



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**H.C. SUCCESSION CAUSE NO. 983 OF 1995**

SAMUEL KIMANI MUTU ..... OBJECTOR/APPLICANT  
V E R S U S  
WAMBUI GATHINA )  
MUMBI GATHINA )..... RESPONDENTS  
THIUNDIU GATHINA )  
PHELOMENA NJAMIB MUTU & OTHERS )

**R U L I N G**

The application dated 28th May, 2002 seeks to modify, correct or set aside the award made by District Officer on 18th April, 2002 and read in the court on 29th April, 2002.

Both parties have sworn and filed their respective affidavits. I may not go in details thereof for the purposes of this ruling.

The main contention of the applicant is that the order made by Shaikh Amin J. on 17th April, 2001 directed the District Officer Gatundu to make report as to the situation on ground. It was so ordered by consent of the parties. The District Officer instead of that took upon himself to arbitrate the whole matter and made his finding by way of an award.

According to the applicant's counsel the said action of the District Officer is ultra vires and is a misconduct.

The Respondent could not much say on the above issue but went on to dwell on the merits of his case and the validity of finding of the District Officer on the basis of such merits.

I am afraid I cannot go into the merits of the case at this stage. I cannot have different view than that contended by the Applicant's counsel that the award made after the arbitration proceedings by the District Officer, Gatundu is ultra vires the order of the court dated 17th day of April, 2001 and has to be set aside only on that ground.

I so order. The costs of this application shall be in the cause.

Dated and delivered at Nairobi this 9th day of July, 2002.

**K. H. RAWAL**  
**JUDGE**