

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL APPEAL NO. E027 OF 2025
MADISON GENERAL INSURANCE COMPANY LIMITED.....APPELLANT
VERSUS
SIMON KIPKOSGEIRESPONDENT

Coram: Before Justice R. Nyakundi

M/s Kitiwa & Partners Advocates

M/s Kimaru Kiplagat & Co. Advocates

RULING

1. What is pending before this court for determination is an application dated 27th February 2025 in which the Applicant is seeking the following orders:
 - a) Spent
 - b) Spent
 - c) There be an order of stay of execution pending the hearing of the application dated 14th February 2025 inter parties.
 - d) Costs of this application be in the cause.
2. The Application is based on the following grounds among others that; -
 - a) The Appellant filed before this Honorable court an application dated 14th February 2025.
 - b) This Honorable court certified the application as urgent and ordered that pre-trial be held on 10th of March 2025.
 - c) The Respondent's Advocates were duly served with the application and the orders on 21st February 2025.
 - d) The Respondent's Advocates have proceeded and instructed auctioneers who have proclaimed the Appellant's properties.

- e) Unless an order of stay of execution is granted, the auctioneers will proceed and collect the proclaimed goods.
 - f) If that were to happen, the application dated 14th February 2025 and the appeal filed herein will be rendered nugatory and the Appellant will suffer irreparable loss.
3. The Application is supported by the annexed affidavit sworn by the MOSES BARASA who avers as follows: -
- a) *That I am a legal officer of the Appellant/Applicant herein and I' am duly authorized to make and swear this affidavit in support of the application here before this Honorable court.*
 - b) *That the Appellant/Applicant filed an application before this Honorable court dated 14th February 2025 seeking inter alia orders of stay of execution of the decree of the lower court pending the hearing of this appeal.*
 - c) *That this Honorable court certified the application as urgent and ordered that the matter be mentioned on 10th March 2025 for pre-trial.*
 - d) *That I am informed by our Advocates on record which information I verily believe to be true that they duly served the Respondent's Advocates with the court's orders on 21st February 2025.*
 - e) *That despite the Respondent's Advocates being aware of this appeal and the orders of the court, they proceeded to instruct auctioneers to proclaim the Appellant's properties.*
 - f) *That unless orders of stay of execution are granted, the auctioneers will proceed and attach the Appellant's properties rendering the application dated 14th February 2025 and this appeal nugatory.*
 - g) *That in the event that was to happen, the Appellant will suffer irreparable loss.*

h) That it is therefore in the interest of justice that an order of stay of execution be granted pending the inter parties hearing of the application dated 14th February 2025 on 10th of March 2025.

DECISION

4. The applicable provisions of the law on withdrawal of suits is Order 25 Rule 1 of the Civil Procedure Rules. The anchor principles are articulated in the case of **Smt. Rais Sultana Begam v Abdul Qadir & Others** which held:

“The consequence of an act of withdrawal is that the Plaintiff ceases to be a Plaintiff before the Court, if he is the only Plaintiff and withdraws the whole of the suit, the suit comes to an end and nothing remains pending before the Court, if he withdraws only a part of the suit that part goes out of the jurisdiction of the court and it is left with only the other part. This is a natural consequence of the act; a further consequence imposed by sub rule (3) is that he cannot institute a fresh suit in respect of the subject matter. He becomes a subject to this bar as soon as he withdraws the suit. It follows as a corollary that he cannot revoke or withdraw the act of withdrawal. If he absolutely barred from instituting a fresh suit, it means that he is absolutely barred from reviving his status as a Plaintiff before the Court.

It stands reason that when a withdrawal the Plaintiff ceased to be a party and the Court ceased to have jurisdiction over the suit and thus become functus officio nothing but a fresh suit can again invest the Court with jurisdiction over it. As far as the withdrawn suit is concerned the suit is at an end and no further proceedings can be in it; the suit and the Plaintiff do not exist and no application such as an for revoking the withdrawal can be made in the suit or by the Plaintiff”.

5. When the matter came for a status conference both legal Counsels invoked Order 25 Rule 4 of the Civil Procedure Rules for the Court to record the following consent: That;
- a) By consent of both parties, this appeal is marked as withdrawn.
 - b) Each party to bear its own costs.
 - c) The file be marked as closed.

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT THIS 11TH AUGUST
2025**

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R. NYAKUNDI
JUDGE