



26th July 2019

The Chief Executive,
AIBK Member.

RE: Update on the Petition challenging the Insurance (Amendment) Act, 2019

1. The Petition and application for Conservatory Orders were filed on Monday 22nd July 2019. The application was certified urgent and the Duty Judge directed that the same be served and thereafter be mentioned on 26th July 2019 (**today**) for directions. We attended Court together with our counsel.
2. The Government Printer released the assented Insurance (Amendment) Act, 2019 (“the Act”) on 22nd July 2019.
3. The commencement date of the Act was indicated as Tuesday 23rd July 2019.
4. Parties appeared for directions before Justice Weldon Korir today, 26th July 2019.
5. IRA had instructed the Attorney General to represent it jointly with representation for the CS, National Treasury. The AG filed and served a Replying Affidavit and Grounds of Objections in court on 26th July 2019.
6. The Association of Kenya Insurers (AKI) appeared through an advocate and applied to be enjoined as Respondents in the suit, arguing that they are the true respondents, representing 51 insurance companies who would be mostly affected by any orders issued in the Petition. The court enjoined them in the suit. They applied for 14 days to file their Replies to the application for conservatory orders and the Petition.
7. The Judge in conduct of the case is on transit to the Court of Appeal having been recently nominated to that court. He therefore indicated that he would not be hearing any matters in the interim.

8. We (AIBK) applied for interim orders pending hearing of the application urging that in the interim the implementation of section 156 of the Insurance Act as amended by the Insurance (Amendment) Act 2019 be stayed notwithstanding that its commencement date was 23rd July 2019. The AG and AKI opposed the request for interim orders.
9. The enjoinder by AKI complicated the issuance of interim orders as the judge considered that all parties should file their responses before any orders can be issued. The judge declined to grant interim orders staying implementation of the Act.
10. The following specific directions were given:-
- a) **AKI to file its replies to the application and Petition within 10 days;**
 - b) **The AG to file the response to the Petition within 10 days;**
 - c) **AIBK to file further Affidavit, if necessary, and Submissions within 10 days after service;**
 - d) **The Respondents to file their submissions within 10 days thereafter; and,**
 - e) **Petition to be heard on 26th September 2019.**
11. Since the application for conservatory orders is yet to be heard, it is proposed that pending the hearing on 26th September 2019 and after AKI has filed its response, a fresh application for interim orders shall be made to stay implementation as the hearing of the case is ongoing.
12. In the interim, the Act has taken effect from 23rd July 2019 which is the commencement date. The effect is that members will be required to comply with the law until such time that a stay order is issued by the court.

Should IRA or the insurers follow up with any criminal prosecution in pursuit of the new law, AIBK will make application to stay such criminal proceedings pending determination of the Constitution Petition.

AIBK SECRETARIAT