



Njuki v Statutory Manager Blueshield Insurance Company Limited (Under Statutory Management) & 3 others; Maina & another (Interested Parties) (Constitutional Petition E002 of 2022) [2023] KEHC 3349 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3349 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CONSTITUTIONAL PETITION E002 OF 2022**

FN MUCHEMI, J

APRIL 20, 2023

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS UNDER ARTICLES 19, 20, 21, 22, 23, 25(C), 40(1),
40(3), 50(1), 48, 159, 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010.**

AND

**IN THE MATTER OF: CONSTITUTIONAL PETITION BY MWANIKI NJUKI AGAINST
VIOLATIONS OR ANTICIPATED VIOLATIONS OF HIS RIGHTS AND FUNDAMENTAL
FREEDOMS AS ENSHRINED UNDER THE CONSTITUTION BY THE PROBABLE
EXECUTION BY THE 1ST & 2ND INTERESTED PARTIES AS AGAISNT THE PETITIONER**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION
OF RIGHTS AND FUNDAMENTAL FREEDOMS AND ENFORCEMENT
OF THE CONSTITUTION) PRACTICE AND PROCEDURE RULES 2013**

AND

**IN THE MATTER OF: THE INSURANCE (THIRD PARTY
RISKS) ACT CAP 405, INSURANCE ACT CAP 487 AND IN
THE MATTER OF: THE INSOLVENCY ACT NO. 18 OF 2015**

BETWEEN

MWANIKI NJUKI PETITIONER

AND

**STATUTORY MANAGER BLUESHIELD INSURANCE COMPANY LIMITED
(UNDER STATUTORY MANAGEMENT) 1ST RESPONDENT
POLICY HOLDERS COMPENSATION FUND 2ND RESPONDENT
INSURANCE REGULATORY AUTHORITY 3RD RESPONDENT**



THE ATTORNEY GENERAL 4TH RESPONDENT

AND

FRANCIS MAINA INTERESTED PARTY

JUDY NJOKI MAINA INTERESTED PARTY

RULING

Brief Facts

1. The petition dated 28th January 2022 seeks the following orders:-
 - a) That there be a stay of proceedings and/or execution against the petitioner in Nyeri CMCC No. 350 of 2009 and 351 of 2009 pending the directions of the main Winding up proceedings of Blue Shield Insurance Company Limited in Milimani High Court Miscellaneous Cause No. 238 of 2017 in line with Section 67C (10) and (11) of the Insurance Act Cap 487.
 - b) A declaration that Sections 67C (10) and (11) and 179 of the Insurance Act as well as Section 10(1) of the Insurance (Third Party Risks) Act Cap 405 grant protection to insured persons or policy holders from execution of decree and apportion liability on the insurance and the policy holders compensation fund if under statutory management or liquidated.
 - c) A declaration that the petitioner and/or policy holder is lawfully protected from liability and thus assign the liability to the 2nd respondent to the extent that the law and its charter allows.
 - d) A declaration that the rights enshrined under Articles 50(1) of the Constitution of Kenya 2010 have been violated and/or are under threat of being violated since a moratorium is still in existence staying all proceedings and execution against the insured of the 1st respondent.
2. In opposition to the application, the 1st & 2nd respondents have filed a Replying Affidavit dated 18th March 2022 and the Interested Parties have filed Grounds of Opposition dated 18th March 2022.

The Petitioner's Case

3. The petitioner states that he is a defendant in both Nyeri CMCC No. 350 of 2009 and 351 of 2009 whereby the plaintiffs are the 1st & 2nd interested parties respectively. In both suits, the petitioner states that he was sued for causing a road traffic accident on 29th August 2006 by negligently driving motor vehicle registration number KAR 497Z causing it to collide with motor vehicle registration number KAA 066K. The petitioner further states that at the time he was insured by Blue Shield Insurance Company Limited which went into receivership and is currently under statutory management.
4. Pursuant to Milimani High Court Miscellaneous Cause No. 238 of 2017, the court has severally issued a moratorium which stayed the execution proceedings of the cases arising out of those persons insured by Blue Shield Insurance Company. The petitioner avers that the lower court cases are coming up for hearing and he seeks protection from any probable liability as may be apportioned by the court and the same be placed on the 2nd respondent as per its Charter.
5. The petitioner states that he is protected from any liability or any proceedings commenced or continued touching on his policy holding with Blue Shield Insurance Company Limited pursuant to Sections 67C (10) and (11) and 179 of the Insurance Act as well as Section 10(1) of the Insurance (Motor



Vehicles Third Party Risks) Act. The petitioner argues that the Cabinet is equipped with the power to establish the Policy Holders Compensation Fund who have the responsibility to cater for liabilities of insurance companies that have been wound up emanating from its policy holders. Thus, the liability having been transferred to the fund, an insured person ought to be shielded from liability of eventual claims against policy holders of insurance companies.

