



**UAP Old Mutual General Insurance Company Limited v Elijah & another (Suing as the Administrators of the Estate of the Late Samuel Mulinge Mulwa) (Civil Appeal E044 of 2025) [2025] KEHC 19155 (KLR) (22 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19155 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E044 OF 2025  
TM MATHEKA, J  
DECEMBER 22, 2025**

**BETWEEN**

**UUA OLD MUTUAL GENERAL INSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**DAVID MULWA ELIJAH & WINFRED MWIKALI MULINGE (SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE SAMUEL MULINGE MULWA) ..... RESPONDENT**

**RULING**

1. The appellant herein filed Makindu MCCC E253/21 against one Mutie Kimuu who was their insured. According to the plaint – the particulars of the Insurance Policy was that there was an express clause that they would not cover their insured’s (defendant) employees. That on 14/1/22021 KCR 086K was involved in an RTA where one Samuel Mulinge Mulwa who was the driver died.
2. As a result – Makindu MCCC E152 /2021 was filed by the Administrators of the Estate of the deceased that the plaintiffs served the pleadings in Makindu MCCC E175/2021 upon the appellant expressing the intention to claim against the plaintiff for settlement of the award that the court shall issue in the said suit.
3. According to the appellant’s suit that claim would be illegal – mainly on the ground that the insured is exempt from the policy; that the plaintiff is mandated to decline the claim, and that the deceased in the suit was an employee of their insured.
4. The appellant filed a Notice of Motion in MCCC E152/24 seeking stay of the proceedings in that suit pending the hearing and determination of their suit Makindu MCCC E253/2021.



5. The learned trial magistrate in MCCC E152/2024 heard the application for stay of proceedings – and in her ruling she pointed out;

“The defendant / applicant submits the Makindu PMCC No.253 of 2021 UAP INSURANCE versus MUTIE KIMUU is pending before court where upon parties will be heard and the issue regarding the interpretation of the insurance policy and the scope of liability with regard to Makueni HCCA E053 of 2023 being an appeal from Makindu E175 of 2021. Further that the suit E253 of 2021 seeks to establish that the applicant is not liable to settle the decree sum in Civil No. E175 of 2021... The applicant therefore submits that they will suffer substantial loss if these proceedings are not stayed pending the determination and Makindu PMCC no E253 OF 2021’

The learned magistrate states further that

.....“The matter referred to by the plaintiff/respondent for enforcement in this declaratory suit is the Civil E175 of 2021 between David Mulwa Elijah & Winfred Mwikali Mulinge (Suing as the administrators of the late Samuel Mulinge Mulwa) versus Mutie Kimuu & Samuel Sila Musevu, already decided and upheld in their favour upon appeal in HCCA E053/2023.

The defendant/applicant herein refers to the pending civil suit in E253 of 2021 between UAP Insurance Company Limited versus Mutie Kimuu which the applicant seeks to be excluded from liability upon it arising in the former case E175/2021 for reasons that the plaintiff/respondent’s deceased’s husband herein was an employee hence not under obligation to settle his claim.”

.....

“As such the defendant/applicant seeks a stay of this declaratory suit pending the hearing of it civil suit No. E253 of 2021.

6. Clearly, this declaratory suit by the plaintiff/respondent seeks to enforce their decree of court against Mutie Kimuu by proceeding to sue his alleged insurer, the applicant herein. The applicant herein has a pending suit against the said Mutie Kimuu for exclusion of liability which however the plaintiff/respondent is not a party to.”
7. The learned trial magistrate found that the application was without merit and dismissed it – as there was no prejudice that would be suffered by the appellant because the applicant would have the opportunity to defend its position in the suit – and that in any event the plaintiff’s in MCCC 152/2024 were not parties to the MCCC E253 of 2021.
8. The appellant has come before me with a similar application because they intend to appeal against the Ruling of the learned trial magistrate in Makindu MCCC E152 of 2024 in delivered on 25/6/2025.
9. The applicant seeks stay of the proceedings in Makindu MCCC 152/2024 pending the hearing and determination of the appeal against that ruling.
10. The application is opposed by the plaintiff in MCCC E 152/2024 because she is not party to MCCC E253/2021 between the Insurance and its insured, that she already has a valid judgment in Makindu MCC E175/2021 where they sued the appellants’ insured- that the trial court simply told the applicant to defend its position in that case-
11. Parties filled written submission which I have considered-



12. The appellants reiterate the argument that any claim against them by the respondent in this matter is illegal.
13. The respondent gives the history of the matters related to the parties herein – then points out that the respondents are not parties in Makindu MCCC E 253/2021 and according to Chege vs Gachura (Civil Appeal 252 of 2023 (2024) KEHC 582 (KLR) 23/5/2024, the orders sought cannot be issued against them.
14. In addition, that there is the opportunity to defend its position in MCCC E152/2024.
15. The issue here is under the application has merit.
16. In the first place – the respondents are not parties to Makindu MCCC E 253/2021 and therefore a stay cannot be sought in 152/2024 with respect to MCCC E253/2021.
17. Secondly in my view the application is premature – The issues raised by the applicant are issues that ought to be canvassed to their finality in the subordinate court. Whether or not the deceased was an employee is appears to be a fact in issue that requires determination before the trial court. Staying the proceedings would not be in the interests of justice as that issue appears to stand between the plaintiff and the fruits of their judgment. Let the canvass their issues before the trial court where the applicant has the opportunity to defend the position it has taken in the subordinate court. The issues raised of illegality etc. can only be canvassed in the suit before the trial court.
18. The upshot is that application is not merited – it is dismissed with costs.
19. The matter is remitted back to the trial court for the hearing and determination of the suits.

**DATED , SIGNED AND DELIVERED VIA CTS ON 22<sup>ND</sup> DECEMBER 2025**

.....

**MUMBUA T. MATHEKA**

**JUDGE**

Court Assistant – Chrispol

