



Kiptum (Acting Commissioner Of Insurance Regulatory Authority) v Blueshield Insurance Company Limited (Under Statutory Management); Muigai & another (Interested Parties); Mogeni (Applicant) (Miscellaneous Application 238 of 2017) [2023] KEHC 2816 (KLR) (Commercial and Tax) (24 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 238 OF 2017**

EC MWITA, J

MARCH 24, 2023

IN THE MATTER OF LIQUIDATION OF BLUESHIELD INSURANCE COMPANY LIMITED

BETWEEN

GODFREY K. KIPTUM (ACTING COMMISSIONER OF INSURANCE REGULATORY AUTHORITY) PETITIONER

AND

BLUESHIELD INSURANCE COMPANY LIMITED (UNDER STATUTORY MANAGEMENT) RESPONDENT

AND

BETH N. MUIGAI INTERESTED PARTY

AND

CHRISANTUS MOGENI APPLICANT

AND

JEAN M. NGEGI INTERESTED PARTY

RULING

1. Chrisantus Mogeni,(the applicant), filed a notice of motion dated July 1, 2022, under Orders 1 rule 8 and 51 rule 1 of the [Civil Procedure Rules](#), seeking leave to be joined in these proceedings as an Interested Party and an order of stay of execution of the judgement and decree in Kisii CMCC No 635 of 2010, *Fredrick Chanzu v Chrisatus Mogeni & 2 others* dated the December 21, 2018. This includes



- attachment motor vehicles registration numbers KBH 069V, KCG 022P, KBR 901T, household and other movable items of the applicant.
2. The applicant also seeks a declaration that being an insured of Blue Shield Insurance Company (the company) under policy No 069/000174/08/12/621, he is protected from execution in Kisii CMCC No 635 of 2010 during the moratorium period declared by the Statutory Manager.
 3. The motion is premised on the grounds on its face and the applicant's affidavit sworn on July 1, 2022. The applicant stated that he is the defendant in Kisii CMCC No 635 of 2010 and that the plaintiff in that suit has obtained Judgment and Decree for Kshs 3,127,964 and attached his motor vehicles registration numbers KBH 069V, KCG 022P, KBR 901T, household items and other movable property in satisfaction of that decree.
 4. The applicant stated that he was insured by the company under policy No 069/000174/08/12/621 when the accident occurred leading to filing of the suit. He further stated that he is not in a position to liquidate the decree sum without the assistance of the company. The applicant asserted that there is a moratorium in place barring all claims against parties insured by the company, (including him) and that he could not have informed the court in Kisii about the moratorium since he had not been served with these proceedings.
 5. The applicant argued that joining him into the proceedings will bring all parties and arising issues before the court for effective determination of the matter. He contended that no prejudice will be suffered by the other parties in these proceedings.

Responses

6. The respondents opposed the application through grounds of opposition dated September 22, 2022 and December 7, 2022,. They argued that the application is incompetent and has no merit; the court had set aside orders given on October 28, 2011 in HCCC No 465 of 2011 (OS) barring all proceedings against policyholders of the company during the moratorium and held (in several applications filed in the suit similar to the current application), that the moratorium issued under section 67C (10) only protected the company from claims by policyholders and creditors, but not policyholders against claims by third parties. The respondents took the view, that the applicant could not benefit from the moratorium hence there would be no basis for joining him into these proceedings.
7. The respondents argued that the petition was filed in 2017, seeking winding up of the company because it had failed to meet the reasonable expectations of policyholders. They relied on *Kingori v Chege & 3 others* (Civil Case No 136 of 2000), [2002] 2 KLR 243 for the position that the applicant had not demonstrated that he was a necessary and proper party, or that his presence would enable the court effectively and completely adjudicate and settle all questions in the case.
8. The respondents asserted that the moratorium does not protect the applicant from execution in Kisii CMCC No 635 of 2010 because section 67C (10) of the *Insurance Act*, protects insurers against claims from policyholders and creditors but does not extend the protection to claims against policyholders by third parties. The respondents relied on *Re Blue Shield Insurance Limited (Under Statutory Management)* (Civil Case No 465 of 2011 (OS) [2017] eKLR and *Re Blue Shield Insurance Company Limited* (Civil Case No 465 of 2011 (OS) [2020] eKLR.
9. The respondents submitted that they will be extremely prejudiced since the court had already given directions and scheduled the matter for hearing which would have proceeded, but for this application. The respondents argued that it is in the interest of justice that the application be declined and dismissed since there are many policyholders, creditors and insurance beneficiaries whose legal rights are severely



affected and are waiting for the determination of this petition, in order to facilitate the processing of their claims subject to such assets as shall be available to settle such claims.

Determination

10. The applicant seeks leave to join the proceedings as an interested party. The applicant also seeks an order staying execution against him in Kisii CMCC No 635 of 2010. The applicant's counsel was given time to file written submissions but did not do so even after time was extended for that purpose on his request.
11. The respondents oppose the application arguing that the applicant is not a proper or necessary party to be joined in the proceedings; that moratorium declared by the statutory does not protect policyholders and that in any event, the orders issued barring any proceedings against policy holders had been set aside in HCCC No 465 of 2011 (OS).
12. The applicant was a policy holder when the company was placed under statutory management. The proceedings in court seek to liquidate the company and the applicant has applied to be made an interested party to these proceedings. He has also sought stay of execution against him in Kisii CMCC No 635 of 2010 on the basis of the moratorium declared in favour of the company pending the hearing and determination of these insolvency proceedings.
13. First and foremost, a moratorium declared by a statutory manager only protects the company against any claims by debtors or creditors to the company. It does not extend protection to policy holders who have been sued by third parties on the basis of the policy they may have taken out with the company.
14. Second, as the respondents argued, the orders that had earlier been issued barring any actions against policy holders of the company during the moratorium, and which appear to have been the real reason why the applicant sought to be joined into these proceedings, were set aside. The applicant did not dispute the fact that those orders were set aside. That being the case, the applicant cannot benefit from orders that no longer exist.
15. But more fundamentally, the applicant has applied to be joined as an interested party yet what is before court is a petition for liquidating the company. It is not clear what role the applicant will play in these insolvency proceedings if joined as an interested party. An interested party plays no major role in proceedings before the court and cannot seek orders of his own, Any orders the court may make are those sought by the principal parties based on their pleadings.
16. In a petition to liquidate a company, a party may be joined as a creditor supporting or opposing the petition but not as an interested party. In that respect, the applicant has not sought to come into these proceedings as creditor either supporting or opposing the petition. I must point out that whether or not to join a party into proceedings is at the discretion of the court. However, an applicant must lay the basis for the joinder, which the applicant has not. In the circumstances, it is difficult for the court to understand why the applicant should be joined into the proceedings in the manner he has approached the court.
17. Consequently, I find no merit in the application. It is declined and dismissed. There will, however, be no order as to costs.

Dated, Signed and Delivered at Nairobi this 24th Day of March 2023

E C MWITA

JUDGE



