial court heard the application inter-parties and dismissed it with its ruling of the 26th February, 1993.

7. In the ruling, the trial court observed thus:-

“The court has considered all the evidence herein and finds that the application herein has no merit.

The applicant has been indifferent to the case and failed to turn up for the case on several occasions even when summoned.

This was reported to the court and the court also communicated to him the need to co-operate in the hearing of the case.

This he did not do. Instead he organized a clan discussion of the matter.

The court cannot take the applicant seriously now if he complains that the arbitration was done in his absence.

It is because he, had knowledge of the proceedings and he decided not to attend the arbitration.

If the court interferes with the award in favour of the applicant it would mean he would be benefiting from his own wrong.”

8. The trial court was seized of the history of the matter. It saw and observed the conduct of the parties in the proceedings leading to the adoption of the elder's award as a judgment of the court. This court does not therefore find any valid reason to interfere with its ruling dismissing the appellant's application which was in any event, not made in good faith and was clearly intended to delay the respondents from enjoying the fruits of the elder's award.
9. This court would also dismiss the appellant's application in similar grounds to those found by the trial court but would add that the appellant also failed to satisfy the requirements necessary for review of a court order and also failed to give satisfactory reasons for the enlargement of time within which he could file an objection to the elders' award or even have the award set aside altogether.

Clearly, the appellant did not provide proper and sufficient grounds to enable the trial court exercise discretion in his favour. His conduct alone militated against exercise of such discretion. His application was thus seem as nothing more than an abuse of the court process.

10. In the upshot, it is the finding of this court that the grounds in support of the appeal are unsustainable for purposes of upsetting the disputed ruling of the trial court.

The appeal is lacking in merit and is hereby dismissed.

Each party shall bear own costs of the appeal.

Ordered accordingly.

[Delivered and signed this 2nd day of March, 2015]

J.R. KARANJA.

JUDGE.