



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

Civil Case 190 of 2003

JAMES MWAURA ND'UNG'U PLAINTIFF

VERSUS

THE COMMISSIONER OF INSURANCE.....1ST DEFENDANT

LAKESTAR INSURANCE CO. LTD..... 2ND DEFENDANT

(Under Statutory Management)

MARY NYAMBURA WASWA 3RD DEFENDANT

(Suing Through Syovinya Lungonzi)

SIMON MUTATI4TH DEFENDANT

(Suing Through Syovinya)

TERESIA GATHONI GATHURA 5TH DEFENDANT

FRANCIS MWAURA CHEGE 6TH DEFENDANT

MILKA WANJA 7TH DEFENDANT

JANE NDUKU 8th DEFENDANT

(Suing Through Syovinya Lungonzi)

PATRICK KOKI 9TH DEFENDANT

(Suing Through Syovinya Lungonzi)

GRACE KINYULA 10TH DEFENDANT

(Suing Through Syovinya Lungonzi)

MARY WANJIKU NYUTU 11TH DEFENDANT

JOYCE WAIRUMU MWANGI 12TH DEFENDANT

(Using Through Mary Wanjiku Nyutu)

RULING

This is an application by Lake Star Insurance Co., Ltd (in liquidation) the 2nd Defendant to strike out the Amended Plaintiff so far as it is concerned on the ground that it fails to disclose any reasonable cause of action against it.

The Application is supported by a Supporting Affidavit. The Application is brought pursuant to the provisions of O.6 rule 13(a) (b) and (c). However Mr. Ligunya sought to rely on O6 rule 13(c) only.

The 2nd Defendant is an Insurance Company, which is now in liquidation. The Amended Plaintiff alleges in paragraph 11 that the Applicant has a legal obligation to indemnify the Plaintiff for any claims arising out of an insurance policy. This is the policy of insurance referred to in paragraph 9 of the Amended Plaintiff, which had been issued by the Applicant to the Defendant to indemnify him against third party claims arising out of any liability the Plaintiff might incur in a motor vehicle accident.

No relief is sought against the Applicant. The relief claimed is against the 1st Defendant for alleged breaches of statutory duty to allow the Applicant to continue doing business. Mr. Ndegwa for the Plaintiff/1st Respondent submitted that under section 10(2) of the Motor Vehicle (Third Party) Insurance Act the Plaintiff was entitled to seek indemnity from the Applicant. This is a right which the Plaintiff has. However, in the case the Applicant is in liquidation and under the provisions of the Companies Act no action can be brought against a receiver without the consent of the court, which has not been obtained in this case. That being so I consider the suit against the applicant to be an abuse of the process of the court and strike out the Applicant from this suit with costs against the Plaintiff.

The costs of all other Respondent will be costs in the cause.

DATED and DELIVERED at NAIROBI this 22nd day of April 2005

P.J. RANSLEY

JUDGE