



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 80 OF 2019

BERNARD MULI KITHUKA.....PLAINTIFF/APPLICANT

-VERSUS-

INVESCO ASSURANCE CO. LIMITED.....DEFENDANT/RESPONDENT

D.M. TUMBO T/A SADIQUE

ENTERPRISES AUCTIONEERS.....1ST INTERESTED PARTY

J.M. MUINDE T/A KANDE AUCTIONEERS....2ND INTERESTED PARTY

RULING

1. The Notice of Motion dated 15th April, 2019 currently before me has been brought by the plaintiff/applicant. The same is supported by the grounds set out on the face thereof and the facts sworn in the sworn affidavit by the applicant herein. The applicant is seeking for an order of stay of execution proceedings pending the hearing and determination of this suit.
2. No response was filed in respect to the Motion by either of the parties.
3. A brief background of the matter as given by the applicant is that at all material times, his motor vehicle registration number KBX 347D was insured by the defendant/respondent and used as a public means of transport.
4. The applicant stated that sometime on or about 8th April, 2017 the said motor vehicle was involved in an accident while ferrying passengers along the Machakos-Kitui road and that following service of summons and pleadings upon the applicant, he forwarded the summons and pleadings to the respondent to take over the matter.
5. The applicant further averred that he was not made aware of the happenings in the suit until such time as he was served with proclamation notices by the 1st and 2nd interested parties, adding that despite giving assurances that it would satisfy the decree arising from the judgment thereon, the respondent has failed to comply.
6. I have carefully considered the grounds presented in the Motion and the facts deponed in the applicant's affidavit. The issue as to whether or not the Motion has been brought without unreasonable delay cannot be answered with certainty, given that the applicant did not indicate when exactly he was served with the proclamation notices. The applicant simply stated that upon service thereof, he forwarded the said notices to the respondent.
7. On the subject of substantial loss, the applicant stated that unless an order for stay is granted, the warrants of attachment issued against him will be executed, thereby causing him to suffer irreparable loss.
8. In all applications for stay, substantial loss forms the crux of the application. Having carefully considered the material placed before this court, I find that the applicant has failed to establish the substantial loss he would suffer if the order for stay is declined. It is trite that execution of decrees and court orders is by issuance of orders of stay which are sought without any justification.
9. It is not enough for an applicant to allege that the process of execution is imminent. One must file the application for stay expeditiously and must also establish the substantial loss that may arise if the order is refused.
10. Having looked at the material placed before this court, I have no reason to find that the applicant stands to suffer substantial loss.
11. The provision of security was not at all addressed by the applicant and since the application for stay has crumbled I find no reason to

belabor on the question of security.

12. The upshot is that the Motion dated 15.4.2019 is found to be lacking in merit and is hereby dismissed with no order as to costs.

Dated, Signed and Delivered at Nairobi this 3rd day of May, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendant/Respondent

..... for the 1st Interested Party

..... for the 2nd Interested Party