



**Kimani v Chege (Civil Appeal E971 of 2023)  
[2024] KEHC 14827 (KLR) (Civ) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14827 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E971 OF 2023**

**CW MEOLI, J  
NOVEMBER 21, 2024**

**BETWEEN**

**JAMES CHEGE KIMANI ..... APPLICANT**

**AND**

**EVANS CHEGE ..... RESPONDENT**

**RULING**

1. Before the Court for determination is the motion dated 24.07.2024 brought by Evans Chege, the Respondent (hereafter the Applicant) seeking inter alia that the sum of Kshs.1,000,000/- deposited in Court on 30.04.2024 be released to the Applicant’s advocates. The motion is expressed to be brought pursuant to Section 1A, 1B & 3A of the *Civil Procedure Act* (CPA), among others. On the grounds on the face of the motion as amplified in the supporting affidavit sworn by Applicant. To the effect that judgment in Nairobi Milimani MCCC E3466/2022 (hereafter lower Court suit) was delivered in his favour in the sum of Kshs. 2,720,963/-, costs of Kshs. 189,438/- and interest; that James Chege Kimani, the Appellant (hereafter the Respondent), subsequently preferred the instant appeal; and that the Respondent filed an application seeking inter alia to stay execution and was ordered to deposit a sum of Kshs. 1,000,000/- into Court as condition for temporary stay orders pending hearing and determination of the stay application and another subsequent application for review of the terms relating to security.
2. The deponent further states that by a ruling delivered on 13.06.2024 the two motions were dismissed with costs, the court effectively declining to grant leave to appeal out of time; finances to cater for urgent medical attention involving the removal of metal implants as well as payment of medical bills; and that he reasonably believes that Respondent has already made a request to have the funds deposited in Court released to him when he is yet to satisfy the lower Court decree. He further deposes that the



purpose of the deposit has dissipated; that the Respondent has not made any payment in settlement of the lower Court decree; and that allowing the motion will enable him enjoy the fruits of his judgment.

3. The Respondent opposes the motion by way of a replying affidavit dated 02.10.2024. to the effect that his motor vehicle, insured by Invesco Assurance Co. Ltd, was involved in the accident with the Applicant who was injured. That pursuant to Section 10 of the [Insurance \(Motor Vehicle Third Party Risks\) Act](#), the insurer is duty bound to satisfy any third-party claims as a result of the accident. He further states that he is aware that Invesco Assurance Co. Ltd is under statutory management and that the Policy-Holders Compensation Fund (PCF) has been appointed the statutory manager as from 14.08.2024, and a moratorium declared on all payments for a period of six (6). Thus, in the interest of justice, the Applicant ought to pursue the insurance company through the statutory manager for settlement.
4. He therefore urges the Court to stay the motion during the declared moratorium period in order to enable the statutory manager to pay the Applicant's claim. He reiterates that it is the duty of the insurer to compensate the Applicant. That this Court ought to release the Kshs. 1,000,000/- deposited in Court for onward transmission to the individual who loaned it to him to utilize as deposit.
5. The parties agreed that the motion be determined on the basis of the parties' respective affidavit material on record, which the Court has duly considered.
6. The Applicant's motion seeking release of deposited monies invokes inter alia the provisions of Section 1A, 1B and 3A of the [Civil Procedure Act](#) (CPA), the latter which this Court has repeatedly addressed that reserves "the inherent power of the court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court".
7. The Court of Appeal in [Rose Njoki King'au & Another v Shaba Trustees Limited & Another](#) [2018] eKLR while addressing itself to the latter provision stated that: -

"Also cited was Section 3A of the [Civil Procedure Act](#) which enshrines the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. In *Equity Bank Ltd versus West Link Mbo Limited* [2013], eKLR, Musinga, JA stated inter alia, that, by "inherent power" it means that

"Courts of law exist to administer justice and in so doing, they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure that the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without its being derived from [the Constitution](#) or statute. Such power enables the judiciary to deliver on their constitutional mandate.....inherent power is therefore the natural or essential power conferred upon the court irrespective of any conferment of discretion."

The Supreme Court went further in [Board of Governors, Moi High School Kabarak and another versus Malolm Bell](#) [2013] eKLR, to add the following:-

"Inherent powers are endowments to the court as will enable it to remain standing as a constitutional authority and to ensure its internal mechanisms are functional. It includes such powers as enable the Court to regulate its intended conduct, to safeguard itself against contemplation or descriptive intrusion from elsewhere and to ensure that its mode of disclosure or duty is consumable, fair and just." (Emphasis added).



