



**Kabansora Millers Limited v Nyangena (Civil Appeal E665 of 2022)
[2024] KEHC 9520 (KLR) (Civ) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9520 (KLR)

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

CIVIL

CIVIL APPEAL E665 OF 2022

WM MUSYOKA, J

JULY 26, 2024

BETWEEN

KABANSORA MILLERS LIMITED APPELLANT

AND

MAUREEN MOKEIRA NYANGENA RESPONDENT

(An appeal arising from the decree in the judgment of Hon. CA Okumu, Resident Magistrate, RM, Adjudicator, delivered on 1st August 2022, in Milimani SCCC No.E1184 of 2022)

JUDGMENT

1. The suit, at the primary court, was initiated by the respondent, and a co-plaintiff, against the appellant, for compensation, for loss tabulated at Kshs. 171,700.00. The claim was that a vehicle belonging to the respondent was hit by that belonging to the appellant, and negligence was attributed on the appellant. The appellant resisted the claim, by a defence, in which it denied liability, and where it pleaded, in the alternative, that the respondent contributed to the said accident and loss.
2. A formal hearing was conducted. 1 witness testified for the respondent. The appellant did not adduce any oral evidence. Judgment was delivered on 12th August 2022. Liability was apportioned at 100%, against the appellant, and damages were awarded at Kshs. 127,300.00, plus costs and interests.
3. The appellant was aggrieved by that verdict, hence the instant appeal. The grounds of appeal, in the memorandum of appeal, dated 20th August 2022, revolve around a single issue, as to whether the respondent had the authority of her co-plaintiff, to bring the suit using his name.
4. Directions were given, on the disposal of the appeal, on 20th December 2023, for canvassing by way of written submissions. The only submissions that I see in the record are by the appellant, although they are titled “respondent’s submissions.”



5. The appellant submits that the respondent had not claimed to be the owner of the accident vehicle, stating that the said vehicle at all times belonged to her co-plaintiff. It is submitted that although the co-plaintiff was named as such in the pleadings, he did not sign any of the pleadings and other papers, and there was no document on record where he authorised the respondent to bring the suit on his behalf. It is submitted that the relationship between the 2 was not pleaded, neither was it pleaded how that relationship related to the vehicle. It is submitted that, if the co-plaintiff had intended the respondent to be his representative, he should have authorised her in that respect in writing. Sections 2, 16 and 20 of the *Small Claims Court Act*, Cap 10A, Laws of Kenya, are cited. *John Kabare Mungai vs. Charles Karuga Koinange* [2005] eKLR (Ransley, J) is relied upon.
6. The evidence on record established that the accident vehicle was owned by the co-plaintiff of the respondent. That ostensibly made him a claimant in the suit. Being the registered owner of the vehicle should have made him the principal party in the suit. He, however, did not execute any of the suit papers, being the statement of claim, verifying affidavit, and the witness statement, all of which were signed by the respondent. At the oral hearing of the matter, on 21st July 2022, the co-plaintiff did not attend court, nor testify, and it was the respondent who attended and gave evidence in support of the claim.
7. The challenge is, who, between the respondent and the registered owner of the vehicle, was the proper person to file and drive the suit. As indicated elsewhere, the evidence on record established that the respondent was the registered owner of the accident vehicle. The respondent, who was principally the person behind the suit, did not, in her filings and in open court at the oral hearing, disclose how she was related to the co-plaintiff, the registered owner of the property, and by extension how she related to the accident vehicle. She did not claim as a spouse, or as co-owner of the vehicle, or as a beneficial owner of the property. Indeed, there was no pleading nor evidence of the nexus between her and the accident vehicle, to justify her pursuing a claim with respect to damage wrought on the vehicle. That, no doubt, raises the issue of locus standi.
8. In the absence of a nexus between the respondent and the accident vehicle, which would have given her standing to sue, it can only then be surmised that she had brought the suit on behalf of the registered owner of the vehicle, who she had named in the suit as a co-plaintiff. I say so as that alleged co-plaintiff never signed any of the court papers, and he did not attend court, nor participate in the suit in any way. That would suggest that the suit was brought on his behalf by the respondent.
9. The law does not envisage that a person moves a court using the name of another, without the authority or permission or consent of the other. Every person has a right to their name, and their name ought not be used, for whatever reason or purpose, without their say so. That is so regardless of the relationship between the persons. A suit cannot be initiated and prosecuted in the name of and on behalf of a person who has not authorised the use of his name, nor authorised prosecution of the suit on his behalf. A suit filed without authority is a nullity.
10. Where suits are brought on behalf of another, what are referred to as representative suits, there are safeguards. Where the person on whose behalf the suit is brought is of sound mind, an authority must be signed by him for the bringing of the suit, and the same must be filed in court. It could include a power of attorney. For a person suffering disability, a guardian ad litem ought to be appointed, to act for that person. A suit on behalf of a minor is brought by a parent or guardian, as next friend of the minor. The pleadings must also reflect that the suit is brought on behalf of another. See Order 1 rules 8 and 13, Order 7 rule 6, Order 30 and Order 32 of the *Civil Procedure Rules* and sections 2, 16 and 20 of the *Small Claims Act*. See *Chalicha Farmers Co-operative Society Limited vs. George Odhiambo & 9 others* [1987] eKLR (Platt, Gachuhi & Apaloo, JJA) and *Sony Savala & another vs. Ndanyi* [2022]



KEELC 2536 (KLR)(Naikuni, J). [John Kabare Mungai vs. Charles Karuga Koinange](#) [2005] eKLR (Ransley, J) is also on point.

11. As the respondent was not the owner of the accident vehicle, or did not claim as such, she was bound to plead and prove that she had the capacity to initiate the suit, by way of displaying authority from the owner of the vehicle to bring the suit. In the absence of such authority, she came out as a stranger and a busybody. That the trial court should have taken into account, before granting her the orders that she had sought in the claim. Entertaining claims, by such busybodies as the respondent, would be to encourage speculative litigation, designed to enrich undeserving litigants, defeating the essence of the legal process, and exposing the court process to abuse and ridicule.
12. I find merit in the appeal herein. I allow the same, with the effect that the decree of the trial court, in the judgment dated 12th August 2022, allowing the claim in that suit, is hereby set aside, and substituted with a decree dismissing the said claim, with costs to the appellant, both on this appeal, and at the court below.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 26TH DAY OF JULY 2024

W MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Eva Odhiambo, Legal Reseacher.

Advocates

Mr. Chamwada, instructed by Chamwada & Associates, Advocates for the appellant.

Mr. Kiamba, instructed by Kiamba & Siboe, Advocates for the respondent.

