



REPUBLIC OF KENYA



KENYA LAW
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**Britam General Insurance Company Limited v Ng'ang'a (Civil Case
E006 of 2024) [2024] KEHC 10980 (KLR) (16 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10980 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL CASE E006 OF 2024
GL NZIOKA, J
SEPTEMBER 16, 2024**

BETWEEN

BRITAM GENERAL INSURANCE COMPANY LIMITED APPLICANT

AND

NOAH KINYANJUI NG'ANG'A RESPONDENT

RULING

1. By the notice of motion application dated 22nd April 2024 brought under the provisions of sections 3A and 36 of the [Civil Procedure Act](#) (Cap 21) Laws of Kenya and Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#) and all other enabling provisions of the law, the applicant is seeking for the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honourable court be pleased to stay proceedings in any suit for damages filed arising from the accident on 24th December 2023 involving the defendant's motor vehicle registration No KCM 578R pending hearing and determination of the suit herein.
 - d. That the cost of this application be provided for.
2. The application is supported by the grounds thereto and the affidavit of even date sworn by Hope Wambugu, the Legal Manager of the applicant's company.
3. She avers in a nutshell that; the applicant insured the respondent's motor vehicle registration No KCM 578R under Insurance Policy No 552/700/1/056947/2023/07. That the vehicle policy covered risks that would occur while the vehicle was being used for the respondent's private purpose.



4. That respondent informed the applicant that on 24th December 2023, that the subject vehicle was involved in a road traffic accident along the Gilgil – Naivasha Road near the weighbridge and that some passengers in the vehicle were injured.
5. That pursuant to the afore report, the applicant conducted investigations and learnt that the respondent was using the subject vehicle to ferry passengers for hire and reward contrary to the provisions of the insurance policy.
6. That as a result, the applicant has a suit seeking for a declaration that it is not obliged to settle any claims for damages arising from any suits out of the accident, on the ground that the respondent used the subject vehicle contrary to the insurance policy.
7. The applicant avers that in the event any judgments are entered in any ensuing suits before the declaration is issued, the plaintiffs in the ensuing suits may enforce judgment against it on the ground of being the insurers and thus render the suit herein a mere academic exercise. Consequently, it is in the interest of justice that the application be allowed as prayed.
8. The matter was placed before the court on the 26th April 2024 and it was ordered that the application be served for a response. The respondent entered appearance and informed the court that, it was not opposed to the grant of the orders sought.
9. However, from the materials before the court, there is no indication of any suit against the respondent arising out of the subject accident.
10. Be that as it may, the court holds the view that, it is in the interest of justice to pursue the hearing of the main suit as there is no eminent danger against the interest and/or rights of the applicant.
11. Indeed, the parties have filed their respective pleadings and the matter is due for pre-trial directions on 30th September 2024. I therefore direct that, the application herein be held in abeyance. However, in case a suit is filed against the respondent is filed before the matter herein is concluded, the applicant is at liberty to apply.
12. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 16TH DAY OF SEPTEMBER, 2024

GRACE L. NZIOKA

JUDGE

In the presence of:

N/A for the plaintiff/applicant

Mr. Otieno for the defendant/respondent

Mr. Komen: court assistant

