**Kurji and another v Shalimar Limited and others**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of ruling:** 17 February 2006

**Case Number:** 197/04

**Before:** Omolo, O’kubasu and Githinji JJA

**Sourced by:** LawAfrica

**Summarised by:** H Kibet

*[1] Appellate procedure – Arbitration – Entry of award as judgment of the court – Failure to hear*

*appellants before award made a judgment of the court – Application for leave to appeal – Whether there*

*were sufficient grounds to grant the appellants leave to appeal.*

**Editor’s Summary**

The applicants herein applied to the Court of Appeal seeking leave of the court to appeal against a decision of the High Court delivered on 31 March 2004. The facts leading up to the decision were that a dispute between the parties had been referred to arbitration. The arbitrator published his award on 22 January 1997. Some six years later, the respondents filed the award in the High Court and on 23 January 2003 moved the court to enter judgment in terms of the award. The application to enter judgment was not served on the applicants and, as a result, the application was heard *ex parte*. On 31 March 2003, the High Court entered judgment against the applicants. The applicants applied for a stay of the judgment but the application was dismissed. They then applied to have the judgment set aside or reviewed but this application was struck out following the raising of a preliminary objection by the respondents. They next applied for leave to appeal against the striking out of their application. The application was refused on 29 July 2004. They now appealed to the Court of Appeal on the grounds that they had demonstrated the existence of serious issues calling for judicial consideration and leave to appeal ought therefore to be granted. Counsel for the respondents, in reply, argued that the application raised no points of law meriting consideration by the court and that under the Arbitration Act, serving the other side with the application to enter judgment did not arise.

**Held** – Though arbitration as a process of settling disputes was designed to keep courts out of settlement of disputes, the courts would not stand and watch helplessly where cardinal rules of natural justice were being breached by the process of arbitration. Thus, in exceptional cases where rules were not adhered to, the courts would be perfectly entitled to step in and correct obvious errors. In this instance, the applicants were arguing that the procedure was not strictly adhered to in that they were denied the right to be heard after publication of the award and before it was made a judgment of the court. Bearing in mind the draft grounds of appeal put forward by the applicants, it could not be said that the application was unmeritorious. The applicants would therefore be granted leave to appeal. Costs to the respondents.

**No cases referred to in ruling**