Njoki v CIC General Insurance Limited & 2 others (Civil Suit E021 of 2022) [2026] KEHC 4500 (KLR) (6 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4500 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL SUIT E021 OF 2022

SM MOHOCHI, J

MARCH 6, 2026

BETWEEN

SAMUEL GACHARU NJOKI ..... APPLICANT

AND

CIC GENERAL INSURANCE LIMITED ..... RESPONDENT

AND

JANE WANGUI MBURU ..... 1ST INTERESTED PARTY

WAMBUGU NDEGWA ..... 2ND INTERESTED PARTY

RULING

1. In the Notice of Motion Application dated 7th December, 2022 brought under Order 51 Rule 1 of Civil Procedure Rules and Sections 3A and 63(e) of the *Civil Procedure Act*, the Applicant seeks the following:-

   i. Spent

   ii. Spent

   iii. That there be stay of proceedings and execution in Nakuru CMCC No. E615 of 2022, Nakuru CMCC No. E499 of 2022 and Nakuru Small Claims Case SCCC/E030/2022 and any other suit that may arise pending the hearing and determination of the instant Application and determination of the instant suit filed by the Plaintiff/Applicant herein.

   iv. That the costs of this Application be provided for.

Applicant's Case

2. The Applications is premised on the grounds on its face and the Applicant's Supporting Affidavit evenly dated. The Applicant deposes that being the owner of motor vehicle registration number, KCS 169R and the Respondent's insured, he seeks a declaration in the suit that the Respondent ought to indemnify him for claims arising from a road traffic accident which occurred on 25th March, 2022 during pendency of the insurance policy.

3. That there exist primary suits that is; Nakuru CMCC No. E615 of 2022, Nakuru CMCC No. E499 of 2022 and Nakuru Small Claims Case No. SCCC/E030/2022 where the Applicant was sued for compensation for loss and damage both personal and fatal claims.

4. That he reported the occurrence of the accident to the Respondent but the Respondent has not appointed any advocates to enter appearance or represent him. that his numerous requests to settle the claims and visits to the Respondent's premises. That he is now faced with possible judgements or possible attachment of property in the event that the Respondent does not settle the claim or appoint an advocate to enter appearance.

Respondent's Case

5. The Application was opposed by the undated Replying Affidavit filed on 7th July, 2023 sworn by Moses Maluki Kavisi, Legal Officer. He deposes that yes the Respondent was the insurer of the Applicant's vehicle. That the policy specifically covered 7 passengers but on the fateful day there were 9 passengers aboard which was breach of the various policy conditions entitling the insurance to decline the claim.

6. It was further averred that there was no insurance cover between it and the driver of the subject vehicle. That by law it is entitled to void vitiate and repudiate liability under the said policy. That investigators were appointed and the Investigation reports dated 30th May, 2022 and 27th January, 2023 listed facts which were in breach of the policy.

7. That the Respondent wrote back notifying him of the breach and that the company had repudiated 3rd party liability, returned the pleadings and requested him to appoint his own counsel. That the Applicant is guilty of non-disclosure of material facts.

1st Interested Party's Case

8. By way of Replying Affidavit sworn on 17th April, 2023, the 1st Interest Party opposed the Application. She stated that she was suing as the Legal Representative of the Estate of Francis Mwariri Kimotho (deceased) in Nakuru CMCC No E615 of 202.

9. That the Application is an abuse of the Court process. That the Applicant's draft defence raises no triable issue and that the Applicant cannot seek stay of proceedings on the basis of pending premature declaratory suit. That the declaratory suit and the Applicant's suit seek to enforce two different parties and can stay the other. The Application seeks to delay or defeat disposal of her suit.

2nd and 3rd Interested Party's Case

10. The Application was opposed by the Replying Affidavit of Wambugu Ndegwa sworn on 29th March, 2023. He averred that the 2nd and 3rd Interested Parties are co-Plaintiff in Nakuru CMCC No E499 of 2022 suing on behalf of one Benedict Wambugu Wangari (deceased).

