



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 870 OF 1997**

**CAROLINE APONDI OJWANG.....PLAINTIFF**  
**-VERSUS-**  
**NEBCO (K) LIMITED (KISII EXPRESS & ANOTHER.....DEFENDANT**

**RULING**

The applicant is asking for an Order that the cases listed in the Notice of Motion under paragraph 3 be stayed until the determination of the suit No. 870 of 1997 which shall be a test case for the others.

The grounds in support of the application are that there are other many suits arising out of one accidents which are pending in other courts and that granting of the orders sought will reduce the expenses of the litigation.

Mr. Githinji for the 3rd party objects to the application on the grounds that there is no provision in the Civil Procedure Rules for making such an Order which would affect a 3rd Party.

This application is made under Order XXXVII Rule 1 of the Civil Procedure Rules which provides that where two or more persons have instituted suits against one Defendant and these Plaintiffs could be joined as Co-Plaintiffs then the court can stay the other suits and try one case on the application of any one Party provided that the issues to be tried are similar.

In the present application there are several Plaintiffs who could be joined as Co-Plaintiffs and in my view this falls within the armpits of the Order 38 (1). It will be upon the 3rd Party to apply to be joined if he so wishes but the Applicant is within her rights to make the present application.

The application is therefore allowed.

Costs shall be in course.

**Delivered and dated this 28th day of July, 2000.**

**KASANGA MULWA**

**JUDGE**