



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**Civil Case 36 of 1998**

CHARLES KARIUKI MURUNJI ..... APPLICANT

VERSUS

1. MUNANU KARIUKI )

2. GACHAU MWANIKI )

3. JOHN WANJOHI ) ..... RESPONDENTS

**J U D G M E N T**

By an originating summons dated 12<sup>th</sup> February 1998 and filed in court on the same day, the applicant, Charles Kariuki Murunji sought the following orders:

1. **THAT the business enterprise bearing the name and trading in the name and style of Murang'a and Nyeri enterprise Company registered on the 12<sup>th</sup> day of November 1969 be dissolved.**
2. **THAT the accounts of the firm from 1972 to date be taken and analysed by an independent auditors to be appointed by this Honourable court.**
3. **THAT the firm/partnership be wound up and the remaining assets and profits/Dividends be shared by the partners equally.**
4. **THAT the respective shares of each partner on dissolution be paid together with accrued interest at court rates for each year from 1972 to date.**
5. **THAT the real Properties be sold to the highest bidder and the proceeds be distributed to the partners.**
6. **THAT the costs of the summons be borne by the Respondents.**

The Originating Summons was supported by an affidavit of the applicant who deponed in the main that he was one of the partners in the business firm known as Muranga and Nyeri Enterprise Company, which partnership was formed and registered on 12<sup>th</sup> November 1969. The other three partners were Munanu Kariuki, Gachau Mwaniki and John Wanjohi the Respondents herein. That the

partnership has its registered offices on plot number 36/1/240, Juja road Nairobi. That the respondents have jointly and contrary to the mutual trust and working relationship that binds their partnership been mismanaging the partnership affairs and have specifically squandered and or misappropriated the partnership funds and have generally shut out the applicant from the said partnership without reasonable cause or excuse. The applicant further deponed that the future of the partnership and its continued existence is at stake and actually hangs in the balance. That the partnership operates business known as Gikomba Uki breweries but up to date there has been no report and or accounts rendered to the applicant to date. The deponent further states that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have without his consent and that of other partners misused the partnership funds and or proceeds to which they have

access to, and have converted and used the same to build a house in Nairobi. Since the partners are unable to work together to advance the partnership business, it is the view of the applicant therefore that the partnership be dissolved.

Finally, the applicant depones that the partnership be dissolved to avoid further embarrassment of some partners, and that the accounts of the partnership since inception be taken and the net profits thereof and accrued interest be shared between the partners on pro-rata basis and that thereafter the partnership be wound up.

The originating summons was duly served on the respondent who failed to enter appearance within the specified period therein whereupon the applicant obtained judgment and then proceeded to set down the originating summons for hearing by way of formal proof. On the 21<sup>st</sup> September, 2005 the applicant sought and obtained directions from **Justice Okwengu** to the effect that the suit proceeds ex-parte by way of viva voce evidence and that the originating summons be deemed as a plaint.

On 26<sup>th</sup> April 2007 the matter came up for hearing before me. Though the order had been made that it should proceed to hearing exparte, the applicant however deemed it necessary nonetheless to serve the respondents with the hearing notice. Despite the service, the respondents did not bother to attend court on the hearing date and accordingly the formal proof proceeded exparte. Only the applicant testified. The applicant basically reiterated what he had set out in his affidavit in support of the application in his evidence. He however produced the certificate of registration of the partnership as an exhibit. The applicant further testified that he did not wish to proceed against the 1<sup>st</sup> respondent as the two had reached a compromise over the dispute. His claim therefore was limited to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents who had refused to part with the applicant's share of the partnership property. The applicant further pointed out that the partnership had property in Nairobi being No. 236/AXI/1913 off Juja road. He produced a copy of the certificate of lease of the property to verify this fact. The applicant testified that since the said property was acquired in 1972 he had never received his share of the income accruing therefrom. The applicant was very clear in his mind that they as partners have been unable to agree on the way forward for the business. He had called several meetings without success to resolve the dispute. It was therefore his view that the partnership had reached a point where it cannot go on. It was for this reason that the applicant was seeking for its dissolution, the taking of the account and costs of the suit.

As already pointed out, the respondents were duly served with the originating summons but elected not to oppose it by way of filing any replying affidavits or at all to counter the allegations of the applicant or to attend the formal proof to challenge the applicant's affidavit or oral evidence. As it is therefore this court has only the word of the applicant expressed in his supporting affidavit as well as his oral evidence to go by. The supporting affidavit and his evidence remains unchallenged and uncontroverted. That being the case, I will have no basis to impugn such evidence. The applicant has in my view been able to demonstrate the existence of a partnership that owns residential properties in Nairobi in the joint names of the partners. He has also been able to demonstrate to my satisfaction that there are problems in the management of the partnership. It does appear that the applicant has been

sidelined by the other partners in particular the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in the management of the business and has been denied his share of the proceeds from the partnership. That being the case I do not see how the partnership can continue to thrive to the detriment of the applicant. There is no doubt at all that the differences between the partners are such that it is impossible to have the partnership running.

I have carefully looked at the provisions of order XXXV rule 4 of the Civil Procedure Rules and I am satisfied that the applicant has brought himself and complied with the strict provision of the said order and rule. Accordingly the originating summons is competent. I will in the result grant prayers 1, 2, 3, 4 and 6 of the originating summons. However those prayers will be enforced against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents only as according to the applicant, he has no claim against the 1<sup>st</sup> respondent.

Finally I leave the issue of an independent auditor to be appointed by this court to look at the accounts of the firm for further submission by counsel for the applicant.

***Dated and delivered at Nyeri this ..... day of ..... 2007***

**M. S. A. MAKHANDIA**

**JUDGE**

*Delivered at Nyeri this 4<sup>th</sup> June 2007 on behalf of Justice Makhandia*

**MARY KASANGO**

**JUDGE**