



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 452 OF 2010

ELIJAH PAKETURE KANAKE).....PLAINTIFF/RESPONDENT

VERSUS

MARGARET WANGARI WANYOIKE..... 1ST DEFENDANT

GEORGE MWAI KIMONDO..... 2ND DEFENDANT

K. B. SANGHANI.....3RD DEFENDANT

JOSPHAT KIMANI..... 4TH DEFENDANT

RULING

- 1) The subject matter of this ruling is the motion dated 19th October 2015 taken out by the 3rd and 4th respondents whereof they sought for inter alia an order for stay of proceedings in this suit during the currency of the moratorium declared by the statutory manager of Concord Insurance Company Ltd.
- 2) The defendants filed the supporting and supplementary affidavits sworn by Narendra Karsan Sanghani to buttress the motion. The plaintiff filed the replying affidavit he swore to oppose the application. When the application came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.
- 3) I have considered the grounds stated on the face of the motion plus the facts deponed in the rival affidavits. I have also considered the rival written submissions. The 3rd defendant avers that it is the registered owner of motor vehicle registration no. KAS 524 W/ZC 5062 Mercedes Benz Trailer insured by Concord Insurance Company Ltd, now under statutory management.
- 4) The 3rd and 4th defendants further stated that the 4th defendant was the driver of the aforesaid truck at the time of the accident. It is argued that there exists an order issued on 6th February 2015 by the High Court vide Milimani H.C.C.C no. 88 of 2014 staying all proceedings subsisting against Concord Insurance Co. Ltd courtesy of the moratorium declared by the statutory manager.
- 5) It is stated that the accident involving the 3rd defendant's motor vehicle was reported to Concord Insurance Co. Ltd which in turn appointed the firm of Lilian Njuguna & Co. Advocates to represent the 3rd and 4th defendants.
- 6) They averred that they learnt that the aforesaid firm of advocates has failed to attend court hence the matter proceeded to hearing exparte without their knowledge. It is their further submission that they instructed the firm of Solonka & Co. Advocates to come on record to take over the conduct of the case from the firm of Lilian Njuguna & Co. Advocates to protect their interest. This court was urged to stay further proceedings in this matter in broad interest of justice.
- 7) The plaintiff opposed the application arguing that service was effected upon the firm of Lilian Njuguna & Co. Advocates and the aforesaid firm of advocates acknowledged receipt of process but it never filed any application to cease acting. It is also pointed out that the 3rd and 4th defendants' application was served long after the suit had proceeded to hearing and is only awaiting delivery of judgment and by then there were no order staying proceedings.
- 8) This suit was filed on 8th October 2010. The plaintiff is basically seeking for damages for the injuries he sustained in a road traffic accident involving him and the defendants' motor vehicles registration numbers KBA 817W and KAS 524 W/ZC5062 on or about 22nd July 2009. The firm of Lilian Njuguna & Co. Advocates was appointed by Concord Insurance Co. Ltd to represent the 3rd and 4th defendants, their insureds.

9) It is also not in dispute that an order was issued staying all proceedings filed against Concord Insurance Co. Ltd. There is no doubt that the plaintiff is not privy to the insurance contract between the 3rd defendant and Concord Insurance Co. Ltd. It is also apparent that the plaintiff is not a party to the suit where stay orders were issued staying proceedings in suits filed against Concord Insurance Co. Ltd.

10) The aforesaid Insurance Company is not a party to this suit. I have perused the order attached to the supporting affidavit of Narendra Karsan Sanghani and it is clear that the stay order issued did not include those parties which were insured by Concord Insurance Co. Ltd

11) In the end, I find no merit in the motion dated 19th October 2015.

The same is dismissed with costs abiding the outcome of this suit.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
9TH DAY OF SEPTEMBER, 2021**

J. K. SERGON

JUDGE

In the presence of:

..... **for the Plaintiff/Respondent**

..... **for the defendant/applicant**