



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

**Misc Appli 95 of 2008**

**IN THE MATTER OF THE COMMISSIONER OF INSURANCE**

**AND**

**IN THE MATTER OF THE LIQUIDATOR, LAKESTAR INSURANCE COMPANY**

**AND**

**IN THE MATTER OF INSURANCE ACT CAP 487 LAWS OF KENYA**

**AND**

**IN THE MATTER OF INSURANCE (THIRD PARTY RISKS) ACT CAP 405 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE KENYA RE-INSURANCE CORPORATION ACT CAP 487A**

**AND**

**IN ACCORDANCE WITH ORDER LIII OF THE CIVIL PROCEDURE RULES**

**BETWEEN**

**ALPHONSE KALI MULWA.....APPLICANT**

**VERSUS**

**COMMISSIONER OF INSURANCE.....1<sup>ST</sup> RESPONDENT**

**THE OFFICIAL LIQUIDATOR,**

**LAKESTAR INSURANCE COMPANY.....2<sup>ND</sup> RESPONDENT**

**DENNIS JULIUS ATHIANG OSOWO.....(interested party)**

**OKOTH ONYAKA MARCELA.....(Interested party)**

## RULING

The application before the Court was made ex-parte by the Applicant, who is a Defendant in Civil Suit No. 3062 of 2005. The Applicant was represented in this case by M. W. Muli & Co. Advocates. The application is brought under order 1 rule 14 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. It seeks that leave be granted to the Applicant to issue and serve a third party notice to the Commissioner of Insurance in terms of the draft third party notice annexed to this application.

The application is based on grounds on the face of the Chamber Summons which are as follows:

- 1. That the Motor vehicle allegedly involved herein registration number KAA 138E was insured by M/s Lakestar Insurance Company Limited now under Official Liquidation.**
- 2. That the said Insurance Company was under the supervision of the Commissioner of Insurance as per the Insurance Act Section 5.**
- 3. That the Insurance Act Cap 487 and the Motor Vehicle Third Party Risk Act Cap 405 strictly shifts responsibility of payment of claims to the Third Parties.**
- 4. That it is necessary to have the said Commissioner of Insurance joined as Third Party to the suit for and/or indemnity.**

The application is also premised on an affidavit sworn by ALPHONSE KALI MULWA who is the Applicant herein. In brief the Applicant deposes that he had insured his vehicle registration No. KAA 138E with the Lakestar Insurance Company Limited under policy No.081/009747/01/11/A the policy documents are annexed to the affidavit and marked "AKM1".

The Applicant deposes further that the Motor vehicle was allegedly involved in an accident on the 15<sup>th</sup> February, 2002. He deposes that he notified Lakestar Insurance Company of the accident and the claim registered under claim No. 10/081/00062/02. The deponent has annexed "AKM2" as proof of the correspondence exchanged with the Insurance over the said claim. The deponent states further that he has been sued, since the Insurance Company went under before it paid the claim under the accident, and that it is his contention that the issue of liability cannot be determined in the absence of the intended Third Parties who are the Commissioner of Insurance and the Liquidator.

Mr. Makori argued this application on behalf of the Applicant. Counsel submitted that the Applicant was insured by the Lakestar Insurance Company which has since gone under. Mr. Makori submitted that under Section 5 of the Insurance Act it was the Applicant's contention that since the Insurance Company went under, liability attaches on the Commissioner of Insurance. Mr. Makori relied on the affidavit sworn by the Applicant in which a Police Abstract is annexed showing that an accident occurred, and insurance stickers showing that the Applicant was Insured with Lakestar Insurance Company.

I have considered the application. The applicant claims that he is entitled to indemnity from the intended Third Party. The Applicant has shown that it is necessary to join the Third Party to the suit in order to enable the court to effectively determine the issues arising in the said suit. I noted that there is a contradiction between the application and the supporting affidavit. The Applicant deposes that the Third Party notice should issue to the Commissioner of Insurance and the Liquidator of the Insurance Company. Since the Court can only grant what has been prayed for in the application the application succeeds only as prayed for on the face of it

I will allow the application in terms of prayer 1 with costs in the cause.

**Dated at Nairobi, this 18<sup>th</sup> day of April, 2008.**

**LESIIT, J**

**JUDGE**

Read, signed and delivered in the presence of:

M. W. Muli & Co. Advocates for the Defendant

**LESIT, J**

**JUDGE**