



REPUBLIC OF KENYA

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

**Civil Case 203 of 2008**

**STEPHEN MARIGI GATHIGI.....PLAINTIFF**

**VERSUS**

**GABRIEL GATHECA**

**MOSES SIRONIK MURAYA**

**NDUNGU MWANIKI.....DEFENDANT**

**RULING**

Kihoto Munyaka Building company is registered under Registration of Business Names Act.

The persons registered as carrying on business under that name are listed as:

1. Peter Gakuo
2. Nahashon Muraya
3. Gathigi Gathuka
4. Evanson Kangaca mwaniki Karimia
5. Kaboi Ngotho
6. Ndauwa Wambu
7. Gitura Turugi
8. Njeri Mwaura
9. Nyokabi Mwaura
10. Stephen Marigi Gathigi

According to the affidavit of the Applicant most of the partners are now deceased leaving Gathigi Gathuka, Gitura Turugi, Njeri Mwaura, Nyokabi Mwaura and the deponent Stephen Marigi Gathigi, applicant.

This application is brought under Order 39 rule 1, 2 and 3 Civil Procedure Rules, Section 28 Partnership Act. Section 3A of Civil Procedure Act Cap 21 seeking orders to restrain the Defendants who are not registered as members of the partnership from conducting any business, calling meetings, operating accounts and generally taking over or doing any such related acts purporting to be partners of Kihoto Munyaka Building Company on the ground that they are not partners of the said business firm.

The Respondent accuse the Plaintiff of not being a partner and state that they represent interests of their respective families where original partners have since died and therefore they are entitled to participate in the business.

The provisions invoked provide that where any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in execution of a decree that may be passed against the Defendant in the suit, the court may grant temporary injunction to restrain such act.

In the present case there is no evidence shown to satisfy the provisions stated above. However, there is serious dispute between the parties.

I therefore do not grant orders sought. The parties should proceed to arrange for the hearing of the full dispute.

The application is dismissed with costs in the cause.

**DATED** this 22<sup>nd</sup> day of October 2008.

**JOYCE N. KHAMINWA**

**JUDGE**