



No. 338/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISCELLANEOUS APPLICATION 268 OF 2011

SHREEJI ENTERPRISES (K) LTD.....APPLICANT

VERSUS

K K M.....1ST RESPONDENT

P K. K.....2ND RESPONDENT

KENYA WOMEN FINANCE TRUST LTD3RD RESPONDENT

L W (Minor suing thro' Aunt and Next Friend

G N. M)4TH RESPONDENT

(ORIGINATING FROM MACHAKOS CHIEF MAGISTRATE'S COURT CIVIL CASE NOS.

1. CMCC NO. 1538 OF 2010- L W (minor suing thro' Aunt and next friend G N.M VS SHREEJI ENTERPRISES LTD & 3 OTHERS
2. CMCC 1539 OF 2010-G N. M (legal representative of the estate of B K. N(DECEASED) VS SHREEJI ENTERPRISES & 3 OTHERS
3. CMCC NO. 1546 OF 2010- L M (suing thro" Aunt & next Friend GETRUDE N. M) VS SHREEJI ENTERPRISES & 3 OTHERS
4. CMCC NO. 1548 OF 2010- P M M (legal representative of the estate of J N M (DECEASED) VS SHREEJI ENTERPRISES & 3 OTHERS).

RULING

- I. In an application dated **23rd November, 2011**, the applicant/plaintiff seeks orders that:-
 - i. CMCC No. 1538 of 2010 be tried first on a priority basis as a test case on the issue of negligence alleged against the four defendants in respect of an accident between the 1st respondent's motor-vehicle registration No. KAW 908B, applicant's motor-vehicle Registration Number KBF 750H ZC 9680, 2nd respondent's motor vehicle registration number KAC 146B and 3rd respondent's motor-vehicle Registration Number KBG 722K which occurred on the 26th August, 2009.
 - ii. All further proceedings in the other suits mentioned in the heading of this application and any further suits that may hereafter be filed, either in the High Court or in any of the Subordinate Courts, arising out of the aforesaid accident be stayed pending the final hearing and determination

of the said issue of negligence alleged against the four defendants in the test suit aforesaid on the basis that:-

- a. The plaintiffs in all the suits so stayed as well as in any suit hereafter filed as aforesaid shall be bound by the said determination of the issue of negligence in that suit as between the four defendants.
- b. Each of the four defendants whether enjoined together as defendants or brought in as a Third Party in each of the suits so stayed shall likewise be bound by the said determination in all the suits mentioned in the heading of this application as well as in any suit hereinafter filed as aforesaid.
- c. A further or other directions be given as to this Honourable Court appears to be just and necessary.
- d. The costs of this application be costs in the cause.

2. The application is supported by an affidavit deponed by **Elizabeth Ngonde** who states that the issue of negligence alleged against the four (4) defendants in the entire suit mentioned in the hearing of the application is identical and common to all of them as they do arise out of the same accident. Secondly, the selection of the test suit will speed up determination of the issue of negligence in all the four (4) suits; avoid conflicting decisions and avoid subjecting the defendants to the costs of trying the same issue in each of the suits.

3. The application is not opposed.

4. Having considered the application and perused copies of pleadings filed in all the four (4) suits, it is apparent that all plaintiffs in the four (4) suits have instituted the said suits against the same defendants. Issues to be determined by the court are similar. It will be in the interest of justice and expediency that one of the suits be tried in respect of the issue of negligence as prayed. I therefore direct that **CMCC No. 1538 of 2010** shall be tried first on priority basis as a test suit. In the circumstances, further proceedings in the other three (3) suits aforementioned shall be stayed until the issue of negligence between the plaintiff and the defendants are determined.

5. Costs of the application shall be in the cause.

6. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 1ST day of JULY 2014.

L.N. MUTENDE

JUDGE