



**REPUBLIC OF KENYA**

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

**COMMERCIAL & ADMIRALTY DIVISION**

**MISC. NO. 547 OF 2012**

**IN THE MATTER OF BLUESHIELD INSURANCE CO. LIMITED**

**(UNDER STATUTORY MANAGEMENT)**

**AND**

**IN THE MATTER OF: COMPANIES ACT (CAP 486 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF THE INSURANCE ACT**

**(CAP 487 LAWS OF KENYA)**

**SAMMY M. MAKOVE, COMMISSIONER OF INSURANCE...APPLICANT**

**VERSUS**

**BLUESHIELD INSURANCE COMPANY.....RESPONDENT**

**(UNDER STATUTORY MANAGEMENT)**

**SHAREHOLDERS, BLUESHIELD**

**INSURANCE COMPANY.....INTERESTED PARTY**

**RULING**

1. As of the date of this Ruling Godfrey K. Kiptum is the acting Commissioner of Insurance and Chief Executive Officer of the Insurance Regulatory Authority (IRA) having been appointed on 26<sup>th</sup> November 2016.
2. Prayer 2 of the Notice of Motion of 9<sup>th</sup> March 2017 seeks to have the name of Sammy Makove removed from the cause herein as the Applicant and his name replaced by that of Godfrey K. Kiptum.
3. It is not disputed that Mr. Makove had been named as the Applicant in his capacity as The Commissioner of Insurance and Mr. Godfrey K. Kiptum is sought to be brought in his Official capacity.
4. That Application is resisted and Mr. Mboya for the Interested Parties asserts that the Powers of The Commissioner of Insurance under the Provisions of The Insurance Act cannot be exercised by a person holding that office in acting capacity. The Court is asked to find that in the absence of a substantive Commissioner of Insurance IRA is in a state of slumber.
5. I do not understand the Interested Parties to be questioning the manner of Appointment of Mr. Kiptum to an acting capacity, what they say however is that in this acting capacity Mr. Kiptum cannot carry out the functions or exercise the Powers of a substantive Commissioner of Insurance. In essence that he is a lame duck.
6. The Commissioner of Insurance is appointed under the Provisions of Section 3E of The Insurance Act. The Act does not have any

provisions for the Appointment of an Acting Commissioner. But as stated earlier it is not the case for the Interested Parties that Mr. Kiptum holds that office in Acting Capacity illegal. This Court will therefore proceed on the premise that the Appointment is within the confines of the law.

7. The answer as to whether Mr. Kiptum can exercise the substantive Powers of the Commissioner of Insurance in respect to the matter before Court would be found in Section 43 of the Interpretation and General Provisions Act:-

**“where a written law confers a Power or imposes a duty on the holder of an office as such, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the person for the time being holding that office”.**

8. Mr. Kiptum is for the time being the holder of the office of The Commissioner of Insurance, albeit, in Acting Capacity. And this Court has not found a provision in the Insurance Act or any other Statute that suggests that a person holding that office in Acting capacity cannot perform the functions of or exercise the power of a substantive Commissioner for Insurance and in particular in respect to the functions bestowed on and/or Power conferred on that office under part VI A of the Act around which the matter in Court substantially revolve.

9. Time and time again, The Insurance Act assigns to the Commissioner of Insurance roles in the protection of the interests of the insuring public, beneficiaries and claimants. It behoves on this Court to construe or interpret the law in a manner that props and promotes the objects of the Insurance Act. To reach a construction that an Acting Commissioner of Insurance cannot exercise the Power of a substantive Commissioner under part VI A of The Act and that as suggested by Counsel for the Interested Parties, the IRA is in a state of slumber in the absence of a substantive CEO, would be inimical to the protection of policyholders, beneficiaries and claimants.

10. As would be clear, I am for allowing the application. Prayer 2 of the Notice of Motion dated 9<sup>th</sup> March 2017 is hereby allowed. Costs in the cause.

**Dated, Signed and Delivered in Court at Nairobi this 13<sup>th</sup> day of April, 2017.**

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

Olgo h/b for Kambuni for Statutory Manager

Mboya for Shareholders

N/A for Applicant

Alex - Court Clerk