



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL CASE NO. 91 OF 2012

TAKFUL INSURANCE OF AFRICA (K) LTD.....PLAINTIFF

VERSUS

RONNY LANGAT.....DEFENDANT

RULING

Takful Insurance of Africa (K) Ltd, the Plaintiff/Applicant, took out the Notice of Motion dated 19th March 2014 in which it sought for the following orders:

1. **THAT this application be certified as urgent and be heard ex-parte in the first instance.**
2. **THAT the Honourable court be pleased to enjoin the Plaintiffs in Sotik PMCC No's 26/2013, 173/2012, 165/2012, 128/2013, 81/2012,133/2013 and 134/2013 as Defendants to the suit therein.**
3. **THAT this Honourable court be pleased to give leave to the Applicant/Plaintiff herein to amend the Plaint.**
4. **THAT costs be provided for.**

The Motion is supported by the affidavit of Jane Gathiaka sworn on 18th March 2014. When served with the Motion, the Interested Parties namely: **Edward Kipngetch Langat**, **Richard Korir**, **Julianah Chepkemoi Ruto** and **Richard Kimutai Cheruiyot** through the firm of M/s Khan & Associates filed a Notice of Preliminary Objection dated 21st March 2014 to oppose the same. The Interested Parties are the Plaintiffs in cases filed against one **Ronny Langat**, the Defendant in this matter.

When the Motion came up for interpartes hearing, the Preliminary Objection had to be disposed of first. It is the submission of the Interested Parties that the Motion herein should be dismissed because the applicant is seeking to be given orders which will affect them on the basis of an insurance contract they are not privy to. The Interested Parties relied on **Sections 4,5 and 10** of the **Insurance (Motor vehicles Third Party Risks) Act**. The main argument is that the Interested Parties have no privity of contract with the Applicant hence the Applicant cannot purport to stay the execution of decrees lawfully obtained against the Plaintiffs insured. Mr. Muchira, who appeared for the Applicant urged this court to find that the Preliminary Objection was misplaced.

I have considered the rival submissions and the material placed before this court. It is important to set out in brief the history of this dispute in order to understand it. The Plaintiff/Applicant herein is an Insurance Company which issued a comprehensive insurance policy to Ronny Langat to cover motor vehicle registration no. KBQ644T. The aforesaid motor vehicle was involved in a road traffic accident on 5th

March 2012, along Sotik-Kericho road. As a result of the accident, the interested parties with others suffered various injuries. They then filed compensatory suits against Ronny Langat claiming for damages before the Sotik Principal Magistrate's Court namely:

- i. **Sotik PMCCC no.128 of 2013**
- ii. **Sotik PMCCC no.26 of 2013**
- iii. **Sotik PMCCC no.173 of 2012**
- iv. **Sotik PMCCC no.165 of 2012**
- v. **Sotik PMCCC no.81 of 2012**
- vi. **Sotik PMCCC no.133 of 2013**
- vii. **Sotik PMCCC no.134 of 2013**

It is said that the Plaintiffs (interested parties herein) wrote statutory notices to the Plaintiff/Applicant herein notifying it of their intention to sue its insured. It is the Plaintiff/Applicant's submission that the circumstances of the accident show that the alleged accident was not covered by the insurance policy issued to Ronny Langat. The Plaintiff/Applicant is of the view that the Plaintiffs in the Sotik court should be enjoined to this suit as defendants since they will be directly affected by the orders sought.

Having given the brief background of this dispute, let me now turn my attention to the preliminary objection. The substantive suit is expressed by the Plaint dated 10th August 2012 in which the Plaintiff/Applicant prays for Judgment against its insured i.e Ronny Langat in the following terms:

- a. **A declaration that the Plaintiff be and is hereby not liable to the defendant under the repudiated insurance policy No.003/10/1/00480/20119 2A)COMP.**
- b. **A declaration that the Plaintiff be and is hereby not liable for any claims arising out of the accident on 5th March 2012, involving the said motor vehicle KBQ 644T.**
- c. **Costs of this suit.**
- d. **Such further or other relief as this Honourable Court deems fit.**

In the Motion before this court, the Plaintiff/Applicant is basically praying for leave to enjoin the Plaintiffs in the Sotik Court as defendants. A critical examination of the Plaint will show that the insurance company is seeking to repudiate the insurance cover it issued to its insured for various reasons. The interested parties have no privity of contract with the Plaintiff, hence they cannot be enjoined to this suit. In any case the Plaintiff was not specifically sued as a tortfeasor in the Sotik court. Whether or not the Plaintiff succeeds in repudiating the insurance contract is not the concern of the interested party. If at the end of the day the plaintiff succeeds in repudiating the insurance policy, the interested parties will execute the decree if any against the tortfeasor. If the Plaintiff fails to repudiate the insurance contract, still the interested parties will pursue the tortfeasor who in turn may file a declaratory suit against the Plaintiff to compel it to settle the claim as per the terms of the insurance policy and in compliance with **Section 10 of the Insurance (motor vehicle Third Party Risks) Act**. With respect, I agree with the submissions of Mr. Meroka, learned advocate who held brief for Mr. Khan for the Interested Parties that the Motion is incompetent and lacks merit. Consequently, I uphold the Preliminary Objection and proceed to order the motion struck out and dismissed with costs to the named Interested Parties.

Dated, Signed and delivered in open court this 30th day of May 2014.

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J.K.SERGON

JUDGE

In the presence of:

Mr. Kirui for Defendant

N/A for Plaintiff but with notice

N/A for Interested parties but with notice