



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**CIVIL CASE NO. EO03 OF 2021**

**SAMMY OPIYO T/A LIERA FARM INVESTMENTS LTD.....PLAINTIFF/APPLICANT**

**VERSUS**

**FIDELITY INSURANCE CO. LTD.....DEFENDANT/RESPONDENT**

**RULING**

1. The plaintiff/applicant moved the court by way of Notice of Motion dated 15<sup>th</sup> June, 2021. It was brought under section 79 (7) of the Land Act, 2012, sections 1A, 1B, 3A & 63(e) of the Civil Procedure Act, CAP. 21 Laws of Kenya and under Order 22 Rule 22 (1) & Order 51 Rule 1 of the Civil Procedure Rules, 2010. The applicant is seeking the following orders:

- a) The application herein be certified urgent and same be heard ex-parte in the first instance;
- b) The execution process commenced against the applicant in Oyugis PMCC No.200 of 2017, Oyugis PMCC NO.201 of 2017, Oyugis PMCC No.202 of 2017, Oyugis PMCC No.203 of 2017, Oyugis PMCC No.205 of 2017 be stayed pending the hearing and determination of this application;
- c) Pending the hearing and determination of this application, the honourable court be pleased to issue an interim injunction restraining the defendant, its servant or agents or otherwise howsoever manner breaching the policy agreement or statutory duty in respect to the judgment in Oyugis PMCC No.199 of 2017 Risper Akinyi Ndalo vs. Liera Farm Investment, Oyugis PMCC NO.200 of 2017 Tabitha Atieno Majwek vs. Liera Farm Investments Limited, Oyugis PMCC NO.201 of 2017 Pamela Achieng Ojwang vs. Liera Farm Investment Limited, Oyugis PMCC NO.202 of 2017 Jemimah Aoko Odungo vs. Liera Farm Investments Limited, Oyugis PMCC NO. 203 of 2017 Dinah Akoth Jacob vs. Liera Farm Investments Limited, Oyugis PMCC NO.205 of 2017 Mary Akoth Ouma vs. Liera Farm Investments Limited;
- d) Pending hearing and determination of this suit, the honourable court be pleased to issue a temporary injunction restraining the defendant from breaching the policy agreement and/or statutory duty in respect to Oyugis PMCC NO. 199 of 2017 Risper Akinyi Ndalo vs. Liera Farm Investment, Oyugis PMCC NO. 200 of 2017 Tabitha Atieno Majwek –vs. Liera Farm Investment Limited, Oyugis PMCC NO.201 of 2017 Pamela Achieng Ojwang vs. Liera Farm Investments Limited, Oyugis PMCC NO.202 of 2017 Jemimah Aoko Odungo vs. Liera Farm Investments Limited, OYUGIS PMCC NO.203 of 2017 Dinah Akoth Jacob vs. Liera Farm Investments Limited, Oyugis PMCC NO.205 of 2017 Mary Akoth Ouma vs. Liera Farm Investments Limited;
- e) The execution process commenced against the applicant in Oyugis PMCC NO.200/2017, Oyugis PMCC NO.201 of 2017, Oyugis PMCC NO.202 of 2017, Oyugis PMCC NO 203 of 2017, Oyugis PMCC NO.205 of 2017 be stayed pending the hearing and determination of this suit;
- f) Costs of this applicant do abide the appeal; and
- g) Such other and /or further orders as this Honourable court may deem just and expedient be granted.

2. The application was premised on the following grounds:

- a) That the respondent has failed to satisfy the judgment in Oyugis PMCC NO. 199 of 2017 Risper Akinyi Ndalo vs. Liera Farm Investment, Oyugis PMCC NO. 200 of 2017 Tabitha Atieno Majwek vs. Liera Farm Investment Limited, Oyugis PMCC NO.201 of 2017 Pamela Achieng Ojwang vs. Liera Farm Investments Limited, Oyugis PMCC NO.202 of 2017 Jemimah Aoko Odungo vs. Liera Farm Investments Limited, Oyugis PMCC NO.203 of 2017 Dinah Akoth Jacob vs. Liera Farm Investments Limited, Oyugis PMCC NO.205 of 2017 Mary Akoth Ouma vs. Liera Farm Investments Limited.

- b) That the respondent is statutorily bound to satisfy the judgment obtained against the applicant being the liability covered by the term of the policy.
- c) That the execution process has been commenced and/or going on as against the applicant by way of arrest and committal of the applicant to civil jail in default of payment of the decretal sum.
- d) That the plaintiff/applicant has a prima facie case with overwhelming chance of success.
- e) That the plaintiff/applicant stands to suffer irreparable loss in the event that orders of temporary injunction is not granted.
- f) That the balance of convenience tilts towards granting the injunction.
- g) That it is in the interest of justice that the application herein be heard and allowed.

3. The respondent opposed the application on the following grounds:

- a) That the applicant has not established a prima facie case to warrant for the orders sought;
- b) That the application, if allowed, will affect the rights of third parties' who have not been enjoined into these proceedings.
- c) That the applicant has not disclosed material facts in the application and in the Supporting Affidavit in regards to the nature/kind of the policy procure and its terms and conditions if any;
- d) That the application is devoid of merit and ought to be dismissed.

4. The applicant herein is basically seeking for an order of stay of execution pending the hearing of the declaratory suit filed herein. I am persuaded that the applicant may suffer irreparable loss if the same is not granted.

5. I therefore grant conditional stay i.e. that the applicant must set down this matter for hearing interpartes within 30 days of this ruling. Failure to do so, the order will lapse. Each party to meet own costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 25TH DAY OF JANUARY, 2022**

**KIARIE WAWERU KIARIE**

**JUDGE.**