



**Geminia Insurance Company Ltd v Kapsumbata (Civil Suit  
E011 of 2022) [2024] KEHC 631 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 631 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL SUIT E011 OF 2022  
MW MUIGAI, J  
JANUARY 19, 2024**

**BETWEEN**

**GEMINIA INSURANCE COMPANY LTD ..... PLAINTIFF**

**AND**

**ROBERT KAMWORJOM KAPSUMBATA ..... DEFENDANT**

**RULING**

1. Vide a Notice of Motion under Certificate of Urgency dated 14<sup>th</sup> July, 2022 and filed in court on 15<sup>th</sup> July, 2022, brought under Sections 1A and 3A of the [Civil Procedure Act](#), Section 10 (4) of the [Insurance \(Motor Vehicle Third Party Risks\) Act](#) Cap 405 and Order 51 Rule 1 of the [Civil Procedure Rules](#).
2. The applicant seeks the following orders that:
  1. Spent.
  2. Spent.
  3. Pending hearing and determination of this application, this Honorable Court be pleased to order stay of proceedings in Machakos SCCC E.151 of 2022 Annah Mwnde Wanza v Nine Star Traders Ltd & Christopher Mwangangi, Machakos SCCC E.147 of 2022 Lucia Ndinda Musau (Suing on behalf of Jayden Baraka-Minor) v Nine Star Traders Ltd & Christopher Mwangangi and Machakos SCCC E.141 of 2022 Lucia Ndinda Musau v Nine Star Traders Ltd & Christopher Mwangangi.
  4. Pending hearing and determination this suit, this Honorable Court be pleased to order stay of proceedings in Machakos SCCCE.151 of 2022 Annah Mwnde Wanza v Nine Star Traders Ltd & Christopher Mwangangi, Machakos SCCC E.147 of 2022 Lucia Ndinda Musau (Suing on behalf of Jayden Baraka-Minor) v Nine Star Traders Ltd & Christopher Mwangangi and



Machakos SCCC E.141 of 2022 Lucia Ndinda Musau v Nine Star Traders Ltd & Christopher Mwangangi.

5. The costs of this Application be provided for.
3. The grounds upon which the application is based are in the body of the said application.

### **Supporting Affidavit**

4. The application was supported by the supporting affidavit dated 14th July,2022 and filed in court on 15th July,2022, sworn by David Nyakundi, the Senior Claims Officer of the Applicant herein, wherein he deposed *inter alia* that Geminia Insurance Company Ltd was the insurer of Motor Vehicle Registration Number KCF 516A under Policy No. MPC/NKU/2021/243439 for the period running between 16<sup>th</sup> August,2021 and 15<sup>th</sup> August,2022 (annexed and marked copy of the insurance contract).
5. Deposing that in pursuance of the said policy and in accordance with the provisions of Section 7 of the *Insurance (Motor Vehicle Third Party Risks) Act* Cap 405, the Defendant herein was duly supplied with Certificate of Insurance No. C23XXXXXXX in respect of the suit motor vehicle herein. (annexed and marked copy of the certificate of Insurance).
6. He deposed that the aforementioned Motor Vehicle was involved in a self-involving accident on 19<sup>th</sup> September,2021 when Annah Mwnde Wanza, Jayden Baraka (Minor) and Lucia Ndinda Musau sustained serious injuries.
7. It was deposed further that subsequent to the above, the Plaintiff received a Notice of Intention of suits, notice of First Mention upon filing and Plaintiff From M/S Evans Muli Advocates Acting on behalf of Annah Mwnde Wanza, Jayden Baraka (Minor) and Lucia Ndinda Musau who had instituted the Suits Machakos SCCC No. E141,E147 and E151 of 2021 against Nine Star Traders Ltd & Christopher Mwangangi before amending their pleadings and substituting Nine Star Traders with Robert Kamworiom Kapsumbata who had purchased and insured the said motor vehicle, seeking damages for injuries allegedly sustained out of the accident involving Motor Vehicle Registration Number KCF 516A in which they were fare paying passengers.
8. Lamenting that the Notice of Institution of Suits, Notice of First Mention upon filing and Plaintiff were forwarded to Geminia Insurance Company Limited pursuant to the Provisions of Sections 10(2)(a) of the *Insurance (Motor Vehicle Third Party Risks) Act* Cap 405. Further that the claimants in the 3 suits averred in their pleadings that they were indeed fare paying passengers in the insured's motor vehicle at the time of occurrence of the accident.
9. He opined that at the time of the Alleged accident the said motor vehicle was being used contrary to the terms of the Insurance contract as it was carrying fare paying passengers yet the vehicle was insured for private use hence according to him the Defendant herein is not entitled to indemnity under the said policy and further that Geminia Insurance Company Limited is not liable under the Act to satisfy any judgment that may be obtained against the defendant in connection with the accident which occurred on 19<sup>th</sup> September,2021.
10. He deposed further that the Plaintiff has filed the instant suit which seeks a declaration to avoid liability arising from the material accident and any judgment that may be obtained against its insured (the Defendant herein) in connection with the material accident.
11. Deposing that the whole object of this suit stands to be defeated/substantially prejudiced unless further proceedings in Machakos SCCC E.151 of 2022 Annah Mwnde Wanza v Nine Star Traders Ltd & Christopher Mwangangi, Machakos SCCC E.147 of 2022 Lucia Ndinda Musau (Suing on behalf



