



Madison General Insurance Limited v Glassworld Engineering Limited (Civil Appeal E007 of 2024) [2024] KEHC 10295 (KLR) (22 July 2024) (Ruling)

Neutral citation: [2024] KEHC 10295 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E007 OF 2024
GMA DULU, J
JULY 22, 2024**

BETWEEN

MADISON GENERAL INSURANCE LIMITED APPELLANT

AND

GLASSWORLD ENGINEERING LIMITED RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 28th February 2024 filed by the applicant/appellant through counsel Mokaya & Onyambu Advocates under Section 1A, and 1B of the Civil Procedure Act (Cap.21), and Order 42 Rule 8(2) and Order 51 Rule 1 of the Civil Procedure Rules 2010.
2. The applicant seeks the following orders:-
 1. (Spent).
 2. (Spent).
 3. That the court be pleased to issue stay of execution of the judgment in Voi CMCC No E128 of 2022 – Glassworld Engineering Ltd v Madison General Insurance Ltd delivered by Hon. T. N. Sinkiyian (PM) on 22nd January 2024 and the assessment of costs thereof pending the hearing and determination of this appeal.
 4. That this court be pleased to make any other or such further orders as it may deem fit and just to grant.
 5. That costs of this application be in the cause.
3. The application has grounds on the face of the Notice of Motion that judgment was delivered on 22nd January 2024 in Voi CMCC No E128 of 2022 Glassworld Engineering Ltd v Madison General Insurance Ltd; that an appeal had been lodged in Voi HCCA No E007 of 2024 against the finding of



breach of policy contract and dismissal of the applicant's/appellant's counter claim; that the appeal will be rendered nugatory if the stay orders sought are not granted.

4. The application was filed with a supporting affidavit sworn by Moses Barasa Legal Officer of the applicant/appellant which amplifies the grounds of the application and to which is annexed a copy of the trial court's judgment.
5. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mokaya & Onyambu Advocates for the applicant, as well as the submissions filed by Mutinda & Wambura Nthiga Advocates for the respondent. Both sides relied upon decided court cases.
6. This is an application for stay of execution pending hearing and determination of appeal. As such it is governed by the provisions of Order 42 Rule 6 of the [Civil Procedure Rules](#).
7. The first consideration is whether the application was filed without unreasonable delay.
8. On this, the judgment was delivered on 22nd January 2024 and this application filed on 28th February 2024. In my view, the application was filed without unreasonable delay.
9. Will the applicant suffer substantial loss if the stay orders sought are not granted? In this regard, the judgment herein relates to a claim for enforcement of a contract of insurance. The contest on appeal is whether the trial court was correct in making the finding it made, in determining the case.
10. In my view therefore, if the stay orders sought are not granted and the appeal later succeeds, the applicant is likely to suffer substantial loss, as the decision in the appeal will have been rendered nugatory and be of no benefit to them.
11. The third and last consideration is provision of security by the applicant. With regard to provision of security by the applicant, in my view the nature of the case herein and the judgment, do not render it necessary for provision of security by the applicant.
12. Consequently, and for the above reasons, I allow the application and order as follows:-
 - i. Stay of execution orders of the judgment in Voi CMCC No E128 of 2022 Glassworld Engineering Limited =Versus= Madison General Insurance Limited delivered by Hon. T. N. Sinkiyian (PM) on 22nd January 2024 and the assessment of costs thereof are hereby issued pending the hearing and determination of the appeal herein.
 - ii. The costs of this application will follow the determination of appeal.

DATED, SIGNED AND DELIVERED THIS 22ND DAY OF JULY 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Mr. Owiti holding brief for Mr. Mokaya for applicant

Mr. Mutinda for respondent

