



**Nyaga v Xplico Insurance Co Ltd (Civil Case E005 of 2023)
[2023] KEHC 27327 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL CASE E005 OF 2023
SN MUTUKU, J
SEPTEMBER 21, 2023**

BETWEEN

PAUL NG'ANG'A NYAGA PLAINTIFF

AND

XPLICO INSURANCE CO LTD DEFENDANT

RULING

1. This ruling relates to the Notice of Motion (the application) dated April 11, 2023 brought by Paul Ng'ang'a Nyaga (the applicant) under various provisions of the law as shown on the face of the Application. The Applicant seeks the following orders:
 - i. That the instant application be certified urgent and be heard ex parte in the first instance.
 - ii. That pending the hearing and final determination of this application inter partes, or until further orders, there be and is hereby ordered a stay of execution of judgment, decree, proclamation, attachment, and all subsequent orders in Ngong PMCC No. 63 of 2023 (Muia Kituva James v. Marion Njeri Gathendu & Paul Ng'ang'a Nyaga).
 - iii. The pending hearing and final determination of this suit, there be a stay of execution proceedings in Ngong PMCC No. 63 of 2019.
 - iv. That the Defendant to meet the costs of this application.
2. The grounds in support of the application are found on the face of it and in the Supporting Affidavit sworn by the Applicant on April 11, 2023.
3. The grounds in support of the application can be summarized as follows, that the Applicant was the registered owner of motor vehicle registration number KCE 237D Toyota VX which he had insured with the Respondent against third party risks under insurance policy number 070/0170020/16/07/100; that the express or implied term of the contract of insurance was that the



Respondent would indemnify the Applicant from risks arising from third party risks arising from third party claims and subsequent court cases relating to thereto including offering legal services and settlement of judgments and decrees in such cases.

4. The Applicant has deposed that the said motor vehicle was involved in a road traffic accident along Magadi Road at Ongata Rongai as a result of which a third party was injured; that the victim filed Ngong PMCC No. 63 of 2019; that the Respondent instructed M/S Ahmednassir, Abdikadir Advocates to represent the Applicant; that the said advocates, under the instructions of the Respondent, entered into a consent judgment on liability and submitted on quantum of damages leading to final judgment in favour of the victim in the tune of Kshs762,840/.
5. The Applicant has stated that the Respondent failed to settle the decretal amount leading to the third-party instructing M/S Betabase Auctioneers to execute the judgment; that the said auctioneers have proclaimed the Applicant's household goods on April 6, 2023. It is the Applicant's argument that he now runs the risk of being rendered bankrupt and destitute should the execution take place and that the Respondent has a legal duty to settle and/or liquidate the decretal sum in the lower court case.
6. Interim orders were issued by this court pending the hearing and determination of this application. Despite service of the Application, the Respondent did not attend court to respond to the issues raised in the application or file any documents.
7. Mr. Kimani for the Applicant informed the court on July 25, 2023 when this matter came up for hearing that he did not wish to submit on the matter but would be relying on the Supporting Affidavit.
8. I have considered the application and the attached documents. I have confirmed through the attached documents that indeed the Applicant's goods have been proclaimed and that there is danger that execution may proceed if this court does not issue the orders sought.
9. I hereby allow prayers 3 and 4 of the notice of motion dated April 11, 2023 pending the hearing and determination of this suit.
10. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED 21ST SEPTEMBER 2023.

S. N. MUTUKU

JUDGE

