



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**MISCELLANEOUS CIVIL SUIT NO. 126 OF 2014**

**IN THE MATTER OF THE INSURANCE ACT CHAPTER 487 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF STANDARD ASSURANCE COMPANY OF KENYA LIMITED (Under Statutory management)**

**SAMMY MUTUA MAKOVE**

**(THE COMMISSIONER OF INSURANCE):::::APPLICANT/RESPONDENT**

**AND**

**MR. JACKSON K. MAINGI:::::INTERESTED PARTY/APPLICANT**

**R U L I N G**

1. The application before the Court is the Notice of Motion dated **16<sup>th</sup> September 2014** and filed in Court on even date. It is expressed to be brought under **Order 1 Rule 10 (2), Order 45 Rule 1** and **Order 51 Rule 1** of the **Civil Procedure Rules 2010** as well as **Section 3A** of the **Civil Procedure Act**.
2. The application is seeking for orders that this Honourable Court do set aside the Court Order of **30<sup>th</sup> July 2014** in relation to the interested party and that the said Orders be reviewed to the extent that it relates to the interested party. It is based on the grounds stated in the application and is supported by the affidavit of the Interested Party, the Applicant herein.
3. The application is opposed. The Respondent filed a Replying affidavit sworn by the Commissioner of Insurance, SAMMY MUTUA MAKOVE on **24<sup>th</sup> September 2014**.
4. By an order of this Court dated **30<sup>th</sup> July 2014**, the Statutory Manager, Mr. Jackson Maingi, was ordered to make and file a report in this Court covering the period during which he was the Statutory manager of Standard Assurance Company. The Applicant was aggrieved by the Order

on the basis that he was not given an opportunity be heard contrary to the provisions of the Constitution. It is this Order that has prompted the Applicant to come to Court seeking a review of the same or setting aside of the said Order.

5. It is the Applicant's case that it is impossible to prepare the Report as he was unable to get the services of crucial staff mainly an accountant due to lack of funds. It is averred by the Applicant that when he did the first report, he highlighted the challenges which he faced but the same were never addressed. As a result, it is the Applicant's position that it is impossible to prepare the required report.
6. On the other hand, it is the Respondent's case that there is no breach of principles of natural justice in the Court requiring the Interested Party to provide a report for the period of his tenure as Statutory manager. According to the Respondent, it is not impossible to prepare the Report as averred by the interested party and no legal basis is therefore laid for this Honourable Court to review the Order.
7. I have considered the application, the affidavits on record as well as the submissions by Counsel. Having done so, I take the following view of the matter.
8. The Report required in this matter is not a requirement by the Court, but a term of Contract under which the interested party took up his appointment. It is therefore not accurate for the Interested Party to state that he was condemned unheard. The report was a requirement he was aware of and would be required to file at the end of his Contract or provision of services.
9. I take note that the Applicant in his submissions has acknowledged that a report could actually be done and filed in this Court. There is a report dated **11<sup>th</sup> March 2014** attached to the Application and marked "**JM 5**". All that was required of the interested party was to file a Report covering the period of his tenure.
10. However, it is vexing that the same had to be filed after taking the parties back and forth. This is a waste of the Court's time. All the averments by the Interested Party in his Supporting affidavit sworn on **16<sup>th</sup> September 2014**, the attachments therein and even the grounds of the application were sufficient to form the required Report.
11. In light of the foregoing, it is plain that the Applicant is not entitled to orders of review. In the circumstances, it is upon the Applicant to obey the Orders of 30<sup>th</sup> July 2014 requiring him to file a Report. Therefore, the order that commends itself to this Court is to dismiss the Notice of Motion dated **16<sup>th</sup> September 2014** with costs.
12. The Interested Party/Applicant shall have a further 30 days from today to fully comply with the orders of this court at 30th July 2014.

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI THIS 19TH DAY OF DECEMBER 2014**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

M/s Kairo for the Applicant

No appearance for the Defendant

Teresia – Court Clerk



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