



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL SUIT NO 21 OF 2016

KENYA ALLIANCE INSURANCE COMPANY LTD.....PLAINTIFF

VERSUS

BENEDICT NYAGAKA MOINDI.....DEFENDANT

RULING

1. The plaintiff, Kenya Alliance Insurance Company Ltd, filed a suit against Benedict Nyagaka Moindi, herein after referred as the defendant seeking a declaration that it is not bound to pay/or satisfy any judgment that may arise out of the suits filed in relation to the alleged accident of 22nd April 2016 along Keroka-Nyangusu road.

2. A brief background of the Plaintiff's case was that plaintiff issued the Defendant with an insurance policy cover for his motor vehicle Registration Number KCC 193Q Toyota Probox Station Wagon ('Motor Vehicle') which was to be used for the Defendant's personal use. It was a term of the policy cover that the Plaintiff would indemnify the Defendant in the event of an accident arising from the use of the motor vehicle as a private vehicle for personal use. The said policy materially did not at all cover Third Party risks for personal injuries or death of passengers 'aboard. On 22nd April 2016 when the Defendant's motor vehicle and motor vehicle registration number KBQ 127H were allegedly involved in a road accident where various people suffered fatal injuries and three people died.

3. As a result several plaintiffs have pending suits seeking compensation as a result of the road traffic accident. The plaintiff avers that at the time of the accident the motor vehicle had been hired out for commercial purposes which were not covered by the policy. Vide Notice of Motion dated 5th June 2017 the plaintiff sought for stay of the proceedings before the Ogembo PMCC Nos. 192, 193, 194, 196, 197, 198, 277 and 278 of 2016. In due course the Plaintiff made an application seeking to enjoin as interested parties the Plaintiffs' in Ogembo PMCC Nos. 192, 193, 194, 196, 197, 198, 277 and 278 of 2016 (herein after referred to as 'interested parties'). The application was allowed in terms of prayers 1, 2 & 4 of the chamber summons dated 25th October 2018.

4. When the application came up for hearing counsel for the parties made both oral and written submissions. Mr. Gichana counsel for the interested party argued that majority of the suits have since been concluded and judgment delivered and the plaintiffs in the suits are ready to file declaratory suit. Miss Kusa submitted that the lower courts matters should be determined. She contends that the plaint before this court has been brought under **section 10** of the **Insurance (Motor Vehicle Third Party Risks) Act Cap 405** and the interested parties ought to have been notified within 14 days of commencement of the action. She argued that a declaration of stay of proceedings will not affect the interested parties who already have judgments. She explained that the application before court was unnecessary as far as the interested parties are concerned and referred to the case of see case of **Blue Shield Insurance vs- Raymond Burr** and asked that the application be dismissed.

5. Counsel for the plaintiff, Mr. Gema, advanced that the merit of plaint should not be determined at the interlocutory stage. He asked that the court to give directions that that no execution to take place. He explained that the reasons for the delay for canvassing the application were occasioned by enjoining the interested parties. He submitted that the suit had triable issues and asked the court exercise its discretion and preserves the status of the suits pending hearing.

DETERMINATION

6. The only issue raised by the Notice of Motion dated 5th June 2017 is whether the Plaintiff is entitled to the orders of stay of proceedings before the Ogembo PMCC Nos. 192, 193, 194, 196, 197, 198, 277 and 278 of 2016. In the case of **Corporate Insurance Company Ltd v Charles John Musee [2014] eKLR** the court was faced with a similar issue of stay of lower court's proceedings. In that case Corporate Insurance Company Limited sought for stay of the proceedings which were before the lower court pending the hearing and determination of its claim before the High Court where it sought a declaratory order to avoid a policy of Insurance. In the **Corporate Insurance Company Ltd (supra)** the court having considered the issue held as follows;

