



Old Mutual Insurance v Multi Gibbs Enterprises; Walunywa (Intended Interested Party) (Suing as Representatives of the Estate of Rashid Malanda- Deceased) (Civil Case E002 of 2022) [2024] KEHC 16307 (KLR) (1 October 2024) (Ruling)

Neutral citation: [2024] KEHC 16307 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL CASE E002 OF 2022
REA OUGO, J
OCTOBER 1, 2024**

BETWEEN

OLD MUTUAL INSURANCE PLAINTIFF

AND

MULTI GIBBS ENTERPRISES DEFENDANT

AND

**LILIAN WALUNYWA INTENDED INTERESTED PARTY
SUING AS REPRESENTATIVES OF THE ESTATE OF RASHID MALANDA-
DECEASED**

RULING

1. The applicant in an application dated 26th May 2024 seeks that she be enjoined to the suit as an interested party and that if this prayer is granted she be granted leave to file a response to the application dated 27.4. 2023 and file a defence and that the costs be borne by the respondents. She avers that she is a plaintiff in Bungoma CMCC No. 299 of 2022 which is the subject in the suit before this court. That the plaintiff in this suit wants a stay of proceedings in Bungoma CMCC No. 299 of 2022 and that the decision in this case will adversely affect her. That the plaintiff in this suit was the insurer of the defendant’s motor vehicle in this suit who is also the defendant in Bungoma CMCC No. 299 of 2022.
2. The application was opposed. The plaintiff/ respondent filed an affidavit sworn by Cheryl Odipo. It is averred that the application is devoid of merit and warrants a dismissal. That a judgment has been delivered in Bungoma CMCC No. E299 of 2022 on the 30.9.2023. If the primary suit has been concluded the application for a stay of proceedings would stand spent and the suit would have no merit.
3. In a supplementary affidavit the applicant admits that the judgment was delivered in CMCC No. 299 of 2022, however, the defendant filed an application to set aside the judgment which was allowed



on 24.1.2024. The defendant has filed a defense and when the matter was before the trial court her advocates objected after a police officer was called to testify. She has filed an appeal on the said ruling.

4. I have considered the application by the interested party/ applicant the affidavits filed by the parties, and the oral submissions, and in my view the applicant's application has merit. Her interest as explained in her affidavits in support of her application, could be affected. Joining her in the suit that is before this court will not prejudice any of the parties. It is in her interest that she gets to know whether the plaintiff will be successful in this suit. I therefore allow the application dated 26.5.2023 in terms of prayer one. The applicant shall respond to the application dated 27.4.2023 within 21 days. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 1ST DAY OF OCTOBER 2024.

R.E. OUGO

JUDGE

In the presence of:

Applicant - Absent

Mr. Mugiro For plaintiff/ Respondent

Defendant - Absent

Wilkister - C/A

