



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

Civil Case 3962 of 1985

STANLEY MATHU NGENE.....1ST PLAINTIFF
WILLIAM MUCHAI NGENE.....2ND PLAINTIFF
HANNAH NYAIKUNU NGENE.....3RD PLAINTIFF

VERSUS

SOLOMON KIRIGA NGENE..... DEFENDANT
RULING

This case was heard by Bosire J. (as he then was) and delivered a judgment on 2nd July, 1996. The dispute herein pits two brothers and their mother as plaintiffs and one of their brothers as the defendant. The learned judge after hearing the case said as follows in the end; **“the evidence clearly shows that the plaintiffs and the defendant had several joint ventures. The defendant’s testimony in a way corroborates that.....Considering all the evidence before me, I am satisfied that the plaintiffs have shown that there is a partnership relationship between them and the defendant, and that they are entitled to an account. Also, that because the relationship between them is not good, the only logical thing to be done is for the partnership to be dissolved. I so declare and give judgment to the plaintiffs in terms as above. As for the appointment of a receiver, I need to be addressed further on the issue before making orders in that regard. Costs to the plaintiffs.”**

To date, the parties have not taken any steps to address the court further on the issue of the appointment of the receiver. That is the only issue that remained in the judgment of the learned judge. The final judgment in my view, was dependant on the appointment or otherwise of the receiver.

I have looked at the submissions of both counsel in respect of the pending issues. With respect, the court cannot give a final order in that regard without reviewing the order of Bosire J. (as he then was). I must therefore endorse the said judgment by stating that the parties having failed to address the issue raised by the learned judge the court now directs that the parties shall enter into a settlement in respect of the partnership properties within 30 days of today, failure of which they shall jointly appoint a receiver and in the event that they are unable to agree on the appointment of the receiver, the court shall do so.

The said receiver shall identify and secure the partnership properties, take accounts thereof and lead to the division of the said properties. This matter shall be called out for mention on 29th November, 2010. The costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 21st day of October, 2010.

A. MBOGHOLI MSAGHA
JUDGE