



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. E 029 OF 2018

KENINDIA ASSURANCE COMPANY LIMITED.....PLAINTIFF

- VERSUS -

THE ADMINISTRATOR NAKUMATT HOLDINGS LTD.....1ST DEFENDANT

NAKUMATT HOLDINGS LTD (In Administration).....2ND DEFENDANT

RULING

1. The administrator of **Nakumatt Holdings Limited**, the 1st defendant, and Nakumatt Holdings Ltd (In Administration) 2nd defendant were sued by **Kenindia Assurance Company Ltd** (Kenindia) for an order of injunction to restrain the defendants from commencing liquidation proceedings against the plaintiff, for declaration that Kenindia was not indebted to the defendants for Ksh 181,344,573.00 and for a declaration that Kenindia is entitled to set off any money payable under insurance claims against any debt.
2. The defendants filed a defence and in that defence the defendants alleged Kenindia had failed to settle claims where discharge vouchers had been executed and returned to them for settlement amongst other allegations. The defendant did not counter claim.
3. The defendant have applied, by chamber summon dated 7th August 2019 for an order for Insurance Regulatory authority (IRA) to be joined as 3rd defendant. Some of the grounds the defendant rely on in regard to that application are:

“WHICH APPLICATION is predicated upon the following grounds:

(a) That Insurance Regulatory Authority (I.R.A) is a statutory government Agency established under the Insurance Act (Amendment 2000) Cap 487 of the Laws of Kenya to regulate supervise and develop the Insurance Industry.

(b) That under Sec 3 (a) of Cap 487, the I.R.A has the legal mandate to issue supervisory guidelines and prudential standards from time to time for the better administration of the insurance industry.

(c) That in the circumstances of this case, the I.R.A has issued directives to the plaintiff herein with regard to the mixing up of insurance and non insurance matters, which directives have been flouted with impunity by the plaintiff without the I.R.A taking any punitive action(s) despite complaints to this effect.

(d) That in order to effectively and finally resolve the matters in dispute now before the Honourable court, it is necessary to enjoin the I.R.A to these proceedings to resolve the common questions of law and fact.”

4. The grounds reproduce above show that IRA should be called as a witness and not be dragged into this case as a party. It is because of that finding and more particularly because neither parties have a claim against IRA that Chamber Summons dated 7th August, 2019 is dismissed. The costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19 pandemic** and in light of the directions issued by **his Lordship, the Chief Justice on 15th March, 2020**, this decision has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

MARY KASANGO

JUDGE