



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APPLICATION 198 OF 2014

IRENE NJOKA.....APPLICANT

VERSUS

KENYA REINSURANCE COPORATION.....RESPONDENT

RULING

The applicant Irene Njoka in his application dated 28th October 2014 seek for leave to commence proceedings and proceed with Third Party proceedings against the Kenya Re-insurance Corporation Limited, Statutory Manager for United Insurance Company Limited. In prayer 2 the applicant seeks for stay of execution of the judgment in Embu HCA No. 77 of 2009.

In her supporting affidavit, the applicant depones that there was a suit for special damages against her which resulted in Embu Civil Appeal No. 77 of 2009. The suit arose from a road traffic accident involving the applicant's vehicle registration No. KAN 046 F which was insured at the material time by United Insurance Company Limited which has now been wound up and whose pending claims are in the hands of the Statutory Manager appointed by Kenya Reinsurance Corporation. The applicant states that she has information that the Respondent who obtained judgment in her favour even on appeal has now applied for taxation of costs giving a signal that he will be executing the judgment very soon.

Mr. Morris Njage argued the application for the applicant. He relied on Section 10 of Insurance (Motor Vehicle Third Party Risks) Act Cap. 405 and Section 228 of the Companies Act and on the case of ***Kensilver Express Ltd & 3 others Vs Commissioner of Insurance & 4 others [2007] eKLR.***

The law applicable in this application is Section 10 of Cap 405 which provides for Indemnity claim by an insured against the Insurance Company.

It provides:-

- 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.*

2. No sum shall be payable by an insurer under the foregoing provisions of this section

(a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or

(c) in connexion with any liability if, before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either -

(i) before the happening of the event the certificate was surrendered to the insurer, or the person to whom the certificate was insured made a statutory declaration stating that the certificate had been lost or destroyed; or

(ii) after the happening of the event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or

(iii) either before or after the happening of the event, but within a period of twenty eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police in writing of the failure to surrender the certificate.

The law requires that the Insurance Company be notified of the accident and that there be in existence of a valid policy. The applicant has annexed a copy of Insurance certificate No. 1647642 commencing on 4/7/2002 and whose date of expiry was 3/8/2002. The accident occurred on 16th July 2002 which was within the life of the insurance certificate. In their correspondences to Buffer Insurance brokers and to the Applicant dated 30/01/2003 and 28/03/2003 respectively, the Branch Manager of United Insurance Company acknowledge that the company had been notified of the accident. His letter dated 30/10/2003 was calling for various documents to be forwarded to him. There is evidence to show that the requirements of Section 10 were complied with. The 2nd letter calls for other documents to enable the insurance company to deal with third party matters.

Although it is not clear from the application, it is assumed that third party proceedings were taken out in pursuance with Order 1 Rule 15. There is *prima facie* evidence that the insurer is entitled to indemnify the insured in respect of motor vehicle KAN 0-46 .

Evidence of winding up of the company has been annexed and that appointment of a statutory manager in the order of the Deputy Registrar High Court Nairobi in High Court Misc. Civil Suit No. 545 of 2006.

"It is hereby ordered:-

1. *That the appointment of Kenya Reinsurance Corporation Limited as Statutory Manager of United Insurance Company Limited be and is hereby extended for a further six (6) months with effect from 15th March, 2011."*

Kenya Reinsurance Corporation was appointed the Statutory Manager of united Insurance Company Limited upon the winding up of the company. The Statutory Manager is obligated to deal with all the business of the company. The order was extended for a further six months on 21/03/2011. The

applicant did not annex any document showing the current position. However, any pending business of the company must be dealt with with the Kenya Reinsurance Corporation.

Prayer 2 seeks for stay of execution of judgment in HCCA No. 77 of 2009 pending hearing and determination of the third party proceedings. This being an *ex parte* application, I can only grant temporary stay pending further action in other proceedings by the applicant.

This application is allowed in terms of prayer 1. As for prayer 2, this court grants temporary stay of judgment for seven (7) days from the date of this ruling pending filing of the Indemnity suit.

There is no order as to costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF NOVEMBER, 2014.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Morris Njage for the Applicant

F. MUCHEMI

JUDGE



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