6. The petitioner asserts that Article 19(3) of *the Constitution* guarantees him the rights and freedoms enshrined in *the Constitution* and shall only be limited to the extent and limitations imposed in *the Constitution*. He further relies on Article 20(1), (2), (3) and (4) of *the Constitution* and contends the law allows the court to uphold and protect him from any adverse actions contrary to the law and procedure. The petitioner relies on Article 21(1) and (2) of *the Constitution* and contends that the state vide the *Companies Act* 2015 actuated the state's duty to pass legislation and policies which incorporates the concepts of moratoriums and their effects and thus ought to be promoted, fulfilled and protected by the courts.
7. The petitioner relies on Articles 22 and 23(1) and (3) of *the Constitution* and contends that the court is empowered to uphold and enforce the Bill of Rights and can seek remedies within the scope of *the constitution*. He further states that his right to a fair hearing under Article 25(c) and 50(1) of *the Constitution* cannot be limited by anybody or any organ. Pursuant to Section 48 of *the Constitution*, the petitioner argues that his right to justice ought to be upheld by declaring the lower court suits are stayed until further directions are made on the same. The petitioner further relies on Article 40(1) and (3) of *the Constitution* and argues that he ought to be granted protection from execution in the event he case proceeds and gets to be adverse and be catered for by the 2nd respondent who is bound to settle the decrees against Blue Shield Insurance Company Limited.

The 1st & 2nd Respondents' Case

8. The 1st & 2nd respondents ventilated their case through an affidavit sworn by William Masita, who is a Managing Trustee employed by the 2nd respondent. He deposes that Blue Shield Insurance Company Limited was placed under statutory management on 16th September 2011 in accordance with the provisions of the *Insurance Act*. Pursuant to Section 67 of the *Insurance Act*, the Commissioner of Insurance appointed a Statutory Manager, Mr. Eliud Muchoki Muriithi, who was later replaced by Policy Holders Compensation Fund, to manage the affairs of Blue Shield Insurance Company Limited with the intention of, among others, tracing and preserving the assets of the insurer.
9. The deponent states that by law, the statutory Manager only displaces the Board of Directors of the Company. He does not take over and/or displace the corporate personality of the company and thus the deponent contends that the institution of the suit against the Statutory Manager for and in relation to matters Blue Shield Insurance Company Limited is a misdirection on the part of the petitioner so as to render the entire petition against the 1st & 2nd respondents as filed incurably defective.
10. The deponent states that on 22nd May 2017, the 3rd respondent commenced winding up proceedings against the insurer in Nairobi High Court Misc. Cause No. 238 of 2017. The shareholders of the insurer objected to the 3rd respondent's decision to commence winding up proceedings and filed an application to that effect before the trial court but the court dismissed the said application.
11. The deponent avers that the Statutory Manager's term has been extended by the High Court from time to time particularly in Nairobi High Court Misc Civil Application No. 547 of 2012, on 3rd November 2017, extended the term of the Statutory Manager until the hearing and determination of the winding up cause Nairobi High Court Misc. Cause No. 238 of 2017. Thus upon the extension



