



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 205 of 2006**

**JOHN NJIRU ..... PLAINTIFF**

**VERSUS**

**MANASE NDWIGA NYAGA ..... DEFENDANT**

**JUDGMENT**

1. Both Plaintiff and Defendant were operating a business in Karurumo market under the name and style of Nyanji General Store which was situated on plot No. 7 Karurumo market Embu. The business was registered under the registration of **Business Names Act**, on 3<sup>rd</sup> November 1988. Both the Plaintiff and the Defendant were partners. Towards the end of 1992, there developed some disagreements between the partners.
2. On 6<sup>th</sup> February 1993 both partners decided to close down the premises and referred their differences for arbitration before family elders. The elders arbitrated on the matter, but the plaintiff refused to co-operate so that the shop could have been opened. The dispute snowballed into the present suit by the Plaintiff in which he sought for an order of dissolution of the partnership and taking of accounts. The Defendant sought for similar orders in the defence.
3. This matter was initially filed at the High Court, Meru and when the High Court was started in Embu, this matter was transferred there. By an order made on 22<sup>nd</sup> February 2006 by Kaminwa, J. It was further ordered the file be transferred to Milimani Commercial Court for hearing and determination. This matter came up for hearing before me on 3<sup>rd</sup> November 2009. The Plaintiff did not attend court and the plaintiff's suit was dismissed.
4. The Defendant proceeded to give evidence on what he purported to be a claim contained in his defence where he sought for an order that the partnership be dissolved, and the proceeds of the business be shared equally. The Defendant testified that he and the Plaintiff were partners in the business. The Defendant was running the business while the Plaintiff was working as a Civil Servant.
5. They operated a partnership bank account at the Barclays Bank, Embu Branch, and Account No. 1294515 and as at 4<sup>th</sup> September 1996, the account had Kshs.302,403.20 which was deposited in a fixed deposit account pending determination of this case. The Defendant urged the court to have the money shared equally between the two partners.
6. This matter involves the dissolution of the partnership. Both parties are desirous of the partnership being dissolved although the Plaintiff did not attend court during the hearing. It is evident from the record, that since the suit was filled several issues were resolved. The only two issues that are outstanding is the formal dissolution of the partnership and how the sum of Kshs.302,403.20 should be shared. The other issues regarding the other assets of the partnership, debts and liabilities have been resolved.
7. Since the partners disagreed they have not been carrying on the partnership business, there is no point of keeping a dormant partnership. I order the partnership be dissolved and the money held at Barclays Bank together with the accrued interest be shared between the Plaintiff and the Defendant equally. Bearing in mind that the Defendant and Plaintiff are relatives, and each one came to court seeking for similar orders, I order each party to bear their own costs of this litigation.

RULING READ AND SIGNED ON **11<sup>th</sup> December 2009** AT NAIROBI.

**M.K. KOOME**  
**JUDGE**