



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION)
AT MILIMANI LAW COURTS, NAIROBI
CASE NO E057 2024(O.S)

**FLORENCE NJOKI KIGO the Administrator of
the Estate of JOHN NDUATI KARIUKI(DECEASED).....**

APPLICANT

-VERSUS-

JOHN MUCHENE WANJIKU MOSES MUKURIA MUCHENE

the Administrator of the Estate of JOHN MBURU

KAGO(DECEASED)...1ST RESPONDENT

MOSES MUKURIA MUCHENE 2ND

RESPONDENT

JUDGMENT

Jurisdiction

Pleadings

The applicant filed an originating summons application dated 29th August 2024 in her capacity as the estate administrators of John Nduati Kariuki, seeking for orders to have a partnership dissolved, which partnership was created as between the estate of John Mburu Kago the 1st respondent and Moses Mukuria Muchene the 2nd respondent over L.R

DAGORETTI/WAITHAKA/.

Prayers in the application

1. THAT the partnership created by JOHN NDUATI KARIUKI(DECEASED), JOHN MBURU KAGO(DECEASED) and MOSES MUKURIA MUCHENE over L.R DAGORETTI/WAITHAKA/32 be and is hereby dissolved.
2. **THAT** the shares of the Partnership be determined and shared as between the 3 partners as indicated in the Certificate of Title of L.R DAGORETTI/WAITHAKA/32 and the share of JOHN NDUATI KARIUKI(DECEASED) be transferred to the Applicant as the administrator to hold for and on behalf of the deceased's estate.
3. **THAT** such other or further order as the Court deems fit in the interest of justice.
4. **THAT** the costs of this suit to abide the cause

The grounds for the application were laid out in the supporting affidavit sworn by the applicant dated 29th August 2024 where she deponed that the estate she represents entered into partnership with the estate of the John Mburu and Moses Mukuria Muchene the respondents evidenced by attaching the certificate of title. That she came to discover that the respondents were trying to subdivide the partnership into 5 smaller portions NAIROBI/BLOCK 202/1527, NAIROBI/BLOCK 202/1528, NAIROBI/BLOCK 202/1529, NAIROBI/BLOCK 202/1530 & NAIROBI/BLOCK 202/1531 and of which 2 had already been transferred to strangers and leaving out 3 portions in the partner's names.

She deponed that she has tried to have the shares belonging to the estate of John Nduati Kariuki(deceased) transferred to the estate for purposes of administration as but the efforts have been frustrated by the respondents

and hence cannot have the same form part of the estate unless the partnership is dissolved and each partner retains their contribution in the estate as per the certificate of title.

The respondents were served but did not enter appearance as evidenced by the affidavit of service sworn by Jacob Mutia dated 23rd July 2025.

The hearing of the application was slated on the 29th July 2025 and the respondents having being served did not attend and the matter was set for judgment and the applicant asked to file submissions

Applicant's submissions

The applicant submitted that on behalf of the estate of JOHN NDUATI KARIUKI(DECEASED) she desired to have the partnership dissolved and have each partner get their contribution of shares to L.R DAGORETTI/WAITHAKA/3 as evidenced by the certificate of title.

That the deceased JOHN NDUATI KARIUKI(DECEASED) held 73/95 share of the partnership property, DAGORETTI/WAITHAKA/32(NOW NAIROBI/BLOCK 202/1527, NAIROBI/BLOCK 202/1528, NAIROBI/BLOCK 202/1529, NAIROBI/BLOCK 202/1530 & NAIROBI/BLOCK 202/1531) and seeks to have the same transferred to her as the administrator of the estate of JOHN NDUATI KARIUKI(DECEASED)to hold for and on behalf of the estate.

She submitted that the demise of 2 of the Partners c dissolved the partnership and what was needed was for the dividing of the shares held in L.R in DAGORETTI/WAITHAKA/32DAGORETTI/WAITHAKA/32.

She relied on Section “37 (1) of the Partnership Act and the case law

**Sultanali P. Molu & another v Kenya Railways Corporation & another
[2002] KEHC 1206 (KLR)**

The matter is clearly uncontroverted the respondents having failed to enter appearance and file any response.

I have gone through at the case law relied on by the applicant that is

**Sultanali P. Molu & another v Kenya Railways Corporation & another
[2002] KEHC 1206 (KLR) and the court stated as follows**

And in section 46 of the Partnership Act Chapter 29, there is a suggestion that in case of death of a partner, then remaining partner can continue with the business and the estate of the deceased partner will have a share of the profits made. My understanding is that for the purposes of the transactions already started before the partner died, the remaining partner can complete them. In this case, the estate of the deceased 2nd plaintiff has made it clear that it is not interested in the partnership business any more. There was a property which is the subject of this suit. I do not see how the remaining partner cannot continue with the case involving that property as it is a transaction that was started during the partnership. In my humble opinion to accept the suggestion that the suit has abated because one partner died would result into absurdities as it could mean in effect that where two partners are suing for what they conceive to be theirs or are being sued for what another person conceives to be his then any time one of the partners dies that is the end of the suit as it abates. It would make it an extreme risk doing any business with a partnership.

I do feel that even after the death of a partner, the remaining partners would continue by way of winding up the partnership, with transactions into which they were involved with third parties.

Being guided by the above case law and the provision in the partnership Act, the applicant as the administrator of the deceased's estate is not keen on pursuing the partnership and having produced a certificate of title pointing to the shares contributed by each partner, there is no reason why the estate should be tied to a partnership it no longer wants to be part of.

Determination:

The applicant has established valid grounds for the dissolution of the partnership and the application is merited and the same is allowed as prayed.

Costs awarded such that each party will bear its own costs.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **22nd** day of **January, 2026.**

MOHAMMED N. KULLOW
JUDGE

Judgment delivered in the presence of: -

No appearance.....for the Applicant

No appearance..... for 1st Respondent

No appearance..... for 2nd Respondent

Philomena W...... Court Assistant

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