



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

CIVIL APPEAL NO. 141 OF 2012

HAMID ABDULRAHMAN ABDALLA

ALI FAIZ SAIDAPPELLANTS

V E R S U S

DIXON NGOTI MWAKONDI RESPONDENT

(An appeal from the Judgment and Decree of the Honourable Senior Resident Magistrate given at Kilifi on 8th August, 2012 in SRMCC 281 of 2010)

AND

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

CIVIL APPEAL NO. 141 OF 2012

HAMID ABDULRAHMAN ABDALLA

ALI FAIZ SAID APPELLANTS

V E R S U S

JAMES KASILA MWAKONDIRESPONDENT

(An appeal from the Judgment and Decree of the Honourable Senior Resident Magistrate given at Kilifi on 8th August, 2012 in SRMCC 282 of 2010)

AND
REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 141 OF 2012

HAMID ABDULRAHMAN ABDALLA

ALI FAIZ SAIDAPPELLANTS

V E R S U S

TEREZIA MSHAI MAGANGA

**ZALINA MALALE MWAMBURI (both suing on behalf of the
estate of ANOLD MZEE WASOME (Deceased)RESPONDENTS**

*(An appeal from the Judgment and Decree of the Honourable Senior Resident Magistrate given at
Kilifi on 8th August, 2012 in SRMCC 386 of 2010)*

RULING

1. The above appeals relates to an accident that occurred on 6th May 2010. That is the same accident relates to **Civil Appeals Nos. 141 of 2012, 142 of 2012 and 143 of 2012**. This Ruling therefore relates to the above three Appeals.
2. The Appellants herein were the 2nd and 3rd Defendants in the lower Court actions. All the Respondents were the Plaintiffs in their various suits. I have noticed as I began to consider the judgments of these appeals that in the lower Court cases there was a first Defendant who has not been named a Respondent in any of the above appeals. The claims in the lower Court cases as filed by the Respondents were for general and special damages which resulted from an accident between vehicle Reg. No. KBJ 493L belonging to the 1st Defendant who is not in these appeals and vehicle No. KAG 085G belonging to the 1st Appellant herein.
3. The present appeals seek a finding that the learned Magistrate erred in finding that the Appellants were 100% liable for the accident. In the submissions filed on behalf of the Appellants the Court is invited to determine that the accident was caused wholly by the negligence of the 1st Defendant who is not a party in these appeals. If the Court makes such a determination as it is invited to do, the first Defendant will be condemned without being heard. That would be contrary to Order 42 Rule 22 of the Civil procedure Rules which provides as follows-

“Where it appears to the Court at the hearing that any person who was a party to the suit in the court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the court may adjourn the hearing to a future day to be fixed by the court and direct that such person be made a Respondent.”

4. Under that Rule the Court can adjourn a hearing of an appeal to enable a Respondent to be made a party in the appeal. Although the parties in these appeals had fully submitted in writing to these appeals the interest of justice require that the 1st Defendant in the lower Court case be made a party. These circumstances apply to all the appeals.
5. It is for that reason that I do therefore make the following orders-
 - a. **Appellant shall within fourteen days amend the memorandum of appeal to include the name of ZARMAZ IBRAHIM ALI as the 2nd Respondent in all the above appeals because the Court find that ZARMAZ IBRAHIM ALI is a necessary party to these appeals.**
 - b. **Appellant shall within 21 days from today's date serve the amended memorandum of appeal, the record of appeal and all the parties submissions to ZARMAZ IBRAHIM ALI.**
 - c. **The said ZARMAZ IBRAHIM ALI shall within 21days after such service file and serve her written submissions to these appeals.**
 - d. **At the reading of this Ruling a hearing date shall be given of this appeal.**
 - e. **This order shall be extracted by the Appellants and be served upon ZARMAZ IBRAHIM ALI.**

DATED and DELIVERED at MOMBASA this 17TH day of JULY, 2014.

MARY KASANGO

JUDGE