



Tahmeed Express Limited v Amaco Assurance Company Limited; Achola (Interested Party) (Civil Case E001 of 2024) [2024] KEHC 14244 (KLR) (22 October 2024) (Ruling)

Neutral citation: [2024] KEHC 14244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL CASE E001 OF 2024
WM MUSYOKA, J
OCTOBER 22, 2024**

BETWEEN

TAHMEED EXPRESS LIMITED PLAINTIFF

AND

AMACO ASSURANCE COMPANY LIMITED DEFENDANT

AND

SUSAN ANYANGO ACHOLA INTERESTED PARTY

RULING

1. The Motion for determination, dated 16th September 2024, is at the instance of the plaintiff. It would like execution of the decree, issued in Busia CMCCC No. 49 of 2018, to be stayed pending hearing and determination of the suit herein.
2. The background, according to the plaintiff, is that the interested party had sued the plaintiff, in Busia CMCCC No. 49 of 2018, to recover compensation, arising out of a motor traffic accident, involving a vehicle it owned. Judgment was entered in favour of the interested party, and she is now proceeding to execute the resultant decree. The case by the plaintiff is that its vehicle was insured, and, therefore, the decree should be settled by the insurer, hence the instant suit. It would like the execution against it to be stayed, while it sorts out the dispute between it and its insurer.
3. There is a response to the Motion, by the interested party, through its Advocate, Mr. Joseph Vitalis Juma. The principal point, made in his response, is that the suit in Busia CMCCC No. 49 of 2018, involved Tahmeed Transporters Limited, as a defendant, and not Tahmeed Express Limited. It is also disclosed that Tahmeed Transporters Limited had asked for, and had been given time, in Busia CMCCC No. 49 of 2018, to pay, and it failed to. Proof has also been provided, that the court, in Busia CMCCC No. 49 of 2018, had granted stay of execution.



4. The Motion was placed before me, on 17th September 2024, and I gave directions on disposal, and granted temporary relief.
5. The application was argued orally, before me, on 7th October 2024, where the Advocates for the parties breathed life to their respective filings.
6. I called for the original trial records in Busia CMCCC No. 49 of 2018. They were made available. I have perused the file. I have confirmed that it was a suit against Tahmeed Transporters Limited. The pleadings, in that cause, were never amended, at any stage, to introduce the plaintiff as a party in that suit. The suit was resolved by way of a consent, between the interested party and Tahmeed Transporters Limited, which was executed by their respective Advocates on 25th August 2022, and was adopted as an order of the court on 22nd November 2022. No formal decree, however, has ever been extracted, founded on the order of 22nd November 2022.
7. The one issue is that the suit, in Busia CMCCC No. 49 of 2018, was against Tahmeed Transporters Limited. The judgment was passed against Tahmeed Transporters Limited, and not Tahmeed Express Limited, the plaintiff herein. The plaintiff has not tried to explain the connection between Tahmeed Transporters Limited and Tahmeed Express Limited, or why a judgment against Tahmeed Transporters Limited should affect Tahmeed Express Limited. The 2 companies are separate legal entities, unless the contrary is established, and a judgment or decree against one cannot be enforced against the other. The plaintiff has not made a case, for stay of execution of a judgment or decree which had not been passed against it, but against another party altogether, in a suit in which the plaintiff was not a party.
8. Secondly, the plaintiff did not disclose that Tahmeed Transporters Limited obtained stay orders in its favour, in Busia CMCCC No. 49 of 2018, and was granted extended periods of time to make good the judgment against it. There could be a sense that the plaintiff is forum-shopping, in ways that are designed to mislead courts, to grant orders to frustrate execution in Busia CMCCC No. 49 of 2018.
9. In view of everything said above, I am not persuaded that the Motion, dated 16th September 2024, is merited. I hereby dismiss it, with costs. The interim orders, made on 17th September 2024, are hereby discharged. The court file, in Busia CMCCC No. 49 of 2018, shall be returned to the Chief Magistrate's Court registry. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 22ND DAY OF OCTOBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Brasiny Nyabero Bokoo, Advocate for the plaintiff.

Mr. Juma, instructed by JV Juma & Company, Advocates for the interested party.

