

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

CIVIL CASE NO. 71 OF 2005

JOSEPH MURIGI.....PLAINTIFF

VERSUS

NATIONAL INSURANCE CORPORATION

(UGANDA).....DEFENDANT

R U L I N G

The Plaintiff seeks by chamber summons dated 4th February, 2005 leave of court to effect service of summons to enter appearance and plead upon the Defendant outside the jurisdiction of this court, more particularly at Kamplala in the Republic of Uganda. The application is brought under Order V, Rule 21 of the Civil Procedure Rules.

I have read the supporting affidavit sworn by the Plaintiff's advocate, Mr. George Onyango Oloo. I have also perused the pleadings and also the **Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA)**, particularly the **Protocol on Third Party Motor Vehicle Insurance Scheme** (Annex II of the Treaty) which is signed by both Kenya and Uganda, among other States. It would appear that the Defendant may be liable to settle the decree in Nakuru HCCC No. 504 of 1999 under the terms of the aforesaid protocol. The Defendant is described in the pleadings as a registered company incorporated in Uganda.

The suit giving rise to the aforesaid decree was founded on tort committed in Kenya. The present suit is based on a contract (the aforesaid Treaty) which, by its terms, appears to be governed by Kenyan law, and thus comes within the provisions of Order V, Rule 21 (e) (iii) of the Civil Procedure Rules.

I will therefore grant the application and grant the leave sought in prayer No. 2 thereof. The Defendant may enter appearance within twenty-one (21) days after service upon it of summons to enter appearance. Costs in the cause. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF APRIL, 2005.

H.P.G. WAWERU

JUDGE

DELIVERED THIS.....DAY OF APRIL, 2005.