11. That the application is misconceived and lacking bona fides. That the suit herein is in nature a declaratory suit as an insured against an insurance company and the liability of the Applicant to third parties is not dependent on the liability between the insured and the insurance company.

12. Further it was stated that such an action ought to be brought after entry of judgment thus the case is premature. That grant or otherwise of stay of proceedings is a discretionary power where the discretion should be in furtherance of the interests of justice.

13. The Court directed parties to file written submission and at the time of writing the Ruling only the Applicant's submissions were on record.

Applicant's Submissions

14. On whether the Applicant is deserving of the orders sought, it was submitted that by the Respondent admitting that it was the insurer is bound by the contract of insurance and cannot renege and the Court should condemn the Respondent. Reliance was placed in Ogada Odingo vs Phoenix of E.A. Insurance Co. Ltd Kisumu HCC 132 of 2002.

15. In relying in the decision in Charles Makenzi Wambua v Africa Merchant Assurance Co. Ltd & Another [2014] eKLR to submit that the issues between the Applicant and the Respondent and the declaratory suit ought to be determined first on merit while the primary suits are stayed. That unless some measure of protection is given to the Applicant the instant declaratory suit as presently framed may well be an academic exercise.

16. That the Applicant stands to suffer prejudice if the primary suits are allowed to proceed to conclusion before hearing and determination of the instant declaratory suit. That failure to grant stay of proceedings would be a waste of judicial time as the judgments arising out of the primary proceedings would have to be reversed if the Applicant is found successful. The Court's attention was drawn to the case of Fredrick Gathungu Njenga vs Africa Merchant Assurance Co. Ltd & Another Nakuru HCCC No. 65 of 2015.

17. In relying on the reasoning in Kenya Power and Lighting Company Limited vs Esther Wanjiru Wokabi [2014] eKLR where the Court laid own the principles to be considered in deciding whether or not to grant stay of proceedings, the Applicant submitted that he has demonstrated that he has a prima facie arguable case, the Application was filed expeditiously and demonstrated sufficient cause and reasoning that it is in the interest of justice to grant the orders sought.

Analysis and Determination

18. I have carefully considered the application, the supporting affidavit, the relying 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.

19. When it comes to stay pf 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 excised 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 b 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 possible succeed on the basis of the pleading and the facts of the case."

20. 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.

21. It is not disputed that the Applicant's motor vehicle registration number KCS 169R was involved in a road traffic accident on 25th March 2022 in which passengers in the subject vehicle sustained serious and fatal injuries. As a result, the injured and legal representatives of the deceased instituted Nakuru CMCC No. E615 of 2022, Nakuru CMCC No. E499 of 2022 and Nakuru SCCC/E030/2022.

22. 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 is bound to settle the claims arising out of the said suit.

23. He averred that he is apprehensive that he is faced with "possible judgments and possible attachment" of property in the event that the Respondent does not settle the claims or appoint and advocate.

24. The Respondent response is to the effect that they have repudiated the claim for the reason that the vehicle was carrying more passengers than it ought to, that the Applicant lied on the statement about the name of the driver at the time of the accident, that the vehicle was used for a purpose not intended and that the vehicle was used to ferry fare paying passengers.

25. 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 Rhird Party Risks) Act and that their suits are not dependant on the outcome of the declaratory suit.

26. The Applicant has relied on a few authorities to submit that he is deserving of the orders of stay of proceedings at the Trial Courts;; Charles Makenzi Wambua v Africa Merchant Assurance Co. Ltd & Another [2014] KEHC 662 (KLR), Fredrick Gathungu Njenga vs Africa Merchant Assurance Co. Ltd & Another and Kenya Power and Lighting Company Limited vs Esther Wanjiru Wokabi [2014] KEHC 3174 (KLR) and Apollo Ogunda v Africa Merchant Assurance Co. Ltd & 4 others [2015] KEHC 71 (KLR).

