

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 62 OF 2003

JANE WAIRIMU MAINA (Suing as the Legal Administrator of the Estate of Ephantus Maina)
.....**PLAINTIFF/ RESPONDENT**

VERSUS

PETER GITHINJI KAHINDI.....1ST DEFENDANT/APPLICANT
WILLIAM M. MUTHONDIO.....2ND DEFENDANT/APPLICANT

RULING

Pursuant to the provisions of *Order 22 rule 22 (i)* of the Civil Procedure Rules, **William M. Muthondio**, the 2nd Defendant herein, took out the Motion dated 31st January 2011 in which eh sought for an order of stay of execution of the decree. The Motion is supported by the Affidavit of the applicant sworn on the same date. **Jane Wairimu Maina**, the Plaintiff herein, opposed the Motion by filing a replying affidavit she swore on 24th March 2011.

The history behind this Motion appears to be short and straightforward. The applicant together with another, were jointly and severally sued by the respondent for damages arising from the fatal injuries inflicted upon **Ephantus Maina**, deceased. The deceased suffered fatal injuries while on board motor vehicle registration No. KAD 910Q. The aforesaid motor vehicle veered off the road after it rolled several times while moving along Nyeri-Othaya road on 10th April 2001. The aforesaid motor vehicle is the property of the Applicant. It was insured by United Insurance co. ltd. now under statutory management. The suit was heard and judgment was entered in favour of the Respondent and against the Applicant. Before settling the decree, United Insurance Company was placed under statutory management. Kenya Re-Insurance Corporation Ltd was appointed the statutory manager of the Applicant's Insurer. The statutory manager declared a moratorium on 15th July 2005 to last for 12 months. The moratorium period was extended for three months in two occasions i.e. on 16th June 2010 and on 17th December 2010. During the period of the moratorium the statutory manager successfully applied for an order of stay of proceedings and stay of execution of decrees against the United Insurance Company and its insured. On 21st January 2011, the Applicant appeared before the Deputy Registrar of this court to answer a notice to show cause why execution of the decree should not be undertaken. The court ordered or execution to be carried out. That order prompted the Applicant to apply for stay before this court. The Respondent opposed the Motion on the ground that United Insurance Co. Ltd was not enjoined to the proceedings as a party hence it is a stranger to the suit. It is also argued that the alleged moratorium notice which was advertised in the newspapers cannot be admissible without any authentication. The Respondent conceded that she intends to execute the decree.

From the material placed before this court, it is obvious that the respondent has commenced execution proceedings to recover the decretal sum. There is also clear evidence that at the time of processing the execution proceedings, the moratorium period had been extended and a notice caused to be published in the local newspaper and in the Kenya gazette. Before then an order for stay of execution had been issued staying proceedings and execution of orders and or orders against United Insurance Co. Ltd and its insured until while the moratorium was still in place. The order was issued by this court upon the application of the statutory manager of **United Insurance Co. Ltd vide Nairobi Commercial Tax Division Milimani H.C.C.C. No. 748 of 2009**. The moratorium period was extended for three (3) months with effect from 17th December 2010. With due respect, the Respondent and her counsel were aware of

the of the moratorium period and stay orders despite their denial. It was therefore wrong for the respondent to purport to execute.

In the end I find the Notice of Motion to be well founded. It is allowed as prayed.

Dated and delivered at Nyeri this 15th day of July 2011.

J. K. SERGON
JUDGE

In open court in the presence of Kinuthia holding brief Muhoho for the Applicant and Sijenje for Plaintiff/Respondent.