



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 522 OF 2015**

**IMPERIAL BANK LIMITED**

**(UNDER THE STATUTORY RECEIVERSHIP OF THE  
RECEIVER MANAGER).....PLAINTIFF**

**- VERSUS -**

**W.E TILLEY (MUTHAIGA) LIMITED.....1<sup>ST</sup> DEFENDANT**

**PRIMECATCH (EXPORTS) LIMITED.....2<sup>ND</sup> DEFENDANT**

**MARA FISH PACKERS LIMITED.....3<sup>RD</sup> DEFENDANT**

**J FISH KENYA LIMITED.....4<sup>TH</sup> DEFENDANT**

**VICTORIAN DELIGHT LIMITED.....5<sup>TH</sup> DEFENDANT**

**RUBY RED LIMITED.....6<sup>TH</sup> DEFENDANT**

**VALUE PAK FOODS LIMITED.....7<sup>TH</sup> DEFENDANT**

**FROM EDEN LIMITED.....8<sup>TH</sup> DEFENDANT**

**AQUALITE LIMITED.....9<sup>TH</sup> DEFENDANT**

**ZULFIKAR HAIDERALI JESSA.....10<sup>TH</sup> DEFENDANT**

**NASIR HAIDERALI JESSA.....11<sup>TH</sup> DEFENDANT**

**NARGIS JESSA.....12<sup>TH</sup> DEFENDANT**

**NADIR AZIZALI JESSA.....13<sup>TH</sup> DEFENDANT**

**FIROZ JESSA.....14<sup>TH</sup> DEFENDANT**

SALIM JESSA.....	15 <sup>TH</sup> DEFENDANT
IRFAN SHAMSHADIN JESSA.....	16 <sup>TH</sup> DEFENDANT
NASHIV HAIDERALI JESSA.....	17 <sup>TH</sup> DEFENDANT
MARMO E GRANITO MINES (T) LIMITED.....	18 <sup>TH</sup> DEFENDANT
MARMO MARBLE (U) LIMITED.....	19 <sup>TH</sup> DEFENDANT
FISHWAYS UGANDA LIMITED.....	20 <sup>TH</sup> DEFENDANT

**RULING**

1. The application before me has been made by 7 shareholders;

***ABDUMAL INVESTMENTS LIMITED;***

***IMARAN LIMITED;***

***REYNOLDS & COMPANY LIMITED;***

***EAST AFRICA MOTORS INDUSTRIES LIMITED;***

***MOMENTUM HOLDINGS LIMITED;***

***REX MOTORS LIMITED; and***

***KENBLEST LIMITED.***

2. The applicants seek to be enjoined to the suit as Co-plaintiffs.

3. It is their belief that it is only upon their joinder into the suit that the court would have served the interests of justice, as by so doing the court would have brought into one case all the issues arising.

4. The applicants say that when they become parties to this suit, the court would then be able to avoid the multiplicity of suits which may otherwise have to occur. And when the potential of the multiplicity of suits was avoided, the applicants said that the court would have facilitated an efficient and economic manner of resolving the issues with finality, in one case.

5. Why do the applicants say so?

6. First, it is because they are contributories and fully paid up shareholders of **IMPERIAL BANK KENYA LIMITED.**

7. It is the view of the applicants that the Receiver had commenced these proceedings against only some of the parties implicated in the scheme of illegal and irregular disbursements of funds from the Bank.

8. The applicants have pointed out that the Forensic Consultants had recommended that action ought to be taken against the following 2 parties;

***JADE PETROLEUM GROUP and***

***ADRA INTERNATIONAL GROUP.***

2. Notwithstanding the said recommendations, the Receiver had failed to take legal action against those 2 parties.
3. The applicants conceded that the claim in this suit was for money due to the bank, and that ordinarily, the proposed plaintiffs would have no locus to sue for the said sums.
4. However, the applicants feel that theirs is an exceptional case because the losses they were due to suffer, were separate and distinct from the losses which the bank had suffered.
5. The said losses were said to be probable because the Bank had floated a Corporate Bond worth Kshs. 2,000,000,000/-.
6. It is the understanding of the applicants that pursuant to Section 30 (E) (2) of the Capital Markets Authority Act, the Directors of the Bank may be held personally liable to the bondholders for any loss they suffered.
7. As the applicants' respective appointees sat on the Board of Directors of the Bank, the applicants believe that they were therefore exposed to the sanctions imposed under Section 30 (E) (2) of the Capital Markets Authority Act.
8. In the event that the Directors suffered the sanctions, the applicants believe that the Directors would be entitled to claim indemnity from the applicants who had appointed the said Directors.
9. Therefore, the applicants said that the acts of the Defendants directly affected them in a manner which was distinct from the way in which the Bank was affected.
10. The applicants view was that their input into the prosecution of this suit would be beneficial to all the parties concerned and also to the court. Therefore, the applicants believe that it was in the interests of justice to enjoin them into the suit.
11. The plaintiff has opposed the application because the reliefs sought could only be granted at the behest of the Bank. The plaintiff was of the view that the applicants lacked locus, as it was only the Statutory Manager who had been appointed to manage the affairs of the Bank who could commence proceedings in the name of the Bank.
12. Whilst appreciating the rule in *Foss Vs Harbottle*, the applicants insisted that their claim was limited only to such **SURPLUS** as may be realized after the Bank's claim had been satisfied in full. In other words, the applicants claims were portrayed as not being in competition with or in substitution of the Bank's claim.
13. The applicants further position was that the wrong doer had disabled the company, (*and therefore the Receiver*) from pursuing certain claims that had accrued or which might accrue in the future.
14. This is how the applicants made their point;

***“a) The Receiver, being an appointee of CBK, it may not sue its appointer in respect to those irregular matters which the Applicants have contended (without any contradiction from CBK), took place and in which senior officers of CBK were complicit, namely, the illegal and irregular disbursement of funds from the Bank.***

***b) For unexplained reasons, the Receiver has failed to institute any proceedings against those parties aforesaid, who are demonstrably complicit in the illegal and irregular disbursement of funds, namely Jade Petroleum Group and Adra International Group”.***

22. In my considered view, it is these submissions that tell the accurate position taken by the applicants.
23. They see the Receiver as compromised, by virtue of the fact that it was appointed by a party who was complicit in the irregular and illegal dealings at the Bank.
24. Therefore, the applicants believe that there was no possibility of the Receiver going all out against all the persons who should be held accountable.
25. Those were not the views of a party who was keen on working with the Receiver.
26. The said views were of parties who appear intent on challenging the Receiver's decision to refrain from suing Jade Petroleum Group and Adra International Group.
27. If parties who were on one side of a case had competing interests, they were unlikely to work in

tandem. Indeed, parties who apportion blame against each other were likely to hinder, rather than enhance, the efficiency with which their case should be prosecuted.

28. In the final analysis therefore, I find that the interests of justice demand that the applicants ought not to be enjoined to this suit as co-plaintiffs of the plaintiff.

29. The application dated 19<sup>th</sup> November 2015 is dismissed, with costs being awarded to the plaintiff.

**DATED, SIGNED and DELIVERED at NAIROBI this 13<sup>th</sup> day of April 2016.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of**

*Muchiri for the Plaintiff*

*Singh Gitau for the 1<sup>st</sup> and 14<sup>th</sup> Defendants*

*Singh Gitau holding brief for Issa for 2<sup>nd</sup> to 9<sup>th</sup> Defendants.*

*Miss Wangari for Wandabwa for Applicants.*

*Collins Odhiambo – Court clerk.*