

**MISCELLANEOUS CAUSE No.44 OF 2023**

- 1. MAGOLOLO AMOS**
- 2. MAGOLOLO MUTESI FIONA**
- 3. MAGOLOLO IVAN :::::::::::::::::::::::::::::::::::::: APPLICANTS**

## VERSUS

**NENA TABITHA :::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE LUBEGA FAROUQ**

## RULING

## 1. Introduction

1. **Introduction**
2. This application was brought by way of chamber summons under the provisions of section 98 of the Civil Procedure Act Cap 71, section 37 (d), (e) & (f) of the Partnership Act, 2010 and Order 30 Rule 9 & 11 of the Civil Procedure Rules SI 71-1 for orders that;
  - (a) the Respondent, MS Nene Tabitha be struck off the partnership of Rainbow High School and be paid her entitlements duly and properly monetized,
  - (b) the remaining partners that's; 2<sup>nd</sup> and 3<sup>rd</sup> Applicants be allowed to cede their shares to the 1<sup>st</sup> Applicant Amos Magololo,
  - (c) the partnership of Rainbow High School be dissolved and the business be reborn as a sole proprietorship of the 1<sup>st</sup> Applicant Amos Magololo and
  - (d) Costs of this application be provided for.

### 3. Background

3. **Background**
4. The 1<sup>st</sup> Applicant in the year 1994, together with Bahaya Martin established a secondary school under the name of Rainbow High School in Budaka District for which he subsequently enlisted the rest of Applicants and the Respondent into the venture for the purpose of causing social and economic development in the community but also improving the family welfare.
5. On the 27<sup>th</sup> June 2005, the parties herein executed a partnership deed, which was duly amended on the 8<sup>th</sup> August 2018, for the purpose of operating the said secondary school. It is however alleged that the Respondent acted in a manner that is detrimental and or prejudicial to the ordinary operations of the partnership business because she has violated various provision of the said partnership deed which has caused the current

heavy debt burden on the partnership business. The Applicants contended that it is just and equitable for the partnership to be dissolved.

6. This application was supported by the affidavit of 1<sup>st</sup> Applicant **MAGOLOLO AMOS** where he averred that being a professional secondary teacher, he established Rainbow High School, Budaka in 1994 as a partnership business with him being the majority shareholder with 80% share capital. He however later, found it prudent to bring in the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants, his children as shareholders with each holding 5% shares as well as the Respondent his former wife, with a percentage of 10% though not yet paid for;
7. Unfortunately, in August 2020, the 1<sup>st</sup> Applicant's marriage with the Respondent became impracticable and they are now involved in divorce proceedings before this court which made both of them to live separate lives hence, putting the fate of the partnership in danger due to the Respondent's refusal to act in the best interest of the business. That in spite of the 1<sup>st</sup> Applicant's diligent efforts to reach out to the Respondent to act in the best interest of the partnership, she has refused, thereby causing paralysis in the business;
8. Following the aforementioned misunderstandings between the 1<sup>st</sup> Applicant and the Respondent, the Applicants filed a notice of cessation of business and notice of change in particulars registered with the Uganda Registration Service Bureau but the same were rejected because the Respondent had not endorsed her signature thereon;
9. The 1<sup>st</sup> Applicant added that the partnership business has been offered loans by Post Bank to redeem its financial situation, but the same have still failed due to the Respondent's refusal to sign the resolution to borrow in order to resolve the current crisis.
10. The 1<sup>st</sup> Applicant further averred that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants agreed to cede their shares to the 1<sup>st</sup> Applicant as their father and also resolved to cause the partnership business to be reborn as a sole proprietorship for the 1<sup>st</sup> Applicant.
11. This application was opposed by the affidavit of the Respondent **NENA TABITHA** where she averred that the Respondent and the 1<sup>st</sup> Applicant granted a power of attorney to the partnership business to borrow, Ugx. 536,970,000/= which was secured by our aforementioned tenancy in common land and indeed the 1<sup>st</sup> Applicant processed the loan and it was advanced but he has never accounted for the same;
12. She contended that as a spouse and as well as a partner, the Respondent has been gainfully employed by the partnership business, committed to the



