



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

Civil Suit 1348 of 2000

FESTUS NGOLU M'IBURI.....PLAINTIFF/APPLICANT

VERSUS

ABDALLA CHULLU.....1ST DEFENDANT/RESPONDENT

**UNIFREIGHT CONVEYORS (K) LTD....2ND
DEFENDANT/RESPONDENT**

RULING

1. The application that is before me is the Chamber Summons (Ex Parte) dated 17/09/2008. The same is brought under Sections 3A, 31, 99 and 100 of the Civil Procedure Act Order XXI Rule 4 of the Civil Procedure Rules and all other enabling provisions of the law and seeks the following ORDERS:-

1. *THAT this Honourable Court be pleased to amend and/or vary the order given herein on 2nd April 2008 to include the names of the directors of UNIFREIGHT CONVEYORS (K) LIMITED to wit: MOHAMED AHMED and MOHAMED MUNIR.*
2. *THAT the Plaintiff/Applicant be granted leave to enforce the decree given on the 2nd day of May 2002 outside this court's jurisdiction.*
3. *THAT the decree herein be executed by the High Court of Tanzania at Dar es Salaam.*
4. *THAT the Defendants/Respondents be ordered to pay all such costs and expenses as are incidental to the enforcement and execution of the said order.*

2. The application is supported by nine (9) grounds on its face, the main one being that the Applicant inadvertently omitted to include the names of the 2nd Respondent in his (Applicant's) application dated 28/02/2008 and that unless the orders sought are granted, the Applicant will be unable to execute the decree herein since the two directors of the 2nd Defendant company namely Mohamed Ahmed and Mohamed Munir both live and work for gain in the United Republic of Tanzania. The application is also supported by the sworn affidavit of Festus Ngolua M'Iburi, the Plaintiff/Applicant herein. He reiterates the grounds on the face of the application and adds that it would be in the interest of justice if the order given on 2/04/2008 is amended/varied to include the names of the two directors of the 2nd Defendant company as prayed.

3. The genesis of this matter is that on or about the 8/09/1999, the Plaintiff/Applicant who was traveling

as a fare-paying passenger in the 2nd Defendant's motor vehicle registration Number KAJ 075G, a Nissan UD diesel was injured in an accident involving the said motor vehicle along the Nairobi-Mombasa highway. The Plaintiff alleged that the accident occurred as a result of the reckless and negligent manner of driving of the 2nd Defendant's servant, driver and or agent. The Plaintiff sought the following reliefs:-

- a. *General damages of Kshs.349,000.00*
- b. *Future operation costs of Kshs.70,000*
- c. *Loss of earning income and livelihood*
- d. *General damages*
- e. *Costs of this suit*
- f. *Interest on (a), (b), (c), (d) and (e) above*
- g. *Any other or further relief as this Honourable Court may deem fit to grant.*

4. The Plaintiff subsequently obtained judgment in the sum of Kshs.180,100/= being general and special damages together with interest thereon at 12% p.a. and also got costs of the suit plus interest thereon.

5. By an application dated 28/02/2008, the Plaintiff/Applicant applied to have the directors of the 2nd Defendant summoned to attend court for their examination on the whereabouts of the 2nd Defendant's/Judgment Debtor's assets or any debts to it and to produce its books of account and in default thereof, the directors of the said company to be made personally liable.

6. After carefully considering the application as filed, the background and circumstances of this case and the submissions made to me by counsel for the Plaintiff/Applicant (Mr. Kurauka, advocate), and also after considering the relevant provisions of the law, I am satisfied that it would be in the interests of justice to grant the order sought. In the circumstances, I allow the application dated 17/09/2008 in the following terms:-

(i) *That the order given herein on 2/04/2008 be and is hereby amended to include the names of the directors of UNIFREIGHT CONVEYORS (K) LIMITED to wit MOHAMED AHMED and MOHAMED MUNIR.*

(ii) *That the Plaintiff/Applicant be and is hereby granted leave to enforce the decree given on the 2/05/2002 outside this court's jurisdiction.*

(iii) *That the decree herein be executed by the High Court of Tanzania at Dar es Salaam.*

(iv) *That the Defendants/Respondents be and are hereby condemned to pay such costs and expenses as are incidental to the enforcement and execution of the orders above.*

It is so ordered.

Dated and delivered at Nairobi this 20th day of November, 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:-

..... For the Plaintiff/Applicant

.....For the Defendant/ Respondent