



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT KITALE Civil Suit 15 of 2010

PETER KINUTHIA NJAU ::::::::::: PLAINTIFF.

VERSUS

BLUESHIELD INSURANCE CO. LTD. ::::::::::: DEFENDANT.

R U L I N G

By a Notice of Motion dated 4th February, 2010, pursuant to the provisions of sections 3, 3A and 63 of the Civil Procedure Act and Order L Rule 1 of the Civil Procedure Rules the applicant seeks orders:-

- (1) **THAT**, this application be certified as urgent and that a hearing date be given on priority basis.
- (2) **THAT**, the defendant/respondent be ordered to deposit the sum of ksh. 383,710/= or any other acceptable and adequate security with this honourable court while pending the hearing and determination of this suit.
- (3) **THAT**, upon the respondent complying with condition No. 2 herein, this honourable court be pleased to order stay of execution in Kitale CMCCC No. 374 of 2008.
- (4) **THAT**, in case of default to comply with condition No. 2 herein, then this honourable court be pleased to order execution in Kitale CMCCC No. 374 of 2008 be levied against the respondent.
- (5) **THAT**, further meanwhile a temporarily stay of execution in Kitale CMCCC No. 374 of 2008 be issued pending hearing of this application.
- (6) **THAT**, costs of this application be borne by the defendant/respondent.

The application is based on the grounds:-

- (1) **THAT**, vide an insurance policy No. 080/000916/05/04/B26 dated 14/7/2007 between the applicant and the respondent the former in consideration of a premium of Ksh. 7,500/= and which was fully paid by the applicant agreed to indemnify the applicant for a period of 14/7/2007 until 12/4/2008 in respect of bodily injuries or death arising out of the driving of motor vehicle KAB 330E Toyota Pick-up owned by the applicant and used in commercial transport/purposes.

- (2) **THAT**, the accident occurred on the 8/9/2007 to the motor vehicle registration No. KAB 330E Toyota Pick-up while being driven by the applicant along Kitale-Eldoret road and as a result one pedal cyclist died.
- (3) **THAT**, in terms of the policy No. 080/000916/05/04/B26 the accident was reported to the respondent and who demanded the payment of Ksh. 7,500/= as the policy excess and which got duly paid by the applicant in July, 2008.
- (4) **THAT**, it was a third party Policy Cover.
- (5) **THAT**, when the claim got filed in Kitale CMCCC No. 374 of 2008 the respondent appointed a firm of lawyers to represent the applicant and subsequently judgment was handed and the principal award stand at Ksh. 383,710/= as on 20/1/2010.
- (6) **THAT**, the respondent is under a legal obligation to indemnify the applicant and the judgment and costs.
- (7) **THAT**, the respondent has failed to pay the decretal sum and costs in Kitale CMCCC No. 374 of 2008 and execution has already been undertaken against the applicant and **WARRANT OF ARREST** has been issued against him (applicant)
- (8) **THAT**, it is in the best interest of justice that the defendant be ordered to indemnify the applicant.
- (9) **THAT**, the applicant can be arrested any time and be put in prison custody.

The application is predicated upon the annexed affidavit of Peter Kinuthia Njau sworn on 4th February, 2010.

It was argued on behalf of the applicant that he was at all material times the driver of motor vehicle registration No. KAB 330E. That the said motor vehicle was insured by Blueshield Insurance Company Ltd. In this regard the applicant exhibited certificate of INSURANCE No. 080/00916/05/04/B26 issued on 14th July, 2001. That the cover was to run from 14th July, 2001 to 12th April, 2006. Consideration for the issuance of the said cover was Ksh. 7,500/= which was duly paid.

It came to pass that the said motor vehicle was involved in an accident on 8th September, 2007 along Kitale-Eldoret road with the consequence that a pedal cyclist was fatally injured.

The applicant was issued with an abstract in respect of the accident exhibited as "PKN24". Eventually he paid a policy excess fee of Ksh. 7,500/=.

Subsequently, a case was filed against the owner and the applicant being Kitale CMCCC No. 374/2008. After undergoing the due process of the law a decree ensued in the sum of Ksh. 383,710/=. The said decree has not been satisfied by the judgment debtor. Consequently a warrant of arrest exhibited as "PKN5" was issued against the appellant.

Faced with that dilemma the applicant reported the matter to the respondent who instructed M/s. Kidiavai & Co. Advocates to take up the matter of representation on the applicant's behalf. That notwithstanding the respondent has failed to make good the claim and the warrant of arrest issued as aforesaid hangs over the respondents neck like the sword of Damocles.

It was the applicant's case that the defendant is legally entitled to indemnify him, as per the insurance policy, and pay on his behalf the said sum of Ksh. 383,710/=. Failure of the respondent to indemnify the applicant is burdensome to the applicant hence this application.

The application we served on the respondent who failed to file replying affidavit or grounds of opposition within the time prescribed by law. The application thus proceeded ex-parte.

I have carefully analysed the evidence on record on behalf of the applicant. In the absence of any evidence from the respondent in rebuttal, I find hold that the applicant has made out a strong case for issuance of orders sought in the application.

Accordingly, there shall be orders in terms of prayers 2, 3, 4, 5 and 6 of the application.

Dated and delivered at Kitale this 1st day of March, 2010.

N.R.O. OMBIJA.

JUDGE.

Mr. Onyancha for plaintiff/applicant.