



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NUMBER 594 OF 2012

APA INSURANCE COMPANY LIMITED. APPELLANT

VERSUS

SAMUEL NJOGU KIMITA. RESPONDENT

R U L I N G

The Application before the court is the notice of Motion dated the 5th November, 2012 and filed by the appellant. The application inter alia, sought the following orders: -

- a. That there be a stay of execution of the entire ruling and orders made by the trial court against the Application on 26th October, 2012 in Milimani Chief Magistrate's Civil Case Number 4069 of 2008 which dismissed the application seeking review or interpretation or clarification of the lower court's judgment dated 9th February, 2012, until the hearing and final determination of the appeal.
- b. That the appellant be granted leave to appeal against the Ruling of 26th October, 2012 within 14 days after the delivering of the ruling out of this application.

Both parties filed written submissions which this court has perused and taken into account in drawing this Ruling.

The facts upon which this application arises, as far as the court can understand them, are as follows: -

The appellant had on 23rd May, 2007 issued a motor insurance cover policy for the Respondent's motor vehicle registration No. KAN 405K for Ksh.450,000/- after receiving the premium from the Respondent. Unfortunately an accident involving the motor vehicle occurred on 25th June, 2007. The accident was reported to the police and a Police Abstract was issued. Then a report of the accident was made to the Appellant as the insuring company and a claim for compensation was made to it.

Fearing the consequences for reasons which may likely be explained during the hearing of the appeal the appellant filed a suit at the lower court seeking certain declarations which would avoid the said Policy of Insurance No. P/10/2007/0801/1978 and costs of the suit. The Respondent herein filed a counter-claim seeking full compensation for the damaged car under the said Insurance Contract. Both sides apparently gave evidence during the trial of the suit.

In her judgment, the trial magistrate dismissed the Appellant's claim thus refusing to give the Insurer the declarations sought which were intended to avoid the policy of insurance aforesaid. On the other hand, the court allowed the counter-claim with the following words: -

“The Plaintiff is therefore, ordered to pay defendant for the insured sum as per their policy. It is so ordered.”

Following the above judgment, the Appellant was aggrieved by the judgment which it argued was not clear and required clarification or interpretation as the trial court did not specify the actual judgment sum. The Appellant, to that end, filed an application dated 16th July, 2012 seeking such clarification and interpretation.

In the meantime, the Respondent/Defendant, was not as much, confused. He prepared to execute for the recovery of the sum of Ksh.450,000/- which was the insured value of his motor vehicle and which, as far as he was concerned, the trial court had given him in the judgment dated 9th February, 2012.

On 26th October, 2012, the trial court delivered a ruling on the Appellant’s application seeking review, clarification or interpretation of its judgment dated 9th February, 2012. It dismissed the application with costs, effectively finding that the judgment, whose conclusion is herein above cited, was clear and did not need any clarification or review or interpretation.

The ruling of the lower court stated above and dated 26th October, 2012 triggered two things, if this court understands them properly: -

First, the Appellant filed this application seeking stay of execution of the original decree for the sum insured which the Decree holder interpreted to be Ksh.450,000/-. Secondly, the appellant sought leave to appeal within 14 days against the said ruling of lower court dated 26th October, 2012.

It would accordingly, appear that the Appellant wishes to appeal only after this court delivers this ruling. And yet there is a Memorandum of Appeal dated 5th November, 2012 which was properly and timeously filed on 6th November, 2012, and was apparently paid for on the same day and the appeal given the No. 594 of 2012 which is the appeal this application is brought under. It is difficult accordingly, to understand why the Appellant again seeks leave to file the same appeal within 14 days after this Ruling is delivered.

As to the stay of execution of the Ruling of the lower court dated 26th October, 2012, which indeed is closely knit the propriety and completeness of the judgment of the lower court dated 9th February, 2012, it is the view of this court that the Appellant may have arguable reasons why the judgment of 9th October, 2012 may need to be clarified. That is to say, there is an issue as to whether the sum which was insured which was Ksh.450,000/- was the sum that the court intended to be paid to the Respondent under the counter claim. For instance, are there some items deductible under insurance settlement practices? Under such practices, was the Respondent to pay “**excess**” and was he to keep the car salvage or pay for the same if he decided to keep the same?

In this court’s view, the issues mentioned above probably required to be clarified in the original judgment and the application for clarification or interpretation of the judgment, may not have been that frivolous.

Furthermore, the application for stay was not delayed and in the view of this court the issue of law requiring interpretation or clarification is fundamental in insurance law and practice and should not be taken lightly.

In the above circumstances this court is persuaded to grant and hereby grants a stay of execution of the original judgment of 9th February, 2012 on condition that the sum of Ksh.450,000/- plus costs and interest estimated at ksh.120,000/- is deposited in court within 15 days.

If the appeal already filed as earlier stated, is not a valid one, the Applicant is hereby granted leave to file its proper appeal within 10 days subject to the condition that the appeal must be prosecuted within 8 months or the stay granted shall automatically stand discharged. Orders accordingly.

Dated and delivered at Nairobi this 1st day of July, 2014.

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JUDGE