- of its term, the Statutory Manager contemporaneously caused the extension of the moratorium on matters moratorium.
12. The deponent avers that the petitioner is entitled to protection from execution pursuant to the court's orders issued in Nairobi High Court Civil Suit No. 465 of 2011 (OS) wherein the insurer's prayers to protect its insureds against proceedings touching on their policies were granted during the currency of the aforementioned moratorium. The deponent further avers that the court orders are still in force which also provide that all proceedings of whatever nature or form against BlueShield Insurance company Limited (under Statutory Management) or its policy holders barred during the currency of the moratorium declared by the Statutory Manager.
 13. Thus, the 1st & 2nd respondents aver that it is a misconception on the part of the petitioner to claim that his rights under *the constitution* have been violated by them and that they have failed in discharging their statutory obligation. In fact, the 1st & 2nd respondents contend that they submitted the requisite statutory report that the 3rd respondent invoked in making the decision to wind up the insurer, Blue Shield Insurance Company Limited. As such, the deponent states that all the actions of the 1st & 2nd respondents in relation to the discharge of the mandate of Statutory Manager has been in good faith and no suit ought to be filed against the Statutory Manager.
 14. The deponent contends that the prosecution of the instant case vid the application and petition filed on the face of an existing moratorium is contrary to the existing court orders, it is a legal and procedural nullity, is contemptuous of the orders of the High Court and thus liable to be dismissed ex debito justitiae.
 15. The deponent states that the 1st respondent in its capacity as the Statutory Manager of Blue Shield Insurance Company is not liable for actions and/or omissions of the previous manager nor the contracts entered into by the previous managers of Blue Shield Insurance Company Limited as the 1st respondent is not privy to such actions or omissions. The Statutory Manager's duty is limited to establish the state of affairs of the Company under legal moratorium as provided under Section 67(C)(9) of the *Insurance Act*. The terms of reference for the said Statutory Manager are tracing, preserving and securing all the assets and properties of the company and the duties do not include taking responsibility and liability of Blue Shield Insurance Company's previous statutory managers/ directors actions and omissions.
 16. The deponent further contends that the Statutory Manager in conducting due diligence as by law required at the end, the law contemplates two outcomes namely that the company may be revived or liquidated. The Statutory Manager declared a legal moratorium for all classes of creditors under Section 67(C) of the *Insurance Act* and thus the petitioner by demanding that liability to be assigned to the 2nd respondent is in itself prejudicial, discriminatory and unconstitutional. In the event of possible liquidation, the deponent states that the *Companies Act* and the *Insolvency Act* outline clear procedures on the ranking of creditors which should be strictly applied in terms of priority.
 17. The deponent states that the Statutory Manager is empowered under Section 67C(9) to establish the state of affairs of the company under legal moratorium. As long as it is doing so diligently and in good faith, it is expressly protected under the law from any cause of action including the present application and petition which the deponent states is unlawful, unprocedural and ought to struck out with costs.
 18. The deponent argues that the 1st & 2nd respondents are not parties to the primary suits and their liability to the petitioner is not an issue nor is it likely to give rise to the decree which may be sought to be enforced and thus they have been wrongly sued as the petitioner has failed to disclose a cause of action against them. Moreover, the deponent avers that there exists a pending winding up cause against Blue



Shield Insurance Company Limited being Nairobi High Court Misc. Cause No. 238 of 2017 which is yet to be concluded and the court has equally not made a determination on the insolvency or otherwise of Blue Shield Insurance Company so as to invoke the mandate of the 2nd respondent.

19. The deponent argues that since the contract of insurance is between the insured and the insurer, the *Insurance act* does not contemplate a scenario where the liability under the insurance contract is to be taken by any other party other than the contracting party in accordance with the principles of privity of contract. As such, the enjoinder of the 1st & 2nd respondents is fatally defective and incompetent as the petitioner has not disclosed any cause of action against them.
20. The deponent further argues that the petition does not disclose any breach of *the constitution* but it is a claim that squarely falls under the civil courts for alleged breach of the petitioner's statutory rights under the *Insurance act* and the *Companies Act*.
21. The deponent avers that Section 179 of the *Insurance Act* calls upon the 2nd respondent to take up liability upon the liquidation order as against an insurer and no such order having been made against Blue Shield Insurance Company, the deponent states that the petition is premature, pre-emptive and presumptive and thus liable for dismissal.

The Interested Parties' Case

22. The Interested Parties argue that the instant petition is aimed at delaying the conclusion of the lower court cases which have been in the corridors of justice for over ten years. The Interested Parties state that they are not policy holders or creditors of Blue Shield Insurance Company and as such they are not affected by the moratorium declared.
23. The Interested Parties further state that they have not obtained judgment in the lower court and thus they are not creditors nor are they affected by the moratorium. Further the interested parties argue that the petitioner is guilty of inexplicable long and inordinate delay. The interested parties state that the petition is an abuse of the court process as the petitioner has not shown the damages he stands to suffer if stay is not granted.
24. Parties disposed of the petition by way of written submissions.

