



**Rwakineza v Kamina (Environment & Land Case 60 of 2022)  
[2023] KEELC 19116 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19116 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 60 OF 2022**

**EK MAKORI, J  
JULY 26, 2023**

**BETWEEN**

**AMELIE RWAKINEZA ..... PLAINTIFF**

**AND**

**EDMOND KAMINA ..... DEFENDANT**

**RULING**

1. A Preliminary Objection has been raised in this matter significantly:
  - i. The suit involves a partnership and dissolution of the same, which is the province of the High Court.
  - ii. Costs
2. The Preliminary Objection was canvassed by way of written submissions.
3. The issue raised in the Preliminary Objection is whether this court has jurisdiction to entertain this matter in the manner and form it is crafted.
4. The test to achieve in raising a Preliminary Objection is as stated in the case of *Mukisa Biscuit Manufacturing Co. Ltd. v West End Distributors Ltd* [1969] EA 696 the Court of Appeal stated at page 701 as follows:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
5. I have looked at the materials and submissions placed before me. The Plaintiff in the prayers sought seeks that:



- a. The Defendant is to produce all the books of account starting from March 11, 2010 to date.
  - b. The Honourable Court issues a declaration that the parties ought to divide the shares in the Partnership as provided for in the Partnership Agreement and further, the said division should be based on the current market value as per the current valuation with regards to what is contained within all that parcel of land known as Plot No 3401 (original No 427/66/III/MN, Kikambala.
  - c. Any other orders that this Honourable Court deems fit.
6. The Partnership Act No 16 of 2012 governs the formation, running, and dissolution of a Partnership and after that share of the accrued property while the procedure on how to approach court is governed by Order 37 Rule 10 of the Civil Procedure Rules, which is by way of an originating summons returnable before a Judge. The Judge here is stated as a High Court Judge as defined under Section 2 of the Act where a “Court” is defined as the High Court or where the value does not exceed Kshs 300,000/-. The Resident Magistrate’s Court. The pecuniary Jurisdiction of a Resident Magistrate keeps changing from time to time as Gazetted by the Chief Justice under the Magistrates Court Act 2015.
7. In Kibui Gichigo Amutavi v Elias Monyeka Kibutwa [2016] eKLR the court held:

“I have stated above, and without going into the merits of the case and the application as filed, that it is evident that there is a relationship between the plaintiff and the defendant who carry on a business in common with a view of making a profit. The definition of a partnership under Section 2 of Act No. 12 of 2012.

Section 3(1) states that:

“a partnership is the relation which subsists between persons carrying on business in common with view to profit.”

8. The Act defined a “Court” as the High Court where the gross assets are more than fifty thousand shillings. It is not in dispute that what each contributed into the purchase and capital of the business is more than Shillings Fifty Thousands, but also subject to proof of each parties actual contribution.

From the definition, there are three essential facts without which a partnership cannot exist. These must be:

- (1) a business
- (2) carried out in common
- (3) with a view of profit.”

In a business where profits are shared, it is concluded that prima facie there is a partnership that may be oral or in writing. The Act is silent on this. I have taken into account the parties pleadings. All allude to the existence of a business partnership. What is in issue is the shareholding and/or what capital each injected into the business and sharing of the profits from the said business.

8. Parties are bound by their pleadings. From the above, it is now evident that there was a partnership between the plaintiff and the defendant. See the case Hellen Wangari Wangechi v Carumera Muthoni Gathua [2015] e KLR.”



9. The matter before this court is the dissolution of a partnership and not a land matter as crafted. The Preliminary Objection is hereby sustained. The entire suit is at this moment struck out with costs to be filed in the appropriate forum.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS  
26TH DAY OF JULY 2023**

**E.K. MAKORI**

**JUDGE**

**In the absence of:**

**Parties**

**NB: Parties were notified via email dated 4<sup>th</sup> July 2023**