of Jayden Baraka-Minor) v Nine Star Traders Ltd & Christopher Mwangangi and Machakos SCCC E.141 of 2022 Lucia Ndinda Musau v Nine Star Traders Ltd & Christopher Mwangangi are stayed.

12. He opined that the small claims court has specific statute-based timelines for delivering judgment in matters filed before it and these three (3) matters are almost due for completion based on the timelines hence, unless this Honorable intervenes, this suit will be rendered nugatory and the plaintiff's application will be prejudiced.

### **Replying affidavit**

13. In response to the Notice of Motion application, there is a replying affidavit dated and filed in court on 3<sup>rd</sup> October,2022, sworn by Ann Mwendu Mwanza, wherein she deposed that contrary to the Plaintiff's assertions in the instant application she was indeed a passenger in the suit Motor Vehicle Registration Number KCF 516A, being driven by Christopher Mwangangi, in the company of her sister in-law Ndinda Musau & nephew Jayden Baraka.
14. She deposed neither were they charged any fare, nor paid any fare for purposes of being driven to their destination. Further that in her witness statement in the small claims which statement is annexed by the plaintiff herein, she never indicated that they were fare paying passengers in the suit motor, she distanced herself from the assertions by the plaintiff.
15. Deposing that the driver of the suit Motor Registration Number KCF 516A, one Christopher Mwangangi is a person well known to them as they attended the same church together. Lamenting that in the circumstances it is clear that the Applicant has not established sufficient cause that it is in the interest of justice to grant the orders sought. Further deposing that the Plaintiff's Application is unsustainable. It therefore follows that the Application and suit dated 14<sup>th</sup> July,2022, is incurably defective, an abuse of the court process and outright act of forum shopping hence the same ought to be struck out and/or dismissed with costs.
16. The matter was canvassed by written submissions.

### **Submissions**

#### **Applicant's submissions**

17. The Applicant in its submissions dated 20<sup>th</sup> October,2022 and filed in court on 20<sup>th</sup> April,2023, wherein counsel for the Applicant while placing reliance on Section 12 of the Small Claims Act submitted that the parties in the small claims filed claims against the Respondent herein seeking for compensation for personal injuries sustained while on board his motor vehicle that was involved in a self-involving accident on 19<sup>th</sup> September,2021.
18. It was contended that the Applicant the said claims are rightly filed in accordance with the provision of the *Small Claims Court Act*.
19. Counsel relied on section 13 of the Act which highlights claims which cannot be instituted in the Small Claims Court and submitted that the jurisdiction of the Small Claims Court is well-founded in law with regards to the matter and prayed that this Honorable court should allow this application and consequently set down the matter for hearing of the main suit to ensure expeditious disposal.

