



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**(CORAM: CHERERE-J)**

**CIVIL APPEAL NO.12 OF 2018**

**BETWEEN**

**THE MONARCH INSURANCE COMPANY LIMITED.....APPELLANT**

**AND**

**MILLICENT ANYANGO OCHIENG.....RESPONDENT**

**AND**

**SILIVESTER MBAKA.....1<sup>ST</sup> DEFENDANT**

**RANA AUTOSELECTION LTD.....2<sup>ND</sup> DEFENDANT**

*(Being an Appeal from the Ruling and Order in Kisumu CMCC No. 553 of 2015 by Hon. H.Adika (SRM) on 19<sup>th</sup> September, 2016)*

**JUDGMENT**

**Introduction**

1. On 19<sup>th</sup> September, 2016, the Appellant's application dated 21<sup>st</sup> July, 2016 seeking orders to stay the proceedings and to be enjoined as an interested party was dismissed for want of attendance by Appellant's counsel.
2. The Appellant faults the learned trial magistrate for failing to consider the application on merit.
3. I have considered this appeal **CIVIL APPEAL NO.12 OF 2018** which arose from **CMCC No. 553 of 2015 LYDIA ACHIENG ODHIAMBO V SYLVESTER MBAKA & RANA AUTOSELECTION LTD** and I have discovered that it is between the same parties and on the same issues as **CIVIL APPEAL NO.11 OF 2018** which arose **CMCC No. 552 of 2015 LYDIA ACHIENG ODHIAMBO V SYLVESTER MBAKA & RANA AUTO SELECTION LTD.**
4. The two appeals and the two lower court matters are no doubt duplicates of each other.
5. The examples of abuse of court process are inexhaustible and involve situations where the process of court has not been resorted to fairly, properly and honestly to the detriment of the other party such as instituting a multiplicity of actions on the same subject matter, against the same opponent as is the case in **CIVIL APPEAL NO.12 OF 2018** and **CMCC No. 553 of 2015 LYDIA ACHIENG ODHIAMBO V SYLVESTER MBAKA & RANA AUTOSELECTION LTD.**

**Disposition**

6. From the foregoing analysis, I have come to the conclusion that this appeal and **Kisumu CMCC No. 553 of 2015** are an abuse of the court process.
7. Consequently, it is hereby ordered that:

**1) This appeal be and is struck out.**

**2) The Appellant is condemned to pay costs to the Respondent**

**DATED AND DATED IN KISUMU THIS.....27<sup>th</sup>.....DAY OF.....February....2020**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant - Amondi/Okodoi**

**For the Appellant - Mr Bagada hb for Mr.Cheruiyot**

**For the Respondent - N/A**