



Angwenyi v Policyholders Compensation Fund; Gordon (Interested Party) (Civil Case E209 of 2024) [2025] KEHC 4200 (KLR) (Civ) (1 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4200 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E209 OF 2024

LP KASSAN, J

APRIL 1, 2025

BETWEEN

DAMARIS MO ANGWENYI PLAINTIFF

AND

POLICYHOLDERS COMPENSATION FUND DEFENDANT

AND

GRIBAN GORDON INTERESTED PARTY

RULING

1. Before this Court is a Notice of Motion dated 3rd October 2024 brought by the Plaintiff under the provisions of Order 42 Rule 6 of the Civil Procedure Rules and Sections 1A, 1B, and 3A of the *Civil Procedure Act*. The Applicant seeks, inter alia, orders for stay of execution of the judgment entered in Milimani CMCC No. E2988 of 2022 pending the hearing and determination of this suit.
2. The application is supported by the affidavit of the Plaintiff sworn on the same date and a Supplementary Affidavit dated 13th October 2024. The Defendant did not file a response. The application is opposed by the Interested Party, who filed a Replying Affidavit sworn on 18th October 2024, along with written submissions dated 30th December 2024.

Background

3. The Plaintiff is the registered owner of the motor vehicle subject to the accident giving rise to the judgment in SCCC E2988 of 2022. Judgment in that matter was entered against her in the sum of Kshs. 822,800/=. The Defendant, being the Policyholders Compensation Fund, has been sued in this matter in relation to the statutory mandate to compensate third parties in respect of insolvent insurers.



Interested Party's Replying Affidavit

4. In his Replying Affidavit sworn on 18th October 2024, the Interested Party, Griban Gordon, opposes the Plaintiff's application for stay of execution. He deposes that the Plaintiff, as the owner of the subject motor vehicle, was held liable in SCCC E2988 of 2022, and judgment was entered against her for Kshs. 822,800/=. Despite the judgment, the Plaintiff has failed to pay the decretal sum or demonstrate any willingness to settle the debt. He emphasizes that the Defendant (Policyholders Compensation Fund) is only statutorily obligated to pay a maximum of Kshs. 250,000/=, and the remainder remains the Plaintiff's personal responsibility.
5. The Interested Party further asserts that the application is brought in bad faith and amounts to an abuse of the court process. He argues that granting a stay without the Plaintiff depositing security would unjustly delay the enforcement of a lawful judgment and deny him the fruits of that judgment. He therefore urges the Court to either dismiss the application with costs or, if inclined to grant it, to order the Plaintiff to deposit a security of Kshs. 370,800/= representing the balance beyond the statutory compensation.

Plaintiff's Supplementary Affidavit

6. In her Supplementary Affidavit, the Applicant reiterates her position that the execution proceedings against her are premature and unjustified. She emphasizes that she has already filed a declaratory suit against the Policyholders Compensation Fund to determine its statutory liability arising from the judgment in SCCC E2988 of 2022. She argues that until the outcome of that suit is known, execution against her should be stayed to prevent undue hardship and potential loss, especially given the statutory cap of Kshs. 250,000/= on compensation from the Fund.
7. The Applicant further states that she is not acting in bad faith and has approached the Court in good conscience seeking a fair resolution. She disputes the Interested Party's assertion that she is avoiding liability and affirms that her application meets the legal threshold for a stay of execution. She prays for the Court to grant the orders sought, stating that the balance of convenience lies in favour of preserving the status quo until the main suit is determined.

Applicant's submissions

8. In her written submissions, the Applicant contends that she has met the threshold for the grant of a stay of execution pending the hearing and determination of the main suit. She argues that she risks suffering substantial loss if execution proceeds, especially considering the statutory limitation on compensation from the Policyholders Compensation Fund. The Applicant submits that she has approached the Court timeously and in good faith, seeking to resolve the legal obligations arising from a motor vehicle accident in which judgment was entered against her. She invokes the court's discretionary powers under Order 42 Rule 6 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act* to prevent an unjust outcome.
9. Furthermore, the Applicant contends that the Defendant (Policyholders Compensation Fund) has a statutory obligation to compensate up to Kshs. 250,000 per claim under the *Insurance Act*. She highlights that she has filed a declaratory suit to determine the extent of this obligation, making execution at this stage premature and prejudicial. Relying on established principles from *Giella v Cassman Brown*, she submits that a prima facie case has been demonstrated, the balance of convenience tilts in her favour, and damages would not be an adequate remedy if the stay is denied and execution proceeds. As such, she prays that the court allows the application and grants the stay of execution as sought.



