



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
NAIROBI

ELC CASE NO E118 OF 2023

**SMART COACH trading as SMART COACH DELIVERY
SERVICE LTD.....
PLAINTIFF**

=VERSUS=

**EASTERN COACH SERVICE LTD.....1ST
DEFENDANT**

**ZAINAB AND ZUMAR MOTORS (K)
LTD.....2ND
DEFENDANT**

**DAVID WABANDI KIGOMO KARIUKI.....3RD
DEFENDANT**

RULING

1. Before me for determination is the Notice of Motion dated 29th October 2024, brought under Order 2 Rule 15(1)(a) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, in which the Applicant seeks the following orders:-

***a) THAT the Honourable Court be pleased to enjoin
LASKY MUTINDA MIKATE as co-Defendant.***

b) THAT the Honourable Court be pleased to strike out the 2nd Defendant/Applicant and dismiss the suit against the 2nd Defendant.

c) THAT the costs of this application and suit be awarded to the 2nd Defendant/Applicant.

2. The application is based on the grounds appearing on its face, together with the supporting affidavit of Mehabub Alam, the Director of the Applicant, sworn on the same date.

THE APPLICANT'S CASE

3. The deponent averred that the Applicant, a motor vehicle dealer based in Mombasa, sold motor vehicle registration No. KDA 664A to Lasky Mutinda Mikate on 3rd October 2020, through a hire purchase agreement. He further averred that the Plaintiff's suit does not disclose any reasonable cause of action against the 2nd Defendant. According to the deponent, Lasky Mutinda Mikate should be joined as a party in the proceedings herein. In conclusion, the deponent urged the court to strike out the suit against the 2nd Defendant with costs.

THE PLAINTIFF'S/RESPONDENT'S CASE

4. The Plaintiff filed a replying affidavit sworn by Daniel Wakaba Macharia in opposition to the application. The deponent averred that, the certificate of official search from the NTSA shows that, the 2nd Defendant is the registered owner of motor vehicle registration No. KDA 664A.

5. He asserted that there exists a privity of contract between the Plaintiff and the 2nd Defendant.
6. The application was canvassed by way of written submissions, which I have duly considered.

ANALYSIS AND DETERMINATION

7. Having considered the application, the respective affidavits, and the rival submissions, the following issues fall for determination: -
 - a) *Whether the application for joinder is merited?*
 - b) *Whether the suit against the 2nd Defendant should be struck out?*
8. The law governing the joinder of parties is based on Order 1 Rule 10(2) of the Civil Procedure Rules, which states as follows;
“The Court may at any stage of the proceedings, either upon, or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the court may be necessary to enable the court to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

9. The **Black's Law Dictionary (8th Edition)** defines an Interested Party as follows;

“a party who has a recognizable stake and therefore a standing in the matter.”

In the case of **Trusted Society of Human Rights Alliance Vs Mumo Matemo & 5 Others (2015) eKLR**, the Court held that;

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made either way. Such a person feels that his interest will not be well articulated unless he or she appears in the proceedings and champions his or her cause.”

10. The Supreme Court of Kenya, in the case of **Francis Karoki Muruatetu & Another Vs Republic & 5 Others (2010) eKLR**, outlined the key elements to consider in an application for joinder of an Interested Party as follows:-

a) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.’

b) The prejudice to be suffered by the intended interested party in case of non-joinder must also be

demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.

c) Lastly, a party must, in its participation, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.

11. These are compelling decisions that establish the legal position regarding the joinder of Interested Parties.
12. The Applicant asserts that the Intended Interested Party is the owner of motor vehicle registration No. KDA 664A and therefore has an identifiable stake in these proceedings.
13. Under the Civil Procedure Rules, the Defendant can only enjoin a Third Party to a case, but cannot apply for a party to be made an Interested Party. It is up to anyone interested in the proceedings to make a formal application to be joined as such and then demonstrate to the Court that they have an identifiable stake in the case.
14. In the matter at hand, the application has been made by the 2nd Defendant on behalf of the Intended Interested Party. It is therefore improper for the 2nd Defendant to seek an order to join the intended Interested Party in these proceedings.
15. With regards to the second issue, the court has power to strike out pleadings under Order 2 Rule 15(1) of the Civil Procedure Rules, which provides as follows: -

15(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that:-

a) It discloses no reasonable cause of action or defence in law;

b) It is scandalous, frivolous or vexatious; or

c) It may prejudice, embarrass or delay fair trial of the action; or

d) It is otherwise an abuse of the process of the court and may order the suit to be stayed or dismissed or judgment to be entered accordingly as the case may be.

16. In the case of **Co-Operative Merchant Bank Ltd v George Fredrick Wekesa (Civil Appeal No. 54 of 1999)**

the Court of Appeal held that:

“Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant’s defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent’s action or which is otherwise an abuse of the process of the court.”

17. Striking out a pleading is a draconian act which may only be resorted to in plain cases. The court must therefore exercise the powers to strike out a suit with the greatest care. The Plaintiff pleaded that the 2nd Defendant/Applicant is the owner of motor vehicle registration No. KDA 664A, which the Applicant has denied. In my view, the issue of ownership of the said motor vehicle can only be determined upon a full hearing.
18. It is thus my considered view that the Applicant has demonstrated that the suit against the 2nd Defendant is an abuse of the court process or is intended to delay the expeditious disposal of this case.
19. The upshot of the foregoing is that the application dated 29th October 2024 is devoid of merit and the same is hereby dismissed with costs to the Plaintiff/Respondent.

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HON. T. MURIGI
JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 26TH DAY OF SEPTEMBER, 2025.**

IN THE PRESENCE OF: -

In the absence of the parties

Ahmed - Court Assistant