



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 611 of 2003

LINDA WATIRI MURIUKIPLAINTIFF

V E R S U S

NEVILLE PATRICK GIBSON WARREN1ST DEFENDANT

DANIEL JAMES CORRY McVICKER.....2ND DEFENDANT

HAMISH WOOLER KEITH3RD DEFENDANT

ZULFIKAR H. ALIBHAI4TH DEFENDANT

R U L I N G

By a consent letter dated 18th of December, 2003 and filed in court on 8th January, 2004, the parties herein agreed on how to proceed towards disposal of this suit. An order was entered in terms of that consent on 9th January, 2004. The only role reserved for the court by that consent is to be found in clause (a) thereof. That clause provides as follows:-

“ (a) THAT this Honourable Court be pleased to determine as a single issue, whether the terms of the Partnership Deed dated the 31st October 1990 applied to the partnership between the Plaintiff and the Defendants.”

Certain consequences will flow from determination of that issue. See clause (e) of the consent.

Mr. Oraro, learned counsel for the Plaintiff, submits that for determination of the issue reserved for the court, the court needs to look only at the documents exhibited in the affidavit sworn by the Plaintiff on the 19th June, 2003 in support of the chamber summons of the same date. Those documents are:

- i) The partnership deed dated 31st October, 1990.
- ii) Letter dated 26th March, 1997.
- iii) Letter dated 9th April, 1997.

Mrs. Shaw, learned counsel for the Defendants, agrees that these are the only documents that the court needs to look at. However, she submits that the conduct of the parties after the filing of the consent order, including the making or receiving of any payments, is important for the determination of the issue in clause (a). She therefore wants an opportunity to call evidence of conduct of the parties as set out above. Mr. Oraro disagrees.

I have given due consideration to the submissions of the learned counsels on the issue. The consent letter dated 18th December, 2003 upon which the consent order was entered on 9th January, 2004, is very detailed and elaborate. As already observed, the only role reserved for the court is determination of the one single issue, **whether the terms of the partnership deed dated 31st October, 1990 applies to the partnership between the Plaintiff and the Defendants.** Upon determination of that issue there will be certain consequences as set out in clause (e) of the consent. Clause (b) of the consent provides for retirement of the Plaintiff from the partnership. Clauses (c) and (d) provide for certain payments to be made to the Plaintiff by the Defendants. There are other provisions in the consent.

It seems to me to be clear that the conduct of the parties whatsoever after the date of the consent (including any payments made or received by them) is not relevant at all to the determination of the issue set out in clause (a) of the consent. The mandate of the court is clear and unambiguous under that clause. The only factual basis for determination of that issue is the partnership deed dated 31st October, 1990 and the two letters dated 26th March and 9th April, 1997. No other facts are necessary, and I will not allow any further evidence to be adduced in that regard. To do so would be to revise the agreement of the parties, and the court does not have the mandate to do so.

‘That is the courts decision on this preliminary issue. Costs will be in the cause.

DATED AT NAIROBI THIS 18TH DAY OF JUNE 2007

H. P. G WAWERU

J U D G E

DELIVERED THIS 22ND DAY OF JUNE 2007