



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Civil Application 51 of 2009

IN THE MATTER OF THE STANDARD ASSURANCE COMPANY LTD.

AND

IN THE MATTER OF THE INSURANCE ACT CAP 487 LAWS OF KENYA

AND

INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) ACT CAP 405 LAWS OF KENYA

AND

IN ACCORDANCE WITH ORDER LIH OF THE CIVIL PROCEDURE RULES

BETWEEN

REPUBLICAPPLICANT

Versus

STANDARD ASSURANCE CO. LTD.1ST RESPONDENT

THE INSURANCE REGULATORY

AUTHORITY (INCORPORATING

THE COMMISSIONER OF INSURANCE)2ND RESPONDENT

THE PRINCIPAL MAGISTRATE'S

COURT KIGUMO.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

AND

PETER IRUNGU MUGI.....1ST INTERESTED PARTY

STANDARD ASSURANCE CO. LTD 2ND INTERESTED PARTY

EXPARTE

ISAAC KINYANJUI KAMAU

RULING

The Exparte Applicant herein, Isaac Kinyanjui Kamau, took out the Notice of Motion dated 8th April 2009 in which he prayed for the

following orders:

- 1. This honourable court be pleased to issue an order of certiorari for purposes of quashing the warrants of attachment issued against the Applicant by the Principal Magistrate at Kigumo in the matter PMCC No. 107/06.**
- 2. This honourable court be pleased to issue an order of mandamus to compel the 1st and 2nd to perform the duty under S. 67 S.4 of the insurance Act and move to court to obtain a stay of proceedings in PMCC 107/06 KIGUMO pending the direction of the moratorium herein.**
- 3. That this honourable court do issue such further orders that it may deem just and expedient in the circumstances of the case.**

The motion is supported by the affidavit of Isaac Kinyanjui Kamau sworn on 8/4/2009. When served, the A.G. opposed the same by filing grounds of opposition dated 22nd June 2009, Peter Irungu Mugi, the 1st Interested Party filed a replying affidavit he swore on 20th May 2009 to oppose the motion. When the motion came up for mention before this court on 9th December 2009, parties were directed to file written submissions. At the time of writing this ruling the 1st interested party was the only one who had filed his submissions.

I have considered the grounds set out on the face of the motion plus the facts deponed in the supporting affidavit and those in the replying affidavit. I have further considered the grounds of opposition and the written submissions.

The facts leading to the filing of this motion are that the exparte applicant herein, took out an insurance cover in respect of his motor vehicle registration No. KAS 500P. A certificate of insurance was issued by M/S Standard Assurance (k) Ltd. The Record shows that the aforesaid motor vehicle was involved in a road traffic accident whereupon Peter Irungu Mugi, 1st Interested Party, was injured. The 1st Interested Party filed a compensatory suit against the Exparte applicant and another vide Kigumo P.M.C.C.C. No. 107 of 2006. The plaint and summons were served upon the Exparte Applicant who in turn forwarded the same to his Insurance Company, i.e. M/S Standard Assurance (k) Ltd, the 1st Respondent herein. It would appear the 1st Respondent did not take any steps to defend the suit on behalf of its insured (Exparte Applicant). The suit proceeded for hearing exparte and judgment was entered against the Exparte Applicant. His motor vehicle registration No. KAS 500 P was attached and subsequently sold in a public auction. It would appear the proceeds of the sale of the aforesaid motor vehicle did not satisfy the decree hence the decree holder attached the Exparte Applicant's immovable property known as L.R. Loc. 2/Mareira/2466. This prompted the Exparte Applicant to take out the current motion. He has beseeched this court to direct the Insurance Regulatory Authority to take action against the 1st Respondent for failing to protect the interest of the Exparte Applicant. He has also urged this court to prohibit the Kigumo Principal Magistrate's court from proceeding with the execution of the decree. The Exparte Applicant also informed this court that he is aware that under S. 10(2) of Cap. 405, the 1st Respondent is bound to settle the decree.

The orders sought are basically judicial review orders of certiorari and mandamus. The Exparte Applicant has urged this court to issue an order of certiorari to quash the warrants of attachment issued against the Exparte Applicant by the Kigumo Principal Magistrate's court. In issuing the warrants of attachment, the aforesaid court is guided by the Civil Procedure Act and the rules therein. It has not been alleged that the aforesaid court did not have the power to issue such warrants. It has not also been alleged that the court acted in excess of jurisdiction. I do not think the order of certiorari is available. The Exparte Applicant did not lay the basis for the application for the order of certiorari.

On the second prayer, the exparte Applicant has urged this court to compel the 1st Respondent by an order of Mandamus to perform its duty under S. 67(4) of the Insurance Act. It is the Exparte Applicants view that the 1st Respondent is bound to settle the decree under section

10(2) of the Insurance Act. It must be made clear that the alleged relationship between the 1st Respondent and the Exparte Applicant is governed by the Insurance Act. But the same is specifically reduced into a contract contained a policy document. In the policy document contains the terms and conditions of the parties. The Exparte Applicant has not deemed it fit to present to this court the insurance policy. He has even failed to present the certificate of insurance. Even assuming that there was an insurance cover at the time of the accident, there is no evidence to show that the risk insured has attached in terms of the insurance contract. On the merits, the Exparte applicant failed to discharge the evidential duty.

In the end I see no merit in the motion. It is dismissed with costs to the 1st Interested party, 2nd, 3rd, and 4th Respondents.

Dated and delivered this 26th day of February 2010.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Mbutia for I.P. and N/A S.W. Ndegwa for Applicant. Waihoma for the State.

J.K. SERGON

JUDGE