



**Kenya Water Institute v CIC General Insurance Limited (Civil Case E194 of 2023) [2024] KEHC 7885 (KLR) (Civ) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7885 (KLR)

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

**CIVIL**

**CIVIL CASE E194 OF 2023**

**JN MULWA, J**

**JUNE 27, 2024**

**BETWEEN**

**KENYA WATER INSTITUTE ..... PLAINTIFF**

**AND**

**CIC GENERAL INSURANCE LIMITED ..... DEFENDANT**

**RULING**

1. This is a declaratory suit filed by the plaintiff against the defendant who at all material times was the Insurer of the Plaintiff's motor vehicle Registration No. KAY 868V under policy No. 012/070/103219/2013/12 under which the insurer was obligated under *CAP 405* to indemnify it against losses, liability and damages arising from use of the said vehicle.
2. The said motor vehicle was involved in a road traffic accident in the primary suit on 23/06/2014.  
The court in Milimani CMCC No. 3350 of 2015 *Sylvester Mutinda Kamau vs. William Wafula and Kenya Water Institute* found in favour of the plaintiff in its judgment delivered on 17/09/2017 which judgment the defendant failed to settle prompting the plaintiff to file this suit seeking declaratory orders that the defendant is statutorily obligated to settle the decretal sum, interest and costs in Milimani CMCC No. 3550/2015 plus costs.
3. Simultaneously with the suit, the plaintiff filed the Notice of Motion Application dated 15/11/2023 under Order 22 Rule 22 and 25 Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 1A, 1B and 3A of the *Act* seeking an Order of Stay of Execution of the decree issued by the primary court on 17/09/2017 pending hearing and determination of the suit.
4. The Applicants Advocate, Brian Wanyonyi Wechabe swore the affidavit in support on 15/11/2023 alongside grounds opposing the application as seen at its face.



In respect to Section 10(1) of the *Insurance (third Party Risks) Act* there is no doubt that that, unless otherwise proved, that the defendant had abdicated its obligations causing the Applicant to likely suffer loss and damage by attachment and sale of its assets despite that obligation being placed upon the insurer of the accident motor vehicle. The decretal sum as at the time of filing this application was Kshs. 1,981,990/= and warrants of attachment had been issued.

5. The purpose and objectives for stay of execution orders is to preserve the subject matter of the suit pending hearing and its determination.

However, the applicant must satisfy the court that if the orders of stay are not granted, substantial loss may be occasioned to the applicant, that security for the due performance of the decree has been offered and that the application has been brought without undue delay.

As ably held in the Case *Butt vs. Rent Restriction Tribunal* [1979]; the power of the court to grant such orders being discretionary ought to be exercised in a way that does not prevent a party from pursuing its appeal or suit so that the same is not rendered nugatory.

See also *RWW V. EKW* [2019] eKLR; *Evelyn Jebitok Keter vs. Henry Kiplagat Muge & 2 Others* [2011] eKLR; *Rocky Driving School Limited V. Cute Kitchen Limited* [2015] eKLR.

6. It is trite that when a court is granting such stay orders, it ought to balance the parties interests as held in *James Wangalwa & Another v. Agnes Naliaka Cheseto* [2012] eKLR:-

“----the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself does not amount to substantial loss. Even when execution has been levied and completed, that is to say the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of *CPR*—substantial loss has to be prevented by preserving the status quo because such loss would render the appeal nugatory”

See also *Absalom Dora V. Tarbo Transporters* [2013] eKLR where the court observed that:-

“The discretionary relief of stay of execution pending appeal is disguised on the basis that no one would be worse off by virtual of an order of the court. As such order does not introduce any disadvantage but administers the justice that the case deserves. This is in recognition that both parties have rights.”

7. It is this courts view that if execution proceeds against the applicant who is the insured of the defendant it will be in total disregard of the provisions of *CAP 405* where the insurer has abdicated its obligations, more so that it has not filed any response to the application and the declaratory suit, and being aware of the execution proceedings against its insured in the primary suit as evidenced in the communication prior to filing of this suit between itself and its insured.

8. In that regard, I find merit in the application dated 15/11/2023. The following order shall issue: -

- a. The Plaintiff/Applicant is granted stay orders of all execution proceedings in respect of the decree issued in Milimani CMCC No. 3550 of 2015 on 17/09/2017 and all consequential orders arising therefrom pending hearing and determination of the declaratory suit herein.
- b. The court having not been told that the defendant CIC General Insurance Limited may be financially unable to satisfy the decree of the Primary suit should the suit be successful, I shall not order deposit of security pending the hearing and determination of the suit



- c. No orders shall issue in respect of the interested party in this application as non are applicable.
9. Costs of the application shall abide outcome of the declaratory suit herein.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE, 2024.**

**JANET MULWA**

**JUDGE**

