



**Takaful Insurance of Africa Limited v Board of Governors, Matumbei Secondary School  
(Civil Suit E008 of 2024) [2024] KEHC 14279 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14279 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT E008 OF 2024  
RN NYAKUNDI, J  
NOVEMBER 15, 2024**

**BETWEEN**

**TAKAFUL INSURANCE OF AFRICA LIMITED ..... PLAINTIFF**

**AND**

**BOARD OF GOVERNORS, MATUMBEI SECONDARY SCHOOL DEFENDANT**

**RULING**

1. What is coming up for determination is the Plaintiff's Notice of Motion dated 3<sup>rd</sup> May, 2024 expressed to be brought under the provisions of Order 51 Rule 1 of the Civil Procedure Rules, Section 3A and 63(e) of the *Civil Procedure Act*. The applicant seeks orders to wit: -
  - a. Spent
  - b. That this court be pleased to stay proceedings in Eldoret Small Claims Court pending the hearing of the application being: Eldoret SCCC No. E1050 through E1078, E1080 through E1094 all of 2023.
  - c. That there be stay of proceedings before the Eldoret Small Claims Court pending the hearing and determination of the suits listed herein above.
  - d. That the costs of this application be provided for.
2. In support of the application are grounds and the Affidavit of Dolphin Moindi. The Plaintiff averred that suits have been filed in Eldoret Small Claims Court being Eldoret SCCC Nos, E1050, through E1078, E1080 through E1094 all of 2023 against the Defendant herein seeking damages resulting from an alleged Road Traffic Accident involving the Defendant's Motor Vehicle Registration No. KCH 709Q, and the same might proceed to completion thereby expecting the Plaintiff herein to make good the judgment which it should not.



3. That the primary suit in the subordinate court, Eldoret Small Claims Court being listed above are compensatory claims for loss and damages arising from a road traffic accident involving the defendant's Motor Vehicle Registration No. KCH 709Q wherein passengers were seriously injured.
4. The applicant further averred that the said motor vehicle registration KCH 709Q is the subject matter of an insurance policy cover No. P/ELD/2023/102/148396, issued to the defendant by the Plaintiff/Applicant.
5. That upon investigations it was discovered that at the time of accident the motor vehicle registration number KCH 709Q was used for carriage of a group of Sabaot community elders and not school students and/or staff contrary to the provisions of the insurance policy entered into by the Plaintiff and the Defendant.
6. That in the event the compensatory suits in the subordinate court proceed to conclusion and judgments issued, then the Plaintiff therein would be at liberty to enforce the judgment against the Plaintiff/Applicant herein as the insurer of the Defendant's motor vehicle, which event would render the instant application a mere academic exercise.
7. Besides the instant application, the interested party through legal counsel Mr. Omusundi filed yet another Notice of Motion expressed to be brought under Section 1, 1a, 3, 3a, 3b of the Civil Procedure Act and Order 8 Rule 1 and 5 of the Civil Procedure Rules seeking a substantive order that this honorable court be pleased to grant leave to the applicant and 16 others to be enjoined as the interested parties. The Notice of Motion is grounded on the affidavit by one John Chesumbai whose ground interalia states that himself and 16 others were awarded damages in a judgment entered on their favor against Matumbei Secondary school following an accident involving the defendant's motor vehicle Reg. No. KCH 709Q. That it is just and equitable for the interested party to be enjoined to this cause to protect their interests.

#### **Determination**

8. Having read through the application and the affidavit in support, the only issue to be determined is whether the court can stay the proceedings at the small claims court regarding the aforementioned suits. I have perused the record and I take note that the application has not been opposed as the Respondent did not file a response.
9. While noting the absence of opposition from the Respondent, this court is mindful that it must nevertheless satisfy itself of the legal and factual basis for granting the orders sought. The court's duty to properly exercise its judicial discretion remains undiminished despite the application being unopposed.
10. The guiding principles operative in this discussions are fairly settled. In the William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others [2019] eKLR, a 5-judge Bench of the High Court, after considering variety of decisions on this question, laid out concrete principles that our courts have established for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court. (See Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000), David Morton Silverstein v Atsango Chesoni [2002] eKLR & Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR). The following principles were laid down:
  - a. First, there must be an appeal pending before the higher Court;
  - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for



such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favor of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;

- c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
  - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
  - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal;
  - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
11. The above-mentioned factors are what the court ought to consider before making a decision as to whether to grant stay of proceedings or not.
12. In the case of *Kenya Wildlife Service Vs James Mutembei* (2019) eKLR, Gikonyo J held that:
- “Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”
13. In *Global Tours & Travels Limited*; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J, (as he then was) stated that: -
- “As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.
14. In *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, it is provided that:
- “The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”



This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case”.

