



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 1020 of 2006

NELLY NDUKU MUTUA. APPLICANT/PLANTIFF

VERSUS

**AFRICA LINE TRANSPORT CO.
LTD.....RESPONDENT/DEFENDANT**

RULING

The application by Notice of Motion is brought by the Defendant in this suit and is such defendant in various suits filed in various courts across the country. The application seeks that this suit be tried as a test suit in relation to this and the other several suits listed in the application, as well as others likely to be filed in other courts across the country, all emanating from a road accident which occurred along Kenol-Sagana Road on 16th December, 2004, involving motor vehicles registration numbers KAH 150N, GKZ 891, KAJ 590K and KAM 287R.,

The suits listed show that suits have so far been filed at Kigumo, Muranga and Nairobi and that the applicant is the defendant. It has filed similar defences and has joined a third party who it claims to have been a responsible for the occurrence of the accident, such third party being named as Simon Kibethi, possible owner the motor vehicle number KAM 287R.

This application is based on the grounds that: -

- a) The suits listed therein and others expected to be filed, all emanate from the same road accident and involves motor vehicles numbers listed herein above.
- b) That the suits appear to raise same or similar issues except probably for different sets of damages which will depend on the injuries sustained.
- c) A third party has been joined in those cases where the defendant has filed defence and is likely to be joined in others coming up.
- d) Same witnesses, some of them experts from outside the country, are likely to be called to give evidence.
- e) Liability is likely to be the same and concerning one or more of the parties already named or included in the suits.
- f) The determination of such liability and once and for all in this suit is likely to govern and assist in determining other ceases likely to follow.

g) Such a once-and-for-all determination will reduce lengthy litigation, high and additional expenses and will give guide to uniformity of awards.

For the above reasons, the defendant through its advocate Mr. Motavi sought that his application be allowed.

Mr. Ogunde for the Plaintiff herein however opposed the application. He referred to Order 37(1) of the Civil Procedure Rules and said the application does not fulfill the conditions for a test case. He said that the suits referred to do not show similar issues or defences nor is there evidence that the others expected will do so. He argues that the pleadings in other suits referred to are not annexed although he does not deny their similarities. He says that the application if allowed, will predetermine the suits.

I have considered the arguments from both sides. The grounds listed and upon which the application is based appear to me and I so find, to be fulfilling the condition stipulated in order 37 (1) and (2). The defendant is the same and it is joining a third party who is one and same in all the cases it has filed. The defendant has deponed that it will file similar defence and join the same third party in other cases expected to be filed against it. The issues involved is who between the defendant and the third party was negligent or reckless and therefore caused the accident from which the suits of various plaintiffs arise. The likelihood of enabling this suit to be a test-case, is clearly there and if determined, will shorten litigation and reduce expenses. Indeed in the cases filed already and those expected, the plaintiffs if they knew one another could have filed one suit where they are co-plaintiffs. Similarly, the defendant and the third party could be joint defendants.

It is further deponed by the defendant and not denied by the plaintiff similar evidence form same witnesses who might come form outside the country, might be called.

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In the view of this court, this is a suitable case which can be allowed to be a test case under Order 31(1) and (2). Accordingly this application has merit. It is hereby granted as prayed with orders os stay of proceedings in all other suits named and to be filed being as prayed. Orders accordingly.

Dated and delivered at Nairobi on this 18th day of August, 2009.

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D A ONYANCHA

JUDGE