



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ELC CASE NO. 336 OF 2013.

NASHON W. NABIBIA.....PLAINTIFF

VERSUS.

BEN WANYAMA TABANI.....DEFENDANT

R U L I N G.

[1]. This Notice of Motion is made under Sec. 35 (2) of the arbitration Act No. 4 of 1995 and order 46 rule 16(1) (a) and order 57 rule (1) of the Civil Procedure Rules 2010. The same is an application for setting aside an arbitration award dated 11/9/2015.

[2]. The grounds are that, one, that the award of one acre to the plaintiff is unjust. Two, that the arbitration is made in bad faith, three, that the award of ½ an acre is bad on the face of it, four, that the award of ½ an acre instead of two acres is unreasonable and that it shocks the conscience of the court.

The applicant relied in his argument on *Total Uganda Ltd. Vs. buram general agencis Ug Comm. LLP Rep (1997 – 2001)* which states that elements of misconduct must be established, to show dishonesty, bad faith fraud collusion or corruption of the arbitrator. He also relied on *Scott Vs Brown, Doering, McNab & Co. (3) [1892]2 QB 724, at 728* that was dealing with illegal contract and several other Authorities to support his case.

[3]. The respondent relied on order 46 rule 16 that sets out the grounds for setting aside an arbitrators award. He also relied on order 46 rule 16(2) of the Civil Procedure Rules. He argues that the arbitrator was not served to enable the arbitrator to reply to the allegations. The respondent argues, that for that reason the application is incompetent.

[4]. This matter was, by consent of the parties, referred to arbitration. Once a matter is referred to arbitration, it can only be set aside under the provisions of Sec. 16(1) of the Civil procedure Rules. These conditions are corruption or misconduct of the arbitrator or umpire. Secondly, it can be set aside when either party has fraudulently concealed any matter which it ought to have disclosed or has willfully deceived the arbitrator or umpire. The application should also be served on the arbitrator.

[5]. The issues raised by the applicant herein do not show corruption or misconduct. No party is alleging that any matter was fraudulently concealed and/or was not disclosed or that the arbitrator was deceived by any party.

The allegation that the arbitrator did not consider certain evidence that was brought to his attention can only be a valid argument and/or assertion if the arbitrator himself was served. This is what is required under 16(2). The same is mandatory. There is no evidence that the arbitrator was ever served.

[6]. The authorities cited by the applicant herein are not relevant to this case at all. They cannot apply here.

[7]. I find the application without merit. I dismiss it with costs to the respondent. I enter Judgment in terms of the award.

Ruling read in open Court In the presence of the Respondents.

Dated at Bungoma this 21st day of February, 2018.

S. MUKUNYA

JUDGE.

In the presence of:

Joy: Court Assistant

Mr. Tsimonjero For Mr. Kraido for the Applicant

Mr. Kundu: For the Respondent