



Mua Insurance (Kenya) Co. Ltd v Astron Enterprises Limited (Civil Suit 21 of 2023) [2023] KEHC 23461 (KLR) (6 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 21 OF 2023
DKN MAGARE, J
OCTOBER 6, 2023**

BETWEEN

MUA INSURANCE (KENYA) CO. LTD PLAINTIFF

AND

ASTRON ENTERPRISES LIMITED DEFENDANT

RULING

1. The applicant filed suit on 11/3/2023. Simultaneous with the suit they filed an application under, inter alia, section 10(4) of the [Insurance \(Motor Vehicle Third Party Risks Act](#) Cap 405. They sought the following prayers:-
 - a. Spent
 - b. That there be stay of proceedings before the Mombasa CMCC No 1645 of 2022; Samuel Moka Mwanzame & Dickson Mwashighadi Moka (Suing as the legal representatives of the estate of the late Alfred Mwazam Moka Versus Astron Enterprises Limited pending the hearing and determination of the instant application.
 - c. That there be stay of proceedings before the Mombasa CMCC No 1645 of 2022; Samuel Moka Mwanzame & Dickson Mwashighadi Moka (Suing as the legal representatives of the state of the late Alfred Mwazam Moka Versus Astron Enterprises Limited pending the hearing and determination of the disclaimer suit filed by the Plaintiff/Applicant herein.
 - d. That the costs of this application be provided for.
2. The main grounds was that there was a policy No MGL/08/087/0/001459/2022 issued to the defendant.
3. The said policy covered an accident arising out of use of the policy. The same however excluded false and fraudulent claims.



4. They also excluded drunk and drivers under influence of alcohol.
5. The driver is alleged to have had 0.346 mg of alcohol.
6. They seek to have the primary suit stayed pending determination of this suit.

Analysis

7. The duty of the courts is to do justice.
8. The plaintiff's duty is to raise a prima facie case.
9. In the event, the Court finds for the defendant. This Judgment will be useful for the Plaintiff in the Primary suit. It is a win- win situation.
10. I am aware that the suit will be rendered otiose, if it proceeds. The primary suit proceeds.
11. I am satisfied that the plaintiff has met the criteria for grant of stay of proceedings in the circumstances. I allow the Application dated 13/1/2023, in the following terms:-
 - a. That there be stay of proceedings before the Mombasa CMCC No 1645 of 2022; Samuel Moka Mwanzame & Dickson Mwashighadi Moka (suing as the legal representatives of the state of the late Alfred Mwazam Moka Versus Astron Enterprises Limited) pending the hearing and determination of the disclaimer suit filed by the Plaintiff/Applicant herein.
 - b. The Plaintiff to expedite the hearing of this suit.
 - c. The suit be heard on a priority basis.
 - d. The orders here shall lapse on 31/12/2024, if the suit shall not have been concluded.
 - e. The parties to fix the matter for direction immediately after the Ruling.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 6TH DAY OF OCTOBER, 2023.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:

Amani for the Applicant

No appearance for the Respondent

Court Assistant - Brian

