



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

Civil Appeal 361 of 2005

DUNCAN OUMA MAJIWA APPELLANT

VERSUS

UNITED INSURANCE COMPANY LIMITED

UNDER STATUTORY MANAGEMENT.....RESPONDENT

RULING

The respondent filed an application brought under **section 223 (a) and (b)** of the **Companies Act** and **Rule 7** of the companies (winding up) Rules. The orders sought are as follows.

“1. That there be a stay of further proceedings

herein pending the hearing and

determination of Nairobi Winding Up

cause No. 22 of 2006.

2. That the court do grant such other or further orders as it may deem fit to so grant.

3. That the costs of this application be in the cause.”

The application was supported by an affidavit sworn by Mumut Ole Sialo, a Manager appointed by the Kenya Reinsurance Corporation Limited, the Statutory Manager of United Insurance Company Limited.

The Statutory Manager was appointed on 15th July 2005. On the same day, the Statutory Manager in exercise of the powers conferred upon him by **section 67 C (10)** of the **Insurance Act**, declared a moratorium on the payment of the said United Insurance Company to its policy holders and all other creditors for a period of 12 months which period has subsequently been extended from time to time.

The deponent went on to state that the Statutory Manager finalized his report in May 2006 and handed it over to the Commissioner of Insurance. On 5th September 2006, the Commissioner of Insurance filed a Winding Up cause at the High Court of Kenya Nairobi, winding up cause No. 22 of 2006. Hearing of the winding up cause commenced on 22nd October 2008 and is not yet finalized. In the

circumstances, Mr. Sialo states, it would be just and proper that this proceedings be stayed pending the hearing and determination of the winding up proceedings.

The application was opposed by the appellant who filed a replying affidavit and urged the court not to grant the orders sought because his appeal has nothing to do with the winding up proceedings aforesaid. He stated that he had completed the attachment and execution of the properties of United Insurance Company Limited before it was placed under Statutory Management. And that is the issue that is on appeal before this court.

Mr. Marwa for the appellant stated that a prohibitory order was issued on 6th July 2005 before the Statutory Manager was appointed. Under **Order XXI rule 49 (1)** of the **Civil Procedure Rules**, where the property to be attached is immovable, the attachment is made by an order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge and the attachment is deemed to be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the attached property. In the circumstances, Mr. Marwa stated the appellant is not affected by the moratorium or winding up proceedings as aforesaid.

I have considered the above submissions as well as the affidavits on record. It is not in dispute that immovable properties of the Insurance Company were attached by issuance of a prohibitory order on 6th July 2005. On the same date a notification of sale of the immovable property was issued. In terms of the provisions of **Order XXI rule 49** the immovable property of the insurance company was lawfully attached on 6th of July 2005 before appointment of the Statutory Manager. The insurance company filed an application seeking to set aside the prohibitory order but that prayer was not granted. Under **section 223** of the **Companies Act**, the court has a discretion as to whether to grant stay of proceedings or not after presentation of a winding up petition before a winding up order has been made.

In the notice of motion filed by the applicant it is stated that the insurance company is insolvent to the tune of

Kshs. 1, 954, 627,429/=. If a winding up order is made it is doubtful whether the appellant will get anything to satisfy its lawful decree considering the extent of the liabilities that attached to the insurance company. The respondent may thus be prejudiced by grant of an order of stay of further proceedings. The applicant has not advanced sufficient reasons as to why this court should exercise its discretion in her favour.

Consequently, I dismiss the application with costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 29TH DAY OF JULY, 2009.

D. MUSINGA

JUDGE.

29/7/2009

Before D. Musinga, J.

Mobisa – cc

N/A for the Applicant.

N/A for the Respondent.

Court: Ruling delivered in open court on 29th July, 2009.

D. MUSINGA

JUDGE.