



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO 110 OF 2017

CIC GENERAL INSURANCE LIMITED.....PLAINTIFF

VERSUS

WILSON GATHONDU MUIRURI.....DEFENDANT

AND

DAVID MWANGI KIURU.....INTERESTED PARTY

RULING

INTRODUCTION

1. The Interested Party's Notice of Motion application dated 25th July 2018 and filed on 28th August 2018 was brought pursuant to the provisions of Section 10 (4) of The Insurance (Motor Vehicles Third Party Risks) Act Cap 405 Laws of Kenya) Order 1 Rule 10 of the Civil Procedure Rules, 2010 and other enabling Laws). It sought the following orders:-

1. THAT David Mwangi Kiuru be enjoined in these proceedings as an interested party

2. THAT costs be provided for.

2. The Interested Party's Written Submissions were dated 5th October 2018 and filed on 9th October 2018 while those of the Plaintiff's were dated and filed on 31st October 2018.

3. Parties requested the court to render its decision based on its Written Submissions which it relied upon in their entirety. The Ruling herein is therefore based on the said Written Submissions.

THE INTERESTED PARTY'S CASE

4. The Interested Party's affidavit in support of the application herein was sworn on 25th July 2018.

5. The Interested Party stated that he was involved in an accident involving Motor Vehicle Registration KBW 038R on 24th July 2016 and he sued the Plaintiff's Insured in **Limuru SPMCC No 217 of 2017**. He served the Plaintiff with statutory Notice on 17th February 2017.

6. He said that the Plaintiff served his advocates with a Statutory Institution of the suit herein on 7th July 2017 but refused to give him copies which he obtained from the court file.

7. He averred that he was therefore an interested party and ought to be enjoined in the proceedings herein.

THE DEFENDANT'S CASE

8. In response to the said application, the Plaintiff's Legal Officer, Joseph Karanja Muchiri swore the Replying Affidavit on its behalf. It was

sworn on 12th October 2018 and filed on 15th October 2018.

9. It stated that the Interested Party did not meet the criteria to be included as an Interested Party and his participation would not add value as the suit herein was declaratory suit against its insured who it averred breached the insurance policy conditions contrary to Section 7 of the Insurance (hereinafter referred to as “Motor Vehicle Third Party Risks”) Act.

10. It pointed out that the fact that the Interested Party filed suit in **Limuru CMCC No 217 of 2017** did not entitle him to be joined herein and his presence was not necessary for the determination of the matter.

11. It stated that it stood to suffer great prejudice if the Interested Party was enjoined herein and urged this court to dismiss his application.

LEGAL ANALYSIS

12. The Interested Party submitted that the mere fact that the Plaintiff had filed suit to avoid the judgment as set out in Section 10 of the Motor Vehicle Third Party Risks Act entitled him, as a matter of right, to be joined in the proceedings herein.

13. The Plaintiff argued that enjoinder is not a right as was held in the case of **Francis Kariuki Muruateru & Another vs Republic & 5 Others [2016] eKLR** where the Supreme Court determined that for a party to be joined as interested party, he must demonstrate the following elements:-

i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.

14. This court entirely agreed with the Plaintiff’s submissions that the intended Interested Party herein would not add value to the determination of the case before court as it appeared to this court that his intention was to monitor the matter herein. He was apprehensive that the Plaintiff would avoid to settle the decretal sum once judgment was entered in his favour to his detriment.

15. Whereas the application had invoked Section 10 (4) of the Motor Vehicle Third Party Risks Act, the same did not render his application defective for the reason that Order 51 Rule 10 (1) and (2) provide as follows:-

1. Every order, rule or other statutory provision under or by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.

2. No application shall be defeated on a technicality or for want of form that does not affect the substance of the application.

16. It was the considered view of this court that notwithstanding that Order 1 Rule 8 (3) of the Civil Procedure Rules empowers any party to apply to be joined as a party to the proceedings, it is not an automatic right. Such party must demonstrate that he is a necessary party for purposes of having the real question being determined.

17. The suit herein was between of an Insured and an Insurer litigating on issues of breach of policy condition or otherwise between them. The issues had nothing to do with the Interested Party who was a stranger and whose claim was against the Defendant herein. His presence in this suit had the potential of embarrassing and/or delaying the hearing and determination of the case to the detriment of the Plaintiff herein.

DISPOSITION

18. For the foregoing reasons, the upshot of this court’s Ruling was that the Interested Party’s Notice of Motion application dated 25th July 2018 and filed on 28th August 2018 was not merited. It is hereby dismissed with costs to the Plaintiff herein.

19. It is so ordered.

DATED and DELIVERED at NAIROBI this 16th day of May 2019

J. KAMAU

JUDGE