

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CIVIL CASE NO. 1156 OF 2002

GENERAL MOTORS (K) LTD.....PLAINTIFF

VERSUS

SKYLINE ROLLERS LTD.....DEFENDANT

RULING

This is application filed on 2nd September, 2002 under the provisions of O.VI Rules 13 (1) (a) and (d) of the Civil Procedure Rules and O.XVIII of the civil Procedure Rules the defendant, applicant, prayers:

“1. That the plaintiffs suit date 8th July, 2002 and filed on 9th July, 2002 be dismissed as it discloses no cause of action against the Defendant

2. That paragraph 2 of the plaintiffs verifying affidavit be struck out

The grounds on which the application is based are said to be because none of the vehicles Registration No. KAG 766Z nor his it at any time authorized its staff or agents to drive the suit vehicle. Although served, the plaintiff did not file a replying affidavit but only filed grounds of objections contending that the suit should not be struck and that the respondent be given a chance to correct anomalies therein if any but did not say how.

On the pleadings and affidavit evidence, it is alleged by the respondent that vehicle registration No. 766Z was owned and was being driven by the applicants agents on 10th July, 1999 when it was involved in an accident with the respondents vehicle registration No. KAH 342 Y causing it to be extensively damaged. Just one day before the suit was time barred on 9th July, 2002, the respondent filed suit alleging the above and in reply the applicant filed a defence contending that it did it own such a vehicle nor were its agents driving the said vehicle on the alleged date. In the supporting affidavit hereto, the applicant attached copies of the Motor Vehicle Registrar’s office documents showing that as on 10th July, 1999, the vehicle registration No. KAG 7662 was owned by Marshals EA Ltd as financier and Jasminder Singh Enterprises ltd which fact has not been controverted by the respondent.

Mr. Sinai, the learned counsel for applicant substituted that the vehicle which allegedly caused the accident and/or the driver hereof was not owned by the applicant or servant thereof, there is no cause of action which can be maintained against the applicant. On the other hand Mrs Kimei, the learned counsel for the respondent submitted that the application was oppressive as the respondent was still gathering information on the ownership of the vehicle and could be by an amendment at the time the details are established.

As can be seen, as of now, there is no ground on which the applicant has been sued by the respondent. It is also not known if the respondent will ever be able to establish that although the vehicle was owned by a third party it was in the control of the applicant. This is however an matter for the future but as of now, the respondent has no cause of action against the applicant. It would therefore be oppressive to the applicant for suit to be left hanging on its head until the respondent goes hunting for evidence to hold the applicant liable. Suits should only be filed after facts are established.

For the above reasons, I hereby allow this application as prayed in pray 1 of the application and hereby

strike out the respondents suit with costs. I also award the costs hereof to the applicant.

Orders accordingly.

Delivered and signed this 16th day of December 2002.

G. P. Mbiti

JUDGE