



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO 4245 OF 1988**

**JOSEPH KAMAU NDACHU.....PLAINTIFF**

**VERSUS**

**JOSEPH JULIUS KABUI GITAU.....DEFENDANT**

**RULING**

1. There is in this reconstructed court record a typed copy of a judgment dated 23<sup>rd</sup> September 1996 which is said to have been delivered on that date by **Ringera, J** (as he then was). But the same is not signed by the Judge. The original court record herein was irretrievably lost at some point in time, presumably together with the original signed judgment. On 2<sup>nd</sup> August 1998 a Principal Deputy Registrar of the court certified the original court record as irretrievably lost. It would appear that the court thereafter authorized reconstruction of the court record by an order entered on 5<sup>th</sup> October 1998. There were then various informal efforts by the Plaintiff to have the unsigned copy of the judgment certified as the judgment of the court. Eventually the matter was placed before a Judge on 27<sup>th</sup> November 2008 (**Visram, J** as he then was) who noted as follows-

**“COURT:**

**At the MENTION here today, counsel says judgment delivered by Ringera, J on 23/9/1996 is not signed, and wants my direction. There are no proceedings recorded in the file, and no record that Ringera, J heard this matter. There is no affidavit before me to explain anything. I am unable to give any directions.”**

On 30<sup>th</sup> May 2012 the court (Waweru, J) directed that the court be formally moved.

2. The Plaintiff subsequently filed **notice of motion dated 26<sup>th</sup> June 2013** under the inherent power of the court. The application (which is the subject of this ruling) seeks the main order that the unsigned judgment dated 23<sup>rd</sup> September 1996 be adopted as the judgment of the court in this suit. There is a supporting affidavit sworn by the Plaintiff annexed to the application. The main grounds for the application are that the parties have been unable to obtain a signed judgment from the court record despite numerous attempts to do so, and that it is in the interests of justice that the available unsigned copy of the judgment be adopted as the judgment of the court so that the Plaintiff can enjoy the fruits of his judgment.

3. In the supporting affidavit the Plaintiff has given a history of the litigation which commenced on 19<sup>th</sup> October 1988 when he filed his plaint seeking damages on account of injuries received in an accident that occurred on 31<sup>st</sup> May 1988. The Plaintiff has further deponed that the suit was subsequently heard by Ringera, J who entered judgment for the Plaintiff on 23<sup>rd</sup> September 1996 for the sum of KShs 220,000/00 together with costs and interest; that before execution of the decree could issue the court file went missing and the Plaintiff applied through his counsel for reconstruction of the court record, which application was allowed by court; that his then advocates on record fortunately had in their possession a copy of the judgment dated 23<sup>rd</sup> September 1996, albeit unsigned by the Judge; and that since the original signed judgment is no longer available, it is in the interests of justice that the available unsigned copy of the judgment be adopted as the judgment of the court.

4. The application and hearing notice were served upon the Defendant. He did not file any papers in response to the application and there was no appearance for him at the hearing thereof.

5. I have considered the submissions of the learned counsel for the Plaintiff. I have also perused the unsigned copy of the judgment dated 23<sup>rd</sup> September 1996. It is a detailed and well written judgment that is unlikely to have been contrived. All available evidence points to it being a genuine judgment delivered in this suit by the Judge who heard the case. But due to the loss of the original court record, the original signed judgment was apparently also irretrievably lost.

6. I will in the circumstances allow the application. The unsigned copy of the judgment dated 23<sup>rd</sup> September 1996 is hereby deemed to be the judgment of the court duly signed and delivered by Ringera, J. The Deputy Registrar is hereby authorized to certify the said copy of the judgment as a true copy of the original upon which a decree may issue. There will be no order to costs of the application. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2014**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2014**