



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

Misc Civil Suit 298 of 2005

IN THE MATTER OF CONSTITUTIONAL REVIEW UNDER SECTION 3, 65 (2) AND 123 (8) OF THE CONSTITUTION

AND

**IN THE MATTER OF NAIROBI CHIEF MAGISTRATE'S COURT (MILIMANI COMMERCIAL COURTS) CIVIL SUIT
NO.5635 OF 1999 JANE, NJERTI MBUGUA**

VERSUS

STANLEY KOOME

BETWEEN

STANLEY KOOME..... APPLICANT

AND

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

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

THE LIQUIDATOR,

STALLION INSURANCE COMPANY LTD....3RD RESPONDENT

JANE NJERI MBUGUA.....4TH RESPONDENT

RULING

Counsel for applicant informed the court that he was served only this morning with a replying affidavit by the 1st and 2nd respondents and that he needs time to file response thereto and asked for 14 days to do so. That is a reasonable request.

Both counsel for respondents maintain that the present application is similar to High Court Misc. Case No.1345/05 which is part-heard before Anga'wa J while applicant's counsel maintains that the similarity between 1345/05 and the present application is not substantial. We asked counsel for 4th respondent to brief us on 1345/05 and when he read out the declarations being sought in 1345/05, it appeared to us that the declarations sought in 1345/05 and in the present case raise substantially similar constitutional issues.

Applicant's counsel contended that issues in present application are wider and unique than those raised in 1345/05. Under section 3 of the Judicature Act, Cap.8, every court is a constitutional court and it is only fair that whatever constitutional issues have been raised in 1345/05, described as a test case, be determined first. Thereafter, the applicant can be at liberty to proceed with the present application.

For this reason, we shall give a mention date for the present case for the parties to give us an update on 1345/05.

Dated at Nairobi the 9th July, 2007.

J.G. NYAMU

JUDGE

B.P. KUBO

JUDGE