



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)

CIVIL SUIT 89 OF 2008

CONCORD INSURANCE COMPANY LIMITED PLAINTIFF

VERSUS

KEWAL CONTRACTORS CO. EA LTD 1ST DEFENDANT

PARMINDER SINGH MANKU 2ND RESPONDENT

HARJEET SINGH MANKU 3RD DEFENDANT

RULING

This ruling arises from an Amended Notice of Motion dated 24th January 2012 but amended on 25th January 2012 by which the applicant seeks the following orders:

- 1) That the application be and is hereby certified urgent and be heard at the earliest opportune time possible due to urgency.**
- 2) That the firm of Kihanya & Co. Advocates be granted to leave to act on behalf of 2nd defendant/applicant instead of Odhiambo and Weda Advocates as judgement has already been entered in the matter herein.**
- 3) That order of injunction be and is hereby given against the plaintiff, its agents, servants and/or employees and in particular Warleen Traders from attaching, selling, disposing or in any other way interfering with the applicants property and as person.**
- 4) Costs of this application.**

The relevant prayers as far as this ruling is concerned are, however, prayers 3 and 4 thereof. The application is premised on the fact that there is a receiving order issued in *Bankruptcy Cause No. 3 of 1998*.

It is clear from the copy of the receiving order annexed to the supporting affidavit that the Official Receiver was constituted Receiver of the estate of the debtor. In my view, once an official receiver has been constituted the receiver of a debtor's estate the debtor ceases to be in charge of his or her estate and all his or her actions including the institution of or continuance of legal proceedings must thereafter be

channelled by or through the official receiver. The present application is filed by the firm of Kihanya & Company Advocates who is indicated to be the advocates for the applicant. There is no indication anywhere whether the said firm has been appointed by the Official Receiver, who is now in charge of the estate of the applicant, to bring this application. The applicant, in my view, by instituting Bankruptcy Proceedings and obtaining a Receiving Order disabled himself from the capacity to either institute or continue with any legal proceedings on his own. Without any evidence before me that this application was filed by counsel appointed by the official receiver, the application as it stands is incompetent.

Secondly, it is true that the Court has power to stay execution against the property of a debtor against whose estate a receiving order has been issued. That power, however, is discretionary and in my view, that power is to be exercised by the Court seized of the Bankruptcy proceedings since **section 2** of the said Act states that “court” means the court having jurisdiction in bankruptcy under this Act. Accordingly, the powers under **section 11** can only be exercised in the Bankruptcy Cause and not in the execution proceedings. In this case the copy of the order annexed indicates that a stay of any action, execution or any other legal process against the Petitioner (read applicant) was stayed. This application is, in my view, unnecessary in light of that express order.

Without considering the merits of the application, it is my view, and I so hold that the application dated 24th January 2012 and amended on 25th January 2012 is incompetent. The same is accordingly struck out but with no order as to costs as the issue was raised by the court on its own motion and in any case the application was not opposed.

Ruling read, signed and delivered in court this day 23rd of April 2012.

G.V. ODUNGA

JUDGE

In the presence of:

Mr. Ndichu for Applicant.

No appearance for Respondent.