



1. Civil Law Division
2. Civil Practice and procedure
3. Subject of main Suit;

TORT

- a) Running down cause
 - b) Female adult aged 26 years old on 18th March 2003.
 - c) Plaintiff sues 1st defendant, 2nd defendant and 3rd defendant as owner of the motor vehicle.
 - d) Plaintiff sues 4th as the driver of vehicle.
 - e)
 - i) Police abstract form shows 3rd defendant owner of vehicle.
 - ii) 1st defendant claims that 2nd defendant is the owner of vehicle.
 - iii) 2nd defendant denies ownership of vehicle.
 - iv) Registration of motor vehicle claims 2nd defendant owner of vehicle.
4. Application dated 30th November 2006 by 1st defendant.
1. That suit against the 1st defendant be struck out.
- Reasons;**
- a) 1st and 2nd defendant used to be one body.
 - b) By LN158 of 5.11.99
Kenya Communications act 1998 (2/98) assets divided amongst the two new bodies defendant 1 & 2.
 - c) That the motor vehicle in question KUL 811 was assigned allocated to 2nd defendant.
 - d) As 1st defendant have never and or no longer the owner of vehicle registration KUL 811 the vehicle in question.
 - e) Limitation of actions.
5. Grounds of opposition/replying affidavit by plaintiff/respondent
- a) Replying affidavit 26th January 2007
 - b) Each defendant denies ownership. All should go to a full trial and not at interlocutory stage.
6. No reply by 2, 3 and 4 defendants.
7. **Held;**
- i) Limitation of time covers only Co-op act.
 - ii) Clear evidence that 1st defendant not owner of vehicle.
 - iii) Suit against 1st defendant be struck out.
8. **Case law**
9. **Statute;** (a) The postal co-operation act 1998 (Sect.24)
(b) Communications act 1998 (No.2 of 1998)
10. **Advocates**
- M. Sila advocate instructed by M/S Sila & Co. Advocates for the plaintiff/respondent.
- S. K. Chelule advocate instructed and holding brief for Munyitia & Co. Advocates for 1st defendant/applicant
- F. O. Koko advocate instructed to hold brief by M/S Kalya & Co. Advocates for 2nd defendant/respondent.
- K. L. Kipyegon advocates for the 3rd defendant

SAMWEL KIBOR CHERUIYOT.....PLAINTIFF

VERSUS

POSTA (K) LTD & 3 OTHERS.....1ST DEFENDANT

TELKOM (K) LTD.....2ND DEFENDANT

PETER TANUI.....3RD DEFENDANT

PHILIP KIPKORIR LANGAT.....4TH DEFENDANT

RULING
(Application to strike out suit against defendant No.1
30th November 2006)

I. Background

1. The subject of the main suit herein is TORT. It is a running down matter whereby the late Zeddy Chepngetich Chepkwony a female adult aged 26 years old in 2003 was a passenger in motor vehicle registration No.KUL 811 when along the Kuresoi-Chepsir road it was driven so negligently by the 4th defendant one Philip Kipkorir Langat that it caused fatal injuries to the said deceased.
2. The legal representatives of the deceased sued 4 defendants. - M/S Postal Corporation of Kenya – 1st defendant
 - M/S Telkom (K) Ltd – 2nd defendant
 - And M/S Peter Tanui – 3rd defendantAs the owner of the motor vehicle registration
KUL 811.
3. According to the plaintiff, the police abstract reflect that;
 - (i) One Peter Tanui (3rd defendant) is the owner of the motor vehicle.
 - (ii) That the 1st defendant claims the 2nd defendant is the owner of the vehicle.
 - (iii) The 2nd defendant denies that they are owners of the vehicle and possibly blames the 3rd defendant.
 - (iv) The registration of motor vehicle shows the KP&T Ltd is the owner of the said vehicle.
4. As there are dispute as to who is the owner of the vehicle, then the said 3 defendants (1, 2 & 3) be held accountable and that should solve the disputes amongst themselves.

II. Application dated 30th March 2006 by the 1st defendant.

5. The 1st defendant filed this application and prayed that the suit against them be struck out on grounds that they were not the owner of the vehicles.
6. The 2nd, 3rd and 4th defendants made no reply to this application but the 1st defendant stated in reply that the matter should not be prayed for at an interlocutory stage.
7. The reasons why the suit should be struck out inter-alia is that originally the 1st and 2nd defendant were under one entity. By the LN 158 of 5th November 1999 of the Kenya Communications Act 1998(No.2/98) the two organization were separated and all the assets of the original organization were divided and vested amongst them. The new bodies created were defendant 1 and 2. Their assets touching on motor vehicle KUL 811 was one of such assets . It was allocated to the 2nd defendant according to LN158 of 5th November, 1999. This legal notice contained all the schedule of the assets belonging to the Telkom Kenya 2nd defendant.
8. According to the 1st defendant, this is sufficient proof that the 1st defendant has never been the owner of the motor vehicle

registration KUL 811. They should have the suit struck out against them.

9. The other issue raised is that as a cooperation now having its own act the suit was filed against them outside the Limitation of Actions. This is not under Cap.22 but under the Postal Cooperation Act of 1998 (No.2/98) Section 24.
10. The Kenya Communication act 1998 deals with Limitation under section 98 whilst the Postal co-operation deal with Section 24 of the Act No.2/98.
11. This is part of evidence to be pleaded and pursue in the main suit.

III. Opinion

12. The 1st defendant has deponed to the fact that they and have never been the owner of motor vehicle registration KUL 811. This proof is envisaged in a schedule where all assets are assigned to the 2nd defendant.
13. The registrar of motor vehicles document the owner of the vehicle is KP/TEL. This 1 presume is Kenya Post and Telecommunications, being the original body who held the ownership of the vehicle.
14. The Kenya Communications Act and the postal communications act are now two separate entities.
15. The information of the fact that motor vehicle to the 2nd defendant is in the public domain.
16. I would rule that the suit against the 1st defendant be expunged from the file and struck out. I make no orders as to costs.
17. As for defendants 2, 3 and 4 the suit should proceed against the three. They are required to file a notice under **Order 1 r.21** Civil Procedure Rules upon each other in order for the court to determine liability/apportionment if any.

Dated this 26th day of November 2009 at Kericho

M. A. ANG'AWA
JUDGE

Advocates

- M. Sila advocate instructed by M/S Sila & Co. Advocates for the plaintiff/respondent.
S. K. Chelule advocate instructed and holding brief for Munityia & Co. Advocates for 1st defendant/applicant
F. O. Koko advocate instructed to hold brief by M/S Kalya & Co. Advocates for 2nd defendant/respondent.
K. L. Kipyegon advocates for the 3rd defendant