



REPUBLIC OF KENYA



**KENYA LAW**  
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**Heritage Insurance Co Ltd v Yano (Miscellaneous Civil Application  
E103 of 2023) [2024] KEHC 7252 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7252 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS CIVIL APPLICATION E103 OF 2023**

**REA OUGO, J**

**JUNE 11, 2024**

**BETWEEN**

**THE HERITAGE INSURANCE CO LTD ..... APPLICANT**

**AND**

**RONALD KIMUTAI YANO ..... RESPONDENT**

**RULING**

1. Before me is a Notice of Motion ( Exparte) dated the 7<sup>th</sup> of November 2023. The applicant is Heritage Insurance Co. Ltd and the Respondent. The application is brought under Section 1A, 2, 3 (a), 63 (e) and 95 of the *Civil Procedure Act* and Section 10 of the *Insurance ( Motor Vehicle Third Party Risk) Act*.
2. The applicant seeks the following orders;
  - a. Spent
  - b. The Applicant be granted leave to file a declaratory suit out of time against the respondent in respect to an accident that occurred on 26/05/2022 involving motor vehicle registration number KCF 744M/ZG 1384 belonging to the respondent.
  - c. The Court be pleased to grant a stay of proceedings in various Civil Suits being Bungoma CMCC No. 191,192, 202, 204, 242 & 352 of 2023 between various plaintiffs and the respondent, pending hearing and determination of the intended declaratory suit.
  - d. The court be pleased to grant stay of execution of the decree in the suit pending hearing and determination of the application.
  - e. That such orders be made in the interest of interest of justice as may be expedient.
  - f. Costs be in the cause.



3. The application is supported by grounds on the face of the application and an affidavit dated 7<sup>th</sup> November 2023 sworn by Gibson Kamau, a Legal Claims Manager of the Applicant.
4. The application was opposed, as the respondent though served did not respond to the application.
5. The applicant avers as follows; that matter was defended by our advocate M/s Kibichiy & Company Advocates. The respondent had taken an insurance cover policy for carriage trailer registration number ZG 1384. The Respondent was assigned policy number 102178070396. The policy cover was financed by NCBA Bank. The respondent failed to honour the loan agreement with the financier. The failure of the respondent to honour the loan resulted in the bank cancelling the payment of premiums on behalf of the respondent. Consequently, the policy cover was cancelled on the 6<sup>th</sup> of April 2022. That at the time of the accident, the applicant was not an insurer of the respondent. That following the accident various claims being Bungoma CMCC No. 191, 192, 202, 204, 242 & 352 of 2023 have been instituted against the respondent. That unless a stay of proceedings of the matters is granted the Applicant will suffer irreparable damages and that delay in filing a declaratory suit is not inordinate. That the prayers sought are not prejudicial to the respondent. The application has been made in good faith and is justifiable and the applicant has a reasonable suit in terms of the draft plaint and the orders sought are in the interest of justice.

### **Analysis And Determination**

6. I have considered the application, the oral submissions and the law applicable. The applicant has demonstrated that there are suits against the respondent as cited in their affidavit in support of the application. The applicant has further demonstrated that a letter dated 16/2/2022 was written to the applicant giving them notice of cancellation of policy no. 102178070396 after the respondent reneged on their contractual obligation to service the IPF monthly on their contract as per the agreement of the loan which was disbursed on 2022-01-03 of Kshs. 235,709.00. The latter is sufficient notice to show that the applicant could face claims against it which it would be required to pay as provided under section 10 of the *Motor Vehicles Third Party Risk Act*.
7. I find that the applicant has demonstrated that the application has merit, even though the delay has not been sufficiently explained, I will exercise my discretion in favour of the applicant. I therefore grant the following orders;
  - a. The Applicant is granted leave to file a declaratory suit out of time against the respondent in respect to an accident that occurred on 26/05/2022 involving motor vehicle registration number KCF 744M/ZG 1384 belonging to the respondent. The said suit shall be filed within 30 days from the date of this Ruling, in default the order shall be vacated.
  - b. There shall be no order of stay of proceedings in Bungoma CMCC Nos., 191,192,202,204, 242 & 352 of 2023 between the various plaintiffs and the respondent as sought as the applicant has to show that it has filed a declaratory suit. Prayer (b) of the applicant is not warranted at this stage. The applicant is at liberty to seek the said order once the declaratory is filed against the respondent, and if demonstrated the various plaintiffs in the above-mentioned suits are proceeding with their suits as required in law.
  - c. This matter will be mentioned on the 11<sup>th</sup> of July 2024 in High Court No. 1 to confirm compliance and for further directions in the matter.
  - d. This order to be served upon the respondent within 7 days
  - e. Costs shall be in the cause.



f. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 11<sup>TH</sup> DAY OF JUNE 2024.**

**R.E .OUGO**

**JUDGE**

In the presence of:

Applicant - Absent

Respondent - Absent

Wilkister/ Diana - C/A.