The Petitioner's Submissions

25. The petitioner submits that there is a moratorium in place staying all the proceedings and execution against the policyholders of Blue Shield Insurance Company Limited. Therefore the petitioner submits that he should be protected from the continuation of the subject proceedings as they are contrary to the moratorium issued by the statutory manager and also threatens his constitutional right of a fair trial pursuant to Article 50(1) of *the Constitution*. To support his contentions, the petitioner relies on the case of Insurance Regulatory Authority v Neptune Credit Management Ltd & Another [2009]eKLR.
26. The petitioner further submits that he ought to be protected as a matter of right from liability which should be undertaken by the Policy Holders Compensation Fund for insolvent companies as its core function is to burden some of the liability. The petitioner further submits that this protection ought to be outright before the determination of the road traffic accident cases of insolvent insurance companies. Further, this protection is in line with the provisions of the *Insurance Act* under Section 10 which provides that the insurer is to satisfy the decree against policy holders which the petitioner seeks to be apportioned to the Policy Holders Compensation Fund by default whenever an insurer is insolvent. The petitioner cites the case of Kensilver Express Ltd & 3 Others v Commissioner of Insurance & 4 Others [2007] eKLR to support his contentions.



27. The petitioner submits that since Section 179 establishes the Policy Holder Compensation Fund, he seeks a declaration from the court that insured persons are protected from liability when their respective insurance companies are declared insolvent or are in the insolvency process. He further submits that the said liability ought to be borne by the Policy Holders Compensation Fund as a matter of right and by default.

The 1st & 2nd Respondents' Submissions

28. The 1st & 2nd respondents rely on the cases of *Wanjiru Gikonyo & 2 Others vs National Assembly of Kenya & 4 Others* [2016] eKLR and *John Harun Mwau & 3 Others vs Attorney General & 2 Others* [2012] eKLR and submits that there is no justiciable controversy between the parties in the instant petition. The 1st & 2nd respondents argue that protection from execution has already been granted in Nairobi High Court Civil Suit No. 465 of 2011 (OS) and the court orders are still in force. This provides that all proceedings of whatever nature or form against Blue Shield Company Limited (under Statutory Management) or its policy holders are barred during the pendency of the moratorium. Thus the petition is moot for the reason that the petitioner is shielded from execution by the moratorium declared by the Statutory Manager, Blue Shield Insurance Company Limited on 16/9/2011. Further the respondents state that there is a subsisting court order in Milimani High Court Misc. Application No. 547 of 2012 issued on 3rd November 2017. As such, the 1st & 2nd respondents argue that it would be a waste of judicial time for the court to entertain the petition further, since what the petitioner is seeking has already been granted by a court of concurrent jurisdiction.
29. The 1st & 2nd respondents contend that the petitioner ought to have placed the High Court orders dated 28th October 2011 in HCCC No. 465 of 2011 before the trial court and seek that the orders be complied with by way of stay of the lower court proceedings as opposed to filing fresh proceedings clothed as a constitutional petition.
30. The 1st & 2nd respondents cite the cases of *Anarita Karimi Njeru v Republic* [1979] eKLR ; *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR and *Kiambu County Tenants Welfare Association v Attorney General & Another* [2017] eKLR and submit that the petitioner has not demonstrated with precision and certainty how they have violated his constitutional rights. The petitioner has referred to Articles 19, 20, 21, 22, 23, 25(c), 40(1), 40(3), 50(1), 48, 159, 258 and 259 of *the Constitution* but he has provided little or no particulars on the manner of the alleged infringements. The 1st & 2nd respondents argue that the petitioner ought to have set out the constitutional provisions which he believes have been violated and demonstrate how the respondents have violated them. It is not enough for the petitioner to casually outline the constitutional provisions purported to have been infringed without demonstrating with reasonable precision, how they were infringed upon. Thus, the 1st and 2nd respondents contend that the instant petition does not meet the requisite threshold of a constitution petition. Moreover, the 1st & 2nd respondents submit that the petitioner has not produced any evidence to show that his rights or the constitutional or statutory provisions have been violated.
31. The 1st & 2nd respondents contend that they have not violated any of the petitioner's rights as they did what was required of them by law. They declared a moratorium, applied for and secured stay of proceedings in the High Court in favour of the insurer and policyholders (the petitioner included) and recommended the winding up of the insurer culminating to Winding Up Cause No. 238 of 2017 filed at Milimani High Court.
32. The 1st & 2nd respondents argue that the prayer for stay of proceedings is an academic exercise since there are already existing orders staying all nature of proceedings against Blue Shield Company Limited



