



**Geminia Insurance Limited v Muteke; Wityla & 4 others (Interested Parties)**  
**(Civil Suit E030 of 2024) [2025] KEHC 15561 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15561 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAKURU**  
**CIVIL SUIT E030 OF 2024**  
**JM NANG'EA, J**  
**OCTOBER 29, 2025**

**BETWEEN**

**GEMINIA INSURANCE LIMITED ..... PLAINTIFF**

**AND**

**EMMANUEL NDUANO MUTEKE ..... DEFENDANT**

**AND**

**GILBERT KHASIAN WITYLA ..... INTERESTED PARTY**

**BONFACE MIHESO ALUVALA ..... INTERESTED PARTY**

**DINAH AYUMA ANDAGO ..... INTERESTED PARTY**

**FRANCIS IMBUKA ALIKAMA ..... INTERESTED PARTY**

**VILLARY MINAYO ..... INTERESTED PARTY**

**RULING**

1. The Plaintiff brings a Notice of Motion dated 23<sup>rd</sup> July 2024 praying for the following reliefs:-

1. Spent

2. Spent

3. That pending full hearing and final determination of this suit, this honourable court be pleased to issue orders of stay of proceedings in Nakuru Chief Magistrate's Court Cause Numbers E282, E283, E284, E285 and E287 of 2024 or any claim arising from the road traffic accident that occurred on the 27<sup>th</sup> day of December 2023 involving motor vehicle registration number KBV 254B and motor vehicle registration number KCS 152R.



4. That in the alternative, pending full hearing and final determination of the instant suit there be stay of execution of any judgment arising from Nakuru Chief Magistrate's Court Cause Numbers E282, E283, E284, E285 and E287 of 2024 or any claim arising from the road traffic accident that occurred on the 27<sup>th</sup> day of December 2023 involving motor vehicle registration number KBV 254B and motor vehicle registration number KCS 152R.
2. The application is supported by affidavit evidence of the Plaintiff's Senior Legal Officer (Eric Onderi) as authorized by its Board of Directors. It is averred that the Plaintiff was at all material times the insurer of the Defendant's motor vehicle registration number KBV 254B. On 27<sup>th</sup> December 2024 the vehicle was involved in a road traffic accident with another motor vehicle registration number KCS 152R.
3. The Plaintiff's witness further deposes that the Defendant failed to notify them of occurrence of the accident which they only learnt upon being served with notice of institution of suit. After investigating the circumstances surrounding occurrence of the accident, the Plaintiff is said to have established that the Defendant breached the terms of the insurance policy executed between them by using the insured vehicle for hire and reward contrary to the Policy. The Defendant also allegedly failed to disclose that at the material time the vehicle was being driven by an unauthorised driver in breach of the insurance policy.
4. The Plaintiff contends inter alia that owing to the breach of the insurance policy, it lodged several claims against the Defendant for negligence seeking compensation. A repudiation notice was also issued to the Defendant and, therefore the Plaintiff asserts that it is not bound to settle the said claims arising from the accident in question which are Nakuru CMCC Nos. E282, E283, E284, E285 and E287 of 2024 hence this suit and application.
5. The Defendant has not filed a response to the application.
6. The Interested Parties put in a reply vide affidavit evidence of their advocate (Mong'are Gekong'a). They describe the application as bad in law, made in bad faith, inept, lacks merit and otherwise an abuse of the court process. While confirming that they did institute the stated suits in the lower court, they contend that staying the proceedings would prevent them from accessing justice against the rules of natural justice.
7. Counsel further deposes inter alia that there is therefore no basis for staying of proceedings or execution of judgements that are yet to be delivered, in any event.
8. Learned Counsel for the Plaintiff rightly submit in writing that the relief of stay of proceedings is discretionary which discretion is required to be exercised judiciously and not capriciously [(see Case Law in Nairobi vs Kimotho & Another (Civil Appeal 16 2023 KEHC 177 17 (KLR) (19 may 2023 (Ruling) cited by Counsel)].
9. The Plaintiff endeavoured to explain the difference between stay of execution pending appeal and stay of proceedings as sought in this matter. Making reference to the judicial determination in Meru Civil Appeal no. 40 of 2018 (Kenya Wildlife Service vs Mutembei (2019) eKLR, it is conceded that;

“.... Stay of proceedings is a grave judicial action which seriously interferes with the right of litigation to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay and overall, the right to fair trial. Therefore, the test for stay of proceedings is high and stringent...”



10. The Plaintiff continues to submit inter alia that it has brought the application timeously and would suffer substantial loss if the stay desired is not granted. It is asserted that there is compliance with Order 42 Rule 6 of the Civil Procedure Rules 2010 regarding conditions for stay.
11. The Defendant and the Interested Parties have not filed submissions.
12. The main issue for determination in this application is whether the remedy of stay of proceedings in the cited lower court suits is merited in the circumstances. The court is being called upon to invoke its discretionary power which is required to be exercised in a judicious and not capricious manner (see the famous case in Shah vs Mbogo among many other Superior Courts' decisions some of which have been relied upon by the Plaintiff).
13. The Plaintiff is seeking stay of proceedings and/or judgement in the Nakuru Chief Magistrate's Civil Suit Nos. E282, E283, E284, E285 and E287, all of 2024 pending hearing and determination of this suit. The claims were instituted by the Interested Parties against the Defendant therein who is also the Defendant in this matter. There is accordingly no legal basis for the reliefs craved.
14. The Plaintiff herein is not a Defendant in the suits before the Chief Magistrate's Court. There is therefore no risk of execution against it in the event that the suits are heard and Judgement entered against the Defendant therein as well as in this matter.
15. The Application is dismissed with costs to the Interested Parties.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025.**

**J. M. NANG'EA, JUDGE.**

In the presence of:

Plaintiff's Advocate, Mr. Mwangi for Mr. Muriithi

Defendant, Absent

Interested Parties' Advocate, Ms Sitati

Court Assistant (Jeniffer)

