



## **Kimani v Ngunju**

**High Court, at Nairobi May 25, 1985**

**Trainor J**

**Civil Case no 599 of 1982**

**May 25, 1985, Trainor J delivered the following Ruling.**

The issue to be resolved is whether the lorry an asset of the partnership, which gave rise to these proceedings, is still the property of the partnership. The issue arose when the defendant, then appearing for himself, claimed that he had purchased the lorry from the finance company which had assisted into purchase by the partnership. As the claim did not appear to be challenged at the time, I decided with considerable hesitation by reason of the defence that was filed, to have the matter tried as an issue, and decided.

I have heard the evidence of the defendant, most of it irrelevant, and there is no doubt that the lorry, was and still is the property of the partnership. The defendant took, possession, or directed his brother, to possession of the lorry from the plaintiff in February 1980 before the finance company repossessed it. At the time the finance company did so, there were Kshs 60,000 arrears of instalments and when they were paid the lorry was returned to the defendant. There was no bona fide sale by the finance company or all the arrears of instalments were paid, and it is immaterial by whom, and the vehicle was returned to one of the partners the defendant. What I have decided is based on the evidence of the defendant and I do not wish to hear the plaintiff as I said the lorry is the property of the partnership to be dealt with by the receiver when he assumes office either by consent of the parties or in default, by order by the court.

**MAY 25 1985 BY CONSENT:**

1. Messrs Githitu Mukonya & Co certified Public Accountants and Messers Theuri & Co. Accounts are hereby appointed receivers of the partnership property.
2. The parties hereto will forthwith hand over to the receivers all books of account (if any) and all assets (if any) or anything whatever in their possession belongs to the partnership.
3. The receivers forthwith will proceed to realise the assets of the partnership, including the lorry, and the parties hereto will do everything they can to expedite the realisation, including the signing of the forms necessary for the transfer of the lorry to any purchaser.
4. The costs of the receivers to be paid equally the parties.
5. On the realisation of the assets of the partnership the receivers will discharge all debts (if any) due by it subject to their costs having been paid by the parties, distribute the balance in the proportion in which the parties contributed to the partnership funds.
6. Either party to have liberty to apply.
7. The costs incurred by the plaintiff in instituting these proceedings, and the costs incurred by the defendant in appearing thereto shall be recoverable from the net assets realised, but the costs incurred by the plaintiff, by reason of the defendant serving, and filing a defence, up to and including today's hearing shall personally be borne by the defendant.