- (under Statutory Management) and its policy holders. The 1st & 2nd respondents cite the case of Wycliffe Otieno Onyango vs Statutory Manager Blue Shield Insurance Co. Ltd & 2 Others [2021] eKLR where the court was faced with a similar case as the present one and dismissed the petition citing that there moratorium in place protected the petitioner from execution.
33. The 1st & 2nd respondents submit that the declaratory orders sought by the petitioner are premature as the petitioner is mischievously seeking the court's intervention to determine what happens where the insurance company becomes liquidated and is unable to settle claims against its insured. The respondents further submit that the court cannot order the statutory manager to settle the claims under Section 10(1) of the Insurance (Third Party Risks) Act. If the insurance company is wound up, it is the liquidator's duty to ensure a rateable distribution of the insurance company's assets to all known creditors of the company. Currently, the respondents contend that the winding up proceedings are yet to be determined by the High Court and any issue that would arise after the determination of the winding up proceedings, such as settlement of claims in the winding up order is granted, ought not to be raised now as it is premature and sub judice.
34. Moreover, the 1st & 2nd respondents contend that there was no privity of contract between them and the petitioner, hence no orders can be made against them. Further, the petitioner has not placed any material before the court to show that the 1st & 2nd respondents neglected to take up their responsibility.
35. The 1st & 2nd respondents refer to Rule 26 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure, 2013 and the case of Feisal Hassan & 2 Others vs Public Service Board of Marsabit County & Another [2016] eKLR and submits that an order for costs ought to be made against the petitioner as he had no bona fide legal dispute against them and further that the petition is frivolous, scandalous and vexatious. The 1st & 2nd respondents contend that the petitioner is guilty of abuse of the process of the constitutional court as the underlying proceedings do not raise any pure constitutional question and as such the petition ought to be dismissed with costs to them.

The Interested Parties' Submissions

36. The interested parties submit that on 28th October 2011, Justice Mwera issued an order barring all proceedings of whatever form or nature against Blue Shield Insurance Company, its property and its policyholders during the pendency of the moratorium. The interested parties further rely on the case of In the matter of Blue Shield Insurance Company Limited (Under Statutory Management) [2017] eKLR Civil Case No. 465 of 2011 and submit that the said orders are ultra vires as they do not extend to third parties. The interested parties therefore urge the court to find and hold that they are neither policyholders nor creditors of Blue Shield Insurance and as such their suits cannot be subjected to a moratorium. The interested parties further cite the cases of In the Matter of Concord Insurance Company [2014] eKLR, Stephen Kilonzo Matiliku v Premier Industries Limited [2019] eKLR and Muthuri Ntara & Another vs Francis Mworira Igweta [2016] eKLR and submit that courts have declined to extend a moratorium to protect policy holders of an insurance company against suits by third parties for negligence, tortious acts or liability. The interested parties further submit that they should not be denied their constitutional right to access of justice enshrined in Article 48 of *the Constitution* and urge the court to set aside the orders of stay of proceedings dated 31st January 2022 as the said orders infringe on their right to due hearing and compensation for pain, suffering and loss of amenities.
37. The interested parties submit that the petitioner's claim that his right to a fair hearing will be infringed if the court does not grant stay of the proceedings is unmerited. The interested parties argue that the petitioner shall be given an opportunity to be heard in the lower court and thus his right shall not be



infringed. The interested parties cite the case of James Ng'ang'a Njenga vs Commissioner of Insurance & 3 Others (2011) eKLR to support their contentions.

