



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL DIVISION**  
**CIVIL CAUSE NO. 125 OF 2015 (O.S)**

**IN THE MATTER OF THE NJENGA KARUME TRUST REGISTERED TRUSTEES**

**AND**

**IN THE MATTER OF THE NJENGA KARUME TRUST**

**AND**

**IN THE MATTER OF THE TRUST IN THE WILL OF JAMES NJENGA KARUME  
(DECEASED)**

**BETWEEN**

**ALBERT KIGERA KARUME ..... 1<sup>ST</sup> PLAINTIFF**

**SAMUEL WANJEMA KARUME .....2<sup>ND</sup> PLAINTIFF**

**LUCY WANJIRU KARUME .....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**KUNG’U GATABAKI & MARGARET NDUTA KAMITHI**

**(SUED AS TRUSTEES OF THE NJENGA KARUME TRUST .....1<sup>ST</sup> DEFENDANT**

**THE NJENGA KARUME TRUST REGISTERED TRUSTEED ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**GRACE NJOKI NJENGA KARUME..... 1<sup>ST</sup> INTERESTED PARTY**

**JANE MUKUHI MATU .....2<sup>ND</sup> INTERESTED PARTY**

**TERESIA NJERI KARUME .....3<sup>RD</sup> INTERESTED PARTY**

**RULING**

1. On 17<sup>th</sup> April, 2015, Mbogholi J ordered that the Preliminary Objection by the 1<sup>st</sup> Defendant dated 1<sup>st</sup> April, 2015 and the 2<sup>nd</sup> Defendant's Motion dated 2<sup>nd</sup> April, 2015 be heard on 5<sup>th</sup> May, 2015. On 5<sup>th</sup> May, 2015, the said Objection and Motion could not be heard as the Plaintiffs' had filed a motion on notice dated 30<sup>th</sup> April 2015 seeking to cite certain parties for contempt of the orders made by this court on 26<sup>th</sup> March, 2015 as variously extended.
2. On the said 5<sup>th</sup> May, 2015, the parties addressed the court at length as to which of the applications, between the ones challenging the jurisdiction of this court and the one for contempt should be heard first. After considering the submissions of learned counsel, the court ruled on 6<sup>th</sup> May, 2015 that on the authority of the **Owners of Motor Vessel Lillian "S" –Vs-Caltex (Kenya) Ltd (1989) KLR 1**, the application and objection challenging jurisdiction be heard first. The court directed that the same be heard on 11<sup>th</sup> June, 2015 after exchange of written submissions by the parties.
3. On 20<sup>th</sup> May, 2015, the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties filed an application seeking to bar the firm of Iseme, Kamau and Maema Advocates (IKM) from acting for **DR. FRANCISCA WANJIKU KAHIU**, the 4<sup>th</sup> Interested Party or any of the Trustees for **THE NJENGA KARUME TRUST** or any of the beneficiaries or any interested party of that Trust. That application was certified urgent and was placed for directions as to the hearing on 11<sup>th</sup> June, 2015.
4. On 11<sup>th</sup> June, 2015, Mr. King'ara Learned Counsel for the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties argued that his client's application should be heard in priority to the Preliminary Objection by the 1<sup>st</sup> Defendant as well as the Motion of the 2<sup>nd</sup> Defendant. He submitted that since his clients application had not been filed when the court made the order of 6<sup>th</sup> May, 2015 that the 2<sup>nd</sup> Defendant's Motion and 1<sup>st</sup> Defendant's objection be heard first, that order cannot be a bar to his clients' application being heard on priority; that the issue of the firm of IKM appearing for any of the parties in this case is so crucial that it should be determined first. His submissions were supported by Mr. Munge for the Plaintiffs, and Mr. Wena for the 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Interested Parties.
5. On their Part, Mr. Oraro, Mr. Gatonye and Mr. Karori Learned Counsels for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and 4<sup>th</sup> Interested Party respectively, opposed Mr. King'ara's application to have his client's application heard on priority to the jurisdiction applications. They submitted that the issue of priority having been determined on 6<sup>th</sup> May, 2015, it could not be re-opened; that there was nothing new that had been presented on behalf of the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties to warrant the court re-visiting its order of 6<sup>th</sup> May, 2015 and that the application by the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties was meant to scuttle the intended arguments on jurisdiction.
6. I have considered the submissions of Learned Counsel and the entire record. I have also perused the application dated 20<sup>th</sup> May, 2015 by the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties hereinafter ("the Motion of 20<sup>th</sup> May, 2015"). What the Motion of 20<sup>th</sup> May, 2015 seeks is to bar the firm of IKM from acting for any of the parties interested in the Trust, be it the trustees or the beneficiaries. The application has cited various clauses in the Trust that give grounds for that application. I have also looked at the Preliminary Objection and the Motion dated 2<sup>nd</sup> April, 2015 made on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant, respectively. The latter two (2) only seek to challenge the jurisdiction of this court to entertain this suit.
7. The contention by the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties is that, since the firm of IKM was the drafter of the Trust Deed and has some Interest in the Trust itself, that firm cannot be objective in acting for any of the parties. I have always known that where there are allegations that the appearance of an advocate or a firm of advocates for one of the parties in a litigation is prejudicial to another litigant, a court has to move with dispatch and deal with such allegation to guard against prejudice being suffered by the offended party. This is meant to guard against a law firm, which has

