

REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NYERI

(CORAM: NYARANGI, PLATT & GACHUHI, JJ A)

CIVIL APPEAL NO 131 OF 1986

IBRAHIM MAINA KARUKU.....APPELLANT

V

CLEMENT GACHAU MURIUKI.....RESPONDENT

JUDGMENT

This is an appeal against the order of J S Patel, J dated January 8, 1986. The record shows that on that date the applicant withdrew his application dated April 15, 1985, and that was allowed by the learned judge. The applicant was Ibrahim Maina Karuku. He is the present appellant represented by his son John Karuku Maina.

In the application withdrawn, that of April 15, 1985, it was prayed that the High Court should review its order made on March 6, 1984. That was the date on which judgment was entered in terms of the arbitration award.

After judgment had been set aside, if the court so decided, there was a second application for leave to apply in extended time to set aside the award. As the whole application was withdrawn, the judgment still stands.

The purpose of the appeal then is to reconsider the withdrawal of the application. It was withdrawn by the old man Ibrahim Maina Karuku. In the memorandum of appeal it is alleged that the old man had been misrepresented. It seems that he had not wanted to withdraw the application, but had wanted it heard, at least when the respondent had been served and he could be present. That is not what the respondent think is true. But as the latter was not present he could not know what occurred. That is not what the respondent thinks is true. But as the latter was not present he could not know what occurred. We only have the appellant's version of what happened. Ibrahim is certainly very old and could well have been mis-interpreted or became confused. But he had withdrawn an earlier application.

The situation is not very clear, but we will give the appellant a chance to put things right through his son, who now represents him. His son will find that orders were made on October 10, 1984 whereby documents of transfer were ordered to be signed. It will be for his son to deal with that situation when applying for review. We are happy to give the appellant this chance, because we note that the root cause of this problem, is a land title about which parties were unaware.

It may well be able to scrutinize the abstracts of both titles Nos 111 and 112, which should be produced by the appellant's son, John to the court.

As this is an indulgence, each party will bear his own costs, although the appellant has been successful.

These are then the orders of the court.

May 22, 1987

