**Macharia v Wanjohi and another**

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

**Date of judgment:** 21 May 2004

**Case Number:** 197/99

**Before:** Omolo JA, Onyango Otieno and Ringera AJJA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Arbitration – Succession dispute – Application for revocation of grant – Referred to District Officer*

*to determine which parties entitled to benefit from estate – Time for filing award extended – Whether*

*award filed outside time – Whether arbitration irregular for failure to take down evidence of appellant.*

*[2] Succession – Revocation of grant – Reference by consent to arbitration before District Officer to*

*determine proper beneficiaries of deceased – Award of arbitrator subsequently read in court – Whether*

*court wrongly abdicated its jurisdiction by referring matter to arbitration.*

**Editor’s Summary**

The deceased was prior to his death the registered owner of a certain parcel of land. Shortly after his

death, his nephew applied for grant of letters of administration to himself. Subsequently, the grant was confirmed after which the nephew was registered as the owner of the said parcel of land. Two persons thereafter applied for revocation of the grant on the ground that the nephew had made false statements in his application. The parties eventually agreed to refer the matter to arbitration by the District Officer. The District Officer subsequently made a finding that two persons were the proper beneficiaries of the deceased. The arbitration award was read and recorded by the superior court. The nephew then appealed against that decision to the Court of Appeal. He argued

(1) that the reference to arbitration was invalid because it was made prior to a revocation of the former grant,

(2) that the filing of the award was irregular as the time for filing the award had not been extended, (3) that the reference to arbitration was an abdication of statutory responsibility by the court and was a nullity, and

(4) that the refusal of the court to set aside the arbitration award was due to a mistaken interpretation of

statute.

**Held** – The parties were entitled to refer the question of entitlement to the estate of the deceased to arbitration. There was no requirement for the court to first revoke the original grant prior to the reference to arbitration. The arbitration award would not become an order of the court until the court entered judgment upon it. In this case, the arbitration award would become the schedule to the grant on how the assets of the deceased ought to be distributed, and would not result in two conflicting decisions on the court record. Failure to file an award within the stated period in the absence of an agreement or order to extend it renders the award a nullity. However, the facts of this case showed that the parties had attended at the registry on various occasions and consented to various extensions of time for the reading of the award. The parties also consented to the reading of the award in court, after the award was filed (*Nyangau v Nyakwara* [1984] LLR 201 (CAK) distinguished). There was no evidence to show that the Appellant had been denied an opportunity to give evidence at the arbitration. In fact, the Appellant’s witnesses had been heard. Arbitration award upheld and appeal dismissed with costs.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Munyua v Wanjiku* [1987] LLR 1472 (CAK)

*Nyangau v Nyakwara* [1984] LLR 201 (CAK