



Tajdeed East Africa Limited v Monarch Insurance Co Limited; Muchira (Being sued as administrator and personal representative of the Estate of Simon Kigunda Mwangi & another (Interested Parties) (Civil Case E010 of 2023) [2024] KEHC 5784 (KLR) (17 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5784 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE E010 OF 2023
M THANDE, J
MAY 17, 2024**

BETWEEN

TAJDEED EAST AFRICA LIMITED APPLICANT

AND

MONARCH INSURANCE CO LIMITED RESPONDENT

AND

LOISE WAMUTURA MUCHIRA (BEING SUED AS ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON KIGUNDA MWANGI) INTERESTED PARTY

ERIC MUCHANGI NJERU INTERESTED PARTY

RULING

1. By an Application dated 14.11.23, the Applicant seeks the following orders:
 1. Spent.
 2. Spent.
 3. Spent.
 4. Spent.
 5. That a declaration do issue; that the Defendant/Respondent herein is statutorily bound to settle the entire judgment and decree; together with the simultaneous auctioneers charges in respect of Kaloleni E011/2020 within 7 days hereof; lest the Defendant/Respondent shall enhance a partial judgment as against the 1st defendant herein in recovery pursuit on behalf of the interested parties.



6. That orders do issue directing the defendant/respondent to instruct its panel of lawyers to indemnify, safeguard and/or represent the plaintiff interest as appurtenant to Kaloleni E011/2020; Eric Muchangi Njeru v Tajdeed East Africa Limited and Mombasa Highway Co. Limited.
 7. That the costs of this application be borne by the Defendant/Respondent.
 8. That any other relief that this Honourable Court deems fit.
2. The Plaintiff alleges that its motor vehicle KBH 503C was insured by the Defendant under Policy Number MNC/0800/000200/2019/TPO. The motor vehicle was involved in an accident on or around 16.9.19, following which Kaloleni Civil Cases Nos. 058 of 2021 and E011 of 2020 were filed against the Plaintiff. The Plaintiff alleges that there was “willful absent participation” of the Defendant in the 2 suits. Judgment in Civil Case E011/2020 has been rendered and the decree holder has commenced execution and proclamations and warrants of attachments have issued. The Plaintiff avers that unless interim orders are granted, the Application will be rendered nugatory as execution will have taken place. It was further stated that under Section 10(1) of the *Insurance Act*, the Defendant/ Respondent is statutorily bound to indemnify the Applicant from any subsisting 3rd party claims.
 3. The 1st Interested Party opposed the Application vide a Preliminary Objection dated 11.10.23. The objections raised is that the present application is res judicata, being a replica of an application dated 11.10.23 filed by the Plaintiff in Civil Case No E011 of 2020. That application was dismissed in a ruling dated 10.11.23.
 4. On 13.12.23, the Court directed the parties to file submissions on both the Application and the preliminary objection. Parties filed their submissions which I have duly considered.
 5. The Plaintiff seeks orders in respect of the judgment and decree in Civil Case No E011 of 2020. I have carefully perused the record including the annexures herein and note that the judgment and decree in question have not been annexed. Without the benefit of seeing the judgment in respect of which stay is sought, the Court is unable to make a determination in respect of the orders sought.
 6. Further and even more critical, the orders sought herein are final in nature and are the orders sought in the main suit. I am keenly aware I cannot at this stage delve into the merits of the case. I must therefore caution myself not to prejudice the main suit by making definite and final findings on the issues raised before parties have been heard substantively. In this regard, I follow the reasoning of Ibrahim, J. (as he then was) in the case of *Muslims for Human Rights (Muburi) & 2 others v Attorney General & 2 others* [2011 eKLR where he stated:

The court must be careful for it not to reach final conclusions and to make final findings. By the time the application is decided, all the parties must still have the ability and flexibility to prosecute their cases or present their defences without prejudice. There must be no conclusivity or finality arising that will or may operate adversely vis- a-vis the case of either parties. This principle is similar to that in temporary at or interlocutory injunctions in civil matters.

This is a cardinal principle and happily makes my function and work here much easier despite walking a tight legal rope that I could easily lose balance with the slightest slip due to any laxity or being carried away by the passion or zeal of persuasion of any one side.



7. The Court must resist the temptation to make any conclusive findings of fact or law on the matter at the interlocutory stage. In the case of *Damour Florian Emmeric v Director of Immigration Services* [2022] eKLR, Mrima, J. spoke to the issue of caution and stated:

29. Given the interlocutory nature of conservatory orders, it is argued, that there is need for a Court to exercise caution when dealing with any request for such prayers. I agree with that proposition for the reason that matters which are the preserve of the main Petition ought not to be dealt with finality at the interlocutory stage."

8. The declaration sought by the Plaintiff that the Defendant/Respondent is statutorily bound to settle the entire judgment and decree as well as the order sought directing the Defendant/Respondent to instruct its panel of lawyers to indemnify, safeguard and/or represent the Plaintiff's interest in the suits, are final orders which cannot be determined at this interlocutory stage.

9. In light of the foregoing, I find the Application dated 14.11.23 lacks merit and the same is hereby dismissed with costs to the 1st Interested Party.

DATED SIGNED AND DELIVERED IN MALINDI THIS 17TH DAY OF MAY 2024

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M. THANDE

JUDGE

