



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 428 OF 2014**

**UAP INSURANCE COMPANY LIMITED.....APPELLANT/APPLICANT**

**VERSUS**

**WASHINGTON GATURA KIMANI.....RESPONDENT**

**RULING**

1. Before me is a Notice of Motion application dated 23<sup>rd</sup> September, 2014. It is expressed to be brought under order 42 Rule 6 of the Civil Procedure Rules, 2010 and Section 3A of the Civil Procedure Act (Cap 21) Laws of Kenya. The appellant seeks the stay of proceedings and implementation of the ruling of court made on 19<sup>th</sup> September, 2014 in Milimani CMCC No. 5029 of 2014 pending hearing and determination of the appeal.

2. Brief facts are that the respondent filed a suit against the appellant in Milimani CMCC No. 5029 of 2014 for a claim of KShs. 512,212/= . Upon hearing the respondent's application dated 21<sup>th</sup> August, 2014 the trial court granted the appellant seven (7) days leave to file and serve a response to the application and ordered the appellant to deposit KShs. 512,212/= in court within the seven days. The appellant was aggrieved by the said ruling and is desirous to appeal occasioning this application.

3. The application is premised on the grounds on the face of the application and the supporting affidavit of Ruth Momanyi and Lorine Nereah Shitumbi sworn on 23<sup>rd</sup> September, 2014. Their main gravamen is that the trial court issued interim orders without hearing the appellant on the application. In its submission, the appellant argued that there will be no imminent prejudice to the respondent if the orders sought are granted considering that the substance in question is money. It relied on the case of ***The Hon. Attorney General v. The Law Society of Kenya & The Council for the Law Society of Kenya, Petition No. 286 of 2014*** to amplify that discretion to grant an adjournment should be exercised when sufficient reason is given. He urged that a directive be issue to the trial court to hear the application to save on judicial time. On this issue the appellant relied on ***David Rotich v. Fatuma Swaleh Ali, Civil Suit No. 215 of 2011***.

4. The respondent opposed the application and filed a replying affidavit sworn on 1<sup>st</sup> October, 2014. He contended that the appellants had sufficient time to respond to their application. That the appellant's failure to respond amounted to non-opposition of the application. In his submissions, the respondent reiterated his averments in the replying affidavit and urged the dismissal of this application.

5. I have considered the depositions and submissions of the parties. The main question is whether it is in the interest of justice to order stay of proceedings or order that the application be heard on merit by the trial court and do away with the appeal.

6. There is no provision in the Civil Procedure Rules or Act which specifically deals with stay of proceedings. The court is therefore under duty to invoke its inherent power under Section 3A of the Civil Procedure Act which calls upon the court to do justice to prevent abuse of the court process. The court ought to consider matters such as the need for speedy disposal of the case and the prima facie merits of the intended appeal.

7. The appellant's grievance is that orders were made against it without being heard, this is in my view an arguable ground on appeal and I am inclined to allow the application. I am fortified by the Court of

Appeal's decision in ***Geogrey Orao Obura v. Martha Karambu Koome Nairobi C.A. No. 258 of 1998 (U.R.)*** where stay was granted because the applicant had been denied the right to defend himself in an application. Accordingly there a stay of proceedings and order emanating from the ruling of 19<sup>th</sup> September, 2014 in Milimani CMCC No. 5029 of 2014 is hereby granted pending hearing and determination of the appeal. Costs shall be in the cause.

Dated, Signed and delivered in open court this 14<sup>th</sup> of November, 2014.

**J.K.SERGON**

**JUDGE**

In the presence of:

.....for the Appellant

.....for the Respondent