



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

Civil 29 of 2005

KAZOSI KALAMA

CHARO KALAMA NGUMO.....
PLAINTIFFS

VERSUS

REA VIPINGO PLANTATIONS LTD.....
.....DEFENDANT

R U L I N G

By an ex parte Chamber Summons dated 24th March 2007, pursuant to the provision of Order 1 Rule 14 of the Civil Procedure Act and section 3A of the Civil Procedure Act, the applicant seeks orders.

- 1) *That leave be granted for the defendant to enjoin HAFSWA A. MOHAMED ALI as a third party to this suit and that M/s Karigithu Kinyua Advocates serve upon them the third party notice attached to this Chamber Summons.*
- 2) *That the third party enter appearance within 21 days from the date of the order.*
- 3) *That a hearing notice be issued to the said third party.*
- 4) *That the costs of this application be in the cause.*

The application is predicted upon the annexed affidavit of MOHAMMED G. MOKUA sworn on the 6th day of July 2007.

For the application it was argued that the claim by the plaintiff herein against the defendant is for general damages arising out of a road accident.

That the said accident involved the defendant's motor cycle registration KAK 790Y which collided with the motor vehicle registration number KAH 736U belonging to the 2nd third party herein. The deceased sustained injuries as a result of the said accident and later died.

That the subject accident was wholly and/or substantially contributed to by the negligence on the part of the third party's authorized driver, agent and/or servant who drove and or managed the said third party's motor vehicle registration number KAK 736U along Kapecha area murram road within the defendant's estate recklessly and/or negligently at high speed with no regard to other road users on the said road and in particular the defendant's motor cycle and as such it is now necessary to join one Hafswa A. Mohammed Ali as a third party herein being the registered owner of motor vehicle registration number KAH 936U aforesaid. A search certificate in respect of motor vehicle registration No. KAH 736U as at 21st February 2007 is annexed as exhibit "MGMI".

Order 1 Rule 14(1) of the Civil Procedure Act provides:

"Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)

(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between any or either of them,

he may, by leave of the court, issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex-parte supported by affidavit"

I have scanned through the application and the evidence in support and is of the persuasion that the orders sought are deserved.

Accordingly I grant the application in terms of prayer 1 of the application.

The notice shall state the nature and the grounds of the claim and shall be in or to the effect on Form No. 22 of Appendix A, and shall be filed within 21 days and a copy of the plaint shall be served therewith.

The notice shall comply with the provision of Order 14 Rule 3 of the Civil Procedure Act and shall be served within 21 days from the date of this order.

DATED and delivered at Malindi this 20th day of September 2007.

N. R. O. OMBIJA

JUDGE