



**REPUBLIC OF KENYA**

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

**MISC CIVIL APPLICATION NO. 17 OF 2013**

MOMBASA TRADE CENTRE LIMITED .....PLAINTIFF

VERSUS

BLUE SHIELD INSURANCE COMPANY LTD.....DEFENDANT

**RULING**

1 The applicant filed this action which proceeded ex parte. By this action the applicant sought leave to institute a civil suit against the respondent before the Chief Magistrate's court Mombasa. This court by its order made on 25<sup>th</sup> February 2013 granted the applicant that leave.

2 The respondent by a Notice of Motion dated 3<sup>rd</sup> June 2013 sought to set aside and vacate the leave granted to the applicant. This court by its Ruling dated 1<sup>st</sup> November 2013 dismissed that Notice of Motion dated 3<sup>rd</sup> June 2013. The costs of that Notice of Motion were awarded to the applicant.

3 The applicant filed its party and party Bill of Costs on 17<sup>th</sup> September 2014. Both parties participated in the taxation of that Bill of Costs. The taxing master of this court on 4<sup>th</sup> February 2015 taxed that Bill at Ksh 31,093.

4 The court is now considering a Notice of Motion dated 20<sup>th</sup> February 2015 filed by the respondent. By that application, the respondent seeks stay of execution of those taxed costs for a period that the respondent is under statutory management. In support of that prayer the counsel acting for the respondent deponed in his affidavit of 20<sup>th</sup> February 2015 as follows:

***5. That the defendant was placed under Statutory Management on 16.9.2011 and a Statutory Manager was appointed on the same day.***

***6. That to date the defendant is under the management of a statutory manager.***

***7. That the duties of a statutory manager on appointment by law do not include payment of debts and therefore the statutory manager does not have the mandate to pay.***

***8. That the plaintiff is minded to execute for the costs as assessed.***

***9. That it is just and equitable to allow for a stay of execution pending the period***

***when the defendant is under statutory management as allowing execution to proceed will be exposing the statutory manager to the actions which by law the statutory manager does not have.***

The respondent did not annex any document to support the above deposition.

5 Although adjournments were granted to enable parties to file their submissions to the application the respondent failed to file such submissions. The applicant did file their submissions which I have had the benefit to consider.

6 Under the Insurance Act Cap 487 the Commissioner of Insurance is empowered to appoint a manager of an Insurance where such an Insurance firm fails the test under Section 67 C of Cap 487. In other words for example where such a firm fails to meet minimum solvency margin, fails to submit accounts and returns; and fails to comply with the requirements of Cap 487, amongst other instances. I was able to sight in the previous application filed in this matter that such a manager was appointed. The date of that appointment is not clear. Section 67 C (3) provides:

***The appointment of a manager shall be for such period, not exceeding twelve months, as the Commissioner shall specify in his instrument of appointment and may be extended by the High Court, upon the application of the Commissioner if such extension appears to the High Court to be justified.***

7 The last extension I can see of that appointment of the manager is as exhibited in the affidavit of ELUID MUCHOKI MURIITHI of 3<sup>rd</sup> June 2013 marked "EMM3" That extension was in High Court Commercial and Admiralty Division Misc No. 586 of 2012. In that case the court on 3<sup>rd</sup> May 2013 extended the appointment of the manager for a period of six months. That extension was for up to 2<sup>nd</sup> November 2013.

8 **From the above it follows that as I consider the present application I have nothing before me to show that the manager's appointment exists up to date. On that ground alone the respondent's application must and does fail. It is dismissed with costs to the applicant.**

**Dated and delivered at Mombasa this 30<sup>th</sup> day of July 2015.**

**MARY KASANGO**

**JUDGE**

30.7.2015

Coram

Before Justice Mary Kasango

C/Assistant – Kavuku

For Plaintiff:

For Defendant:

**Court**

The Ruling delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**