



**Directline Assurance Company Limited v Munguti (Suing as the Legal Representative of the Estate of Kelvin Maingi Leonard) (Civil Appeal E101 of 2022) [2024] KEHC 8878 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8878 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E101 OF 2022  
JK NG'ARNG'AR, J  
JULY 25, 2024**

**BETWEEN**

**DIRECTLINE ASSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**CATHERINE NDUKU MUNGUTI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KELVIN MAINGI LEONARD) ..... RESPONDENT**

*(An appeal from the judgment and decree of the Chief Magistrate's Court at Machakos (M. A. Otindo, PM.) delivered on 5th July, 2022 in CMCC No. E035 of 2021)*

**JUDGMENT**

1. The respondent filed a plaint dated 26<sup>th</sup> January, 2021 in Machakos CMCC No. E035 of 2021. In it, the respondent averred that as the legal representative of the estate of the deceased namely Kelvin Maingi Leonard, she sued the insured owner of motor vehicle registration number KCH 587W, that is Trinity Transporters Limited, resulting from an accident that occurred on 1<sup>st</sup> February, 2017 in Machakos CMCC No. 462 of 2018. The said vehicle was insured by the appellant by dint of policy number 10xxxxxx that existed at the time the accident occurred.
2. The respondent averred that on 16<sup>th</sup> January, 2018, she issued a notice of intention to sue the appellant in line with the statutory provisions of the *Insurance Act*. Thereafter, she filed Machakos CMCC No. 462 of 2018 seeking compensation from the appellant's insured. On 26<sup>th</sup> March, 2019, judgment on liability was obtained in her favor in the ratio of 90:10. On 25<sup>th</sup> September, 2020, a decree was issued and warrants in the sum of Kshs. 7,505,443.00 extracted on her behalf. However, the insured has not settled the decretal sum as at the time of filing the suit. She observed that since the appellant was the insurer of the suit motor vehicle, it was duty bound to satisfy the decree. It is for those reasons that the respondent



- filed a declaratory suit seeking to compel the appellant to satisfy the sum of Kshs. 7,505,443.00. She further prayed for costs of the suit.
3. In its judgement dated 5<sup>th</sup> July, 2022, the trial court found that the respondent's claim was merited. It was allowed as prayed. It is those findings that galvanized the appellant to file its memorandum of appeal dated 20<sup>th</sup> July, 2022. The appellant raised seven grounds impugning the findings of the trial magistrate. In summary, the appellant complained that the findings of the trial court were faulted as it failed to take into account the provisions of section 5 (iv) and 10 (1) of the Insurance (Motor Vehicle Third Party Risks) Act when making a declaration that the appellant was bound to satisfy the decretal sum in Machakos CMCC No. 462 of 2018. The appellant distanced itself from the insured stating that it did not insure it. That since the policy was the only proof of relationship, the respondent had failed to establish her case to the required standard. Finally, the learned magistrate premised her decision on wrong principles of law and as such, occasioned a miscarriage of justice. For these reasons, the appellant urged this court to allow the appeal by setting aside the judgment of the trial court. It further prayed for costs of this appeal.
  4. The appeal was directed to be canvassed by way of written submissions. However, as at the time of writing this judgment, only the respondent impressed with her submissions. I have looked at those submissions dated 2<sup>nd</sup> February, 2024 with are very elaborate urging this court to dismiss the appeal. I have also considered the memorandum of appeal and examined the record of appeal. This being a first appeal, I am reminded of my primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial magistrate are to stand or not and give reasons either way. [See Abok James Odera T/A A.J Odera & Associates vs. John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR].
  5. The respondent PW1 testified that the deceased was her son. He died on 1<sup>st</sup> February, 2017 following a road traffic accident that occurred along the Nairobi Mombasa highway near Makutano area. The deceased was a passenger aboard motor vehicle registration number KCH 587W. Following the deceased's death, the respondent incurred a sum of Kshs. 284,450.00 towards funeral arrangements.
  6. The respondent filed Machakos CMCC No. 462 of 2018 wherein the insured owner of the suit vehicle, the appellant's insured, that is Trinity Transporters Limited, entered appearance and filed its statement of defence. On 26<sup>th</sup> March, 2019, a consent judgment on liability was entered in her favor in the ratio of 90:10. The matter proceeded for assessment of damages and on 25<sup>th</sup> September, 2020, a decree was issued in the sum of Kshs. 7,505,443.00 which the appellant's insured has never settled to date. This notwithstanding the proceedings in HC Misc. App. No. 546 of 2019 where the insured sought stay of execution. The same was granted on condition that the insured remitted half of the decretal sum to the respondent. The appellant's insured had failed to do so. The said judgment has yet to be appealed and the application for review was dismissed, the respondent continued. Since the decretal sum was outstanding, the respondent urged the trial court to allow the suit as prayed.
  7. In support of her case, the respondent produced the pleadings in Machakos CMCC No. 462 of 2018 namely the plaint [PEXh.1] as well as the memorandum and statement of defence marked PEXh.2, the decree issued on 26<sup>th</sup> September, 2020 [PEXh.3], police abstract [PEXh.4], demand letter and statutory notice dated 26<sup>th</sup> April, 2018 and 3<sup>rd</sup> January, 2018 respectively both marked PEXh.5, demand letter to the appellant dated 2<sup>nd</sup> February, 2022 marked PEXh.6, the court's ruling urging the appellant's insured to settle a portion of the decretal sum [PEXh.7], statement of accounts from Directline Insurance [PEXh.8], certificate of insurance for motor vehicle KCH 567W [PEXh.9] , letter dated 18<sup>th</sup> January, 2019 acknowledging service of the statutory notice marked PEXh.10 and letter dated 15<sup>th</sup> November, 2019 from Directline Insurance [PEXh.11].



