



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**CIVIL SUIT NO. 125 OF 2005**

**JOSHUA PETE .....1<sup>ST</sup> PLAINTIFF**  
**AUSTINE ADICHOH .....2<sup>ND</sup> PLAINTIFF**  
**SAMWEL NGANGA WANYOIK.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL (Sued for and on behalf of the Minister of  
Finance and the Commissioner of Insurance.....1<sup>st</sup> DEFENDANT**  
**DELOITTE & TOUCHÉ .....2<sup>nd</sup> DEFENDANT**

**AND**

**UNITED INSURANCE COMPANY LTD(Under Statutory Management )  
KENYA REINSURANCE CORPORATION..... INTERESTED PARTIES**

**RULING**

By an application dated 19<sup>th</sup> July 2011, the applicant herein prays for the following orders:-

- (1) That pending the hearing and determination of this application there be an interim order of stay of execution of the decree in Kakamega CMCC Number 573 A of 2011.**
- (2) That the applicant be joined as the plaintiff to suit.**
- (3) Costs of the application.**

At the trial the 1<sup>st</sup> and 2<sup>nd</sup> defendant relied on their grounds of opposition filed on 7<sup>th</sup> September 2011 dated 28<sup>th</sup> September 2011 respectively. In his supporting affidavit the applicant has deponed that he was the owner of motor vehicle registration number **KAG 440 S** which was involved in a road traffic accident on 29<sup>th</sup> December 1998.

At the time of the said accident he had been insured by **United Insurance Company Limited** the interested party herein. A suit for damages namely **KAKAMEGA CMCC No. 573 'A'/2001** was filed by one **Beatrice Shadiya** and judgment issued against the applicant. He has exhibited a decree of Kshs. 384,716. His property have been proclaimed. While the above exercise was going on, the Insurance Company was placed under receivership. I have also had the occasion to read the plaintiff's plaint and the defences of the parties who are already on board in this case.

The same raises very weighty legal and jurisprudential issues to be determined. One of the issues to be

determined is whether the defendants owe any duty to the plaintiffs while they are under the cover of the private insurance company. I am also alive to the turmoil the Insurance Industry has gone through in the recent years.

The learned State Counsel has argued in his grounds of opposition that the applicant has no locus standi in this matter and the application should be disallowed. Locus standi is defined in the Black Law Dictionary 8 Edition as:-

**“The right to bring an action or to be heard in a given forum”.**

The Provisions of Order 1 Rule 1 of the Civil Procedure Rules reads:-

**“All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate suits, any common question of law or fact would arise”.**

I am persuaded that the above falls squarely within the application herein. I shall therefore allow the applicant to be made a co-plaintiff herein. The next issue for determination is whether this court should stop execution proceedings in the lower court as prayed. On the facts before me, it is clear that the inability to honour the decree is not of the applicants making. There was a valid insurance as at the period of the accident. I am however alive to the fact that the decree has to be satisfied as the victim of the accident by law is entitled to be compensated. In the interest of justice however I shall grant the prayer for stay of the execution in Kakamega CMCC Number 573 ‘A’/2001, On condition that the plaintiff proceeds to fix this suit for hearing within the next thirty (30) days from the date of reading of this Ruling. I must note also that this matter has never proceeded because of numerous applications which have stalled the same. On the same breath the plaintiff must show seriousness in prosecuting the suit entirely. All the relevant steps including taking of a hearing date has to be effected within the next thirty (30) days.

I shall therefore in summary make the following orders:-

- (i) The applicant is made a plaintiff in this suit**
- (ii) There be stay of execution of the decree in Kakamega CMCC Number 573 “A” / 2001 on condition that the plaintiff do proceed to fix this suit for hearing within the next thirty (30) days from the date of this Ruling.**
- (iii) Costs in the cause.**

Orders accordingly.

**Dated, signed and delivered at Kisumu this 10th day of November 2011.**

**H. K. CHEMITEI  
JUDGE**

*HKC/aa*