



**Kadenge & 9 others v Robson Harris Advocates LLP & another (Civil Suit E141 of 2025) [2025] KEHC 12318 (KLR) (Civ) (6 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12318 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL SUIT E141 OF 2025**

**SN MUTUKU, J**

**AUGUST 6, 2025**

**IN THE MATTER OF: THE ADVOCATES ACT (CAP 16 LAWS OF KENYA), THE  
ADVOCATES (ACCOUNTS) RULES, THE CODE OF STANDARDS OF PROFESSIONAL  
PRACTICE AND ETHICAL CONDUCT AND THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF: A CLAIM ARISING FROM THE UNLAWFUL  
WITHHOLDING OF CLIENT FUNDS BY AN ADVOCATE IN  
BREACH OF FIDUCIARY DUTY AND PROFESSIONAL OBLIGATION**

**AND**

**IN THE MATTER OF AN APPLICATION UNDER ORDER 37 OF THE  
CIVIL PROCEDURE RULES, 2010, FOR THE DETERMINATION OF  
QUESTIONS ARISING OUT OF AN ADVOCATE-CLIENT RELATIONSHIP**

**BETWEEN**

**JOSEPH NGALA KADENGE ..... 1<sup>ST</sup> APPLICANT**  
**ESTHER SIDI KAZUNGU ..... 2<sup>ND</sup> APPLICANT**  
**KEAH JAMES ..... 3<sup>RD</sup> APPLICANT**  
**JOHN HYLAND ..... 4<sup>TH</sup> APPLICANT**  
**TABITHA MRICHWA NGUMBAO ..... 5<sup>TH</sup> APPLICANT**  
**DAVID MENZA MBOJA ..... 6<sup>TH</sup> APPLICANT**  
**ROSEMARY MBOJA MWANDORO ..... 7<sup>TH</sup> APPLICANT**  
**SAMSON VIDZO ..... 8<sup>TH</sup> APPLICANT**  
**JOHN H MRAMBA (SUING AS THE PERSONAL REPRESENTATIVE OF THE  
ESTATE OF THE LATE PAUL GEORGE KENGA) ..... 9<sup>TH</sup> APPLICANT**



SAMUEL KARISA CHENGO ..... 10<sup>TH</sup> APPLICANT

AND

ROBSON HARRIS ADVOCATES LLP ..... 1<sup>ST</sup> RESPONDENT

JANE SUMBEIYWO MWANGI ..... 2<sup>ND</sup> RESPONDENT

## RULING

### Background

1. The issues in this matter arise from an Originating Summons (OS) dated 5<sup>th</sup> May 2025 instituted by Joseph Ngala Kadenge, Esther Sidi Kazungu, Keah James, John Hyland Mramba, Tabitha Mrichwa Ngumbao, David Menza Mboja, Rosemary Mboja Mwandoro, Samson Vidzo, John H. Mramba (Suing as the Personal Representative of the estate of the late Paul George Kenga and Samuel Karisa Chengo (hereafter the Applicants). They have anchored the OS under Sections 1A, 1B and 3A of the *Civil Procedure Act* (CPA); Order 37 of the Civil Procedure Rules (CPR) and Article 159 of *the Constitution* of Kenya. Therein, the Applicants are seeking, inter alia, an order that Robson Harris Advocates LLP and Jane Sumbeiywo Mwangi (hereafter the 1<sup>st</sup> and 2<sup>nd</sup> Respondents) be jointly and severally compelled to deliver a cash account for the sum of Kshs. 32,000,000/- received on behalf of the Applicants; a declaration that the Respondents be deemed to be jointly and severally holding a sum of Kshs. 18,500,000/- plus accrued interest, which monies are owing to the Applicants.
2. From a reading of the record, it is clear that the present claim is founded on alleged professional misconduct and breach of fiduciary duties on the part of the Respondents herein, in respect of the sale of the property known as Plot No. 117/II/MN Mombasa (the subject property).
3. The OS is accompanied by a Notice of Motion of the same date. In that Notice of Motion, the Applicants are seeking leave of the court to enjoin George Kenga Sirya as an Interested Party, to these proceedings.
4. When the aforementioned application was placed before this court on 10<sup>th</sup> June 2025, the parties were directed by this court to address it, through oral submissions, on the issue of jurisdiction of this court to determine the OS.

