



REPUBLIC OF KENYA



**Murunge v Murungi & 2 others (Civil Case 125 of 2009)
[2025] KEHC 6494 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL CASE 125 OF 2009**

**M MUYA, J
MAY 20, 2025**

BETWEEN

LAWRENCE MUTWIRI MURUNGE PLAINTIFF

AND

JULIUS MBALE MURUNGI 1ST DEFENDANT

ZACHARIA MURIUKI GILBERT 2ND DEFENDANT

JESSIKAY ENTERPRISES 3RD DEFENDANT

RULING

1. The application dated 28th November, 2023 seeks the following orders:-
 - a. Spent
 - b. Spent
 - c. That the Honourable Court be pleased to suspend the writing and or delivery of its judgment in this case scheduled on 30th November, 2023 pending the hearing and determination of this application.
 - d. That the Honourable Court be pleased to suspend the ruling and or delivery of its judgment in this case pending the hearing and determination of winding up cause in Nairobi Milimani High court Misc. Cause No. 238 of 2017.

The application is supported by the grounds on the face of the application.

The Applicant's Case

2. At all material times the 1st defendant was the owner of motor vehicle registration number KAS 371N, Toyota Hiace Matatu. On 23rd July, 2006 while along Karatina-Kiganjo road near Kanjo the applicants



said vehicle registration KAS 371N Toyota Hiace Matatu was involved in a road traffic accident in which the Plaintiff/Respondent who was a passenger in the said motor vehicle was injured.

3. After the accident the Respondent filed this suit claiming special and general damages plus costs of the suit. At the time of the accident the above mentioned motor vehicle was insured by Blue Shield Insurance Company Limited vide Policy Bs6/088/00536/2004. Upon the applicant being served with the summons to enter appearance and plead he took them to Blue Shield Insurance Company Limited who initially instructed the firm of M/s Nyaga Nyamu & Co. Advocates who filed a memorandum of appearance and defence on his behalf.
4. Thereafter the firm of Nyamu Nyaga & Co. Advocates withdrew their services and Blue Shield Insurance Company Limited appointed the firm of M/s Mithiga & Co. Advocates. Owing to lack of instructions the said firm of Mithiga & Co. Advocates filed an application to cease acting which was allowed by the court. The applicant made efforts to follow up with Blue Shield Insurance Co. Limited which was undergoing financial problems and eventually it was placed under statutory management.
5. The applicant followed up the matter with the manager till 2017 when he was informed that all accident cases in court in regard to motor vehicles insured by Blue Shield Insurance Co. Limited had been suspended by the court and would not be proceeding for hearing anymore until the process of winding up of Blue Shield Insurance Co. Limited was completed.

In the month of October, 2021 the applicant got information from Mutunga Advocate to the effect that he was acting for the Plaintiff and that his case was ongoing at Nyeri High Court.

The applicant instructed Nyamu Nyaga & Co. Advocates to act for him, since then the applicant had been visiting Blue Shield Insurance Co. Limited Statutory Manager's offices until he gave him a letter dated 22/11/2023. He obtained the court order and Kenya Gazette Notice and made this application through his advocate. It is the applicant's contention that he was not aware of the moratorium declaration dated 3/11/2011 until 22nd November, 2023 when the Statutory Manager, Blue Shield Insurance wrote a letter to the Deputy Registrar of this court, attaching the declaration of moratorium dated 3/11/2011, Kenya Gazette Notice dated 17th December, 2017 and the court order dated 17th November, 2017.

Determination and Conclusion

It is common ground that there is filed at Milimani High Court winding up cause no. 238 of 2017 which at the time of the application was still pending determination.

It is not in dispute that there was an extension of the moratorium on payments by Blue Shield Insurance Company Limited pending the hearing and determination of the winding up cause. There is an order by the Milimani Commercial & Admiralty Division Misc. Application no. 547 of 2012 dated 3rd November, 2017 by Justice F. Tuiyot (as he then was) to the effect that the term of the statutory manager of Blue Shield insurance Company Limited be extended pending the hearing and determination of the winding up cause being Milimani High Court Misc. Cause no. 238 of 2017 or until otherwise terminated by the court.

It is not in dispute that the 1st defendant's motor vehicle registration no. KAS 371N, Toyota Hiace Matatu was insured by Blue Shield Insurance Company Limited at the time of the alleged accident.



Section 67 C(II) of the [Insurance \(Amendment\) Act](#) provides:-

“For the purpose of this section, where a moratorium is declared under subsection (10) a policy holder shall not be liable to pay any claim not payable by the insurer due to the moratorium”

It is noted that the moratorium is in respect to payments. The court has not made a determination as to whether the plaintiff is liable to pay general and special damages as prayed in the plaint. Even if the court does come to that conclusion there will be other processes to be undertaken.

The court further notes that the judgment in this case was to be delivered on 20th November, 2023. It is now close to two years since then. I find that this application has no merit and it's dismissed with costs to the plaintiff.

RULING READ AND DELIVERED IN OPEN COURT THIS 20TH DAY OF MAY, 2025.

.....

M. MUYA

JUDGE

In the presence of:-

Mr. Nyamu for the Defendant

Mutunga for the Plaintiff

