



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 573 OF 2006**

**MWAURA WANG'OMBE .....1<sup>ST</sup> PLAINTIFF**

**VERONICA GATHIKA MWAURA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JAMES MUIITE RUGUYA.....1<sup>ST</sup> DEFENDANT**

**SAMUEL NDUNG'U GATHOGA.....2<sup>ND</sup> DEFENDANT**

**MARY WAMBUI NJUGUNA .....3<sup>RD</sup> DEFENDANT**

**MOSES MUIGAI RUGUYA .....4<sup>TH</sup> DEFENDANT**

**JOSEPH TURU NGURE .....5<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. Mwaura Wangombe and Veronica Gathika Mwaura, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs herein respectively, commenced a suit by way of originating summons dated 16<sup>th</sup> May 2006 and amended on 22<sup>nd</sup> December 2011, against James Muite Ruguya, Samuel Ndung'u Gathora, Mary Wambui Njuguna, Moses Muigai Ruguya and Josephat Turu Ngure as the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> defendants herein respectively, for the dissolution of the partnership known as 'Gitangu Men and Women Self Help Group' among other prayers.

2. The plaintiffs sought for determination of the following questions under the Originating summons:

1. That are they parties, partners and members in the partnership known as Gitangu Men and Women Self Help Group?
2. That are the plaintiffs entitled to any dividends and profits accrued since 1989 to date or at all?
3. That was the plaintiffs expulsion from the partnership lawful?
4. That are the plaintiffs entitled to compensation or at all?
5. That which party is to bear the costs of this summons?

3. The plaintiffs sought the following orders:

- a. The said Gitangu Men and Women Self Help Group be dissolved and wound up and the plaintiffs be paid their dues, commensurate with their shareholding at the time of the winding up of the partnership.
- b. That a receiver manager be appointed by this Honorable Court to wind up the aforesaid society or partnership.
- c. That the costs of this case be provided for in any event.

4. The plaintiffs summons was grounded on the affidavit of Mwaura Wangombe. When served the defendants filed the replying affidavit of James Muite Ruguya to resist the plaintiffs originating summons.

5. The plaintiffs aver that they formed the partnership with other members in the name and style of Gitangu Men and Women Self Help Group. They elected the defendants as the officials of the said partnership. It was agreed by all members that each member was to contribute on a monthly basis and each was entitled to 20% of the contribution per share. It was further agreed by the members that the monies collected was to be used in buying plots, shares of estates and companies to help members in the time of need like death and sickness.

6. That on or about 2002, the partnership unlawfully expelled the plaintiffs from the said partnership. The plaintiffs aver that they own shares in the partnership. The partnership owes the plaintiffs unpaid dividends for the years 2001 and 2002, which the officials promised to settle but have not.

7. The plaintiffs avers that they never received any dismissal letters from the partnership and for this reason they know are still bona fide members of that partnership.

8. The plaintiffs further state that the partnership should pay their dues and lastly that unless the said orders are made, the plaintiffs will continue to suffer unprecedented damages and loss.

9. The defendants on the other hand avers that the plaintiffs were members of Gitangu Men and Women Self Help Group before they were legally dismissed according to the group by-laws. The defendants wrote a letter dated 20<sup>th</sup> January 2002 to that effect to the plaintiffs. The said letter was agreed upon after the partnership Committee meeting held on 9/01/2002. The defendants acknowledge that they owe the plaintiffs some dues which they ought to collect and have not. That the plaintiffs are not entitled to any compensation from the partnership. Lastly that the plaintiffs ought to bear the costs of this summons since they instituted this suit in bad faith and malice having been fully aware of the groups by-laws.

10. The plaintiffs filed a supplementary affidavit of Mwaura Wangombe in response to the defendants replying affidavit. The plaintiffs aver that they were never legally and lawfully dismissed from the partnership and still hold themselves as members.

11. The 1<sup>st</sup> plaintiff avers that the members of the partnership could have heard of his criminal case and made a basis to dismiss him. The 1<sup>st</sup> plaintiff states that indeed he was accused for alleged murder in Criminal Case No.19 of 2004, which he was later acquitted per the judgment of Hon. Justice J.L.A Osiemo.

12. This suit proceeded for hearing exparte. The plaintiffs case summoned one witness Mwaura Wangombe PW1, the 1<sup>st</sup> plaintiff herein. PW1 stated that he was unfairly treated by the officials in the partnership to which he is still a member by not giving him his dividends. The partnership also alleges that it expelled him and never communicated to him about the expulsion from the partnership. For these reasons he seeks the partnership to be dissolved and a receiver appointed.

The plaintiffs were called to file written submission.

13. The issues for determination are as follows:

- i. *Whether or not the plaintiffs were members of Gitangu Men and Women Self Help Group*
- ii. *Whether or not the plaintiffs were lawfully dismissed from Gitangu Men and Women Self Help Group and whether they are entitled to any compensation upon dismissal.*
- iii. *Whether or not the partnership herein should be dissolved.*

14. The first issue for determination is whether or not the plaintiffs were members of Gitangu Men and Women Self Help Group.

15. The plaintiffs affidavit in support of the originating summons and the defendants replying affidavit both aver that there existed a partnership called Gitangu Men and Women Self Help Group. Where the plaintiffs were members and the defendants as the officials. It is settled that indeed a partnership existed.

16. The second issue for determination is whether or not the plaintiffs were lawfully dismissed from Gitangu Men and Women Self Help Group and whether they are entitled to any compensation upon dismissal.

The plaintiffs submit that they were expelled from the said partnership via a letter dated 20<sup>th</sup> January 2002, which is on record but they never received it.

The defendants on the other hand aver that they dismissed the plaintiffs from the partnership and they were duly guided by the by-laws governing the partnership. In particular Law No.5 of their by-laws.

Law No.5 of the Gitangu Men and Women Self Help Group provides for dismissal of a member who is caught doing wrong without refund of interests and only a member contribution to be refundable.

17. The plaintiffs state that they never received any dismissal letters. The defendants aver that they issued dismissal letter to the plaintiffs. The defendants do not state if they confirmed that the said letters of dismissal had been received by the plaintiffs. With such ambiguities, the court cannot arrive at a sound decision on these issues on a balance of probabilities.

18. I am inclined to believe that the parties ought to have produced their partnership by-laws, this would have brought to light the proper guidelines as to grounds for dismissal and procedure for dismissal of members from the partnership. The plaintiffs have alleged but have not proved their case on a balance of probabilities.

19. The third issue for determination is whether or not the partnership should be dissolved.

The plaintiffs submit that the partnership is ripe for dissolution, because they were ill treated by the officials by not remitting their dividends as required as well as dismissing them from the partnership unprocedurally.

20. The plaintiffs relied on Section 39(d) of the Partnership Act which reads ;

**‘on application by a partner , the courts may decree a dissolution of the partnership in any of the following cases;(d)where a partner other than the partner suing willfully or persistently commits a breach of the partnership agreement ,or otherwise conducts himself in matters relating to the partnership business that is not reasonably practicable for the other partners to carry on the business in the partnership with him’**

21. The defendants did not comment on the issue of dissolution of the partnership in their replying affidavit. The plaintiff has not convinced this court vide its evidence that the partnership should be dissolved.

22. I have evaluated the evidence before this court and find no merit in the originating summons, it is hereby dismissed, with each party bearing its own costs.

**Dated and delivered in open court this 20<sup>th</sup> day of December, 2017.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant