

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 397 OF 1996

AKIL FAKHRUDIN MOHAMEDALI..... 1ST PLAINTIFF

KARIM HASSANAL SHARIFF 2ND PLAINTIFF

VERSUS

SHITAL R. PATEL 1ST DEFENDANT

MURGIAN TRANSPORT (K) LIMITED 2ND DEFENDANT

RULING

The application before me is a Chamber Summons brought under Order 1 rule 18 of the Civil Procedure Rules and seeks directions as regards the Third Party Notices taken out by the First Defendant upon KARIM HASSANALI SHARIFF and AKIL FAKHRUDIN MOHAMEDALI. The three cases, that is HCCC 397, 398 and 399 of 1996 were consolidated. The Third Party are the Administrators of the estate of ARIEF MOHAMEDALI who was at the time the driver of motor vehicle KAB 439R in which the deceased (his wife) in HCCC 397 of 1996 and Plaintiff minors (his children) in HCCC 399 of 1996 were traveling.

Mr. Mabeya for the Applicant argued that by hearing the case on liability as between the Defendants and Third Party at the same time as that of the Plaintiff and the Defendants would save the parties as well as the court on time as the issues are the same. Opposing the application Mr. Thuo for the Plaintiffs submitted that the deceased husband cannot in law be held to be contributory negligent in a case where his wife seeks damages and further that the even if this was to be possible, then the third Party notice would fail by reason of limitation under the Law Reform Act.

I have considered the arguments and authorities referred to herein. The Third Party is already a party to the suit and it is not denied by the defendants that the issues and evidence as regards liability will be the same as that between the Plaintiff and the defendants. The court has a duty to the litigants to ensure as far as possible the disposal of their cases is not delayed simply on account of issues that can be determined once and for all. I have considered the reasons advanced in opposition to the application and find that these are issues that can be dealt with during the submissions at the close of the trial. It has not been shown that the Plaintiffs will suffer only prejudice if the Third Party case is heard at the same time. In the interest of justice I shall allow the application and order that the case as between the third Party and the Defendants be heard at the same time as that between Plaintiffs and defendants. The Third Party are to file their defence within 14 days from the date herein and Discoveries if any to be done 15 days thereafter. The costs of the application shall in any event be to the Plaintiffs.

DATED AND DELIVERED AT MOMBASA THIS 1ST DAY OF OCTOBER 2001.

P.M. TUTUI

COMMISSIONER OF ASSIZE