



Cello Thermoware Ltd v Mua Insurance (Kenya) Ltd & another (Civil Case 196 of 2023) [2025] KEHC 16494 (KLR) (Civ) (13 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16494 (KLR)

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

**CIVIL
CIVIL CASE 196 OF 2023**

**JN MULWA, J
NOVEMBER 13, 2025**

BETWEEN

CELLO THERMOWARE LTD PLAINTIFF

AND

MUA INSURANCE (KENYA) LTD 1ST DEFENDANT

EXECUTIVE INSURANCE BROKERS LTD 2ND DEFENDANT

RULING

1. By the Motion dated 2 04 2025 the Applicant Mua Insurance (Kenya) Limited (1st Defendant) sought an order for stay of proceedings of this suit pending the hearing and determination of an Appeal to the Court of Appeal vide (COACA No. E082 of 2025 Hudson Moisistis & Cello Thermoware Limited v John Njonge Ndung’u on grounds stated on its face and supporting affidavit of Serah Weru, company secretary of the Applicant sworn on 2 04 2025.
2. The application is premised on provisions of Order 42 Rule 6 of the Civil Procedure Rules (CPR) and Sections 3A of the *akn ke act 1924 3 Civil Procedure Act*, and Section 5 and 10 (2) of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405 Laws of Kenya.
3. It is the Applicants depositions that Judgment in this court vide Milimani Hcc. 35 of 2017 John Njoroge Ndungu v. Hudson Maisistis & Cello Thermoware Ltd was delivered on 19 10 2023 (Hon. Ongeru J) and being dissatisfied, the Applicant then the Respondent in this suit lodged the instant appeal to the Court of Appeal against the whole decision as seen from the record of Appeal filed herewith and annexed hereto “Exhibit 1” dated 19 12 2024.
4. Meanwhile a short history-giving rise to this suit will suffice. That the Plaintiff took out a Motor Vehicle Insurance Policy with the 1st Defendant in respect of its motor vehicle registration No. KAU 547W,



that during the pendency of the policy, the vehicle was involved in an accident subject of the suit Hcc No. 35 of 2017, and the resultant judgment dated 19 10 2023 and subject of the appeal pending at the Court of Appeal.

5. It is further stated that this suit (declaratory suit) seeks to compel the Defendants to seek the judgment of the High Court on account of the quantum of damages awarded to the Plaintiff; and therefore on such grounds, the Applicant (1st Defendant) seeks to stay execution proceedings pending hearing and determination of the declaratory suit.
6. The court record shows that the decretal sum awarded by the court is Kshs. 26,711,483 plus costs and interest as seen in the Decree dated 4 02 2015; which is the same amount that the Plaintiff in this declaratory suit seeks to stay its execution.
7. In opposing the application, the Respondent Plaintiff filed a replying affidavit sworn on 9 08 2025 by its Director Amit Doshi. His deposition is that the application is made in bad faith as it failed to honour and comply with conditional stay order vide a rulings dated 29 10 2024 and 11 02 2025 whereof it was directed to deposit Kshs. 10 million in a joint earning account of the Plaintiff and the Defendants advocates names attached as exhibit "AD-1".
8. Additionally, the deponent states that in view of the Applicants failure to comply with the court orders, the orders sought should not be granted, as grant of the same would prejudice the Respondent's interest.
9. Parties filed submissions, which the court has considered.

Analysis and Determination.

10. It is trite that stay of proceedings is a grave judicial action as it may seriously interfere with the right of a litigant to conduct and conclude its case expeditiously. Thus the court in the case of Global Tours & Travels Ltd; Nairobi HC Winding Up cause No. 43 of 2000 stated that

“...Whether or not to grant stay of proceedings or further proceedings on decree or order appealed from is a judicial discretion to be exercised in the interest of Justice... the sole question whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order...”
11. In this matter, the court duly exercised its discretion in line with the above holding, when by a ruling dated 29 10 2024 and orders made on 11 02 2025 in Hcc No. 35 of 2025 (the primary suit) were granted to the 1st Defendant Applicant. It failed to comply with the conditional stay orders for reasons not stated in the instant motion.
12. This court notes that the court (Ongeri J) in the ruling of the 1st Defendant Motion dated 17 11 2023 the Applicant sought an order of stay of execution of the impugned judgment pending hearing and determination of the declaratory suit (Hcc No. E196 2023) this suit.
13. At the time, this instant suit had already been filed, and the said orders were in respect of the same suit.
14. What the court gunners in respect of motion for determination is that the Applicant wishes to have a second bite at the cherry, the orders it seeks having been granted, and not complied with.



15. Upon reading the entire ruling, I am satisfied that the court (Ongeri J) considered the principles for grant of stay of proceedings and execution of the decree in this case pending hearing and determination of this suit.
16. The said orders having not been complied with it would be a travesty of justice and fairness for this court to proceed to allow the same orders which in effect lapsed automatically, allowing the Respondent to proceed with execution.
17. Additionally, I find that the instant application has been caught up with the doctrine of resjudicata as stated at Section 7 of the *akn ke act 1924 3 Civil Procedure Act* which provides:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”
18. For the foregoing, I find and hold that the 1st Defendant’s application dated 2 04 2025 is not only an abuse of court process but also unmerited and resjudicata. It is dismissed with costs to the Plaintiff.
19. Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025.

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JANET MULWA.
JUDGE

