



**Britam Insurance Co. Ltd v Njoki & another (Civil Appeal  
E008 of 2024) [2024] KEHC 7607 (KLR) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7607 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL E008 OF 2024  
DKN MAGARE, J  
JUNE 24, 2024**

**BETWEEN**

**BRITAM INSURANCE CO. LTD ..... APPELLANT**

**AND**

**ANNE WAITHERA NJOKI ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL NJUGUNA NJOKI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed an application dated 17/5/2024 seeking the following orders that:-
  - a. The Honourable Court be pleased to stay the proceedings in Othaya PMCC No. E033 of 2023 and Othaya PMCC No. E001 of 2024 wherein the applicant through its advocates on record is defending both ongoing claims arising out of policy No. NYI/MPRV/POL/2174648 pending the hearing and determination of this application.
  - b. This Honourable court be pleased to stay the proceedings in Othaya PMCC No. E033 of 2023 and Othaya PMCC No. E001 of 2024 wherein the applicant is through its advocates on record defending both ongoing claims and arising out of policy No. NYI/MPRV/POL/2174648 pending the hearing and determination of this appeal.
  - c. The costs of this application be provided for.
2. This was based on there being primary suits for which they are declining liability. These are Othaya PMCC No. E033 of 2023 and Othaya E001 of 2024.
3. They state that they are at risk of satisfying claims that are not payable. This is based on the postulations of the insurance (Third Party Risks) Act, Cap 405. It is supported by an affidavit of Peter Ngola Makau dated 17/5/2024.



4. This arose from a suit filed where the case was heard and the suit dismissed with costs. They state that they received instruction to appeal. The main issue relates to whether the claim in the primary suit is for fare paying passengers.
5. The court may not go into the merits of the appeal. Stay of proceedings is a serious order. It comes with it a creation of backlog. It must however be counter balanced with the right to be heard. The allegations are serious, if proved or otherwise they have serious ramifications.
6. It is therefore imperative that the orders be given to preserve the status quo before the appeal is heard and determined. There must however be consequences for the stay. The Appellant must be prepared for their part of the bargain.
7. The application was not opposed. It does not however lessen the burden on the party applying for stay. They must prove:-
  - i. Irreparable loss.
  - ii. An arguable case.
  - iii. Prejudice to the Respondent.
  - iv. Interest of justice to stay proceedings.
8. I find that their case is not idle. There are questions of fact and law that must be dealt with at the appellate level. I find that they have an arguable appeal. An arguable appeal does not need to succeed.
9. Secondly the Respondent will not be unduly prejudiced. They will be in a position to know who will pay them in advance. Thirdly, there will be sufficient security to assuage the Respondents of their costs. Order 42 Rule 6 provides as follows:-
  6.
    - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
    - (2) No order for stay of execution shall be made under subrule (1) unless—
      - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
      - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
10. In the circumstances, I allow the application with conditions as required under Order 42 Rule 6 of the Civil procedure Rules.
11. The application dated 17/5/2024 is allowed on the following terms:-



- a. There be stay of proceedings in Othaya PMCC E001 of 2024 and Othaya PMCC E001 of 2024 pending hearing and determination of the appeal hearing.
- b. The appellant to deposit a sum of Kshs.200,000/- as security for each of the 2 files in court within 30 days. The said amount shall remain as security to be utilized in case the Appellant herein is unsuccessful and Respondents are successful.
- c. Costs in the cause.
- d. The appellant to file a Record of Appeal and submissions by 4/8/2024.
- e. The Respondents to file submissions by 22/8/2024.
- f. Directions for hearing shall be given upon delivery of the ruling.
- g. The orders shall lapse unless the appeal is concluded by 27/6/2025.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 24<sup>TH</sup> DAY OF JUNE 2024.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Mrs. Muga for the Applicant

No appearance for the Respondent

Court Assistant - Jedidah

