

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NUMBER ccccc OF 2001

CCCCC TRANSPORT COMPANY LIMITED PLAINTIFF

-VS-

CCCCC ENTERPRISES LIMITED DEFENDANT

PLAINT.

1. The Plaintiff is a limited liability Company duly incorporated in the Republic of Kenya under the provisions of the Companies Act (Cap. 486 of the Laws of Kenya) and carrying on transportation business in Nairobi and elsewhere in the said Republic. Its address for service for purposes of this suit is care of Messrs. & Company, Advocates, Ccccc, Arboretum Drive, P. O. Box ccccc , Nairobi.

2. The Defendant is a limited liability Company duly incorporated in the Republic aforesaid under the provisions of the Companies Act , Cap. 486 of the Laws of Kenya) and carrying on business in Nairobi and elsewhere in the said Republic. Service of Summons to Enter Appearance shall be effected upon the Defendant through the offices of the Plaintiff's Advocates.

3. At all material times, the Defendant was the employer of one Zephania Mogiri Ondieki, now deceased, ("the said driver") engaged by the

Defendant as a driver of the Defendant's motor vehicle registration number CCCCC 327 F.

4. On or about 9th May, 1998 along the Nairobi – Mombasa Highway near a place known as Aimima Kilungu, the said driver, whilst in the course of his aforesaid employment and with the authority and/or consent of the Defendant was driving the Defendant's said motor vehicle. The same was so negligently and/or recklessly driven, managed and or controlled by the said driver, that the he caused and/or permitted the same to violently collide with the Plaintiff's motor vehicle registration number KAG 993 T.

PARTICULARS OF NEGLIGENCE AND/OR RECKLESSNESS

- a) Driving the Defendant's said motor vehicle along the said road in an aggressive manner and/or at an excessive speed;
 - b) Failing to keep any or any proper look - out or to or to have any or any sufficient regard for any oncoming traffic that was or might reasonably have been expected on the opposite side of the said road;
 - c) Carelessly overtaking at a dangerous speed and without keeping any proper look out for other road users;
 - d) Failing to take any sufficient steps to brake, stop, swerve and/or otherwise manoeuvre the Defendant's said motor vehicle so as to avoid colliding with the Plaintiff's said motor vehicle;
5. By reason of the foregoing, the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS AND SPECIAL DAMAGE

| | |
|---|---------------------------|
| a) Value of goods damaged and /or destroyed in the accident.. .. | Kshs. 3,151,290.00 |
| b) Less amount paid by the insurers | Kshs. 2,507,000.00 |
| | ----- |
| | Kshs. 644,290.00 |
| c) Cost of repairs to the Plaintiff's said motor vehicle. | Kshs. 2,430,525.65 |
| d) Loss of user (Kshs. 200,000.00 per week for four weeks) | Kshs. 800,000.00 |
| | ----- |
| TOTAL | Kshs. 3,874,815.65 |
| | ===== |
| TOTAL | Kshs. 1,444,290.00 |

6. The Plaintiff avers that the Defendant as employer of the said driver and owner of motor vehicle registration number CCCCC 327 F is vicariously liable to the Plaintiff for the said driver's said negligent acts aforesaid. Accordingly, the Plaintiff claims from the Defendant the said sum of Kshs. 3,874,815.65. 1,444,290.00

7. Despite demand being made upon the Defendant to pay the Plaintiff the aforesaid sum, the Defendant has refused, neglected and /or otherwise failed to pay the said sum of Kshs. 3,874,815.65 1,444,290.00 or any part thereof.

8. The Plaintiff avers that there are arbitration proceedings pending between itself and Panafrican Insurance Company Limited, the insurer of the Plaintiff's motor vehicle aforesaid which proceedings arose out of the said accident. In the said proceedings, the Plaintiff claims, *inter alia*, the sum of Kshs. 2,430,525.65 together with interest thereon, the same being the sum incurred by the Plaintiff in repairing its said motor vehicle subsequent to the said accident. Accordingly, the Plaintiff avers that in the event that it is successful in the said arbitration proceedings and it is awarded the said sum of Kshs 2,430,525.65 together with interest thereon as prayed therein, the Plaintiff hereby undertakes to offset the said sum of Kshs 2,430,525.65 against the similar sum of Kshs. 2,430,525.65 claimed against the Defendant herein and more particularly set out in paragraph 5(c) above.

9. The cause of action arose within the jurisdiction of this Honourable Court.

REASONS WHEREFORE the Plaintiff prays for judgment against the Defendant jointly for: -

- a) Special damages in the said sum of Kshs. 3,874,815.65 1,444,229.00 together with interest thereon at the prevailing commercial rates from 9th May 1998 until payment in full.
- b) Costs of this suit and interest thereon at Court rates.
- c) Such other or further relief as this Honourable Court may deem fit and just to grant.

DATED at Nairobi this day of 2002

**CCCCC AND COMPANY
ADVOCATES FOR THE PLAINTIFF**

DRAWN AND FILED BY:-

Ccccc and Company
Advocates
Ccccc
Arboretum Drive
P. O. Box ccccc
Nairobi

TO BE SERVED UPON

(Through the Plaintiff's Advocates Offices)

1. Ccccc Enterprises Limited

Mombasa.