

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Civil Case 94 of 2002

MUSANGO KIELA

DIANA DANIEL MUSANGI.....`PLAINTIFFS/RESPONDENTS

VERSUS

KENGOLD ENTERPRISES LTDDEFENDANT/APPLICANT

RULING

1. The Application before me is dated 6.10.2003 and is premised on Order VI Rule 13(1) (b) and (d) of the Civil Procedure Rules, as well as section 3A of the Civil Procedure Act and it is specifically sought that the suit herein be dismissed with costs to the Defendant.

2. The grounds relied upon are that:-

- a. The defendant herein is not the owner of the motor vehicle alleged to be involved in the accident.
- b. The Plaintiff can have no claim against the Defendant
- c. The suit herein is therefore frivolous, vexatious and an abuse of the process of the Court.

3. From the Supporting Affidavit of Joseph Kibe Mungai sworn on 6.10.2003 and the submissions by Ms Janmohamed for the Defendant/Applicant, the Defendant's case is that the suit herein is based on an alleged accident involving the late Daniel Musango Kiela and motor vehicle registration number KAH 497B – ZB 6929 on 26.7.2002. It was alleged in the Plaintiff that the said motor vehicle was registered in the names of the Defendant but in fact a search at the Kenya Revenue Authority indicated that the said motor vehicle was actually registered in the names of Lento Agencies and CFC Bank Ltd and Lento Agencies and D.T. (K) Ltd. That there has not been established any legally tenable connection between the Defendant and those entities and that being the case there cannot be a cause of action against the Defendant and the suit ought to be dismissed as prayed.

4. In the Replying Affidavit sworn on 27.4.2008 the Plaintiff's response is that striking out is a draconian action and yet there is an Application to amend the Plaintiff so that the correct party is sued as Defendant. That since the ownership of the motor vehicle subject of the accident is disputed, the issue should be addressed in evidence to be tendered during the trial.

5. I propose to take little time with the Application; since it is clear that the Defendant is not the registered owner of Motor vehicle KAH 497B – ZB 6929, then no cause of action that is sustainable has been established in the pleadings. I say this because the certificates of official search elsewhere referred to above are clear as to who the registered owner(s) of the motor vehicle are and it is those entities that should have been sued. There is nothing more to say.

6. The Application dated 6.10.2008 is allowed as prayed with costs to the Defendant.

7. Orders accordingly.

Dated and delivered at Machakos this **18th** day of **November 2008**.

Isaac Lenaola

Judge

In the presence of: Mr. Makau h/b for Miss Onyango for Applicant.

Isaac Lenaola

Judge