



Pan Africa Insurance Company Limited v Tamre (Suing as the Administrator of the Estate of the Late Wycliffe Cavine Omondi) & another (Civil Appeal 585 of 2019) [2025] KEHC 9255 (KLR) (Civ) (30 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9255 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 585 OF 2019

LP KASSAN, J

JUNE 30, 2025

BETWEEN

PAN AFRICA INSURANCE COMPANY LIMITED APPLICANT

AND

JACOB WAMBAYE TAMRE (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE WYCLIFFE CAVINE OMONDI) 1ST RESPONDENT

APA INSURANCE COMPANY LIMITED 2ND RESPONDENT

RULING

1. For determination is the motion dated 14/10/2024 by Pan Africa Insurance Co. Ltd (hereafter the Applicant) seeking inter alia:
 - a. That this honorable Court be pleased to release to the Applicant the security deposited in the joint interest earning account at Kenya Commercial Bank (KCB) Bank Ltd being Account No. XXXXXXXXXX in the names of Simba & Simba Advocates and Nyaberi & Co. Advocates.
 - b. That the said amount be disbursed to the Applicant through the bank account of their present advocates in record i.e. Bank:- KCB Bank, Account Name:- Simba & Simba Advocates, Account No.-: XXXXXXXXXX, Account Branch-; Kipande House
 - c. That this honorable Court be pleased to make such further orders as are necessary for the ends of justice and to prevent an abuse of the Court process.
 - d. That the cost of the motion be provided for.



2. The motion is expressed to be brought among others pursuant to Section 1A, 1B & 3A of the Civil Procedure Act (CPA) on grounds amplified in the supporting affidavit of even date sworn by Sylvia Matasi. The gist of her deposition is that vide a ruling delivered on 19/11/2019 this Court directed the Applicant to deposit the entire decretal sum, in respect of Nairobi Milimani CMCC No. 7673 of 2014 (hereafter the lower Court Suit), in a joint interest earning account in name of the advocates representing the parties in the matter. That in compliance with the said direction, on 07/02/2020, the Applicant deposited Kshs. 7,531,556.95/- in a joint interest earning account domiciled at KCB Bank Ltd being Account No. XXXXXXXXXX in the names of Simba & Simba Advocates and Nyaberi & Co. Advocates. She goes on to depose that on 31/07/2024, this Court delivered a judgment in the instant appeal in favour of the Applicant directing that the lower Court matter be heard afresh. In summation she states that it is only fair and just that the amount paid by the Applicant as security in respect of the appeal be released to the Applicant's counsel.
3. The 1st Respondent opposes the motion by way of a replying affidavit dated 04/12/2024 deposed by Dr. Justy P. Lumumba, counsel on record for the 1st Respondent. He begins his deposition by setting out and affirming the events leading up to the instant appeal and its subsequent determination. He particularly assails the motion by deposing that the lower Court suit, of which is a declaratory suit as against the Applicant, underpins liability on the insurance company and is not a re-litigation of the primary suit Nairobi Milimani CMCC No. 1998 of 2006, that has since been determined. That the Applicant has been using the Court process to shield itself from fulfilling its obligations under the Insurance Act by settling all insurance claims arising out of premiums paid. He goes on to state that it is only fair and just that for the parties to fast track the lower Court suit, the amount deposited in the joint interest account ought to remain there until the lower Court matter is heard.
4. That in any event, the Applicant will still be condemned to pay over the said amount to the 1st Respondent, as such, it serves no purpose releasing the same to the Applicant. He further states that the availability of the funds in the joint interest account will equally ensure ease of settlement of the lower Court decree considering the prolonged duration that parties have been litigating on the matter. In conclusion, he states that the 1st Respondent is desirous of having the lower Court suit timeously determined.
5. The motion was canvassed by way of written submissions of which this Court has duly considered together with the rival affidavit material.
6. Alongside the forestated, this Court has correspondingly considered the record before it. It is not in dispute that the Applicant filed an appeal as against the decision of the lower Court rendered on 11/10/2019, which appeal was determined in its favour vide a judgment of this Court delivered on 31/07/2024. Prior to determination of the instant appeal, the Applicant filed an application seeking stay of execution pending hearing and determination of its appeal, this Court as a condition on the order of stay of execution being sought, directed vide a consent order on 11/12/2019, that the decretal sum in the lower Court suit to the tune of Kshs. 7,531,556.95/- be deposited in a joint interest earning account in the name of respective counsel for the parties acting in the matter. It is the said deposited funds that is at the core of the motion presently for consideration before this Court.
7. It is well trodden that a successful litigant is entitled to the fruits of successful litigation, See-; *Samvir Trustee Limited vs. Guardian Bank Limited Nairobi (Milimani) HCCC 795 of 1997 and Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63*. Here, going by the decision of this Court rendered on 31/07/2024, which is shall capture verbatim latter in this ruling, the success the Applicant is yet actualize, on accord of having successfully litigated its appeal, is to have



the matter heard afresh by another Magistrate other than the one who initially heard and rendered a decision in the matter. (See Annexure SM).

