



REPUBLIC OF KENYA



Ntiritu v Muriira (Civil Case E001 of 2021) [2023] KEHC 21133 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU**

CIVIL CASE E001 OF 2021

TW CHERERE, J

JULY 27, 2023

BETWEEN

PATRICK MUTUMA NTIRITU PLAINTIFF

AND

BONIFACE MWENDA MURIIRA DEFENDANT

RULING

Background

1. On the dated 27th April, 2023, this court entered judgment for the Respondent as against the Applicant for KES. 8, 122,971/- plus costs of the suit and interest.
2. By notice of motion dated 05th June, 2023 supported by an affidavit sworn by the Applicant on even date and a further affidavit sworn on 21st June, 2023, Applicant seeks stay of execution of the judgment pending the hearing and determination of a declaratory suit Meru CMCC NO. E102 of 2023 he has filed against his insurer Britam Insurance Limited which he says is duty bound to settle the decretal sum.
3. Respondent opposed the application vide his replying affidavit sworn on 16th June, 2023 in which he avers that he is not privy to the contract of insurance between Applicant and his insurer and the pending suit between them should not be a bar to settlement of the decretal sum.
4. I have considered the application in the light of affidavit evidence on record. The record demonstrates that Applicant has not appealed the judgment of this court but seeks to stay of execution of the judgment pending the determination of a declaratory suit between him and his insurer.
5. Applicant deposes that he would be financially crippled if the orders sought are not granted. Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay (See Kenya Shell Limited v Benjamin Karuga Kigibu & Ruth Wairimu Karuga (1982-1988) 1 KAR 1018). Since



Applicant also avers that his insurer will reimburse him if the declaratory suit succeeds, I find that Applicant stands to suffer no substantial loss and the order of stay is therefore unmerited.

6. Respondent has a lawful judgment in his favour which the Applicant is lawfully bound to satisfy and therefore the right to enjoy the fruits of his judgment should not be hindered only by the existence of a declaratory suit to which he is not a party.
7. From the foregoing analysis, I find that the notice of motion dated 05th June, 2023 has no merit and it is dismissed with costs to the Respondent.

DATED AT MERU THIS 27TH DAY OF JULY 2023.

T. W. CHERERE

JUDGE

Appearances:

Court Assistant - Morris Kinoti

For Plaintiff/Applicant - Mr. Laichena for Laichena Mugambi & Ayieko Advocates LLP

For Respondent - Mr. Olunga for Samuel Gitonga & Associates

