



Crown Motors Group Limited v Rentco East Africa Limited (Civil Appeal E135 of 2021) [2022] KEHC 10135 (KLR) (30 June 2022) (Judgment)

Neutral citation: [2022] KEHC 10135 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E135 OF 2021
TW CHERERE, J
JUNE 30, 2022**

BETWEEN

CROWN MOTORS GROUP LIMITED APPELLANT

AND

RENTCO EAST AFRICA LIMITED RESPONDENT

(Being an appeal from the Ruling and Order in Tigania CMCC No. 47 of 2021 by Hon. R.Ongira (RM) on 07th September, 2021)

JUDGMENT

Background

1. By a notice of motion dated 17th May, 2021, Appellant applied for orders that:
 - a. Tigania CMCC No. 47 of 2020 and Tigania CMCC No. 74 of 2021 consolidated
 - b. The Applicant be struck out of the proceedings
2. The application was based on the grounds among others that Tigania CMCC No. 47 of 2020 and Tigania CMCC No. 74 of 2021 arise of the same accident and that except for the Plaintiffs, the other parties are the same. The second ground is that the Applicant though being a co-owner of motor vehicle GKB 388R (accident motor vehicle) that was involved in the accident the subject of the suit suits had no control over the said vehicle the same having been leased to the National Police, the 2nd 3rd Party in the suits.
3. By a ruling dated 07th September, 2021, the learned trial magistrate relying on Section 8 of the [Traffic Act](#) that the person in whose name a vehicle is registered shall unless the contrary is proved be deemed to be the owner of the vehicle held that the issue of whether Appellant was an owner of the accident motor vehicle was a triable issue that ought to be canvassed at the trial.



Appeal

4. Dissatisfied with the trial magistrate's ruling, Appellant on 06th October, 2021 filed the memorandum of appeal dated 23rd September, 2021 raising eight (8) grounds which I have consolidated into one ground that the learned trial magistrate erred in dismissing the application dated 17th May, 2021.
5. This court on 28th February, 2022 directed that the appeal be canvassed by way of written submissions which the Respondent dutifully filed.
6. The Appellant contends that the application that is the subject of the appeal was premature and in support thereof has cited *Dilesh Somchand Bid v Afrika Investment Bank Ltd & Another* [2011] eKLR
7. In this case, Appellant has entered appearance but has not filed a defence. I therefore find that upon filing its defence, if Appellant is of the view that as between it and the defendant there is no proper question to be tried regarding its liability, it can appropriately move the court for directions under Order 1 Rule 22 of the *Civil Procedure Rules*, 2010.
8. As of now, I find that the learned trial magistrate's finding that that the issue of ownership of the motor vehicle was a triable issue was well founded.
9. A reading of the learned trial magistrate's ruling reveals that the issue of consolidation was not considered.
10. *Nyati Security Guards & Services v Municipal Council of Mombasa* [2000] eKLR, the Court set out the principles that consolidation of suits as follows:
 - “.....the situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:
 - a) Some common question of law or fact arises in both or all of them; or
 - b) The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
 - c) For some other reason it is desirable to make an order for consolidating them.”
11. From the perusal of Tigania CMCC No. 47 of 2020 and Tigania CMCC No. 74 of 2021, there is no denying the fact that they both arise from the same accident and that except for the Plaintiffs, the other parties are the same. Ultimately the main issue for determination would be who among the parties is liable for the same accident.
12. In the circumstances, I find that it would serve the interests of justice to consolidate the two suits so that the issues can be dealt with simultaneously thus affording the parties a just, expeditious, proportionate and affordable resolution of the dispute.
13. In the end, the appeal partially succeeds and for the reasons given on the foregoing analysis, it is ordered:
 1. Tigania CMCC No. 47 of 2020 and Tigania CMCC No. 74 of 2021 shall be consolidated for the purpose of determining liability as between the parties
 2. The order disallowing the striking out of Appellant's name from the suit is upheld
 3. Appellant shall bear ½ costs of the appeal.

DATED AT MERU THIS 30TH DAY OF JUNE 2022



T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Appellant - Mr. Odera for Bansbury Associates Advocates LLP

For Respondent - Mr. Mutegi for Marienga & Co. Advocates

