



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 92 OF 2015

PACIS INSURANCE COMPANY LIMITED.....PLAINTIFF

VERSUS

MOHAMED F. HUSSEIN.....DEFENDANT

RULING

1. Before the court for determination is the plaintiff's application dated 10.7.2015 and expressed to be brought under sections 1A and 2A(/) of the Civil Procedure Act and seeks orders that:

- (a) That this application be certified as urgent and dispensed with in the first instance.**
- (b) That this court be pleased to allow service of this application, summons, plaint and other court documents to the Defendant herein by way of registered post through its last known address or through P.O.Box 28832-00100 NAIROBI advertisement in a daily newspaper of wide circulation.**
- (c) That this court be pleased to grant leave for the Plaintiff herein to serve the Plaintiff's advocate in Kwale Civil Suit No. 42 of 2015 (Mgandi Charo Chombo vs Mohamed Hussein) with this application, summons, plaint and other court documents.**
- (d) That this court be pleased to order stay of proceedings in Kwale Civil Suit No. 42 of 2015 (Mgandi Charo Chombo vs Mohamed Hussein) and all related suits arising from an alleged accident which occurred on 2nd January 2014 along Kombani Kwale road pending inter partes hearing of this application.**
- (e) That this court be pleased to order stay of proceedings in Kwale Civil Suit No. 42 of 2015 (Mgandi Charo Chombo vs Mohamed Hussein) and all related suits arising from an alleged accident which occurred on 2nd January 2014 along Kombani Kwale road pending hearing and determination of the declaratory suit filed against the Respondent.**
- (f) That the costs of this application be provided for.**

2. When the matter was placed before the Judge (Kasango J) on the 23.7.2015 the court granted prayers 1,2,3, & 4 *ex parte* and fixed the application for hearing *inter partes* on the 17.9.2015. It is evident therefore that only prayer 5 is outstanding and due for determination by the court.

3. The application is founded on the overriding objective of the court. It therefore follows that the orders I grant herein must be in tandem with those objectives:-being the facilitation of just, expeditious, proportionate and affordable resolution of civil disputes.

4. To ground the application, the plaintiff/applicant has expressed his fear that the suit in the lower court; KWALE CIVIL SUIT NO.42 OF 2015 may be heard and determined before this matter is heard and dispensed of and thereby prejudice the plaintiff interests as the insurer.

5. There is in the record of this file a copy of the plaint in the lower court and it shows that the plaintiff herein has not been joined in these proceedings. Consequently it goes without saying that any judgment that may result in that case will never be against the plaintiff directly and if one was to seek to hold that plaintiff before me liable for the decree from the lower court, such person would have to file a declaratory suit which suit would have the life of its own and will have to be heard in the usual manner.

6. This court takes the view that it is only after the conclusion of the Kwale case that will determine whether or not the defendant (as the plaintiff in the Kwale suit) is liable and therefore I am only after such a judgment that any liability may attach upon the plaintiff.

7. Consequently, I am not convinced that the hearing and determination of that suit prior to this suit will visit any prejudice upon the plaintiff. To me its conclusion and delivery of judgment against the defendant herein will be the essence of urgency the plaintiff seeks to demonstrate herein. It is yet to arise.

8. Consequently therefore I find that the overriding objective of the court towards timely and proportionate determination of suits will be compromised rather than promoted by an order that Kwale suit be stayed. I decline to grant the application and dismiss it as far as prayer 5 is concerned.

9. I have noted that the plaintiff has sought and had endorsed a default interlocutory judgment in this matter. I doubt the propriety of that judgment but direct that the plaintiff proceeds to the registry and takes a date for hearing the suit forthwith.

10. Should the plaintiff fail to approach the registry for purposes of fixing the suit for hearing in the next 45 days, the suit shall stand dismissed for want of prosecution.

Dated, signed and delivered at Mombasa this 15th day of July 2016.

In the presence of:-

No appearance for the Applicant/plaintiff.

No appearance for the Defendant/Respondent.

P.J.O.OTIENO

JUDGE