



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL CASE NO. 39 OF 2002**

**JORAM THUO.....1<sup>ST</sup> PLAINTIFF**

**VERSUS**

**SAMUEL MBUGUA.....2<sup>ND</sup> PLAINTIFF VERSUS  
KAY LIFT SERVICES.....DEFENDANT**

**RULING**

Pursuant to the provisions of *Order VIA rules 3, 5 and 8* of the Civil Procedure (now under Order 8), **JORAM THUO** and **SAMUEL MBUGUA**, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs respectively, took out the summons dated 11<sup>th</sup> August 2010, in which they sought for leave to amend the *Plaint*. The Summons is supported by the affidavit of Samuel Mbugua Mutahi. There is evidence showing that the Summons was served upon the advocates for Kay Lift Services, the Defendant herein. The Plaintiffs were granted leave to prosecute the application *ex parte* when it became evident that neither the defendant nor its advocates attended court for the *inter partes* hearing of the Summons, despite having been served with a hearing notice.

The Plaintiffs have stated on the face of the application that they wish to have the *Plaint* amended to correct the erroneous impression that Kay Lift Services, the defendant herein, was the registered owner of Motor Vehicle registration No. KAJ 350L. The Plaintiffs aver that they have now discovered that the Defendant is the actual beneficial and or the insured owner of the aforesaid motor vehicle.

I have considered the Plaintiffs application for amendment. They are basically seeking for leave to correct the capacity of the Defendant in these proceedings. The background of this suit can easily be deduced from the pleadings. On the 21<sup>st</sup> day of August 1999, the Plaintiffs herein were involved in a road traffic accident while on board motor vehicle registration No. KAJ 350L. In the initial *Plaint*, the Plaintiffs sued the Defendant for damages for the injuries they sustained as a result of the accident claiming it was the registered owner of the motor vehicle. The Defendant filed a defence denying ownership of the same in its defence filed on 22<sup>nd</sup> April 2002. The Plaintiffs have now discovered that the Defendant is actually not the registered owner of the aforesaid motor vehicle. Annexed to the affidavit of Samuel Mbugua Mutahi, is a copy of the records relating to motor vehicle registration No. KAJ 350L obtained from the Kenya Revenue Authority dated 5<sup>th</sup> May 2003 which shows that the motor vehicle is owned by Stephen Kihoro Thuo. It is the Plaintiffs' submission that the Defendant herein was the beneficial and or insured owner of the motor vehicle. The general principle to be taken into account in dealing with such an application is that the amendments should be allowed to correct the error to enable the court determine the real issues in controversy, so long as the other side is not prejudiced. There is no evidence that the Defendant will be prejudiced in any way if the order is granted. I allow the Summons dated 11<sup>th</sup> August 2010 as prayed with costs abiding the outcome of the suit.

***Dated and delivered at Nyeri this 11<sup>th</sup> day of February 2011.***

**J. K. SERGON**

**JUDGE**

In open court in the presence of Mr. Wahome holding brief Gachihi for Plaintiff.