



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO 207 OF 2018

MISIKO REMY SIRENGO (Suing as the Legal representative of the Estate of

ALFRED JUMA SIRENGO (DECEASED)).....PLAINTIFF

VERSUS

JOHN KABAA WATENE.....1ST DEFENDANT

CMC MOTORS GROUP LIMITED.....2ND DEFENDANT

RULING

1. The 2nd Defendant's Notice of Motion application dated 23rd April 2019 and filed on 17th October 2019 sought the striking out of its name from the suit herein. The said application was supported by the Affidavit of its Receivable Accountant, James Njenga that was sworn on 23rd April 2019.
2. It stated that it sold Motor Vehicle Registration Number KBA 602G (hereinafter referred to as "the subject Motor Vehicle") to one Julius Mururia Maina on 15th June 2007 by way of hire purchase, which he duly acknowledged delivery on the Delivery/ Acceptance Certificate. It contended that the said Julius Mururia Maina was for all purposes and intent the registered owner of the subject Motor Vehicle.
3. It pointed out that the hire purchase agreement was to be secured by joint registration of the said subject Motor Vehicle in its name and that of the said Julius Mururia Maina and that at no time had it been in possession, control, use and/or management of the same. It therefore averred that at the alleged time of the accident involving the said subject Motor Vehicle, it was neither its principal owner nor the insured and hence there was no basis in law or equity to be held liable for the said accident.
4. It was its further averment that there was no premise to enjoin it in the proceedings herein and thus urged this court to strike out its name from the proceedings as it was in the interests of justice to do so.
5. In opposition to the said application, on 15th November 2019, the Plaintiff swore a Replying Affidavit. The same was filed on 18th November 2019. He stated that upon being served with a Demand Notice, the 2nd Defendant did not disclose the particulars of the person they allegedly sold the subject Motor Vehicle to. He pointed out that as at 24th August 2015, the 2nd Defendant was the registered owner and that the copy of records did not disclose joint ownership.
6. It was his contention that the 2nd Defendant did not annex any invoice to prove its sale of the said subject Motor Vehicle to the said Julius Mururia Maina. He also averred that it could enjoin the said Julius Mururia Maina as a third party and then seek indemnity from him. He stated that the issues that it had raised were weighty and needed verification through a full trial.
7. He termed the present application as an abuse of the court process and second guessing the court and asked the court to dismiss the same with costs.
8. Only the Plaintiff furnished the court with Written Submissions. The same were dated 30th April 2020. He had also attached List and Bundle of Authorities of even date. However, despite having been requested several times to forward its Written Submissions, the 2nd Defendant did not do so. The Ruling herein is therefore based on the Plaintiff's Written Submissions only.
9. The Plaintiff referred this court to Section 8 of the Traffic Act Cap 403 (Laws of Kenya) where it was stated that **"The person in whose name a vehicle is registered shall unless the contrary is proved deemed to be the owner of the vehicle.** He further placed reliance on the

cases of **Hebert Masinde Juma & Another (Suing as the personal representatives of the Estate of Late RNJ) vs Rose Mudibo**[2019] eKLR where the court cited the case of **Nancy Ayemba Ngaira vs Abdi Ali** [2010] eKLR where Ojwang J (as he then was) held that the name appearing in a certificate from the Registrar of Motor Vehicles was not the final proof that the sole owner was the person appearing in the said certificate.

10. He further relied on several cases amongst them, the case of **Peter Waikwa Njagi vs Omar Ali Shabal** [2011] eKLR where it was held that the task of the court was to give fulfilment of the intent of parties who were bound by agreement and that of **Total (Kenya) Limited formerly Caltex Oil (Kenya) Limited vs Janevams Limited** [2015] eKLR where it was held that a proforma invoice was considered a commitment to purchase goods and that the same was not a receipt that could attest to the existence or acquisition of goods.

11. On perusing the Plaintiff's Written Submissions, this court took the view that there was a risk of it delving into the merits of his case if it interrogated the authorities vis-à-vis the facts of this case. However, it limited itself to his submissions to justify that the 2nd Defendant was a necessary party to the proceedings herein.

12. In his Replying Affidavit, he annexed a printed copy of the Motor Vehicle Copy of Records of the subject Motor Vehicle from National Transport and Safety Authority (NTSA). The previous owners therein as at 20th August 2018 were showed to have been:-

“Speed Capital Limited

Teresia Wanjiku Wambaki”

The current owner was shown to have been:-

Catherine Njoki Karanja

13. There was an endorsement in the said Motor Vehicle Copy of Records that had been written by hand indicating that the Motor Vehicle Copy of Records was as at 24th August 2015 and that the previous owner was CMC Motors Group Limited. It was not clear to this court who wrote the same and/or why the Plaintiff did not furnish the court with a printed copy of the said Motor Vehicle Copy of Records from NTSA as at 24th August 2015.

