



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
CIVIL SUIT NO. 367 OF 2004

GEORGE KINYUA KIRINGAPLAINITFF/APPLICANT

VERSUS

UNITED INSURANCE CO. LIMITED1ST DEFENDANT

NATHAN AMKOA

T/A ONGUMWE AUCTIONEERS2ND DEFENDANT

RULING

The Plaintiff has sued the 1st defendant as his insurer of his motor vehicle registration No. KAN 35L.

On or about 7th February 2002 the plaintiff's aforesaid vehicle was involved in an accident whereby various ones were injured and as a consequence thereof suits against the plaintiff were filed amongst them is **SRMCC NO. 40 OF 2002 (MASENO)**, **HCC NO 33 OF 2002 (BUSIA)** and **CMCC NO 422 OF 2002 (KISUMU)**.

The Plaintiff's final prayers are for,

(i) Declaration that the first defendant is liable to honor and settle the decretal

sum in **SRMCC NO 40 OF 2002 (MASENO)**;

(ii) An order for refund to plaintiff of kshs 81, 500/-.

The 2nd defendant is sued by virtue of being an auctioneer, that an attachment levied by him in **SRMCC NO. 40 OF 2002 (MASENO)** was illegal.

The Plaintiff as well as filling the plaint simultaneously filed the application dated 6th July 2004 the subject of this ruling.

The Plaintiff seeks the following prayers: -

- The court grants an order for a stay of execution in SRMCC NO 40 of 2002 (MASENO) against the 2nd Defendant pending determination of the main suit.
- The court grants a stay of execution against the 2nd Defendant, and any other auctioneers in all other subsequent matters that may arise from the accident subject matter herein.

The plaintiff brings the application under Section 3A of the Civil Procedure Act; Order 21 rules 22 (1) and 25 of the Civil Procedure Rules. Order 21 Rule 22 (1) provides power to stay execution to the court, which that decree has been sent for execution. That order to my mind does not assist the Plaintiff because there is no decree sent hereof for execution.

Order 21 rule 25 relates to the power to stay execution pending suit between decree holder and judgment debtor. The order similarly does not assist the Plaintiff. Section 3A relates to the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. In considering whether Section 3A can assist the Plaintiff one needs to consider whether what the Plaintiff seeks is in accordance with the demands of justice. The Plaintiff seeks from this court to stay suit that are not directly connected to this case and more importantly against persons who will not be granted an opportunity to be heard. That to me is not justice.

The Plaintiff further seems to seek a blanket stay against any other action that the Plaintiff may face. This again cannot be said to be in the interest of justice

I have carefully considered counsel's submissions before me and the affidavit in support of the application and I find that the orders sought are unattainable in this suit they may very well be available in those other suit in Maseno and other courts.

In view of my above finding I will decline to grant the orders as sought and accordingly the application dated 6th July 2004 is dismissed with no orders as to costs.

Dated and delivered this 17th December 2004.

MARY KASANGO

JUDGE