



**Britam Insurance Company Limited v Ajiki (Civil Suit  
E001 of 2025) [2025] KEHC 5808 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5808 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL SUIT E001 OF 2025  
JK SERGON, J  
MAY 8, 2025**

**BETWEEN**

**BRITAM INSURANCE COMPANY LIMITED ..... PLAINTIFF**

**AND**

**GEOFFREY AJIKI ..... DEFENDANT**

**RULING**

1. The application coming up for determination is a notice of motion dated 13th February, 2025 seeking the following orders;
  - (i) Spent.
  - (ii) Spent.
  - (iii) That this Honorable Court be pleased to issue an order for stay of proceedings Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno v. Acini Driving School, Geoffrey Ajiki, and Benson Gego pending hearing and determination of this instant suit.
  - (iv) That the costs of this application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Egehiza Aligula the Legal Officer of M/s BRitam Insurance Company Limited, the Plaintiff/Applicant herein, with authority, well conversant with the proceedings herein and hence competent to swear the affidavit.
3. He avers That Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno v. Acini Driving School, Geoffrey Ajiki, and Benson Gego has been instituted against the Defendant/Respondent herein in the Chief Magistrate's Court at Kericho seeking damages for injuries sustained due to an accident That occurred on 18/05/2021 involving the Defendant's/Respondent's motor vehicle Registration No. KCW 2X4A, which was negligently driven by an intoxicated driver, resulting in a violent collision with motorcycle Registration No. KMEN 067K.



4. He avers That the said suit Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno v. Acini Driving School, Geoffrey Ajiki, and Benson Gego was last slated on 20/08/2024 for hearing where parties were directed to fix new dates at the registry and That the Applicant has filed the instant Disclaimer suit herein against the Plaintiff/Respondent herein, and which suit is competent and has appreciable chances of success.
5. He avers That the disclaimer suit seeks to deny liability and/or indemnification for the accident involving the Respondent's motor vehicle Registration No. KCW 2X4A, which was negligently driven by an intoxicated driver, resulting in a violent collision with motorcycle Registration No. KMEN 067K. As a result of the accident, one Vincent Kiprono Ngeno, a pillion passenger aboard the said motorcycle suffered injuries and instituted Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno v. Acini Driving School, Geoffrey Ajiki, and Benson Gego.
6. He avers That the disclaimer suit is premised on the fact That the insurance policy expressly excludes coverage for injuries sustained in circumstances That violate its terms which include but not limited to driving the Insured motor vehicle while under the influence of alcohol.
7. He avers That consequently, any claim arising from the said accident is deemed to have emanated from a fundamental breach of the insurance policy, thereby absolving the Plaintiff of any legal or contractual obligation to indemnify the Defendant in That regard. He avers That this Honourable Court is espoused with the wide and unfettered jurisdiction to stay proceedings in Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno v. Acini Driving School, Geoffrey Ajiki, and Benson Gego, pending the hearing and determination of the instant disclaimer suit, in the wider interest of justice.
8. He avers That in the premises it is only fair and just That there be stay of proceedings Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno v. Acini Driving School, Geoffrey Ajiki, and Benson Gego, pending the inter- partes hearing and determination of the instant application, and/or the hearing and determination of the Disclaimer suit, as the case would be.
9. He further avers That the Disclaimer suit whose Plaintiff is annexed hereto, clearly raises factual and legal issues That need to be canvassed before the High Court and it is both in the interest of justice and the responsibility and the mandate of this court to ensure the suit aforesaid is not frustrated, there being no hindrance at all.
10. He avers That no injustice and/or 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.
11. He avers That the Respondent herein is a person of unknown worth and if the substantial decretal amount is realized via execution, there is every danger and likelihood That the same will be put out of the reach of the court and That of the Defendant upon the success of the Disclaimer, as is highly likely.
12. Geoffrey Ajiki the respondent herein filed a replying affidavit in response to the application he avers That he is one of the Defendants in Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno Vs. Acini Driving School, Geoffrey Ajiki and Benson Gego and That he took a motor vehicle insurance cover with the Applicant herein to cover Motor Vehicle Registration No. KCW 214 A and further That he has a valid and undisputed insurance policy with the Applicant in respect to the suit motor vehicle, and That the said policy is and was not voidable.
13. He avers That the Applicant had previously filed an application for stay of proceedings and for leave to file a declaratory suit MISC. CIVIL APPLICATION NO. E038 OF 2024 before this court which was dismissed vide a ruling rendered on the 5th of December 2024 by Honourable Justice J.K. Serگون



and therefore the instant Application is Res Judicata and an abuse of Court Process and attached a copy of the said Ruling.

