



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karimi v Xplico Insurance Company Limited; Wainaina (Interested Party) (Civil Case E008 of 2021) [2022] KEHC 15760 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15760 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE E008 OF 2021  
RB NGETICH, J  
NOVEMBER 24, 2022**

**BETWEEN**

**GEORGE KARIMI ..... PLAINTIFF**

**AND**

**XPLICO INSURANCE COMPANY LIMITED ..... DEFENDANT**

**AND**

**SIMON WAINAINA ..... INTERESTED PARTY**

**RULING**

1. This is a ruling on the plaintiff's application dated May 19, 2021 filed under a certificate of urgency seeking stay of execution of the decree issued in Kiambu Chief Magistrates Court No 169 of 2019, Simon Wainaina v George Karimi pending the hearing and determination of the application and of the suit.
2. The application is premised on the grounds that the plaintiff is the owner of Motor Vehicle Registration Number KBS 060X which as at February 20, 2019 was insured by the Defendant. From the record, the said vehicle which operated as passenger service vehicle was involved in an accident on February 20, 2019, along Kiambu Raibai road injuring the interested Party.
3. The interested party filed Kiambu CMCC No 169 of 2019 claiming damages. Summons to enter an appearance were forwarded to the Defendant and the trial court found the Plaintiff negligent and awarded the Interested Party the sum of Kshs 171,991/=. From the averments to date, the Defendant has failed to settle the decretal amount despite the Plaintiff complying with the insurance policy by paying the excess of Kshs 30,000/=.
4. The application is supported by the affidavit of George Karimi. He averred that that as a result of non-settlement of the decretal amount, the Interested Party's Advocate had obtained warrants of execution



against the Plaintiff; the firm of M/S Fantasy Auctioneers has proclaimed the Plaintiff's property in the process of execution. If the execution is not stayed, the Plaintiff will suffer irreparable loss. The application was brought without undue delay.

5. When the application came up for hearing on May 17, 2022, Counsel Gikenye for the Interested Party informed the court that he was not opposed to the application. Despite being served, the defendant did not file response to the application.
6. Counsel for the Applicant/Plaintiff urged this court to allow the application as prayed.
7. On the 21<sup>st</sup> of May 2021 when the matter came before Justice Mary Kasango, she issued an interim stay of the execution of the decree issued by the Chief Magistrate Court in Kiambu CMCC No 169 of 2021. The said interim orders have been extended.

### **Analysis And Determination**

8. I have considered ground of the application and averments in supporting affidavit. The issue for determination is whether the applicant has met the threshold for grant of stay of execution.
9. The applicant has filed a declaratory suit which is attached to the application. From the record, it is not denied that the plaintiff's Motor Vehicle registration number KBS 060X was insured by the defendant at the time of the accident. The Plaintiff therefore had a valid insurance cover from the defendant and further complied with the requirements to make excess payment of Kshs 30,000/=. The defendant was required to indemnify the Interested Party as per the terms of the insurance policy. The defendant however failed to honour the decree in Kiambu CMCC No 169 of 2021 and the Applicant is apprehensive he will suffer loss as the Interested Party has proclaimed his property in satisfaction of the decree.
10. Section 10 (1) of the *Insurance Motor vehicle 3<sup>rd</sup> Parties Risks Act* Cap 405, provides as follows:-

“Where the owner of a motor vehicle has taken out a policy of insurance which purports to indemnify him and other authorized persons in respect of a liability to third parties intended to be protected under section 5(b) of the *Act* for injuries or death to them in the use of the Motor Vehicle on the road; and

  - a. A judgment in respect of liability as is required to be covered is obtained against such owner of the motor vehicle (the insured);
  - b. Then, notwithstanding that the insurer may in accordance with the terms of the insurance contract be entitled to avoid or may even have avoided the policy or liability (under Section 8), or would have restricted or limited the liability as per the terms of the policy (under section 16);
  - c. Nevertheless, the insurer is under mandatory statutory liability first to pay the full judgment sum to the persons entitled to the benefits of the judgment (the injured or estate of the deceased); and
  - d. Thereafter, the insurer may recover the due sum so paid to the third party under a clause in the terms of the insurance contract, if any under the Act (as per the proviso to Section 8) or a statutory obligation or liability created against the insured under the *Act* (as per provision to Section 10).
11. From the wording of the above provision, the act ensures a third party injured by the insured motor vehicle is compensated for the injuries sustained by the insured motor vehicle.
12. It, therefore, follows that defendant was obligated to indemnify the Interested Party as per the decree in Kiambu CMCC no 169 of 2019 which it has failed to do.



13. Record shows that the trial court delivered its judgment on April 22, 2021 and the application herein filed on May 19, 2021. From averments herein, the defendant has failed to honour the decree of the trial court.
14. The Applicant has filed a declaratory suit to compel Defendant to satisfy the decree, while the Interested Party wish to enjoy the fruits of his judgment. I note that the application for stay has not been opposed by either party. In this circumstance, I find the application dated May 19, 2021 is merited and I am inclined to stay execution with conditions.
- 15.

**Final Orders**

1. I hereby stay execution of decree issued in Kiambu CMCC No 169 of 2021 on the condition that half the decretal amount is paid to the Interested Party.
2. Costs to abide by the outcome of this suit.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU**

**THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

.....  
**RACHEL NGETICH**

**JUDGE**

**In the Presence of:**

Kinyua/Martin – Court Assistant

No Appearance by Parties

For the Plaintiff – Absent

For the Defendant – Absent

For the Interested Party – Absent

