



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISC. CASE NO. 67 OF 2012

SAMMY M MAKOVE.....PLAINTIFF

-VERSUS-

KENYA RE-INSURANCE CORPORATION.....DEFENDANT

RULING

1. It is not disputed by the parties in this matter that this case was filed under the provisions of section 67 C (3) of the Insurance Act Cap 487. It is under this suit that the court has extended the term of the Statutory Manager of United Insurance Company Limited (under Statutory Management).

2. The Statutory Manager was appointed by the Commissioner of Insurance as provided under section 67 C (1). Following that appointment, as stated before, the courts in exercise of the power denoted by section 67C (3) have extended the term of the statutory manager from time to time. Section 67C (3) needs to be considered here because it was subjected to contending submissions of learned advocates. It provides:

“The appointment of a manager shall be for such period, not exceeding twelve months, as the Commissioner shall specify in his instrument of appointment and may be extended by the High Court, upon the application of the Commissioner if such extension appears to the High Court to be justified.”

3. But it needs to be stated that it is not matters relating to the appointment of the Statutory Manager that is under consideration in this ruling, no, it is an application filed by the statutory manager, entitled Amended Notice of Motion, dated 6th June 2019 and amended 3rd October 2019, under consideration. The application is for the following prayers:

- ***That the court orders of 27th February 2019 in so far as they prohibit the statutory manager from making any payments be and hereby varied, vacated and or set aside.***
- ***That the court orders of 28th May, 2019 in so far as they extend the orders of 27th February, 2019 be and is hereby varied, vacated and or set aside.***

4. The order made on 27th February 2019 was an extension of the order made on 26th July 2018. The order of 26th July 2018 was in the following terms:

IT IS HEREBY ORDERED:

- 1. That the court cannot give other directions other than those given by Justice Ochieng.***
- 2. THAT the meeting set on 31/7/2018 may proceed but no payment can be made to anyone until the court so directs.***
- 3. THAT this matter shall be before court on 1.10.2018 and if there will be any application by then on record the court will give necessary directions.***

5. The order made by the court on 27th February 2019 is in the following terms:

IT IS HEREBY ORDERED:

1.THAT, the matter be mentioned before Justice Tuiyott to be considered together with winding up Cause No. 22 of 2006 on 28.2.2019.

IT IS FURTHER ORDERED:

2.THAT, the Interim Order restraining the Statutory Manager from making any payments is extended up to 28.2.2019.

6. The matter was placed before Justice Tuiyott on 28th February 2019, as ordered above, when the learned judge made the following order:

IT IS HEREBY ORDERED:

1. **THAT** mention on 30th July, 2019 at 02:30 pm

2. **THAT** the life of the statutory manager is hereby extended upto the hearing and determination of the Preliminary Objection to cause No. 22/2006

3. **THAT** the orders granted on 27th February, 2019 are similarly extended.

7. This matter was referred to me, by Justice Tuiyott, for me to consider the Notice of Motion application because that application seeks to vary or set aside the order of 27th February 2019, which order was pronounced by me. The reference of that application to me, as noted by Justice Tuiyott was in keeping with the provisions of Order 45 Rule 2 of the Civil Procedure Rules which requires that the judge who **“passed the decree or made the order”** does hear the application for review unless such a judge is no longer attached to the court. Indeed as noted by Justice Tuiyott, as the learned judge referred this matter to me, there is **“logic to the rule”**. I am certainly better placed to recall the background under which I granted the order and therefore better placed to determine whether the **“review is deserving.”**

8. The background, as I clearly recall, under which I made the first order of **26th July 2018**, is the very forceful representations made by the many advocates appearing in this matter, that the statutory manager, since his appointment 13 years ago, was failing to give reports to a body that was set up on **8th March 2018** known as Claims Settlement Committee. The court on that day was also addressed by learned advocate acting for persons who had paid premiums to the insurance company. In his address that learned advocate stated that his clients had been left out in the operations of the Statutory Manager there were also allegations, by some of the advocates, on that day, that the statutory manager had entertained some fraudulent and nonexistent claims which was adversely affecting the policy holders.

9. It is in that background that I issued the order of **26th July 2018** that:

“...no payment can be made to anyone until the court so directs.”

10. The statutory manager, as submitted by his learned advocate, on being appointed exercises all the powers of the insurer at the exclusion of the insurer’s board of directors. This was clearly stated by Justice Gikonyo in the case **BLUE SHIELD INSURANCE COMPANY LTD v ALICE W. KARIUKI & ANOTHER (2014) eKLR** thus:

“9] It is clear from the foregoing judicial authorities and statutory provisions that, a Statutory Manager appointed under section 67C (2) of the Insurance Act in essence assumes the management, control and conduct of the affairs and business of the Insurance Company to the exclusion of its Board of Directors and the use of its seal. The Statutory Manager steps into the shoes of the Board of Directors and makes all the decisions which the Board would make were it not for the statutory management. Such decisions include filing or defending suit, appointing advocates to represent the company and fire advocates already representing the company. I wish also to add that recovery of debts owed to the company includes recovery through litigation by duly appointed advocates.”

11. If indeed the statutory manager assumes the **“management, control and conduct of the affairs and business of the insurance company”** the court cannot prevent the statutory manager discharging his duties and responsibilities, by preventing him from making payments which are necessary for carrying out his responsibilities.

12. Bearing in mind the background under which the order of 26th July 2018 was made, as set out above, I wish to state categorically that it was not the intention of this court to make an order that would prohibit the statutory manager from spending money including payment of his operational costs. The order made by me on 26th July 2018 addressed only payments, which as stated the learned counsels addressed me on, saying that the statutory manager had entertained fraudulent claim. But even that address by the learned counsels has no substance in view of the statutory managers deposition that during the pendency of the winding up cause no. 22 of 2006, in respect to United Insurance Company Limited, payments of claims are stopped by the moratorium under section 67C(10) of the Insurance Act.

13. The learned advocates before me; representing the policy holders, the claimants, the service providers; claims settlement committee; and interested parties; opposed the statutory manager’s application on many grounds which when one considers the statutory manager’s obligations under the law have no grounding. The objections raised in my view are a reflection of the frustrations experienced by all concerned parties to the winding up of the United Insurance Company Ltd. The matter has been outstanding in the court for far too long.

14. In my view the prayers sought by the application before me are merited. The orders of 26th July 2018 and 27th February 2019 need to be set aside to ensure the work of the statutory manager is not impeded.

CONCLUSION

15. Accordingly I grant the following orders:

a. The court order of 26th July 2018 and 27th February 2019 in so far as they prohibited the statutory manager from making any payment are hereby set aside and vacated.

b. There shall be no order as to costs to the Notice of Motion dated 6th June and Amended 3rd October, 2019.

DATED, SIGNED and DELIVERED at NAIROBI this 16TH day of DECEMBER, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie..... **COURT ASSISTANT**

..... **FOR THE PLAINTIFF**

..... **FOR THE DEFENDANT**