

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO. 159 OF 2014

**CORPORATE INSURANCE COMPANY LTD.....PLAINTIFF/
APPLICANT**

VERSUS

**CHARLES JOHN MUSEE.....
DEFENDANT/RESPONDENT**

RULING

1. Corporate Insurance Company Limited, the Applicant herein took out the motion dated 28th May, 2014 in which it basically sought for a stay of proceedings in **Milimani H.C.C.C No. 112 of 2013**, Philip Njoroge Ngugi =Vs=Charles John Musee pending the hearing and determination of this suit. The motion is supported by the affidavit of Nancy Shikuku. When served with the motion, Charles John Musee, the Respondent herein, filed grounds of opposition to resist the same. When the motion came up for interpartes hearing, Learned Counsels recorded a consent order to have the motion disposed of by written submissions.
2. Before delving deeper into the substance of the motion, let me set out the brief background of this dispute. Philip Njoroge Njagi, the Plaintiff in **Milimani H.C.C.C.C No. 112 of 2013** was involved in a road traffic accident while on board Motor Vehicle Registration No. **KAV 623J** owned by Charles John Musee, the Defendant/Respondent herein and the insured of Corporate Insurance Company Limited, the Plaintiff/Applicant herein Philip Njoroge Njage, was injured as a result of the accident, hence filed a compensatory suit i.e **Milimani H.C.C.C. No. 112 of 2013** against Charles John Musee the Defendant/Respondent. Corporate Insurance Company Limited, has now filed this suit in which it is seeking for inter alia, a declaratory order authorising it to avoid the policy of Insurance. It has now taken out the motion dated 28th May, 2014 seeking for stay of further proceedings pending the hearing and determination of this suit.
3. Having set out in brief the history behind this motion, I now turn my attention to the merits or otherwise of the motion. I have considered the grounds set out on the face of the motion and the facts deponed in the supporting affidavit plus the grounds of opposition. I have further considered the rival written submission. The main question to be answered is whether or not the Applicant is entitled to be given the order for stay of proceedings in **Milimani H.C.C.C No. 112 of 2013**. The Applicant has argued that it is going to show when this suit comes up for hearing that it is entitled to repudiate the contract of Insurance it entered with the Respondent. It has alluded that some of the grounds it will rely include the fact that the Respondent used the insured Motor Vehicle for uninsured purposes, thus breaching the express terms of the Insurance contract.
4. The Applicant argued that its suit will be rendered nugatory if the order for stay is not given. The Respondent on the other argued against the application stating that the Insurance Company is seeking to interfere with a claim by a third party who is not party to the contractual relationship between the Insurance Company and the insured. After a careful consideration of the rival arguments, I have come to the conclusion that the motion lacks merit. First, the Applicant is not a party in **Milimani H.C.C.C No. 112 of 2013**. It is clear that the aforesaid suit is between the injured and the Applicant's insured. Even if judgment was given in favour of the injured party, the

decree will not be executed against the Insurer but against the Insured. I therefore see no damage that the Applicant will suffer. In any case it will be upon the Interested Party in the end of the compensating suit to apply for a declaratory suit against the insurer who has refused to settle the Insurance claim. I however find no ground to rule that the Applicant's suit is premature. It is perfectly right to file the suit. If the order sought by the Applicant is given considerable delay may be occasioned against the case filed by the injured.

5. In the end, I see no merit in the motion. It is dismissed with costs abiding the outcome of the suit.

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**