

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPL. NO. 1674 2004

ANN MUCHIRA.....APPLICANT

VERSUS

THE COMMISSIONER OF INSURANCERESPONDENT

RULING

I have considered this matter at length. I am very persuaded at this stage that the Applicant has an arguable case against the Commissioner of Insurance. The Applicant is an innocent party who has complied with the Law that required her to take out a Third party insurance cover. She duly paid her insurance premiums and the same received by a licensed insurance company. After the accident took place, the insurance company took up the Defence of the claims and out of 7 has settled 5. The Applicant is now faced with execution of a decree of almost Shs. 500,000/= which is not a mean sum for any ordinary Kenyan.

However, the decree holder in these matters are also victims. They have Judgments in their favour and they have to enjoy the fruit of Judgment after suffering injuries and/or loss and damage. This is a very sad situation for both the applicant and the Decree-holders.

The United Insurance Company Ltd. is a notorious company in this court and the court takes judicial notice that the company is unable to pay its claims. Is the Commissioner of Insurance responsible? This question must go for determination in this court.

I do hereby grant prayers 1 and 2. Costs shall be in the Main application. The Application shall be filed within the next 21 days. The United Insurance company Ltd. Is hereby enjoined as an interested party and must be served.

With much regret, I am unable to grant stay of the execution of the Decree in HCCC No.562 of 1998. I think that it would be wrong for this court to do so after the events in one matter in which a stay was granted.

Such an Order would be onerous and unfair to the Decree-holder who has nothing to do with the Commissioner's problems or that of United Insurance. This suit is against our Insurance Industry and system. It is board to come to a head very soon with calumnious consequences for our economy. It will be inevitable as long as we have unstable Insurance companies in the market.

As a result I do hereby decline to grant prayer 3.

Dated and delivered at Nairobi this 7th day of December, 2004.

MOHAMMED K. IBRAHIM

JUDGE