



IN THE COURT OF APPEAL

AT NYERI

(Coram: Platt, Gachuhi & Masime JJA)

CIVIL APPEAL NO 45 OF 1986

LEONARD WACHIRA KARANI.....APPELLANT

VERSUS

FRANCIS MBUI MUNYAKA.....RESPONDENT

JUDGMENT.

(Appeal from the High Court at Nyeri, Patel J)

Platt, Gachuhi, Masime JJA delivered the following Judgment.

This appeal arises from the ruling of the High Court at Nyeri, whereby it dismissed the Appellant's application to set aside the award of a panel of elders, which arbitrated the dispute between the parties. That application alleged that the panel of elders was guilty of misconduct, and so the award ought to be set aside under Rule 15(a) of Order 45 of the Civil Procedure Rules. In his ruling the learned trial judge found no misconduct, and so he dismissed the application and proceeded to enter judgment in terms of the award.

In this appeal the same allegation of misconduct has been argued. Learned Counsel for the Appellant has referred us to the record of the arbitration proceedings and submitted that since the signatures appear on a handwritten page after the rest of the award which is typewritten the elders signed that page without seeing the award. The signature page of the award clearly refers to the "award attached to the proceedings to the proceedings of the enclosed case" being agreed upon by the elders who then sign below. In view of this, we do not accept Counsel's submission. The other matter of the acreage of the Respondent's portion is covered by the view taken of the evidence.

In the result we find no merit in this appeal and we order it to be dismissed with costs. But we note that the Respondent is satisfied with his award of 3 acres and his agreement that his brothers's family should have 5 acres.

As we pointed out this morning in another case where the High Court refuses to set aside an award under Order 45 Rule 15, the combined effect of Order 42 Rules 1 and 2 and Order 45 Rule 17(1)(c) of the Civil Procedure Rules requires the intending appellant to seek leave of the High Court before the appeal is brought. Advocates should be aware of this Rule.

Dated and delivered at Nyeri this 20th day of May , 1988

H.G PLATT

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JUDGE OF APPEAL

J.M GACHUHI

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JUDGE OF APPEAL

J.R.O MASIME

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JUDGE OF APPEAL

Cases

No cases referred to.

Statutes

Civil Procedure Rules (cap 21 Sub Leg) order 45 rules 15(a), 17(1)(c); order 42 rules 1, 2 May 20, 1988,