



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CAE NO. 675 OF 2010

CORPORATE INSURANCE COMPANY LIMITED.....PLAINTIFF

VERSUS

KELLYANN WANJIKU NJIRIRI.....DEFENDANT

JOHN NJERU MUNYI.....INTERESTED PARTY

R U L I N G

1. The **Notice of Motion** application before the court is dated **22nd January 2014** and is filed by the Interested Party under Sections 3, 3A, B and C of the Civil Procedure Act. The application seeks the following prayers:-

- 1. John Njeru Munyi be enjoined as an Interested Party in this case.***
- 2. The case be withdrawn from this court and be transferred to the Nairobi Chief Magistrates court for hearing and determination.***
- 3. The orders made herein on 23/1/2012 be set aside.***
- 4. Cost be provided for.***

2. The application is premised on the grounds set out therein, and is supported by the affidavit of John Njeru Munyi, the Intended Interested Party.

3. The Applicant's case is that he is the Plaintiff in Nairobi HCCC 253 OF 2010 against the Defendant herein and three others wherein he is seeking damages for injuries he sustained in the accident the subject of proceedings in this suit. The Plaintiff herein obtained orders stopping the Applicant from prosecuting his case Nairobi HCCC 253 OF 2010 until this suit HCCC 675 of 20210 is heard and determined. However, the Applicant was not served or heard on the application for stay of proceedings in his case yet he was directly affected by those orders made by consent or collusion. It is the Applicant's case that no party should be denied a chance to be heard before adverse orders are made against him, and orders so obtained are in breach of the rules of natural justice, are unjust, illegal and or in breach of the The Constitution of Kenya, 2010. The Applicant states that she is clearly an Interested Party in these proceedings, he would like the case HCCC 675 OF 2010 to be heard and determined quickly so that he can prosecute his case in Nairobi HCCC 253 of 2010 and prays for transfer of this case to the lower court for expeditious trial. He also applied to transfer his case to the lower court, since the lower court has jurisdiction to grant the reliefs sought in this suit, and has more magistrates to hear the case expeditiously. This court's Civil Division has an acute shortage of judges.

4. The application was served, but while the Defendant has filed a replying affidavit the Plaintiff has not done that. The Defendant has no opposition to the Applicant being joined to this suit as Interested Party. However, the Defendant opposes the transfer of the matter to the Nairobi Chief Magistrate Court for hearing and determination, arguing that this matter is already certified ready for hearing and its transfer will cause more delay.

5. I have considered the application and the supporting and replying affidavits. The only disputed issues for determination are two:-

- 1. Whether this suit may be transferred to the lower court.***

2. Whether the orders made herein on 23rd January 2012 may be set aside.

6. On issue number one, I have noted that pre-trial directions have been made in this matter and the matter certified ready for hearing. Subsequently, hearing dates have been taken at the registry but so far the matter has not taken off. It is my view that transferring this matter to the lower court may actually delay the matter further, and that the prayer in this regard should be denied.

7. As to the issue number two above, I have noted that the consent recorded in court on 24th January 2012 was between the Plaintiff and the Defendant. It does not involve the Interested party. In any event, that consent appears to me to have been made on valid grounds in that it is important that the liability of the Plaintiff in this matter for the accident which took place on 18th December 2007 be determined first before any other suits arising from that accident may proceed. I am therefore reluctant to set aside the aforesaid consent as prayed.

8. In the upshot save that the Applicant is allowed to join these proceedings as an Interested Party, the Applicant's application dated 22nd January 2014 fails with costs in the cause.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 12TH DAY OF JUNE 2015

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for the Plaintiff

No appearance for the Defendants

Mr. Kaburu for the Interested Party

Teresia – Court Clerk