



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**CIVIL CASE NO 715 OF 2002**

**PERIS ONDUSO OMONDI (suing through his**

**Next Friend JOHN PAUL SPEM OMONDI) .....PLAINITFF**

**VERSUS**

**TECTURA INTERNATIONAL LTD.....DEFENDANT**

**R U L I N G**

1. The Defendant herein has applied by **notice of motion dated 24<sup>th</sup> May 2013** for the main order that **“the entire proceedings herein be set aside unconditionally”**. Apparently, the proceedings were a hearing of the suit *inter partes* that commenced on 21<sup>st</sup> May 2011 before Odunga, J and culminated in a **judgment delivered on 19<sup>th</sup> July 2012**. By that judgment the Plaintiff was awarded damages as follows -

- (i) **KShs 3 million for pain, suffering and loss of amenities.**
- (ii) **KShs 500,000/00 for loss of future earning capacity.**
- (iii) **KShs 110,000/00 for future medication.**
- (iv) **Special damages of KShs 900/00.**
- (v) **Costs and interest at court rates.**

The awards were to be discounted by 20% “pursuant to the court’s finding on liability”. Decree was issued on 12<sup>th</sup> November 2012.

2. At the time of the accident that gave rise to the action the Defendant was apparently insured by **United Insurance Co. Ltd**, which was subsequently placed under statutory management.

3. The main grounds for the application are –

- (i) That the Statutory Manager declared a moratorium on 15<sup>th</sup> July 2005 under section 67C (2) (i) of the Insurance Act on payments by the insurance company to its policy-holders and “all other creditors”.

(ii) That the High Court (Ang'awa, J) subsequently ordered on 24<sup>th</sup> January 2007 in Nairobi HC Misc. Civil Suit No. 1345 of 2005 (O.S), *inter alia* –

“That all judgments, execution processes, including warrants of attachments and arrest entered against the Defendants in suits arising out of accidents involving motor vehicles hitherto insured by United Insurance Co. Ltd. (now under statutory management) and which claims United Insurance Co. Ltd had by operation of statute assume responsibility at all stages of such judgments, decrees and warrant be, and are hereby stayed until the originating summons dated 12<sup>th</sup> September 2005 in (this suit) is heard and determined.”

4. The Plaintiff is yet to respond to the application which is not yet set down for hearing. The Defendant has sought interim stay of execution of the decree pending disposal of the application which the Plaintiff has passionately resisted.

5. I have considered the arguments made for and against interim relief. Making findings upon those arguments would prejudice hearing of the application. But I must make some obvious observations

(i) As already pointed out the hearing of the suit was *inter- partes*.

(ii) It has not been demonstrated in the supporting affidavit, *prima facie*, that United Insurance Co. Ltd has “by operation of statute assumed responsibility” for the decree herein.

(iii) Again *prima facie*, it has not been demonstrated that United Assurance Co. Ltd. is a judgment-debtor in a declaratory suit in respect to the decree herein.

(iv) The moratorium exhibited in the supporting affidavit which was declared on 15<sup>th</sup> July 2005 was for a period of twelve (12) months. It has not been demonstrated, *prima facie*, that the same was extended.

(v) The moratorium was to affect the **policy-holders** and “**other creditors**” of United Insurance Co. Ltd. It has not been demonstrated, *prima facie*, that the Plaintiff/Decree-Holder herein is such policy-holder or other creditor.

6. In these circumstances I am not persuaded that interim stay of execution would be in the interests of justice, and I decline to grant the same. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JUNE 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF JUNE 2013**