



## **Editorial Summary**

### *1. Civil Appeal*

### *2. Subject of subordinate court case*

## **EMPLOYMENT CONTRACT**

2.1 *Unlawful termination of employment contract.*

2.2 *Employee, original plaintiff files suit in 1988,  
in the Magistrate Court.*

2.3 *Defence calls six or more witnesses to confirm  
allegation that termination of employment was  
lawful due to gross misconduct.*

2.4 *After that Hon. Magistrate holds that the  
termination of employment of the original  
plaintiff was lawful.*

2.5 *Judgment: suit dismissed (8 July 1994).*

### *3. Original Plaintiffs/Appellant – Appeals*

3.1 *Appeal filed out of time with  
leave of court (Misc. 1155/94)*

3.2 *Appeal filed in 291/96*

3.3 *Hearing before Amin J*

4. *Judgment of appeal 8 November 2000*

### ***Amin J***

4.1 *The appeal is devoid of merit and is dismissed*

.... no orders as to costs.

4.2 *In the peculiar circumstances of this appeal*

*it is pertinent that the appellant's cause of action  
and claim be fully considered De novo.*

5. *Appellant understands:*

5.1 *De novo to mean rehearing of appeal a fresh*

*before the High Court.*

5.2 *Appellant takes dates before Aganyanya J on*

*15<sup>th</sup> May 2000 and 24<sup>th</sup> September, 2000.*

5.3 *Appellant on being informed matter on appeal finalized*

*but must return to subordinate court, understands that  
appeal was allowed.*

5.4 *Appellant draws up a decree called "amended decree"*

*4<sup>th</sup> June 2004.*

5.5 *Respondent employee writes to the court,*

*Deputy Registrar on July 2<sup>nd</sup>, 2010 to verify decree.*

5.6 *Transpires there is no decree to file.*

5.7 *Respondent/Employee files application to*

*expunge decree.*

6. *Application 9<sup>th</sup> March 2012*

6.1 *Whereas there is a purported decree dated*

*8<sup>th</sup> April, 2008 and subsequent application for execution.*

6.2 *Whereas no such decree exists.*

*The Appellant employer prays that the amended decree*

*and application for execution be expunged from the court record and be  
declared null and void **ibi initio.***

6.3 That court to enquire into source of said decree and application for execution together with certification stamp affixed by Deputy Registrar.

7. In reply

**Employee**

7.1 Alleges the documents are genuine.

7.2 Industrial claim to be heard De novo.

7.3 Hon. Aganyanya head the former Employee in  
absence of the employer.

7.4 Prays application be dismissed and he be now  
awarded Ksh.11.4 Million.

8. Held:

8.1 The former employee's file does not disclose any decree  
of 11.4 million; this being a fictitious  
figure.

8.2 The Hon. Mr. Justice Aganyanya never held actual  
hearing for former employer. This was to be in  
subordinate court.

8.3 Application of 9<sup>th</sup> March 2012 be allowed.

a) That the purported amended decree dated 8<sup>th</sup> April 2009 and subsequent application be and is declared null and void *ibi initio*.

b) That the Police Commissioner do investigate the decree and application for execution and to enquire as to its source and in particular the certification stamp purportedly affixed by the Deputy Registrar.

(c) To further look into the mental status of the Employee.

9. Advocates :

i) Gabriel Shibusse appellant/respondent present in person

ii) V K Mungai holding brief for A N Thengei instructed by M/s Waruhiu K'Owade & Nganga & Co Advocates for Respondent/Original defendant/applicant

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

**GABRIEL A. SHIBUTSE.....APPELLANT/ORIGINAL PLAINTIFF/RESPONDENT**

**VERSUS**

**KENYA PIPELINE CO. LTD....RESPONDENT/ORIGINAL DEFENDANT/APPLICANT**

**R U L I N G**

I. INTRODUCTION

1. The applicant/respondent (herein referred to as the employer) had been sued in the year 1988 by their former employee, the respondent/appellant (herein referred to as the former employee) for the unlawful and wrongful termination of employment. The Hon. Trial Magistrate upon hearing both parties held in her judgment of

8<sup>th</sup> July 1994 that the termination of the employment was lawful against the employee. The suit was dismissed.

2. The employee filed appeal out of time but with leave of the court

(Misc 1155/94). The CA 291/96 came for hearing before Amin J.

3. The Hon. Judge upon hearing the appeal held in his judgment of

8<sup>th</sup> November 2000 that:

**3.1 “... the appeal is devoid of merit and is dismissed ... no orders as to costs.**

**3.2 [whereas] in the peculiar circumstances of this appeal, it is pertinent that the appellant’s cause of action and claim be fully considered De novo.”**

4. The appellant understood this to mean that *De novo* was re-hearing the appeal afresh before the High Court as opposed to the suit before the subordinate court.

5. The appellant took dates before the High Court on 15<sup>th</sup> May 2000 and on

24<sup>th</sup> September 2000. In both instances, he was notified that the appeal was finalized and there was nothing left. That he required to return to the subordinate court for hearing.

6. The former employee understood this to mean that his appeal was allowed.

7. The former employee then presented to court a decree called “amended decree dated 4<sup>th</sup> June 2004 and dated 4<sup>th</sup> April 2008.” He presented this document to his employer that demands Ksh. 11,400,000/- be paid to him. The employer wrote to court on 2<sup>nd</sup> July 2010 seeking the verification of this new decree.

8. It transpires that from the court records there was no decree on the file.

9. The employer filed an application to expunge the decree dated

9<sup>th</sup> March 2012.

Application dated 9<sup>th</sup> March 2012

10. The appeal originally filed by the former employee had been dismissed. The former employee brought a new decree dated 8<sup>th</sup> April 2008 and subsequent application for execution. This decree did not exist on the court file nor orders made by any judicial officers.

11. The employer in its application prayed that the amended decree and application for execution be expunged from the court record and be declared null and void *ibi initio*.

Further that this court enquire into the source of the said decree and application for execution together with the certification stamp affixed by the deputy registrar.

12. In reply to this application, the former employee alleges the document is genuine. He understood his case was to begin *De novo*. That Anganyanya J heard the employee in absence of the employer

13. He prayed the application before court be dismissed and he be awarded Ksh. 11.4 million.

FINDINGS

14. The files before this court does not disclose any decree of Ksh. 11.4 million. This figure is fictitious.

15. Whereas the employee appeared before Aganyanya J, at no time did the Hon. Judge hear the said employee. He instead informed the employee that he was to start his case afresh *De novo* in the magistrate's court. There was nothing left in the appeal which was "*functus officio*".

16. The allegations raised in the application are extremely serious. This court would allow the application dated 9<sup>th</sup> March 2012, namely:

- a) That the purported amended decree dated 8<sup>th</sup> April 2008 and subsequent application for execution be and is hereby declared null and void *ibi initio*.
- b) That the police do investigate the decree and application for execution and enquire as to its source and in particular the certification stamp purportedly affixed by the deputy registrar within 120 days.
- c) I further make orders that the mental status of the former employer Gabriel A Shibusse be looked into.
- d) Costs to the applicant.

DATED THIS 28<sup>TH</sup> DAY OF MARCH 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

*Advocates* :

- i) *Gabriel Shibusse appellant/respondent present in person*
- ii) *V K Mungai holding brief for A N Thengei instructed by M/s Waruhiu K'Owade & Nganga & Co Advocates for Respondent/Original defendant/applicant*