



Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Subordinate Court Case*

DECLARATORY SUIT

- 3.1 *Motor vehicle accident.*
- 3.2 *Multiplicity of suits accidents.*
The appellant original defendants insured
- 3.3 *Insurance company appellant – declaratory suit to pay decretal sum awarded in damages for injuries sustained.*
- 3.4 *Application to trial court to file a counter claim.*
- 3.5 *Application dismissed*
- 3.6 *Appeal to High Court.*
- 3.7 *Application for stay of proceedings of subordinate court case.*
4. *Application 9th December 2011*
 - 4.1 *To grant a stay of proceedings to finalization of appeal.*
5. *In reply:*
 - 5.1 *The appellants have already settled one out of two cases.*
 - 5.2 *Application opposed*

6. *Held:*

Stay of proceedings granted.

7. *Case Law:*

8. *Advocates :*

i) *C.A. Nyaiitho instructed by M/s Archer & Wilcox & Co Advocates for appellant/original defendant*

ii) *E Nganga instructed by M/s E. Nganga & Co Advocates for respondent/ original plaintiff*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL NO. 273 OF 2011

**CONCORD INSURANCE CO. LTD.....APPELLANT/ORIGINAL
DEFENDANT**

VERSUS

MOSES GAKUNGA KIRUKU.....RESPONDENT/ORIGINAL PLAINTIFF

***(Being an appeal from the Ruling of Hon. A.K. Ndungu Esq, Senior Principal Magistrate of 2nd
day of June 2011***

in CMCC No. 13580 of 2006 at Milimani Commercial Courts at Nairobi)

R U L I N G

I. BACKGROUND

1. The appellant/applicant M/s Concord Insurance Company Ltd were sued in a declaratory suit by the respondent, their insured in which the respondent sought orders of the court, that the insurance company be compelled to pay the decretal sum awarded in damages, due to an accident that occurred on 13th May 2004.

2. There were multiplicity of suits filed and award given. The insurance company applied to the court in question to have a “counter-claim” to be included in the pleadings. The trial magistrate declined on grounds that the said “counter-claim” was time barred.

3. Being aggrieved, the applicant filed an appeal against the ruling delivered on 2nd June 2011. The

appeal dated 17th June 2011 was filed on 20th June 2011.

4. An application dated the 9th December 2011 was thereafter filed seeking orders for a stay of proceedings till the finalization of the appeal.

II APPLICATION FOR STAY OF PROCEEDINGS

9TH DECEMBER 2011

5. This application was heard interparties. The appellant claimed they would be prejudiced if the proceedings continue.

6. In reply, the respondent alleges that there has been settlement of other cases in connection with the same accident and did not therefore see why there be stay of proceedings in the matter. The respondent asked the application be dismissed.

III FINDINGS

7. The applicant wants to be heard on the point as to whether or not the trial magistrate was correct to reject the inclusion of their

“counter-claim” in their pleadings. In order for this to occur, stay of proceedings would be in order.

8. I would accordingly allow this application for stay of proceedings in CMCC 13580/06 until the determination of the appeal.

9. I order that security of costs of Ksh. 279,000/= be provided by the appellant to be deposited to court pending the finalization of the appeal. That this deposit be done within 14 days.

DATED THIS 19TH DAY OF JANUARY 2012 AT NAIROBI

M.A. ANG’AWA
JUDGE

Advocates :

i) *C.A. Nyaiitho instructed by M/s Archer & Wilcox & Co Advocates for appellant/original defendant*

ii) *E Nganga instructed by M/s E. Nganga & Co Advocates for respondent/ original plaintiff*