



Paradise Systems Limited v Directline Assurance Company Ltd; Njoroge & 5 others (Interested Parties) (Civil Suit E123 of 2024) [2024] KEHC 8943 (KLR) (Civ) (18 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8943 (KLR)

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

CIVIL

CIVIL SUIT E123 OF 2024

JN MULWA, J

JULY 18, 2024

BETWEEN

PARADISE SYSTEMS LIMITED PLAINTIFF

AND

DIRECTLINE ASSURANCE COMPANY LTD DEFENDANT

AND

BENSON NGURE NJOROGE INTERESTED PARTY

WESLEY AMULAKU MASABA INTERESTED PARTY

EMMANUEL MUSIA SANGOLO INTERESTED PARTY

MICHAEL MULINGE MUASYA INTERESTED PARTY

DORIS GAKII INTERESTED PARTY

BOAZ OTIENO OTIENDE INTERESTED PARTY

RULING

1. I have considered the motion dated 17/06/2024 the Supporting Affidavit and the opposing affidavit, as well as all annexures thereto.

The defendant though served with the application and affidavit of service filed, it has failed to file any response.

2. The interested parties have lawful and regular judgments and decrees from the trial court at Milimani Chief Magistrates Court as stated and provided at paragraph 7 of the plaint dated 17/06/2024.



3. This case is a Declaratory suit whereof the Plaintiff/Applicant, had been sued in the trial court for damages arising from a motor vehicle accident involving its motor vehicle registration no. KBS 774 D whereof the interested parties sustained injuries. It is the applicant's case that its accident vehicle had a valid insurance cover with the Defendant and therefore obligated to settle the claim arising and during the validity of the policy No. 00239397.
4. By the instant application, the Applicant/Plaintiff seeks an order pending hearing and determination of this suit, of stay of execution of the various decrees stating in its supporting affidavit that the interested parties are unlikely to suffer loss that cannot be compensated in costs and interest should the declaratory suit not be successful.
5. On the part of the interested parties, by their Replying Affidavit sworn by their Advocate Munywoki Muthangya on 8/07/2024 state that the trial courts held the plaintiff wholly liable in damages and harm they suffered and proceeded to quantify the damages.
The interested parties have not been able to enjoy fruits of their judgments as all that they have are paper decrees as they have not been able to execute them against the plaintiff.
6. Having carefully considered the application and oral arguments of Advocates for both the applicant and the interested parties, and the court being acutely aware of the obligations of an insurer of an accident vehicle where personal injuries are sustained, under provisions of Section 10 of cap 405 Insurance Motor vehicle third party Risks Act, the court is persuaded that the obligations by the defendant (insurer) have not been effected, hence this suit.
7. The court notes that the defendant herein was not party in the interested parties case before the Chief Magistrates court cases that gave rise to the judgments and decrees subject of this declaratory suit.
It would be inappropriate and unlawful to purport to hold it liable to satisfy the said decrees upto when this suit is heard and determined.
8. The Applicant/Plaintiff seeks an order of stay of execution against the interested parties, by themselves or their agents, and a restraint order from dealing in any manner with its motor vehicle Registration No. KCF 507Z which has already been attached and due for sale in execution of the judgments and decrees of the trial court, and seeks that the same be released to it pending hearing and determination of this case. It is stated to be a commercial vehicle and that its continued impoundment at the Auctioneers yard is gravely prejudicial to its interest as it continues to lose income.
9. The decretal sums in each of the six suits are individually stated in the said decrees. Contrary to submission by the plaintiff/applicant, the decretal sums for each of them do not exceed the limit of monetary jurisdiction of the Small Claim's Court.
For good order and for saving precious judicial time had each of the interested parties filed individual declaratory suits, I find it appropriate that the six parties filed the suit together.
10. The decrees in each of them are stated at paragraph 4 of the supporting affidavit sworn on 17/06/2024 by the applicant's director. The warrants of attachments are annexed as "PKW" and the total sums are stated as Kshs. 1,465,546/- as per decrees exhibited as "MM-1"
11. Upon consideration of the applicant's case, and taking into account that this suit may not be heard and concluded as soon as we may wish and further that the attached vehicle continues to lose income as averred by the applicant, and being aware that both parties interests ought to be protected by a fair and just orders, I am persuaded to grant the applicant prayers sought and stay execution of the six decrees of the interested parties subject to the Applicant/Plaintiff depositing in court security in the total sum



of the decrees, Kshs. 1,465,546/= within 21 days of this ruling. In default, the stay orders shall lapse automatically.

12. The Applicant shall pay Auctioneers fees and storage charges for the attached motor vehicle Registration KCF 507Z, for the same to be released to itself and upon compliance with the conditional stay orders stated at paragraph 11 above.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY 2024.

JANET MULWA

JUDGE

