



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 363 OF 2011

IN THE MATTER OF: NYONJORO SLAUGHTER HOUSE (A PARTNERSHIP)

AND

**IN THE MATTER OF: AN INTER-PEADER APPLICATION & PETITION FOR
DISSOLUTION OF**

NYONJORO SLAUGHTERHOUSE AS A PARTNERSHIP.

BETWEEN

JOSEPH MAGONDU NGUGI

JOHN MUKIRI MBAI

OWEN NJUNG'E MBURU AND

**LUCY WAMBUI MUTHONDU (All Sued As TRUSTEES OF NYONJORO
SLAUGHTERHOUSE.....RESPONDENTS**

AND

**THE ESTATES OF MBAI GATUMA, BERNARD MBURU GICHUHI, GATHERU MBUTO,
BEDAN MUTHONDU MACHUA,**

**RODRICK MUHORO THIRU WANGANGA, KIARIER MURABA, NGUGI
MAGONDU, MUMIRA KAMAU,**

**NJUGUNA MUTHIORA & GITAU GICHUI (ALL NOW
DECEASED).....BENEFICIARIES/HEIRS**

J U D G M E N T

The applicants herein filed an originating summons on the 20th August, 2011 which was later amended on the 19th day of March 2015.

The same is brought under Order 8 Rules 3 & 4, Order 34 Rule 1 and Order 37 of the Civil Procedure Rules. In the said amended Originating Summons, the Applicants have sought the following orders: -

- i. *That Nyonjoro slaughterhouse, as a partnership be dissolved under the supervision of the*

court;

- ii. That the court do direct and order that all the assets of the partnership, being parcels of land Title numbers Dagoretti/Mutuini/82,83,459 and 386, together with all improvements erected and being thereon, including all permanent structures and buildings and all moveable assets, plant, equipment and machinery of any of them belonging to the partnership, be called in, valued and sold and the proceeds thereof be deposited into the court pending the determination of prayer no. 4 hereof,**
- iii. That the sum of Kshs 7,215,000/=, being the balance of the proceeds of the sale of land parcel/Title number Dagoretti/Mutuini/90, held in Co-operative Bank of Kenya, Kimathi Branch, Nairobi in the joint names of the respondents advocates in terms of the consent order recorded herein on 15th February 2012, be transferred/deposited into court to be dealt with together with other properties as enumerated in 2 above;**
- iv. That the court decides, upon hearing the parties, the mode of distribution of all the net proceeds of the sale of the partnership assets;**
- v. That the costs of all the advocates, valuers, selling and managing agents be met from the proceeds of the sale of the partnership assets in priority.**

The Application is premised on the grounds set out on the body of the same and on the annexed affidavit of G K Meenye Advocate.

The history of the matter is that Nyonjoro Slaughterhouse as a Partnership, was registered with the Registrar of Business Names on the 23rd day of February, 1970 with a membership of 11 people.

That all the founder members/partners have passed on and their respective personal representatives have not applied to take up their places in the partnership in terms of the Partnership Deed dated the 31st March, 1975.

The beneficiaries are unable to agree on the mode of sharing the proceeds of the earlier sale.

The Applicants are the custodians of the title documents for four (4) other properties belonging to the partnership being land title Nos. Dagoretti/Mutuini/82, 83, 459 and 386 some of which are developed with a working slaughter house, Lagoons, holding grounds and others not developed.

The nominated Trustees and the various beneficiaries are not able to reach any agreement as regards the future of the firm and its business and it is only just and fair that the same be dissolved and the assets valued and sold and the proceeds be distributed by the court so that the investment is not wasted.

The partners duly executed a Partnership Deed to regulate its affairs and the same is dated the 31st day of March, 1975.

Amongst the properties of the Partnership assets is a piece of land situate in Dagoretti, Nairobi known as the title number Dagoretti/Mutuini/90 which the representatives of the families and dependants of the partners in a meeting held on 10th November, 2010 resolved to sell. The said property was sold at 13.5 million which money was paid to the Applicant on behalf of the partners.

The Trustees/Respondents could not agree on the mode of sharing of the proceeds which stands at Ksh.7.5 million net of liabilities.

