



**Okoiti v Monarch Insurance Company & 5 others (Constitutional
Petition E005 of 2024) [2024] KEHC 9845 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CONSTITUTIONAL PETITION E005 OF 2024**

REA OUGO, J

JULY 26, 2024

**IN THE MATTER OF THE ARTICLES 2,3,19,20,21,22,23,25,28,40,46,47,48,50(1),
165 (3) (B) AND 258 (1) OF THE CONSTITUTION**

AND

IN THE MATTER OF BREACH OF SECTIONS 2 & 4 OF THE FAIR

ADMINISTRATIVE ACTION ACT

AND

**IN THE MATTER OF BREACH OF OF THE AFRICAN CHARTER ON HUMAN &
PEOPLE RIGHT**

AND

**IN THE MATTER: THE INSURANCE ACT CHAPTER 487 AND THE
INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) ACT CHAPTER 405**

BETWEEN

ANDREW OKOITI PETITIONER

AND

MONARCH INSURANCE COMPANY 1ST RESPONDENT

INSURANCE REGULATORY AUTHORITY 2ND RESPONDENT

SEVENTY-SEVEN AUCTIONEERS 3RD RESPONDENT

**GEOFFREY JUMA GEORGE (BEING SUED AS THE LEGAL
REPRESENTATIVE OF THE ESTATE OF VERONICA ANYONA
LUYINGU) 4TH RESPONDENT**

**PHILIS SCHENGA (BEING SUED AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF ERICK MWANJE) 5TH RESPONDENT**



RULING

1. This Ruling relates to the application dated July 3, 2024. A brief background of the application is that the petitioner has an insurance policy covering P/NO MNC/0807/00750/2022 with 1st respondent. According to the applicant/petitioner in 2022 the petitioner's vehicle KDB 007B was involved in an accident and the 1st respondent was notified. The 4th and 5th respondents were the plaintiffs in the suit filed in Webuye SPMC Civil Case No. MCC/E083 of 2022 and Webuye SPMC Civil Case No.E084 of 2022. Judgment was entered against the petitioner in both cases. Thereafter, the 4th and 5th respondents proclaimed the applicant's movable property to satisfy the decree from the lower court. The applicant is challenging this attachment of his 3 vehicles in the motion dated 3rd July 2024. In his petition filed simultaneously with the motion, the applicant is seeking various declaratory orders on the said execution and obligations of an insurance company where a party has taken out an insurance policy amongst other orders. The applicant seeks the following orders;
 - i. Spent
 - ii. That pending the hearing of this application inter parties, this Honourable Court be pleased to issue a temporary order restraining the 3rd, 4th and 5th respondents, their employee or servant or anyone else acting on their behalf from seizing, detaining, selling, and/or auctioning or in any disposing off or denying the owner use of motor vehicles KCY 007D, KDE 007D, KDB 007D and KCF 019D, man prime movers that is set for auction vide a proclamation and warrant of attachment dated 27th May, 2024 or any other way interfering with the property belonging to the petitioner herein that has been so unlawfully proclaimed pending the hearing and determination of the petition herein.
 - iii. That pending the hearing of this application inter parties, this Honourable Court be pleased to issue a temporary order restraining the 3rd, 4th, and 5th respondents, their employee or servant or anyone else acting on their behalf from seizing, detaining, selling, and/or auctioning or in any disposing off or denying the owner use of motor vehicles KDB 007D, KCY 007D, KDE 007D and KCF 019D vide the proclamation notice dated 09/04/2024 and further dated 27/05/2024 or any other way interfering with the property belonging to the petitioner herein pending the hearing and determination of the petition herein.
 - iv. That pending the hearing of this application inter parties, this Honourable Court be pleased to issue an interim order compelling the 3rd, 4th, and 5th respondents to release to the petitioner motor vehicle registration number KCY 007D, KDE 007D, KDB 007D and KCF 019D, man prime movers that was so unlawfully and illegally attached and proclaimed which belongs to the petitioner.
 - v. That at the hearing of this petition interparties, this Honourable Court be pleased to issue a temporary order restraining the 3rd, 4th and 5th Respondents, their employee or anyone else acting on their behalf from seizing, detaining, selling, and/or auctioning or in any disposing off or denying the owner use of motor vehicles KDB 007D, KCY 007D, KDE 007D and KCF 019D vide the proclamation notice dated 09/04/2024 and further dated 27/5/2024 or any other way interfering with the property belonging to the petitioner herein pending the hearing and determination of the petition herein.



- vi. That at the hearing of this application interparties, this Honourable Court be pleased to issue an order compelling the 1st respondent herein to deposit sufficient security in court to satisfy the decree issued in favour of the 4th and 5th respondent herein in Webuye Senior Principal Magistrate Court Case No. MCC/E083 OF 2022 and Webuye Senior Principal Magistrate Court Case No. MCC/E084 of 2022 and the costs related thereto pending the hearing and determination of the petition herein.
- vii. That the costs of and incidental to this application be costs in the cause in any event.
2. The application was opposed by the 1st respondent and the 4th and 5th respondents. The 1st respondent filed grounds of opposition and a replying affidavit sworn by Titus Munguti the 1st respondent's legal officer dated 16th July 2024. The 4th and 5th respondents filed replying affidavits sworn by George Juma George dated 5.7.2024 and Philip Schichenga replying affidavit dated 6.7.2024
3. I have considered all the affidavits filed by the parties and the oral submissions made during the hearing of this application. The applicant seeks prayers 2 and 5 of the motion. There is no dispute that there is a judgment against the petitioner in the 2 civil cases at Webuye court. There is also no dispute that execution has proceeded against the petitioner with the full knowledge of the 1st respondent who is his insurer and that the 1st respondent has issued post-dated cheques to the 4th and 5th respondent. The 4th and 5th respondents admitted that some cheques have been honoured and some, post-dated, await the dates indicated to be honoured on various dates as indicated. The 4th and 5th respondents fear that the remaining cheques might not be honoured because they have had previous incidents with the 1st respondent when some cheques were not honoured.
4. The applicant is apprehensive that the continual detaining of his vehicle is exposing them to risks and that he is also losing business. The applicant has demonstrated that he has a prima facie case, his vehicles have been attached despite taking up insurance with the 1st respondent. He is challenging the acts of the 4th and 5th respondent despite the fact that he has taken an insurance cover to cover any loss or damage that could occur. He has also submitted that he continues to suffer loss as the vehicles are used in his business. The issue of the 1st respondent not honouring post-dated cheques has not been sufficiently demonstrated. As we await the hearing of the petition and noting that the 1st defendant has taken the burden to liquidate the decretal sum owing, I will exercise my discretion in the interest of justice and make the following order; Motor vehicle registration numbers KDB 007D, KCY 007D, KDE 007D, and KCF 019D which were attached after a proclamation dated 9/4/2023 shall be released to the petitioner/applicant forthwith. The issue of the auctioneer's fees will be determined at the hearing of the petition if the parties cannot agree on who shall bear the auctioneer's costs. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 26TH DAY OF JULY 2024.

R.E.OUGO

JUDGE

In the presence of:

Mr Omboko -For Petitioner/ Applicant

Mr. Mwangi -For the 1st Respondent

Miss Kihima - For the 2nd Respondent

3rd Respondent - Absent



Miss Soita h/b Mr Omollo -For the 4th & 5th Respondents

6th Respondent - Absent

Wilkister/ Diana - C/A