Interested Party's submissions

10. In his written submissions, the Interested Party opposes the Applicant's request for stay of execution, arguing that the application lacks merit and is an abuse of court process. He asserts that the Plaintiff, as the registered owner of the subject motor vehicle, has already been found liable in Milimani CMCC No. E2988 of 2022 and judgment was entered against her in the sum of Kshs. 822,800/=. Despite this, she has failed, refused, or neglected to settle the decretal sum. He maintains that the Plaintiff is personally liable for the judgment and cannot seek refuge in a pending declaratory suit. Furthermore, he points out that the Defendant's liability under the law is capped at Kshs. 250,000/= per claim, and the remainder is the Plaintiff's responsibility.
11. The Interested Party further argues that the moratorium provisions under Section 67C(10) of the *Insurance Act* only protect insurers against claims by policyholders and creditors—not third parties. Citing several judicial decisions, including *Kiarie v Kiema* and *In re Blue Shield Insurance Company Ltd*, he submits that third parties like himself are entitled to pursue claims against insured persons despite any moratorium. He also contends that the Plaintiff has not satisfied the conditions for grant of an interlocutory injunction, particularly the requirement to demonstrate irreparable harm. In conclusion, he submits that if the Court is inclined to grant a stay, the Plaintiff should be ordered to deposit security of at least Kshs. 370,800/=:, and otherwise, the application should be dismissed with costs.

Issues for determination

- a. Whether the Plaintiff/Applicant has met the threshold for grant of a stay of execution pending determination of the main suit.
- b. Who is to bear the costs.

Analysis & Determination

12. Generally, stay of execution is provided under Order 42 Rule 6 of the Civil Procedure Rules 2010 which provides:

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
13. For orders of stay of execution to be granted, the Applicant must satisfy the conditions to wit that substantial loss may result to the Applicant unless the order is made; that the application has been made without undue delay; and that such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.
14. The application herein was filed promptly. On substantial loss, the Plaintiff asserts that unless stay is granted, her property risks being sold through execution despite her having filed the declaratory suit. The Court takes notice that the decretal amount due was Kshs 822,800/=. The Applicant admitted that Kshs 200,000/= had been paid to the Interested Party, this was not denied. A balance of Kshs 622,800/= remains unpaid.
15. The court takes judicial notice that the insurance company Invesco, which provided the policy for the Plaintiff/Applicant has been placed under moratorium with the Defendant herein acting as the



statutory manager. The moratorium so placed protects the insurance company from its policyholders and creditors.

16. The Interested Party in opposition relies on the judgment already entered in the lower court and the Plaintiff's failure to settle the decree. It is further submitted that the Defendant is only statutorily obligated to pay Kshs. 250,000/= under Section 179 of the *Insurance Act*, and the remainder of the judgment sum is the Plaintiff's personal liability as the owner of the vehicle.
17. The Court has reviewed the cited authorities by the parties and I am persuaded that the mere existence of a moratorium under Section 67C(10) of the *Insurance Act* does not shield the insured from third-party claims nor bar courts from entertaining declaratory suits.
18. This Court finds that the Plaintiff/Applicant has raised an arguable case, and unless stay is granted, the substratum of the suit may be rendered nugatory. I take note that the notice relied upon by the Applicant will only cover claims up to Kshs 250,000/=. This will leave a balance of Kshs 372,800/= which the Plaintiff/Applicant will have to pay to the Interested party. To protect the interest of all parties herein, the Court makes the following orders:
 - a. A stay of execution of the judgment in Milimani CMCC No. E2988 of 2022 is hereby granted pending the hearing and determination of this suit.
 - b. The Plaintiff/Applicant shall, within 30 days of this Ruling, deposit a sum of Kshs. 370,800/= into a joint interest-earning account in the names of advocates for the Plaintiff and the Interested Party as security for the balance of the decretal amount.
 - c. In default of (2) above, the stay shall automatically lapse.
 - d. Costs of this application shall be in the cause.
19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1ST DAY OF APRIL 2025.

LINUS P. KASSAN

JUDGE

In the presence of:-

No appearance for Applicant

No appearance for Respondent

Nohende for Interested Party

Carol – Court Assistant

Interested Party Griban Gordon Oduor.