15. As it can be discerned from the above cited authorities, the question of stay of proceeding is such a serious and grave issue which can only be considered in deserving circumstances. This court is clothed with the wide discretion to issue such orders but the same ought to be exercised judiciously on a case to case basis.
16. This court must weigh the balance of convenience between the parties. The Applicant raises concerns about potential liability under the insurance policy, staying proceedings in multiple Small Claims Court cases would effectively deny or delay access to justice for numerous claimants who allege personal injuries. The balance of convenience clearly favors allowing the Small Claims Court matters to proceed expeditiously.
17. The applicant approached this court on the strength of the suits filed at the Small Claims Court against the Respondent seeking compensation for personal injuries that occurred as a result of an accident involving the Respondent’s Motor Vehicle Registration No. KCH 709Q. The argument advanced by the Applicant is that the Respondent herein cannot be indemnified under the insurance policy in place as the Applicant is not liable to settle judgments that may arise for reasons that it was discovered that at the time of the accident the motor vehicle registration number KCH 709Q was used for carriage of a group of sabaot community elders and not school students and/or staff contrary to the provisions of the insurance policy entered into by the Plaintiff and the defendant.
18. I share the opinion that the Small Claims Court has jurisdiction to preside over those suits and if anything, the question that curls itself from the applicant’s arguments is that of liability. The applicant ought to have raised at the earliest opportunity the issue of liability and have the court determine the same.
19. Whether the court should exercise its discretion to grant stay of proceedings as appreciated from the authorities cited depends on the circumstances of each case, but the essential question here is whether there is a risk of injustice to one or another to the proceedings before the Small Claims Court. In particular, the Plaint by the applicant is premised on motor vehicle registration KCH 709Q being the offending vessel on the allegations of an accident involving the claimants in the various suits still being canvassed and pending conclusion. The Plaintiff is not even an interested party in the ongoing proceedings before the Small Claims Court. Their interests as pleaded in the Plaint is on the policy of insurance document allegedly issued to the defendant Matumbei Secondary School the carrier of the risk under the tort of negligence. A quick perusal of the sample files before the Small Claims Court shows that the proceedings on both liability and quantum are yet to be determined. This court further takes judicial notice that proceedings before the Small Claims Court are governed by strict statutory timelines of sixty (60) days from initiation of the suit to the final judgment. The Plaintiff coming as it did before this court without taking into account the stringent test in the Small Claims Court on case management and resolution of claims to seek stay before the High Court is generally meant to oust the provisions of the statute. The formulation of this application if considered in favor of the applicant would occasion an injustice to one or both parties currently involved in a serious litigation which is time bound by the statute. So that in my humble view, liability and quantum is yet to be fully



considered and determined by the Small Claims Court. It is worth of note that there is a motor vehicle involved in the various claims pending before the Small Claims Court but there is no judgment to be enforced against the Plaintiff in Civil suit No. E008 of 2024. On the other hand, it is not clear from the application whether the Plaintiff is litigating before the Small claims court as the insurer through the insured or the defendant is participating in the suit as an independent party in breach of the duty of care to the Claimant. On the question raised by the Applicant, I think it is prudent to venture into the realm of repudiation of the policy after the conclusion of the pending claims before that other forum. I therefore decline that the affidavit evidence before me supported the applicant's contention that there was a risk. That the respondent will be unable to pay the judgment sum and pass it on to the insurer while fully aware there existed an exclusion clause as to the risks insured, I am of the opinion that there is a greater risk of injustice to the Claimants in the Small Claims Court if stay was granted at this early stage of the case docket's management.

20. Having examined both applications filed in support of the motions, it is clear to this court that in the first application dated 3<sup>rd</sup> May, 2024, the real prospect of success of the suit from which it could probably find its judgment will be rendered nugatory or it will suffer some other irremediable damage is one the Small Claims Court pronounces itself on the pending claims. Ultimately however I am not satisfied that the Plaintiff as of now would be ruined in the absence of stay or its situation as established some exceptional circumstances to warrant the reliefs sought in the application. The first motion is therefore denied. On the other hand, the application dated 30<sup>th</sup> September, 2024 be and is hereby allowed. Each party to bear their own costs.

**SIGNED, DATED AND DELIVERED AT ELDORET THIS 15<sup>TH</sup> DAY OF NOVEMBER 2024.**

**R. NYAKUNDI**

**JUDGE**

Email: nsmatiri.mmcadv@gmail.com

In the Presence of:

Ms. Kimathi, Advocate for the Applicant.

