



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISCELLANEOUS APPLICATION NO. 316 OF 2016
IN THE MATTER OF UNITED INSURANCE COMPANY LIMITED
(UNDER STATUTORY MANAGEMENT)

AND

KIKI INVESTMENTS LIMITED, MUMBU HOLDINGS LIMITED AND KIRAGU INVESTMENTS LIMITED (AS THE ONLY SHAREHOLDERS OF UNITED INSURANCE COMPANY LIMITED)

RULING

1. The shareholders of the **UNITED INSURANCE COMPANY LIMITED (UNDER STATUTORY MANAGEMENT)** have moved the court by way of an Originating Summons dated 23rd June 2016.
2. The primary relief they are seeking is a **TRANSITIONAL BOARD of DIRECTORS** be established in respect to the company, **UNITED INSURANCE COMPANY LIMITED**.
3. If established, the said Board would be vested with the legal mandate to deal with all issues pertaining to the company, including the settlement of genuine and verified claims payable by the company under the Insurance Act.
4. Amongst its duties, the Board would, if established, put together a **CLAIMS VERIFICATION AND SETTLEMENT COMMITTEE (CVSC)**, which would;

“complete verification, compromise claims and recommend settlement of all lawful and genuine claims payable by the company under the Insurance Act...”

5. In the face of the Originating Summons, the **INSURANCE REGULATORY AUTHORITY** (*hereinafter “the Respondent”*) lodged a Notice of Preliminary Objection, in the following terms;

“1. THAT this court lacks jurisdiction to entertain and or grant the prayers and or orders as sought by the applicants herein.

2. THAT the suit and prayers sought therein are res judicata.

3. THAT the suit and prayers sought therein are sub judice.

4. **THAT the entire suit and the prayers sought therein runs contrary to the letter and spirit of the provisions of the Insurance Act and the Companies Act.**

5. **THAT the entire suit as filed and the orders sought therein are in flagrant breach of the letter and spirit of Section 1B (a) of the Civil Procedure Act.**

6. **THAT the entire suit as filed and the orders sought therein is a monumental procedural and substantive legal nullity, misconceived, unmaintainable in law and an unmitigated abuse of the court process.**

7. **THAT entertaining the suit herein shall be rewarding the applicants conduct as vexatious litigants who are inclined to institution of endless litigation over similar and or substantially similar subject matter”.**

6. When canvassing the Preliminary Objection, Mr. Milimo advocate submitted that the reliefs being sought had all been granted previously, by Mabeya J. in **Misc CASE No. 67 of 2012.**

7. The orders in question were made on 25th September 2013, and the most relevant one reads as follows;

“2. THAT notwithstanding the provisions of Section 67C of the Insurance Act, the Applicant, Commissioner of Insurance, be and is hereby at liberty to constitute a Caretaker Board of six (6) members consisting of three (3) members appointed by himself and the rest of the shareholders of United Insurance Company Limited to put in place operational structures in anticipation of the revival of United Insurance Company Limited”.

8. In my considered view, the only differences between the orders granted by Mabeya J., and the orders sought in the current application are as follows;

i) The order dated 25th September 2013 cited the name “CARETAKER BOARD” whilst the current application talks of a “TRANSITIONAL BOARD OF DIRECTORS”; and

ii) The earlier order stated that the Board consists of six (6) members, whilst the current application asks for 7 members.

9. In both instances, the cases were intended to put in place mechanisms to facilitate the verification of claims, to enable the Board settle those which were found to be lawful and genuine.

10. Thereafter, the shareholders would receive the balance of the assets, so that the company could then be revived.

11. In a nutshell, I find that the issues raised in the current application had, in substance, all been determined by the court previously.

12. The Preliminary Objection herein is definitely not a procedural technicality, as contended by the applicants.

13. If an issue has been litigated and the court has given its determination on it, the law is very right to bar parties from raising such issues afresh. If parties were at liberty to raise the issues anew, after they had been previously determined, there would be no end of litigation.

14. The limited capacity which the Judiciary has would be stretched further, un-necessarily so, if the courts had to repeat the jobs that had already been accomplished. Surely, that would constitute a subversion of the Constitutional principle enshrined in Article 159 (2) of the Constitution, which requires Courts and Tribunals to dispense justice without delay.

15. Being held hostage by parties who wish to re-litigate matters which had already been determined, the courts would be unable to handle other cases as they ought to do.

16. Of course, there are provisions of law which allow parties who are dissatisfied with the decision rendered by a court, to challenge the court's decision through an appeal.

17. Therefore, if the applicant or those whose earlier applications had been determined, were not satisfied, it was open to them to challenge such determinations through appeals or through review. However, I reiterate that there is no room in law, for parties to return to court, to seek reliefs which the same court had either granted or rejected.

18. Accordingly, the Preliminary Objection is upheld, and I order that that Notice of Motion and the Originating Summons dated 23rd June 2016 be struck out.

19. The Applicant will pay to the Respondent, the costs of the Originating Summons, the Notice of Motion and the Preliminary Objection.

DATED, SIGNED and DELIVERED at NAIROBI this 20 day of February 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

No appearance for the Applicant

Ooyo for Milimo for the Respondent

L. Mbabu for Shareholders.

Collins Odhiambo – Court clerk.