



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**MISC CIVIL APPLICATION NO 77 OF 2014**

**1. ERIC KEVIN KIRIKO MWAURA**

**2. MURANG'A STEEL & HARDWARE LTD.....APPLICANTS**

**VERSUS**

**1. JOEL MAGURU**

**2. JOSEPH MWAURA MWANGI.....RESPONDENTS**

**R U L I N G**

1. The Applicants in the application the subject of this ruling (**notice of motion dated 01/10/2014**) were third parties in the lower court where the 2<sup>nd</sup> Respondent (**Joseph Mwaura Mwangi**) was the plaintiff and the 1<sup>st</sup> Respondent (**Joel Maguru**) was the defendant. The plaintiff had sued the defendant for damages in negligence. The defendant issued a third party notice upon the Applicants (**Eric Kevin Kiriko Mwaura and Murang'a Steel & Hardware Limited**) claiming indemnity from them in respect to the plaintiff's claim.

2. The lower court directed that the issue of indemnity as between the defendant and the third parties be tried first before the suit as between the plaintiff and the defendant could be tried. That issue of indemnity was indeed tried by oral evidence, and judgment delivered on 20/04/2012 in favour of the defendant. The third parties did not appeal against that judgment.

3. Thereafter the suit between the plaintiff and the defendant was disposed of by way of an application for judgment on admission. That application was allowed and judgment entered in favour of the plaintiff. It is that judgment that the third parties now seek leave to appeal against. The defendant did not appeal against the judgment.

4. With respect the third parties' present application is misconceived. There was no issue to be tried as between the third parties and the plaintiff, and the plaintiff's judgment is against the defendant, not against the third parties. The issue of indemnity as between the defendant and the third parties was distinct and separate from the plaintiff's claim against the defendant, and was tried separately. The third parties never challenged the judgment against them in favour of the defendant in respect to that issue of indemnity. There is no direct nexus between the plaintiff and the third parties, and he cannot execute his judgment obtained against the defendant directly against the third parties.

5. The corollary of course is that the plaintiff's judgment against the defendant is no direct concern of the third parties, beyond their liability to the defendant in indemnity in respect thereto. They cannot challenge that judgment. It is worth repeating that they did not challenge the defendant's judgment for indemnity against themselves.

6. The notice of motion dated 01/10/2014 is misconceived and in any event has no merit. It is hereby dismissed with costs to the Respondents. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 12<sup>TH</sup> DAY OF MAY 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANGA THIS 13<sup>TH</sup> DAY OF MAY 2016**