38. The interested parties further submit that they are only third party victims of the negligent acts of the petitioner and should not be embroiled in the fight between the petitioner and the respondents. The interested parties further argue that settling of claims that are shown to be bona fide rests upon the policy holder and the insurer with whom the policy holders enjoys privity of contract. In the event the insurer is unable to pay, the burden lies on the insured to settle the claims of third parties and then seek alternative remedies of compensation from the respondents without prejudicing the third parties. To support their contentions, the interested parties rely on the cases of Mercy Waithira v United Insurance Company Limited Statutory Manager & 3 Others [2019] eKLR, Duncan Mogaka Muchira vs Minister for Finance & 4 Others and Kenny Jaden Kwanyiri v Minister for Finance & 3 Others [2005] eKLR. The interested parties submit that the petitioner ought not to be excluded from liability as it will prejudice them and yet they have no privity of contract with the insurance company and having no connection with the respondents, they shall not be in a position to execute their judgment or decree if their suits are allowed.
39. The interested parties further argue that granting relief sought by the petitioner would be premature and unprocedural which would be tantamount to an abuse of the court process. Additionally, the makers of the policy holders compensation fund did not have the intention of shielding policy holders against liability from third parties. In the event the prayer is granted, the proceedings of the main suit will be prejudiced as the petitioner will already be excluded from liability and it would be unlawful to hold the 2nd respondent liable yet it is not a party in the main suits thus rendering the execution of the decree impossible. The interested parties submit that if the lower court suits are successful, the petitioner has the remedy of jointly and severally suing the respondents for compensation.

Issues for determination

40. The main issues for determination are:-
- a) Whether the petition meets the threshold for a constitutional petition
 - b) Whether the petitioner is entitled to the orders sought in the petition.

The Law

Whether petition meets the threshold for a constitutional petition.

41. It is indisputable that for a constitutional petition to be sustainable it must achieve the basic threshold. With some reasonable degree of precision it must identify the constitutional provisions that are alleged to have been violated, threatened to be violated and demonstrate the manner of the violation and/or threatened violation. This principle was enunciated in Anarita Karimi Njeru v Republic [1979] KLR where the court stated as follows:-
- If a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with precision that of which he complains the provisions said to be infringed and the manner in which they are alleged to be infringed.
42. The principle in Anarita Karimi was further enunciated in Mumo Matemu v Trusted Society of Human Rights Alliance [2014] eKLR where the court said:-



We cannot but emphasize the importance of precise claims in due process, substantive justice and the exercise of jurisdiction by the court.

The principle in *Anarita Karimi Njeru* underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution*. Procedure is also a handmaid of just determination of cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenant of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* that established the rule that requires reasonable precision of framing of issues in Constitutional petitions is an extension of this principle.

43. The background facts are that the petitioner in the instant case was insured by Blue Shield Insurance Company Limited. He has stated that his motor vehicle registration number KAR 497Z was involved in a road traffic accident with motor vehicle registration number KAA 066K on 29th August 2006. The accident led to the institution of suits for damages being Nyeri CMCC No. 350 & 351 of 2009 where the interested parties are the plaintiffs respectively in each case. The trial court cases were to take off for hearing on 7th February 2022 and the petitioner moved this court seeking the prayers as outlined in his petition.
44. Regarding the prayer for stay of proceedings, the petitioner has outlined in his petition that there is currently a moratorium directing that all the proceedings and executions of those insured by Blue Shield Insurance Company Limited (under Statutory Management). The court record shows that Blue Shield Insurance Company Limited was placed under statutory management on 16th September 2011. These orders were granted in Nairobi High Court Civil Suit No. 465 of 2011 (OS) which protects all creditors and policy holders from execution during the pendency of the moratorium. It is not in dispute that the said orders are still subsisting pursuant to Milimani High Court Misc. Application No. 547 of 2012 issued on 3rd November 2017. Therefore the petitioner by virtue of the moratorium is already protected against any proceedings and execution. As demonstrated in a similar case before the High Court in Bungoma, *Wycliffe Otieno Onyango vs Statutory Manager Blue Shield Insurance Co. Ltd & 2 Others* [2021] eKLR, the petitioner ought to have informed the trial court of the existence of the moratorium in HCCC No. 465 of 2011 and seek that the orders be complied with by way of stay in the lower court proceedings. This court cannot grant an order for stay bearing in mind that the moratorium and stay granted by a court of concurrent jurisdiction in the suits aforementioned is still valid.
45. The petitioner has further argued that his rights under Articles 19, 20, 21, 22, 23, 25(c), 40(1), 40(3), 50(1), 48, 159, 258 and 259 of *the Constitution* were violated by the respondents. Although he lists the above articles and argues that his rights have been violated by the respondents, he has not demonstrated with certainty how the said rights have been violated by the respondents. He has provided no particulars as to the allegations thereunder and the manner of infringement. For instance he has cited Section 40(1) and (3) which stipulate:-
 - (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-
 - (a) Of any description; and
 - (b) In any part of Kenya
 - (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation-



