



REPUBLIC OF KENYA

THE HIGH COURT OF KENYA AT NAIROBI

H.C. CIVIL CASE NO. 5632 OF 1993 (O.S)

IN THE MATTER OF THE PARTNERSHIP ACT (CAP 20)

AND

IN THE MATTER OF THE DISSOLUTION AND WINDING UP
OF WA-AMBE ENTERPRISES

BETWEEN

DAVID MAGIRI

ANN NAOMI MAGIRI..... PLAINTIFFS

V E R S U S

JOSEPH MBERIA

JENIFFER MBERIA DEFENDANTS

R U L I N G

After the decree was issued in the present case the Plaintiff-Decree holder filed an application under Order XX Rule 16 and 20 of the Civil Procedure Rules and also under Section 63(e) of Civil Procedure Act. In effect it was seeking orders for taking account of the dissolved Wa-mbe Enterprises. The application is dated 29th November 2001 but it seems to have been filed on 25th April, 2002.

Thereafter on 8th July, 2002 an order by consent was recorded appointing a firm of M/s Gikuru Kazibwe & Company to audit the accounts of the firm, Wa-mbe Enterprises. According to Mr. Nelson Gaichinga Gikuru a partner in the said firm he sent out a questionnaire to both the parties who are the partners in the firm. The Plaintiff returned the same duly filled in but the Defendant did not. He thereupon prepared a draft account and sent to both the parties for their comments. The plaintiff who is a sleeping partner agreed to the draft and he received the comments from the Defendants on 12th November, 2002.

He responded to those comments and formed an opinion that the draft need not be amended. He also stated the same in respect of comments he received from an Accountant appointed by the Defendant. He said specifically he also did not agree to his comments.

The consent order to appoint the aforesaid firm has not been varied. The Defendant delayed the process as is evident from the record of this court.

The Defendant without seeking any leave from the court sent comments by another accountant as late as 4th February, 2003. The appointed accountant gave evidence that he did not agree on the comments made by second accountant, who was not called as a witness to contradict that averments, by the Defendant.

With these facts, I shall have to accept uncontroverted evidence of the accountant who adduced the same as an expert witness. The court has, with reasons, formed an opinion that the only purpose of the Defendant is to delay the process of the court. This court shall not be baited by him to allow him to do so.

I therefore order that the draft account produced by the appointed firm of accountants be adopted and orders be made in pursuance to what is reflected therein including the cash account upon winding up the business.

The plaintiff shall have costs for these proceedings.

Dated and delivered at Nairobi this 27th day June, 2003.

K. H. RAWAL

JUDGE.