



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CIVIL CASE NO. 1 OF 2016 (O.S)

PETER KAGO NDEGWA.....PLAINTIFF

VERSUS

HERMAN NGUGI KAHOI.....1st DEFENDANT

JOEL GATHIYU KARIUKI.....2nd DEFENDANT

AND

SAMUEL WACHIRA KARIUKI.....APPLICANT

RULING

1. **PETER KAGO NDEGWA (KAGO)** filed an originating summons against **HERMAN NGUGI KAHOI AND JOEL GATHIYU KARIUKI (The Respondents)** seeking for dissolution of the partnership between them to be dissolved and the respondents be ordered to render true account of the partnership.
2. The name of the partnership is Central Bar and Restaurant which business was to be run from premises on **L R No. 2787/9/V Nanyuki Municipality**. The partnership deed was signed on 13th January, 2009.
3. An interlocutory chamber Summons application has been filed by **Samuel Wachira Kariuki (Proposed 3rd Respondent)** whereby he seeks joinder in this matter. He seeks to be joined on the grounds that he is the proprietor of a business known as Venus Bar and Restaurant (Venus Bar) which is run at premises on L. R. NO. 27879/V/Nanyuki Municipality (the same premises where the partnership was run); that he runs the Venus Bar on his own and has a tenancy agreement of the premises dated 2nd January, 2013.
4. The proposed 3rd respondent deponed in his affidavit that he has not had any business link with the partnership, and that his inclusion in these proceedings shall enable the court to effectually and completely adjudicate on the dispute.
5. The application was opposed by Kago. By his replying affidavit, sworn on 9th November, 2017, Kago deponed that the proposed 3rd respondent was his former employee and had no financial capacity to run a business; and that the proposed 3rd respondent was a proxy of the respondent for the purpose of circumventing his interests.

DETERMINATION

6. **Order 1 Rule 3 of the Civil Procedure Rules** speak to joinder of defendants to an action. It provides:

“ All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such person any common question of law or fact would arise.”

7. The basis upon which Kago objects to the joinder of the 3rd proposed respondent is that he is being used as a proxy by the respondents to deny him his rights.
8. The proposed 3rd respondent has deponed that he is the proprietor of the Venus Bar. That he is running that business on his own right. That Venus Bar bears no relation to the partnership.

9. With the above in mind Kago's objection is defeated by his own affidavit which he swore on 20th February, 2017 when he deponed, at paragraph 19, that:

”... by 2010, the respondents had unilaterally and in bad faith changed the business name from Central Bar and Restaurant to Venus Club”

10. Kago cannot with one breath claim that the partnership business was changed to Venus Bar and with other claim that the proprietor of Venus Bar should not be joined in the proceedings. If indeed this court, after hearing this case, was to determine that the partnership business changed the name to Venus Bar and the proposed 3rd respondent was not in this matter to advance his case on how he obtained that business of Venus Bar, there would be an injustice against the proposed 3rd respondent.

11. I am of the view that the best interest of justice would be met with the proposed 3rd respondent being joined in this action.

12. Accordingly the following are the orders of the court.

(a) Samuel Wachira Kariuki is hereby joined as the 3rd respondent in this action.

(b) The said Samuel Wachira Kariuki shall file his affidavit in this matter with 14 days from today's date.

(c) At the reading of this Ruling a hearing date shall be fixed.

Dated and Delivered at Nanyuki this 22nd February 2018

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Plaintiff:

1st Defendant:

2nd Defendant:

3rd Applicant:

For plaintiff:

For defendant:

Language.....

COURT

Ruling delivered in open court

MARY KASANGO

JUDGE