



**Pasha Enterprises Limited v Kenya Alliance Insurance Company Limited; Karama & another
(Suing as the legal representatives of the Estate of Abdul Wahab Hassan - Deceased) & 3 others
(Interested Parties) (Civil Case E002 of 2024) [2024] KEHC 4895 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E002 OF 2024
EM MURIITHI, J
APRIL 18, 2024**

BETWEEN

PASHA ENTERPRISES LIMITED PLAINTIFF

AND

KENYA ALLIANCE INSURANCE COMPANY LIMITED DEFENDANT

AND

**YUSSUF HASSAN KARAMA & HALIMA YUSSUF (SUING AS THE LEGAL
REPRESENTATIVES OF THE ESTATE OF ABDUL WAHAB HASSAN -
DECEASED) INTERESTED PARTY**

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**MOHAMED ALI DAWA & JAMILA MOHAMED (SUING AS THE
LEGAL REPRESENTATIVES OF THE ESTATE OF ADAN ALI -
DECEASED) INTERESTED PARTY**

**RISHARO ALI HASSAN & RUKIA ABDULLAHI ALI (SUING AS THE
LEGAL REPRESENTATIVES OF THE ESTATE OF ALI HASSAN BORU –
DECEASED) INTERESTED PARTY**

RULING

1. By an application under certificate of urgency dated 25/1/2024, pursuant to Article 50 of the [Constitution](#), Sections 1A, 1B, 3A of the [Civil Procedure Act](#), Order 40 Rules 1 and 2 of the Civil Procedure Rules and all other enabling provisions of the law, the Plaintiff/Applicant seeks that:
 1. Spent
 2. Spent



3. The honorable court be pleased to issue an order of interim injunction restraining the interested party either by themselves or their agents/Auctioneers from levying any execution on the plaintiff/applicant with regard to Isiolo Civil Suits Nos. 46, 47, 48 and 49 of 2015 pending hearing and determination of this suit.
4. Costs of this application be provided for.
2. The application is based on grounds on the face of it and supported by an affidavit sworn by Samwel Theuri, the Plaintiff's director. The Plaintiff had taken an insurance cover for his vehicle registration No. KBT 715 T FAW with the Defendant, and on 12/12/2013, the motor vehicle was involved in a road traffic accident, as a result of which the Interested Parties sustained various injuries. The Defendant has now failed and/or refused to settle the decrees in Isiolo Civil Suits Nos. 46, 47, 48 and 49 of 2015, yet the same were covered by the insurance policy. Under the insurance policy aforesaid, the liability of the Defendant in respect of third parties was unlimited and therefore there was no cap on liability. The Defendant has an obligation to settle the decrees in the aforementioned suits in full, and unless interim orders are granted, the Plaintiff's property will be sold yet it had a valid insurance cover for its motor vehicle. He is advised by his advocates that the insurance was properly notified of the filing of the suit and therefore they are obligated to settle the decrees.
3. Samwel Theuri, the Plaintiff's director swore a supplementary affidavit on 29/2/2024 in support of the application. He avers that the application is not res-judicata as the lower court suits sought recovery of damages from an accident while the suit herein seeks compulsion of the Defendant to honour its contractual obligation in settling the full decretal sum.
4. The Interested Parties opposed the application vide a replying affidavit sworn by Kiautha Arithi, their advocate on 6/2/2024. He avers that it is clear from the pleadings that this is a quarrel between an Insured, the Plaintiff and its insurer, the Defendant, and they should leave the Interested Parties out of it. Their clients obtained regular judgments/decrees after a very protracted hearing and no appeal has been filed or stay obtained therefrom. Clearly the present application is an abuse of the court process, is indeed res-judicata and it ought to be dismissed with costs, as there cannot be injunctive orders against valued decrees of competent courts.
5. The application was argued orally in court and a ruling reserved.

Determination

6. An application for interlocutory injunction is governed by the principles of interlocutory injunction set out in *Giella v Cassman Brown* (1973) EA 358, and the question before the court is whether a *prima facie* case has been established; whether damages are adequate compensation in the circumstances of this case, and where, in case of doubt, the balance of convenience lies on the issue of grant of temporary prohibitive injunction.

Prima facie Case

7. The undisputed facts of this case are that the Plaintiff's motor vehicle, which had been insured by the Defendant was involved in a road traffic accident, wherein the Interested Parties sustained various injuries. The Interested Parties subsequently obtained lawful decrees against the Plaintiff in Isiolo Civil Suits Nos. 46, 47, 48 and 49 of 2015. There is imminent danger of execution of the said decrees by the Interested Parties against the Plaintiff who had taken out an insurance cover with the Defendant. The Plaintiff now wants the Defendant compelled to settle the decretal sums in full in accordance with the insurance policy.



8. It is against that backdrop that this court finds that the Plaintiff has established a prima facie case with a probability of success.

Irreparable Loss

9. The Interested Parties will proceed to execute their legally obtained decrees against the Plaintiff herein unless the court intervenes in granting the orders sought.
10. This court finds that the Plaintiff has demonstrated that it will suffer irreparable loss which cannot adequately be compensated by an award of damages, as it will be required to settle the decretal sums yet it had insured the accident motor vehicle with the Defendant at the material time.

Balance of Convenience

11. Having found that the Plaintiff will undeniably suffer irreparable loss which cannot be compensated by an award of damages, the balance of convenience tilts in favour of granting the interim injunction as sought in the application.
12. The issue of the application being res-judicata has aptly been addressed by the Plaintiff in its supplementary affidavit that the matter dealt with by the trial court was a compensatory suit for personal injuries from a road traffic accident yet this is a declaratory suit against an insurance company to settle the decretal sum.

Orders

13. Accordingly, for the reasons set out above, this court finds that the application dated 25/1/2024 is merited and it is allowed in terms of prayer No. 3 as follows:
1. An order of interim injunction restraining the Interested Parties either by themselves or their agents/Auctioneers from levying any execution on the plaintiff/applicant with regard to Isiolo Civil Suits Nos. 46, 47, 48 and 49 of 2015 pending hearing and determination of this suit, is hereby issued.
 2. The Costs of the application shall be in the cause.

Order accordingly.

DATED AND DELIVERED THIS 18TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

Appearance

J M Wanjohi for the Applicant/Plaintiff

Mr. Arithi for the Interested Parties

Ms. Jayo for the Respondent/Defendant

