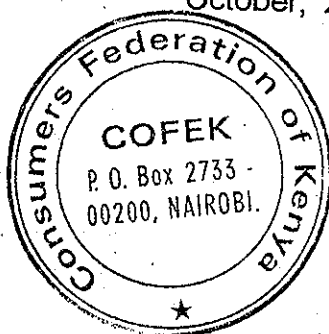


## SUMMARY OF CASE BETWEEN MWANIKI GACHUBA VERSUS NOCK

1. **Mwaniki Gachuba** is an Advocate of the High Court of Kenya and member of the Law Society of Kenya (LSK), a Licensed Procurement Specialist, member of the Kenya Institute of Supplies Management (KISM) and an Arbitrator and a Member of the Chartered Institute of Arbitrators (CI Arb) among other professional bodies. He is currently a Master of Laws (LL.M) student (UoN) and holds a Bachelors Degree in Law (LL.B) (UoN), Bachelor of Education (B.Ed) (Moi University), Graduate Diploma in Purchasing & Supply (UK).
2. Employed as NOCK's Procurement Manager on 24<sup>th</sup> November, 2008, vide letter referenced NOCK/HR/PF027 after competitive recruitment through Deloitte & Touche and NOCK Board.
3. Employment took effect on the 2<sup>nd</sup> February, 2009.
4. Worked continuously from 2<sup>nd</sup> February, 2009 to 4<sup>th</sup> November, 2010 (both days inclusive) when Sumayya Hassan-Athman was terminated employment without notice, reason or cause or opportunity to defend reasons for termination.
5. Prior to joining NOCK was employee of Kenya Pipeline Company Limited (KPC) as Supplies Officer from 1<sup>st</sup> August, 2006 until 30<sup>th</sup> January, 2009, when he voluntarily resigned to join NOCK.
6. Performed duties and functions of Procurement Manager strictly within the Public Procurement and Disposal Act, 2005 and the Regulations thereunder and faithfully, and professionally and at no time was he ever subjected to any *bona fide* disciplinary action by NOCK or any other statutory body or authority concerned with the regulation of public procurement process. Indeed, on 1<sup>st</sup> October, 2010, appointed by Sumayya as member of NOCK's Corruption



Prevention and Integrity Committee (COPIC) and assigned the duty of reviewing COPIC framework.

7. No Job Description, Performance Targets given until April, 2010.

8. **Employment terminated for compliance with Procurement law**

(a) Sumayya wanted Mwaniki Gachuba out of NOCK due to strict adherence to the Public Procurement and Disposal Act, 2007 which gave her little room to manipulate procurement process. Examples of illegal and irregular procurements include:

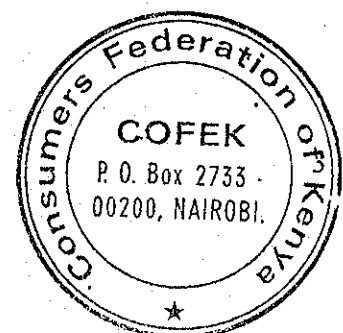
- i. Procurement of multi-million petroleum transport services without following procedure and Mwaniki Gachuba refused to issue a Purchase Order/Contract.
- ii. Procurement of conference materials worth Ksh. 6 million for East Africa Petroleum Conference (EAPC). In April, 2009 Mwaniki Gachuba refused to issue Purchase Order/Contract for supply of conference materials that Sumayya personally ordered for without following procurement procedure.
- iii. Procurement of petroleum products. Between February, 2009 and November, 2010, Mwaniki Gachuba refused to issue Purchase Orders or Good Receipt Notes (GRN) for procurement of diesel and liquefied petroleum gas (LPG) worth hundreds of millions that were procured without following procurement procedures.
- iv. Variations to contract for construction of AGO tank at the Respondent's Nairobi National Terminal (NNT). In April, 2009, Mwaniki Gachuba refused to issue variation Purchase Orders/Contract for variation as the same was above 10% of the

original contract sum and also because the variation had not been approved by NOCK Tender Committee as required in law.

- v. Procurement of fencing works at Tassia plot. In January, 2010 Mwaniki Gachuba refused to issue Purchase Order/contract for procurement of works because the procurement had not been approved by the Tender Committee as required in law.
- vi. Procurement of Total Kenya petrol stations worth Ksh. 500 million. In October, 2010, Mwaniki Gachuba refused to table before the Tender Committee the acquisition of the petrol stations, retrospectively and because the tendering, valuation and approval procedures were not followed.
- vii. Acquisition or leasing of land and/or petrol stations. Between February, 2009 and November, 2010, Mwaniki Gachuba opposed unprocedural and illegal acquisition or leasing of land/petrol stations without professional valuation and due diligence.

