

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1965 OF 1979

KARANJA AND 18 OTHERSPLAINTIFF

VERSUS

KANYUIRA AND ANOTHER.....DEFENDANT

RULING

This is a suit filed by nineteen individuals eighteen of whom are described as businessmen and one as the personal legal representative of a deceased person and a body described as a firm against two other individuals. The plaintiff alleges that the first nineteen plaintiffs and the two defendants being twenty one persons in all on April 8, 1953, agreed to form an association then known as Nyagatugu and Kirimiga; that the objective of the association were to acquire and develop properties and carry on businesses in Nairobi; that subsequently the association acquired some seven plots and that the original capital contributed by the members being Kshs 27,550 was to be and was used to acquire plot No 209/2705 Kariokor and other plots. There are other averments in the plaintiff but I do not need to set them out for the purposes of this ruling.

When the case came up for hearing, learned counsel for the plaintiffs gave an outline of his case. The learned counsel for the defendants then took as a preliminary objection a point that he has raised in his pleadings: he said that as there were nineteen plaintiffs and two defendants who allegedly formed the alleged association, the said association was illegal as its members exceeded the statutory limit of twenty persons under the Partnership Act. In support of this contention, he cited the case of *FortHall Bakery Supply Co v Frederick Muigai Wangoe* [1958] EA 118.

In that case it was held that as the association therein was not registered as a company under the Companies Act or formed in pursuance of some other Act or letters patent, it could not be recognized as having any legal existence; there was therefore no party to maintain the action in the suit and consequently the action was ordered to be struck out with no order as to costs.

In response to this objection, Mr Kamau sought to distinguish the present case by alleging that the claim herein is not derived from the association but from the individuals themselves. I have perused the pleadings carefully and with respect I fail to see the distinction sought to be drawn.

In the result, I hold that the preliminary objection succeeds. The suit is hereby struck out with no order as to costs.

Dated and delivered at Nairobi this 30th day of July , 1982.

J.R.O MASIME

JUDGE