



REPUBLIC OF KENYA



KENYA LAW
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**Tenai v Kaburia (Civil Appeal E257 of 2024)
[2025] KEHC 7958 (KLR) (Civ) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7958 (KLR)

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

CIVIL

CIVIL APPEAL E257 OF 2024

AC MRIMA, J

JUNE 5, 2025

BETWEEN

JAMES TENAI APPELLANT

AND

HASSAN MURIUNGI KABURIA RESPONDENT

(Being an appeal from the Ruling and Order of Hon. C. Maiyo (Resident Magistrate/ Adjudicator) delivered on 9th February 2024 in Nairobi SCCC No. E3184 of 2023)

JUDGMENT

1. The judgment subject of this appeal relates to the ruling of the trial Court dated 9th February 2024 which was delivered in Nairobi [Milimani] Small Claims Court Case No. E3184 of 2023 [hereinafter referred as 'the suit'] where the Court dismissed the Appellant's application by way of an Amended Notice of Motion dated 29th January 2024. The said application sought the following orders: -
 1. That this application be certified urgent and interim Exparte orders be granted at the first instance pending its hearing and determination.
 2. That there be a stay of execution of the judgment delivered on 29th November 2023 pending the hearing and determination of this application.
 - 2A) That there be a stay of execution of the judgement delivered on 29th November 2023 for the duration of the moratorium imposed on Xplico Insurance Company Limited.
 3. That this Honourable Court be pleased to issue an injunction restraining the claimant and his agents and/or representatives from attaching, proclaiming, carrying away and/or disposing off the respondent's moveable property pending the hearing and determination of this application.



4. That the Honourable Court be pleased to grant any other orders and/or relief befitting the circumstances.
5. That costs of this application be provided for.
2. The background of this matter is that the trial Court entered judgment for the Respondent herein in the sum of Kshs.182,150/= on 30th November 2023 after it found the Appellant herein liable for the accident that occurred on or about 17th November 2021 along Kimathi Street within Nairobi County. The Appellant subsequently filed the Amended Notice of Motion dated 29th January 2024. The application was supported by the grounds thereon and the supporting affidavit by one Abackson Nduma, an Agent of the Appellant's insurer, Xplico Insurance Company Limited. The affidavit was sworn on 11th January 2024.
3. The application was vehemently opposed by the Respondent vide a Replying Affidavit he swore on 31st January 2024. The application was heard and a ruling delivered on 9th February 2024 dismissing it with costs to the Respondent.
4. Aggrieved by the ruling, the Appellant filed the instant appeal vide Memorandum of Appeal dated 20th February 2024 proposing the following grounds: -
 1. That the learned magistrate erred in fact and law in failing to make an order for a stay of execution of the trial court's judgment for the duration of the moratorium imposed on the appellant's insurer by the Policy Holders Compensation Fund.
 2. That the learned magistrate erred in fact and in law in misconstruing the legal principles applicable in delivering the impugned ruling.
 3. That the learned magistrate erred in law and in fact by failing to direct her mind to the relevant issues raised in the appellant's notice of motion dated 29th January 2024 and subsequent written submissions dated 6th February 2024.
 4. That the learned magistrate erred in fact and law in manifesting bias in the proceedings leading to the impugned ruling.
5. Subsequently, the Appellant prayed that the ruling dated 9th February 2024 be set aside and the application be allowed.
6. Parties filed written submissions. The Appellant's submissions were dated 5th September 2024 while the Respondent's submissions were dated 19th February 2025. The gist of the submissions will be ingrained in the latter part of this judgment.
7. This court's jurisdiction on appeals from the Small Claims Court is limited to matters of law as provided for under Section 38 of the *Small Claims Court Act* [Cap.10A] of the Laws of Kenya. Under that provision, a party may appeal to the High Court on matters of law and that the decision thereof is final. Whereas there has been universally accepted definition of the term 'matters of law', there has been some working definitions thereto. For instance, the Supreme Court of Kenya in *Petition No.7 of 2013 Mary Wambui Munene v Peter Gichuki Kingara and Six Others* (2014) eKLR, held that 'jurisdiction is a pure question of law and should resolved on priority basis.' In this case, the issue is whether the trial Court determined the application in accordance with the law. Such an issue transcends the borders of matters of fact into the realm of matters of law. Therefore, this Court is properly seized of jurisdiction over this appeal.



