



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MACHAKOS**

**Civil Appeal 128 of 2008**

**BONIFACE MURITHI NDWIGA ..... 1<sup>ST</sup> APPELLANT**

**MICHAEL MUSAU MAWEU ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**JANE KATULI NDIVO ..... RESPONDENT**

**RULING ON A PRELIMINARY POINT**

1. Before the Notice of Motion dated 9/7/2008 could be heard, I was asked to rule on a point that arose in the Further Affidavit sworn on 22/7/2008 by the Appellant/Applicant, Boniface Mureithi Ndwiga. For avoidance of doubt, the Applicant in the Motion was seeking orders of stay of execution pending the hearing and determination of his Appeal. The preliminary point is this; on 30/6/2008, Lesiit J. sitting in Milimani Commercial Court issued certain orders in H.C.C.C 318/2008 (O.S), a suit filed by Geoffrey Njenga, the Statutory Manager of Invesco Assurance Company Limited. The learned judge gave the following orders:-

- a. "This Application is hereby certified as urgent and shall be heard on priority basis;
- b. 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 01/03/2008;
- c. 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 Manager on 01/03/2008;*
- d. 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 01/03/2008;*

e. THAT no statutory notices, 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 01/03/2008;

f. 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 by the Statutory Manager on 01/03/2008;

g. 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

h. THAT the costs of this Application shall be in the cause.”

2. It is clear from orders nos. 2 and 3 specifically that suits against policy holders assured by Invesco Assurance Company Limited (under Statutory Management) subsisting in various courts and Tribunals including this court, irrespective of the stage stood suspended by dint of that order. I am not too certain myself of the reasoning behind that blanket order nor the background leading to it but the order is subsisting and properly binding unless cause is shown otherwise.

3. I have seen evidence that the Applicant was a policy holder and held a certificate No. A2996234 which expired on 8/4/2007. The Appeal before me was filed on 10/7/2008 and therefore at the time, the Applicant was not a policy holder with Invesco Assurance Company Limited and cannot without other evidence be said to be a policy holder who can benefit from the blanket order of Lesiit J. as aforesaid. I have seen a letter dated 14/3/2008 addressed to the advocates for the Respondent on a “without prejudice basis” cover and there is no purpose in adverting to it as its contents cannot bind any party.

4. Having so said however and before being seen to be going against an order of a court with concurrent jurisdiction, I will give directions as follows:-

1. Let the Applicant bring forth evidence that he is presently a policy holder with Invesco Assurance Co. Ltd. This should be done by way of affidavit within 14 days.

2. Let the Applicant within the same period, bring evidence that the orders of Lesiit J. above are still subsisting and if he has evidence as in 1 above, that they attach to any suit against him as a policy holder.

3. If the Applicant fails to abide by 1 and 2 above, the Application dated 9/7/2008 will on the next mention date be fixed for hearing on its merits before this court.

4. Parties may now take a mention date for further orders/directions.

5. Orders accordingly.

Dated and delivered at Machakos this 10<sup>th</sup> day of September 2008.

**ISAAC LENAOLA**  
**JUDGE**

In presence of:

**ISAAC LENAOLA**  
**JUDGE**