



REPUBLIC OF KENYA



KENYA LAW
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Machanja v Trident Insurance Company Limited; Mwangi (Interested Party) (Civil Case E008 of 2025) [2025] KEHC 13154 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL CASE E008 OF 2025
EM MURIITHI, J
SEPTEMBER 25, 2025**

BETWEEN

GIBION MWANGEKA MACHANJA APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

AND

DAVID MUCHEKE MWANGI INTERESTED PARTY

RULING

1. The Plaintiff who sues for a declaratory judgment under section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* filed a Notice of Motion dated 9th June, 2025 seeking the following orders:
 1. Spent.
 2. Spent.
 3. This Honourable court be pleased do set aside the execution proceedings against the Plaintiff emanating from Wanguru CMCC No. E106 of 2024 David Mucheke Mwangi vs. Gibion Mwangeka Machanja.
 4. The cost of this application be in the cause.
2. The application is supported by a supporting affidavit setting the facts relied on. The applicant's case is that on 20th May, 2024, his motor vehicle registration number KBT 408W was involved in a road traffic accident along Mwea-Embu Road while being driven by his authorised agent. He had insured the said motor vehicle under policy number 140/080/1/000275/2024/01 issued by the Defendant, which cover included a third party liability cover expiring in the year 2025.



3. The applicant avers that he reported the accident to the Defendant/Respondent who instructed him to fill out a claim form dated 22nd July, 2024, upon which the Defendant assured him that the matter would be defended by them pursuant to the contractual obligation under the policy cover. He was directed by the insurance agent to pay an excess amount of Kenya Shillings Thirty Thousand (Kshs. 30,000/-) as required by the Respondent to facilitate claim processing. The Applicant paid the said amount via M-PESA on 10th August 2024.
4. Further, the Respondent/Defendant received and acknowledged the claim, and the Defendant's insurance agent confirmed to me that the Respondent/Defendant had taken up the matter and would handle any legal claims arising from the accident. He was served with pleadings in Wang'uru CMCC No. E106 of 2024, filed by a third party in respect of the same accident. However, at the time, he was residing and working in the United Arab Emirates and was therefore unable to attend court or follow up on the proceedings.
5. Moreover, he avers that judgment was entered against him on 17th April, 2025 and a decree further issued on 3rd June 2025 for the sum of Kshs. 1, 234,233/= which continues to accrue interest.
6. Lastly, he stands to suffer irreparable harm, financial loss and injustice unless the Honourable Court urgently grants stay of execution pending the determination of this suit.
7. The interested party filed a Replying Affidavit urging that while the plaintiff should be indemnified by his insurer the interested party who has been waiting for compensation since 20th May 2024 when the accident in issue happened should not be made to continue suffering loss when he has a valid judgment.
8. Further, he avers that in circumstances as described above the best rule approach recommends itself that plaintiff in the present suit pays the interested party, he pursues his claim against his insurer after which any monies he has paid can be refunded to him by the insurance who indeed owes him such a duty as he claims.
9. Lastly, he opposes the application for stay of execution, urge the plaintiff to pay him and pursue his claim against the insurance as he is entitled to indemnity from the said insurance company.

Applicant's submissions

10. The applicant submits that the insurer has the contractual obligation to indemnify the decree-holder from executing against the insured pending indemnity proceedings.
11. In the case of *Onzee v Invesco Insurance Co Ltd & another* [2024] KEHC 4775, the Court stated as follows:

“Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* provides for the duty of an insurer to settle a decretal amount in all situations where the insurer has effected a policy upon which a risk has arisen even where the insurer may be entitled to avoid the policy or even where the same has been avoided, for the full decretal sum including interests and costs, only subject to the sum capped under section 5.”
12. The Plaintiff/Applicant submits that he contacted the Defendant/Respondent through its appointed agent, who advised him to pay the requisite excess amount to facilitate the provision of a defence in the suit filed before the lower court. Despite complying with this directive, the matter was not defended at hearing, and judgment was subsequently entered against the Plaintiff/ Applicant



13. In the case of *Ndaka vs Kenya Orient Insurance Limited & Another* (2024) KEHC 5448 the High Court granted stay of attachment and sale of property pending a declaratory suit against the insurer. The Court emphasized that such relief was necessary to prevent irreparable harm where execution would be rendered ineffective and a mere academic exercise.
14. Additionally, in the case of *Good News Church Africa vs Board of Management Eldoret Secondary School* (2021) eKLR the Court stated,

“Substantial loss is key consideration in an application for stay of execution and stay of proceedings. The Applicant must establish which he/she will suffer if such orders are not granted.”