As a result of the foregoing, Sumayya wanted Mwaniki Gachuba out of NOCK by all and any means.

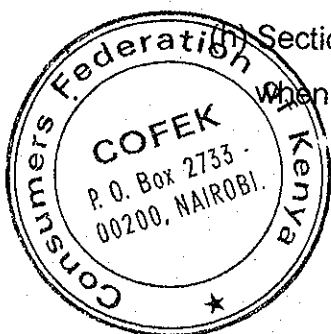
9. Sumayya refused to confirm Mwaniki Gachuba after six (6) months probationary period as required under Clause 7.3 of the Performance Management Process Ref: PM-HR-6-2 of the Respondent's ISO Procedures Manual.
10. On 14<sup>th</sup> September, 2010 Sumayya maliciously and in an arrogant abuse of office, tabled a contested performance evaluation report before the Respondent's Human Resources Committee of the Board and unreasonably recommended termination for non-performance.



11. On 21<sup>st</sup> September, 2010 Sumayya maliciously, unreasonably and illegally extended probation period from 14<sup>th</sup> September, 2010 to 13<sup>th</sup> March, 2011 notwithstanding that the probation period had lapsed on or about 1<sup>st</sup> August 2009 (after 6 months from the date of commencement of employment).
12. On 1<sup>st</sup> October, 2010, Mwaniki Gachuba protested the purported extension of his probationary period citing the relevant provisions of the Employment Act, 2007 and the Respondent's ISO Procedures Manual relating to probation. Sumayya did not reply, deny, traverse, substantiate or withdraw the letter as requested by the Claimant.
13. On 6<sup>th</sup> October, 2010, Sumayya signed Performance Targets for the year July 2010 to June 2011 (some three months into the financial year).
14. On 4<sup>th</sup> November, 2010, employment terminated by Sumayya.
15. On 5<sup>th</sup> November, 2010, Mwaniki Gachuba appealed the termination but got no response to his letter.
16. On 8<sup>th</sup> November, 2010, Mwaniki's name, photograph and identity number published in the Daily Nation.
17. On 30<sup>th</sup> November, 2010 Mwaniki through Onyoni Opini & Company Advocates requested Sumayya for:
  - (i) Reasons for termination of employment.
  - (ii) Copies of the Board Papers, deliberations and minutes culminating in the termination.
  - (iii) When the appeal would be heard.
18. On 6<sup>th</sup> December, 2010 Iseme, Kamau & Maema Advocates responded but did not give the reasons for termination, copies of Board Papers and Minutes of the Meeting date when appeal would be heard.

**19. From the foregoing Sumayya violated**

- (a) Section 5 of the Employment Act, 2007 by discriminating against Mwaniki by refusing without any lawful justification to pay for his club membership while other managers benefitted.
- (b) Section 41(1) of the Employment Act by failing to inform Mwaniki the reasons why she sought termination of his employment on 14<sup>th</sup> September, 2010.
- (c) Section 41(2) of the Employment Act by failing to give Mwaniki Gachuba an opportunity to be heard before tabling the recommendation to terminate his employment on 14<sup>th</sup> September, 2010, before the Respondent's Human Resources Committee of the Board of Directors
- (d) Sections 42(2) and (3) of the Employment Act by unlawfully extending the probationary period on 21<sup>st</sup> September, 2010, beyond 6 months to 26 months.
- (e) Section 41(1) of the Employment Act by failing on 3<sup>rd</sup> November, 2010 to explain to Mwaniki Gachuba the reasons for which she was considering termination.
- (f) Section 41(2) of the Employment Act by failing to give Mwaniki an opportunity to be heard before requesting the Committee to terminate on 3<sup>rd</sup> November, 2010.
- (g) Section 43(2) of the Employment Act for failing to proof reason for termination
- (h) Section 44 of the Employment Act by summarily terminating employment when it was unmerited in the circumstances.



- (i) Section 45 of the Employment Act by terminating without following the laid down procedures.

The termination was vengeful and linked to the adverse press reports in *The Standard* newspaper on 2<sup>nd</sup> November, 2010 against Sumayya which report questioned her performance capabilities as she was not qualified to join NOCK in 2003.