8. The gist of the application that was dismissed was that the Appellant was unable to satisfy the trial Court's judgment for the reason that the Appellant's insurer, Xplico Insurance Company Limited, was placed under a statutory management and a moratorium placed on all payments by the insurer to its policy holders and creditors for a period of 12 months, beginning 9th December 2023. A communique through a Press Release by the Insurance Regulation Authority dated 8th December 2023 on its decision to place the insurer under statutory management and the appointment of the Policyholders Compensation Fund as the Statutory manager was annexed to the application. It was on the basis of the above communication that the Appellant filed the application to restrain any execution against himself based on the insurer's inability to make any payment.
9. Section 67C of the *Insurance Act*, Cap. 487 of the Laws of Kenya provides for the power of the Commissioner to intervene in management of insurance companies. Sub-sections (10) and (11) provides as follows: -
- (10) For the purposes of discharging his responsibilities, a manager shall have power to declare a moratorium on the payment by the insurer of its policy-holders and other creditors and the declaration of a moratorium shall;
- a. be applied equally to all classes of policy-holders and creditors, subject to such exemptions in respect of any class of insurance as the manager may, by notice in the Gazette specify
 - b. suspend the running of time for the purposes of any law of limitation in respect of any claim by any policy-holder or creditor of the insurer
 - c. cease to apply upon the termination of the manager's appointment whereupon the rights and obligations of the insurer, its policy-holders and creditors shall, save to the extent provided in paragraph (b), be the same as if there had been no declaration under the provisions of this subsection
- Provided that this subsection does not apply to any sum due as contributions or penalties to the Policyholders' Compensation Fund.
11. For the purpose of this section, where a moratorium is declared under subsection (10), a policyholder shall not be liable to pay any claim not payable by the insurer due to the moratorium.
10. A careful reading of the above provision reveals that once an insurer is placed under statutory management and a moratorium declared by the manager through the Kenya Gazette then any payment by that insurer, its policy holders and third-party creditors in respect of claims which the insurer would have otherwise honoured, but for the moratorium, is thereby stopped. A further reading of the above provision has it that the declaration of the moratorium has the following effect: -
- i. It may apply to all or some of the classes of policy-holders and/or creditors as the manager may specify in the Kenya Gazette.
 - ii. It suspends the running of time for the purposes of any law of limitation in respect of any claim by any policy-holder or creditor of the insurer.
 - iii. It ceases to apply on the termination of the manager's appointment or on the effluxion of time and thereafter liability continues forthwith.



- iv. It does not apply to any sum due as contributions or penalties to the Policyholders' Compensation Fund.
11. In applying the foregoing to the matter at hand, suffice to note that apart from the Press Release by the Insurance Regulatory Authority on the appointment of the manager, there was no Kenya Gazette notice which was issued by the Manager declaring any moratorium and its terms. Needless to say, the Press Release did not declare any moratorium and even if it did, that would have been irregular since such a declaration can only be undertaken by the manager. Still on the issue, this Court has come across a Press Release by the Manager dated 12th December 2023 communicating the moratorium. However, there was no mention of a gazette notice in the press release and the moratorium was only for 12 months. Even if it is to be assumed that there was a valid gazette notice, still there is no evidence that the moratorium is still current to date. Further, there was no evidence by the insurer that it would have honoured the Respondent's claim against the Appellant, but for the appointment of the manager and the declaration of the moratorium.
12. With the above scenario, the Appellant's application could not have succeeded. The trial Court was, therefore, right in dismissing the application.
13. Consequently, the following final orders do hereby issue: -
 - (a) The appeal be and is hereby dismissed.
 - (b) The Appellant shall bear the costs of the appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF JUNE, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Bore, Learned Counsel for the Appellant.

No appearance for Learned Counsel for the Respondent.

Amina/Abdirazak – Court Assistants.

