



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO 247 OF 2010

A.K. ABDULGANI.....APPELLANT

VERSUS

GEOFFREY NZIOKA NDUMBU.....RESPONDENT

(From the original conviction and sentence in criminal case no. 4942 of 2009 of the Chief Magistrate's court at Milimani Commercial Court before A.K. Ndungu (Mr) on 24th June, 2010)

RULING

The Respondent herein has applied by Notice of Motion dated 19th November 2014 for the main order that **“the appeal be stayed pending the currency of the moratorium issued in favour of Concord Insurance Company Limited in Nairobi HCCC No. 38 of 2014”**.

The grounds for the application are –

- (i) The Respondent is a policy holder of Concord Insurance Company Limited
- (ii) That stay orders were issued in favour of Concord Insurance Company Limited barring proceedings during the moratorium.
- (iii) The Appellant stands to suffer no prejudice if the application is allowed and it is in the interest of justice that the orders sought are allowed

There is annexed to the application a High Court order (Havelock, J) made on 5th February 2015 in Nairobi HC Civil Suit No. 38 of 2014 (O.S), which states *inter alia* –

“That there be a stay of all proceedings subsisting against Concord Insurance Company Limited (under Statutory Management) during the currency of the Moratorium declared by the statutory manager on 6th February 2013 and as further extended by the statutory manager for a further period of one year from the 6th February 2014.”

It is further supported by the affidavit of counsel for the Respondent, **Zehrabanu JanMohamed** sworn on **19th November 2014**.

The application is opposed by the Appellant through the Replying Affidavit sworn on **24th November 2014** by his Counsel, **Catherine Ngala**. The grounds of opposition emanating therefrom include –

- i. That there is no nexus between the High Court Order and the Appeal as the Respondent has not demonstrated that he was a policy holder of Concord Insurance.
- ii. That the Appellant stands to suffer prejudice as the decretal sum continues to earn interest to his detriment.

It is evident from the documents before court that the said High Court Order was made on 5th February 2014. The moratorium was to run from 6th February 2014 for a period of one year. There is no evidence *prima-facie* of any extension of the moratorium. It was the duty of the Respondent to demonstrate this by availing this information to the court.

It has been demonstrated in the supporting affidavit, that Concord Insurance Co. Ltd assumed responsibility and wrote to its advocates to represent them in the matter. Thus the moratorium and the High Court Order affects the current proceedings.

However, as stated earlier, it has not been demonstrated that the moratorium was extended when it lapsed on 6th February 2015 and for this reason the application must fail.

It is therefore dismissed with costs.

Orders accordingly.

Dated and delivered at Nairobi this 5th Day of March, 2015.

A.MBOGHOLI MSAGHA

JUDGE