

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 360 OF 2013

CORPORATE INSURANCE COMPANY LIMITED.....PLAINTIFF

VERSUS

CHARLES JOHN MUSEE.....DEFENDANTS

RULING

1. The defendant is an insured of the plaintiff under insurance policy number C01/080/1/903084/212 for motor vehicle registration number KAV 623J (*'the vehicle'*). The defendant has been sued in Milimani HCCC No. 112 of 2013 Philip Njoroge Ngugi v. Charles John Musee following an accident which involved the vehicle. The plaintiff herein has filed this declaratory suit seeking among others a declaration to avoid the policy for the reason that the defendant used the vehicle for uninsured purposes. Due to the existence and pendency of HCCC No. 112 of 2013, the plaintiff filed Notice of Motion dated 28th May, 2014 seeking stay of proceedings in Milimani HCCC No. 112 of 2013 Philip Njoroge Ngugi v. Charles John Musee pending hearing and determination of this suit.
2. The application is supported by the affidavit of Nancy Shikuku sworn on 28th May, 2014. She sought stay of proceedings of HCCC No. 112 of 2013 for the reason that the outcome of this suit shall have an impact on the former suit.
3. The defendant filed grounds of opposition dated 26th June, 2014. It is contended that the application is misconceived and an abuse of the court process; that the application is attempting to evade justice; that the application has primarily conceded material facts while bringing the application and that the application ought to be dismissed.
4. The application was canvassed by way of written submissions. The plaintiff reiterated its averments in the affidavit and relied in *Gateway Insurance Company Limited v. Kaboykek Farmers Co-operative Society Limited (2014) e KLR* where Ogola J, granted orders sought to avoid the policy because the tractor in the suit was being used for uninsured purposes. The defendant's position on the other hand was that plaintiff conceded liability when it sent a discharge voucher to the defendant and contracted an advocate to represent the defendant in HCCC No. 112 of 2013. That staying the said proceedings is tantamount to blocking the injured party from claiming damages. Reliance was placed in *Corporate Insurance Company Limited v. Kane Owen Wachira and 4 Others, Nairobi HCCC No. 401 of 2010*.
5. I have considered the rival depositions and the submissions together with the authorities cited therein. It is my considered view that declaratory suits are an alternative to review proceedings. That being the case and as correctly held by Mutava J, in *Corporate Insurance* case (supra) which opinion I share, I find that the application herein is premature since the suit from which a declaration as to whether or not the insurer is entitled to avoid liability under the contract of insurance between the plaintiff and the defendant is yet to be determined. The application herein is consequently dismissed with costs.
6. Dated, Signed and Delivered in open court this 18th day of December, 2014.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant