



**Old Mutual General Insurance Kenya Limited v Omwono (Civil Case E006 of 2024) [2025] KEHC 2208 (KLR) (Civ) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2208 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CIVIL  
CIVIL CASE E006 OF 2024  
KW KIARIE, J  
FEBRUARY 14, 2025**

**BETWEEN**

**OLD MUTUAL GENERAL INSURANCE KENYA LIMITED ..... PLAINTIFF**

**AND**

**BRIAN OBAGA OMWONO ..... DEFENDANT**

**RULING**

1. The plaintiff/applicant moved the court via a Notice of Motion dated 4 August 2024, under section 3A of the *Civil Procedure Act*, section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Act, and Order 51 Rule 1 of the Civil Procedure Rules. The application seeks the following orders:
  - a. That this application be certified urgent and service thereof be dispensed within the first instance.
  - b. That there be a stay of proceedings in Ol -Kalou CMCC No. E044 OF 2024 Sophia Chebet Kiprop vs Brian Obaga Omwono pending the hearing and determination of the instant application.
  - c. That there be a stay of proceedings in Ol-Kalou CMCC No. E044 of 2024 Sophia Chebet Kiprop vs Brian Omwono pending the hearing and determination of the suit.
  - d. That the costs of this application be provided for.
2. The application was premised on the following grounds:
  - a. That the suit before the subordinate court, Ol Kalou CMCC No. E044 of 2024 Sophia Chebet Kiprop vs Brian Obaga Omwono is a compensatory claim for damages arising from an accident



that occurred on 1<sup>st</sup> February 2024 involving the insured Motor Vehicle Registration No. KDL 474X.

- b. That the defendant had insured motor vehicle registration number KDL 474X under Policy Cover No. 100/070/1/011680/2023, issued to him by the plaintiff herein.
  - c. That a fundamental clause of the subject Insurance Policy Cover stipulated that the Plaintiff's/Applicant's (the insurer) duty to indemnify the insured would only arise in the event of an accident caused or arising from the use of the subject motor vehicle KDL 474X subject to the terms and conditions and comprehensible exceptions of the policy.
  - d. That the policy cover excludes the company from liability in the event that the insured and/or his authorized driver is certified by a competent authority to have been using motor vehicle KDL 474X contrary to the policy issued in this case being driving motor vehicle KDL 474X without a valid driving license.
  - e. That the Plaintiff/Applicant herein conducted investigations into the accident, and the investigator established the insured knowingly authorized a driver who did not have a valid driving licence to be in control of motor vehicle KDL 474X at the time of the occurrence of the accident.
  - f. That the Policy Cover issued to the Defendant for motor vehicle KDL 474X was under terms and conditions of the Plaintiff's/Applicant's Private Car Policy.
  - g. That the Plaintiff's/Applicant quintessence is that the insured's acts contravene the contract of insurance thereto.
  - h. That statutorily, the Plaintiff herein would be obligated to satisfy the judgments that may ensure from Ol Kalou CMCC E044 of 2024 Sophia Chebet Kiprop vs Brian Obaga Omwono, save if the Plaintiff has been insulated by a declaration issued by the court relieving it of the statutory obligation.
  - i. It would, therefore, be within the practice and obligation of the court that the proceedings in Ol Kalou CMCC NO. E044 of 2024 Sophia Chebet Kiprop vs Brian Obaga Omwono be stayed pending the hearing and determination of the suit.
  - j. The Plaintiff/Applicant herein stands to suffer great prejudice unless there be a stay of proceedings Ol Kalou CMCC No. E044 of 2024 Chebet Kiprop vs Brian Obaga Omwono pending the hearing and determination of this application as the Plaintiff may execute orders if the suit in the subordinate court is to proceed to its conclusion to the detriment of the Plaintiff/Applicant herein.
3. The application was served on the respondent, and an affidavit of service dated the 10<sup>th</sup> day of September 2024 was filed. The respondent did not file any response.
  4. I have perused the application and the supporting affidavit. I am satisfied that the orders sought are merited. I grant a stay of proceedings in Ol-Kalou CMCC No. E044 of 2024 Sophia Chebet Kiprop vs Brian Omwono pending the hearing and determination of the suit. Costs will abide by the outcome of this suit.

**DELIVERED AND SIGNED AT NYANDARUA THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025**

**KIARIE WAWERU KIARIE**

**JUDGE.**