When the matter came up for mention on 30th July, 2015, a consent was recorded by the partners as follows: -

- i. *Nyonjoro slaughter house as a partnership be dissolved under the supervision of the court;*
- ii. *The matter be listed for hearing of prayer number 4 on 24/9/2015;*
- iii. *Parties do file their respective affidavits in support or opposition within 30 days of today;*
- iv. *The trial to be by way of affidavit evidence and submissions of counsel."*

With the consent in place, the only issue for the court to determine is prayer 4.

In their submissions, the Applicants submitted that they have no interest in the suit other than for their fees and charges for acting for the partnership. They claimed that they had been custodians of the title documents for all the properties owned by the defunct partnership, Nyonjoro Slaughter House and will deliver the same to such party or persons as the court shall direct. They urged the court of find that the properties were acquired by the partners in equal shares.

On their part, the Respondents submitted that the partnership was registered in the year 1975 and prior to the registration, the partners had acquired properties between the years 1966 and 1967 which forms the basis of the present litigation and that no more property was acquired after the registration of the partnership. They asserted that the partners purchased the properties in question from the proceeds of the partnership business. They referred the court to Clause 3 of the Partnership Deed which highlighted Capital Contribution of the partners towards the business.

According to the Partnership Deed, each of the partners made the following Capital Contribution: -

Mbai Gatuma	Kshs.6,620/=,
Benard Mburu Gichihi	Kshs.5,817/=,
Gatheru Mbuto-	Kshs.3,700/=,
Bedan Muthondu Machua	Kshs.3,325/=,
Ngugi Magondu	Kshs.1,525/=,
Rodrick Muhoro	Kshs.1,304/=,
Thiru Kiarie Muramba	Kshs.1,262/=,
Mumira Kamau-	Kshs.714/40,
Njuguna Muthiora	Kshs.620/=,
Gitau Gichihi	Kshs.250/=.

These contributions were made before the Partnership Deed which Deed was only executed for purposes of formalizing an existing relationship between the partners. They averred further that Clause 11 of the Partnership Deed makes reference to the realization of assets of the Partnership upon winding up and that Section 41 of the Partnership Act is explicit on the profit sharing ratio.

With the dissolution of the partnership, it therefore follows that all the assets of the partnership have to be dealt with in one way or the other. The most reasonable and appropriate one in the circumstances, is to have all the assets (both movable and immovable) sold and the proceeds distributed among the partners and/or their beneficiaries and that is what prayer 2 of the amended originating summons seeks. That does not seem to represent any problem to the Respondents. The biggest headache to them is how to share the proceeds of the sale. The court has been called upon to decide on this particular issue.

In tackling this issue, the court notes that there is a Partnership Deed duly executed by all the partners and the existence and/or validity of the same is not denied by the parties.

The Applicants (who have not interest in the suit) claims that there is no evidence of Capital Contribution for the purchase of the properties by each of the partners and they contributed equally. The Respondents on the other hand fully rely on the Partnership Deed which outlines the ration of contribution of the partners which varied between them.

It is not in dispute that the partners first came together in the year 1960's when they purchased some properties. They registered their business on the 13th February 1970 and later on 31st March, 1975 executed a formal Partnership Deed which outlined their Capital Contribution but did not specify the amount contributed by each partner for the purchase of the properties. This begs the question whether their Capital Contribution can be used to come up with a ration for purchase of the property or whether it can be concluded that they contributed equally to the purchase of the properties.

In my view, and in the absence of clear documentation or evidence, the just and appropriate rationale to use should be the ratio of contribution of the Capital by the Partners as captured in the Partnership Deed. This view is informed by the fact that the buying of the properties preceded the Partnership Deed, subsequently, when drafting the deed the partners must have considered not only the Capital Contribution of each Partner but also the contribution of each partner in the purchase of the properties in question.

In the end, it's the decision of this court that the mode of distribution of all the net proceeds of sale of the Partnership assets should be pegged on Clause 3 of the Partnership Deed with each respective partner/family getting a share in accordance with the partners' contribution to the business. In any case, the Partnership Deed required that the profits realized and all losses suffered by the business would be shared and borne as the case may be proportionately to each partner's contribution.

There will be no order on costs as the Respondents will benefit from the proceeds.

Dated, signed and delivered at Nairobi this 31st day of March, 2016.

.....

L NJUGUNA

JUDGE

In the Presence

..... ***for the applicants.***

..... ***for the Respondents.***