



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 666 of 2005

2. 1. Running Down Cause

TEST SUIT (orders of Ransely J 20.5.05 (Order 37 Civil Procedure Rules)

3. Motor vehicle collision mini bus and lorry

4. Liability

a) 1st defendant registered owner of mini bus vehicle reg. No. KAN 576K

b) 2nd and 3rd defendant registered owner and driver of vehicle registration

No. KAR 128P

c) Order 1 r 2(1) Civil Procedure Rules notice issued by the advocate for 2nd and 3rd defendant (22.1.09).

5. Held:

The mini bus left its side of the lane and went into the lane of the lorry due to over speeding liability against (the mini bus) 1st defendant at 100%.

The 2nd and 3rd defendant did not contribute to the accident.

6. Case law – Nil

7. Advocates:

Ngunjiri M. for Ngunjiri & Co. Advocate for the plaintiff

Mege for Muchui & Co. Advocate for the 2nd and 3rd defendant

Ouna O. for Okwach & Co. Advocates for the 1st defendant

MAINA GACHOMBAPLAINTIFF

VERSUS

PAUL NGUNYU KANYI & 2 OTHERS.....DEFENDANTS

JUDGMENT ON LIABILITY

A TEST SUIT

1: PROCEDURE

1. This is a running down suit whereby a collision is alleged to have occurred between a mini bus public service vehicle carrying several passengers (Reg. No. KAN 576K) that was owned by one Paul Ngunyu Kanyi the 1st defendant herein and motor vehicle lorry owned by M/s Aberdare Creameries Ltd and driven by David Kariuki Muturi (the 2nd defendant and 3rd defendant herein) respectively.

2. Several passengers sustained injuries with some fatal. The passengers filed suit against the three named defendants in tort claiming damages for their negligence in causing the said accident. The result of filing suit was that there now exists multiplying of suits filed against the defendants being SRMCC 19704/04.

Milimani CMCC 1112/03

Kiambu PMCC 300/03

Limuru SRMCC 168/04

Limuru SRMCC 192/03

Milimani CMCC 11588/03

Limuru SRMCC 191/03

Amongst others.

3. The defendants would of course up with several cases in various courts. The decision of the Judicial officers would perhaps vary and as a result there would be an embarrassment in that different courts would come up with different findings on liability.

4. In order to circumvent this situation, the Civil Procedure Rules provides that under order 37 Civil Procedure Rules an application may be filed seeking the courts orders to stay all pending suits or suits to be subsequently filed and there be one suit as a test suit on the issue of liability. Once this issue has been decided on merits the stay orders are lifted and all the parties merely apply the judgment on liability to their respective cases by way of an application to adapt the same liability. The parties would then proceed to formal proof.

II: Liability

4. On the fateful day of 6 April 2003, passengers boarded a public services vehicle reg. KAN 576K owned by the 1st defendant. Evidence before court (PW6) clearly showed that the driver of the said vehicle was over speeding. As the said driver neared the portion of a road along the Naivasha-Nairobi road his vehicle left his side of the lane as it did a slight bend and collided into an on coming lorry vehicle driven by the 2nd defendant and owned by the 3rd defendant. The lorry vehicle was travelling up hill. A collision occurred that requires I determine whom between the two drivers was to blame for its

action and if so did any of them contribute to the occurrence of the accident.

5. The driver to the 1st defendant DW1 gave evidence and stated that as he approached the lorry he was not over speeding. He passed the lorry but the said side of the vehicle collided with the said lorry which had left its lane and collided into his vehicle.

6. The 3rd defendant and driver to the lorry informed the court that it was the 1st defendant vehicle that left its side of the road and collided into his side. Indeed his evidence is supported by the eye witness who gave evidence in this court.

7. It is true that the police put the blame for this accident on the 3rd defendant. He was charged with a traffic offence and duly convicted. The defendant No.3 was able to show that he appealed against the conviction and sentence of the finding of the trial magistrate. The High court found he was not to blame for the accidents.

8. I find that the 1st defendant was over speeding. He was travelling down hill and at a slight bend. DW1 himself said he thought he would not hit the lorry as he travelled but did so as the two vehicle passed. I am impressed by the witnesses who were travelling in the 1st defendant vehicle. They stated that the 1st defendant driver was over speeding and indeed left its lane and collided into the lorry.

9. I find that the liability herein be at 100% against the 1st defendant. That the 2nd and 3rd defendants did not contribute to this accident. I accordingly enter judgment against the 1st defendant at 100% . The suit against the 2nd and 3rd defendant is dismissed.

10. In Summary

10.1. Liability

- i) Motor vehicle collision between two vehicles
- ii) The 1st defendant is 100% liable for the accident vicariously for the acts of its agents and or servant
- iii) The suit against the 2nd and 3rd defendant is dismissed.

11. I award the costs of the suit to the 2nd and 3rd defendant to be paid by the 1st defendant.

12. Parties are to proceed to assessment of damages under order 9a r 5 Civil Procedure Rules on the pending issues.

Dated this 1st day of February 2007.

M.A. ANG'AWA

JUDGE

Ngunjiri M for Ngunjiri & Co. Advocates for the plaintiff

Mege for Muchui & Co. Advocates for the 2nd and 3rd defendant

Ouma for Okwach & Co. Advocates fo