



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli 586 of 586 of 2008

IN THE MATTER OF THE UNITED INSURANCE COMPANY LTD

AND

IN THE MATTER OF THE INSURANCE ACT CAP 487 LAWS OF KENYA

AND

INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) ACT CAP. 405 LAWS OF KENYA

AND

IN ACCORDANCE WITH ORDER LIII OF THE CIVIL PROCEDURE RULES

BETWEEN

PETER KAGOTHO GITAU..... APPLICANT

V E R S U S

THE STATUTORY MANAGER, UNITED

INSURANCE CO. LTD..... 1ST RESPONDENT

THE INSURANCE REGULATORY AUTHORITY (INCORPORATING

THE COMMISSIONER OF INSURANCE)..... 2ND RESPONDENT

THE SENIOR PRINCIPAL MAGISTRATE'S COURT KIAMBU.....3RD RESPONDENT

THE ATTORNEY-GENERAL..... 4TH RESPONDENT

AND

SIMON NGUGI GITERU..... INTERESTED PARTY

R U L I N G

Before me is a Chamber Summons dated 3rd December, 2008 filed by S.W. Ndegwa advocate for the applicant named as **PETER KAGOTHO GITAU**. The application was brought under Order LIII rule 2, 3 and 4 of the Civil Procedure Rules, section 60 (2) 67(c), 70(a) of the Constitution of Kenya, section 10(2) and Section 179 of the Insurance Act, and Section 3A of the Civil Procedure Act. The respondents are named as **THE STATUTORY MANAGER UNITED INSURANCE CO. LTD**, **The INSURANCE REGULATORY AUTHORITY (INCORPORATING THE COMMISSIONER OF INSURANCE)**, **THE SENIOR PRINCIPAL MAGISTRATE'S COURT KIAMBU**, and **THE ATTORNEY GENERAL**. There is an interested party named as **SIMON NGUGI GITERU**. The orders

sought are as follows-

1. *The application be certified urgent and heard ex parte in the first instance.*
2. *The honourable court be pleased to grant leave to the applicant to apply for the orders of mandamus to compel the 1st and 2nd respondents herein to perform their duty under section 67(c) (4) of proceedings herein in civil suit SPMCC 247/03 (Kiambu) and seek to obtain a court order to stay proceedings pending the duration of the moratorium.*
3. *The Honourable court be pleased to grant leave to apply for orders of certiorari to quash the warrants issued by the court in SPMCC No. 247/03 (Kiambu).*
4. *The honourable court grant leave to operate as a stay of execution in SPMCC No. 247/03 Kiambu.*
5. *Costs be in the cause.*

The application was filed with a **SUPPORTING AFFIDAVIT** sworn by the applicant on 3rd December, 2008. It was also filed with a **STATEMENT** dated 22nd September, 2008, and an affidavit **VERIFYING THE FACTS RELIED ON** sworn on 22nd September, 2008. Several documents relating to the case in the Senior Principal Magistrate's Court Kiambu were filed.

On the 3/12/2008, I ordered that the application be served. When service was effected, some counsel came on record for the parties, except the interested party. On the hearing date Mr. Ndegwa appeared for the applicant, Mr. Ngugi for the 1st respondent, and Ms. Gichuki for the 2nd respondents. Before the hearing date, grounds of opposition were filed on behalf of the 1st respondent. A replying affidavit was filed on behalf of the 2nd respondent. Grounds of opposition were filed on behalf of the 3rd and 4th respondents. The counsel who appeared before me on the hearing date also addressed me.

I have considered the application, documents filed and submissions of counsel for the parties. At this threshold stage, I am not required to determine the merits of the case. I am however required to determine whether the applicant has demonstrated an arguable case.

I am indebted to all counsel who appeared before me and put their respective clients' cases. Those arguments however, appear to go to the merits of the case. In my view, though this matter arises from civil proceedings in the subordinate court, there are several provisions in the statute law, whose implementation by public institutions or officials need to be investigated by this court. That can only be done after the Notice of Motion is filed, and parties are given a chance to ventilate their respective positions. In my view, the applicant has demonstrated an arguable case. I will grant leave to file judicial review proceedings.

I have been requested that leave granted do operate as a stay. In my view, if stay orders are not granted the judicial review proceedings to be filed will be rendered academic. I will therefore grant a stay.

For the above reasons, I order as follows-

1. *Leave is granted to the applicant to file judicial review proceedings for mandamus and certiorari as requested. The Notice of Motion will be filed and served within 21 days from today.*
2. *The leave above granted will operate as a stay of execution in SPMCC No. 247/03 Kiambu until hearing and determination of the Notice of Motion to be filed. Provided that if the Notice of Motion is not filed and served within 21 days, the stay hereby granted will automatically lapse.*
3. *Costs will follow the determination of the Notice of Motion.*
4. *Mention on 29th July, 2009.*

Dated and delivered at Nairobi this 1st day of July, 2009.

George Dulu

Judge.