

REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT NAIROBI
H.C.CIVIL CASE NO.1171 OF 2002

OMAR MOHAMMED & (3) THREE OTHERS PLAINTIFFS
VERSUS
ASTROL ENTERPRISES LTD. & (2) OTHERS DEFENDANTS

RULING

This is an application by way of Notice of Motion of 10.9.2002 asking for an order to strike off the defence filed in this suit and entry of summary judgement under Order 35 Rules 1, 2 and 3 and Order 50 Rule 1 of the Civil Procedure Rules and Section 3A of the Act.

Supporting affidavit by Mohammed Hassan sworn on 17.9.2000 says that the cost of transport was agreed at Kshs.816,553.40 but the Defendant has failed to pay it. The agreement dated 12.8.2000 is exhibited between the Defendants and purported plaintiffs and is signed only by first Plaintiff and not the other three and this has been supported by Mr. Mugo in his opposition to the application saying the Plaintiff does not say who it is that is owed the money.

The principle applicable is that where Defendant shows defence on the merits to have leave to defend summary judgement cannot be ordered. The purpose of Order 35 is to avoid a multiplicity of suits and to expedite the passing of a decree in a case where there is absolutely no defence to the claim.

The Court must be satisfied not only that there is no defence but also that there is no arguable point to be argued on behalf of the Defendants. The defendant must show that he has some reasonable ground of defence to the action. Here the defence is a denial merely but in his submissions the defendant counsel raised the point that the agreement is signed by one Plaintiff but that is not a defence because of liability to one person may only bar other claimants from bringing any fuller claims besides it does not absolve liability against the named defendant.

I am satisfied having considered the affidavit and the application that there is no defence to the claim and same is hereby struck off and judgement entered in favour of the Plaintiff as prayed with costs to this application with cost of the main case and of the application.

DELIVERED at Nairobi this 23rd day of May 2003.

A.I. HAYANGA

JUDGE

Read to –

Mr. Ndunda for Applicant

No appearance for Respondent

23.5.2003