



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 90 OF 2010 (OS)**

**KAHIU KARUGO.....PLAINTIFF**

**VERSUS**

**KAMAU NJIGUA.....1<sup>ST</sup> RESPONDENT**

**MONICA MUTHONI MWANGI.....2<sup>ND</sup> RESPONDENT**

**WAMBUI KAHORERIA.....3<sup>RD</sup> RESPONDENT**

**WAMBUI MUGURU MWANGI.....4<sup>TH</sup> RESPONDENT**

**PRISCILLA WAMBUI NGUGI.....5<sup>TH</sup> RESPONDENT**

**WAMBUGU NJURU.....6<sup>TH</sup> RESPONDENT**

**(all trading as KENDA BOARDING & LODGING)**

**JUDGMENT**

1. This suit commenced by way of originating summons dated 14<sup>th</sup> February 2010. The suit seeks dissolution of the partnership and distribution of its assets proportionate to the shares of each of the partners. Three issues have been flagged out in the summons for determination –

- (a) Whether the parties herein are partners in Kenda Boarding & Lodging;
- (b) Whether the applicant has issued a notice for determination of the partnership;
- (c) Whether the partnership should be wound up, its assets valued and sold and the proceeds thereof shared amongst the partners proportionate to their shares; and
- (d) Whether the respondents should pay costs.

2. The matter was originally filed at the Civil Division of the High Court but was transferred to the Family Division for unclear reasons. I have perused through the pleadings and I do not, with respect, see any issue arising therefrom that would necessitate the matter being handled from the Family Division. Anyhow, I shall proceed to determine the dispute instead of having the parties kicked from one Division of their court to the next.

3. The factual background to the matter is set out in the affidavit in support sworn by the plaintiff on 18<sup>th</sup> February 2010. He avers that he and six others formed a partnership in 1969 which was registered on 16<sup>th</sup> October 1969 by the Registrar of Business Names, and a certificate issued in that behalf. In 1984 the parties entered into another agreement which dealt with how to run the partnership properties. Some of the partners died along the way and were succeeded by their relatives, whose names are set out in the affidavit. The partnership is said to have had acquired the assets listed in the affidavit, which are managed by a firm known as Pinnacle Valuers. He says that he has lost interest in the partnership for reasons that he has given in the affidavit, and as a result he issued a notice to the other partners of his intention to retire. The notice is through a letter dated 12<sup>th</sup> January 2010.

4. There is a reply to the suit. One is by Wambugu Njigua through an affidavit sworn on 22<sup>nd</sup> March 2010. He replies on his own behalf and on that of the other respondents. He states that they are not in principle opposed to the dissolution of the partnership, but accuse the plaintiff

of rushing to court before waiting for the partners to resolve the matter. He states that the partnership had started earlier, in 1964, under a different name, though not registered, and the plaintiff was not among the original partners. He concedes that the partnership owns the assets that are listed in the plaintiff's affidavit. He raises issue of partners in the original arrangement who died before the instant outfit was registered in 1969, and says that they still had interest in the partnership. He also refers to another suit, which he says is still pending, and which is on the same partnership, and argues that the same ought to be consolidated with the instant cause. He proposes that termination of the partnership should be preceded by valuation of the assets, all partners should vacate all the assets that they occupy and that the partners meet and agree on their respective shares.

5. It was directed that the suit be disposed of by means of written submissions. I have gone through the record and noted that the parties did file their respective written submissions, and I have noted the points of law advanced.

6. It is trite law that a partnership automatically determines upon the demise of a partner. It is common ground that several partners have passed on since 1969 when the partnership was registered. It would mean that the partnership as existed in 1969 was wound up a long time ago and what exists today is not the original partnership of 1969. Indeed, the original plaintiff herein died, and had to be substituted. It meant that upon his demise the successor of the 1969 partnership also automatically terminated. It would appear that the original plaintiff did serve a notice of termination of the said partnership.

7. It would appear that the respondents have no objection to the dissolution of the partnership in its current form, but they have raised certain issues. It would appear that the question of who the current partners are is moot. Indeed, it would seem that all the original partners, going by the 1969 and 1984 documents, are deceased. The persons who claim to be partners now are their successors. It would seem also that there are other persons whose names are not in the documents who claim to be partners too.

8. It emerged too that there are other pending proceedings relating to the partnership, between the partners. I called for the court files in respect of those causes so as to peruse them to note their status. The files have not yet been availed to me, I, therefore, have to proceed on the basis of the material before me.

9. Based on what is before me I shall proceed to answer the questions raised in the Originating Summons as follows-

(a) Yes, the parties hereto are partners in Kenda Boarding & Lodging;

(b) Yes, the applicant/plaintiff did issue a notice of termination of the partnership;

(c) Yes, the partnership should be wound up, its assets valued and sold and the proceeds thereof shared amongst the partners proportionate to their shares; and

(d) No, each party should bear their own costs.

10. To facilitate the winding up of the partnership, I shall direct that that the partners shall agree on a common valuer to conduct a valuation of the assets of the partnership as a precursor to the dissolution. This should be done within thirty (30) days of the date of this order. The said valuer shall be remunerated from the income of the partnership. Should the parties be unable to agree on one valuer, then each one of them shall be at liberty to appoint their own valuer at their own expense. The matter shall thereafter be mentioned in court to confirm appointment of a valuer or valuers, and for the court to give further directions.

11. There is liberty, should any party be aggrieved by the orders that I have made herein above, to move the Court of Appeal appropriately within the next twenty-eight (28) days.

**DELIVERED, DATED AND SIGNED at NAIROBI THIS 5<sup>TH</sup> DAY OF OCTOBER, 2018.**

**W. MUSYOKA**

**JUDGE**