



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOIUS APPLICATION NUMBER 4 OF 2011

IN THE MATTER OF KENYA NATIONAL ASSURANCE (IN LIQUIDATION)

IN THE MATTER OF THE INSURANCE ACT (CAP 487) AND THE COMPANIES ACT (CAP 486) LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE OF THE COURT FOR THE APPLICANT TO COMMENCE PROCEEDINGS AGAINST

KENYA NATIONAL ASSURANCE (IN LIQUIDATION)

JOHNSON NGURE.....APPLICANT

VERSUS

KENYA NATIONAL ASSURANCE (IN LIQUIDATION).....RESPONDENT

RULING

This is an application by way of Chamber Summons dated 5th January 2011, filed by J W Kiniti & Company Advocates for the applicant. It was filed under section 228 of the companies Act (Cap 486 Laws of Kenya) and rule 3 of the Companies High Court Rules, as well as rule 5 (2), 7 (2), and 203 of the Companies Winding Up Rules, and section 1A, 1B, and 3A of the Civil Procedure Act (Cap 21 Laws of Kenya).

The orders sought are: -

- 1. The leave be granted to the applicant herein, to institute proceedings against Kenya National Assurance (in liquidation).**
- 2. That costs of this application be provided for.**

The application has grounds on the face of the Chamber Summons. The grounds are brief and I will reproduce them hereunder. They are as follows: -

- (a) The applicant's motor vehicle was insured by Kenya National Assurance (In liquidation).**
- (b) The applicant's motor vehicle was involved in a road accident and a claim arose out of it and the applicant herein was sued in HCCC No. 660 of 1997 Susan Njeri Ndungu Versus Johnson Ngure and the case concluded and judgment awarded against him on the 18th August, 2010.**
- (c) That the respondent has refused and/or neglected his duty against the applicant and as such the need to bring these proceedings against the Kenya National Assurance (in liquidation).**
- (d) That Kenya National Assurance has been put into liquidation and the applicant is therefore, obliged to seek the leave of this honourable court to file suit against the liquidator pursuant to the provisions of section 228 of the Companies Act (Cap 486 Laws of Kenya).**

The application was filed with a supporting affidavit sworn by the applicant on 5th January, 2011. It was deponed in the said affidavit, inter alia, that Kenya National Assurance (in liquidation) was the insurer of the applicant's motor vehicle registration KTN 083. That on 12th November, 1989 the said motor vehicle was involved in an accident with another motor vehicle as a result of which Grace Wanjiru Ndungu was fatally injured. That judgment was entered against the applicant but Kenya National Assurance (in liquidation) had failed to satisfy the judgment. That the deponent was informed by his advocate that he needed to obtain leave of this court to file suit against Kenya National Assurance (in liquidation).

This application was heard ex-parte. It is an application for leave to institute proceedings against a company which is in liquidation. Section 228 of the Companies Act (Cap 486) requires that leave of the court be granted for the institution of a suit against a company which is in liquidation. It provides: -

228. When a winding up order has been made or an interim liquidator has been appointed under section 235, no action or proceeding shall be proceeded with or commenced against a company except by leave of the court and subject to such terms as the court may impose.

The above section clearly requires that leave of this court be granted to institute proceedings against a company which is in liquidation. The facts placed before me show that Kenya National Assurance has been put under liquidation. It is in fact in the public knowledge, and I take the judicial notice of the same, that Kenya National Assurance is indeed in liquidation.

In my view, the applicant has demonstrated that Kenya National Assurance was the insurer of the subject motor vehicle and that it had failed to satisfy the judgment. A letter dated 7th October 2010 has been exhibited herein in which counsel for the applicant M/s Kibunja Advocates Associates wrote to the official receiver of Kenya National Assurance notifying of the judgment already entered. In my view, only when leave of this court is granted to institute proceedings against the insurer, can issues between the applicant and respondent be resolved judicially. It is, therefore, in the interest of justice that this court grants leave to institute proceeding. I, therefore, find merits in the application and will grant the same.

In the result, therefore, I allow the application and grant prayer 1. The intended proceedings will be instituted within the next 14 days.

Costs will await decisions in the proceedings to be instituted.

It is so ordered.

Dated and delivered at Nairobi this 5th Day of May 2011.

.....

GEORGE DULU

JUDGE

In the presence of

No appearance for applicant