

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL CASE NO. E003 OF 2023

BRITAM GENERAL INSURANCE CO. LTD.....PLAINTIFF

VERSUS

PAUL NDUNGU GITAU.....DEFENDANT

RULING

1. The defendant has moved this court vide a motion dated 2.7.2025 which is supported by the affidavit of Aggrey Lucas Kidiavai sworn on even date, wherein he craves for the following orders:-
 - i. That pending the hearing and determination of this application inter partes, there be a stay of proceedings in this suit.
 - ii. That pending the hearing and determination of the suits filed in the lower courts being:
 - a) Kimilili civil case no. 236 of 2021
 - b) Kimilili Civil case no. 237 of 2021
 - c) Kimilili Civil Case No. 238 of 2021all filed against one Albert Wanyonyi by the victims of the accident herein, there be a stay of proceedings of this matter.

2. The gist of the defendant's application is that there 3 suits pending in Kimilili court being Kimilili civil cases Number 236, 237 and 238 of 2021 filed by victims of a road traffic accident against one Albert Wanyonyi in respect of a motor vehicle registration No. KAU 071R which had t all material times been insured by the plaintiff herein hence the need to stay the proceedings herein until the said suits are heard and determined; that this suit is sub judice the said suits and that the questions of ownership of motor vehicle registration number KAU 071 R, liability for causing the road traffic accident and the attendant tortious claims by the victims/claimants and the nexus between the said liability and insurable interest are alive and open for determination before the lower court.

The defendant maintains that the continuation of this case will result in duplicity of proceedings, conflicting findings and prejudice to the defendant's case.

It is the defendant's position that judicial economy, fairness and interest of justice dictate that the proceedings herein be stayed. Lastly the defendant maintains that this application is predicated on good faith and has been made timeously.

3. This application has been resisted by the Plaintiff vide grounds of opposition (undated).
4. This Plaintiff's position is that the defendant's application herein is incompetent, fatally defective, and a complete misapprehension of the law. Further that the same is not premised on any legal foundation.

5. The Plaintiff maintains that the rule of sub judice does not apply to the suit herein due to the following reasons:
 - a) This case is based on insurance contract while the suits in the lower court are found on tortious negligence;
 - b) This suit and the cases in the lower court have distinct causes of action.
 - c) That the parties are different and so are the legal issues.
 - d) That the plaintiff herein has the legal right to seek repudiation of the insurance contract.
 - e) That a stay order of stay of proceedings is a drastic one and a legitimate reason have been adduced to warrant a grant of such orders.

SUBMISSIONS

6. This application was canvassed by way of written submissions. This court has duly considered the rival submissions of parties and the issues that arise for determination are as follows: -
 - a) Whether the suits in Kimilili court civil cases Nos 236, 237 and 238 of 2021 do render this suit sub judice.
 - b) Whether the applicant has met the legal threshold for grant of orders of stay of proceedings.
7. Whether this suit is sub judice Kimilili court civil cases numbers 236-238 of 2021. The cases in the Principal Magistrate court Kimilili have been filed by one Albert Wanyonyi by victims of a road traffic accident that occurred on 20.10.2021 involving motor vehicle registration No. KAU

071 R. the claims are all based on tortious negligence as particularized in paragraph 5 of the complaints. The prayers sought are as follows: -

- a) General damages for pain, suffering and loss of amenities.
- b) Special damages
- c) Costs of the suit plus interest.

8. The suit herein is filed against Paul Ndung'u Gitau is premised on breach of the policy of insurance underwritten by the Plaintiff for the defendant's insurable interest and the plaintiff is craving for declaratory order to allow it repudiate the insurance contract between it and the defendants. I need not expound any further that the facts, questions in issue and the law upon which this suit is based on are quite distinct from those that inhere in the suits before the lower court. There is nothing directly and substantially in issue before the Principal Magistrate court Kimilili that is also directly and substantially in issue before this court. Wherefore section 6 of the Civil procedure act does not apply to this suit.

Whether the Applicant has established the threshold for grant of orders of stay of proceedings.

9. I do agree with the Plaintiff that an order for stay of proceedings is a draconian one that should ordinarily be granted sparingly and on very exceptional circumstances where an applicant has demonstrated legitimate reasons that justify in the interest of justice, such stay viz a vis a

litigants right to a fair hearing as enshrined under article 50 of the Constitution of Kenya 2010.

10. As already stated hereinabove the parties herein and the cause of action are distinct from those in the cited cases pending before the lower court. The plaintiff herein is entitled to have its day in court without unnecessary hurdles being placed on its path.
11. The defendant herein has failed to establish legitimate reasons and legal basis for grant of order of stay of proceedings and is at the utmost obviously intent on employing procrastination tactics at the prejudice of the plaintiff. This clearly demonstrates abuse of court process which this court will not countenance.
12. On the balance I do find and hold that the application herein is devoid of merit and must therefore fail. I thus dismiss it with costs to the Plaintiff.

Delivered, signed and dated at Bungoma this 28th day of January, 2026.

**MWANAISHA S. SHARIFF
JUDGE**