



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL APPEAL NO. 28 OF 2016

AGNES CHEPUS....APPELLANT/RESPONDENT

VERSES

MARGARET GOKO.....APPLICANT

RULING

1. The applicant vide her notice of motion dated **10th June 2020** has prayed for the following reliefs;

(a) that there be stay of execution of this court's judgement dated 17th October, 2018 pending the hearing and determination of this application.

(b) that there be stay of execution herein pending the hearing and determination of a declaratory suit namely KITALE CMCC NO. 425 OF 2019 between the Applicant and AFRICA MERCHANT ASSUARANCE COMPANY LIMITED.

2. The application is premised on the grounds thereof and the sworn affidavit of the applicant dated 10th June, 2020. Basically the applicant acknowledges the judgement of this court dated 17th October, 2018 in which it dismissed her appeal. She has filed a declaratory suit against her insurers namely AMACO LTD vide suit No. 32 of 2019.

3. While at it the respondent has filed a notice to show cause against the applicant in which she has threatened to execute against her. In that respect therefore the applicant is apprehensive that should this application be denied then she stands to suffer loss and damage and the declaratory suit shall be rendered null and void.

4. The Respondent through her Replying Affidavit sworn on 1st June 2020 has opposed the application stating that she has been waiting for the fruits of her judgement for a long time and thus the application should never be allowed. She said that the declaratory suit does not in any way affect this suit and the impending execution. That the Applicant was all along aware of this appeal and she has not done anything to settle the same. She prayed that the application be dismissed.

5. The court has perused in detail the application as well as the rival affidavits. It is obvious that the applicants appeal was dismissed and she has not preferred any appeal to the Court of Appeal. The only solution is to settle the decree.

6. The issue of the declaratory suit has nothing to do with this appeal since the same has to do with the Applicant and her insurance company. The Respondent respectfully is not privy to the contract between the Applicant and her said insurance company. Whatever the outcome between her and AMACO ltd shall be decided in the said declaratory suit which the Respondent is not even a party.

7. Consequently, and without wasting much judicial time the application is not meritorious at all. At any rate there is no evidence that the Applicant has taken any iota of effort to settle the decree.

8. The application is otherwise dismissed with costs to the respondent.

Dated, signed and delivered at Kitale this 16th day of September 2020.

H. K. CHEMITEI

JUDGE

16/9/2020

In the presence of:-

Munialo holding brief for Ambutsi for Respondent/Applicant

Bisonga for Gacathi for Appellant/Respondent

Court Assistant - Kirong

Ruling delivered in open court.