



**Nyabwanga v Oino (Civil Case E001 of 2021)
[2024] KEHC 13322 (KLR) (23 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13322 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL CASE E001 OF 2021
TA ODERA, J
OCTOBER 23, 2024**

BETWEEN

EZRA OTWERE NYABWANGA PLAINTIFF

AND

BENHADAL MATARA OINO DEFENDANT

JUDGMENT

1. The plaintiff filed this suit seeking: -
 - a. A declaration that the plaintiff and the defendant herein were in partnership and/or jointly bought motor vehicle registration no. KCU 094Toyota Hiace.
 - b. An order that the defendant provides /supplies the full accounts of the said partnership and / or running of business concerning motor vehicle registration No. KCU 094 G.
 - c. An order for dissolution of the said partnership and /or the defendant be ordered to refund or pay to the plaintiff his share.
 - d. costs of the suit.
 - e. Any other orders/relief this court may deem fit to grant.
2. The matter came up for hearing on 13.2.24 but the defendant did not attend court despite being notified of the hearing date. The matter therefore proceeded ex-parte.
3. The case of the plaintiff as per his pleadings and evidence is that on or about 8.4.19 he entered into an agreement with the defendant to run a matatu business. They proceeded to purchase a Toyota Hiace registration number KCU 094G from Maheer Motors Limited at the price of Kshs. 2,900,000/= out of which they paid a down payment of Kshs 1,400,000/= with him contributing Kshs 900,000/ = (as per the copy of the cheque pexh 1) while the defendant paid 500,000/= towards the purchase of the



said vehicle. The vehicle was purchased and delivered as per the agreement dated 8.4.24. Also that the defendant was in charge of the day to day management of the same. Further that the defendant: -

4. On or about the month of June 2019 the defendant paid the plaintiff a sum of Kshs 380,000/= purporting it to be his share in the business without giving a full account of the business. The plaintiff pleaded that despite demand the defendant has refused to account for the vehicle, the business and the full entitlement of the plaintiff.
5. The defendant entered appearance and filed defence through M/s Onguti and Co. Advocates he denied that he was in business with the plaintiff and stated that he took a loan of Kshs 900,000/= (as per the bankers cheque) from him to purchase the vehicle which he was solely own for his gainful use. He said he has refunded Kshs 380,000/= and a further Kshs. 100,000/= and he acknowledged that the balance stands at Kshs 420,000/= which he is willing to pay. He denied ever receiving a demand notice as pleaded.
6. I have considered the pleadings, submissions for the plaintiff and the evidence herein. The issues arising for determination are as follows;
 - a. Whether the plaintiff and defendant were in a partnership?
 - b. Whether the plaintiff and defendant jointly bought motor vehicle registration number KCU 094 G?
 - c. Whether the plaintiff is entitled to receive the accounts of the business from the defendant and his share of the same?
 - d. Who bears the costs of this suit?
7. On whether the plaintiff and defendant were in a partnership, it is the case of the plaintiff that he was in a business partnership with the defendant and they orally agreed to do matatu business and hence he paid Kshs. 900,000/= to the seller of the vehicle as per the agreement and the cheque which were both produced as pexh 1 & 2 respectively. The defendant pleaded that they were not in business but the plaintiff loaned him Kshs 900,000/= which he used to buy the vehicle. The defendant did not attend court to cross examine the plaintiff and present his case. The evidence of plaintiff was thus not controverted. If it were true that the plaintiff was loaning the defendant the Kshs. 900,000/= what would have stopped him from giving the defendant the money instead of paying the seller? Though the partnership was not in writing, the plaintiff told court that the agreement between them was verbal and I am not convinced that the money was a loan as pleaded by defendant but that the plaintiff paid the seller as a business partner of the defendant. I find that there was indeed a partnership between the parties.
8. On whether the parties jointly bought the motor vehicle herein, plaintiff told the court that they jointly bought the same. The defendant denied this and said the plaintiff merely loaned him money to purchase the vehicle. The plaintiff produced the cheque of Kshs. 900,000/= as a proof of part payment and that the defendant paid Kshs 500,000/=. The said deposit of Kshs 1,400,000/= was part of the agreement dated 8.4.2019(Pexh 1). I have already found that the parties were in a partnership and so the motor vehicle registration number KCU 094 G was jointly bought by the plaintiff and defendant herein.
9. On whether the plaintiff is entitled to the accounts by the defendant and his share in the business, the plaintiff decried that the defendant did not account to him and converted the business to be his own. The business started running from 8.4.24 as per the agreement and the plaintiff's case is that the cause of action arose immediately after the vehicle was bought as the defendant never accounted for



the business. This is not challenged. I am satisfied that the plaintiff is entitled to the accounts of the business from the year 2019 to date and his ½ share of the business less the Kshs 380,000/= which he acknowledged.

10. I order that the defendant gives an account of the business to the plaintiff from April 2019 to date within 30 days from today.
 11. The oral business partnership between the parties herein is dissolved.
 11. I award costs to the plaintiff in the sum of Kshs. 130,000/=
- 14 Days Right of Appeal.

T.A ODERA

JUDGE

23.10.24

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

Plaintiff

Defendant-Absent

Court Assistant - Oigo

