



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Case 1471 of 1999

JACKSON THUO MWANGIPLAINTIFF

VERSUS

PATRICK KIARIE NJOROGEDEFENDANT

RULING

1: PROCEDURE

1. TEST SUIT

Where a motor vehicle accident occurs involving several passengers and defendants, it is always advisable for the defendants to file a TEST SUIT application staying all other suits pending the determination of the issue of liability. The plaintiff can also make application for a representative suit to be heard where there are several plaintiff.

2. In this case, the plaintiffs who were involved in a motor vehicle accident that occurred as a result of a collision between the vehicle they were travelling in and an oncoming vehicle, filed for an application for a test suit be used and to be tried in the principal magistrates Court case 3108/98 at Milimani Commercial Courts. This application as heard in Misc. civil application No.486/02 on 22 May 2002 (Hayanga J). The effect of the order issued under suits were stayed pending the finalization of the TEST SUIT in the subordinate courts.

3. The trial magistrate heard the test suit together with the main suit on quantum in Nairobi PMCCC 3108/98 on 16 May 2002. In that decision the trial magistrate held the defendants M/s Mainyo Investment Ltd and Patrick Kiarie Njoroje liable for the accident. He held that the third party M/s Kenblest Ltd was not liable for the accident. The judgment was brief but I believe this is the interpretation of it.

II: APPLICATION.

4. By an application dated the 30 August 2002, the third party now applies to be discharged from all the pending suit where they had been sued and or joined as third party.

5. I have had the opportunity to read the pending files in the subordinate courts at Milimani. I have also confirmed through the third party applicant that all advocates concerned had been served with the application in question. There has been no opposition.

6. I accordingly discharge the third party Applcition M/s Kenblest Ltd and or their agent and servants from the suit in question according to the judgment in PMCCC3108/98 as ad with Misc. Civil appeal

486/02.

7. That the suits in question being:-

Nairobi PMCCC3108/98

Nairobi Hccc 1471/98

Nairobi Hccc2144/98

Nairobi Hccc 1883/00

Nairobi PMCC 3109/98 Judgment on liability

incorrect at 95%:5%

and cannot stand.

Nairobi PMCC 1903/98

Nairobi RMCC 400/01

And or any suit that may be filed or is pending and not mentioned above. This order is to be field in respective files. The files be returned to the respective courts to proceed on quantum thereafter.

The costs of this application be in the cause.

Dated this 9th Day of November 2005 at Nairobi.

M.A. ANG'AWA
JUDGE

Enonda, Makoloo, Makori & Co. Advocates for the plaintiff

Mereka & Co. Advocates for the 1st and 2nd defendant