



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**CIVIL CASE NO. 14 OF 2017**

**JUBILEE INSURANCE COMPANY LTD.....PLAINTIFF**

**-VERSUS-**

**MATFAM LIMITED.....DEFENDANT**

**RULING**

1. This is an application by the 1<sup>st</sup> and 2<sup>nd</sup> interested parties to be enjoined as parties in this suit. The application is supported by five grounds set out in the notice of motion.

2. It is also supported by a supporting affidavit dated 29<sup>th</sup> January, 2018. The notice of motion is brought pursuant to Article 159 of the 2010 Constitution of Kenya, Order 51(1) of the Civil Procedure Rules and sections 1A, 1B, 3A and section 63(e) of the Civil Procedure Act (Cap 21) Laws of Kenya.

3. The following are the major grounds upon which the application is based. First, following a road accident involving motor vehicle registration No.KBP 460W on 8<sup>th</sup> November 2012, one of the interested parties sustained severe bodily injuries, whereas the other one, Nelson Abel Onwong' a died as a result of the said injuries.

Second, the interested parties filed two different suits namely; Narok CMCC No. 41 of 2014 and Narok CMCC No. 69 of 2015, seeking recovery of general and special damages against the defendant in this suit. Third, the interested parties have stated that the outcome of the instant Civil Case No. 14 of 2017, will affect them and it is for that reason that they seek to be enjoined as interested parties.

4. In the 14 paragraphs supporting affidavit sworn to by Jared Nyambati Morang'a, he has deponed to the following major matters. First, he has deponed that there are two pending suits in the court of the Chief Magistrate at Narok, which are referred to in the grounds in support of the instant application. He has also deponed that in those suits the interested parties are seeking to recover general and special damages. The deponent has attached the plaints in those cases that are pending in that magisterial court. The deponent has also deponed that the outcome of the instant suit will affect them. It is to be noted that in the instant suit, the plaintiff is seeking a declaration that it is not liable to make any payment or indemnify the defendant for accidents in which the interested parties lost their relatives.

5. Counsel for the interested parties made submissions in support of the application. They have cited a number of authorities which I have considered. Among them is the case of **Yusuf Abdi Adan & Another V. Hussein Ahmed Farah & 3 Others**, Civil Case No. 100 of 2016 (Nairobi) in which the court defined an interested party in the following terms:

***“... An interested party is one who has a direct interest or stake in the case though he or she was not a party to the cause ab initio. That is one who will be affected by the decision of the court when it is made either way or who person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings to champion his or her cause.”***

6. Counsel for the defendant filed written submissions in opposition to the application. Counsel cited a number of authorities, which I have considered. Among the authorities cited is Rule 2 of the Constitution of Kenya (protection of the Fundamental Rights and Fundamental Freedoms) Practice and Procedure Rules of 2013 enacted vide legal notice No.117 of 2013, in which an interested party is defined as:

***“A person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”***

7. In the light of the affidavit evidence, the submissions of both parties and the authorities cited I find the following to be the issues for determination.

1. Whether or not the interested parties have a stake in the outcome of this instant suit.

2. Who bears the cost of this suit?

**Issue 1**

8. The plaintiff in the instant suit seeks a declaration that it is not liable or bound to make payments or indemnify the defendant under the insurance policy in respect of death or bodily injury arising out of the road traffic accident which occurred on 8<sup>th</sup> November 2012 along Narok – Bomet road involving the defendant's motor vehicle registration No. KBP 460W and other 3<sup>rd</sup> parties. The relationship between the plaintiff and the defendant is of a contractual nature. It is to be noted that the outcome of the instant suit will not affect the interests of the two interested parties, since they are not parties to the contract.

9. In the light of the foregoing considerations I find that the authorities cited by the defendant are persuasive. Those cited by the proposed interested parties are distinguishable.

10. The plaintiff submitted that he has no objection to the two interested parties being enjoined to the suit.

11. The upshot of the foregoing is that the application of the two interested parties is hereby dismissed in its entirety.

**Issue 2**

12. The defendant has succeeded in this application. It will therefore have the costs of this application.

**Ruling delivered** in open court this 24<sup>th</sup> day of **May, 2018** in the absence of the plaintiff and in the presence of Mr. Kambo for Mr. Githui for the defendant and in the absence of interested parties.

**J.M BWONWONGA**

**JUDGE**

**24/5/2018**