

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO 637 OF 2000 (OS)

ODONGO MARK OKEYO..... PLAINTIFF

VERSUS

STEVE OMONDI OWINO.....DEFENDANT

JUDGMENT

This is a partnership suit in which the main claim is for the dissolution of a partnership, and the taking of accounts. From the certificate of registration given on 18th January 1990, it is clear that a law firm of Owino & Co was formed under which the parties herein were to practice as a law firm.

The plaintiff, however, physically moved out and got employed elsewhere, leaving the firm to be run by the respondent, and the plaintiff was, for all practical purposes and intent, not a participant in the goings on in the law firm.

According to his evidence, the plaintiff was not consulted over the affairs of the firm.

It is said that the firm has incurred liabilities, but the court is not satisfied on the present evidence, as to such alleged liabilities, except in one incident in which a letter was written by the defendant “absolutely” absolving the plaintiff from “any liability whatsoever in respect of the judgment granted..... in respect of the partnership’s undertaking for Shs11,325,600” and the defendant undertook to indemnify the plaintiff in respect thereof, “which had nothing to do with you, should the need for such an indemnity arise”.

Having regard for the evidence, the Court is satisfied that the partnership exists in name only, but the plaintiff is, for all intents and purposes, out of it, whether by design or default. No useful purpose is being served by the continued existence of the partnership, and it is hereby dissolved.

With regard to accounts, however, the plaintiff has failed to establish any in-put in the firm by him – either by way of capital or exertion of his efforts to create income. There are no articles of partnership, and no arrangements as to assets, liabilities, sharing of anything, and so forth. In these circumstances ordering the taking of accounts would not be just. It would merely be for enabling the plaintiff simply to pry and intermeddle into the affairs of an undertaking in which he showed little or no interest and in which he has never manifested any effort to build and support.

In the circumstances, an injunction sought is not proper and just.

Bearing all these considerations in mind the Court holds that while a case has been made out sufficiently to justify the dissolution of the partnership, no case has been properly made out for ordering accounts and granting any injunction. Accordingly, the prayer for dissolving the partnership is granted; but the other reliefs are dismissed.

As there has been partial success on either side to some appreciable measure, each party shall bear its own costs of this originating summons. Orders accordingly, *ex tempore*.

Dated and delivered at Nairobi this 24th day of June, 2003

R.C.N KULOBA

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JUDGE