



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 610 OF 2012 (O.S)**

**THE STATUTORY MANAGER**

**UNITED INSURANCE CO. LIMITED.....APPLICANT**

**- VERSUS -**

**EDWARD MURIU KAMAU**

**NJOROGE NANI MUNGAI,**

**PETER MUNGE MURAGE, T/A**

**MURIU, MUNGAI & CO. ADVOCATES.....RESPONDENTS**

**RULING**

1. The application before me was brought by the Applicant, seeking a stay of further proceedings in this case, including the taxation of the Respondent's Bill of Costs dated 27<sup>th</sup> August 2013.
2. The application is dated 13<sup>th</sup> April 2016, under a Certificate of Urgency. The reason why the application was considered urgent was that the Bill of Costs was scheduled for taxation on 14<sup>th</sup> April 2016.
3. It is common ground that the two parties in this case had an Advocate/Client relationship, pursuant to which the Respondent had acted for the Applicant in various matters.
4. The Applicant had brought these proceedings seeking orders to compel the Respondents to deliver a fully itemized and detailed Cash Account and/or Statement of Account arising from the sale of **L.R. No. 25196** (*original No. 209/7594*). The Respondent had handled that sale transaction.
5. The Applicant believed that the Respondent had withheld some proceeds from that transaction. As the Applicant was of the view that the Respondents were not entitled to withhold those proceeds, the Applicant sought orders to compel the Respondents to account for the money which they were holding.
6. Mabeya J. heard the case and delivered his verdict on 14<sup>th</sup> June 2013. The learned Judge held that the Applicant had been giving instructions to the Respondents, to apply some of the sale proceeds for other general purposes.

7. In the light of those instructions issued by the Applicant, the court held that the sale proceeds lost their character, and were thereafter held for general purposes.

8. From that moment on, the Respondents became entitled to a lien over the funds they were holding, provided that the Applicant had not settled the accrued fees earned by the Respondents.

9. The learned Judge noted that the quantum of the fees needed to be ascertained; and the process of doing so was through taxation of the Advocate/Client Bill of Costs.

10. Whilst noting that the parties had been involved in some verification exercises (*but which were not finalized*), the court commented that it would be prudent for the Respondents to have their Bill of Costs taxed.

11. I believe that the Respondents took seriously the comments of the learned Judge, hence the filing of their Bills of Costs.

12. It is within that context that the Applicant brought the application for stay of any further proceedings in the case.

13. The basis of the said application was an order made on 23<sup>rd</sup> October 2009, in **SAMMY M. MAKOVE, THE COMMISSIONER OF INSURANCE Vs KENYA REINSURANCE CORPORATION (STATUTORY MANAGER UNITED INSURANCE COMPANY LIMITED) MISC. CIVIL SUIT No. 545 of 2006.**

14. The said order was in the following terms;

***“1. THAT a stay be and is hereby issued of all proceedings subsisting against United Insurance Company Limited (under statutory management) during the currency of the Moratorium declared by the Statutory Manager on 15<sup>th</sup> July, 2005 and extended by this honourable court in High Court Miscellaneous Civil Suit No. 545 of 2006 for a further six months from 16<sup>th</sup> of June, 2009.***

***2. THAT a stay be and is hereby issued of all taxation proceedings currently ongoing against United Insurance Company Limited (under Statutory Management) and for which the said company may become liable during the currency of the moratorium declared by the Statutory Manager on 15<sup>th</sup> July 2005.***

***3. THAT all proceedings of whatever nature or form against United Insurance Company Limited (under Statutory Management) or its policy holders be and are hereby stayed during the currency of the Moratorium declared by the Statutory Manager on 15<sup>th</sup> of July 2005?.***

15. The Applicant submitted that if the Respondents were permitted to proceed with the taxation of their Bill of Costs, that would be a contravention of the Moratorium which mandatorily requires the statutory manager to preserve the assets of the company, while conducting due diligence to evaluate the solvency of the company, and its prospects for revival.

16. If litigation were permitted to continue against the company, the statutory manager feels that that might lead to the possible collapse of the company, thus defeating the spirit of Section 67 C (4) and (5) of the Insurance Act.

17. In a nutshell, that section enjoins the statutory manager to recover all debts and other sums due to and owing to the company. The statutory manager is required to deposit with the Central Bank of Kenya, all the sums recovered.

18. It is expected that the funds recovered would constitute the much required capital for the revival of the

company, so that it can pay its creditors and also ensure that the claims against its policy holders were settled.

**19.**The applicant cited the following words of Koome J. (*as she then was*) in **STEPHEN KIARIE CHEGE Vs INSURANCE REGULATORY AUTHORITY & ANOTHER Misc. APPLICATION No. 601 of 2009**;

*“Moreover, there is no dispute that the Insurance Company was placed under statutory management and a moratorium was declared by the statutory manager by virtue of section 67 (c) of the Insurance Act. Based on that, all the payments to the policy holders and creditors are suspended for the period of the moratorium. In this case therefore, the court cannot order the statutory manager to settle the claims under section 10 of the Insurance Act?.*

**20.**In the light of that holding, the Applicant submitted that if the Respondents were allowed to proceed with taxation of their Bill of Costs, that would amount to preferential and discriminatory treatment of the Respondents *vis-a-vis* the other creditors and litigants.

