

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. E253 OF 2025

TRIDENT INSURANCE COMPANY LTD
....PLAINTIFF/APPLICANT

VERSUS

MARK KIPROTICH
TEIMUGE.....DEFENDANT/RESPONDENT

RULING

1. The Applicant Trident Insurance Co. Ltd by its **motion dated 23/09/2025** seeks orders among them that judgment in Milimani SCCC No. E3907 of 2023 entered infavour of the Respondent in the sum of Kshs. 479,527 be set aside and execution of the decree be stayed pending hearing and determination of the suit, as well as an order restraining the Defendant/Respondent and/or their Agents or Auctioneers from executing the decree against the Applicant.
2. In support of the motion the Legal Officer of the Plaintiff, one Butram Mwaringa swore the affidavit on an even date. In his averments, it is posited that at the time of the accident subject of the case before the Small Claims Court, the Insurance Policy in respect of the vehicle Reg. No. KCF 029M had lapsed and was not in force therefore the Plaintiff

Insurance Company is not liable to settle liabilities arising from the accident.

3. It is further averred in the further affidavit sworn on 20/10/2025 that under **Section 10(4) of the Insurance (Motor Vehicle Third party Risks) Act Cap 405** does not haust the court's jurisdiction to determine whether an insurer is liable to satisfy a judgment arising from an accident.
4. That it is evident from records that the impugned accident occurred on 30/11/2022 whereas the Policy was valid from 14/10/2022 to 13/11/2022 and therefore outside the period insured by the Plaintiff annexing as exhibits the consent discharging Pacis Insurance Company from liability that shows date of accident as 30/11/2022 as well as judgment in the Small Claims Court rendered on 23/10/2023- marked as MT.
5. For the foregoing the Applicant deposes that it had no statutory or contractual obligation to indemnify or satisfy the judgment obtained in the Small Claims Court Case No. E3907/2023.
6. **In opposition to the motion**, the Respondent filed a Replying Affidavit in which it raises an issue of lack of Jurisdiction by this court to entertain the declaration suit having been filed outside the 3 months limitation period prescribed under **Section 10(4) of Cap 405** and therefore

arguing that the orders sought by the Applicant are not capable of being granted arguing that the interim stay of execution orders ought to be vacated and discharged.

7. It is further averred by the Respondent that the date of accident was 30/10/2022 and not 30/11/2022, relying on the police abstract - marked as **MT - 3 and OB** extract which date falls within the insured period by the Plaintiff and therefore the cover was valid.
8. What the court postulates to be the issues for determination are:-
 - i. Whether the Applicant has demonstrated a case for grant of stay of execution of the Small Claims Court Judgment pending hearing of the declaratory suit in respect of the suit.*
 - ii. Who bears costs of the motion.*
9. I have considered the Small Claims Court case and the Judgment delivered on 10/07/2023. The applicant by dint of being the insurer of the claimant motor vehicle KAX 007T was held liable for the accident stated in the police Abstract - Exh., to have occurred on 30/11/2022; involving also two other vehicles.
10. I have also considered that by a consent signed between the Respondents in the claims the Respond was to bear 50% of the damages assessed at Kshs. 479,527/= including interest and costs as seen in the Decree drawn and dated

Upon which execution proceedings was undertaken through Betabase Auctioneers.

11. The gist of the Applicant's application falls under the issue whether the accident occurred during the validity of the Insurance Policy taken out by the Respondent.
12. Whereas the Applicant, Trident Insurance Co. Ltd admits that the vehicle subject of the declaratory suit and the lower court Registration No. KAX 007T was insured by itself for a period of one month, it denies that the accident occurred with the period covered by the policy;
13. I have perused the Insurance policy Ext. No. "BM3" it shows that the policy period was from 14/10/2022 to 13/11/2022 which prima facie shows that the accident that occurred on 30/11/2022 was outside the period of a valid and subsisting cover.
14. The court is minded that **Section 10 (1) Insurance (Motor Vehicle Third Party Risks) Act, Cap A05 laws of Kenya** places a statutory obligation to pay to the person entitled to the benefit of any judgment passed against on insured, it does not do so when the validity of the policy is under challenge.
15. To that end, the Applicant filed the instant case in this court to challenge the validity of the obligation to settle the judgment passed in the Small Claims court; upon claim/allegation that as at 30/11/2022, the policy had lapsed

and therefore under no obligation to settle the judgment and decree passed against it.

16. It is upon the above affidavit material placed before me that the Applicant seeks stay of execution to await hearing of its declaratory suit.
17. On the issue raised by the Respondent, under **Section 10 (4) of Cap 405**, the right to file a declaratory suit by an insurer, in my view is not limited.
18. In this matter, the small claims case No. E707/2023 was commenced by a claim dated 10/08/2023 and was concluded by a judgment rendered on 10/07/2023.
19. This alone exhibits an error; as the claim having been commenced on 10/08/2023 as stated by the 1st claimant therein, and defendant in this declaratory suit, could not have been delivered on 10/07/2023 (see judgment by the Hon. V. M. Mochache, RM).
20. Further, the court agrees with the Applicant that Section 10(4) of **Cap 405** does not oust this court's jurisdiction to entertain a suit by an insurer to determine the validity or otherwise of an insurance policy under the Act vide a declaratory suit seeking orders to avoid an insurance policy on account misrepresentation fraud or any other ground.
21. **For the foregoing for the period pending hearing and determination of the declaratory suit, Prayer No. 3 of**

the motion dated 23/09/2025 is granted; SUBJECT to the Applicant, Trident Insurance Company deposits in court security in the sum of Kshs. 250,000/- within 15 days of this ruling.

22. In default, the order of stay of execution shall lapse automatically.

Costs of the Application shall abide outcome of the suit.

Orders accordingly.

Delivered Dated and Signed at Nairobi this 5th day of March, 2026.

.....
JANET MULWA.

JUDGE