- upbringing of their children, ensuring that the partnership business flourishes, advising the 1<sup>st</sup> Applicant and conducting general family care, but the said allegations about her are ingenious creations of the 1<sup>st</sup> Applicant meant to defraud and cheat the Respondent of her entitlement in the commonly owned property and shares in the Partnership business as a spouse;
13. Following the above, the Respondent averred that it is just and equitable that the status quo be maintained, for the convenience of all parties.
  14. The Respondent added that where the partnership business is situated which is LRV 3453 Fol. 10, Plot 416, Block Budaka and FRV 1466 Fol. 21, Plot 741 is property held as tenancy in common between the 1<sup>st</sup> Applicant and the Respondent and it will therefore be unjust, oppressive and greedy for the 1<sup>st</sup> Applicant to purchase her equal interests
  15. The Respondent also attached a counterclaim to her affidavit in reply which is against the 1<sup>st</sup> Applicant herein for misapplication of Ugx 536.970.000/=, an order for extinction of his shares because of such dishonesty dealings with the partnership business, a declaration that property situate on FRV 1466 Fol. 21, Plot 741, Block 2 is commonly owned by 1<sup>st</sup> Applicant and the Respondent.
  16. This application was rejoined by the affidavit of the 1<sup>st</sup> Applicant **MAGOLOLO AMOS** where he averred that he will raise preliminary objections to the effect that the Respondent's affidavit in reply is fundamentally incurably defective since it is riddled with fundamental falsehoods and that the counterclaim embedded in the Respondent's affidavit in reply is instituted irregularly and contrary to order 8 of the Civil Procedure Rules which renders the entire reply fundamentally defective for which this court will be moved to have the same struck out with contempt;
  17. The 1<sup>st</sup> Applicant further reiterated his averments and added that in order to increase the income base of the partnership business, the other partners and the 1<sup>st</sup> Applicant on 28<sup>th</sup> September 2018 resolved to seek credit to the tune of UGX 750,000,000 from Post Bank to undertake the development of infrastructure of the partnership business and it was secured using property of the partnership comprised in Leasehold Register Volume 3453 Folio 10 described as Plot 416 Budaka and Freehold Register Volume 1466 Folio 21 described as Plot 741 Budaka;
  18. However, there was already a running loan by the same partnership totaling to UGX 117,214, 869/= which was deducted to settle the said loan. He said that the bank further deducted other processing charges and also reversed the advance of UGX 100,000,000/= all totaling to a monetary sum

of UGX 239,977,169/= including the aforesaid outstanding loan and the sum received was therefore UGX 410,022,83 1/=;

19. The 1<sup>st</sup> Applicant also averred that the partnership business has been financing the said loan facility in accordance with the loan agreement however, due to Covid19 lockdown they were unable to finance the loan obligations and thus the accumulation of the arrears over the loan sum and the bank has on several occasions threatened to foreclose the partnership property in order to dispose of the same to recover the loan sum which currently stands at UGX 434,121,213/= but the Respondent has been uncooperative as she has deliberately declined to be a party to any of the partnership business despite several invitations, she has remained unbothered and uninterested;
20. That the Applicants have held several meetings with a view of determining how to settle the outstanding obligations and reached a resolution to obtain credit to invest in the business and settle the outstanding dues but the said resolutions have not been implemented because of the Respondent's refusal to get involved in the affairs of the partnership and as a matter of fact several persons are intending to extend credit to the partnership on condition that the consent of the Respondent has to be attained first which she has declined;
21. That due to the foregoing, it is evident that the partnership business is no longer sustainable as the Respondent is no longer willing to be party to the partnership affairs, hence, the resolution that the partnership be dissolved and the assets be computed together with the losses;
22. The 1<sup>st</sup> Applicant contended that the resolution to dissolve the partnership is to prevent further accumulation of debt or further liability on the part of the partners.

23. **Legal representation**

24. Counsel Masanga appeared for the Respondent while counsel while the Applicants were represented by Nangulu & Mugoda Advocates.

