



REPUBLIC OF KENYA



KENYA LAW
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Directline Assurance Company Limited v Ookoba & another; Nyakweba & another (Interested Parties) (Civil Suit E002 of 2023) [2024] KEHC 937 (KLR) (5 February 2024) (Ruling)

Neutral citation: [2024] KEHC 937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CIVIL SUIT E002 OF 2023
F GIKONYO, J
FEBRUARY 5, 2024**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED PLAINTIFF

AND

HENRY OOKOBA 1ST DEFENDANT

KIPLANGAT CHESIMET 2ND DEFENDANT

AND

SIMON ONAMI NYAKWEBA INTERESTED PARTY

JAMES OUCHO KAMANDA INTERESTED PARTY

RULING

Stay of proceedings

1. The significant orders sought in the Notice of Motion dated 27.05.2023, are: -
 - i. Stay of proceedings and or all consequential orders or actions in Kilgoris CMCC E045 of 2021 Simon Onami Nyakweba vs Kiplangat Arap Chesimet and Henry Ookoba and Kilgoris CMCC E033 of 2022 James Oucho Kamanda Vs Okindo Nyandeke and Kiplangat Chesimet pending hearing and final determination of this suit.
 - ii. Stay of any other proceedings against the defendants arising from the road accident which occurred on 8th June 2021 along the Nkararo- Moita road at around 0620 hours involving motor vehicle registration number KYM xxx Mitsubishi lorry and tractor registration number KTCB xxxc/ ZF7xxx.
 - iii. Costs of this application be in the cause.



2. The application is premised on Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), Section 10(4) of the [Insurance \(Motor Vehicle Third Party Risks\) Act](#), and Order 51 rule 1 of the [Civil Procedure Rules](#).
3. The application is based on the grounds set out in the application and supported by the supporting affidavit of Kelvin Ngure sworn on 27.05.2023.
4. The gist of the application herein is that the suit is seeking for a declaration that the plaintiff/applicant is entitled to avoid or repudiate the insurance policy no. 0013xxxx and/ any claims arising thereto or any addendums, endorsements, and renewals thereof issued by itself to the defendants/ respondents arising from the accident which occurred on 08.06.2021 at about 0620 hours along Nkararo- Moita road involving the interested parties and/or any claims against the defendants/ respondents on the grounds that the defendants/ respondents breached express terms of the policy.
5. The plaintiff/applicant is apprehensive that the suits by the interested parties may proceed and judgment entered against the defendants/respondents and the interested parties will seek to have the plaintiff satisfy the decrees which they were entitled to avoid.
6. Therefore, the plaintiff/applicant has applied for a stay of proceedings in Kilgoris CMCC. No. E045 of 2021 and Kilgoris CMCC No. E033 of 2022 pending hearing and determination of this suit.
7. The 1st and 2nd defendants/respondents and 1st interested party/respondent have not filed any replies.
8. The 2nd interested party/Respondent opposed the application via a Replying Affidavit dated 30.06.2023 sworn by James Oucho Kamanda.
9. The core argument by the 2nd interested party/respondent is that it is premature for the applicant to seek a stay of proceedings of suits going on in the lower court where the applicant is not a party and thus has no *locus standi*.
10. According to the interested party/respondent, they served the applicant with the intention to sue and they have not issued a notice to repudiate the same. The suit was filed on 22.08.2022. The accident occurred on 08.06.2021. The declaratory suit has been filed one year and two months after the date of the accident. The suit is therefore time barred having been filed after the lapse of three months statutory period.
11. Furthermore, they urged that, the plaintiff/applicant stands to suffer no prejudice if the suits proceed in its absence. The interested party is entitled to have the matter heard and determined expeditiously.

Analysis and Determination

Issue

12. Close look at the application reveals that the court should determine whether stay of proceeding already filed in court and also any anticipated proceedings in respect of the accident in question, is orders deserved?

Stay of proceedings

13. Stay proceedings is a serious interruption of a party's right to litigate the case. Such order impinges upon the right to access to justice (art. 48, [Constitution of Kenya, 2010](#)). It should therefore, be ordered sparingly and in clear cases where the proceeding is an abuse of the court process, or it is oppressive or is mere demurer, or will cause great prejudice to the applicant, and must be stopped in the interest of justice ([Kenya Wildlife Service -vs- James Mutembei](#) [2019] eKLR).



14. This jurisdiction is meant to avoid a waste of valuable judicial time, prevent duplication or multiplicity of suits, and abuse of process of the court.
15. The present suit is premised on section 10(4) of the *Insurance (Motor Vehicles Third Party Risk) Act* Cap 405 which states that:
 - “(4) No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto.”
16. In this case, it is, however, contended by the 2nd interested party/respondent that he never sued the plaintiff/applicant herein. This submission is oblivious when and how liability of the insurer to third party under section 10 of CaP 405, Laws of Kenya arise.
17. Be that as it may, insurer’s liability however does not crystallise until judgment has been obtained against the insured by the third party. Again, questions on the competency of this suit as it was filed outside the time stipulated in the law have arisen. In addition, argument by the insured that the suits filed by the third parties may be concluded before their case does not consider the general statutory obligation on parties under the overriding objective of the law especially on expeditious disposal of cases, and the constitutional demand on the court to administer justice without delay. In any event, execution against the insurer of any judgment obtained against the insured can only be through a declaratory suit- which a whole process of litigation which removes any urgency or necessity to inhibit a litigant’s right to litigate their case in court without delay or interruption.
18. The right to access to justice, to be heard and receive justice without delay, is shaping a new thinking around stay of proceedings, which also sets a stringent threshold for stay of proceedings given that it impedes those rights. A more pragmatic approach is for the applicant to always be vigilant to progress their case with the spirit of expedition, and seek such directions from the court as may be appropriate towards that end.
19. On the basis of reasons stated above, there is absolutely, no basis for staying the proceedings in Kilgoris CMCC No. E045 of 2021 and Kilgoris CMCC No. E033 of 2022.
20. The other request to stay any anticipated judicial proceedings in respect of the accident in issue is not only speculative, but a dangerous caveat which exposes such anticipated suits to the capture of the



limitation of actions laws, with the potentiality of extinguishing the right to seek remedy from the court.

21. Accordingly, this application fails and is dismissed with costs to the 1st and 2nd interested parties.
22. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS
ONLINE APPLICATION THIS 5TH DAY OF FEBRUARY 2024**

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HON. F. GIKONYO M.

JUDGE

In the presence of:

C/A – Mr. Leken

Plaintiffs - M/s Lenin - Present

Defendants – M/s Ogari - Absent

Interested parties – M/s Musili Mbithi - Absent