8. The Applicant's explanation in support of the motion is fairly upfront, that it is only just that the amount paid by the Applicant as security in respect of the appeal be released to the Applicant's counsel. The 1st Respondent, through counsel, appears to oppose the motion on three (3) divergent aspects -; that there is inevitability that the deposited funds will eventually be paid out to 1st Respondent once the lower Court matter is re-heard and determined in the 1st Respondent's favour; that the deposited funds will ensure that the lower Court matter is expeditiously determined; and that parties have litigated over a long period of time, to wit, if the funds continue remaining in the joint interest account, the same will ensure ease of settlement of the lower Court decree, once the same is heard and determined.
9. At the risk of repetition, it bears reminder that the funds in the joint interest account sought to be released were acting as security in respect of the Applicant's appeal. Patently, the appeal that was determined appertained a ruling of the lower Court rendered on 11/10/2019 emanating from a review application (See Annexure JPLN-4) and not a decree of the same Court earlier rendered on 14/12/2018. (See Annexure JPLN-3). Deductively, as at determination of the review application by the lower Court, there existed a decree that had been passed by the same Court meanwhile was yet to be settled. The security deposited over the appeal was on accord of the decree rendered on 14/12/2018. Thus, the instant appeal having been determined, it can purposefully be stated that the purpose of the security deposited thereof has since been extinguished, but the issue arising is whether the monies deposited ought to be released to the Applicant.
10. Ex facie, it is the Court's reasoned belief that the decree emanating from the lower Court suit (See Annexure JPLN-3), has not been set aside and or appealed. What the Applicant has merely sought is for the release of the funds it availed as security for its appeal. While the 1st Respondent appears to have reservation with the release of the said funds, it was not bereft of options within which to move the Court, to secure the said funds, pending a fresh hearing of the matter before the lower Court. The 1st Respondent, cannot by way of response, seek relief before this Court and or induce this Court to grant order not specifically sought. Suffice to say, this Court cannot suo moto move to decline to release the funds, so deposited, on the premise of the 1st Respondent's apprehension without being formally moved by 1st Respondent by way of specific reliefs.
11. As is, and by this Court understanding of the judgment rendered on 31/07/2024, the 1st Respondent still remains the decree-holder in respect of decree in Nairobi Milimani CMCC No. 7673 of 2014 meanwhile can still proceeds to realize the fruits of successful litigation appropriately and if need be. I find it useful to quote, the relevant part of this Court's judgment to give effect to my latter deduction. This Court stated in part therein that-;

“In view of everything said above, it is my conclusion that there is merit in the appeal herein.

I shall, accordingly, review the decision of the trial court, of 11th October 2019, to the extent of the dismissal of the review prayer, so that that prayer is allowed. Given that some of the issues raised point to the impugned judgment having been arrived at while the matter was being handled by Advocates that the appellant had not appointed, and given that an issue has arisen, with respect to where the liability should fall, as between the 2 insurance companies, I shall not substitute the said decision with my own, but I shall remit the matter back to the trial court, for hearing afresh, by a magistrate other than Hon. DW Mburu, SRM. The appeal herein is determined in those terms. Each party shall bear its own costs.” (sic)



12. Ultimately, this Court is not convinced by the 1st Respondent's riposte, to decline the release of funds deposited in Court as security, in respect of an appeal that has since been determined in favour of the Applicant/depositor. The 1st Respondent still has recourse and can move the Court appropriately to secure his interest, if need be. This Court is therefore inclined to allow the motion in the following terms -:

- a. That an order does hereby issue releasing to the Applicant the security deposited in the joint interest earning account at Kenya Commercial Bank (KCB) Bank Ltd being Account No. XXXXXXXXXX in the names of Simba & Simba Advocates and Nyaberi & Co. Advocates.
- b. That the said amount be disbursed to the Applicant through the bank account of their present advocates in record i.e. Bank:- KCB Bank, Account Name:- Simba & Simba Advocates, Account No.-: XXXXXXXXXXXX, Account Branch-; Kipande House
- c. That each party to bear their own costs of the motion.

13. Order accordingly!

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2025

L. P KASSAN

JUDGE

In the presence of;

Mabesu for Applicant

Latei holding brief ochieng for 2nd Respondent

Carol – Court Assistant

