



**Madison General Insurance Kenya v Kanja; Njuguna & another (Interested Parties)  
(Civil Suit E023 of 2025) [2025] KEHC 17212 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17212 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT E023 OF 2025  
SM MOHOCHI, J  
NOVEMBER 21, 2025**

**BETWEEN**

**MADISON GENERAL INSURANCE KENYA ..... PLAINTIFF**

**AND**

**SIMON MURIITHI KANJA ..... DEFENDANT**

**AND**

**VERONICA WANJIKU NJUGUNA ..... INTERESTED PARTY**

**TABITHA WAMBUI NJUGUNA ..... INTERESTED PARTY**

**RULING**

1. The Applications before Court for determination are dated 26<sup>th</sup> May, 2025 and 12<sup>th</sup> August, 2025 wherein, the Applicant seeks for an order that this Honorable Court be pleased to stay any proceedings of the Nakuru CMCC No. E426 of 2025: John Manji Kiarie v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, Nakuru SCCC No. E296 of 2025; Veronicah Wanjiku Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, and Nakuru SCCC No. E299 of 2025: Tabitha Wambui Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui and any other subsequent proceedings to be filed arising from the same cause of action pending the hearing and determination of this disclaimer suit.
2. The Applicant and Respondent were in an insurance insurer contract with an insurance policy cover which is now subject to the disclaimer suit as the Applicant contends that the Respondent was in breach of express provisions of the insurance cover and as such the accident occurred but the Applicant seeks to be exempted from any liability thereon.



3. The Application is strangely not opposed by the Respondent and is opposed by the Interested Parties vide a replying affidavit sworn on the 22<sup>nd</sup> October, 2025, urging this Court to dismiss the Applications on the grounds that the Plaintiff/Applicant herein is a nonparty in the matters therein. In the Defendant/Applicant's humble submissions, he will endeavor to show that the Applications are merited and as such urge this Honorable Court to allow the same.
4. The Application is premised on the following grounds:
  - i. That the suits before the Subordinate Court, Nakuru CMCC No. E426 of 2025: John Manji Kiarie v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, Nakuru SCCC No. E296 of 2025; Veronicah Wanjiku Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, and Nakuru SCCC No. E299 of 2025: Tabitha Wambui Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui are a compensatory claim for damages arising from an accident that occurred on 25 December, 2025 involving motor vehicle registration number KDG 257P.
  - ii. That the said motor vehicle registration number KDG 257P was the subject matter of a Motor Commercial (GENERAL CARTAGE) under Policy number NYR/02/2227723/2023 issued to the Defendant herein by the Plaintiff herein running from 9<sup>th</sup> February, 2024 to 18<sup>th</sup> January, 2025.
  - iii. That a fundamental clause of the subject Insurance Policy Cover stipulated that the Plaintiff's (the insurer) duty to indemnify the Defendant would only arise in the event of an accident caused or arising from the use of the subject motor vehicle registration number KDG 257P subject to the terms and conditions and comprehensible exceptions of the policy.
  - iv. That the Plaintiff herein conducted investigations into the accident and established that as at the time of the accident, the Defendant had used the motor vehicle for hire and reward thus in breach of the use clause.
  - v. That subject to the policy cover referred to in paragraph 2 above, motor vehicle registration number KDG 257P was only to be used for general cartage of the Defendant's goods.
  - vi. That in the foregoing, the Defendant herein breached the terms and conditions under Motor Commercial (General Cartage) Policy number NYR/02/2227723/2023.
  - vii. That consequently, the Plaintiff claim for compensation in Nakuru CMCC No. E426 of 2025: John Manji Kiarie v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, Nakuru SCCC No. E296 of 2025; Veronicah Wanjiku Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, and Nakuru SCCC No. E299 of 2025: Tabitha Wambui Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui are inadmissible as the terms of the Defendant's policy cover does not extend to and/or cover liability in respect of death or bodily injury to any person in the event where the insured offended and/or breached the terms and conditions provided for in a policy agreement.
  - viii. That in the event the compensatory suit in the subordinate Court proceed to conclusion and Judgment issued, then the Plaintiff therein would be at liberty to enforce the Judgment against the Plaintiff/Applicant herein as the insurer of the Defendant's motor vehicle, which event would render the instant Application a mere academic exercise.