14. Whereas the 2nd Defendant had premised its application under Order 1 Rule 10 and 14 of the Civil Procedure Rules, 2010, this court found and held that the Plaintiff's suit had not disclosed any reasonable cause of action against it as stipulated in Order 2 Rule 15 (1) of the Civil Procedure Rules.

15. Notably, Order 2 Rule 15 (1) of Civil Procedure Rules, 2010 provides as follows:-

(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(a) it discloses no reasonable cause of action or defence in law; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.

(3) So far as applicable this rule shall apply to an originating summons and a petition.

16. The court must at all times be cognisant of the fact that judicial time is precious and must not be wasted in engaging itself in academic exercises by hearing cases in a full trial where it was plain and obvious that a plaintiff disclosed no reasonable cause of action or defence in law, where a plaintiff was scandalous, frivolous, vexatious, where a plaintiff may prejudice, embarrass or delay the full trial of the action or where the plaintiff was otherwise an abuse of the court process.

17. In the case of **Grace N Karianjahi vs Dr Simon Kanyi Mbuti** [2002] eKLR, it was also held as follows:-

“The Plaintiff can also be frivolous, if it has no substance, it is fanciful or that the party is simply trifling with the Court or wasting the Courts time. The Pleading is also vexatious if it has no foundation in law, it is filed for the mere purpose of annoying the other party; it is leading to no possible good and has no chance at all of succeeding. On the other hand, pleadings are otherwise an abuse of the court process when they are filed in court simply to waste its time or when they are worthless or to delay the due process of the law”.

18. In the same breathe, a court must exercise restraint and proceed very cautiously when it has been asked by a party to strike out pleadings

before a matter has proceeded for full trial. Indeed, striking out pleadings before hearing of a matter is a draconian step and must be used sparingly and in the clearest of the cases as was held in the case of **D.T. Dobie Co Ltd vs Muchina [1982] KLR D.T. Dobie** and in the case of **Geminia Insurance Co Limited vs Kennedy Otieno Onyango [2005] eKLR** where Musinga J (as he then was) held as follows:-

“It is trite law that striking out pleadings is a draconian step which ought to be employed in the clearest of cases and particularly where it is evident that the suit is beyond redemption.”

19. In the case of **Elijah Sikona & Another vs Mara Conservancy & 5 Others [2013] eKLR**, it was further held as follows:-

“There are well established principles which guide the court in exercise of its discretion under these rules. Striking out is a jurisdiction which must be exercised sparingly and in clear and obvious cases. Unless the matter is plain and obvious, a party to civil litigation is not to be deprived of his right to have his suit determined in a full trial. The court ought to act cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court”.

20. In addition, in the case of **Wedlock vs Moloney [1965] 1 WLR 1238**, it was held that:-

“...Summary jurisdiction of court was never intended to be exercised by a minute and protracted examination of documents and the facts of the case in order to see if the Plaintiff really has a cause of action...”

21. As could be seen from the aforesaid cases, the common thread was that courts must be very cautious to deny parties an opportunity to ventilate their cases no matter how weak their opponents felt their cases were. However, they were also called upon to be vigilant not to allow cases that fell within the provisions of Order 2 Rule 15 (1) of the Civil Procedure Rules, 2010 to clog the already congested court diaries.

22. A cursory look at the said printed Motor Vehicle Copy of Records did not bear the 2nd Defendant's name as the Plaintiff had deponed in his Replying Affidavit. He was obligated to demonstrate to the court the relationship between the 2nd Defendant and the 1st Defendant herein. It was not for the 2nd Defendant to have disclosed to him the particulars of whom it sold the subject Motor Vehicle to as he had contended. The Plaintiff was putting an onerous duty on the 2nd Defendant to look for the said Julius Mururia Maina to help him prove his case.

23. Indeed, a plaintiff is required to have all his facts at the time of filing suit and not seek to obtain those from a third party. Allowing the Plaintiff to proceed as he had averred amounted to a fishing expedition and was unacceptable in any fair trial.

24. Accordingly, having considered the facts of this case, it was this considered opinion that this was a clear case for striking out of the suit against the 2nd Defendant herein. Indeed, the Sword of Damocles ought not to hang over its head until the matter is heard and determined for the reason that the Plaintiff had failed to show the nexus between it and the 1st Defendant herein and/or that it was vicariously liable for the negligence of the 1st Defendant herein.

DISPOSITION

25. For the foregoing reasons, the upshot of this court's Ruling was that the 2nd Defendant's Notice of Motion application dated 23rd April 2019 and filed on 17th October 2019 was merited and the same is hereby allowed with costs to it.

26. It is so ordered.

DATED and DELIVERED at NAIROBI this 30th day of July 2020

J. KAMAU

JUDGE