



King’oo v Kenya Orient Insurance Co. Ltd (Civil Suit E030 of 2024) [2025] KEHC 9822 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL SUIT E030 OF 2024**

**EN MAINA, J
JULY 3, 2025**

BETWEEN

JAMES MUNYAO KING’OO PLAINTIFF

AND

KENYA ORIENT INSURANCE CO. LTD DEFENDANT

RULING

1. Before this court is the Plaintiff’s applications in the Notice of Motion dated 28th November 2024 seeking orders as follows:

- “a. (spent)
- b. That pending the hearing and determination of this application, this court do issue an order of stay of execution of the judgments/decrees issued in Machakos SCC No.1231/2024 – *Melivinah Viata Muema v James Munyao King’oo*, SCC 1232/20024 – *Robbinson Muema v James Munyao King’oo*, SCC 1233/2024 *Gift Mutheu Muema v James Munyao King’oo*, SCC 1234/2024 – *Irene Mumbua Nzomo alias Irene Mumbua v James Munyao King’oo* and SCC 1235/2024- *John Mulei v James Munyao King’oo*.
- c. That there be stay of proceedings in Machakos SCC No.1231/2024 –*Melivinah Viata Muema v James Munyao King’oo*, SCC 1232/20024 – *Robbinson Muema v James Munyao King’oo*, SCC 1233/2024 *Gift Mutheu Muema v James Munyao King’oo*, SCC 1234/2024 – *Irene Mumbua Nzomo alias Irene Mumbua v James Munyao King’oo* and SCC 1235/2024- *John Mulei v James Munyao King’oo*.
- d. That pending the hearing and determination of this suit, this court do issue an order of stay of execution of the judgments/decrees issued in Machakos SCC



No.1231/2024 – *Melivinah Viata Muema v James Munyao King’oo*, SCC 1232/20024 – *Robinson Muema v James Munyao King’oo*, SCC 1233/2024 *Gift Mutheu Muema v James Munyao King’oo*, SCC 1234/2024 – *Irene Mumbua Nzomo alias Irene Mumbua v James Munyao King’oo* and SCC 1235/2024- *John Mulei v James Munyao King’oo*.”

2. The gravamen of the application is that the Defendant is the insurer of the Plaintiff’s motor vehicle Reg. No. KCT 922 B which motor vehicle was involved in an motor accident along the Machakos – Nairobi Road on 11th June, 2024 wherein several people sustained bodily injuries. That the said persons sued him for damages in the Small Claims court in Machakos; some claims have been heard and determined with resultant decrees while some are still pending hearing, it is the Plaintiff/Applicant’s case that the Defendant/Respondent being the insurer of the vehicle, it is liable to settle the claims brought against him but the Defendant/Respondent has failed and/or ignored to do so. The Plaintiff/Applicant is apprehensive that if the orders sought are not granted, the Plaintiffs in the cases shall proceed to execute the judgment and that it is in the interest of justice that the same be granted.
3. The Defendant/Respondent opposed the application through the grounds of opposition dated 28th February 2025 in which it states:-
 - “(1) That the Notice of Motion, as filed, constitutes an abuse of the court process and is fundamentally flawed in law. It contravenes the mandatory provisions of the doctrine of exhaustion of remedies.
 - (2) That the Applicant’s attempt to seek a stay in this matter without having exhausted such remedies is improper and must be dismissed as it offends well established principles of procedural fairness and judicial efficiency.
 - (3) That the Applicant’s application is, in essence, an omnibus or all-encompassing motion that fails to provide a clear and specific legal basis for each order sought. It seeks to address multiple orders in one go, thereby obscuring the intent and impact of each individual order. This lack of clarity renders it impossible for the Respondent to fully comprehend the scope of relief sought and to adequately prepare a response, in violation of the fundamental principles of due process and fairness.
 - (4) That the Respondent submits that it is not a party to suits reference by the Applicant, and there is no discernible nexus between the Respondent and the parties involved in those suits. The application, therefore, is procedurally irregular as it attempts to involve the Respondents in matters in which it has no legal standing or interest.
 - (5) That the Respondent further submits that the Applicant’s application is improper in law as it seeks to obtain substantive orders that should only be addressed in the context of the main suit. The reliefs sought are premature and inappropriately advanced at this stage, as they do not pertain to interlocutory matters or procedural issues.
 - (6) That the Applicant is effectively attempting to unseat the Respondent from access to justice, thus undermining the fairness and integrity of the judicial process.



- (7) That the evidence relied upon by the Applicant in support of the motion has not been subjected to proper scrutiny, not has it been tested for its probative value. In this regard, the Respondent asserts its right to cross-examine the Applicant's witnesses in the main suit.
- (8) That the Respondent respectfully submits that the application for stay of proceeding is without merit and should be dismissed in its entirety and with costs."
4. The application was canvassed by way of written submissions. I have carefully considered the applications, the grounds on its face thereof, the supporting affidavit, the grounds of opposition, the rival submissions, the cases cited and the law.
5. The application is brought under Section 10(1) of the *Insurance (Motor Vehicle Third Party Risks) Act* which places a duty on an Insurer to satisfy judgments against the insured. The section states:
- “ 10. Duty of insurer to satisfy judgments against persons insured.
1. If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.
- Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in section 5(b) prescribed in respect thereof in the Schedule.....”
6. It is the Applicant's case that the Respondent is and was at all material times the insurer of his motor vehicle Reg. No. KCT 922B Mazda Demio vide a comprehensive Insurance Policy No. 04084XXXXXX22022 which was involved in a motor accident along the Machakos – Nairobi Road on 11th June 2024 leading to several claims for damages being lodged against him in the Machakos Small Claims Court. That some of the claims have been heard and determined and judgments delivered wherein damages have been awarded to the Claimants while some of the claims are still pending. That however, despite having been served with the requisite statutory notices, the Respondent has refused and/or neglected to settle the decrees arising from the judgments hence necessitating this case and the current application.
7. Section 10(1) of the *Insurance Motor Vehicle Third Party Risks) Act* obligates an insurer to settle the judgments obtained against its insured if the liability is covered by the terms of the policy. The Applicant contends that in this case the Respondent has despite demand and notice to sue refused to pay the decretal sum. No such demand and notice of intention to sue has been annexed and other than the judgments and notices of intention to execute issued in the various cases the Applicant has



not annexed any evidence of the Respondents refusal to pay or intention to repudiate the claim. He who alleges must prove. It is not sufficient to throw documents on the face of the court and require it to look for the evidence.

8. Refusal by the insurer to pay cannot be imputed from the judgments and notices of execution to execute per se. The grounds of opposition filed by the Respondent do not betray any repudiation of the policy or refusal to settle the claims. Moreover the Respondent is not a party in the various claims in the court below and the Claimants thereat are also not parties to these proceedings and as such it would be unjust to issue orders staying their cases or stopping execution of their decrees without having given them an opportunity to be heard. Further, the orders if granted would have the effect of conclusively determining rights of the parties in this case and that too would be irregular.
9. The upshot is that this application is not merited. The same is dismissed.
10. Costs of the application to be borne by the Plaintiff/Applicant.
Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 3RD DAY OF JULY, 2025.

E. N. MAINA

JUDGE

In the presence of:

Mr. Muumbi for the Plaintiff/Applicant

Mr. Kinyanjui for the Defendant/Respondent

Geoffrey – Court Assistant

