



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL CASE NO. 390 OF 2011

GEOFFREY SILA MUTUNGI PLAINTIFF

VERSUS

NAHASHON WAMBUA MWANGANGI1ST DEFENDANT

MONICA WACHUKA WAITHAKA 2ND DEFENDANT

JUDGMENT

1. The plaintiff, GEOFFREY SILA MUTUNGA vide the plaint dated 30.12.2011 sued the Defendants, NAHASHON WAMBUA MWANGANGI and MONICA WACHUKA WAITHAKA for the following orders:-

a) A permanent injunction restraining the Defendants either by themselves or their agents from removing the plaintiff from the partnership and or from the management and running of the partnership business.

b) A declaration that the partnership Deed between the plaintiff and the defendants is valid in law.

c) Such other or further relief as this Honourable Court may deem fit to grant.

d) Costs of this suit.

2. The plaint states that the plaintiff and the 1st and 2nd defendants who are husband and wife and his business were partners trading in the name and style of **KINGSENT ENTERPRISES**. It is averred that the parties entered into a partnership deed on the 10th June, 2010 and started a petrol station in MATILIKU market. It is claimed that the defendants herein have threatened to remove the plaintiff from the partnership, hence the filing of this suit.

3. The defendants filed a statement of defence and denied the plaintiff's claim and raised a counter claim as per the amended defence dated 3/7/2012. According to the statement of defence, the plaintiff was a salaried manager and not a business partner. The defendants prayed for the following orders in the counter-claim:

a) An order that the plaintiff renders a full and true account of the business the subject of this suit from 30.12.2011 upto 15.03.2012 and to surrender all the

books, records and/or other documents related thereto covering the same period.

b) A permanent injunction restraining the plaintiff, his agents, servants, employees an/or whoever else under his direction from managing, operating, trespassing on or name of KINGSENT ENTERPRISES at Matiliku, simba or any other place.

c) Costs of, and incidental to, this suit.

d) Any other just relief.

4. On 8.8.2012. The defendants requested for judgment to be entered against the plaintiff on the counter-claim as no defence had been filed to the same. Consequently, the Deputy Registrar entered interlocutory judgment as prayed. The plaintiff subsequently on 15.8.2012 filed a reply in the defence and defence to the counterclaim.
5. On 23.7.2014, when the case came up for hearing, the plaintiff was not present though served. Consequently, the plaintiff's suit was dismissed and the counter claim fixed for formal proof.
6. When the case proceeded for formal proof on 4.3.2015, the plaintiff was not present though served. The 1st defendant testified (PW1). His evidence was that the business was a partnership between him and his wife the 2nd defendant. That the plaintiff was employed as a business manager at the petrol station in MATILIKU at a salary of kshs. 20,000/- per month. A letter of employment was produced as an exhibit. He produced the partnership Deed as an exhibit. He described the partnership Deed filed in the plaintiff's documents as a forgery. It is his further evidence that the suit herein was filed by the Plaintiff to frustrate a criminal case instituted against the plaintiff at the Makindu Law Courts which was preferred against the plaintiff after the discovery of a shortfall of kshs. 93,000/- at the petrol station. The 1st defendant's evidence is that the plaintiff disappeared after temporary orders of injunction were issued herein. He further stated that the plaintiff has since vandalized the petrol station and ran away with the capital. The plaintiff is also accused by the defendants of having carried away all the records and books of account from the petrol station.
7. The defendants evidence is uncontroverted. The defendants have proved their case on a balance of probabilities for the issuance of the orders sought. Consequently, I allow the counter claim as prayed with the costs of this case to the defendants.

Dated, signed and delivered at Machakos this 15th day of December, 2015.

B. THURANIRA JADEN

JUDGE.