



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT VOI**

**CIVIL CASE NO. 2 OF 2019**

**BRITAM GENERAL INSURANCE COMPANY LTD.....PLAINTIFF**

**VERSUS**

**1. RENTCO EAST AFRICA LIMITED**

**2. CO-OP BANK FLEET AFRICA LEASING LTD.....DEFENDANTS**

**AND**

**1. FESTUS MBITHI THOMAS**

**2. JOHN NDEGWA KARIUKI**

**3. GEORGE GATHI WANJAMA**

**4. DAVID MURIITHI KINGORI**

**5. FREDRICK MURIITHI NJIRU**

**6. PAUL MATHIKA WAMBUA**

**7. SIMON MURIITHI KIMANI**

**8. JACKSON MUGAMBI MUNGATHIA .**

**9. VICTOR AMONYI MUGALA**

**10. JAMES KIOKO KYALE**

**11. JARED ONYINKWA MAOGA**

**12. DAVID KIRWA KIPKOKEY**

**13. HUSSEIN ISSACK MAALIM**

**14. FREDSON MWITA CHAGOCHE**

**15. BONAYA DIKA GONJOBE**

**16. GIDEON MWITI NYAGA**

17. CHARLES KIPROTICH KOSGEY
18. SAMUEL ODOYO ODHIAMBO
19. ABDIRAHMAN ABDI WAKO
20. JOSHUA WANYONYI TEMBULAH
21. SAMSON KIBOWEN BORE
22. JEREMIAH THUO GACHIGI
23. BENARD KIPKEMOI ROTICH
24. ATHUMAN SWALEH SAID
25. SHADRACK KIPCHUMBA ROTICH
26. KIPKOECH CHIRCHIR CYLUS
27. PATRICK WAWIRE NDOMBI
28. KEVIN JUMA WAFULA
29. JULIUS LEMAYAN EKONDOYO
30. ERICK MOKAYA MANG'ERA
31. DANIEL KEMEI YEGON
32. JACKSON KIPKIRUI CHERUIYOT
33. KENNEDY KIPROP KEMBOI
34. PETER ONGER ORORA
35. MICHAEL OMONDI OWINO
36. EDWIN OBASI
37. JARED ONYINKWA MAOGA.....INTERESTED PARTIES

**RULING**

1. By Notice of Motion here dated 10/12/2020 the Plaintiff prays for orders:
  2. **THAT** the Applicants herein be enjoined in this suit as Interested Parties.
  3. **THAT** all the court processes commenced herein by the Plaintiff and/or the Defendants be served upon the Interested Parties/Applicants for their appropriate response thereto and/or necessary action; and
  4. **THAT** the costs of this application be provided for.
2. The application is premised on grounds set out therein and is supported by affidavit of **Shem Kebongo** sworn on 10/12/2020.
3. The Applicant's case is that the Interested Parties herein are General Special Unit Officers who were involved in a road traffic accident on the 21/2/2019 while on board motor vehicle registration number GKB 904T Isuzu sold FT; that the Interested Parties/Applicants herein subsequently instructed the firm of **SHEM KEBONGO** to institute suits for the recovery of damages in civil matters filed against the Defendant herein in Voi CMCC Nos. 81/19, 82/19, 83/19, 84/19, 85/19, 86/19, 87/19, 88/19, 89/19, 90/19, 91/19, 92/19, 94/19, 95/19, 96/19, 102/19, 103/19, 104/19, 105/19, 106/19, 107/19, 108/19, 109/19, 110/19, 111/19, 112/19, 113/19, 114/19, 115/19, 116/19, 117/19,

118/19,119/19, 120/19, 121/19, 122/19, 123/19; that some of the matters filed in the lower court have since been heard and the court has rendered itself on the same; that the Plaintiff has filed application herein seeking to stay proceedings in the suits filed by the Interested Parties in the lower court; that any orders that may be issued by this Court with regard to the said application and suit is likely to affect the Interested Parties' suits that have been filed in the lower court; that the Interested Parties are apprehensive that if this application is not granted they stand to suffer great prejudice as the orders that will flow from determination of this suit is likely to affect the aforesaid matters in the lower court; and that if the Interested Parties are joined hereto they would be able to vindicate their interests, in a fair transparent manner.

4. Only the 2<sup>nd</sup> Defendant opposed the application via grounds of opposition dated 11/12/2020 stating that the application is misconceived, frivolous and bad in law; that the proposed Interested Parties have not demonstrated their stake in this suit, and do not qualify as Interested Parties within the threshold set by the Supreme Court in **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR**; that there is no privity of contract between the Plaintiff/Applicant, 2<sup>nd</sup> Defendant/Respondent and the Proposed Interested Parties in relation to the alleged motor commercial Insurance Policy, and that the application is an abuse of the court as it will delay the subject suit contrary to Article 159(2)(b) of the Constitution of Kenya, 2010.

5. The Plaintiff did not oppose the application.

#### **Submissions and Determination**

6. Only the Applicants filed submissions, stating that by dint of the Plaintiff's application dated 3/3/2020, it can be discerned that the intentions of the Plaintiff herein were to have the Intended Interested Parties participate in this matter; that the orders that may flow from the said application will have a direct impact on the Intended Interested Parties. Therefore, it was submitted, the Intended Interested Parties herein have a recognizable stake in the matter.

7. Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter the "*Mutunga Rules*") defines an Interested Party as a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court, but is not a party to the proceedings or may not be directly involved in the litigation.

8. An Interested Party that is party who has a '*stake/interest*' directly in the case and who is likely to be affected by the decision of the court if made.

9. Upon perusal of the Plaintiff's Notice of Motion dated 3/3/2020 prayer 3 thereof seeks to have suits filed by the Intended Interested Parties stayed pending the determination of this suit. Clearly the decision made by the court in the event that the said prayer is allowed will have a direct effect on the Intended Interested Parties cases filed in the lower court.

10. The upshot is that the Notice of Motion dated 10/12/2020 is merited. The same is allowed with costs in the cause.

**DATED, SIGNED AND DELIVERED IN MOMBASA THIS 13<sup>TH</sup> DAY OF MAY, 2020.**

**E. K. O. OGOLA**

**JUDGE**

Ruling delivered via MS Teams in the presence of:

Mr. Kiti for Plaintiff

Ms. Koske for 2<sup>nd</sup> Defendant

Ms. Owiti for Applicant

Ms. Peris Court Assistant