



**Nzau (Suing as legal representative & administrator of the Estate Of Francis Wambua Nzau) v Dodhia Motors Ltd & 2 others (Civil Case 227 of 2011) [2024] KEHC 3025 (KLR) (Civ) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3025 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 227 OF 2011**

**AN ONGERI, J**

**MARCH 15, 2024**

**BETWEEN**

**CYPRIAN MUEMA NZAU (SUING AS LEGAL REPRESENTATIVE  
& ADMINISTRATOR OF THE ESTATE OF FRANCIS WAMBUA  
NZAU) ..... PLAINTIFF**

**AND**

**DODHIA MOTORS LTD ..... 1<sup>ST</sup> DEFENDANT**

**ISAAC WANDERI WAWERU ..... 2<sup>ND</sup> DEFENDANT**

**SUPER BARGAINS LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant/applicant filed the chamber summons dated 25/5/2023 under Section 1A, 1B and 3A of the [Civil Procedure Act](#), Order 1 Rule 10 2 Rule 14 and Rule 25 of the [Procedure Rules](#) and all other enabling seeking the striking out of the first defendant from this suit.
2. The application is based on the following grounds;
  - i. That at all-time relevant to this suit, specifically at the time of the said accident their existed as sale agreement dated 25<sup>th</sup> November, 2006 for the sale of the motor vehicle registration number KAW 020R to Royal Trading Company of PO Box 18215-00500, Nairobi of who immediately took possession of the said motor vehicle as beneficial owner upon full payment of the purchase price vide an invoice dated 5<sup>th</sup> December, 2006 whereby in accordance with the system of registration at the time the 1<sup>st</sup> defendant handed the original logbook to the subject motor vehicle and signed transfer forms in favor of Royal Trading Company and hence the 1<sup>st</sup>



defendant were neither the registered owners nor were they the beneficial owner of the said motor vehicle.

- ii. That to the best of the 1<sup>st</sup> defendant knowledge on the material -date of 2<sup>nd</sup> September, 2010 the motor vehicle in question had already sold to KAW 020R to Royal Trading Company of PO Box 18215-00500, Nairobi and the said persons to the best of the 1<sup>st</sup> defendant knowledge were in possession of the said motor vehicle and consequently the 1<sup>st</sup> defendant cannot be held liable in the circumstances
  - iii. That in any event via a Notice of Motion application dated 19<sup>th</sup> February, 2021 filed in this honourable court by the 3<sup>rd</sup> defendant the said party admitted to being the insured being the registered and/or beneficial owner of the subject motor vehicle at the time of the subject accident herein whereby in the said application they sought to enjoin the their insurer being The Official Receiver An Interim Liquidator of Concord Insurance Company Limited hence in light of the said admission it is unreasonable, unfair and unjust to drag along the 1<sup>st</sup> defendant throughout the hearing of this matter while the 3<sup>rd</sup> defendant has admitted to owning the subject motor vehicle herein.,
  - iv. That it is in the best interest of justice and the expedient disposal of this case that this honourable court does strike out the 1<sup>st</sup> defendant from the suit.
3. The plaintiff opposed the application vide his replying affidavit dated 11/7/2023 in it he deponed that the documents allegedly used as evidence of sale of the motor vehicle as at the time of the accident are not admissible in evidence. The 1<sup>st</sup> defendant was the registered owner of the motor vehicle as at the time of the accident.
  4. He averred that in its defence dated 20/7/2020 the 1<sup>st</sup> defendant does not occasion blame on the alleged Royal Trading Company Ltd. The 1<sup>st</sup> defendant further averred that it would institute 3<sup>rd</sup> party proceedings against the alleged royal trading company Ltd which it never did. The remedy available to the 1<sup>st</sup> defendant is to enjoin the said company as a third party to these proceedings.
  5. He averred that the 3<sup>rd</sup> defendant has denied being the registered or beneficial owner of the motor vehicle in question and had admitted that this fact is not tenable.
  6. He indicated that the current application is intended to delay and frustrate the hearing and determination of this very old matter. The issues being raised in the application can be completely raised during the hearing noting that the matter is ready for trial. The applicant will not suffer any harm or prejudice if the orders sought are not granted.
  7. The parties filed submissions as follows;
  8. The 3<sup>rd</sup> defendant submitted that it exercised its absolute right to discontinue/withdraw its application pursuant to the provisions of order 25 of the [Civil Procedure Rules](#) in which it had sought to enjoin the official receiver as an interested party.
  9. The withdrawal application was made in the presence of all parties and the same was granted without any objection.
  10. The 3<sup>rd</sup> defendant submitted that the 1<sup>st</sup> defendant bears the burden of satisfying this court for the grant of its sought orders under its application dated 25/5/2023.



11. In support of its argument the 3<sup>rd</sup> defendant cited *Charles Kiptarbei Birech v Paul Waweru Mbugua & another* [2021] eKLR it was held as follows;

“In instant case, the Plaintiff and the 2<sup>nd</sup> Defendant entered into a consent withdrawing the suit and filed it and it was recorded as such. The same terminated the suit forever. By their act, the suit ceased to exist. Put in simple language, the suit came to an end. It does not matter the means by which the suit was withdrawn that is to say whether by notice of withdrawal, leave of court or consent of the parties. Each of these three has one and the same effect: the suit, it withdrawn wholly as was in the instant case, ceased to be in existence.”

12. The plaintiff submitted that Section 8 of the *Traffic Act* (Chapter 403 of the Laws of Kenya) provides that, “The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.

13. It was the plaintiff’s argument that the 1<sup>st</sup> defendant was the registered owner of the motor vehicle at the time of the accident therefore the documents allegedly used as evidence of sale of the motor vehicle by the 1<sup>st</sup> defendant to Royal Trading company Ltd are not admissible in evidence.

14. The sole issue for determination is whether the 1<sup>st</sup> defendant should be struck off from these proceedings.

15. The 1<sup>st</sup> defendant submitted that it sold the motor vehicle to one Royal Trading Company of P. O. Box 18215-00500 Nairobi.

16. I find that the said Royal Trading Company has not been enjoined as a party to this suit.

17. The substitution and addition of parties to a suit is governed by Order 1 Rule 10 (2) of the *Civil Procedure Rules* which provides 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 in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

18. In case of *Communications Commission of Kenya and 4 others v Royal Media Services Limited & 7 others* Petition No 15 of 2014 [2014] eKLR, the Supreme Court held as follows;

“An Interested Party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is the one who will be affected by the decision of the Court when it is made either way. Such a person feels that his or her interests will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. A party could be enjoined in a matter for the reason that;

- i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- ii. Joinder to provide protection of the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation”.



19. I find that the issues raised by the 1<sup>st</sup> Defendant/Applicant are factual issues to be raised during the hearing and the same cannot be determined at interlocutory stage.
20. I dismiss the application dated 25/5/2023 and direct that the suit be set down for hearing.
21. The costs of the application to abide the suit.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 15TH DAY OF MARCH, 2024.**

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**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the 1<sup>st</sup> Defendant

..... for the 2<sup>nd</sup> Defendant

..... for the 3<sup>rd</sup> Defendant

