



**APA Insurance Limited v Nyabuto (Civil Case E028 of 2024)  
[2025] KEHC 59 (KLR) (15 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 59 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E028 OF 2024  
PN GICHOHI, J  
JANUARY 15, 2025**

**BETWEEN**

**APA INSURANCE LIMITED ..... PLAINTIFF**

**AND**

**MARY BOSIBORI NYABUTO ..... DEFENDANT**

**RULING**

1. On the face of the Notice of Motion dated 11<sup>th</sup> July, 2024, the Applicant states that he has moved this Court pursuant to Sections 1A, 1B and 3A Civil Procedure Rules, Order 22 Rule 5, Order 34 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules and all enabling provisions of the law for Orders:-
  - a. That this application be certified as urgent and service of the same be dispensed with in the first instance.
  - b. That this Honorable Court be pleased to issue an Order for stay of proceedings Molo CMCC No. E276 and E277 of 2024 pending Inter-Partes hearing and determination of this Application.
  - c. That there be stay of proceedings in Molo CMCC No. E276 and E277 of 2024 pending the Hearing and Determination of this instant suit.
  - d. That the costs of this application be provided for.
2. The grounds are on the face of the application supported by the Affidavit sworn by Shelmith Nguni in her capacity as the Applicant's Legal Officer.
3. The Applicant states that two suits being Molo CMCC No. E276 of 2024 and E277 of 2024 have been instituted against the Defendant/Respondent herein seeking damages for injuries sustained due to an accident that occurred on 25/03/2024 involving the Respondent's Motor Vehicle Registration Number KDJ 213L Isuzu Canter.



4. It is deponed that if the two suits proceed and are determined, the instant Disclaimer suit will be rendered nugatory and would thereby occasion substantial loss to the Applicant, as the Plaintiffs in the said suits will be free to execute against the Applicant herein being the Respondent's insurer and, the said Disclaimer proceedings would be rendered nugatory.
5. The Applicant contends that this Court is espoused with the wide and unfettered jurisdiction to stay proceedings in two suits pending the hearing and determination of the instant suit.
6. It is reiterated that the Disclaimer suit clearly raises factual and legal issues that need to be canvassed before the High Court, hence it is in the interest of justice to ensure the suit aforesaid is not frustrated.
7. The Applicant further states that no prejudice shall be occasioned upon the Respondent herein as the determination of the Disclaimer suit will only serve the expeditious determination of the instant suit.
8. It is further stated that the Respondent herein is a person of unknown worth and if the substantial decretal amount is realized via execution, there is danger and likelihood that the same will be put out of the reach of the court and that of the Applicant upon the success of the Disclaimer suit, as is highly likely.
9. It is stated that the Applicant has filed the instant Disclaimer suit herein against the Respondent herein, and which suit is competent and has appreciable chances of success.
10. Though served, there is no response filed by the Respondent herein.
11. There are also no submissions filed in regard to this application. After considering the application, Supporting Affidavit and the annexures thereto, the issue for determination is whether the Court should grant stay of proceedings of the two cases filed in Molo Magistrate Court being CMCC No. E276 of 2024 and CMCC No. 277 of 2024, pending hearing and determination of this suit.
12. Regarding stay of proceedings, Halsbury's Laws of England, 4<sup>th</sup> Edition. Vo. 37 at page 330 and 332 states as follows:-

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”
13. It is noted that the sole reason that the Applicant is seeking stay of proceedings in the two cases in Molo is that the insurance policy taken by the Respondent herein does not cover personal injury and death, which injuries are the subject of the cases in Molo Magistrate court.
14. A look at the copy of the Plaints before the trial court shows that the Plaintiffs claim against the Respondent herein damages for injuries allegedly sustained when the Respondent's motor vehicle



registration number KDJ 213 L Isuzu Canter in which they were travelling as passengers hit potholes causing it to overturn. They attributed the accident to the negligence of the Respondent herein.

15. It is therefore clear that the issues therein are between the Plaintiffs therein and the Defendant/ Respondent herein and not the Applicant herein. The cases are yet to be heard and determined.
16. Whether the insurance (Applicant) will meet the damages entered in favour of the Plaintiffs against the Defendant/ Respondent or not, is not an issue that warrants stay of proceedings in the two suits before the trial court. The case before this Court is between the Applicant herein and the Respondent over the insurance cover for the said accident motor vehicle. Whether or not the Respondent was insured to cover the liability in the circumstances of the suits before the trial court, is not a justification to issue the orders sought herein.
17. It is not demonstrated how determination of those suits would render the suit before this Court nugatory. To stay proceedings as sought would gravely hamper access to justice which includes expeditious disposal of the matter before the trial court. In the upshot, the application is not only highly prejudicial to the Plaintiffs in the said suits but also lacks merit.
18. In conclusion, this Court makes the following orders:-
  1. The Notice of Motion dated 11<sup>th</sup> July, 2024 be and is hereby dismissed.
  2. The costs shall be in this cause.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF JANUARY, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Ombeyo for Applicant

N/A for Respondent

Ruto, Court Assistant