- ix. That in the circumstances, it would be prudent and in the interest of justice that further proceedings in Nakuru CMCC No. E426 of 2025: John Manji Kiarie v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, Nakuru SCCL No. E296 of 2025; Veronicah Wanjiku Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, and Nakuru SCCL No. E299 of 2025: Tabitha Wambui Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui and any other subsequent proceedings to be filed arising from the same cause of action herein be stayed pending the outcome of this Application and the disclaimer suit, which Application would result into Orders directly affecting the said suit.
5. This Court had consolidated the two Applications and enjoined the parties in the proceedings in the various suits in the subordinate Courts sought to be stayed and parties were directed to file written submission.
6. The Respondent elected not to participate despite service and the motion is opposed by the interested parties

### **Applicant's Written Submissions**

7. It is the Applicant's submission that the applications herein are merited as demonstrated. The Court is reminded that this Honorable Court that an order for stay of proceedings just like an order for stay of execution, the Applicant must demonstrate that it has an arguable appeal/suit, he stands to suffer irreparable loss and that the application has been brought without unreasonable delay. That the Court should consider the uniqueness when it comes to an order for stay of proceedings. The Issue of the Respondent not enjoying the fruits of its judgment does not arise since no judgment has been rendered against any party. An order for stay of proceedings is usually granted in exceptional circumstances and in the interest of justice for both parties and ensuring that the appeal/suit is not rendered nugatory and that it is not adjudicated in vain, It must also be ensured that the appeal/suit does not cause confusion and conflict of proceedings at whichever level and that none of the proceedings both at the trial... discretion to be exercised in the interest of Justice.... The sole question is 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.
8. That the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the Intended Appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.
9. That the instant applications are merited for the reasons that it has been brought without undue delay and/or expeditiously, it seeks to save judicious precious time, the disclaimer suit is arguable and in the event it succeeds, the proceedings in Nakuru CMCC No. E426 of 2025: John Manji Kiarie v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, Nakuru SCCL No. E296 of 2025; Veronicah Wanjiku Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, and Nakuru SCCL No. E299 of 2025: Tabitha Wambui Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui and consequential orders if any might be rendered futile and more importantly it works in the best interest of both parties and the Honorable Court as shall be demonstrated below.



10. That the Applications have been brought without unreasonable delay. The interested parties herein instituted suits in the Small Claims Court arising from a road traffic accident dated 25th December, 2024 which were filed on the 11th May, 2025. Moreover, the Plaintiff herein proceeded to institute this instant suit on the 26th May, 2025 and filed these Applications on 26th May, 2025 and 12th August, 2025. Sixteen days (16) days from the date the interested parties herein instituted the instant suits. The said period is reasonable time and/or it is not inordinate and as such, the Applicant is not in the business of delaying and/or obstructing justice contrary to the Interested parties allegation. Reference is made to the case of Charles N. Ngugi v ASL Credit Limited [2022] eKLR where it was stated that: "Nevertheless, I am inclined to allow the applicant leave to file his intended appeal noting that two (2) months is not Inordinate.
11. That the Applicant stands to suffer irreparably and/or substantially if the order for stay of proceedings is not granted. The Lower Court claims might proceed to hearing and determination of the Interested parties' claims within the 60 days stipulated by law much to the prejudice of the Applicant herein. This would defeat the prayers that the plaintiff sought in the disclaimer suit including the declaration that it is not bound to satisfy or pay or satisfy any judgment arising from the said cause of action.
12. This prayer is the main objective of the disclaimer suit and if the proceedings are not stayed the Respondent and Interested Parties will have an undue advantage of relying on the judgment rendered in lower Court suits arising from the said cause of action. In any event, in such a scenario, we bring to the attention of this Court that in the event the Lower Court suit succeeds, a decree will inevitably be made and will have a long lasting negative impact upon the Plaintiff compelling them to satisfy the judgment therein much to Plaintiff/Applicant's detriment.
13. That the order for stay of proceedings sought herein is a peculiar one and Court to treat it as such. The disclaimer suit seeks to disclaim that the Plaintiff/Applicant is not bound to pay or satisfy the judgment arising from the said cause of action in the Subordinate Court Claims. The same as a result of breach of the motor commercial policy by the Respondent.
14. That the insurer's obligation to indemnify or satisfy any judgment is strictly subject to compliance with the policy, and any material breach thereof automatically discharges the insurer from liability. The Subordinate Court's judgment binds the insured, not the insurer, unless the policy remained valid and enforceable at the time of the accident. Under Section 10(4) of the *Insurance (Motor Vehicles Third Party Risks) Act*, the insurer is entitled to seek a declaration that it is not liable where the policy has been voided or breached. It would therefore be unjust and contrary to public policy to compel the Plaintiff/Applicant to satisfy a judgment arising from a risk expressly excluded under the policy, as doing so would allow the Respondent to benefit from his own wrongdoing and undermine the principle of contractual freedom. It is therefore their humble view that due to the uniqueness of the matter before court and even in the event the Honorable Court finds that the Applicant has not clearly demonstrated that she will suffer irreparable loss, the application still stands as merited.
15. That in light of the foregoing legal and factual analysis, they beseeches the Court to grant the orders for stay of proceedings in Nakuru CMCC No. E426 of 2025: John Manji Kiarie v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, Nakuru SCCC No. E296 of 2025; Veronicah Wanjiku Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui, and Nakuru SCCC No. E299 of 2025: Tabitha Wambui Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi &Maureen Njango Kinyanjui and any other subsequent proceedings to be filed arising from the same cause of action with costs to the Applicant.

