**Kenya Breweries Ltd v Kiambu General Transport Agency Ltd**

[2000] 2 EA 398 (CAK)

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

**Date of judgment:** 11 August 2000

**Case Number:** 9/00

**Before:** Gicheru, Akiwumi and Lakha JJA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Contract – Variation of terms – Estoppel – Whether subsequent letter varied terms of written*

*contract – No consideration – Whether subsequent letter would found cause of action.*

**Editor’s Summary**

to give business efficacy to the contract. *Matiri and Sons v Nithi Timber*

*Co-operative Society* [1987] In June 1980 the Respondent, Kiambu General Transport Agency Ltd, was appointed a wholesale distributor of beer by the Appellant, Kenya Breweries Ltd The letter, which the Respondent accepted and signed, provided that the contract was terminable by twelve months’ notice given by either party. Three months later in October 1980 the managing director of the Applicant wrote a letter to the Respondent, wherein a ten-year termination notice was suggested to be a reasonable one. Subsequently, the Respondent was prevailed upon to sign a fresh letter of appointment dated July 1996 by which the termination period of the agreement was stated to be three months. In March 1997, pursuant to the latter distribution agreement, the Applicant gave the Respondent a three-month termination notice, as a result of which the distributorship arrangement was terminated. The Respondent then brought this suit in the superior court claiming that the above termination was unlawful and was done in breach of contract. It claimed general and special damages for breach. The Respondent’s case was that the letter of 1980 specified a ten-year termination notice. Further, that the agreement of 1996 was procured by undue influence. The High Court judge accepted these submissions and found that the letter of 1980 acted as an estoppel. She awarded damages of KShs 71 million for winding-up costs and KShs 169 million for loss of profits. On appeal, it was contended for the Applicant that the letter of 1980 did not vary the terms of the earlier contract, let alone affect the subsequent agreement.

**Held** – (Lakha JA dissenting) Variation of an existing contract involves an alteration as a matter of contract of the contractual relations between the parties. The variation must be supported by consideration and the parties must be *ad idem*. If the agreement is mere *nudum pactum*, it would give no cause of action for breach particularly if its effect was to give a voluntary indulgence to the other party. *Vanbergen v St Edmunds* [1933] 2 KB 223 followed. On the evidence, the letter of 1980 was not intended to vary the terms of the contract. *Per curiam*: A written contract cannot be amended by an implied stipulation unless it can be said to be mutually intended and necessary LLR 1512 (CAK) adopted.

Appeal allowed.

**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)

***East Africa***

*Matiri and Sons v Nithi Timber Co-operative Society Ltd* [1987] LLR 1512 (CAK) – **A**

*Ouma v Nairobi City Council* [1976] KLR 297

*Peters v Sunday Post Ltd* [1958] EA 424

***United Kingdom***

*Carter v Hyde Park Hotel Ltd* [1948] 64 TR 177

*Central London Property Trust Ltd v High Trees House Ltd* [1956] 1 All ER 256

*Singh v Pirbhai* [1951] AC 688

*Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd* [1954] 2 All ER 28

*Vanbergen v St Edmunds Ltd* [1933] 2 KB 223 – **F**

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