



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 744 of 2005

1. JOAN OGALLO

2. CAROL OGALLO (suing thru' her Next Friend, the 1st Plaintiff)....PLAINTIFFS

V E R S U S

1. KENYA BUS SERVICES LTD

2. JOHN SHANGANYIDEFENDANTS

R U L I N G

The cause of action in the present suit arose out of a road accident which occurred on 2nd June, 2004 in Nairobi between motor vehicle registration number **KAL 046 S** driven by the 1st Plaintiff and motor vehicle registration number **KAE 112 W** owned by the 1st Defendant and driven by its servant or agent, the 2nd Defendant. Damages are claimed by the Plaintiffs for personal injuries suffered in the accident. The 2nd Plaintiff is the 1st Plaintiff's daughter; she was a passenger in motor vehicle KAL 046 S. The 1st Plaintiff has also claimed damages in respect of material damage caused to motor vehicle KAL 046 S. The suit is part-heard; the 1st Plaintiff has testified. In the course of her testimony on 4th December, 2007, it became clear that motor vehicle KAL 046 S was registered, not in her name, but in the name of her husband, **LABAN AYIEKO OGALLO**. The Plaintiffs' learned counsel promptly and orally applied for joinder of the said Laban Ayieko Ogallo as the 3rd Plaintiff in the proceedings. The application was strongly resisted by the Defendants' learned counsel. The court therefore directed that a formal application for joinder be made so that the issue can be properly canvassed and adjudicated upon. Such formal application was filed on 14th December, 2007 by chamber summons of the same date; it is the subject of this ruling. The application is supported by the affidavit of the said Laban Ayieko Ogallo.

As expected, the Defendants have opposed the application by grounds of opposition dated 28th January, 2008. Those grounds are:-

1. That the application is misconceived, bad in law and incurably defective.
2. That it lacks merit and is not brought in good faith.
3. That it is an abuse of the process of the court.

4. That the applicant has been unduly indolent and is undeserving of the court's discretion.
5. That the Defendants will be prejudiced and suffer injustice.

No replying affidavit was filed.

I have read the supporting affidavit. I have also given due consideration to the submissions of the learned counsels appearing, including the authorities cited.

The application is essentially made under **Order I, rule 10(2)** of the **Civil Procedure Rules** (the Rules). **Section 63(e)** of the **Civil Procedure Act, Cap. 21** (the Act) is also cited. That section appears to be the statutory underpinning of rule 10 aforesaid. It gives the court power to make various orders in supplemental proceedings, including orders as may appear to the court to be just and convenient.

Under rule 10(2) aforesaid, the court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to it to be just, order, *inter alia*, that the name of a person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. It is a wide discretion; it must nevertheless be exercised judicially and upon settled principles.

The rule is simply saying that a person may be added as a party to a suit only if he is a proper and necessary party. In the present case, the 1st Plaintiff is in essence the special owner of the motor vehicle KAL 046 S. It was bought using common funds from a joint account maintained in the joint names of her husband and herself. It was bought specifically for her exclusive use. She used it exclusively, and it was always at her disposal. She maintained it herself. Her husband apparently never touched the motor vehicle. In these circumstances it was not unreasonable that she thought all along that it was already registered in her name.

What about her husband? There was really no way he could have thought that the motor vehicle was registered in his wife's name. He bought it himself. He bought it duty-free. He knew it was registered in his own name; he had its documents. He knew he could not transfer it to anyone else, including his wife, without reference to Kenya Revenue Authority on account of the "duty-free" element. He must have known that he had not transferred ownership of the motor vehicle to his wife. He should have been more alive to the fact of his registration as owner of the motor vehicle than he apparently was when he and his wife decided to file suit. More likely, he was simply careless in this regard.

Having said so, the following facts are clear. The 1st Plaintiff was the special owner of the motor vehicle. She could pursue the claim relating to the material damage to the vehicle, but only if the legal owner is not available. That legal owner, her husband, is available. His cause of action arises from the same facts as the existing Plaintiffs' causes of action. He negotiated a settlement before the suit was filed, in respect to the material damage to the vehicle, though the matter was ultimately not settled. The claim relating to this material damage has been known to the Defendants all along; it is not something new to them.

The legal owner of the motor vehicle, who is available, is certainly a proper and necessary party. Without him, the issues relating to the material damage to motor vehicle KAL 046 S cannot be effectually and completely adjudicated upon. The claims relating to this material damage have been known to the Defendants all along, and they arise from the same facts as the existing Plaintiffs' claims. The Defendant will not be prejudiced in any way at all by the addition of Laban Ayieko Ogallo as the 3rd Plaintiff. I so hold.

In the event, and for the above reasons, the application has merit and has not been brought in bad faith. Nor is it misconceived or bad in law or defective in any way. It is certainly not an abuse of the process of the court. Finally, there was no delay in bringing the application once it was apparent that the

1st Plaintiff was not the registered owner of motor vehicle KAL 046 S.

I will therefore allow the application. LABAN AYIEKO OGALLO is hereby added to these proceedings as the 3rd Plaintiff. An amended plaint shall be filed and served within 14 days of delivery of this ruling.

I will award costs of the application to the Defendants. The costs are hereby assessed at KShs. 10,000/00 and must be paid within 14 days of delivery of this ruling. In default the Defendant may execute for the same forthwith. Those will be the orders of the court.

DATED AT NAIROBI THIS 23RD DAY OF JULY 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 25TH DAY OF JULY 2008