



**ICEA Lion General Insurance Company Limited v Ongera (Civil Suit E004 of 2023) [2024] KEHC 12046 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 12046 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL SUIT E004 OF 2023  
F GIKONYO, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**ICEA LION GENERAL INSURANCE COMPANY LIMITED ..... PLAINTIFF**

**AND**

**CYRUS OBURU ONGERA ..... DEFENDANT**

**RULING**

**Stay of proceedings**

1. The application before the court is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, and sections 3A and 63(e) of the *Civil Procedure Act*; and it seeks for the following orders;
  - i. Spent.
  - ii. Spent.
  - iii. That there be stay of proceedings before the Narok Chief Magistrate's court being Narok CMCC No. E140 of 2023 *Van Gesare Onkwani v Cyrus Oburu Ongera*, Narok CMCC No. E148 of 2023 *Isaac Ontita Nyabaro Vcyrus Oburu Ongera* And Narok CMCC No. E149 of 2023 *Julius Makori Nyakina v Crus Oburu Ongera* pending the hearing and determination of the suit herein.
  - iv. That the costs of this application be provided for.
2. The application is premised upon grounds set out in application and the supporting affidavit of Lydia Mwirigi.
3. The foundational facts stated by the Applicant are; that three civil suits filed in Narok Chief Magistrate's court; Narok CMCC NO. E140 of 2023 *Van Gesare Onkwani v Cyrus Oburu Ongera*,



Narok CMCC NO. E148 of 2023 Isaac Ontita Nyabaro v Cyrus Oburu Ongera and Narok CMCC NO. E149 of 2023 Julius Makori Nyakina v Cyrus Oburu Ongera are seeking damages for personal injuries arising from a road traffic accident involving the insured motor vehicle.

4. However, at the time of the accident, the insured's motor vehicle was being used for carriage of passengers for hire and reward contrary to the terms of the insurance policy.
5. Therefore, as the plaintiffs in the cases before the subordinate court were the passengers in the defendant's (insured) motor vehicle, they were not covered by the subject policy for the said motor vehicle was at the time operating outside the scope of the cover of insurance taken out.
6. On the basis that the defendant/respondent had breached a material term of the policy document, the plaintiff/applicant repudiated the policy of insurance, making this application necessary.
7. The applicant averred that in the event the primary suits are concluded and judgments are issued, the plaintiffs therein would be at liberty to enforce the judgment against the plaintiff/applicant herein as the insurer of the defendant's motor vehicle registration no. KCS xxxQ which would render the instant application a mere academic exercise.
8. It is the applicant's contention that, proceedings in the said suits should be stayed as a consequence of this application which directly relates to and affects the said suits.

#### **In opposition...**

9. The defendant filed a replying affidavit sworn by one Cyrus Oburu Ongera.
10. The respondent averred that the investigations and alleged evidence were obtained illegally.
11. The respondent averred that the magistrate's court has neither given any directions and/ or handled the said matters nor has any judgment been entered against the applicant and no execution has been taken out against the applicant. Therefore, there are no proceedings alleged either in the main or primary suits to be stayed as prayed.
12. The respondent urged this court to dismiss the application.

#### **Directions of the court**

13. The application was dispensed off by way of written submissions. The plaintiff/Applicant's submissions were filed in court on 08/11/2024 while the defendant/respondent's submissions were filed in court on 15/07/2024.

#### **The plaintiff/applicant's submissions.**

14. The applicant submitted that this court has the requisite jurisdiction and discretionary powers to grant the orders of stay of proceedings. The applicant relied on *George Oraro v Kenya Television Network* Nairobi HCCC No. 151 Of 1992 cited in [Britam General Insurance Company \(Kenya\) Limited v Stephen Wambua Masila & 11 Others](#) [2020] eKLR.
15. The applicant submitted that they have met the criteria set for granting an order for stay of proceedings. The applicant relied on [Kenya Wildlife Service V James Mutembei](#) [2019] eKLR, *Global Tours & Travel Limited*; Nairobi HC Winding Up Cause no. 43 of 2000, [Halsbury's Law of England](#), 4<sup>th</sup> edition. Vol.37 pages 330 and 332.
16. The applicant submitted that upon the applicant proving that it is not obligated to satisfy the judgments in the primary suits in this suit, it will be easier for the various plaintiffs in the primary



suits to enforce judgments upon proving their case against the defendant and avoid unnecessary proliferation of proceedings. The applicant relied on the court of appeal in *Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 Others* Civil Appeal No. 25 of 2002[2009] KLR 229.