knowledge or information in a matter obtained when acting during the existence of a fiduciary relationship with the parties, from using the same to the advantage of one party against another. Looking at the Motion of 20<sup>th</sup> May, 2015, the same addresses pertinent issues in the Trust itself, while a look at the jurisdiction application and objection shows that the latter two (2) are purely procedural. They do not go to the merits or otherwise of the parties' interests in the Trust.

8. The questions that, therefore, arise for consideration are; what prejudice will the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties suffer if the firm of IKM appeared for the 4<sup>th</sup> Interested Party in the jurisdiction application and objection? Can the filing of the motion of 20<sup>th</sup> May, 2015 amount to a review of the order of 6<sup>th</sup> May, 2015 in which the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties participated fully in the proceedings culminating in that order? What should take priority between barring an Advocate from acting for one party, which will allegedly prejudice a party in those proceedings and the court deciding whether it has jurisdiction in a matter?
9. On the first issue, looking at the Motion of 20<sup>th</sup> May, 2015, the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties have not pleaded or alleged that they will suffer any extreme or any prejudice at all if the court were to decide the issue of jurisdiction first before that Motion. There is nothing that is alleged to be in the knowledge of the firm of IKM that will either add or subtract to the issue of jurisdiction of this court to the prejudice of the 3<sup>rd</sup> and 8<sup>th</sup> Interested Party. The Motion of 20<sup>th</sup> May, 2015 touches on the merits of the Trust itself while the jurisdiction application and objection are about whether this court has power to determine this matter.
10. On the second issue, the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties actively participated in the proceedings that culminated in the order of priority made on 6<sup>th</sup> May, 2015. They are bound by that order. They cannot seek to review, vary and set aside that order through the back door by filing the motion of 20<sup>th</sup> May, 2015. In my view, nothing has so drastically changed from the circumstances prevailing on 6<sup>th</sup> May, 2015 to warrant the varying of that order. The 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties have always known that the firm of IKM had drawn the Trust. Nothing prevented the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties from challenging the *locus standi* of that firm from representing the 4<sup>th</sup> Interested Party before 6<sup>th</sup> May, 2015 or earlier for them to turn around now and say they should be heard first. As to the contention that the 3<sup>rd</sup> and 8<sup>th</sup> Interested Parties were not represented on 6<sup>th</sup> May, 2015 when the order of priority was made, the answer to that is that it was their obligation to seek to know the outcome of the proceedings of 5<sup>th</sup> May, 2015. It is not the obligation of the court to bring to the attention of the parties its decisions if such parties have notice of the decision date.
11. On the 3<sup>rd</sup> issue, Nyarangi JA in the case of **Owners of Motor Vessel Lilian "S" Vs Caltex Kenya Ltd (Supra)**, held at page 14 that: -

***“Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of Law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”***

That pronouncement is the law. No court should depart from it. If this court finally finds that it has no jurisdiction to entertain this matter, on what basis would it have inquired into the locus or otherwise of the firm of IKM appearing for the 4<sup>th</sup> & 8<sup>th</sup> Interested Party? There will absolutely be no basis. The court would have wasted its precious judicial time for no reason.

12. In view of the foregoing, I find that the order of 6<sup>th</sup> May, 2015 still stands. The Objection and jurisdiction application by the Defendants have priority over everything else. Parties should proceed and take dates to dispose of the same. It is so ordered.

Dated and Delivered at Nairobi this 16<sup>th</sup> day of June, 2015.

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**A MABEYA**

**JUDGE**