25. **Submissions**

26. At the hearing of this application and in the presence of counsel for the Respondent, both counsel were given schedules within which to file their respective written submissions for which counsel for the Applicants complied but counsel for the Respondent failed.



27. **Submissions by Counsel for the Applicants**

28. Counsel submitted that the counterclaim was irregular and rendered the entire affidavit in reply fundamentally defective.
29. He submitted that the Respondent, by her persistent conduct, she has made it practically impossible for the partnership to effectively do business and as such they said business is in paralysis and may collapse if this court does not use its inherent power to alter the status quo.
30. Counsel argued that the Applicants have filed a notice of cessation of business, but the registrars at URSB have directed that the Respondent must append her signature to the documents executed, which the Respondent has refused to do, thereby causing paralysis in partnership business and it is the reason the orders sought ought to be granted.

31. **Analysis of court**

32. I have looked at the court record and noted that the 1<sup>st</sup> Applicant raised three objections challenging the form in which the affidavit in reply was brought. The Respondent on the other side also raised a preliminary objection against the legality of Application. However, in the interest of justice, I will ignore all the irregularities therein and consider the application on its merits as below-
33. The 1<sup>st</sup> Applicant in his submissions raised four issues for this court's determination and these include-
- (a) Whether the Respondent is guilty of such conduct which is prejudicial to the carrying on of the business?
  - (b) Whether the Respondent has acted in breach of the partnership deed or in such manner that it is reasonably impracticable to carry on business with her?
  - (c) Whether circumstances have arisen justifying the dissolution of the partnership?
  - (d) What remedies are available to the parties?
34. Counsel for the 1<sup>st</sup> Applicant argued the first two issues together and the rest were argued separately. This court will follow the same format.

**Issue No. 1:** *Whether the Respondent is guilty of such conduct which is prejudicial to the carrying on of the business?*

**Issue No.2:** *Whether the Respondent has acted in breach of the partnership deed or in such manner that it is reasonably impracticable to carry on business with her?*

35. For proper understanding of this matter, I will define a partnership. Section 2 (1) of the Partnership Act, 2010 defines a partnership as a

*relationship which subsists between or among persons not exceeding twenty in number, who carry on business in common with view of making profits.*

36. It follows therefore, that in order for a partnership to be in existence and operation there must be a business carried on by the partners and in this case Rainbow High School. (See also section 3 on rules for determination the existence of partnership).

37. Clause 8 of the partnership deed for Rainbow High School provides for the duties of partners in the business and paragraph (ii) of Clause 8 states that-

*"Each partner shall devote maximum attention to the partnership business and inform the other partners of any event that may be intended to affect the business of the partnership in an adverse state."*

38. Under paragraph 13 of the affidavit in reply, the Respondent averred that-  
*".....as the partner, I have been gainfully employed, committed to .....ensuring that our partnership business flourishes...."*

39. However, contrary to the above, the 1<sup>st</sup> Applicant under paragraph 13 of his affidavit in rejoinder averred that-

*"The Respondent has been very uncooperative as a partner and she has not been able to attend any of the partnership meetings and has deliberately declined to be a party to any of the partnership business. Despite several invitations, the Respondent has remained unbothered or uninterested."*

40. In **DFCU Bank Ltd V. Ndibaza Naima & Anor, Civil Suit No. 80 of 2012**, it was held that-

*"breach of contract arises where the act which is complained of is a breach of duty arising out of the obligations undertaken by the contract".*

41. In the present case, although the 1<sup>st</sup> Applicant allege that the Respondent's conduct is in breach of the terms of the partnership deed, there is no evidence to prove the same, since no correspondence was attached to prove that the Respondent was invited for any partnership meeting as required by clause 16(iii) of the partnership deed for Rainbow High School.

42. Section 101 (1) of the Evidence Act Cap 6 provides that-

*"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist".*

43. Section 101 (2) of the Evidence Act further provides that-

*"When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*



44. Therefore, the Applicants having failed to prove that the Respondent was invited for a partnership meeting and she refused to attend, this court is not persuaded to believe that the Respondent's conduct is prejudicial to the partnership or acted in breach of the partnership deed in any way as alleged.
45. Issues No.1 and 2 are answered in the negative.

