



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
HIGH COURT CIVIL CASE NO. 333 OF 2014

PRISCILLA WAMBUI (Suing as the Legal

Representative of the Estate of MAUREEN MUTHONI WAMBUI.....PLAINTIFF

VERSUS

RICHARD KIMANI1ST DEFENDANT

ROSE MUGO.....2ND DEFENDANT

EXPRESS CONNECTIONS LIMITED.....3RD DEFENDANT

FAMILY BANK LIMITED.....4TH DEFENDANT/APPLICANT

RULING

1. The application dated 10th March, 2016 seeks orders that the 4th Defendant be struck out of the proceedings herein.
2. The application is based on the grounds stated therein and is supported by the two affidavits sworn by Lawrence Anthony Ouma, a Senior Legal Officer at Family Bank Ltd, the 4th Defendant. It is the Applicant's case that the 2nd defendant Rose Mbuiya Mugo applied for a loan facility of Kshs.7,956,000/= for the purchase of two buses. The Applicant accepted the 2nd Defendant's loan application which was to be repaid in twenty instalments. That one of the terms of said loan was that the motor vehicles were to be registered in both the names of the Applicant and the 2nd Respondent.
3. It was further stated that the 2nd Defendant subsequently fully repaid the Loan amount. That on 31st December, 2013 when the accident the subject matter of the suit occurred, the Applicant did not have any interest in the motor vehicle KAZ 204G which is alleged to have caused the accident. According to the Applicant, it's wrongly enjoined to this suit.
4. The Application is opposed. According to the replying affidavit, the application at hand is a delaying tactic. That the application raises factual matters which can only be proved at a full trial when the Applicant will have the opportunity to present and argue his case. That by 1st September, 2014, the Applicant was still registered as a co-owner of the motor vehicle in question. The Defendant posed the question why the Applicant was still reflected as a co-owner of the motor vehicle when the loan had already been repaid.

5. I have considered the application, the reply to the same and the oral submissions made by the learned counsels for the respective parties herein.

6. The Applicant has exhibited the loan facility offer letter, the chattel mortgage instruction and the 2nd Defendant's Bank account statement reflecting the loan repayment. From these documents, it is evident that the Bank was registered as a Co-owner of the motor vehicle in question as a financier. These facts are not controverted by any other evidence. I am therefore satisfied that the bank was only a financier of the 2nd Defendant for the purposes of purchasing the motor vehicle.

7. On the undisputed evidence that the bank's name remained as a joint registered owner after the repayment of the loan, the answer is found in Section 8 of the Traffic Act Cap 403 Laws of Kenya which states as follows:-

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”

Thus being registered as the owner of a motor vehicle is only *prima facie* evidence of ownership. The contrary can be proved like in the instant case.

8. As a financier, the bank was only a registered owner as security for the monies advanced. The bank had no control over the daily use of the motor vehicle. The driver of the motor vehicle was not an agent of the bank. The bank cannot therefore be held vicariously liable for the accident herein. Consequently, the bank is not a necessary party in this suit. (See for example the following persuasive authorities: **Jane Wairimu Turanta v Githae John Vickery & Equity Bank & another [2013] eKLR** and **Investments and Mortgages Bank Limited v Nancy Thumari & 3 others [2015] eKLR**).

9. With the foregoing, I hold that the bank is not a necessary party to this suit. I allow the application with costs to the Applicant.

Dated, signed and delivered at Nairobi this 29th day of Nov., 2016

B THURANIRA JADEN

JUDGE