



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Case 93 of 2007**

BHOPINDER SINGH VIRDEE T/A SINGH ENGINEERING WORKS.....PLAINTIFF

VERSUS

INTRA AFRICA ASSURANCE COMPNAY LTD.....DEFENDANT

RULING

This is an application brought under S.3A of the Civil Procedure Act and Order XXXV Rule 1 of the Civil Procedure Rules which prays that summary judgment be entered for the Plaintiff against the Defendant as prayed in the plaint and for the costs of the suit. It is brought on the grounds that the amount sought in the plaint is a liquidated sum which arises from a policy of insurance and the Plaintiff/Applicant paid the requisite premiums due under the policy but the Defendant has refused/ignored and/or failed to settle the decretal sum, interest and costs. Further grounds are that the Defendant has no plausible defence to the Plaintiff's claim. The Plaintiff/Applicant has sworn the supporting Affidavit in which he depones that one of his employees was injured while on duty for the Plaintiff and he successfully sued the Applicant and under the policy taken out by the Plaintiff/Applicant from the Defendant/Respondent the Defendant ought to meet the judgment against the Plaintiff but that the Defendant has refused to pay the decretal sum.

In a Replying Affidavit sworn by Prafulchandra Chandubhai Patel who says he is a Director of the Defendant competent to so swear it is stated that there is a plausible defence to the claim herein and he craves leave of the court to Defendant. He raises various issues as to whether or not the Plaintiff/Applicant complied with policy of insurance and whether under such policy any liability arose and states that these are matters which must be determined at trial. He adds that the Plaintiff's Advocates have already drawn the issues to be agreed to go for trial thereby showing that the defence raises triable issues.

I have carefully considered this application. Let me state on the onset that the law on striking out is well settled. The defence will not be struck out if it raises even just one triable issue and further that summary procedure is to be applied in the clearest of cases so that where possible it is best that cases be determined upon adducing and examination of the available evidence. In this case I do find that the defence does indeed raise various issues that must be determined upon the receipt of evidence. Whether or not the Plaintiff complied with the terms of the insurance policy; whether or not the Plaintiff is stopped from claiming, among other issues, are in my view matters that must only be determined at trial.

For those reasons I find that the application under consideration is without merit and the same is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 25TH DAY OF FEBRUARY, 2010.

P.M.MWILU

JUDGE

IN THE PRESENCE OF:-

Paul Ekitela - Court clerk

Mr. Mbeja - Advocate for the Applicant

Mrs. Simiyu holding brief for Mrs. Odede Advocate for the Respondent.