



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

Civil Suit 209 of 2009

CORPORATE INSURANCE COMPANY LIMITED PLAINTIFF

VERSUS

JOYCE WANGARI NGONDI DEFENDANT

RULING

The plaintiff is seeking for a declaratory order against the defendant; the plaintiff is seeking to avoid the private car policy of insurance No.CO1/070/1/904497/2008 issued on 7th May 2008. The plaintiff further seeks for a declaration that it is not liable to indemnify the defendant for claims by passengers injured or killed as a result of an accident which is covered by the policy issued to the defendants. After instituting the suit, it was followed by a chamber summons filed on 28th September 2009 under order 6 rules 13(1) and 16 of the Civil Procedure Rules.

The plaintiff is seeking for an order that the prosecution of all compensation claims arising from the accident which occurred on 17th June 2008, involving motor vehicle Registration No. KAX 456K be stayed, pending the hearing and determination of the suit. This application is predicated on the grounds that motor vehicle registration KAX 456K was involved in a road traffic accident on 17th June 2008 and several people who claimed to have been traveling therein as passengers were injured/or died. The estate of one such passenger has filed a compensation claim in court being CMCC NO. 1481 OF 2009 Milimani. The applicant contends that the insurance cover it had issued to the defendant expressly excluded any carriage of goods or passengers. The defendant had insured the motor vehicle for her personal use and for her business not for carrying passengers.

This application is supported by the affidavit of Nancy Shikuku a legal officer with the applicant. It is further elaborated by the matters deposed to in the affidavit that the insurance policy issued to the defendant specifically excluded the motor vehicle for business purposes as indicated under page 7 of the policy. Under that policy, the vehicle was confined to the defendant's use, for social domestic and pleasure purposes and for the defendants own business or profession. The period for the cover was between 7th May 2008 to 6th May 2009 when the defendant was indemnified in the event of an accident caused by or arising out of the use of the vehicle to the third parties other than fare paying passengers.

On the 17th June 2008 during the currency of the insurance policy the motor vehicle was involved in an accident, a deceased passenger has given notice of intention to sue for damages on the grounds that the fatality suffered by the deceased was caused by the negligence driving. The deceased family has further filed a suit and it is clear from the suit, the deceased was traveling as a passenger along Nairobi-Naivasha road. Counsel therefore urged the court to grant the order pending the determination of the declaratory suit.

This application was opposed on the grounds that it was firstly, a non starter since it is predicated on the wrong provisions of the law. Order 6 rule 13 deals with striking out of proceedings. Thus the proper jurisdiction of this court has not been invoked. Furthermore the prosecutions of the suits that are sought to be stayed are not even indicated. Under the provisions of Order 37 rule 1(2) of the CPR, a party applying for a stay of a suit or proceedings must be a party in that suit. The fact that the plaintiff intends to repudiate a contract is not in itself a bar to other parties who have instituted third party compensation claims against the motor vehicle owner. Under the policy of insurance the motor vehicle is insured for use of domestic social business and professional life and it covers liability to third parties and so is an authorized driver.

In evaluating the matters put forth for and against this application I have considered the policy annexed to the applicant's affidavit especially the Clause Limitations as to use private vehicles which provides and I quote:

“Use only for social, domestic and pleasure purposes and by the Insured in person in connection with his business or profession. The policy does not cover use for racing competitions rallies or trials (or use for practice for any of them) or use for hire or reward commercial traveling the carriage of goods in connection with any trade or business or use for any purpose in connection with Motor Trade.

Use for social, domestic and pleasure purposes and for the Insured's business or profession. The Policy does not cover use for racing completion, rallies or trials (use for practice for any of them) or carriage or passengers for hire or reward “

The plaintiff has filed a suit seeking a declaration that they are not liable to indemnify the defendant for claims lodged by the passenger as a result of an accident that occurred on 17th June 2008. They have also attached a copy of the pleadings in CMCC NO. 1481 OF 2009. It is not pleaded in that suit that the plaintiff was a fare paying passenger. It is only indicated that the plaintiff was lawfully traveling in the motor vehicle Registration No. KAX 456k as a passenger. Whether the plaintiff was carrying the defendant in the cause of her business or profession or for social domestic or pleasure is not known.

Accordingly there is no basis upon which the orders sought can be granted. Secondly, this application is a non starter, it is brought under the provisions of order 6 rule 13 which deals with striking out of pleadings and I agree with the counsel for the defendant that the proper jurisdiction of the court has not been invoked.

Finally the orders sought are so vague because the parties who have filed suit which the plaintiff intends to stay are not cited. According the application is dismissed for lacking in merit with costs to the defendant.

RULING READ AND SINGED ON 25TH NOVEMBER 2009 AT NAIROBI.

M.K. KOOME

JUDGE