



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Miscellaneous Application 840 of 2009

JOYCE N. MAINA.....APPLICANT

VERSUS

INSURANCE REGULATORY AUTHORITY.....1ST RESPONDENT

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

AND

PETER KINYANJUI KAMAU.....INTERESTED PARTY

RULING

1. This Originating Summons was taken out by the Applicant against Insurance Regulatory Authority and Blue Shield Insurance Company (although the citation of Blue shield is by error) and Peter Kinyanjui Kamau as the Interested Party. Simultaneously with the filing of Originating Summons the applicant filed a Chamber Summons application under the provisions of Section 3A of the CPA Section 10(2) of the Cap 405 and Section 203 of the Insurance Act. The applicant is seeking for an order of stay of proceedings in **Thika CMCC 1365 of 2005** pending the hearing and determination of the Originating Summons.
2. This application is predicated on the grounds that the applicant is insured by the United Insurance Company, the insurance company was supposed to indemnify the applicant against all claims and liability arising as a result of the insurance cover over the motor vehicle registration KZS 137 which was insured under policy No. COMP 4 MP78024.
3. Counsel for the applicant submitted that under the insurance Act, the applicant is protected and judgment obtained against her arising out of an accident involving by the said motor vehicle during the period of the cover, should be settled by the insurance company. The vehicle was duly insured against third party risk. He urged the court to grant an order staying the proceedings so that the issues raised in the main suit can be determined. However this application was not served against the respondents. It is only the third party who was served.
4. This application was opposed by the Interested Party, Counsel submitted that the application is fatally defective because the parties cited in the Originating Summons is Blue Shield Insurance and verifying affidavit cites the same party. On the merit of the application, it was contended that the same application was argued before the chief magistrate's court in Thika where the interested party has filed a material damage claim against the applicant in Thika CMCC 1365 of 2005. The ruling was scheduled for delivery on 4/11/2009, when the applicant stole a match and filed the present application in High Court which is a tantamount to an abuse of a court process.
5. It was further argued that the jurisdiction of this court was not properly invoked under the provisions of Section 10 of Cap 405. The claim before the court is one for material damage which is not covered under the provision of Sections 4, 5 and 10 of the Insurance Act which refer to compensation for personal injuries or death but not material damage claims. Moreover no claim has been admitted by the insurance company as provided for under Section 203 of the Insurance Act. The case relied upon by counsel for Applicant that is **Misc. suit No. 1345 of 2005 (OS)** the decision by Ang'awa J, was stayed by the Court of Appeal decision in the case of **Commissioner for Insurance & 2 others vs.**

Kensilver Insurance Ltd & 3 others (2008) eKLR.

6. I have evaluated the submissions for and against this application. Firstly, the application is slovenly drawn. The Originating Summons cites the wrong party and so is the verifying affidavit. Moreover the application was not served upon the 1st and 2nd Respondents it was only served upon the Third Party. It is clear from the record that the third party had instituted a suit being **CMCC 1365 of 2005 Thika**, against the Applicant in which she is seeking for material damage compensation. A similar application was made before the court in Thika. The fact that the 1st and 2nd Respondents were not served, and this application was made even before the ruling was delivered by the Thika court lends credence to the submission that this application was made to abuse the court process.

7. It is also evident from the Insurance Act that the Insurance Company is supposed to admit liability within sixty (60) days and settle the claim. In this case the Insurance Company was never served, did not admit liability, and it is under statutory management. This application is therefore a nonstarter, it lacks merit and it is dismissed with costs to the Interested Party.

RULING READ AND SIGNED ON **4th December 2009** AT NAIROBI.

M.K. KOOME

JUDGE