



Ndaka v Kenya Orient Insurance Limited & another; Muthoka & another (Interested Parties) (Suing as the Administrators of the Estate of the late David Nzine Muthoka) (Civil Case E003 of 2024) [2024] KEHC 5448 (KLR) (21 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CIVIL CASE E003 OF 2024**

RK LIMO, J

MAY 21, 2024

BETWEEN

TITUS T. NDAKA APPLICANT

AND

KENYA ORIENT INSURANCE LIMITED 1ST RESPONDENT

MEDISON INSURANCE COMPANY LIMITED 2ND RESPONDENT

AND

KAREN NGINA MUTHOKA INTERESTED PARTY

LUCY NJERI MACHARIA INTERESTED PARTY

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE DAVID
NZINE MUTHOKA**

RULING

1. This court has considered the Application dated 28th March 2024 and the grounds raised. I have also considered the response made by the Interested Party who is the decree holder in Kitui CMCC No. E124 of 2021. The Application as framed is seeking a Stay of Attachment and Sale of attached property belonging to the Applicant pending the determination of declaratory suit. The attachment is brought about by the execution carried out by the Interested Party vide Kitui CMCC No. E124 of 2021. The applicant’s main grievance is that he is likely to suffer irreparable loss and that the discretion of this court should be exercised in his favour.
2. The Interested Party on the other hand has opposed the Application stating that she is entitled to fruits of the Judgment and has nothing to do with the declaratory suit as she is not privy to the contract between the Applicants and Respondents. This court finds that the applicant has not established



sufficient grounds to warrant this court exercising its discretion in his favour because for one, the declaratory suit is between him and his insurers, the Respondents herein.

3. The Interested Party is not privy to the dispute/ breach of any contractual agreement as between the Applicant and his insurers.
4. Secondly, the Interested Party being a successful party in Kitui CMCC No E124 of 2021 is entitled to the fruits of Judgment. This court finds that any loss suffered or occasioned to the Applicant due to breach of any contractual agreement as between him and his insurers will be covered by party at fault.
5. The Interested Party has not been faulted in any way in the execution process carried out. The same is lawful and I do not find sufficient reasons advanced to stay it. In the premises the Application dated 28th March 2024 is dismissed with costs to the Interested Party.

DATED, SIGNED AND DELIVERED AT KITUI THIS 21ST DAY OF MAY, 2024

HON. JUSTICE R. K. LIMO

JUDGE

