



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 142 of 2008

CORPORATE INSURANCE CO. LIMITED.....PLAINTIFF

VERSUS

SAMUEL KAMAU NG'ANG'A.....DEFENDANT

RULING

1. The application before court is the chamber summons dated 13.01.2009. The same is brought under Order VI Rule 13(1) and 16 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all other enabling provisions of the law seeking orders that the prosecution of PMCC No. 1430 of 2008 (Milimani, Nairobi) be stayed pending the hearing and determination of the suit herein. The applicant also asks for costs of the application.
2. The application is premised on grounds that:- (a) PMCC No. 1430 of 2008 is a bodily injury claim arising out of an alleged road traffic accident; (b) The alleged insurance cover expressly excluded passengers who may be carried in the said motor vehicle (c) If PMCC No. 1430 of 2008 is heard and determined then the applicant herein will be bound by the judgment in that suit.
3. The application is supported by the sworn affidavit of Nancy Shikuku Chief Legal Officer of the plaintiff/applicant. While admitting that the applicant issued policy number CO1/080/1/001935/2006, the deponent says that the policy was confined to the carriage of the defendant's own goods that it did not cover any claims that may arise from injury sustained by passengers on the insured motor vehicle. The deponent urges this honourable court to stay the lower court case pending the hearing and determination of this suit.
4. Annexed to the affidavit and marked "NSI" is a copy of the Commercial Vehicle Policy. Exception (iii) to Section II of the policy exempts the plaintiff/applicant from liability in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises.
5. The application is unopposed. Upto and including the time of the hearing the defendant had not filed any replying pleadings either by way of a replying affidavit or grounds of opposition. Fort this reason Mr. Muturi, learned counsel for the plaintiff/applicant urged this honourable court to allow the application.
6. After carefully considering the application as filed, the affidavit in support thereof and the

annextures, thereto, I am persuaded that this application has merit. The fact that the defendant (as plaintiff in PMCC No. 1430 of 2008) has not controverted any of the facts given by the plaintiff/applicant. I accept the plaintiff's case as true. Accordingly, I allow the application and do hereby order and direct that PMCC No. 1430 of 2008 be and is hereby stayed pending hearing and determination of this case. Costs shall be in the cause.

Dated and Delivered at Nairobi this 15th May 2009.

R. N. SITATI

JUDGE

Delivered in the presence of:

..... for the Plaintiff

..... for the Defendant

Court clerk –