



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL DIVISION**  
**CIVIL CASE NO. 568 OF 2012**

**VIRGINIA WANGUI MATHENGE.....PLAINTIFF**

**VERSUS**

**AGNES WAIRIMU NJORO.....1<sup>ST</sup> DEFENDANT**

**WAWERU GUANDARU MATHENGE.....2<sup>ND</sup> DEFENDANT**

**RULING**

The court, on the 4<sup>th</sup> July, 2013 made the following orders:-

- 1) That an audit of the firm of Mathenge & Muchemi, Advocates, at the time of his death shall be taken forthwith, a list of assets (including any accrued but not yet recovered fees for work already done), and also to include the debts of the firm (including monies owed to clients).
- 2) That the audit shall be taken by an accountant to be agreed upon by the parties or in the absence of such agreement, to be appointed by the court.
- 3) That the audit shall be filed in court within 30 days of the day the accountant is appointed.
- 4) That the audit fees shall be paid equally by the three parties, but the same shall be recovered from the Estate of the deceased.
- 5) That costs of the application be in the cause.

By 19.7.2013 the Plaintiff and the 2<sup>nd</sup> Defendant had agreed on the firm of Wachira Irungu & Associates, Certified Public Accountants to so appointed. The 2<sup>nd</sup> Defendant who had been contacted and had all the relevant information on the issue, however, kept silent and did not attend court that day as expected. The court then directed that the Plaintiff had to file this formal application to enable the court to do the relevant appointment from the names to be submitted by the parties. The court showed inclination to appoint the firm of Wachira Irungu & Associates, Certified Public Accountants, whom the Plaintiff and the 1<sup>st</sup> Defendant had chosen for such appointment.

The 2<sup>nd</sup> Respondent/Defendant prefers the firm of William L. Wachira & Company who had been handling the relevant firm's accounts all along, a basis upon which the Plaintiff and the 2<sup>nd</sup> Defendant rejected the firm from appointment. They argued that the firm, having all along been entangled with the relevant firm's affairs, cannot presently be suited to do the job without prejudice and with independence.

I have carefully considered the issues raised above. I am in agreement with the view that the firm of William L. Wachira & Company, is unsuitable as it may not be independent having done the same job all along. There is no need to belabour such point which is obvious even on the basis of mere perception.

I further note that the firm of Wachira Irungu and Associates, originally preferred by the Plaintiff and the 1<sup>st</sup> Defendant, is not among those proposed by them and by the 2<sup>nd</sup> Respondent. It is not necessary to delve into the reasons for their change of mind.

Doing the best I can, I select and appoint the firm of Erastus & Company Certified Public Accountants and Management Consultants to carry out the audit of the firm of Mathenge & Muchemi, Advocates. This will be with effect from the 13<sup>th</sup> January, 2014, for a period of thirty (30) days. The resulting report shall be filed in court on or before the 13<sup>th</sup> February, 2014 before 12 noon. The 1<sup>st</sup> Respondent and any other party involved in the control of any relevant record shall and is hereby ordered to:-

- a) Give full access of the firm of Mathenge & Muchemi Advocates to the appointed Accountant.
- b) Give full disclosure of all physical and electronic documents and records, as well as all relevant information relating to the financial affairs of the firm to the appointed Accountant or auditor, as earlier ordered by the court.
- c) Orders accordingly.

**DATED and DELIVERED** at Nairobi this **19<sup>th</sup>** day of **December, 2014**.

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**D.A. ONYANCHA**

**JUDGE**