Respondent submissions

15. There are no submissions on record.

Interested party submissions

16. He submits that stay of execution of the judgment in Wanguru court should not be granted because the person who have truly lost in the whole of these proceedings is the interested party. It is not in dispute that his vehicle was damaged as a consequence of negligence on part of applicant’s agent, it is not in dispute that he lost a sum of Ksh 1,220,000/= It is not in dispute he has incurred costs in attempt to pursue those damages, both the applicant and his insurer were duly informed before start of suit at Wanguru court and should compensate the interested party and thereafter claim indemnity and/or reimbursement from his insurer the defendant/respondent in this matter.

Issue

17. The issue for determination is whether stay of execution pending determination of the declaratory suit should be granted.

Analysis

18. The applicant seeks an order of stay of execution of the judgment and decree in Wanguru CMCC No. E106 of 2024 pending the hearing and determination of the declaratory suit.
19. A declaratory suit is filed pursuant to the provisions of section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* which section obligates an insurance company to satisfy decrees made against its insured. A decree made against an insured is usually enforced by filing a declaratory suit against the insured’s insurance company. The applicant avers that he was served with pleadings in Wang’uru CMCC No. E106 of 2024, filed by a third party in respect of the same accident. However, at the time, he was residing and working in the United Arab Emirates and was therefore unable to attend court or follow up on the proceedings.
20. Moreover, judgment was entered against him on 17th April, 2025 and a decree issued on 3rd June 2025 for the sum of Kshs.1,234,233/= which continues to accrue interest.
21. Section 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act provides: “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 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 interests on judgments.
22. The applicant is apprehensive that the interested party will execute as against him hence defeating the essence of the declaratory suit.
 23. The grant of stay of proceedings in execution of the judgment and decree in Wanguru CMCC No. E106 of 2024 is at the discretion of the court.
 24. However, the applicant avers that he fears that execution might be levied against him unless the interim orders are granted yet he had a valid insurance cover for the motor vehicle as at the time of the accident subject of the primary suit and the respondent has refused to make good the payment of the decretal sum in Wanguru CMCC No. E106 of 2024.
 25. The interested party urges that the plaintiff in the present suit should pay the interested party, and then pursue his claim against his insurer after which any monies he has paid can be refunded to him by the insurance who indeed owes him such a duty as he claims.
 26. This Court in Kerugoya HC MISC. CIVIL APPLICATION NO. E058 OF 2024 ADRIAN NCHAU v. CYRUS KABIRU GATIMU, while observing no direct correlation between the duty of the judgment debtor to meet the judgment and his insurance for such liability, giving rise to a statutory liability under section 10(1) cap.405 aforesaid for the enforcement of which he is entitled to sue, agreed in the interests of justice to accommodate the applicant conditional upon his deposit of security as follows:
 23. “I should respectfully agree with Kogi v Muchiri (Sued as the Administrator of Ruth Wambui Muchiri - Deceased) (Miscellaneous Civil Case E155 of 2024) [2025] KEHC 7393 (KLR) (22 May 2025) (Ruling) where Muchemi J. held: it is evident that the primary duty of settling the decree falls squarely on the applicant. In the event the applicant’s insurer fails to satisfy the decree, the applicant will still be called upon to satisfy the decretal amount. The respondent is not privy to the contract between the applicant and his insurer.
 24. In the same vein, the Court has noted the decision in Njeru Patrick Vs. Invesco Assurance Co. Ltd. (2021) eKLR, where the Court (Odunga, J. as he then was) stated that:
 - “27. I must however state that the primary obligation of settling the decree falls squarely on the Applicant and in the event the Defendant as his insurer fails to satisfy the decree, the Applicant will still be called upon to satisfy the same. The mere fact that the Defendant is bound both contractually and statutorily to satisfy the decree does not absolve the Applicant from meeting his obligations under the tort of negligence. Therefore, I respectfully disagree with the view that by not granting the stay herein, the Court will be assisting the defendant to avoid a contract whose terms are dictated by statute, to compensate the interested parties herein then revert to the plaintiff to recoup any extra sums that they may have paid to third (interested) parties. It must be noted that nothing prevents the Applicant from settling the decretal sum and then suing the Defendant for compensation or reimbursement.
 28. It is my view that in these circumstances, justice would be done to all the parties if there was a stay of proceedings for a short period to enable the Applicant prosecute his case. Accordingly, I hereby grant an order staying execution in Kithimani PMCC No. 317 of 2016 pending the determination of this suit on condition that the Plaintiff/Applicant secures a bank guarantee or any other form of security, movable or immovable, for the