- (a) Results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
- (b) Is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-
 - i. Requires prompt payment in full, of just compensation to the person; and
 - ii. Allows any person who has an interest in, or right over, that property a right of access to a court of law.

46. The petitioner has not set out with precision the respondents' acts of infringements of his rights under Article 40(1) and (3) of *the Constitution*. His argument is that since he was insured by Blue Shield Insurance Company Limited (under Statutory Management), he ought to be protected from execution in the event that the case in the lower court proceeds adversely against him.
47. Further he has cited violation of Section 48 of *the Constitution* which stipulates that:-
The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.
48. The petitioner gives no explanation on violations of his right to access to justice. Due to the nature of this petition, I find Article 48 irrelevant.
49. Regarding all the articles cited, the petitioner has merely made reference to *the Constitution* and listed the rights but has not given the particulars of the alleged infringements. This makes it impossible for the respondents to respond or answer to the allegations and complaints made by the petition. The court has no material to consider in the event that it is required to determine the petition.
50. The petitioner has further cited the provisions of the *Insurance (Motor Vehicles Third Party Risks) Act* and the *Insurance Act* particularly Section 10(1) and Sections 67C (10) & (11) and 179 respectively. Notably, he does not demonstrate how the respondents have violated the said provisions. In fact by citing the said provisions, the petitioner has acknowledged that as a policyholder he is protected under the moratorium placed by BlueShield Insurance Company Limited pursuant to Section 67C. In fact, the 1st & 2nd respondents have demonstrated that they have performed their lawful duties by placing the insurance company under statutory management, declaring a moratorium to protect the insurer's policy holders and creditors and instituting winding up proceedings which has led to the Winding Up Cause No. 238 of 2017 in Milimani High Court. Therefore, it is quite evident that there is already stay of proceedings by virtue of the moratorium in place and subsisting court orders barring the levying of execution against the policyholders of BlueShield Insurance Company Ltd. Furthermore, the petitioner has failed to demonstrate how the respondents have violated his constitutional rights and freedoms. It goes without saying that this petition leaves a lot to be desired.
51. A cursory look at the prayers in the petition, brings out prayers that are civil in nature and which ought not to have been brought by way of a constitutional petition. These are prayers a) and b) which are purely based on civil law and are just good material only in a civil suit. As for prayers c) and d) the petitioner prays for declarations that his right as a policy holder are protected under the *Insurance Act*, Cap 487 and the Insurance Third Party Risks Act, Cap 405 as well as under *the Constitution*. The Petitioner has an obligation to state in his petition the violations under *the Constitution* which he has failed to do.
52. It is not denied that orders to protect the insurer Blue Shield and the policy holders are in place having been issued in Nairobi HCC suit No. 465 of 2011 and in Nairobi HC Winding –up Cause No. 238



of 2017 that is yet to be determined. These orders are still in force and this court ought not to entertain issues already determined by competent courts. Furthermore, the outcome of the winding-up cause is not known, whether the Insurance company shall be revived or liquidated. The petitioner ought to have approached the magistrate's court where the cases against him are pending and argued his right of protection by the orders already issued by other courts. The two cases Nyeri CMCC Nos. 350 & 351 both of 2009 are yet to be heard and there is no basis that has been shown for this court to grant any orders for stay of proceedings. The magistrate's court is possessed of the requisite jurisdiction to deal with the said issues.

53. In conclusion, I am of the considered view that this petition does not meet the threshold of a Constitutional petition and ought not to be entertained.
54. Consequently, this petition is hereby struck out with costs to the respondents and interested parties.
55. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 20TH DAY OF APRIL, 2023.

F. MUCHEMI

JUDGE

Ruling delivered through videolink this 20th day of April, 2023

