



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI COMMERCIAL COURT**  
**CIVIL SUIT NO. 729 OF 2010**

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

**VERSUS**

**THUITA KIIRU WAINAINA .....1<sup>ST</sup> DEFENDANT**

**PAUL WAINAINA KIMANI .....2<sup>ND</sup> DEFENDANT**

**DIRECTIONS**

1. The plaintiff's claim against the defendants is for **Kshs.15 Million** that was paid to them as stakeholder in respect of a sale transaction which did not materialize.
2. The defendants, as advocates for the vendor, were to hold the deposit as stakeholder pending completion of the transaction.
3. Contrary to the terms of the sale agreement, the defendants, without the authority of the plaintiff, the purchaser, released the said sum to the vendor and/or its agents. That is expressly admitted by the 2<sup>nd</sup> defendant in paragraph 8 of his statement of defence where he stated:  
**“The 2<sup>nd</sup> defendant paid out monies to various parties on instructions of the vendor and shall at the appropriate time join the vendor and the various beneficiaries as third parties in this suit for the court to be able to determine who is liable to refund the money herein.”**
4. On 22<sup>nd</sup> December, 2011 the 2<sup>nd</sup> defendant sought leave to commence third party proceedings against Caroget Investments Limited (the vendor) as well as 6 other people.
5. The court granted leave on 15<sup>th</sup> March, 2012 and set the matter for directions on 24<sup>th</sup> April, 2012.
6. On 24<sup>th</sup> April, 2012 none of the defendants or their advocates attended court. Only **Mr. Issa**,

Advocate for the plaintiff, was in attendance.

7. Consequently directions were stood over to 8<sup>th</sup> May, 2012 and Mr. Issa was directed to issue notices to the defendants' advocates.

8. On 8<sup>th</sup> May, 2012 Mr. Issa told the court that he wishes to have the suit between the plaintiff and the defendants heard separately since his client has nothing to do with the issues between the defendants and the 3<sup>rd</sup> parties. He feared that the third party proceedings may unnecessarily delay the finalization of his client's claim against the defendant which, in his view, is a straight forward one.

9. **Mr. Onguto**, who held brief for **Miss Wamaitha** for the 2<sup>nd</sup> defendant, told the court that the 2<sup>nd</sup> defendant had so far managed to serve only 3 of the 7 third parties and sought more time to effect service upon the rest.

10. **Miss Njuguna** for the 1<sup>st</sup> defendant opposed the proposal made by Mr. Issa, saying that the plaintiff authorized the release of the deposit.

11. I do not agree with Miss Njuguna that the plaintiff authorized the release of the deposit or any part thereof to the vendor and/or its agents. The contents of paragraph 8 of the 2<sup>nd</sup> defendant's statement of defence are clear beyond any peradventure.

12. Ideally, the plaintiff's claim against the defendants as well as the defendants' claim against the third parties ought to be heard at the same time so that all these related claims are determined once and for all. However, the court has discretion to direct otherwise, see **Order 1 rule 15 (1) (c)** of the **Civil Procedure Rules**.

13. The court appreciates the fears expressed by the plaintiff that determination of its claim against the defendants may be slowed down by the dispute between the defendants and the third parties.

14. The court is cognisant of a stakeholder's responsibility in a sale transaction and the need to expedite settlement of any claim that may arise between a vendor and a purchaser where the transaction does not materialize for any reason.

15. Bearing all the above in mind, I hereby direct as follows:

**(a) The 2<sup>nd</sup> 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 2<sup>nd</sup> 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 4<sup>th</sup> June, 2012.**

**(d) Pre-trial conference shall be on 8<sup>th</sup> 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.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MAY, 2012.**

**D. MUSINGA**

**JUDGE**

**In the presence of:**

**Alex – Court Clerk**

**Mrs. Kinyanjui for the 2<sup>nd</sup> Defendant**

**Ms. Nduta Njuguna for the 1<sup>st</sup> Defendant**

**No appearance for the Plaintiff**