



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Suit 76 of 2009

PETER MUINDE.....PLAINTIFF

VERSUS

STATUTORY MANAGER INVESCO ASSURANCE CO. LTD.

INSURANCE REGULATOR AUTHORITY

ATTORNEY GENERAL.....DEFENDANTS

AND

SALOME NTHEMBI PETER AND 17 OTHERS.....INTERSTED PARTY

RULING

The plaintiff instituted this suit against the defendants and the interested parties seeking for orders that the plaintiff is not bound to pay decretal sum issued against him by various suits filed by the interested parties before the Resident Magistrate's court at Kilungu and the Chief Magistrate's court in Machakos. This application is brought under the provisions of Section 203(I) (2) of Cap. 487 and Section 10(ii) of Cap.405 of the laws of Kenya. The plaintiff is also seeking for a declaration that the three defendants be ordered to honor the claims arising from the judgments in the suits filed against the plaintiff. Finally there be a stay of proceedings against the plaintiff in those suits.

This suit was simultaneously filed with a chamber summons dated 8th April, 2009 in which the plaintiff seeks for stay of proceedings and stay of execution. This application is predicated on the grounds stipulated on the body thereto and elaborated in greater detail in the supporting affidavit of Peter Muinde filed on 8th April, 2008. According to the applicant, he was duly insured by Invesco Assurance Company Limited (under statutory management) (hereinafter referred to as the insurance) for motor vehicles KAX295 L, KAR530 X and KAL825 E. The motor vehicles were involved in an accident on various dates. The plaintiff reported to insurance, he was sued in the following suits

- (a) RMCC No.34/07 – Kilungu.
- (b) RMCC No.40/07 – Kilungu
- (c) RMCC No.42/07 – Kilungu

- (d) RMCC No.38/07 – Kilungu
- (e) RMCC No.39/07 – Kilungu
- (f) RMCC No.36/07 – Kilungu
- (g) CMCC NO.847/07 – Machakos
- (h) CMCC No. 648/07 – Machakos
- (i) CMCC No.846/07 – Machakos
- (j) CMCC No.844/07 – Machakos
- (k) SPMCC NO.900/03 – Machakos
- (l) CMCC No.856/04 – Machakos
- (m) CMCC No.649/05 – Machakos
- (n) CMCC No.845/07 – Machakos
- (o) CMCC No.843/07 – Machakos
- (p) CMCC No.198/08 – Machakos
- (q) CMCC No.41/07 – Kilungu

The applicant contends that the 1st defendant was placed under statutory management by the 2nd defendant with the advice of the 3rd defendant. The statutory manager moved to court and obtained an order that there be no civil proceedings entertained in any court or tribunal against insurance or its policy orders during the currency of the moratorium declared by the statutory manager on 1st March, 2008. All the civil proceedings whatever nature or form, and whatever their stage currently subsisting in various courts and tribunals against insurance or its policy holders were suspended during the currency of moratorium declared by the statutory manager on 1st March, 2008.

However this blanket order did not specify the names of the policy holders like the applicant. As such the matters are still proceeding before the Resident Magistrate's court in Kilungu and the Chief Magistrate's court in Machakos. The plaintiff has been forced to hire his own lawyers because the lawyers who acted for the insurance withdrew from acting on account of non payment of their professional fees.

This application was opposed by the 2nd defendant on the grounds that it adversely mentioned the 2nd defendant in the supporting affidavit. There is nothing untoward that the 2nd defendant did, because the appointment of a statutory manager was done in accordance with provisions of Section 3E of Cap 487. After the appointment of the statutory manager, the 2nd defendant can only wait for the report. The statutory manager is not capable of protecting the policy holders before ascertaining that they were genuine policy holders. Counsel for the 2nd defendant urged the court not to make any orders because the policy holder's funds cannot be accessible to one claimant before the insurance company is wound up, that is when the statutory manager will make a decision on the policy holders to be compensated and by how much.

It is determinable from the records that on 30th June, 2008, in Milimani Misc. CMCC No.318 of 2008 (OS) an application was made by Geoffrey Njenga the statutory manager of Insurance and the following

orders were issued by Lesiit J.

