



**Obadha v Invesco Assurance Company Limited; Arnold & 2 others (Interested Parties)  
(Civil Suit E016 of 2021) [2022] KEHC 12754 (KLR) (26 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12754 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL SUIT E016 OF 2021  
FA OCHIENG, J  
AUGUST 26, 2022**

**BETWEEN**

**MICHAEL OBADHA ..... PLAINTIFF**

**AND**

**INVESCO ASSURANCE COMPANY LIMITED ..... DEFENDANT**

**AND**

**BILL ARNOLD ..... INTERESTED PARTY**

**HAYA HELLEN ONYANGO ..... INTERESTED PARTY**

**ZEDEKIA MOSETI STEVENS OGUMBO ..... INTERESTED PARTY**

**RULING**

The application dated August 16, 2021 sought the stay of execution in the following 3 cases;

- a. Bill Arnold v Michael Obadha, Kisumu CMCC No 441 of 2019;
- b. Haya Hellen Onyango v Michael Obadha, Kisumu CMCC No 442 of 2019;
- c. Zedekiah Moseti Ogumbo v Michael Obadha, Oyugis SPMCC No 134 of 2019.

1. The plaintiff/applicant told the court that the claims in the 3 cases arose from an accident involving his motor vehicle registration number KBV 211X. The said vehicle had been insured by the defendant, Invesco Assurance Company Limited.
2. As the insurance policy which the plaintiff had taken out with the defendant was valid, at the time when the accident happened, the plaintiff has instituted those proceedings seeking, inter alia, a declaration that the defendant is liable to settle all the proven claims from the interested parties herein.



3. The plaintiff instituted these proceedings after he was served with proclamation notices and warrants of attachment which had been issued at the instance of the 1<sup>st</sup> and 2<sup>nd</sup> interested parties. Following the issuance of the proclamation notices and the warrants of attachment, the plaintiff was apprehensive that his motor vehicles would be sold-off by public auction.
4. The plaintiff therefore sought stay of execution in the 2 cases which were lodged at the Magistrate's Court, Kisumu.
5. In respect to the case at the Magistrate's Court, Oyugis, the plaintiff sought orders to compel the defendant to engage an advocate to defend him: And before such appointment, the Plaintiff prayed that the proceedings be stayed.
6. It was the plaintiff's case that unless the execution proceedings, in the 2 cases at Kisumu, are stayed; and also unless the suit at the court in Oyugis is stayed, the plaintiff would suffer massive loss and damage, which would bring about his financial ruin.
7. In answer to the application the 1<sup>st</sup> and 2<sup>nd</sup> interested parties have said that the existence of the contractual relationship between the plaintiff and the defendant does not affect the obligations of the plaintiff to settle the decretal amounts.
8. As far as the 1<sup>st</sup> and 2<sup>nd</sup> interested parties were concerned, the plaintiff should seek indemnity from the defendant, after he settles the decretal amounts.
9. In his submissions the plaintiff acknowledges that the 1<sup>st</sup> and 2<sup>nd</sup> interested parties were entitled to the fruits of the judgments which had been granted in their favour.
10. However, he also emphasizes that he too has a right to seek indemnification, so as to avoid financial ruin.
11. And because his vehicle was insured, the plaintiff was of the view that these proceedings would be beneficial to the interested parties, as the plaintiff would have carried their burden and saved them the time and the resources which they would have had to incur in suing the insurer.
12. The plaintiff drew attention to section 4 (1) of [cap 405](#), which gives to the interested parties the right to enforce the Judgments against the insurer.
13. At the tail-end of the submissions, the plaintiff said;

“Lastly, we are made aware that the defendant had a consent with the interested parties to settlement (sic!) the decretal sum at the rate of Kshs 100,000/= per month. We are also made aware that so far Kshs 100,000/= was paid to the interested parties and a further Kshs 100,000/= in two bankers cheques has been refused by the interested parties due to late payment.”
14. If indeed the defendant had entered into a consent with the interested parties, pursuant to which the defendant was to settle the decretal amounts, that would imply that the defendant had taken on the obligation to pay the said decretal amount.
15. Indeed, the plaintiff has concluded his submissions thus;

“We submit that the purpose of this proceedings is to have the decretal sums paid, thus urge the court to reign in on the interested parties and have their cheques collected instead



of dwelling on attaching and depriving the plaintiffs off his personal assets and yet the defendant is willing and ready to continue making payments.”

- Emphasis is mine.

16. As the plaintiff has said, the defendant was already willing and ready to continue making payments towards the decretal amounts.
17. Therefore, on the strength of the plaintiff's own understanding, it does appear that there would be no need for the court to be called upon to make a declaration about something which the defendant had already embraced.
18. On the other hand, as the plaintiff said, the 1<sup>st</sup> and 2<sup>nd</sup> interested parties only took steps to execute the decrees after there had been a delay on the part of the defendant.
19. Surely, if the defendant was in breach of the terms of the consent between it and the interested parties, it would be an affront to justice if the court barred the interested parties from carrying on with the process of execution.
20. I do appreciate that when a person holds a valid insurance policy, the insurer ought to settle the decretal amount arising from an insured event.
21. But if the court were to order to a stay of execution, when the defendant was not meeting the terms of the consent it had entered into with the interested parties, that would imply that whether or not the decretal sums were being remitted to the decree holders, the said decree holders would be compelled to sit back and wait for the dispute (if any) to be resolved between the plaintiff and the defendant.
22. In my considered view, it would be extremely prejudicial to the interested parties if the court were to curtail their right to execute the decrees, when the plaintiff or his insurer were not remitting payments.
23. But it cannot be overlooked that execution of the decree against an insured, who had a valid insurance policy at the material time, was prejudicial to the insured.
24. The situation before me is a very unfortunate one, as between the insured on the one hand, and the decree holders on the other hand. the decree holders are entitled to recover the decretal amount, from the plaintiff; whilst the plaintiff was entitled to look to the insurer to pay the decretal amount.
25. It is a blot on the insurer who abdicates its responsibility to its insured.
26. I note that when the matter came up in court on September 22, 2021, the plaintiff's advocate, Mr Angaya Amwata informed the court that his client was requesting the court to be allowed to pay Kshs 100,000/= monthly.
27. Although the interested parties rejected the said offer, I would imagine that if the plaintiff had a genuine intention to honour his word, (if the offer had been accepted), almost the entire sum would have been paid-off by now.
28. In the circumstances, having given consideration to the plaintiff's offer, as well as what the plaintiff described as the defendant's willingness and readiness to pay the decretal amount, I find that justice demands that the application for stay of execution be rejected. I therefore dismiss the application dated August 16, 2021,
29. However, I do allow the plaintiff and the defendant a grace period of three (3) Months, from today, to settle the decretal amounts.
30. Costs of the application are awarded to the interested parties, and shall be paid by the plaintiff.



**DATED, SIGNED AND DELIVERED AT KISUMU THIS 26<sup>TH</sup> DAY OF AUGUST 2022**

**FRED A OCHIENG**

**JUDGE**

