



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO 1523 OF 2001

SUSAN KANGAI MORONGE.....PLAINTIFF

V E R S U S

EQUATOR DISTRIBUTORS (K) LTD & OTHERS.....DEFENDANTS

AND

ASSOCIATED MOTORS LIMITED.....THIRD PARTY

R U L I N G

1. The Third Party herein has applied by **notice of motion dated 31st August, 2013** for judgment on liability in this suit to be entered in terms of the judgment delivered on **30th August, 2011** in the **“test suit” (Nairobi HCCC NO. 21st June 1999)**, and upon such entry of judgment on liability, the suit herein as against the 3rd Party be dismissed in terms of said judgment.
2. The Plaintiff supports the Third Party’s application.
3. The 1st Defendant has opposed the application by **replying affidavit filed on 28th February, 2014**. It is sworn by **Frederick Otieno Mege**, the 1st Defendant’s advocate. Grounds of opposition include -
 - i. That a notice of appeal was duly lodged against the judgment in the test suit and duly served.
 - ii. That a consent order for stay of execution of the test suit judgment was entered on 30th January, 2014 pending disposal of the intended appeal or appeals.
 - iii. That the present application is premature, and the order sought is intended to frustrate the intended appeals.
4. I have considered the submissions of the learned counsels appearing. No authorities were cited.
5. It is conceded that the judgment in the test suit has been challenged and notice of appeal in that regard lodged. It is also conceded that execution of the decree flowing from that judgment was stayed pending disposal of the intended appeal.
6. In the circumstances I hold that it would not be proper to permit any further action to be taken

upon the impugned judgment in the test suit before disposal of the intended appeal – or the notice of appeal.

7. I will in the event refuse the application for now. It is dismissed, but with no order as to costs. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF MAY 2014

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 30TH DAY OF MAY 2014