

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 88 of 2006

DUNCAN GITHINJI NJERU.....APPLICANT

VERSUS

1. MINISTER OF FINANCE.....1ST RESPONDENT

2. COMMISSIONER OF INSURANCE.....2ND RESPONDENT

3. STATUTORY MANAGER UNITED INSURANCE.....3RD RESPONDENT

4. HON. ATTORNEY GENERAL.....4TH RESPONDENT

AND

MONICA WACUKA NGERA.....INTERESTED PARTY

RULING

Before the court is application dated 20/11/2006 which orders to set aside orders made in this court on 23/10/2006 to the effect that execution of orders made in **HCC No. 75 of 1998** be stayed.

The grounds are set out in the body of the application and also supporting affidavit sworn by applicant's advocate Mr. Macharia Muraguri. The main ground is that the stay orders were made before hearing the judgment creditor in suit **HCC No. 75 of 1998** who is affected who holds a judgment made in his favour on 2/7/2004. That the Applicant stands to suffer hardship by the delay of execution of his decree which is valid and not appeal from or set aside.

This application is opposed by the exparte applicant who has filed 4 grounds of opposition. I have perused the same. The Respondent does not need protection against the Applicant in **HCC No. 75 of 1998**. He is required to satisfy judgment lawfully entered against him in favour of the Applicant. The issues raised in this suit do not concern the applicant. It is not sought to set aside judgment or to appeal against the same. It is a matter between the Respondent and his insurers. The judgment is against the Respondent only. His insurers are not party suit HCC. No. 75/98. To delay a party from enjoying the fruits of judgment since 2/7/2004 is doing injustice to him.

I therefore allow the application and grant orders sought. The exparte orders made on 23.10.2006 are hereby set aside to the extent of order number 3 thereof.

Costs shall be in the cause.

Dated this 16th January, 2007

J.N. KHAMINWA

JUDGE