



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

**Misc Appli 1356 of 2003**

**HOLBERT D. NJOROGE.....APPLICANT**

**Versus**

**COMMISSIONER OF INSURANCE & 2 OTHERS.....RESPONDENT**

**RULING**

Before me is the Application (Chamber Summons) dated 1<sup>st</sup> November 2006 brought pursuant to S.3 A Civil Procedure Act, Reinsurance Act Cap 487 Laws of Kenya

Applicant, Holbert Njoroge, seeks orders that there be a stay of execution pending hearing of this Application; that the court orders a set off of the costs demanded against the Statutory provisions of Settlement by Kenya Reinsurance Cooperation, that the attached motor vehicle be released and costs be in the cause.

The dispute herein relates to costs only. There is a judgment against the Applicant for Kshs.3 million and the Applicant contends that under S. 145 of the Kenya Reinsurance Corporation Act, the said party is enjoined to pay 25% of all policies that are reinsured by it. That therefore the Respondent should satisfy 25% of the decretal sum.

The Application was opposed and a Replying Affidavit sworn by Jane Florence Otieno, the Corporation Secretary of the 3<sup>rd</sup> Respondent was filed. She depones that the bill of costs was taxed at Kshs.76,545/= and after issue of a certificate, the Respondent initiated execution proceedings. It is the 3<sup>rd</sup> Respondent's contention that the Applicant never preferred any reference to the High Court in respect of the Ruling on taxation, challenging the costs and that there is no contract of insurance between the Applicant and the 3<sup>rd</sup> Respondent. That S.145 of the Insurance Act which is relied upon makes Reinsurance mandatory as between the 3<sup>rd</sup> Respondent and other Insurers and there is therefore no privity of contract between the Applicant and the 3<sup>rd</sup> Respondent. The Applicant had insured with Kenya National Assurance which went under liquidation.

Section 145 of Insurance Act reads:

“145 (1) subject to this Act, every insurer shall reinsure with the Kenya Reinsurance Corporation such properties of each policy of Insurance issued or renewed in Kenya by the insurer, in such proportion and in such manner and subject to such terms and conditions as are prescribed.

(2) Subject to this Act, every Insurer shall also place with the Corporation in addition to the reinsurance specified under Subsection (i) such proportion of its reinsurance business from Kenya placed in the international Reinsurance market excluding facultative Reinsurance, in such properties and in such manner and subject to such terms and conditions as are prescribed.”

The said Section does not create any direct relationship between the 3<sup>rd</sup> Respondent and the Applicant. The contract of Insurance was between the Applicant and his Insurance Company, the Kenya National

Assurance which is now under liquidation. The Reinsurance contract was between the 3<sup>rd</sup> Respondent and Kenya National Assurance. There is no privity of contract between the 3<sup>rd</sup> Respondent and the Applicant.

Though the Kenya National Assurance was required to reinsure with the 3<sup>rd</sup> Respondent it has to be proved that indeed the Applicants loan was reinsured with the 3<sup>rd</sup> Respondent which the Applicant has not demonstrated and for that reason it is only the Kenya National Assurance who can bring such an action against the 3<sup>rd</sup> Respondent.

I do agree with the Respondent that the Applicant has no claim against the 3<sup>rd</sup> Respondent and this Application is dismissed with the Applicant bearing the costs.

Dated and delivered this 19<sup>th</sup> day of June 2007.

**R.P.V. WENDOH**

**JUDGE**

Read in presence of:

Mr. Nduhiu for Applicant

Daniel: Court Clerk