#### **Defendant's/ Respondent's submissions**

20. The Respondent in the Submissions dated and filed in court on 29<sup>th</sup> November,2022, wherein counsel for the Respondent relied on Section 3 (1) (c) of the *Judicature Act* which gives the High Court and



all subordinate courts power to exercise jurisdiction in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12<sup>th</sup> August,1987.

21. Credence was placed on the case of *Kenindia Insurance Company Ltd v George Mungai* [2017] eklr which was to the effect that “the dispute did not arise because there existed a contract of insurance between the parties. No. the disputes was that there having been an insurance contract, the event insured, loss by accident, occurred and the Appellants obligation therefore arose.”
22. Submitting that the Small Claims Court at Machakos, is well placed to finalize the hearing and determination of the claims before (Machakos Small Claims Court Case No. E141, E147 and E151 of 2022) arising from the contract of insurance herein, event insured herein, and the loss by accident occurred herein, and clearly where the Plaintiff may seek to be enjoined only as the Insurer of the Defendant.
23. It was submitted that in the in the instant matter, this Honorable court only has appellate jurisdiction over the claims filed at the Small Claims Court in Machakos (Machakos Small Claims Court Case No. E141, E147 and E151 of 2022) as envisaged in Section 38 of the Small Claims Act,2016.
24. It was the Respondent contention that the only exception where an insurer would not be liable to pay to satisfy judgments against persons insured is provided in Section 10 (4) of the *Insurance (Motor Vehicle Third Party Risks) Act* Cap 405.
25. Contending that the power to stay proceedings is a discretionary one flowing from the inherent jurisdiction of this honorable court. it is nevertheless a discretion that must be exercised judicially and only for the benefit of deserving parties. Opining that the plaintiff/Applicant has not bothered to take any steps to be enjoined in small claims matters and explain their cases despite having an endless opportunity to do so.

### **Supplementary Submissions**

26. The Applicant in its supplementary submission dated 11<sup>th</sup> September,2023, wherein counsel for the Applicant averred that the 3 were fare paying passengers as alluded to in their pleadings, contrary to the terms of the insurance policy between the plaintiff and Defendant.
27. It was submitted further that the Small Claims Court is a subordinate Court and as such, a declaration similar to the one being sought herein by the Plaintiff/Applicant cannot issue to another similar Court since they are of the same Rank. Contending that it is for this reason that the Plaintiff/Applicant moved to this Honorable Court to seek the said declaration and stay orders as against the proceedings in the subordinate courts since it exercise supervisory jurisdiction over them. Counsel relied on Section 10 (4) of the *Insurance (Motor Vehicle Third Party Risks) Act* Cap 405.
28. Credence was placed on the cases of Madison Insurance Company of *Kenya Limited v Veronica Banchiri Metiokio* [2020] eklr and *Kenyan Alliance Insurance Company Limited v Eunice Nyaboke Nyaribari & Another* [2019] eklr, and Submitted that this honorable Court has the requisite Jurisdiction to preside over the present suit and ultimately grant the orders as prayed for.

### **Determination/analysis**

29. I have read through and considered the Notice of Motion Application dated 14<sup>th</sup> July,2023, the Replying Affidavit dated 3<sup>rd</sup> October, 2022, and Written Submissions dated and filed on diverse dates by the parties together with the authorities relied upon by the counsels for their respective clients.



30. The issue that commends itself for determination is Whether the Applicant should be granted the order for stay of proceedings in Small Claim matters being Machakos SCCC 151, 141, and 147 of 2022 Respectively.

31. In the case of *Kenya Wildlife Service v James Mutembei* (2019) eKLR, Gikonyo J held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”. (Emphasis added)

32. Further, in the persuasive authority in *Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000* Ringera J, (as he then was) stated that: -

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”. (Emphasis added).

33. The Court of Appeal held in the case of *UAP Insurance Company Ltd v Michael John Beckett* [2004] eKLR, that:

“All an applicant is required to show is that he has an arguable appeal which is not frivolous and that the appeal will be rendered nugatory if the stay of proceedings is not granted.” (Emphasis added).