Interested Parties Submissions



16. That Courts have consistently held that stay of proceedings is a draconian remedy, interfering with a party's right to an expeditious trial, and is only granted on clear and compelling grounds.
17. That, the applicant is not a party to the cases which he intends to stay. The two cases being, Nakuru SCCL No. E296 of 2025; Veronicah Wanjiku Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi & Maureen Njango Kinyanjui, and Nakuru SCCL No. E299 of 2025: Tabitha Wambui Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi & Maureen Njango Kinyanjui are between the (victims) and the owners of suit Motor vehicles.
18. That the issues of settlement/coverage of a matter that has not been determined not even heard can only be addressed when the said matter is concluded. Interfering with a case that raises no concern against the Applicant herein and which cause of action, parties and fact do not in any way implicate the Applicant herein is harsh and unfair to the parties in the said Lower Court cases.
19. That the issues of coverage/settlement between the insurer and its insured are collateral and cannot be used to stay the Intended parties' claims.
20. That the Applicant's own description is of a Motor Commercial General Cartage Policy in ordinary insurance parlance, general cartage denotes carriage of goods for hire or reward (as distinct from "own goods only"). If the insured's vehicle was hired to transport goods, then that was consistent with general cartage use policy and not a breach as claimed. Any attempt to single out "hiring" from a general cartage policy would require a clear, express exclusion by endorsement without which then the same is construed against the maker (the insurer herein) the Applicant herein by virtue of the cotrapreferentum rule. They on this basis urge the Court to be slow to grant a stay on the basis of contested, unexplained policy language.
21. That, this Application is bereft of the very document it relies as evidence that is the policy. Without the policy and the specific use clause, the allegation of breach is speculative. The insurer bears the evidential burden to place the wording before Court and demonstrate that the factual use falls plainly within a valid, applicable exclusion. It has not done so.
22. That, the Small Claims Court regime compels speedy hearing and determination within statutory timelines, with minimal adjournments. A stay of proceeding would delay this special forum, unduly prejudice the Claimants/Interested parties herein, and multiply proceedings. The insurer suffers no comparable prejudice because it retains all rights inter se the insured.
23. The interested parties urge this Court to disallow this application and let the Claimants proceed with their cases and after a determination is made then the insurer and insured can discuss among themselves on the issue of coverage without prejudicing the interested parties herein.

### **Analysis and Determination**

24. Having considered the Applications and pleadings for and against the Court deems the only issue for determination to be whether the Applicant has met the conditions for stay of proceedings of the Lower Court suits.
25. The primary objective when deciding on a stay of proceedings is the interest of justice and ensuring expeditious resolution of all disputes.;
26. I have carefully considered the application, the supporting affidavit, the replying affidavits, the submissions as well as the authorities relied upon. The only issue for determination is whether the Applicant has met the necessary conditions for the grant orders of stay of proceedings.



27. When it comes to stay of proceedings, the Court in *Chege v Gachora* [2024] KEHC 5821 (KLR) was of opinion that:

“(23) It is trite law that whether or not to issue an order for stay of proceedings is a matter of the Court’s discretion exercised after due consideration of the merits of the case and the likely effect of the ends of justice. The exercise of that discretion should be premised on conscientious and judicious decision based on defined principles which were expounded by Ringera J. in *Global Tours & Travels Limited, Nairobi Winding Up Cause No. 43 of 2003*:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice .....the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is so, 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. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

(24) Similarly the threshold for stay of proceedings has been illuminated in the passages in *Halsbury’s Law of England*, 4th Edition. Vol. 37 page 330 and 332,:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

28. Therefore, from the foregoing, the issue of stay of proceedings is a discretionary power and for the Court to exercise that discretion a party must satisfy several conditions and the reasoning has to be to the satisfaction of the Court.

