



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 318 OF 2008 (O.S.)

IN THE MATTER OF: INVESCO ASSURANCE COMPANY LIMITED

AND

IN THE MATTER OF: THE COMPANIES ACT (CAP 487 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF: THE INSURANCE ACT (CAP 487 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF: AN APPLICATION BY INVESCO ASSURANCE COMPANY LIMITED

RULING

1. Before me is a Notice of Motion dated and filed herein on 31 May 2010. It is an extremely bulky document the reason for that being that there are 698 pages of Exhibit annexed to the Affidavit in support of the Application sworn by **GEOFFREY NJENGA** again dated 31 May 2010. In the said Affidavit, the Defendant describes himself as the Managing Director of Invesco Assurance Company Limited under statutory management (hereinafter "*Invesco*"), the Applicant herein.
2. On the 10 November 2011, Mr. Kingara for Invesco appeared before me. He explained that Invesco was placed under statutory management by the Interested Party in 2003. At that time there was a number of other insurance companies that had suffered the same fate and the government, showing concern, wanted to find out the reason behind the collapse of such companies. Invesco was used as a test case. An investigator was appointed and he discovered a number of reasons for such collapse principally involving falsification of claims. Thereafter, the Statutory Manager recommended that Invesco be re-opened and such Statutory Manager is **GEOFFREY NJENGA** now Invesco's Managing Director. Such recommendation for the re-opening of the company has been approved by its shareholders.

3. Mr. Kingara then informed this Court of the past proceedings, particularly as regards the orders granted by my learned sister Lesiit J on 30 June 2008. Such orders were extended by Kimaru J and all parties have been served with this Application in compliance with orders given by Njagi J on 2 June 2010. On 10 November 2011, Miss Wangethe appeared for an interested party (not specified) but said that she was only holding a watching brief. In accordance with Mugo J's Order made on 23 November 2010 a return date for the Application was taken at the Registry for hearing of the matter on 31 March 2011. I have noted the Affidavit of Service sworn by **SAMUEL M. KARIUKI** of the advocates' firm on record for Invesco, dated 30 March 2011 to which he attached copies of the advertisements as regards the Application.

4. The record shows that on 31 March 2011, there were appearances before Mugo J for Invesco, the Commissioner of Insurance, the Respondent and 3 interested parties. The learned Judge disqualified herself from hearing the Application in view of her Ruling in *HCCC No. 630 of 2010* between the Plaintiff therein (presumably the Respondent here) and the advocates' firm of Gatundu & Co. It is to be noted that Mr. Gatundu appeared for the Respondent on that date. Eventually after a new date was taken at the Registry, the Application came before me, as I say on 10 November 2011 and I requested time to consider my Ruling in this regard as there are many interested parties and cases unresolved throughout the Republic in relation to Invesco.

5. The Notice of Motion before me asked for the following Orders:

“1. THAT this Application be certified as urgent and heard Ex-parte in the first instance.

2. THAT this Honourable Court do set aside the proceedings, decree warrants and all taxations in matters annexed hereto as schedule A. The said matters having proceeded in contempt of the orders granted by the Honourable Lady Justice Lesiit on the 30th day of June 2008 enforcing the moratorium granted by the statutory manager of Invesco Assurance Company.

3. THAT this Honourable Court be pleased to grant stay of execution with respect to such warrants, decrees and legal costs arising from contracts, suits and policies issued by the applicant prior to the moratorium declared by the Statutory Manager on 1st March 2008 for the next one (1) year which suits, decrees and warrants are more specifically set out in schedule annexed hereto B.

4. THAT the civil proceedings of whatever nature or form filed in any court or tribunal and subsisting as against Invesco Assurance Company Limited or its policy holders during the existence of the Moratorium declared by the Statutory Manager on 01.03.2008 and all their Consequential Orders be declared NULL AND VOID;

5. All taxations by the applicant's Advocates set out in schedule C annexed hereto and proceedings whatever their nature or form currently subsisting in various courts and tribunals against Invesco Assurance Company Limited that relate to suits that proceeded during the Moratorium period declared by the Statutory Manager on 01.03.2008 be declared NULL AND VOID;

6. All statutory notices, demands or claims of whatever nature or form issued and/or effected against Invesco Assurance Company Limited or its policy holders during the Moratorium period declared by the Statutory Manager on 01.03.2008 be declared NULL AND VOID;

7. The Applicant be hereby granted leave to serve this application and orders issued hereby by publishing them in the East African Standard Newspapers and service on all parties affected by this order be deemed effected upon a public of the said orders in the Newspaper.

8. That pending hearing and final determination of this application, this Honourable Court do stay execution of any of the decrees, taxations and proceedings in the schedules annexed hereto.

9. The costs of this Application be provided for”.

6. Mr. Kingara wound up his submissions before me by saying that his firm had served copies of the application and hearing notices, I assume for the hearing on the 10 November, 2011. To this end I have observed the Affidavit of Service sworn by Mr. Kingara's clerk/process server on the 9 November, 2011 and filed herein on 10 November 2011. The deponent details that he has served copies of the hearing notice on the offices of Gatundu & Co. Advocates, A. N. Ngunjiri & Co. Advocates, S. W. Ndegwa & Co. Advocates, Waweru Gatonye & Co. Advocates and Ouma Njenga & Co. Advocates. These firms' representatives all appeared before Mugo J. on 31 March 2011. I am satisfied that all those interested in this matter including the Respondent c/o Gatundu & Co. Advocate have been properly served with Hearing Notices of the hearing of the Application on 10 November 2011. In accordance with Mr. Kingara's final submission, I am treating the Application as unopposed.

7. As a result, I hereby grant the Orders sought in the Notice of Motion dated 31 May 2010 being numbers 2, 3, 4, 5 and 6 supra.

There will be no order as to costs.

DATED and DELIVERED at NAIROBI this 16th day of November, 2011.

**J. B. HAVELOCK
JUDGE**