14. He avers That the instant application is scandalous, vexatious and an afterthought meant to further delay the hearing and disposal of the old dispute and matter in Kericho CMCC NO. E243 OF 2022.
15. He avers That the suit matter Kericho CMCC NO. E243 OF 2022 is already substantially heard and by granting the Orders as sought by the Applicant, the Respondent will therefore suffer great prejudice if the Orders sought are granted.
16. He avers That the intended declaratory suit has zero chances of success and That this Application is misconceived and does not meet the criteria for the grant of the orders sought.
17. He reiterated That granting the orders sought will/would essentially disrupt legal process in Kericho CMCC NO. E243 OF 2022 a matter which is already substantially heard.
18. He avers That the applicant has not satisfied the principles set for Stay of Proceedings to merit the orders sought and therefore the instant application should be dismissed with costs.
19. The matter came up for inter partes hearing, the parties agreed to canvas the application through written submissions, at the time of writing this ruling the respondent had not uploaded submissions in the case tracking system.
20. The applicants in their submissions contended they had established a prima facie case to warrant stay of proceedings in the matter before the subordinate court. The applicants argued That they had laid materials before the court demonstrating That there was breach of the policy of insurance by the defendant entitling the plaintiff to repudiate and consequently be relieved of the obligations and That the suit in the subordinate court, i.e Kericho CMCC No. E 243 of 2022 has been instituted against the defendant herein who was insured by the plaintiff. They placed reliance on section 10 (4) of the Insurance (Motor Vehicles Third Party Risk) Act Cap 405 obligating an insurance company to satisfy any judgment obtained against its insured unless the insurer has obtained a declaration That it is not under obligation to satisfy the judgments. It provides That; “No sum shall be payable by an insurer under the foregoing provisions of this Section if in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration That, apart from any provision contained in the policy he is entitled to avoid it on the ground That it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on That ground, That he was entitled so to do apart from any provision contained in it.”
21. I have considered the application, response and submissions by parties and I find That the issue (s) for determination are whether to stay proceedings in Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno v. Acini Driving School, Geoffrey Ajiki, and Benson Gego pending hearing and determination of this instant declaratory suit.
22. On the issue as to whether to stay proceedings in the lower court, on one part the applicant contended That claim arising from the said accident is deemed to have emanated from a fundamental breach of the insurance policy, thereby absolving the Plaintiff of any legal or contractual obligation to indemnify the Defendant in That regard. The applicant was adamant this Honourable Court is espoused with the wide and unfettered jurisdiction to stay proceedings in the lower court pending the hearing and determination of the instant disclaimer suit, in the wider interest of justice. On the other part, the respondent contended That he has a valid and undisputed insurance policy with the applicant in respect to the suit motor vehicle, and That the said policy is and was not voidable. The respondent contended That the applicant had previously filed an application for stay of proceedings and for leave



to file a declaratory suit MISC. CIVIL APPLICATION NO. E038 OF 2024 before this court and That the same was dismissed vide a ruling rendered on the 5th of December 2024.

23. This court having considered the arguments by the parties and court record finds That it rendered itself on the issue of stay of proceedings in Kericho CMCC NO. E243 OF 2022, Vincent Kiprono Ngeno v. Acini Driving School, Geoffrey Ajiki, and Benson Gego pending hearing and determination of the instant declaratory suit in its ruling dated 5th December, 2024 and having made its determination on the issue of stay of proceedings in the said ruling, it is therefore the finding of this court That the instant application is res judicata.
24. Consequently, the notice of motion dated February 13, 2025, is hereby dismissed with costs to the respondents.

**DELIVERED, SIGNED AND DATED AT Kericho THIS 8TH DAY OF MAY, 2025.**

**J.K. SERGON**

**JUDGE**

