



**REPUBLIC OF KENYA**

**John Mbugua Mungai v Nyila Ndunda  
High Court of Kenya at Machakos**

**February 21, 2000**

**J W Mwera, Judge**

**Civil Case No 50 of 1994**

February 21, 2000 J W Mwera, Judge delivered the following ruling.

Under review now is the defendant/applicant's chamber summons dated April 23, 1999 and brought under Order 45 rule 4 Civil procedure Rule section 3A Civil procedure Act. The main ground is that the arbitrator's award dated November 4, 1996 and read to the parties on December 13, 1996 be remitted to that arbitrator for reconsideration and filing of a conclusive award. The grounds on which the application was based, the affidavit in support thereof and the argument by Mrs Nzei were to the effect that the said award was indefinite, inconclusive as to the points it ought to have determined in the result that it could not be effected. That the arbitrator did not state whether the suit filed or otherwise and who would pay costs.

Mr Wambua who filed grounds of opposition held the view that the application was bad in law because it was not brought within 30 days after the award was read. There was indeed no explanation and satisfactory reason shown why the application came a whole 3 years, later contrary to Order 45 rule 16 Civil procedure Rules. That litigation must end at some stage. That rule reads:

"16. An application may be made under rules 12,13,14 and 15 within thirty days of receipt by the applicant of notice of filing of the award under rule 10 or where a date for reading the award has been fixed by the court under rule 10A within thirty days of that date.

" The court heard that this rule is permissive by its use of the word "May" in making an application under rules 12,13,14 and 15. This application was made under rule 14. But in this court's view that word "May" refers to allowing any party who feels so to apply. It does not mean that application under these rules is a must. But if a party chooses to apply then he has 30 days to do so after receiving notice of filing the award OR after the reading of the award. Thus after December 13, 1996 (the last opportunity to apply) when the award was read the applicant had 30 days to make this application under rule 14 ie by January 30, 1997 at the latest or as vacation days would allow. By bringing this application on July 10, 1999 it was incompetent and bad in law. Even for once, allowing that rule 16 is permissive and the 30 days need not be adhered to, which position, this court does not agree with it would still be inexcusable to wait for more than 3 years to apply and besides have no explanation for the delay.

The prayers herein are declined.

If the award was never made a judgment of this court all is left to the parties to consider what best course to take.

Orders accordingly.