



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIVIL NO.276 OF 2018

MALIYA MINATO AKALA(Suing for and

on behalf of the family and Estate

of Paul Akala Selebwa).....PLAINTIFF

VERSUS

U SATES INTERN.....DEFENDANT

RULING

The defendant has applied by Notice of Motion dated the 5th May 2014 for stay of proceedings in Chief Magistrate's Court Civil Case Number 1372 of 2011 pending the hearing and determination of the Appeal herein.

The Application is made on the grounds that the cause of action arose out of a Road Traffic Accident which occurred on the 21st day of December 2009 involving motor vehicle KAE 969J and KA 945B along Juja Road near Huruma flats.

That after filing the defence, the defendant learnt that the owner of motor vehicle registration Number KA 945B was to blame for the accident and consequently, he sought leave to file a formal application and enjoin the owner of the aforesaid motor vehicle as a third party.

That when the matter came up for hearing on 31st January 2018, the Application was still pending but the trial court proceeded to hear the main case. The Applicant contends that it's only fair that the court grants a stay of proceedings of the lower court suit pending the hearing and determination of the Appeal. The applicant avers that the application was timeously made and that if the orders sought are not granted, the Appeal shall be rendered nugatory. That the Appellant has an arguable Appeal with good chances of success and that the Respondent will not suffer any prejudice if the orders are granted.

The application was opposed via a replying affidavit sworn by Maliya Minayo Akala who is the Respondent. She depones that the applicant had filed a similar application dated 9th day of March, 2018 seeking stay of proceedings which they failed to prosecute on the 30th day of April 2018, despite having been given audience to do so. In addition there are other applications dated 5th May 2018, 9th March, 2018 and 23rd February 2018 which the Appellant has failed to prosecute and are still pending.

The Applicant averred that the application to enjoin a third party was brought late in the day after seven (7) years and when the Lower Court matter was pending judgment. It is averred that there exists other appropriate channels for redress which will not occasion the Respondent injustice.

The court has considered the Application together with the submissions by the respective parties.

The Applicant submitted that the trial magistrate did not grant them a chance to prosecute the pending Application but proceeded to hear the main suit. The said application sought to join a Third party to the suit. The Respondent on his part contends that the Application was made too late in the day, that is, eight years from the date of filing of the suit which in their view, was a delaying tactic on the part of the Applicant.

I have considered the submissions by both counsels on this aspect of the delay. The court notes that the application aforesaid was filed seven (7) years down the line. In paragraph 7 of the supporting affidavit, the deponent states that subsequent to the filing of the defence, the information available to the Applicant was that the owner of motor vehicle KA 945B was to blame for the accident. He has not disclosed when this information came to his knowledge. At all material times relevant to this case, the defendant knew that the accident involved two motor vehicles and therefore ought to have brought that Application in good time to avoid delay in prosecuting the matter. I find that there

was in ordinate delay in bringing the Application and the same was brought too late in the day which was prejudicial to the Respondent.

The respondent has deponed that the Appellant filed several applications which are similar to the Application herein and which are pending before the Lower court. They are dated 5th May 2018, 9th March 2018 and 23rd February 2018. It was submitted that by bringing the present Application when there are other pending applications, it is an abuse of the court process. The Applicant denied that there are other applications pending hearing. The court placed the matter for mention on 2nd July 2018 for the parties to confirm if there were pending applications and on the said date, Counsel for the plaintiff confirmed to the court that there was a pending Application dated the 23rd February 2018. The fact was not denied by the applicant in which case, I have no hesitation in finding that the filing of the present application was an abuse of the court process.

For the reasons given above, I find that the Application dated the 5th May 2018 has no merits and the same is dismissed with costs to the Respondent.

Dated, Signed and Delivered at Nairobi this 25th day of October, 2018

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L. NJUGUNA

JUDGE

In the presence of:-

..... **For the Plaintiff**

..... **For the Defendant**