



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 88 OF 2019**

**DAVID MUSILI MUTHUI.....PLAINTIFF/APPLICANT**

**VERSUS**

**DIRECTLINE INSURANCE COMPANY LIMITED.....1<sup>ST</sup> RESPONDENT**

**TAABU VAATI JOSEPH.....2<sup>ND</sup> RESPONDENT**

**ZAINABU JOSEPH.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application dated 29<sup>th</sup> April, 2019 seeks orders that pending the hearing and determination of the suit herein there be stay of execution and proceedings in Milimani CMCC 2667 of 2014.

2. The application is premised on the grounds stated therein and the supporting affidavit sworn by the Applicant, David Musili Muthui. It is stated that judgment was delivered on 4<sup>th</sup> April, 2019 in CMCC No. 2667 of 2014, Taabu Joseph & another v David Musili Muthui. That David Musili Muthui who is the Applicant herein had been sued in the said case by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants herein who are the legal representatives of the late Joseph Mwangui Musee who died as a result of fatal injuries sustained on 10<sup>th</sup> November, 2011 while on board motor vehicle Registration No. KBF 844F which motor vehicle was insured by the 1<sup>st</sup> Defendant herein who is duty bound to settle the award of Ksh.615,514/= interest and costs in CMCC No. 2667/14. The Applicant is apprehensive that the 1<sup>st</sup> Defendant may decline to settle the aforesaid decretal sum and as a consequence execution proceedings may be commenced against him.

3. The 1<sup>st</sup> Defendant, Directline Insurance Company Limited on 18<sup>th</sup> September, 2019 informed the court that they will not participate in the application.

4. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in opposition to the application filed the grounds of opposition dated 7<sup>th</sup> May, 2019 which are as follows:

**“1.The Plaintiff’s application and suit herein do not disclose any cause of action against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The same should be struck out as against themselves.**

**2. This Honourable Court does not have the jurisdiction to stay execution and proceedings in a suit which has been concluded and judgment has been delivered and no Appeal or Review has been preferred. There are no provisions of law to sanction such a process.**

**3. That the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant have no *locus standi* in a suit based on a contract between the Plaintiff and the 1<sup>st</sup> Defendant. The application and the suit should be struck out as against themselves.**

**4. That the Applicant’s application is incompetent, frivolous, vexatious and an abuse of court process.”**

5. I have considered the application, the response to the same and the submissions filed.

6. The suit herein seeks declaratory orders that the 1<sup>st</sup> Defendant is liable to satisfy the judgment and decree in Milimani Commercial Courts

CMCC 2667/14. The 1<sup>st</sup> Defendant is sued as the insurer of motor vehicle registration No. KBF 844F. In the case herein, no remedy has been sought against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The application for the interlocutory orders sought herein must be anchored in the pleadings in the main suit. There is therefore no basis upon which to grant the orders sought herein against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

7. If the Applicant herein has any issues with the judgment entered in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who were the Plaintiff's in CMCC No. 2667/14, he ought to deal with them within the remedies available therein.

8. With the foregoing, this court's conclusion is that the application has no merits. Consequently, the application is hereby dismissed with costs.

**Dated, signed and delivered at Nairobi this 7<sup>th</sup> day of Nov., 2019**

**B.THURANIRA JADEN**

**JUDGE**