27. I have perused the said authorities and the above are not relatable to this case as they are at the Appeal stage and they seek inter alia stay of execution of judgments and decrees as well as stay of proceedings in already concluded primary suits.

28. 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."

29. 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."

30. 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 4-fold 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"

31. First and foremost, there is no decision reached yet so the Applicant is pre-empting the outcome of the Courts in the primary suits. A declaratory suit is only applicable upon entry of judgment. Section 10 thereafter becomes applicable.

32. Secondly according to the Act, the Respondent can only indemnify parties who are insured under the policy. If the Respondent is compelled to take up the primary suits only for the same to be determined that it had no obligation to do so then it will suffer prejudice.

33. Thirdly 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.

34. Even if the Court does find that the Respondent is liable to settle the claims, the liability of the Respondent has to follow a sequence of tests to which at this point we are not yet there.

35. Liability in the Primary suits affects the Respondent upon issuance of judgement and the Court finds that the Respondent is indeed liable to satisfy the decrees therein and that the injured were persons insured under the policy.

36. In Francis Mwobobia v Invesco Insurance Co. Limited; Mwirigi Muguna Nkoroi (Intended Interested Party/Applicant) [2021] eKLR the Court held that "

> " upon entry of judgment in such accident claims where the Defendant was insured, Section 10 of the Insurance Motor Vehicle Third Party Risks) Act requires the insurer to settle the decretal amount as awarded and in accordance with the provisions of the Act. It is however not always the case that the insurers willingly settle the claim and this necessitates the filing of a declaratory suit to compel the insurer to settle the decree."

37. In Musyoki vs Amaco Insurance Company Ltd & Another [2023] eKLR, I dealt the Court stated:-

> " The primary duty of settling the decree falls squarely on the Applicant. In the event the 1st Respondent as his insurer fails to satisfy the decree, the Applicant will still be called upon to satisfy the same. Nothing prevents the Applicant from settling the decretal sum and then suing the Respondent for compensation or reimbursement.

38. On the other hand, the primary suits are between the Applicant and the Interested Parties who in any case are not parties to the contract of insurance between the Respondent and the Applicant. Rightly so, the Applicant has a statutory right to seek a declaration that the Respondent is obligated to settle claims under the insurance policy.

39. Be that as it may, there is no statutory provision barring the Interested Parties from seeking their rights and further in the event judgment is entered against the Applicant, nothing bars them from executing the judgment against the Applicant directly.

40. Nothing prevents the Applicant from settling the decretal amounts that would arise from the Courts and thereafter suing the Respondent for reimbursement. The duty to settle any claims falls squarely on the Applicant.

41. This was also the position in Stephen Amollo Odhiambo Vs Monarch Insurance (2022) KEHC 15610 (KLR) where it was held that:-

> " I must however state that the primary obligation of settling the decree falls squarely on the plaintiff and in the event that the Defendant as his insurer fails to satisfy the decree, the plaintiff will still be called upon to satisfy the same. In other words, the mere fact that the

Defendant is bound both contractually and statutorily to satisfy the decree does not absolve the plaintiff from meeting his obligations under the tort of negligence."

42. The issues raised by the Respondent on breach of insurance policy and whether the Respondent can legally repudiate the contract of insurance are matters which cannot be canvassed at the interlocutory stage and hereby reserved for hearing of the main suit.

43. It is my considered opinion that this Application is premature and ill conceived. Staying of proceedings should be done under great scrutiny.

44. 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 precent 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.

45. Granting such orders would be to aid the Applicant in delaying his liability to the Interested Parties which would not be in in the interest of justice.

46. In the premise I find that the Application is without merit and is hereby dismissed. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 6TH DAY OF MARCH, 2025

MOHOCHI S. M.

JUDGE