



British American Insurance Company Ltd v Kyalya (Suing as the legal representative of the Estate of Kilaku Kyalya (Deceased) (Civil Appeal E689 of 2023) [2024] KEHC 7050 (KLR) (Civ) (12 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E689 OF 2023

JN MULWA, J

JUNE 12, 2024

BETWEEN

BRITISH AMERICAN INSURANCE COMPANY LTD APPELLANT

AND

SAMMY KYALYA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KILAKU KYALYA (DECEASED) RESPONDENT

(Being an Appeal from the Ruling of Hon. Mr. R. L. Musiega SRM in CMCC E. 4855 of 2022 delivered on 21st July, 2023)

RULING

1. By a Motion Dated 26/07/2023 the Appellant Britam General Insurance Company Limited having appealed against the judgment and decree of the lower court in Milimani CMCC No. E 4855 of 2022 sought an order of stay of execution of the decree pending hearing and determination of the Appeal filed vide a Memorandum of Appeal dated 26/07/2023 and filed on an even date and any other order as the court may find fit to grant.
2. The Application is premised on provisions of Order 42 Rule 6 and 9 of the [Civil Procedure Rules](#) among others, and supported by an affidavit sworn by Ms. Hope Wambugu on 26/07/2023 and grounds stated at the face thereof.
In addition, the Applicant has filed its submissions dated 7/11/2023
3. In objection to the motion the Respondent Sammy Kyalya filed a Replying Affidavit sworn on 18/10/2023 and Submissions dated 26/03/2024.



4. In the first instance and upon perusal of the parties' pleadings notably the Supporting and Opposing Affidavits and the parties submissions I note other "errors" if I may call them typing errors, mistakes or deliberate, just as I find "errors" in the trial court's proceedings and documents.
5. Apparently such "errors" are the subject of the Appeal before this court.
 - a. The Applicant's motion is dated 26/07/2023 and supported by an affidavit sworn on an even date.
However, its submissions are in support of an Application dated 9/06/2016.
 - b. The Respondents Replying Affidavit is in respect of an application Dated 20/07/2023 and its submissions in respect of an application dated 20/07/2023.
6. In addition, the court is faulted for determining applications not before it due to the identified "errors."
7. As a court I find myself bound by the parties' pleadings. As stated above both parties' pleadings have "errors".
8. In the circumstances I deem it proper and just to down my tools for the moment and postpone writing of the ruling until these evident "errors" committed by both parties be looked into by giving the parties a chance to rectify their pleadings to avoid doing an injustice to both.
9. To that end therefore, I direct that both parties' advocates to attend court for mention for directions on 9/7/2024.
10. In the meantime, on my own volition, I make an order that status quo as date of these directions be maintained to avoid prejudice on either party.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JUNE, 2024.

JANET MULWA

JUDGE.

