



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

MISCELLANEOUS CIVIL APPLICATION NO. 20 OF 2017

IN THE MATTER OF DISSOLUTION OF PARTNERSHIP

BETWEEN

TINAH ANNAH KHAJEBE.....1ST APPLICANT

JACKLINE SIMBIRO.....2ND APPLICANT

WILLIAM BARASA.....3RD APPLICANT

CHAUSIKU SIMBIRO.....4TH APPLICANT

AND

BONIFACE MAKANGA.....RESPONDENT

RULING

[APPLICANTS' CHAMBER SUMMONS DATED 11TH APRIL, 2017]

1. Tinah Annah Khajebe, Jackline Simbiro, William Barasa and Chausiku Simbiro, the 1st to 4th applicants have brought their chamber summons application dated 11th April, 2017 under sections 1A, 1B and 3A of the Civil Procedure Act, Order 37 Rule 11 of the Civil Procedure Rules 2010 and Article 159 of the Constitution. Boniface S. Makanga is the Respondent. Through the application, the applicants seek orders as follows:

“1. That this matter be certified urgent and be heard ex-parte in the first instance.

2. That the court do issue temporary injunction in the first instance restraining the Respondent from operating the Bar and Restaurant known as New Galana Bar and Restaurant or Galana Bar and Restaurant

3. That the court do grant an injunction restraining the Respondent by himself, servants and or agents from operating the business known as New Galana Bar and Restaurant or Galana Bar and Restaurant pending hearing and final determination of this summons.

4. That the court do order dissolution of the Partnership between the heirs of Khajebe Simbiro, Robert Okoth Skudi and Michael Makenga and the assets of the said partnership to be sold and each family to get their respective share.

5. That the cost of this Application be provided for.”

2. The application is supported by the grounds on its face and an affidavit sworn by the 1st Applicant.

3. The Respondent opposed the application through a replying affidavit sworn on 3rd May, 2017 and grounds of opposition dated 6th June, 2017.

4. The advocates for the parties filed and exchanged submissions on the application and when the matter came up for hearing, they indicated to the court that they were relying on the submissions and were not highlighting the same.

5. Prayers No. 3 and 4 of the application are the ones to be addressed in this ruling. Prayer No. 1 is spent and Prayer No. 4 requires full hearing. I therefore need to be careful so as to fully address the issue of interlocutory injunction without delving into the substance of the matter.

6. The facts that appear undisputed at this stage indicate that Khajebe Simbiro, the father of the applicants, entered into a partnership with Robert Okoth Skudi and Michael Makanga to operate a bar and restaurant business under the name Galana Bar and Restaurant. Michael Makanga is the father of the Respondent. All the partners are deceased. According to the applicants the shareholding was as follows:

- a) Khajebe Simbiro - 64/128
- b) Robert Okoth Skudi - 50/128
- c) Michael Makanga - 14/128

7. The Respondent claims he has bought out the heirs of Robert Okoth Skudi. The shareholding in the partnership and whether the Respondent has bought out the shares of the heirs of Robert Okoth Skudi is not of importance at this stage.

8. The grounds upon which the applicants seek orders injuncting the Respondent from operating the business are that the Respondent has failed to account for the profits of the business and has sidelined the applicants in the running of the business.

9. The Respondent denies locking out the applicants from the business. He avers that he has rendered the accounts of the business. He questions the capacity of the 1st, 2nd and 4th applicants to institute these proceedings stating that some of the administrators of the estate of the deceased Khajebe Simbiro have not been included in this matter.

10. For an injunction to be granted, an applicant must demonstrate that he has an arguable case and will suffer irreparable loss if an injunction is not granted. Where the court is in doubt, it decides the issue on a balance of convenience.

11. Whether or not the Respondent has failed to render accounts for the business is a matter to be determined after a full hearing. There is the question as to whether some of the applicants have the capacity to sue. Although the applicants acknowledge that the partnership was made up of three people, they have completely ignored the estate of the deceased Robert Okoth Skudi in seeking a dissolution of the partnership.

12. The applicants have not explained what they desire to achieve through the injunctive orders. Do they want the business closed? They have not said so. An injunctive order is likely to end up in closure of the business as it is admitted that the Respondent is the one in charge of the business. Such an order will affect the employees of the business and the creditors and debtors of the business.

13. In short no basis has been laid for issuance of orders of injunction. In the circumstances prayers No. 2 and 3 of the applicants' application dated 11th April, 2017 are dismissed. Costs shall abide the outcome of the suit.

14. Before I put down my pen, I want to urge the parties in this matter to explore alternative dispute resolution. Families that have grown and eaten together should not subject their issues to an adversarial dispute resolution mechanism which may end up tearing them apart. However, this court is ready to hear them if they think this is the only way of resolving the dispute.

Dated, signed and delivered at Malindi this 17th day of May, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT