



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 232 OF 2010**

**IN THE MATTER OF THE INSURANCE ACT CHAPTER 487 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT KIAMBU**

**CIVIL CASE NUMBER 238 OF 2002**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**SENIOR PRINCIPAL MAGISTRATE KIAMBU LAW COURTS.....1<sup>ST</sup> RESPONDENT**  
**STEPHEN NGUGI NJENGA .....2<sup>ND</sup> RESPONDENT**  
**F.M. GIKUNDA T/A EXPEDITION GENERAL MERCHANTS.....3<sup>RD</sup> RESPONDENT**  
**DAVID N. NTHUMBI ..... EX PARTE APPLICANT**

**RULING**

The ex parte applicant's application dated 5<sup>th</sup> July, 2010 seeks the following orders:

**"1. An order of certiorari do issue to remove to this court and quash the entire proceedings**

culminating into the judgment of the court made on 29<sup>th</sup> September, 2009, in Kiambu SPMCC No. 238 of 2002.

2. **An order of prohibition do issue prohibiting the Principal Magistrate's Court at Kiambu or any other person from further proceeding and/or making any further orders relating to Kiambu SPMCC No. 238 of 2002.**

3. **The costs to abide the outcome of this application."**

The application was made on the following grounds:

**"(a) That at all material times relevant to Kiambu Civil Suit no. 238 of 2002 at the Senior Principal Magistrates Court at Kiambu, the applicant was comprehensively covered and/or insured by United Insurance Company Limited.**

**(b) That as at the time Civil Suit No. 238 of 2002 (sic) the court at Kiambu there was in place a moratorium declared by the Statutory Manager of United Insurance Company Limited under receivership and an order of the court in High Court Miscellaneous Civil Suit No. 545 of 2005 staying all proceedings of whatever nature or form against United Insurance Company Limited (under statutory management) or its policy holders, during the currency of the moratorium declared by the Statutory Manager on the 25<sup>th</sup> July 2005.**

**(c) That another High Court Order in Civil Case No. 748 of 2009 issued on the 2<sup>nd</sup> October 2009 stayed all claims of whatever nature or form against United Insurance Company Limited (under statutory management) or its policy holders during the currency of the moratorium declared by the Statutory Managers on the 15<sup>th</sup> July 2005.**

**(d) That the applicant being a policy holder of United Insurance Company Limited is protected from execution by the aforementioned orders of the Superior Court.**

**(e) That on the 25<sup>th</sup> May 2010, the Senior Principal Magistrate's Court at Kiambu issued warrants of sale of property in execution of decree and warrants of attachment of moveable property in execution of a decree to M/S F.M. Gikanga t/a Expeditious General Merchants as against the applicant.**

**(f) In execution of the said warrants, on the 11<sup>th</sup> day of June 2010 M/S. F.M. Gikanga t/a Expeditors General Merchants attached the applicant's moveable properties including motor vehicle Registration No. KAD 690Z contrary to court orders barring such execution.**

**(g) There is real and present danger that unless stay is granted pending the hearing and final determination of the substantive application the applicants goods shall be auctioned rendering the intended application mode.(sic)**

**(h) It is just, fair and equitable that the orders sought herein be granted."**

In his affidavit in support of the application, the ex parte applicant annexed thereto a copy of the Declaration of Moratorium published vide Gazette No. 6821 and dated 15<sup>th</sup> July, 2005. The same reads as follows:

# **“THE INSURANCE ACT (CAP 487) UNITED INSURANCE COMPANY LIMITED**

**(Under statutory management)**

## **DECLARATION OF MORATORIUM**

**NOTICE is given that in exercise of the powers conferred by section 67(c) (10) of the Insurance Act, the Statutory Manager of United Insurance company Limited, declares a moratorium on the payment of the said insurer of its policy holders and all other creditors for a period of twelve (12) months with effect from the date of this notice.**

**Dated 15<sup>th</sup> July, 2005**

**JOHNSON GITHAKA  
Statutory Manger”**

The ex parte applicant also annexed to his affidavit a copy of a police abstract which shows that his motor vehicle registration No. KAD 690Z was insured by United Insurance Company Limited. He further stated that following the said declaration of moratorium the High Court in Civil Suit No. 545 of 2006 stayed all proceedings subsisting against United Insurance Company Limited and its policy holders. Further, in HCCC No. 748 of 2005 at Nairobi (Milimani Commercial Court) the court stayed all proceedings of whatever nature or form against the said insurance company or its policyholders during the currency of the moratorium. A copy of a court order issued on 27<sup>th</sup> October, 2009 was exhibited.

The ex parte applicant further stated that the proceedings culminating into the judgment of the court in Kiambu SPMCC No. 238 were conducted during the currency of the moratorium which is against the aforesaid orders. His advocates had made efforts to urge the trial court to stay further proceedings but the court declined to do so. The trial court proceeded to issue warrants of attachment and sale of his moveable property in execution of a decree in the aforesaid case.

As a policyholder of the said insurance company, the deponent stated, he is entitled to the protection of the law in regard to further proceedings in Kiambu SPMCC No. 238 of 2002.

The 2<sup>nd</sup> respondent filed a replying affidavit and stated that the ex parte applicant had not annexed a policy document to prove that his motor vehicle was duly covered by United Insurance Company Limited. He further stated that the ex parte applicant had not demonstrated that he was a party to the High Court Civil Case No. 748 of 2009 in which the orders barring proceedings against the insurance company and its policyholders in view of the moratorium was made.

Parties filed their submissions which I have perused. From the ex parte applicant’s affidavit, it is evident that the declaration of moratorium in respect of United Insurance Company Limited is still in force. It has been extended from time to time. As at 25<sup>th</sup> May, 2010 when the warrants of attachment and sale were issued against the moveable assets of the ex parte applicant, the moratorium was in force.

In HCCC No. 748 of 2009 (Milimani Commercial Court), the court ordered a stay of all proceedings subsisting against United Insurance Company Limited (under statutory management) and its policyholders during the currency of the moratorium declared by the statutory manager on 15<sup>th</sup> July, 2005.

The ex parte applicant annexed to his affidavit a copy of a police abstract which shows that his motor vehicle registration number KAD 690Z was covered by United Insurance Company Limited. No evidence to the contrary has been adduced. That being the case, it cannot be disputed that he is a beneficiary of the orders made in the aforesaid suit.

In view of the foregoing, the orders of prohibition sought by the ex parte applicant are merited and I grant the same. However, there is no basis of issuing an order of certiorari to quash the proceedings that culminated into the judgment in Kiambu SPMCC No. 238 of 2002. This is because the declaration of moratorium against the said insurance company may be lifted in which event the decree issued in Kiambu SPMCC No. 238 of 2002 may be executed. Each party shall bear its own costs of this application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY, 2011.**

**D. MUSINGA**

**JUDGE**

**In the presence of:**

**Nazi – Court Clerk**

**Mr. Begi for the Ex Parte Applicant**

**Mr. Thuo for the 2<sup>nd</sup> Respondent**

**Mr. Kaumba for Mr. Onyiso for the 1<sup>st</sup> Respondent**