

## The High Court in Harare, Zimbabwe

HH 30/18

### Trustees of the Mukono Family Trust & Another v Karpeg Investments (Pvt) Ltd and Others

<b>Court</b>	:	High Court
<b>Case</b>	:	Criminal
<b>Date of Judgement</b>	:	January 24, 2018
<b>Plaintiff</b>	:	Trustees of the Mukono Family Trust & Another
<b>Defendant</b>	:	Karpeg Investments (Pvt) Ltd and Others
<b>Concept</b>	:	Industrial Designs Infringement
<b>Statue</b>	:	Section 15 of the Industrial Designs Act, Chapter 26:02

#### Panel of Justices

Hungwe J President

#### Case Background

This matter commenced as an action against seven defendants by the two plaintiffs seeking:

- a permanent interdict barring the defendants from reproducing, selling or offering for sale exporting or otherwise dealing in their plaintiffs' works.
- an order that defendants account for all the profits from infringing plaintiffs' works.
- damages calculated at 50% of the profits made by the defendants from infringing plaintiffs' works for the period 12/02/2009 to date of summons.
- attachment and delivery up of all infringing copies or articles presently in defendants' possession and five costs of suit at the attorney and own client scale.

#### Procedural History

The IP Tribunal gave a ruling on the case.

#### Issue

- Whether or not the defendant's goods are infringing upon plaintiff's intellectual property rights.
- Whether or not plaintiff is entitled to a permanent interdict barring defendant from reproducing selling or offering for sale exporting or otherwise dealing in plaintiffs' specified works.
- Whether or not plaintiff is entitled to any damages and if so the quantum thereof.

#### Rational

The court held that a trust in which an industrial design was registered, is not a juristic person and cannot own intellectual property law rights, in this case an industrial design. The trust therefore could not proceed with an infringement case against the Respondents.

**Keywords** Registered industrial design, owner, family trust, Interpretation Act, infringement, counterfeit products