**Kinini v Kiganjo**

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 4 December 1974

**Case Number:** 43/1974 (2/75)

**Before:** Spry Ag P, Law Ag V-P and Musoke JA

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**Appeal from:** High Court of Kenya – Chanan Singh, J

*[1] Partnership – Action – Receiver – May be appointed even when partnership denied – Principles.*

*[2] Equity – Receiver of partnership property – Principles on which appointment made.*

**Editor’s Summary**

The respondent claimed that a partnership existed between himself and the appellant. He applied for the appointment of a receiver of the property of the alleged partnership. On the application the judge decided that there was a partnership, and that a receiver should be appointed. On appeal the appellant submitted that no receiver can be appointed when the partnership is denied.

**Held** –

(i) the denial of a partnership is only one factor to be taken into account and does not of itself

preclude the appointment of a receiver (*Floydd v. Cheney* (4) followed; *Norway v. Rowe* (1) and

*Rock v. Mathews* (2) not followed);

( ii) the judge should not have decided on the application that there was a partnership;

(iii) the judge should have decided whether there was a reasonable probability that a partnership

existed;

(iv) on the facts no such probability was shown;

(v) no evidence of irreparable damage had been produced.

Appeal allowed.

**Cases referred to Judgment:**

(1) *Norway v. Rowe* (1812), 34 E.R. 472.

(2) *Rock v. Matthews* (1848), 64 E.R. 102.

(3) *Tate v. Barry* (1928), 28 S.R. (N.S.W.) 380.

(4) *Floydd v. Cheney*, [1970] Ch. 602.