



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 132 OF 2018**

**JOHN IRERI.....APPELLANT**

**VERSUS**

**JESSEE WAMITHI KIAGO.....1<sup>ST</sup> RESPONDENT**

**ROSE MUTHONI.....2<sup>ND</sup> RESPONDENT**

**RULING**

The application dated the 13<sup>th</sup> day of March, 2018 came up for hearing interpartes on the 19/3/2018 when the court gave directions that prayer 2 of the application be heard first. In prayer 2, the applicant seeks orders to enjoin Blue Shield Insurance Company as an interested party in the Appeal.

The affidavit in support of the application is sworn by one John Ireri who depones that he is a policy holder with Blue Shield Insurance Company. That by virtue of being a policy holder, he was sued in CMCC No. 2210 of 2011 after his vehicle was involved in a Road Traffic Accident which matter was heard and determined and a decree issued. The decree is annexed to his affidavit and marked as annexure 1.

He avers that his insurers (Blue Shield Insurance Company Limited) are liable to satisfy the decree. He contends that he will be prejudiced if he is forced to pay the money as he was insured, having taken an insurance cover in the year 2008. The Applicant has annexed a letter dated 15<sup>th</sup> November 2017 from the Insurer which in his submission acknowledged there was a case pending in court being CMCC No. 2210/2011 which was scheduled for Notice to Show Cause on the 29<sup>th</sup> November, 2017. The letter also pointed out that there is a moratorium.

The Respondents have opposed the application vide grounds of apposition filed on the 19/3/2018. In his submissions, counsel for the Respondents argued that Blue Shield was not a party to the suit pursuant to which the decree sought to be executed was issued and that no reasons have been given why it was not enjoined as a party in CMCC No. 2210/2011. It was further submitted that if the order to join Blue Shield Insurance Company is issued at this stage, the order will be against the rules of natural justice. Counsel submitted that no good reasons have been given for the joinder and that the application has been made too late in the day at the Appeal stage.

In his further submissions, counsel for the Respondents argued that it will not serve any useful purpose to join Blue Shield at this stage as the Respondents have no claim against the said company. With regard to the letter dated 15<sup>th</sup> November, 2017 marked as annexure 3 it was submitted that the same is on a “without prejudice” basis and as such not binding on the author.

The court has duly considered the application and all the material before it in support and in opposition to the same.

Prayer 2 of the application seeks to enjoin Blue Shield as a party to the suit, on the basis that the company had insured the applicant at the time the accident occurred. It is his case that the company should satisfy the claim by virtue of the Insurance Policy that existed between them at the material time. It is noted that the lower court suit was finalized and there is already a decree that has been partially satisfied though a consent entered into between the parties in the lower court is subject of this Appeal. In the said suit, Blue Shield was not a party to the suit and the Respondents have not moved against Blue Shield in execution of the decree. The only reason why the Appellant seeks to enjoin the company is because it had insured him.

As rightly submitted by the Respondent, for what purpose is Blue Shield being joined? Is it only for satisfying the decree?

From the circumstances of this case, it would appear so, in which case, it is not necessary for it to be joined as a party for that sole purpose. The Appellant/Applicant can apply to enforce his right against Blue Shield in a separate suit and by way of a declaratory suit. He cannot seek to enforce his rights at this late stage when the matter is on Appeal. In my view, the policy of insurance that exists between the Appellant

and Blue Shield is not binding on the Respondents because they were not parties to it and its on that basis that an insurance company is not joined as a party in the primary suit. On the issue of the moratorium, it would not serve any useful purpose for the court to consider it at this point, the court having made a finding to disallow the joinder of Blue Shield Insurance Company.

In the end, prayer 2 of the application has no merits and the same is disallowed.

Dated, Signed and Delivered at Nairobi this **21<sup>st</sup>** Day of **March, 2018**.

.....

**L. NJUGUNA**

**JUDGE**

**In the Presence of**

.....*For the Applicant*

.....*For the Respondent*