



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO 763 OF 2004

AMBROSE MATOGO.....PLAINTIFF

VERSUS

1. BENEDICT M. LIMISI
2. TELKOM (K) LTD
3. PATRICK OCHALA.....DEFENDANTS

R U L I N G

1. The Plaintiff's suit is for damages in negligence arising out of a road accident. The 1st and 2nd Defendants are sued as the joint owners of motor vehicle registration number KAC 840 X which collided with the Plaintiff's motor vehicle registration number KAQ 979 Y. It is the Plaintiff's case that the accident was caused by the sole negligence of the 3rd Defendant who was the driver of KAC 840 X.

2. The 2nd Defendant filed a statement of defence dated 25th August 2004. It denied that it was jointly registered with the 1st Defendant as a co-owner of KAC 840 X, or that the 3rd Defendant was its authorized driver or gent. It also denied that any accident occurred on the date pleaded at paragraph 6 of the plaint. It further pleaded, without prejudice that if an accident occurred as pleaded, the same was solely caused, or substantially contributed to, by the Plaintiff's negligence as more particularly set out.

3. Finally the 2nd Defendant denied that the Plaintiff suffered the injuries or loss pleaded.

4. The 2nd Defendant subsequently filed chamber summons dated 18th October 2006 which is the subject of this ruling. It seeks, under **Order VI, rule 13 (a), (b) & (d)** of the **Civil Procedure Rules** then in place (the **Rules**) the main order that the Plaintiff's suit as against it be struck out with costs. The grounds for the application sated on the face thereof are –

(i) That the 2nd Defendant has been improperly joined in this case.

(ii) That the 2nd Defendant was a financier of the 1st Defendant for the purchase of motor vehicle KAC 840 X, and that to protect the 2nd Defendant's financial interest in the motor vehicle it was registered in both the 1st and 2nd Defendant's names.

(iii) That after the registration the physical control, use and possession of the motor vehicle remained with the 1st Defendant, "and as such he was responsible for

its general use and maintenance”.

(v) That in the circumstances the Plaintiff has no cause of action as against the 2nd Defendant, and his suit against it is thus misconceived, scandalous and an abuse of the process of the court.

5. There is a supporting affidavit sworn by one **Joseph Tuikong**, an assistant manager with the 2nd Defendant in charge of insurance. He has explained the joint ownership of the motor vehicle by the 1st and 2nd Defendants. Annexed to the affidavit are several documents, including a loan agreement between the 1st and 2nd Defendants for purchase of a motor vehicle, and an authority for payment by the 2nd Defendant of KShs 350,000/00 in respect of purchase of motor vehicle KAC 840 X.

6. The Plaintiff has opposed the application by **replying affidavit filed on 18th January 2007**. Grounds of opposition emerging therefrom include –

(i) That the application is “baseless, frivolous, scandalous and vexatious” only intended to delay the course of justice in this case.

(ii) That none of the documents exhibited by the 2nd Defendant in its application restrict its joint ownership of the motor vehicle in any way.

(iii) That the copy of records from the Registrar of motor vehicles discloses the 1st and 2nd Defendants as joint owners, without more, of the motor vehicle.

(iv) That the 2nd Defendant is thus a very necessary party in the suit.

7. I have considered the submissions of the learned counsels for the 2nd Defendant and the Plaintiff, including the cases cited.

8. **Section 8 of the Traffic Act, Cap 403** provides –

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

In other words, the presumption of ownership contained in the fact of registration as owner can be displaced by evidence.

9. The 2nd Defendant is not a registered money lender or financial institution or bank. But the practice of employers advancing money to their employees for various purposes, including purchase of motor vehicles, is well-established in this country. There is uncontroverted documentary evidence annexed to the supporting affidavit that indeed the 2nd Defendant advanced to its employee, the 1st Defendant, KShs 350,000/00 to purchase motor vehicle registration KAC 840 X.

10. However, the copy of records obtained from the **Registrar of Motor Vehicles** discloses the 1st and 2nd Defendants as joint-owners, without more. One would have expected the 2nd Defendant to be registered joint-owner of the motor vehicle **as a financier**. That special and limited interest was not noted on the register of the motor vehicle. Should it not have been so noted?

11. The Plaintiff has pleaded for an opportunity to cross-examine the 2nd Defendant on its claimed limited interest in the accident motor vehicle. Such opportunity can only come at the trial of the action.

12. For now I am not satisfied that the presumption in section 8 of Cap 403 has been displaced by the 2nd Defendant. The Plaintiff is entitled to his day in court as against the 2nd Defendant.

13. In the circumstances I will refuse the chamber summons dated 18th October 2006. It is dismissed with costs to the Plaintiff. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 28th DAY OF NOVEMBER 2013

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER 2013