OUTLINE

INTRODUCTION

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Three issues;

- Whether Mwakyoma has any genuine claim against the firm.
- Whether the answer would have been different if the subject matter of the demand was an advance from Mwakyoma to the firm.
- Whether Mwangwale can be paid by the firm.

CONCLUSION

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INTRODUCTION

In attempting this question the definition of the key terms founded in the scenario will be provided, the centre of the question by raising three issues whereby the answers for the same will provide for the solution of this task.

According to Oxford Advanced Genie the term partner means one of the people who own a business and shares profits.

The law of contact Act defines partnership as the relationship which subsists between persons carrying on the business in common as defined with a view of profit. Persons who have entered in to partnership with one another are called collectively a firm[1].

According to Judicial dictionary, a partnership is the relation which subsists between persons who have agreed to combine their property, labour or skills in some business and to share the profits thereof between them[2].

As the demand of the question the following issues are raised .

(i) Whether Mwakyoma has any genuine claims against the firm.
(ii) Whether the answer could be different if the subject matter of the demand is an advance by Mwakyoma to the firm.
(iii) Whether Mwangwale can be paid by the firm.

As per the definition of the partnership, Mwakyoma is a co- partner to the firm. Section 194[3](a) provides that every partner has a right to take part in the management of the partnership business. According to Oxford Advanced Genie Dictionary (supra) management means the people who run and control a business or similar organization. this is to say the provision above empowered Mwakyoma to run and control the business including purchasing whenever necessary. The authority of partners as stated in the book of Abbott K.R and N.Pendlebury[4]. Is inter alia that a partner has an implied authority of buying and selling goods in the account of the firm.

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[1] Law of Contract Act (Cap 345 R.E 2002)
[2] K.J.Aiyar (2001) Judicial Dictionary, p 720.

[3] Law of Contract Act (supra)
[4] K.R.Abbott and N.Pendlebury(1996) Business Law, p 38.

However **section 194(b)**[5] **of Cap 345**(supra) provides that… but no change may be made in the nature of the partnership business without the consent of all existing partners. In the scenario there for Mwakyoma acting under the power conferred to him under sub section a. above ordered timber from Finland a very unusual activity of the firm. This firm does not deal with timber and so the act of Mwakyoma to order timber without the consent of his co- partner amount to change in nature of the partnership and hence it contravened the provision of **section 194 (b) of Cap 345** (supra)

In **Florent Lugarabamu v. Hassan Maige Goronga**[6] Nyalali C.J, Makame and Omari JJ.A held that *"… the partnership has been tainted by the illegality arising from the failure to comply with the requirements of the law and no partner can enforce a right under this tainted partnership."*

Therefore with regards to the provision of the law under section 194(b) Cap 345 (Supra) and the position of the court it is obvious that the act of Mwakyoma to order timber which is very unusual activity of the firm without consent from his co- partner contravened the law governing partnership and therefore no claim of rights can be founded therefrom.

In respect to second issue that is **whether the answer could be different if the subject matter of the claim was an advance to the firm,** this issue is answered affirmatively. The law provides that the firm must indemnify every partner in respect of payment made and personal liability incurred by him in the ordinary and proper course of the business for the firm, and in or about anything necessary done for the preservation of the business or property of the firm. This is provided for under section 194 (f) (i) and (ii) of Cap 345 (Supra)

Therefore in case of advance made by Mwakyoma to the firm that there must have consent between the co- partners and such advance is presumed to be for the welfare of the firm and without prejudice, such personal liability must be indemnified by the firm.

In respect to the third issue:

Whether Mwangwale can be paid by the firm, **Abbott K.R**. in his book titled **Business Law** (Supra), commented that every partner is

[5] Op cit
[6] [1988] TLR 243 CA

argent of the firm and there fore has implied authority to bind the firm by transaction entered by him in the ordinary course of business. This is also provided under section 201(1) of Cap 345 (supra). An outsider who contracts with a partner within the scope of the implied authority may treat the firm as bound despite any restriction on the authority of that partner to which the partners have agreed.

This abstract is supported by the provision of the law under 202 of Law of Contract Act (Supra), that an act executed in the firm name by any person thereto authorized whether a partner or not is binding on the firm and all the partners.

In the case of **Merchantile Credit limited v. Garrod**[7]. In this case **A** and **B** were partners in a firm which let garages and repair cars the partners agreed expressly to exclude buying and selling cars. Without **B**'s knowledge '**A**' acting without the owners consent sold a car to the plaintiff without having title .The plaintiff claimed his money back and **A** had non. **B** was held liable.

Mwakyoma acting as an agent of the firm contracted with Mwangwale to transport to his firm, that fact made the firm liable to pay for such service. The fact that the goods were unusual activity of the firm can not exonerate the firm from such liability taking in to account that such fact were unknown to Mwangwale. Therefore the firm is liable to pay for that service.

CONCLUSION

The law on partnership provides clearly the circumstances upon which partners' act may bind the firm. It also explains to when the acts of partners may not bind the firm all depend on the circumstances of each case. This scenario has tried to cover some of theme. Mwakyoma can claim nothing from the firm where as Mwangwale is entitled to be paid for the service rendered to the firm although the service involved unusual activity of the firm.

[7] [1962] 328

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