- (I) This application is hereby certified as urgent and shall be heard on priority basis.
- (II) No civil proceedings of whatever nature or form shall be entertained and or filed in any court or tribunal against Invesco Assurance Company Limited (Under Statutory management) or its policy holders during the currency of the moratorium declared by the Statutory Manager on 01.03.08.
- (III) That all civil proceedings whatever their nature or form and whatever their stage currently subsisting in various courts and tribunals against Invesco Assurance Company Limited (Under Statutory Management) or its policy holders be and are hereby suspended and shall remain suspended during the currency of the Moratorium declared by the statutory Manger on 01.03.08.
- (IV) That all taxation proceedings whatever their nature or form currently subsisting in various courts and tribunals against policy holders of Invesco Assurance Company Limited (Under Statutory Management) and for which the company may become liable be and are hereby suspended and shall remain suspended during the currency of the Moratorium declared by the Statutory Manager on 01.03.08.
- (V) That no statutory notice, demands or claims of whatever nature of form shall be issued or be effective against Invesco Assurance Company Limited (Under Statutory Management) or its property or its policy holders during the currency of the Moratorium declared by the Statutory Manager on 01.03.08.
- (VI) That the running of time for the purpose of any law of Limitation in respect of any notice, demand or claim by any policy holder or creditor of Invesco Assurance Company Limited (Under Statutory Management) is suspended and shall remain suspended during the currency of the Moratorium declared b the Statutory Manager on 01.03.08.
- (VII) That the applicant is hereby granted leave to publicize the foregoing orders by publishing them in the Kenya Gazette, the Daily Nation newspaper and Standard Newspaper and
- (VIII) That the costs of this application shall be in the cause.

The issues raised in this application are weighty and perhaps require to be addressed at the Government policy level or better still through legislation. The plaintiff contends that he was insured by Invesco Assurance Company which was placed under statutory management on 01st March, 2008. Under a policy of insurance in particular Section 10 of the Insurance Act Cap 405 it is the duty of the insurer to satisfy judgment against a policy holder. However, with the appointment of a statutory manager, a moratorium was declared by the statutory manager and by virtue of Section 67(c) 10 of the Insurance Act, it is provided as follows:-

“For the purposes of discharging his responsibilities, manager shall have power to declare a moratorium on the payment by the insurer of its policy holders and other creditors and the declaration of a moratorium shall-

- (a) be applied equally to all classes of poly holders and creditors, subject to such exemptions in respect of any class of insurance as the manager may, by notice in the Gazette specify;***
- (b) Suspend the running of time for the purpose of any law of limitation in respect of any claim by any policy holder or creditor of the insurer.”***

According to the provisions of the Insurance Act, what the 2nd defendant did, is what it is authorized by the law for him to do as the regulator that is to appoint a statutory manager. The regulator has to await the report from the statutory manager to determine whether the insurance will be wound up before payment or compensation of the policy holders. I also agree with the counsel for the 2nd defendant that at this stage, no orders can be made against the 2nd defendant.

The people, who will be affected by the orders of stay of proceedings as sought in Chamber summons, are the interested parties. These are the parties who filed various suits at the RMCC court in Kilungu and CMCC court in Machakos. They were served with this application according to the affidavit of service filed by Henry Masimba on 20th April, 2009. They however did not make an appearance.

I have taken into account that a blanket order was made by this court staying all the civil proceedings against insurance or its policy holders. The suits were suspended during the currency of moratorium. Accordingly on the basis of that order the plaintiff has been able to prove on the face of the matter that he is one of the policy holders and therefore the order extends to him.

I hereby grant him the order prayed in paragraph 2 of the Chamber summons dated 4th February, 2009, to remain in force during the life of the moratorium declared on 1st March, 2008. After the moratorium the interested parties will be at liberty to proceed with their suits as they deem fit. This order should be served upon all the interested parties. Cost of this application shall be in the cause.

Ruling read and signed at NAIROBI this 7th August, 2009.

M. K. KOOME

JUDGE