

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 840 of 2009

JOYCE MAINA APPLICANT

VERSUS

INSURANCE REGULATORY AUTHORITY 1ST RESPONDENT
UNITED INSURANCE CO. LTD. 2ND RESPONDENT
PETER KINYANJUI KAMAU INTERESTED PARTY

RULING

1. The Chamber Summons dated 22nd April 2010 is brought by Peter Kinyanjui Kamau who was described as the interested party in the originating summons filed by Joyce Maina on 1st October 2009. The applicant's application is brought under the provisions of order VI Rule 13 (b), (c) and (d) of the Civil Procedure Rules. The applicant is seeking for an order that the suit be dismissed with costs. This is on the grounds that the suit is scandalous , frivolous and vexatious. It is otherwise an abuse of the court process this application is supported by the affidavit of Miss Chege who has detailed how the suit was meant to abuse the court process. The suit was meant to seek for an order of stay of execution of a decree emanating from CMCC NO. 1365 OF 2005 Thika.
2. Joyce Maina had filed a similar application before the lower court which was pending for ruling on 4th November 2009. She also filed HCCC MISC. APPL NO. 98 OF 2010 at the Nairobi Central Registry over the same issue on 30th March 2010. The three different applications are pending in three different courts, seeking to stay execution. The applications were meant to circumvent the ruling before the Chief Magistrate's Court in Thika and to embarrass the court. The multiplicity is an abuse of the court process which is tantamount to forum seeking which should be discouraged. The notice of motion referred to Blue Shield insurance while the verifying affidavits refers to United Insurance. However none of the two parties have been served. Therefore the suit is fatally defective. The suit against the interested party is a material damage claim. Thus the jurisdiction of this court was not properly invoked and the prayers sought cannot lie. The interested party cannot be stopped from the fruits of her litigation.

3. This application was supported by the 1st respondent the Insurance Regulatory Authority. However it was opposed by Mr. Mutiso learned counsel for the applicant in the originating summons. He argued that in MISC APPL. NO. 748 OF 2009 there was an order extending moratorium in favour of United Insurance. Further the courts discretion to struck a suit should be exercised sparingly as it was held in the case **Ivita vs Kyumbu [1984] KLR**

4. This application seeks for striking of this suit. It is trite that striking out pleadings is always sparing done when the pleading being complained about is an abuse of the court process and discloses no triable issue? The principles to bring to bear are explained by the Court of Appeal in the case of; **DT Dobbie & Co. Ltd. versus Muchina 1982 KLR** as per Madan JA:

“The court should aim at sustaining rather than terminating a suit. A suit should only be struck out if it is so weak that it is beyond redemption and incurable by amendment. As long as a suit can be injected with life by amendment, it should not be struck out.”

5. It is common ground that this suit was slovenly drawn by the applicant. The issue for consideration is whether the suit can be rescued by an amendment. This is an originating summons seeking mandatory orders of injunction against the an insurance company which was not party to the proceedings before the Chief Magistrate’s Court. Moreover, the applicant has just filed a multiplicity of suits which is an abuse of the court process. There is no reason that has been given why the plaintiff filed another suit at the Central Registry when this one is pending. This lends credence to the submission by counsel that this suit was meant to forum seek and abuse the court process and was not meant for ends of justice. Accordingly, I find that this suit will not serve any useful purpose, it is struck with costs to the interested party and to the 1st respondent.

RULING READ AND SIGNED ON 30TH JULY 2010 AT NAIROBI.

M.K. KOOME
JUDGE