



**Garrett Adams Limited v Invesco Insurance Company Limited; Busienei (Interested Party) (Civil Case E001 of 2023) [2025] KEHC 3903 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3903 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CIVIL CASE E001 OF 2023  
RPV WENDOH, J  
MARCH 27, 2025**

**BETWEEN**

**GARRETT ADAMS LIMITED ..... PLAINTIFF**

**AND**

**INVESCO INSURANCE COMPANY LIMITED ..... DEFENDANT**

**AND**

**LYDIA CHEPKOSKEI BUSIENEI ..... INTERESTED PARTY**

**RULING**

1. By the application dated 14/12/2023, the applicant, Garrett Adams Limited, seeks the following orders
  - i. Spent
  - ii. That pending the determination of this application and that dated 4/12/2023, the court be pleased to stay the warrants of attachment dated 13/9/2023 and Judgment dated 26/5/2023 in Kapenguria SPMCC 19/2020, Lydia Chepkoskei Busienei -V- Garrett Adams Limited.
2. The application is premised on grounds found in the body of the application and the affidavit of Nadir Salyani, dated 14/12/2023.
3. The deponent is a director of the applicant company and depones that the Interested party got judgment against the applicant; that the cause of action arose out of a road traffic accident involving the applicant's motor vehicle and the Interested party; that the said motor vehicle was insured by Invesco Assurance Company.
4. The Applicant needs protection against execution following the said judgment and on 04/12/2023, the applicant filed this declaratory suit against the Respondent.



5. The applicant's Counsel went ahead and filed submissions relating to grant of orders of injunction and relied on the case of *Giella -V- Cassman Brown* (1973) EA 358. According to Counsel the applicant had met the threshold for grant of an order of injunction as laid down in the *Giella* case i.e. that the applicant had demonstrated that he has a prima facie case with high chances of success, that the applicant will suffer irreparable loss if not granted and lastly, that if in doubt, whether balance of convenience tilts in the appellant's favour.
6. The application was opposed and the Respondent, Lydia Chepkoskei, swore an affidavit dated 6/12/2023, and deponed that she is the decree holder and that the suit cannot be maintained because the Respondent was placed under liquidation on 8/2/2023; that leave must be sought first before any action can be brought against the Respondent and that therefore the entire suit and application should be struck out.
7. She further deponed that in any case, she is a stranger to the relationship between the applicant and Respondent; that the applicant was served with the plaint and was represented by the firm of Ingosi Advocates, they participated in the proceedings in the lower court and should let the interested party enjoy the fruits of her judgment. Mr. Kiveu, Counsel for the Interested Party also filed grounds of opposition to the effect that this application is a replica of the application dated 4/12/2023, it is frivolous, vexatious and an abuse of the court process, is incompetent and does not seek to set aside orders made on 4/12/2023; that the application has been overtaken by events as the vehicle was attached long ago and there is nothing to stay.
8. Both parties filed written submissions.
9. The applicant urged that the applicant has met the threshold for the grant of an order of injunction and went ahead to argue the grounds upon which an order of injunction may be granted. The Respondent filed submissions through the firm of Kiveu Advocates. He submitted that the legal status of the Defendant, Invesco
10. Assurance is that on 15/8/2024, it was placed under statutory management pursuant to section 67 C (2) (1) of the *Insurance Act* and that the regulator appointed Policyholders Compensation Fund (PCF) that has taken over the management and operations of Invesco Assurance; that the suit is no longer tenable and should be struck out; that the fund has declared a moratorium on all claims and proceedings against the defendant for a period of one year under that compensation is capped at 250,000/= under the Policyholders Compensation Regulations; that in any case there is no privity of contract between the applicant and the Interested Party and the Interested Party cannot be barred from enjoying the fruits of her judgment based on a contract between the applicant and defendant; that the plaintiff can claim for indemnity from the Insurer (defendant) upon settling the claim. Counsel relied on the decision in *Kamakya -V- Resolution Insurance Company Ltd* (2021) eKLR.
11. Counsel argued that the applicant had failed to meet the conditions for grant of an order of injunction set out in *Giella -V- Cassman Brown* (Supra) I have duly considered the application, the response thereto and submissions by both Counsel.
12. The applicant seeks a stay of execution of the warrants dated 26/5/2023 and the judgment in SPMCC 19/2020. An application for stay of execution is brought pursuant to Order 42 Rule (6) (1) and (2) of the *Civil Procedure Rules*. For the court to grant an order of stay.
13. The applicant has to satisfy the following conditions,
  1. That substantial loss may result to the applicant if an order of stay is not granted;
  2. That the application has been brought without unreasonable delay;



3. That the applicant will provide security for due performance of the decree.
14. In this matter the applicant has gone ahead and made submissions relating to grant of an order of injunction which is governed by Order 40 CPR and the conditions for grant of an order of injunction are those set out in the case of *Giella -V- Cassman Brown* (Supra) I find that the applicant has not attempted to demonstrate that they are deserving to an order of Stay of Execution.
15. In addition to the above the Respondent submitted that the Defendant, Invesco Assurance Company Limited has been placed under statutory management under section 67 C (2) (1) of the *Insurance Act* and that Policy Holders compensation Fund (PCF) has taken over the management and operations of Invesco. Unfortunately, the Counsel did not provide any evidence to prove this fact. The above notwithstanding, this is a matter that the court takes judicial notice of, that the defendant was placed under statutory management for one year with effect from 14/8/2024 in terms of Section 67 C (2) (1) of the *Insurance Act*. A suit cannot therefore be filed against the said defendant.
16. As submitted by the Interested party's Counsel, the applicant seeks to stop execution of a judgment made in favour of the Interested parties who had no contract with the Defendant. The contract of Insurance was between the applicant and the Defendant. The Interested party is therefore a stranger to that contract and the court cannot stop the interested party from enjoying the fruits of her judgment without good reasons.
17. In the matter of *Blue Shield Insurance Company Limited* (2017) eKLR the court while addressing the issue of interested parties suing an Insurance Company had this to say "A moratorium declared under Section 67 (C) (10) of the *Insurance Act* is meant to protect the Insurer in this case against its policy holders and its Creditors and not the policy holders against proceedings from third parties"  
*In Kamakya -V- Resolution Insurance Company Ltd* (2021) eKLR Judge Odunga observed "However; that whereas an insured may well be entitled to settle claims covered under the Insurance Policy; that statutory right of action does not bar a person injured from executing the decree issued in his favour against the insured directly"  
..... the issues between an Insurance Company and its policy holder/creditor should not affect the policy holder/tortfeasor as there is no privity of contract between them"
18. I take a cue from the above decisions and, in this case, the applicant cannot purport to stop the Interested party from reaping the fruits of her judgment from the applicant in order to await the lifting of the moratorium from the defendant.
20. The applicant should settle the Interested party's claim and seek indemnity from the Insurer (Defendant).
21. In the end, I find no merit in the application I also find the application to be incompetent in that it only seeks an order of stay pending hearing of the application. If granted what happens after the application is heard. The application dated 14/12/2023 is hereby dismissed with costs to Interested Party.

**DELIVERED, DATED, AND SIGNED AT KAPENGURIA THIS 27TH DAY OF MARCH, 2025.**

**R. WENDOH**

**JUDGE**

Ruling delivered in open court in the presence of

Plaintiff / Applicant – Mr. Wambilyanga

Interested party - Mr. Kiveu