### Submissions

5. Miss Wangui, learned counsel for the Applicants, submitted that the present dispute is properly before this court for the reasons that it arises from an advocate-client relationship and not from the subject property and that no orders are being sought in respect of the subject property. She submitted that the cause of action arose in Nairobi where the Respondents are based and that the sale transaction took place in Nairobi. Counsel relied on the case of *Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] KESC 2 (KLR) in which the Supreme Court of Kenya reasoned that jurisdiction is determined by the subject matter of the dispute and not on territorial jurisdiction.
6. Mr. Siganya, learned counsel for the Respondents, submitted in opposition that this court lacks territorial jurisdiction to determine this matter, given that the subject property is situated in Mombasa; that the Applicants reside in Kilifi County while the purchaser of the subject property resides in Mombasa. It was submitted that the material sale transaction was undertaken in Mombasa and that



under section 15 of the [Civil Procedure Act](#), a matter ought to be filed where the cause of action took place or alternatively, where the parties reside.

7. It was submitted that the material sale transaction was handled by the Mombasa Branch offices of the Respondents; that given the orders being sought, the claim ought to have been brought by way of a plaint rather than an Originating Summons; that the Applicants have failed to enjoin all the relevant parties to the sale transaction and that the declaratory order sought in the OS to the effect that the Respondents' actions be deemed to constitute professional misconduct and a breach of their fiduciary duties, can only be sought before the Advocates Disciplinary Tribunal and not this court.
8. Counsel relied on *Republic v Advocates Disciplinary Tribunal; Amugune (Ex parte Applicant)* [2023] KEHC 23664 (KLR) where it was held that matters pertaining to discipline of advocates fall within the mandate of the Advocates Disciplinary Tribunal. Counsel urged that for the reasons advanced above, this court ought to strike out the OS, with costs to the Respondents.
9. Mr. Macharia, learned counsel appearing alongside Mr. Siganya for the Respondents, echoed the submissions of Mr. Siganya and emphasized on the principle that once a court finds that it lacks jurisdiction in a matter, it ought to down its tools and cannot thereafter proceed to transfer the matter to the appropriate court; as set out in the case of *Boniface Waweru Mbiyu v Mary Njeri & another* [2005] KEHC 2392 (KLR).
10. In her rejoinder, Miss Wangui maintained that the claim herein is civil in nature and is therefore competently before this court and that no complex issues are being raised in the present suit. She has urged the court to decline to strike out or dismiss the suit, and to order that the same be heard on merit.

### **Determination**

11. I have considered the arguments of counsel on the issue of jurisdiction of this court to determine this matter. The singular issue that presents itself for determination is whether this court is seized with jurisdiction to determine this OS. The Applicants through their counsel hold the view that this court has the requisite jurisdiction to hear and determine this matter. Counsel for the Respondents have argued that court lacks jurisdiction in this matter.
12. The Applicants have placed reliance on *Mwigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] KESC 2 (KLR). I have read that authority. My understanding of the above authority is that it relates to an electoral dispute and is distinguishable from this case. While I am alive to the fact that decisions of the Supreme Court are binding on this court, it is my considered view that this authority is not helpful to the Applicants.
13. I am guided by the legal principle that jurisdiction is everything and that without it, a court cannot proceed further with the matter before it where the court finds that it lacks jurisdiction in the matter. The above principle was reaffirmed by the Court of Appeal in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR held the view that a suit filed devoid of jurisdiction is dead on arrival and cannot be remedied and that without jurisdiction, the Court cannot confer jurisdiction to itself. The Court of Appeal cited with approval *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* (1989), where it was held 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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to



exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

14. The pleadings in this matter relate to alleged professional misconduct and breach of fiduciary duty on the part of the Respondents, arising out of a transaction for the sale of the subject property. The law is clear on the place of filing suits. Section 5 of the CPA provides as follows:

Any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred.

15. Section 15 of the CPA on its part provides that:

Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- (a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- (b) any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

16. From the above provisions of the *Civil Procedure Act*, it is clear that a suit ought to be filed either where the subject matter to the dispute is situated or where the cause of action arose or where the defendant or defendants reside or carry on business/gainful employment. Parties to this suit have taken different approaches towards the issue of jurisdiction. However, from the pleadings, the Applicants herein reside in Kilifi whereas the Respondents are based in Mombasa. Counsel for the Respondents acknowledging that it is the 1<sup>st</sup> Respondent’s Mombasa-based Branch that undertook the material sale transaction. It is not disputed that the subject property is also situated in Mombasa.

17. The Applicants have failed to place any material before this court to persuade it that it is seized with jurisdiction to determine this matter. Upon taking the arguments advanced by the parties in this matter on the issue of jurisdiction, I am of the considered view that this suit ought to have been instituted at the High Court situated in Mombasa as opposed to Nairobi. It is my finding that the suit is incompetently before this court and is consequently struck out to lack of jurisdiction. Costs are awarded to the Respondents.

18. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 6<sup>TH</sup> AUGUST 2025.**

**S. N. MUTUKU**

**JUDGE**