#### **The defendant/respondent's submissions.**

17. The respondent submitted that the applicant has not established a prima facie case with sufficient cause to warrant stay of proceedings on the mentioned cases as the applicant seeks to stay yet to commence proceedings. The respondent relied on Order 42 Rule 6(1) of the *Civil Procedure Rules, Kenya Wildlife Service v James Mutembei*(2019) eKLR, *Halsbury's law of England*, 4<sup>th</sup> edition, vol. 37 page 330 and 332, *David Morton Silverstein v Atsango Chesoni* (2002) eKLR.
18. The respondent submitted that the applicant has ignored the provisions of order 42 rule 6(1) of the Civil Procedure Rules. The respondent argued that due regard must be given to time in order to avoid delaying the matters in subordinate courts. The respondent relied on *Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] eKLR.

#### **Analysis And Determination.**

19. From the pleadings and submissions of the parties, the major issue for determination in this application is: -

##### **i.Stay of proceedings in the primary suits herein.**

20. Stay of proceedings is provided for in Section 6 of the *Civil Procedure Act* where an issue is directly and substantially in issue in proceedings between the same parties, another court ought to stay its proceedings in respect of such suit. See *Timothy Kisina Kithokoi v Elijah Kitele & another* [2022] eKLR.
21. Of the relief of stay of proceedings, it was stated in the case of *Kenya Wildlife Service v James Mutembei* (2019) eKLR, that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceedings is high and stringent”.
22. The power to stay proceedings ought to be exercised sparingly in respect of cases which ought to be stayed in the interest of justice; but, it all depends on the facts of the case(*David Morton Silverstein v Atsango Chesoni* [2002] eKLR, the Court of Appeal citing *Kenya Commercial Bank Ltd v Benjoh Amalgamated Ltd & Another* [1998] eKLR).
23. See also *Halsbury's Law of England*, 4th Edition. Vol. 37 pages 330 and 332, that:

“The stay of proceedings is a serious, grave, and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”



This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

24. Although the court has power to stay proceedings, caution is advised against disruption or postponement of a party’s right to litigate without indomitable reason or justification.
25. The question here is therefore, whether there are exceptional circumstances that justify stay of proceedings instituted by the third parties?
26. The main reasons for seeking stay of proceedings in Narok CMCC NO. E140 of 2023, E148 of 2023, and E149 of 2023 are twofold: - i) that the defendant/insured breached fundamental warranties, terms, and conditions of the Insurance Policy thus entitling the plaintiff /applicant to avoid the obligations under the policy; and ii) once judgment is obtained in the Narok suits, the plaintiff /applicant will be held liable to settle the claims under the provisions of Cap 405, *Insurance (Motor Vehicle Third Party Risk) Act*, despite having filed this suit seeking a declaration that it is entitled to avoid the policy.
27. A careful balancing is required here, of right of the third parties to remedy for injuries sustained against the insured; and of the insurer to seek repudiation of a policy in a declaratory suit against the insured.
28. It bears repeating that stay of proceedings is a serious interruption or postponement of a party’s right to litigate a case in court. And, it is not strange that stay of proceedings have been used to cause prolonged delays, thereby, causing grave injustice. There has to be a rethinking on the justification for postponing the right of the third parties to pursue their remedies simply because a declaratory suit to avoid the policy has been filed, and lean towards the constitutional imperative of party obligation in their case, to assist the court attain the overriding objective of the law, more specifically, expeditious disposal of cases. The reality is that, there is no judgment against the insured. Similarly, there is no declaratory suit against the insurer under cap 405 of the laws of Kenya. No justification for staying the primary suits.
29. This is a call to serve substantive justice within the constitutional framework by tapping the wisdom in the principles of justice in article 27 of the *Constitution* on equality before the law and the right to equal protection and equal benefit of the law, and non-discrimination; and in article 159(2) of the *Constitution* that; (a) Justice shall be done to all, irrespective of status; and (b) justice shall not be delayed; providing the formula for striking a symmetrical balance of the rights of the parties.
30. Within that thinking, the approach that commends itself to the court is for the plaintiff’s declaratory suit to be fast-tracked. The plaintiff should utilize the overruling objective rules of the court, and observe party obligations thereto to achieve expeditious disposal of their case. Worth noting is that, the third parties, in prosecuting their cases, are not impeding or preventing the plaintiff from fast-tracking their case. In the circumstances of this case, there is no any call to go beyond the logical.
31. In the upshot, the application for stay of proceedings is dismissed with no order as to costs. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT Narok THROUGH MICROSOFT TEAMS APPLICATION, THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**F. GIKONYO M**

**JUDGE**

In the presence of:

Odoyo for applicant

Mogaka for respondent



Otolo C/A

