

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 334 OF 2017

CO-OPERATIVE BANK OF KENYA LIMITED.....APPELLANT

VERSUS

THOMAS NGUI.....1ST DEFENDANT

ASHER AKAL ONYANGO.....2ND DEFENDANT

RULING

This is an application lodged by the appellant herein who is the 2nd defendant in the lower court where proceedings are ongoing. The appellant had filed an application in the lower court objecting to its joinder in the said proceedings, after which a ruling was delivered on 9th June, 2017 dismissing the application.

The appellant then filed a Memorandum of Appeal followed by the present application. The proceedings in the lower court relate to a road traffic accident involving two motor vehicles one of which was owned by the 1st defendant. The appellant herein financed the acquisition of that motor vehicle. In the application before me the appellant refers to its Memorandum of Appeal, which raises the question whether or not vicarious liability may be attributed to a financier of a motor vehicle for alleged acts of the person driving the said motor vehicle, merely because the log book bears the said financier's name. It is the fear of the appellant that, unless proceedings in the subordinate court are stayed then the appeal will be rendered nugatory.

There is a supporting affidavit sworn by the Relationship Manager of the appellant in support of the application. The application is opposed and there are two affidavits filed by the respondent in opposing the application. Counsel agreed that the application be determined on the contents of the affidavits filed by the parties.

Some of the issues raised in the affidavits relate to the pleadings filed by the parties and delve into matters of evidence and liability.

I believe it is clear from the facts as demonstrated by the parties that there are very serious issues raised in the Memorandum of Appeal to justify the order sought by the appellant.

In the event the lower court proceedings are determined before this issue is resolved, prejudice and substantial loss may be visited upon the appellant in if the appeal succeeds.

Accordingly, the lower court proceedings are hereby stayed until this appeal is heard and determined. As this order relates to proceedings that are ongoing in the lower court, parties should endeavour to have the appeal heard and determined expeditiously. Costs shall be in the cause.

Dated, signed and delivered at Nairobi this 29th day of May, 2018.

A. MBOGHOLI MSAGHA

JUDGE