



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 6 OF 2020.**

**HERITAGE INSURANCE COMPANY LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**PETER MARI KAGWANJA.....DEFENDANT/RESPONDENT**

**RULING**

1. The application dated **19<sup>th</sup> May 2020** by the applicant seeks stay of proceedings in **MOLO CMCC NO.335 OF 2019 AND 336 OF 2019** where the respondent is the defendant. The application is supported by the affidavit of **ROBERT KIOKO** the applicant's legal officer sworn on the even date.
2. The application was not opposed by the respondent though he appeared to have been served. The applicant avers that it insured the respondent vide his motor vehicle registration number **KCH 406S**. The terms of the policy were that the vehicle was to be used solely for the respondent's private engagements and not commercial or to carry any passengers for hire.
3. The applicant went on to state that the respondent on **14<sup>th</sup> April 2019** was involved in a road traffic accident along Nakuru –Eldoret road at Sachangwan and as a result those whom he was carrying were injured. The two have since filed the aforementioned suits claiming damages both general and special.
4. The applicant states that the claimants therein were fare paying passengers which runs contrary to the terms of the insurance policy agreement. In the premises it prays that because of this, it has no obligation to settle any award to the claimants but instead it ought to be the responsibility of the respondent. It is for this reason that they pray that the two suits at the lower court be stayed pending the determination of this suit.
5. Looking wholesomely at the application this court finds merit therein. If indeed the insurance policy did not cover fare paying passengers, then *prima facie*, the applicant has a claim against the respondent. Should the compensation claim proceed at the lower court the applicant stands to suffer loss and damage.
6. All is not lost for the claimants as they can still pursue the respondent independently if need be. But for now the interest of the applicant ought to be protected.
7. For the above reason the application is hereby allowed, let there be stay of proceedings as prayed for under paragraph 3 of the application. The costs shall await the outcome of the suit.

**Dated signed and delivered via video link at Nakuru this 18<sup>th</sup> day of March 2021.**

**H. K. CHEMITEI**

**JUDGE.**