



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL CASE NO. 855 OF 2001**

**NYAMBURA MACHARIA & ANOTHER ..... PLAINTIFF**

**VERSUS**

**AGOSTINO MAINA WAITARA & 7 OTHERS ..... DEFENDANT**

**JUDGMENT**

This suit was filed on 24th May 2001 by way of Originating Summons. In it the two plaintiffs, Nyambura Macharia and Mwangi Njuguna alias Mwangi Ndua are seeking the dissolution or winding up of a partnership known as Kwireria Village Company in which they are partners as evidenced in a Certificate of Registration of a business dated 9th April 1969. In the suit the plaintiffs have named Agostino Maina Watara, B. Karanja Njoroge, Alexander Ngigi, Nyaguthii Mwangi, Geoffrey Nyoro, Hannah Wanjiru, James Ngigi Mbugua and Winnie Wambui Njoroge as Defendants. The said persons were at one time or another members of the said business (partnership) who are either no longer interested in the business or have since died. The said Defendants, together with the plaintiffs were in partnership with others the whereabouts are not known today.

In their evidence, which is not challenged, the plaintiffs have avered that the partnership had a membership of twenty people a fact which is borne of by the copy of the registration certificate produced in evidence. They have also avered that the partnership did buy and have registered in the names of all the partners a plot in the Eastleigh area of Nairobi which was never developed. They produced as evidence a certified copy of an indenture dated 17th December 1971 evidencing the purchase of this plot from one Waljee Hirjee Estates Limited. The plot is shown on the said indenture as L.R. NO. 36/1/2.

Having failed to trace other partners and/or defendants in the suit the plaintiffs sought the leave of this court to serve summons by substituted service in the newspapers and did so as per a copy of a page the Daily Nation produced in court. No one answered to the summons and the suit proceeded ex parte. In their sworn statements the plaintiffs testified that to the best of their knowledge nine of the partners are deceased. They have also testified that, owing to the death of the said nine and the apparent disappearance of the others, they are as of now the only surviving partners interested in owning and developing the said plot L.R. No. 36/1/2. Their efforts to use and/or develop the said parcel of land have been hampered by the *de jure* existence of the partnership when *de facto* there is none.

I have no reason to doubt the plaintiff's testimony herein or challenge the documents produced as evidence. The facts of the case is that the existence of the partnership is only on paper and of no value to anybody. I accept counsel's submission that there being no agreement to the contrary, the partnership would legally dissolve upon the death of a party or parties. The plaintiffs have, on a balance of probabilities proven their case. I hold that the suit succeeds. The partnership known as Kwirera Village company is hereby dissolved and/or wound up. Costs in the cause.

**Dated, Signed and Delivered at Nairobi this 6th February 2004.**

**M.G. MUGO**

**AG. JUDGE**