



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL CASE NO. 729 OF 2010**

**WHITE HORSE INVESTMENTS LIMITED ..... PLAINTIFF**

**-VERSUS-**

**THUITA KIIRU WAINAINA ..... 1ST DEFENDANT**

**PAUL WAINAINA KIMANI ..... 2ND DEFENDANT**

**RULING ON DIRECTIONS**

1. When this case came up for hearing on **4th October 2018**, issues were raised, more particularly by the 2nd defendant, which necessitated me to peruse this file in detail to be able to give directions.

2. On perusal I noted that no less than 3 separate directions have been given in this matter by 3 separate judges, on how this matter should proceed. For clarity I shall refer to those directions.

3. On **11th May 2012**, **Justice D. Musinga** (as he then was) directed as follows:

*“a. The 2nd defendant should serve the third party notice upon all the third parties forthwith.*

*b. The third parties, in the event that they intend to contest the third party proceedings commenced against them by the 2nd defendant, should enter appearance and file their respective defences within 15 days of service.*

*c. The plaintiff, the defendants and the third parties should file their witness statements and bundle of documents, if any, by 4th June, 2012.*

*d. Pre-trial conference shall be on 8th June, 2012 after which a hearing date shall be fixed.*

*e. If by then the defendants or the third parties shall not have filed their respective documents as stated hereinabove, only the plaintiff's claim against the defendants shall be fixed for hearing.”*

4. On a subsequent occasions that is, on **11th June, 16th July** and **16th November 2012**, **Justice Musinga** directed that the hearing of this case do proceed as between the plaintiff and the defendants. On **17th January 2013**, **Justice Havelock** (as he then was) directed that the hearing of this case between the plaintiff and the defendants should proceed without the participation of the 3rd parties and that if any of the defendants wish to call the 3rd parties as witnesses they may do so.

5. On **17th May 2014**, this case was fixed for hearing between the plaintiff and the defendants but it did not proceed. On that day, **Justice Havelock** directed that the defendants may fix a date for pre-trial conference involving themselves and 3rd parties.

6. On **15th December 2014**, **Justice Ochieng** during a Case Management Conference directed by consent of the parties that the plaintiff and the defendants do file their witness statements and documents.

7. With the above in mind, it becomes abundantly clear that directions have been given previously in this matter by other judges before me and accordingly the most that I can do is to reiterate them by stating that the plaintiff and the defendant's case shall proceed to trial separately from any trial that may proceed between the 2nd defendant and 3rd parties. This being an old case, at the reading of this ruling I shall fix a date for hearing on priority basis.

DATED, SIGNED and DELIVERED at NAIROBI this 31st day of October, 2018.

MARY KASANGO

JUDGE

**Ruling read and delivered in open court in the presence of:**

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendants

MARY KASANGO

JUDGE