**21.**In answer to the application, the Respondents submitted that because it was the Applicant who had moved the court in an attempt to ascertain the quantum of money owed by the Respondents to the Applicant, the said Applicant was estopped from turning around to stop the process it had started.

**22.**Secondly, the Respondents emphasized that the steps which the Applicant was now seeking to stop were actually undertaken because of the court orders contained in the Judgement of Mabeya J.

**23.**Thirdly, the Respondents pointed out that the orders sought were so imprecise that they would be incapable of enforcement. The Respondents consider the orders to be lacking in precision because they were not time-bound. In effect, if the orders were granted they would stay the proceedings in perpetuity.

**24.**In determining the application I will first address the issue concerning the alleged ambiguity of the proposed order.

**25.**It is generally true that when a court issues an order for the stay of proceedings, such an order is normally not in perpetuity.

**26.**Proceedings would normally be stayed until the happenings of a specified action or step; for example there can be a stay of proceedings pending the hearing and determination of an appeal or pending the hearing and determination of arbitration.

**27.**In this case, the application appears to be seeking a stay of proceedings in perpetuity, as it does not specify the step or event or time-frame to which the order for stay is pegged. That would mean that even after the statutory management is concluded, the Respondents could not proceed with the taxation of their Bills of Costs. Such an outcome would be inconsistent with justice, as the Respondents have already been awarded costs of the case. Therefore, at some point, they should be able to take steps to tax their Bills of Costs, unless the parties will have already agreed on the quantum of such costs.

**28.**I find that the court would be unable to grant an order for stay of proceedings in the terms sought.

**29.**However, the lack of precision of the terms to which the application was pegged would not necessarily lead to the dismissal of the application. I hold the considered view that if the court came to the conclusion that the proceedings ought to be stayed, the court would have the discretion to specify the time-frame or other conditions, which would accord justice to the parties.

**30.**The second issue that I look at is in relation to the scope of the orders granted in Miscellaneous Civil Suit **No. 545 B of 2006**.

**31.**Both the Applicant and the Respondents asserted that that order stayed all proceedings. However, a

closer look at the orders shows that the stay of proceedings was in respect to;

***“...all proceedings against United Insurance Company Limited (under statutory management) during the currency of the Moratorium declared by the Statutory Manager on 15<sup>th</sup> July 2005...?”***

32. Even in relation to order for stay of taxations of Bills of Costs, the same was in respect to the taxations against the Applicant.

33. It is thus clear that the Applicant was not precluded from bringing proceedings against any persons or entities.

34. As it is the Applicant who brought these proceedings, the same cannot be deemed as proceedings against the United Insurance Company Limited (*under statutory management*). These are proceedings by the Applicant. Therefore, they are not subject to the court orders dated 23<sup>rd</sup> October 2009.

35. But even if the case were subject to the court orders, the Applicant cannot be allowed to go on with the case only as long as it wishes, and then when adverse orders are made, be allowed to say that the proceedings should be stayed: It would be inconsistent with fairness.

36. More significantly, it is to be noted that Mabeya J. did make the following remarks in this case;

***“However, I note that there is a dispute as to the exact amount of legal fees that is in question. I also note that there has been a verification exercise initiated by the parties and the same has been stalled for one reason or the other. Given this position, it would be prudent for the Respondents to file their respective Bill of Costs for taxation since the verification is yet to bear any decisive results. In the result, however, I will direct that the Respondents do file their bills for taxation in the usual manner but within a reasonable time?”***

37. The learned Judge expressly directed the Respondents to file their bills of costs, for taxation.

38. As the Respondents pointed out, the Applicant did not challenge the orders of Mabeya J., whether through an appeal or through an application for review. Therefore, those orders remain firmly in place, and should therefore be given effect. If I was to order that the process of taxation be stayed, I would be countermanding an order made by a court of concurrent jurisdiction, through a process which was not recognized in law.

39. In the case of **SHIMMERS PLAZA LTD Vs. NATIONAL BANK of KENYA LTD CIVIL APPEAL No. 33 of 2012** the Court of Appeal emphasized that it is the duty to obey the law, by all individuals and institutions. The learned Judges of Appeal quoted the words of **Romer L.J in Hadkinson Vs Hadkinson [1952] ALL. E.R 567;**

***“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged.***

***The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void?.***

40. The orders of Mabeya J. must therefore be obeyed, even if the Applicant thinks that the same contravened the orders made on 23<sup>rd</sup> October 2009.

41. I would add that the taxation process cannot, of itself, be prejudicial to the Applicant. I so find because the Applicant would actually become aware of the amount of money that the Respondents were entitled to. If the taxed costs were less than the sums held by the Respondents, it would result in the Respondents being required to release to the Applicant any surplus.

42. On the other hand, if the fees exceeded the amount held by the Respondents, the Applicant could not, at this stage, be compelled to make payments to the Respondents.

43. In the result, there is no merit in the application dated 13<sup>th</sup> April 2016. It is therefore dismissed, with costs to the Respondents.

44. In effect, the process of the taxation of the Respondents' bills of costs may now proceed.

**DATED, SIGNED and DELIVERED at NAIROBI this 21<sup>st</sup> day of September 2016.**

**FRED A. OCHIENG**

**JUDGE**

***Ruling read in open court in the presence of***

Njomo for Kingati for the Applicant

Wilson for the Respondents

Collins Odhiambo – Court clerk.