



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**CIVIL CASE NO. 116 OF 2012**

**JOSEPH ZACHARY MACHOGU ABUTA.....PLAINTIFF**

**VERSUS**

**KENINDIA ASSURANCE CO. LTD.....DEFENDANT**

**R U L I N G**

The application dated 20-6-2012 prays that pending the determination of this suit there be stay of execution in Nyando PMCC 171 of 2007 between Edward Kabaka Amiller and Joseph Z.N.M. Abuta. It is supported by the annexed affidavit of the applicant sworn on 20-6-2012.

Basically, the applicant was sued by Mr. Abuta, who was brought into this case as an interested party at the above quoted Nyando court claiming inter alia damage for an accident which occurred on 30-12-2005. Apparently and according to the applicant it was the defendant/respondent that was insuring his motor vehicle Reg. No. KAN 967S at that moment. The matter proceeded to full trial where the court awarded the sum of Kshs. 25,000/= as general damages to the interested party.

From the proceedings herein the respondent failed to indemnify the applicant forcing it to file this declaratory suit.

The question therefore is, should the interested party await the outcome of this suit so that he can claim the fruits of judgment from the lower court? I do not think that this would be fair. The applicant had all the time during the trial at the lower court to engage the respondent. Further, the insurance cover or understanding between the applicant and the respondent has nothing to do with the interested party herein.

In any case should the applicant succeed here then he shall be adequately indemnified by the respondent.

For the above reasons, I do disallow this application with costs to the interested party.

**Dated, signed and delivered at Kisumu this 23rd day of July, 2014.**

**H.K. CHEMITEI**

**JUDGE**