REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 523 of 2005

CHRISTOPHER MAKANGA

FREDRICK MULANYA

EDWARD OSANO

WINFORCE ATONGA

**EVANS MUGASIS ……….........................
………………………………….PLAINTIFFS**

AND

PATRICK MUTUA ……….........................…1ST PROPOSED INTERESTED PARTY

GERALD MAKENZIE …….......................... 2ND PROPOSED INTERESTED PARTY

JACK O. OKECHA ………........................ .3RD PROPOSED INTERESTED PARTY

DEDAN WAMBUGU …….........................….4TH PROPOSED INTERESTED PARTY

WILLIAM O. OCHIENG .... 5TH PROPOSED INTERESTED PARTY

CLEOPAS M. MOSE …….......................… 6TH PROPOSED INTERESTED PARTY

VERSUS

BLUE SHIELD INSURANCE CO. LTD.

MUGANDA WASULWA T/A KEYSIAN AUCTIONEERS …………..DEFENDANTS

R U L I N G

This application is by Patrick Mutua, Gerald Makenzie, William Okoti Ochieng and Cleopas M. Mose (hereinafter called the applicants). They seek one primary order that they be granted leave to be joined to this suit as interested parties. There are four primary grounds for the application stated as follows:-

1. **That the motor vehicles of the first three applicants have illegally and unprocedurally been repossessed by the defendants herein.**
2. **That the motor vehicles of the rest of the applicants are about to be unprocedurally and illegally repossessed by the defendants herein as they have already instructed their auctioneers to so repossess.**
3. **That the proposed interested parties were former marketing managers of the defendant and had procured car loans whose agreements did not have chattels mortgage to grant right to the defendant herein to repossess their said motor vehicles and this court already ruled on the same on 30.1.2006.**
4. **That in order for the court to determine the real questions in controversy it is mete and just that the plaint herein be amended.**

The application is supported by an affidavit sworn by the first applicant on 17.8.2006 who states that he has full authority of the other applicants to swear the affidavit. At paragraph 6 of the said affidavit the first applicant avers that the defendants have irregularly and illegally repossessed the motor vehicles belonging to the first three applicants yet there were no chattels mortgage executed and registered to warrant the said repossession, and the defendants are looking for motor vehicles belonging to the rest of the applicants with a view to repossessing them and at paragraph 7 it is deponed that on 21.9.2005, the court ruled that the repossession of the 1st defendant's former managers' motor vehicle was irregular and illegal for want of chattels mortgage and upheld Clause 6 of their car loan agreement which provided for commercial rates of interest in the event of employment termination and default.

The application is opposed on the basis of Grounds of Opposition filed by the advocates of the defendants on 31.8.2006. The defendants contend that no sufficient reasons have been given for the application and no draft pleadings are exhibited to show the reliefs proposed to be sought. They also contend that the applicants have never repaid their car loans since they left the 1st defendant's employment neither have they made any proposals of how they wish to clear the loans yet they want to be

joined in this suit where the original plaintiffs have been repaying their loans. Finally the defendants contend that the applicants have not shown evidence or documents to confirm the alleged repossession.

I heard the application on 29.8.2006. The substance of the applicants' case is that when they were in the employment of the 1st defendant they were granted car loans on terms that did not reserve the right of repossession of the cars. Yet the 1st defendant has repossessed the cars purchased by the first 3 applicants under the car loan arrangement and have threatened to repossess the cars purchased by the rest of the applicants. They seek to join these proceedings because their colleagues, the plaintiffs, have made like claims against the defendants and have obtained orders restraining such repossession. In the applicants' view as the court has pronounced its decision in the car loan agreements between the plaintiffs and the first defendant which agreements also govern their car loans, they should be joined to this suit to enable the court finally determine the controversy between them and the defendants.

On behalf of the defendants it was submitted that as no draft pleading had been exhibited, the reliefs intended to be made are not known and because of that omission the application should be dismissed. According to the defendants, the applicants had not placed material before the court to warrant the grant of the order sought by them.

I have considered the application, the supporting affidavit, the Grounds of Opposition and the submissions made to me by counsel. Having done so, I take the following view of this matter. It is surprising that the applicants state that an amended plaint is annexed to the supporting affidavit when in fact no such document is so annexed. Despite that omission, it is not difficult to discern the proposed claim of the applicants against the defendants from the averments in the supporting affidavit and the annextures thereto. It is similar to the claim already made by the plaintiffs against the defendants in this suit. There is therefore no difficulty in deciding this application even though no draft proposed pleading is exhibited.

The opposition raised by the defendants in the Grounds of Opposition and in the submissions made to me suggest that the relationship between the plaintiffs and the defendants and that of the applicants and the defendants is intertwined if not the same. The plaintiffs and the applicants are former employees of the 1st defendant. They all obtained car loans from the 1st defendant on the same or similar terms. They now appear to have similar complaints against the defendants.

I cannot see how the defendants would be prejudiced if the applicants join this suit. Indeed no prejudice is suggested by either the plaintiffs or the defendants. I also do not see how the joining of these proceedings by the applicants will be injurious to either the defendants or the plaintiffs in any manner. In **Central Kenya Ltd. vs. Trust Bank Ltd. [2000] 2 RA 365,** the Court of Appeal held:-

> "… **all amendments should be freely allowed at any stage of the proceedings provided that the amendments or joinder did not result in prejudice or injustice to the other party that could not be properly compensated for in costs."**

Having found that the applicants and the plaintiffs have a common interest against the 1st defendant and that neither the defendants nor the plaintiffs can suffer any prejudice or injury if the applicants join this suit, I allow this application and grant leave to the applicants to join this suit as sought. The pleadings may be amended to reflect their status and filed and served within the next seven (7) days. The defendants are at liberty to respond to the applicants' pleadings within fourteen (14) days of service of the same.

Costs shall be in the cause.

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this 4th day of October 2006.

F. AZANGALALA

JUDGE

Read in the presence of:- Gatundu for the proposed interested parties.

F. AZANGALALA

JUDGE

4/10/06