



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 311 OF 2012

COMPLY INDUSTRIES.....PLAINTIFF

- VERSUS -

P. N. MASHRU LIMITED..... DEFENDANT

RULING

1. This suit was filed on **17th May 2012**. The plaintiff’s claim relates the contract for the defendant to transport, for the plaintiff, a new thermal oil heater from Mombasa Port to the plaintiff’s premises in Nakuru. It is alleged in the plaintiff’s claim that the heater was damaged during that transportation.

2. The plaintiff was ordered by a Notice dated **3rd May 2018** to show cause why this suit should not be dismissed for want of prosecution.

3. The plaintiff showed cause by an affidavit sworn on **11th June 2018** of **John Mbaluto**, the plaintiff’s advocate. By that affidavit the advocate deponed that the defendant, in respect to the present claim, was insured by **Concord Insurance Company Limited**. That **Justice Mabeya**, in HCCC No. 88 of 2013, on **14th March 2013** ordered stay of proceedings of all court matters subsisting against **Concord Insurance**. The order also granted stay to all current and pending matters of Concord policy holders, for which matter Concord Insurance may become liable. The extracted court order issued by **Justice Mabeya** was annexed to the affidavit.

4. The only evidence the court has, that this matter is a matter that Concord Insurance may be liable to settle is a letter written to the plaintiff’s advocate by the defendant’s advocate stating so. That in my view is not sufficient reason to continue holding this matter in abeyance. The parties and more particularly the defendant need to provide proof to this court that this is a matter involving Concord Insurance. In the absence of such proof this court will order this case to proceed for hearing.

5. With the above in mind I make the following orders:

- a. The plaintiff has shown cause why this suit should not be dismissed for want of prosecution.*
- b. The defendant shall on a date to be fixed at the reading of this Ruling provide documentary evidence that this claim is one which Concord Insurance Company Limited may become liable.*
- c. Failure to provide such proof this case shall be fixed for hearing.*

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant

MARY KASANGO

JUDGE