

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL CASE NO. E012 OF 2024

**OCCIDENTAL INSURANCE COMPANY.....
.....APPLICANT**

VERSUS

**ETHAN KIBURI KIRIGWI.....
RESPONDENT**

AND

**TIMOTHY KARUGI KARANU.....1ST INTERESTED
PARTY**

**PETER KIRIGI KIRGWI.....2ND INTERESTED
PARTY**

**PETER NDERU CHEGE.....3RD INTERESTED
PARTY**

RULING

- 1.** This ruling is in respect of the Notice of Motion dated 26th August 2024 in which the applicant, *Occidental Insurance Company* seeks an order of stay of proceedings in several suits filed in the Kenol Magistrate's Court being *Kenol MCCC/E199 of*

2024; MCCC E203 of 2024 and MCCC E202 of 2024 pending the hearing and determination of the instant suit.

2. In the instant suit (hereinafter, the disclaimer suit) the applicant, sued

the respondent vide a plaint dated 26th August 2024 seeking declarations that it was entitled to disclaim liability which may arise from the suits pending before the lower court (the primary suits). The suits were filed by the interested parties against the respondent seeking general damages for personal injuries arising from a road traffic accident that occurred on 7th September 2023 involving two motor vehicles which included the respondent's vehicle Registration No. KDH 604H.

3. The disclaimer suit is based on grounds that the respondent was guilty of material misrepresentation or non disclosure of facts as he concealed the fact that at the time of the accident, the interested parties were his employees; that the policy of insurance issued in respect of the respondents motor vehicle Regs. No. KBQ 604 H did not cover personal injuries to his employees.

5. In support of the application, *Ms. Jennifer Solovea*, the applicant's Legal Officer swore an affidavit detailing nature of the claims in the primary suits and further deposed that upon being served with a copy of the summons to enter appearance served on its insured, the applicant engaged *Prudent Loss Assessors* to investigate circumstances surrounding occurrence of the accident; that the investigator's report revealed that the suits filed against the respondent emanated from work related claims which were not covered by the policy of insurance issued to the respondent; that if the stay sought was not granted, the primary suits will proceed for hearing and the applicant will be forced to satisfy judgements it was entitled to avoid under *Section 10 (4) of the Insurance (Motor Vehicles Third Party Risks Act)* which will cause it extreme prejudice.
7. The application is opposed through a replying affidavit sworn on 20th October 2024 by the 2nd interested party, *Mr. Peter Kirigwi Murigi* on his own behalf and on behalf of the 1st interested party.

Mr. Murigi deposed that the application amounted to an abuse of the court's process as it impeded on their constitutional rights to fair hearing, access to justice and expeditious disposal of their cases; that liability to settle judgements in the event that their cases were successful lay squarely on the respondent; that the applicant's relationship with the respondent was contractual and had nothing to do with their claim of negligence against the respondent. He urged the court to dismiss the application for want of merit.

- 9.** The respondent and the 3rd interested party though served did not participate in any way in the hearing of the application.
- 10.** The application was canvassed by way of written submissions. The applicant's submissions dated 24th February 2025 were filed by the firm of *Ms. J.N. Muema & Co. Advocates* while those of the 1st and 2nd interested parties dated 18th March 2025 were filed by their advocates on record *Ms. Waigwe & Associates Advocates*.
- 11.** Having considered the application, the affidavits on record and the parties rival written submissions as well as the authorities

cited, I find that the only issue for my determination is whether the applicant had demonstrated that it was deserving of the relief of stay of proceedings as prayed.

- 12.** It is trite that the court's power to grant an order of stay of proceedings is purely discretionary but given the nature and consequences of such an order, it is a relief that should be granted sparingly in exceptional cases. In exercising its aforesaid discretion, the court's primary consideration ought to be whether it was in the interest of justice to grant such an order and if it was, on what terms.
- 13.** The rational underpinning the need for judicial caution in determining applications for stay of proceedings was well articulated in *Halsbury's law of England 4th Edition Vol. 37* page **330** and **332** as follows;

“ 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 proceedings 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 not merely that the plaintiff might not or probably would not succeed but that he could not possibly succeed on the basis of the pleadings and the facts of the case.”

14. I also entirely agree with the reasoning of *Gikonyo J* in ***Britam Insurance Co. Ltd V Jane Muthoni Mwangi, Kevin Ouma Ochieng & 3 others 2021 KEHC 2131 [KLR]*** in which the learned judge expressed himself as follows;

“....the greater constitutional lesson is that an application for stay of proceedings portend serious impediment to the right to fair hearing, access to justice and the expeditious disposal of cases. Courts of law should therefore guard zealously against imposing such impediments except for good cause. Thus, the test is quite stringent for

stay of proceedings interferes with a person's right to litigate his grievances in court expeditiously and without unnecessary interruption. The sole question is whether it is in the interest of justice to order a stay of proceedings."

- 15.** In deciding whether or not to grant an order of stay on terms like those sought in the instant application, the court is called upon to weigh the pros and cons of granting such an order having in mind the prejudice the parties are likely to suffer if the order was granted or denied.

- 16.** In this case, it is clear from the material placed before me that the interested parties are the plaintiffs in the primary suits while the respondent is the defendant. As the applicant is not a party to the suits, it is clear that even if the suits proceeded for hearing and were eventually successful, liability would only be entered against the respondent and not the applicant. The contract of insurance which is the subject matter of the disclaimer suit has nothing to do with the interested parties as the contract is between the applicant and the respondent.

- 17.** Given the above facts, it is my finding that granting an order of stay as sought will greatly prejudice the interested parties as it will unduly obstruct their right to a fair hearing and expeditious disposal of their cases against the respondent on account of a dispute that does not involve them.
- 18.** On the other hand, if the court declined to grant the orders sought, the applicant is not likely to suffer much prejudice since it is possible to have hearing of the disclaimer suit fast tracked.
- 19.** Further, the applicant's apprehension that it will be forced to settle claims made against the respondent in the primary suits despite pendency of the instant suit if stay was not granted is not justified considering that it was not disputed that as matters now stand, no judgement has been obtained against its insured.
- 20.** In view of the foregoing, I have come to the conclusion that in the circumstances of this case, it would be unfair and against the interest of justice to grant the stay orders as sought as doing so would hold hearing of the primary suits in abeyance for an indefinite period of time yet the interested parties are

strangers to the insurance contract sought to be enforced in the current suit.

- 21.** That said, considering that the parties had in the course of the hearing informed the court that one suit had already proceeded for hearing before interim orders of stay were granted, in order to balance the rights of the parties, I direct that the disclaimer suit be heard on a priority basis.

In the end, the applicant's Notice of Motion dated 26th August 2024 is hereby dismissed with no orders as to costs.

DATED, SIGNED and DELIVERED at **MURANGA** this 19th day of February 2026.

HON. C.W. GITHUA

JUDGE

In the Presence of :

Mr. Kasiry holding brief for *Ms. Muema* for the Applicant

No appearance for the respondent and all the interested parties.

Ms. Susan Waiganjo, Court Assistant