8. The background to the motion is that the Respondent, being aggrieved with the decision in the lower Court suit, preferred this appeal. Equally, the Respondent filed two motions dated 21.09.2023 and 03.11.2023. The former was seeking inter alia that this Court be pleased to enlarge the time for filing of the appeal herein; and that pending hearing and determination of the appeal an order to stay execution of the ex parte judgment and orders issued on 02.03.2023 in favour of Applicant in the lower Court suit. The latter motion sought that this Court be pleased to allow the Respondent to deposit security in the form of a title deed in lieu a cash deposit of Kshs. 2,000,000/- (pursuant to the interim order issued by this Court).
9. During the pendency of both applications, the Respondent was ordered to deposit the amount of Kshs. 1,000,000/-, failing which the latter motion, relating to the interim order, would stand, spent. On 30.04.2024 the Respondent deposited the stated sum and the Court proceeded to hear and determine both applications.
10. In a ruling delivered on 13.06.2024, the Court held inter alia that: -

“A motion of this nature principally stands or falls on the demonstration of “good and sufficient cause” by an applicant; it is what unlocks the Court’s discretion. The Court agrees with the Respondent that the Applicant has not demonstrated “good and sufficient cause”. While the Court is alive to the emphasis in *Vishva Stone Suppliers Company Limited v RSR Stone (2006) Limited* [2020] eKLR concerning the importance of the right of appeal, the right is not absolute, and a blundering party who squanders his legal options has only himself to blame. He cannot expect the respondent to suffer prejudice arising from his default. The prayer for leave to appeal out of time has not been justified. The Court finds no merit in 1<sup>st</sup> motion upon which the 2<sup>nd</sup> motion is premised. Both are hereby dismissed with costs.”
11. Hence the present application for the release of the sum of Kshs.1,000,000/- deposited in Court on 30.04.2024. The undisputed facts gathered from the rival affidavit material are that the Applicant was involved in a road traffic accident involving the Respondent’s motor vehicle, which at the time was insured by Invesco Assurance Co. Ltd. That subsequently a suit filed by the Respondent yielded a decree (annexure EC-1) in favour of the Applicant which the Respondent sought to challenge by way of appeal. However, the leave sought to file an appeal out of time was denied. Therefore, no appeal exists.
12. The Respondent’s response cites Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act. While it is true that by dint of Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act, the insurer, Invesco Assurance Co. Ltd., has the duty to satisfy any third party claims arising from the subject accident, what is presently before the Court is an application seeking release of sums deposited as security pending the hearing and determination of the Respondent’s motions dated 21.09.2023 and 03.11.2023. The motions were dismissed, with the consequence that no appeal exists in respect of the lower Court judgment and decree. Nevertheless, Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act provides for certain conditionalities for a declaration of satisfaction to issue, as espoused by the Court of Appeal in *Jiji v Gateway Insurance Co. Ltd (Civil Appeal 126 of 2018)* [2022] KECA 368 (KLR). That however is not a matter for this court.
13. Moreover, the Respondent was not privy to the insurance contract between Invesco Assurance Co. Ltd and the Applicant. The decree for which partial satisfaction is sought by way of release of deposited sums was against the Respondent and not Invesco Assurance Co. Ltd. The said decree did not arise from a declaration of statutory obligation pursuant to Section 10 of the *Insurance (Motor Vehicle Third*



Party Risks) Act. Therefore, the alleged moratorium notice by the PCF is of no moment here. Neither is the matter of the alleged third party who supposedly lent the subject sums to the Respondent.

14. The requirement for the furnishing of security as condition for granting stay of execution is found in Order 42 Rule 6 (2) CPR and is intended” for the due performance of such decree or order as may ultimately be binding” n the applicant seeking stay. Here, the appeal was rendered stillborn by the ruling dismissing the Respondent’s motions, which means that the parties reverted to the position where the decree in the lower court requires satisfaction. By definition, the security is intended for such situations and there can be no justification here to deny the Applicant his just dues which have crystallized under the law.

15. In the result, motion dated 24.07.2024 is merited and is hereby allowed with costs to the Applicant.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 21<sup>ST</sup> DAY OF NOVEMBER 2024.**

**C. MEOLI**

**JUDGE**

In the presence of

Mr. Masana for the Applicant/Respondent

N/A for the Respondent/Applicant

C/A: Erick

