

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

Miscellaneous Application 601 of 2009

STEPHEN KIARIE CHEGE..... APPLICANT

VERSUS

INSURANCE REGULATORY AUTHORITY1ST RESPONDENT

STATUTORY MANAGER UNITED INSURANCE CO. LTD.....2ND RESPONDENT

AND

SHARON MUMASI INTERESTED PARTY

RULING

The plaintiff instituted this suit against the defendants by way of an originating summons in which he has sought for among other orders, that the Insurance Regulatory Authority and the Statutory Manager of the United Insurance Co. Limited do discharge their duties under section 10(2) of Cap.405 and section 203(1) and (2) of the Insurance Act.

This suit was simultaneously filed with chamber summons dated 10th July 2009 seeking for orders that there be a stay of sale of motor vehicle Registration No. KAW 592K pending the determination of this application. This applicant also seeks for a mandatory order of injunction directing Eshikhoni Agency Auctioneers to release the said motor vehicle pending the determination of the originating summons.

This application is grounded on the fact that the applicant's motor vehicle was duly insured with United Insurance Company, besides he fulfilled all the conditions under the policy. However his motor vehicle was attached to satisfy a decretal sum as per the judgment in CMCC NO.312/2004. The applicant contends that he had insured his motor vehicle pursuant to the provisions of the Insurance Act, under section 10(2) of Cap 405, the insurance company is enjoined to settle all the claims covered under the policy of insurance.

In further arguments, counsel relied on the decision in **HCC Misc. Appl. No.1345/2005 Kensilver Express vs. the Minister for Finance & Others** where the High Court (Ang'awa J) made orders that all proceedings, judgments execution processes in respect of matters concerning United Insurance Company be settled or stayed. The ruling also declared that the plaintiff's Constitutional rights to liberty and peaceful ownership of their property had been violated or they were put in jeopardy by 3rd Parties seeking to execute court processes or decrees in which United Insurance Company Limited had assumed responsibility under section 10(2) of the Insurance (3rd Party Risks) Act. Counsel argued that a duty is placed by the insurance company by law to ensure settlement of claims within 60 days. No policy owner should be attached when there is an insurance policy. It is also the responsibility of the insurance company or its regulators to settle all claims.

This application was opposed by the 2nd respondent on the grounds that it is adversely mentioned and there are allegations that, as a regulatory body it had failed in its duties and responsibility of ensuring that the insurance company is well regulated to discharge its responsibility. The 2nd respondent argued that it duly discharged its statutory duties by appointing a statutory manager under section 67 of the Insurance Act. The statutory manager has recommended that United Insurance Company be wound up pursuant to

section 179 of the Insurance Act. If the Insurance Company is wound up, a policy owners compensation fund is supposed to be created for the compensation of the policy owners.

The policy owner will have to fully demonstrate they were insured and they had fully complied with the terms and conditions of the insurance policy. During the tenure of the statutory manager, a moratorium was declared under the provisions of section 67 (c)10 of Insurance Act which in essence suspended the provisions of section 203 of the Act. Further as far as the claim against the 2nd respondent is concerned, there was no privity of contract between the plaintiff and the 2nd respondent. In any event the plaintiff is supposed to file a declaratory suit if there was an Insurance contract and the plaintiff has an onus to demonstrate that as at the time of the accident, his motor vehicle was insured.

The pleadings before the court do not show when the accident occurred, or whether there was a valid insurance cover. Lastly this application was also faulted for relying on the decision in Misc. Hccc Civil case No. 1345 of 2005 which has already been stayed by the decision of the Court of Appeal in Civil Application No. 4 of the 2008, Nairobi.

Is the plaintiff entitled to the orders sought in this application; firstly this suit was instituted by way of originating summons as I understand it, the plaintiff is seeking for a declaratory judgment following a decree issued in CMCC NO.213 OF 2004 Kakamega. The scanty details pleaded in this suit do not indicate where the accident occurred, or when the judgment was made. A copy of the judgment which entitles the plaintiff to the declaratory orders is also not annexed to these pleadings. Under the provisions of section 10(2) of the Insurance Act liability covered by the Insurance policy is recoverable from the insurer by the person entitled to the benefit of the judgment against the insured.

However owing to the scanty information and the slovenly manner in which the pleadings herein are drawn, I am afraid there is no basis upon which this court can grant the interim orders sought. Moreover, there is no dispute the Insurance Company was placed under statutory management and a moratorium was declared by the statutory manager by virtue of section 67(c) of the Insurance Act. Based on that, all the payments to the policy holders and creditors are suspended for the period of the moratorium. In this case therefore, the court cannot order the statutory manager to settle the claims under section 10 of the Insurance Act. If the Insurance Company is wound up, it is the statutory managers duty to ensure a rate able distribution of the insurance company's assets to all known creditors of the company.

I agree with the submissions by counsel for the 2nd respondent that there was no privity of contract between the 2nd respondent and the applicant, therefore no orders can be made against them. The applicant is a regulatory body and there is no material before this court to support the allegations that they neglected to take up their responsibility.

In the result, I find no merit in the application dated 10th July 2009. I hereby dismiss it with costs to the 2nd respondent. The temporary order of stay of execution granted on 10th July 2009, is hereby discharged.

RULING READ AND SIGNED ON 18TH SEPTEMBER 2009 AT NAIROBI.

M.K. KOOME

JUDGE