34. In *Halsbury’s Law of England*, 4th Edition. Vol. 37 page 330 and 332, it is provided that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case”. (Emphasis added).



- 35. I am persuaded by the aforementioned authorities as they lay down the clear principles that stay of proceedings is a grave matter to be entertained only in the most deserving cases as it impacts the right to expeditious trial. It is therefore a discretionary power exercisable judiciously by the court upon consideration of the facts on a case by case basis.
- 36. The Application before me was brought against the backdrop of suits that were filed in the Small Claims court against the Respondent herein seeking for compensation for personal injuries sustained while on board His Motor Vehicle Registration Number KCF 516A that was involved in a self-involving accident on 19th September, 2021.
- 37. The contention of the Applicant herein is that the Defendant herein is not entitled to indemnity under the said policy and that Geminia Insurance Company Limited is not liable to satisfy any judgment that may be obtained against the defendant in connection with the accident which occurred on 19<sup>th</sup> September, 2021.
- 38. It was the Applicant’s concern that the subject motor vehicle was being used contrary to the terms of insurance as it was carrying fare paying passengers yet it was insured for private use. On the other hand, the Respondent averred that this Court only has appellate jurisdiction over the claims filed at the Small Claims Court.
- 39. In my view regardless of the feasible orders that will emanate from the Small Claims Court, regard must be given to time in order to avoid delaying this matter any further. The provisions of Article 159(2)(a) (b)(c) and (d) of *the Constitution* of Kenya as read with Sections 1A and 1B of the *Civil Procedure Act*, Cap 21 enjoin this court to foster and facilitate the overriding objective of the Act to render justice to parties in all Civil Proceedings in a just, expeditious, proportionate and affordable cost to parties.
- 40. A reading of Section 12 of the Small Claims Act (the Act), I find that the Court has jurisdiction to determine any civil claim relating to—
  - a. ....
  - b. ....
  - c. ....
  - d. compensation for personal injuries; and
  - e. ....
- 41. Further Section 38 (1) of Act provides for the appeal and states as follows:
  - 1. “A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.”
- 42. In the instant case, it is my considered opinion that it would not be in the interest of justice and fairness to exercise court’s discretion and grant stay of proceedings as the same will only serve the purpose of delaying the suits filed Small Claims Court that are pending in the lower court to the detriment of the Respondent herein. I am therefore not satisfied that the Applicant has demonstrated that it has an exceptional circumstance to warrant issuance of the orders sought.
- 43. To determine the expeditious determination of the suits and bearing in mind the strict timeline under which the Small Claims Court has to operate it only just and fair that the said suits be continued to their logical conclusion. Any delaying tactic to hold them in abeyance will be tantamount to denying justice. the Applicant herein will be entitled to exercise its right of Appeal in the event that it will be



dissatisfied with the outcome of the Lower decision. The Appellant's concern in this Application and suit filed herein can be well ventilated in appeal.

44. It is worth noting that Judicial time is precious and scarce and must not be wasted in proceedings that would end up being academic exercises.
45. In the case of *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] eKLR, the Court of Appeal rendered itself as follows: -

“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice.” (Emphasis added).

46. For the above reasons, the Notice of Motion Application dated 14<sup>th</sup> July, 2022 is dismissed with costs to the Defendant/Respondent.

### **Disposition**

1. The matter shall proceed before the Small Claims Court with the Respondent raising at the earliest instant that the question of liability is denied/contested by virtue of Section 10 of *Insurance (Motor Vehicle 3<sup>rd</sup> Party Risks Act* Cap 405 and the Small Claims Court to make its finding. Then the aggrieved party may Appeal and seek stay of execution if need be.

It is hereby so ordered.

**RULING DELIVERED, SIGNED & DATED IN OPEN COURT IN MACHAKOS ON 19<sup>TH</sup> JANUARY, 2024 (VIRTUAL/PHYSICAL CONFERENCE).**

**M.W. MUIGAI**

**JUDGE**

