

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 1 of 2008

KAJUNA IDD NOOR.....PLAINTIFF

VERSUS

RAPID KATE SERVICES LTD.....1ST DEFENDANT

SIMION ISENDE.....2ND DEFENDANT

JOSEPH WAITE MACHARIA.....3RD DEFENDANT

AKAMBA PUBLIC ROAD SERVICES LTD.....4TH DEFENDANT

DANSON KARANJA KIMANI.....5TH DEFENDANT

RULING

Arising from the injuries the plaintiff suffered in an accident on 8th January, 2005 along Molo-Nairobi road involving the defendants' vehicles, on 20th December 2007 M/S Ombati Ongau & Co. Advocates filed Civil Suit No. 11013 of 2007 at the Milimani Nairobi Chief Magistrate's court (the Nairobi case) claiming damages. On 7th January 2008 M/S Sila Munyao & Co. Advocates filed this suit (the Nakuru case) on the same cause of action.

By their Chamber Summons dated 5th January 2009 and brought under **Order 6 Rules 13(1)(d)** and **16** the 4th and 5th defendants applied to strike out this suit for duplicity. On 8th September 2009 the second and third defendants followed suit by filing a similar application under **Order 7 Rules 1** and **2** and **Order 6 Rule 13(1)(d)** of the **Civil Procedure Rules**. This ruling is on the second and third defendants' said application.

Basing himself in the averments in the affidavit in support of the application, their counsel Mr. Mahida submitted that the plaintiff knowing very well that he had filed the Nairobi suit committed perjury by averring in the verifying affidavit in this suit that there is no any other suit pending on the same cause of action. He said filing two suits on the same cause of action is an abuse of the process of court and urged me to strike out this suit with costs to the second and third defendants.

In response Mr. Munyao for the plaintiff, also basing himself on the averments in his clients affidavits in opposition to this application, submitted that the plaintiff does not deny that the two suits were filed on his behalf on the same cause of action. He said the plaintiff initially instructed M/S Ombati Ongau & Co. Advocates to file a suit on his behalf and claim damages for the injuries he suffered in the said accident. As he was not able to raise the high fees that those advocates demanded he withdrew his instructions to them and instructed M/S Sila Munyao & co Advocates. The plaintiff was surprised to learn later that M/S Ombati Ongau & Co. Advocates filed the Nairobi case despite the withdrawal of his instructions from them. The plaintiff having since withdrawn the Nairobi case Mr. Munyao urged me to find that this application has no basis and dismiss it with costs.

I have considered the matter. Filing of two or more suits by a party on the same cause of action was a common practice of the ambulance chasers in this country. Such litigation was no doubt an abuse of the court process. Happily that practice has considerably been reduced by the amendment to **Order 7** of the **Civil Procedure Rules**.

It is not in dispute that two suits were filed on behalf of the plaintiff on the same cause of action. The correspondence annexed to the plaintiff's replying affidavit confirm his claim that M/S Ombati Ongau & Co. Advocates demanded Kshs.100,000/- from him before they could file a suit on his behalf. The defendants have not provided proof that the plaintiff paid those advocates any money to file the suit. In the circumstances I am inclined to believe the plaintiff that he withdrew his instructions from those advocates. As those advocates stated in **Ex.3** that they had, while awaiting for a deposit, drawn a draft plaint, I am prepared to believe Mr. Munyao's submission that the plaintiff may have signed the verifying affidavit for the Nairobi case before he withdrew his instructions.

For these reasons, and the fact that the plaintiff has withdrawn the Nairobi case, I find that he has not abused the court process and I accordingly dismiss this application. Each party shall bear its own costs of this application.

DATED and DELIVERED this 8th day of July, 2010.

D. K. MARAGA
JUDGE.