



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

PETITION NO. E005 OF 2021

IN THE MATTER ARTICLE 22(1) OF THE CONSTITUTION OF KENYA, 2010.

AND

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS PURSUANT TO ARTICLE, 46,47 AND 40 OF THE CONSTITUTION OF KENYA 2010,

SECTION 3A (2) (B) OF THE INSURANCE ACT, CAP 487 LAWS OF KENYA, SECTION 4 AND 5 (B) (IV) OF INSURANCE (MOTOR VEHICLES THIRD PARTY RISKS), CAP 405 LAWS OF KENYA AND SECTION 12 (2), 13(2) AND 94 OF THE CONSUMER PROTECTION ACT NO. 46 OF 2012

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS AND ENFORCEMENT OF THE CONSTITUTION) PRACTICE AND PROCEDURE RULES, 2012.

BETWEEN

CHINA NATION AERO TECHNOLOGY INTERNATIONAL

ENGINEERING CORPORATION LTD.....PETITIONER

AND

THE INSURANCE REGULATORY AUTHORITY.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

KENYA ORIENT INSURANCE COMPANY LTD.....3RD RESPONDENT

SILAS MUTHURI M'ITIRI.....4TH RESPONDENT

RULING

Background

1) Judgment was entered for the 4th Respondent as against the Petitioner for in **MERU CMCC NO. 231 OF 2018** and a decree for the sum of Kshs. 1,944,237.00 was issued on 23rd February, 2021.

2) Petitioner's goods which include motor vehicles were proclaimed on 04th March, 2021.

Notice of motion dated 09th March, 2021

3) The Petitioner filed this Petition dated 09th March, 2021 and notice of motion of same date claiming that the execution is a violation of its right to consumer protection enshrined in Article 46 of the Constitution.

4) When the matter came before me for directions on 25th May, 2021, I asked the parties to address me on the legality of presenting an application for stay of execution by way of a constitutional petition.

Analysis and Determination

5) I have considered the submissions filed on behalf of the Petitioner and on behalf of the Respondent and Petitioner. The Petitioner contends that its insurer's failure to settle the decretal sum and the execution of the decree by the 4th Respondent violates its right to consumer protection enshrined in Article 46 of the Constitution. In support of its case, Petitioner has placed reliance on **Caroline Karimi Moses v Insurance Regulatory Authority & 3 others [2019] eKLR.**

6) The 4th Respondent's on the other hand submitted that he has a lawful decree with a right to enforce it and in support thereof cited **Kenya Bus Services Ltd & 2 others v Attorney General & 2 others [2005] eKLR.**

7) The law on the court that has jurisdiction to determine questions relating to execution of decrees is to be found under Section 34 of the Civil Procedure Act which provides as follows:

All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

8) In the case of **Kenya Bus Services Ltd & 2 others v Attorney General & 2 others** (above), the court was faced with a situation such as the one presented in this Petition and *Nyamu J* as he then was rendered himself as follows:

Judgments of competent courts cannot be challenged in a constitutional court except on grounds of lack of due process or anything that borders on unconstitutionality

9) The Petitioner has neither pleaded nor established that the execution complained of did not follow due process. It has similarly not demonstrated that the 4th Respondent's realisation of the fruits of a lawful decree borders on unconstitutionality.

10) From the foregoing, I am persuaded that the Petitioner's remedy lies in seeking orders of stay of execution in the same suit in which the decree was issued or in filing a declaratory suit against its insurer pursuant to section 10(2) of the Insurance (Motor Vehicle Third Party Risks) Act.

11) Consequently, the court finds that both the Petition and the motion are an abuse of the court process and both are struck out with costs to the 4th Respondent.

DATED AT MERU THIS 29th DAY OF July 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Petitioner - N/A for G.M.Wanjohi & Co. Advocates

For 4th Respondent - Ms. Atieno instructed by JK Ntarangwi & Co. Advocates