29. It is not disputed that the Applicant and Respondent were in an insurer-insured relationship on motor vehicle registration number KDG 275P that was involved in a road traffic accident on 25th December 2024 in which passengers in the subject vehicle sustained serious and fatal injuries. As a result, the injured instituted Nakuru CMCC No. E426 of 2025: *John Manji Kiarie v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi & Maureen Njango Kinyanjui*, Nakuru SCCC No. E296 of 2025; *Veronica Wanjiku Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi & Maureen Njango Kinyanjui*, and Nakuru SCCC No. E299 of 2025: *Tabitha*



Wambui Njuguna v Cencoast Suppliers Limited, Simon Muriithi Kanja, Dennis Owour Omondi and Maureen Njango Kinyanjui

30. The Applicant moved the Court seeking to stay the proceedings in those suits pending the hearing and determination of this suit. In this suit the Applicant seeks a declaration that the Respondent was in breach of the terms and conditions of the insurance policy cover and as such the Applicant is not obligated to settle the claims arising out of the said suits.
31. The Applicants averred that they are apprehensive are faced with “possible judgments and possible attachment” of property in the event that the judgments are entered against the Respondent in the primary suits before the Trial Courts.
32. The Respondent response is absent and lacking implying concession to the reliefs sought, a scenario of collusion as the primary suit affects them both in equal measure.
33. The Interested Parties had insisted that that they stand to lose as their suits will not be determined expeditiously. Further that the suit is premature based on the provisions of Section 10 of the Insurance (Motor vehicle third Party Risks) Act and that their suits are not dependant on the outcome of the declaratory suit.
34. Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act provides:

“Duty of insurer to satisfy judgments against persons insured:

(1)If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.”
35. Further, Section 5(b) of the same Act provides;

“In order to comply with the requirements of section 4, the policy of insurance must be a policy which insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road.”
36. With the above in mind, the case of UAP Insurance Co. Ltd vs Patrick Charo Chiro [2021] eKLR the Court held that:

“for liability to accrue under section 10 of the Insurance (Motor Vehicle Third Party Risks) Act CAP 405, there is a 4fold test to be met. Firstly, that the motor vehicle in question was insured by the appellant; Secondly, that the respondent has a judgement in his favour against the insured; Thirdly, that statutory notice was issued to the insurer either at least 14 days before the filing of the suit wherein judgement has been obtained or within 30 days of filing the suit where judgement has been obtained and finally the respondent was a person covered by the insurance policy”



37. First and foremost, there is no decision reached yet so the Applicant is preempting the outcome of the Courts in the primary suits. A declaratory suit is only applicable upon entry of judgment. Section 10 thereafter becomes applicable. The Applicant has not sought injunction in the primary suits in the Trial Court(s) as an interested party to serve notice of the disclaimer.
38. Secondly, according to the Act, the Applicant can only indemnify parties who are insured under the policy. If the Respondent had no insurance at the material time then he shall be legally obligated to discharge the said liability and thus the Applicants will suffer no prejudice should such primary suits proceed to hearing.
39. Thirdly, the fear of “possible judgments and possible attachment” is not a good satisfactory reason to interrupt in the legal right of the Interested Parties to conduct their suits to their logical determination.
40. Even if the Court does find that the Respondent is liable to settle the claims, the liability of the Applicant has to follow a sequence of tests to which at this point we are not yet there. The Applicant expressed fears of adverse judgment as basis of stay is premature as for now.
41. Liability in the Primary suits affects the Applicant only upon adverse judgement against the Respondent where a valid insurance policy cover applies and the Court finds that the Respondent is indeed liable to satisfy the decrees even if he did not have insurance at the time of accident.
42. It is my considered opinion that this Application is premature and ill conceived. Staying of proceedings should be done under great scrutiny.
43. The overriding objectives of the Civil Procedure Act and the Constitution is the facilitation of expeditious resolution of disputes. Allowing such orders would surely set a bad precedent whereby any time an insured is sued and the insurer fails to take up the claim or drags its feet they will be moving the Court at the detriment and prejudice of the injured.
44. Granting such orders would be to aid both Applicant or Respondent or any of them in delaying settlement liability to the Interested Parties which would not be in the interest of justice.
45. In the premise, I find that the Application dated 26<sup>th</sup> May, 2025 and 12<sup>th</sup> August, 2025 are without merit and is hereby dismissed.
46. The Applicant is directed to comply with order 11 and set down this suit for hearing within the next 60 days.
47. I shall grant the Costs of the Application to the participating interested parties.

It is So Ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 21<sup>ST</sup> DAY OF NOVEMBER 2025.**

.....

**MOHOCHI S. M.**

**JUDGE**

