REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO. 3534 OF 1995

P.N. MASHRU LIMITED…….PLAINTIFF

-VERSUS

THE ATTORNEY GENERAL……..……..……...DEFENDANT

RULING

The plaintiff comes to this court for the following orders against the defendant under the provisions of O.VI Rule 13 (1) (d) and O. XII Rule 1 of the Civil Procedure Rules.

> "1. The defendants written statement of defense be struck out for being an abuse of the process of the court.
>
> 2. Further and/or in the alternative judgment be entered on liability.
>
> 3. The costs of this application be provided for." The grounds relied upon are said to be as follows:

1. A consent order on liability was recorded in **RMCC No. 2230 of 1995 JOHN MIRINGU KARUGA VS. ATTORNEY GENERAL on 16th June, 1998.**

2. The said suit arises from the said accident as the accident that led to this suit and the defendant cannot therefore legally deny liability in the face of such admission.

3. The recording of the said consent order amounted to an admission of liability on the part of the defendant (Attorney General)

4. In the premises, the defense on record herein is a sham and is calculated to delay the plaintiffs claim"

On being served, the defendant opposed the application on the following grounds:-

"1. That this application is misconceived, incompetent and bad in law.

2. That this application lack merit and has no justifiable grounds to show the orders sought for sought to be granted.

3. That this application is an abuse of the process of this honourable court"

The above objections were said to arise from:-

"1. That consent order on liability recorded in RMCC No. 1230 of 1995 John Miringu Karega Vs.

Attorney General on 16th June, 1998 has no bearing, relevance or effect in any way or at all on the liability in issue herein.

2. That the consent does not amount to an admission of liability on part of the defendant/respondent in the matter herein.

3. That the defense dated 26th February, 1996 raises triable issues, serious points of law and should be heard on its merit.

4. That the suit herein and RMCC No. 2230 of 1995 John Mirigu Karega Vs. Attorney General are two totally separate suits, raising different issues of law and fact."

Briefly, it is common ground that on or about 1st December, 1994, the parties vehicles collided and the defendant settled claims by the passengers in its vehicle by admitting liability and paying them off. On 1st December, 1995, one day after the limitation period, the applicant filed the current suit claiming the value of its vehicle plus consequential loss of Shs.56,000/- per day. The defendant denies liability, contending that the suit was time barred and/or that the accident was caused or substantially cohabited to by the applicant.

Later, the plaintiff also claimed medical expenses for employees without ….

Mr. Muhoro the Learned Counsel for the applicant submitted that as the defendant had admitted liability to its own employees and/or passengers, it could not now deny liability to the other vehicle which was involved in the accident. Miss Shah, the learned counsel for the defendant however contended that the defense of limitation and contributory negligence was not available tot he defendant as against its passengers but was now available to it as against joint tort feasor and/or third parties. Hence the suit …. triable issues which should go to trial.

I entirely agree with the learned counsel for the defendant. As the limitation period had expired and/or as there is a claim for ……, I find that the defense has no triable issues.

I therefore dismiss this application with costs.

Orders accordingly.

Dated and signed at Nairobi this 11th day of June, 2002.

G.P. Mbito

JUDGE