46. **Issue No.3: Whether circumstances have arisen justifying the dissolution of the partnership?**

47. According to the partnership deed which is the legal document binding the parties, attached thereto as annexure 'A' to the affidavit in support, the partners did not envisage including a clause on dissolution of the partnership in their deed.

48. However, section 37 of the Partnership Act, 2010 provides for circumstances under which court can dissolve a partnership, and of interest to this court, is paragraph (c) and (d) which are to effect that-

*"(a) when a partner is shown, to the satisfaction of the court, to be of permanently unsound mind, in which case the application may be made on behalf of that partner by his or her guardian ad litem or next friend or person entitled to intervene as by any other partner;*

*(b) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his or her part of the partnership contract;*

***(c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of a court, regard being had to the nature of the business, is calculated prejudicially to affect the carrying on of the business;***

***(d) when a partner, other than the partner suing, willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself or herself in matters relating to the partnership business, that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him or her;***

*(e) When the business of the partnership can only be carried on at a loss; or*

*(f) Whenever, in any case, circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved. (The highlighted emphasis is mine)"*

49. In view of the above, under paragraph 12, 13 & 15 of the affidavit in rejoinder the 1<sup>st</sup> Applicant averred that due to business constraints, the school has been unable to settle teacher's salaries and is further indebted to several suppliers which debts continue to accrue interest against the partnership. That several meetings with a view of determining how to settle the outstanding obligations and resolutions have been reached to obtain

credit to invest in the business and settle the outstanding dues but due to the Respondent's refusal to get involved in the affairs of the partnership, that the partnership cannot get out of its debts since all persons intending to extend to the partnership credit need the Respondent's consent.

50. According to the Respondent, she has always ensured that their partnership business flourishes. Which means she was participating in the management of the partnership business. Therefore, to rebut the Respondent's allegations, the Applicants were under a duty to prove to this court how the Respondent's conducts have affected the proper running of the partnership business, something which they have failed to do.

51. Issue No.3 is accordingly answered in the negative

52. **Issue No. 4: What remedies are available to the parties?**

53. The Applicants in the notice of motion prayed among other prayers that the partnership of Rainbow High School be dissolved and the business be reborn as a sole proprietorship of Mr. Amos Magololo, the 1<sup>st</sup> Applicant.

54. Section 37 of the Partnership Act, provides for circumstances under which court can dissolve a partnership, however, as already discussed in this ruling, the Applicants have not proved those circumstances to require this court to exercise its powers in this regard.

55. The Applicants further prayed that the Respondent be struck off the Partnership of Rainbow High School. Clause 9 of the partnership deed provides for circumstances under which a member of the partnership can cease to be a partner and these include-

- (a) a partner voluntarily offers to resign in writing or by court order
- (b) Mental in-capacity of a partner
- (c) Death of a partner
- (d) Partner changing citizenship
- (e) When 2/3 majority of partners pass or resolution terminating partner's membership to the partnership

56. In the case before this court, none of the above circumstances have been proved by the Applicants to exist, in order for this court to exercise its mandate.

57. The above notwithstanding, it is pertinent to note that among the duties partners owe each other includes; the duty to serve, the duty of loyalty, the duty of care, the duty of obedience, the duty to inform copartners and the duty to account to the partnership. Partners working for the common good of their business should work to archive the said duties.



58. Following the above reasoning, and in the interest of justice, this court has made the following orders-

- (a) This application is dismissed.
- (b) The 1<sup>st</sup> Applicant/the chairperson of the partnership shall account to all partners on how the finances of the partnership are used and how the partnership business is managed once every year.
- (c) The Respondent shall attend all the partnership meetings upon notice and actively involve herself in the management of the same.
- (d) Costs of this Application are awarded to the Respondent

I so order

.....  
**LUBEGA FAROUQ**  
**JUDGE**

**16<sup>th</sup>/04/2024**