

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPELLATE DIVISION**  
**CIVIL APPEAL NO. E391 OF 2022**

**MADISON GENERAL INSURANCE(K) LIMITED .....**  
**APPLICANT**

**-VERSUS-**

**KIARIE MUTURI FRANCIS .....**  
**RESPONDENT**

**RULING**

1. This is an application to stay proceedings of the lower Court until an appeal is heard and determined. The brief facts about this application is that there was a lower Court Judgement that found Mr. Kiarie Muturi liable (allegedly insured by the Appellant herein). Consequently, Mr Kiarie filed a suit against the Appellant herein and obtained orders to the effect that the Appellant having insured Mr Kiarie's Motor Vehicle was liable to satisfy the decree in the earlier Judgement. The Plaintiff in the earlier suit filed a declaratory suit against the Appellant herein which I believe is still pending. I wish to note the following;

**A. Parties to the suit**

2. The Appellant herein was not a party to the earlier RTA suit since it is an insurance company neither was it in the subsequent suit (which is the subject of this appeal) was between the Appellant herein in and the Defendant in the earlier suit or in other words, the Plaintiff in the RTA suit is not a party in the subsequent suit (declaratory suit). The issue is whether this application is an abuse of the Court process as the plaintiff in the ongoing declaratory suit was not subject to the lower Court decision prompting this appeal.

## **B. Insurance**

3. In CMCC 12922/21, the Plaintiff in the RTA suit seeks to have the Appellant herein satisfy the decree because it allegedly insured the Respondent in this Appeal but the Appellant disputes insuring the Respondent herein. Should the Court stay the proceedings in no 12922/21 pending the determination as to whether the Appellant herein duly insured the Respondent herein? The issue as to whether the Respondent herein was insured by the Respondent or not cannot be decided by CMCC 12922/21 since the respondent in this appeal is not a party but rather it is best be decided in this appeal since it is an insurance against an alleged insured. What if this Court faults the insurance policy between the Respondent and the Appellant or overturns the

lower Court decision and the lower court finds the appellant herein liable to certify the decree, wouldn't it create a conflict and embarrassment of the Court

4. To preserve the dignity of Courts and afford all parties sufficient fora to address all pertinent issues, prayer 3 of the Application dated the 14 day of July 2022 is allowed. Given the circumstances of this suit, each party shall bear on costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**HON. L. P. KASSAN  
JUDGE**

**In the presence of:**

**Muyuka for Applicant**

**No appearance for Respondent**

**Carol - Court Assistant**