said decretal sum as security for the due performance of the decree or order as may be ultimately be binding on him within 30 days of this order. In default the stay will automatically lapse.”

25. This Court understands the issue before the court as it said in *Pasha Enterprises Limited v Kenya Alliance Insurance Company Limited; Karama & Yussuf (Suing as the Legal Representatives of the Estate of Abdul Wahab Hassan -Deceased) & 3 others (Interested Parties)* (Civil Case E002 of 2024) [2024] KEHC 5185 (KLR) (16 May 2024) (Ruling), in not so dissimilar circumstances:
- “13. The situation before the court is resolved in this way: the plaintiff insured has a right under access to justice to file the declaration suit in enforcement of alleged breach of contract. The decree holder in the trial court suit is entitled to enforcement of the fruits of his judgment, subject only to a successful appeal. The decree-holder is not beholden to the insured’s claim in breach of contract in a declaratory suit. Consequently, the decree-holder is entitled to recover the award in his judgment, subject only to appeal but the insured defendant is entitled to recover by declaratory suit or otherwise the benefit of his insurance contract in which no privity of contract exists as against the successful suitor/decree-holder.”
26. The applicant is apprehensive that the respondent will execute as against him hence defeating the essence of the declaratory suit. As pointed by Odunga, J. it is not correct to suggest that the Court would be aiding the insurer to avoid a statutory contractual obligation, if stay of execution is not granted.
27. In the interest of justice, seeing that according to the warrant of attachment the decretal sum is a substantial sum of Ksh.1,559,382/- and balancing the rights of the decree-holder and the judgment debtor who seeks declaratory order against his insurer, the Court will grant a stay of execution on condition that the applicant judgment debtor shall deposit into court as security the sum equivalent to half (1/2) the decretal sum within 30 days from the date hereof.”
27. The impact of section 10 (1) of the Insurance (Motor Vehicle Third Party Risks) Act on the facts of this case is the subject of the declaratory suit. However, in the absence of any defence to the suit or information as to the health of the defendant Insurance company, the Court is not able to assess its ability, apart from liability to pay.
28. At this stage, the Court must balance the interests of the Judgment debtor to secure the enjoyment of the fruits of judgment against the Applicant’s right to seek the enforcement of statutory obligation for payment of the decretal amount which the court finds to be substantial.
29. Having considered the substantial decretal sum in this case being Ksh.1,234,233/=, this Court would agree to stay execution for a short period of time to allow the conclusion of the declaratory suit and upon conditions as to deposit of security.

Orders

30. Accordingly, for the reasons set out above, the Court makes an order for stay of execution of the judgment in this case for a period of ninety (90) days and subject to the applicant depositing with the Court the sum of Ksh.600,000/=, approximating half the decretal sum, within the next thirty (30) days.
31. In default, execution to issue.



32. The applicant shall pay to the Interested Party the costs of the application.

Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF SEPTEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Khadija Mohamed & Associates Advocates for the Applicant.

N/A for the Respondent.

M/S Gachoka Mwangi & Co. Advocates for the Interested Party.