8. The court noted that the appellant's counsel had a propensity to adjourn the matter when it was poised for hearing on antecedent dates. On this occasion that PW1 testified, the court declined to allow the appellant to adjourn again. Since the appellant was not ready to proceed, its case was closed after the close of the plaintiff's case. However, both parties filed their elaborate submissions that were considered by the trial magistrate.
9. The respondent sought declaratory orders to compel the appellant to satisfy the decree extracted in Machakos CMCC No. 462 of 2018 that remained unsettled. Section 4 (1) of the Insurance (Motor Vehicles Third Party Risk) Act provides that all motor vehicles operating within the jurisdiction of Kenya shall have in force a policy of insurance or such security in respect of third party risks as long as the same complies with the requirements of this Act. It is established herein that the insured, Trinity Transporters Limited, took out an insurance policy with the appellant under policy no. 10xxxxxx. The policy was running at the time the accident occurred on 1<sup>st</sup> February 2017. The information was captured in the exhibits marked PExh.4 and PExh.9. These facts were not disputed by the appellant.
10. This brings us to the relevant provisions of the Act found in section 10 (1) which provide that it is the duty of the insurer to satisfy a judgment against a person insured. However, under section 10 (2) (a), the insurer shall be notified within fourteen days of the commencement of the proceedings against the insured. This was demonstrated aptly by the respondent who notified the appellant of her intention to sue the appellant's insured as set out in PExh.5. In fact, it was acknowledged by the appellant vide its letter dated 18<sup>th</sup> January, 2019 marked PExh.10.
11. Sub section 4 then provides as follows:

“No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action.”
12. It is noted that the appellant in its memorandum of appeal denied that since the signed policy schedule was not produced and since they denied being the insurers of the insured, then they could not be held culpable. Unfortunately, the particulars of denial were not adduced before the trial court and this court. However, and be that as it may, it was incumbent upon the appellant to have complied with the dictates of section 10 (4) if that was the direction it intended to take. It cannot now swing its memorandum of appeal before the court's eyes saying that it intended not to comply when it was aware of the dictates of the Act.
13. In my view, nothing stopped the respondent from proceeding in the manner she did. She swiftly notified the appellant that she was intent on filing suit against its insured in Machakos CMCC No. 462 of 2018 within the statutory time period and the said notice was acknowledged as received by



the appellant. She thereafter obtained a judgment and a lawful decree that has not been satisfied by the insured. It was thus within her right to seek declaratory orders against the appellant since no action was undertaken by the appellant as couched in section 10 of the Insurance (Motor Vehicles Third Party Risk) Act. I have also no doubt in my mind that the policy of insurance complied with the provisions of section 5 of the Act. While the appellant decried that the trial magistrate failed to consider that provision with the circumstances herein, I find that on a balance of probabilities, nothing demonstrated that the certificate of insurance violated those provisions. That argument must fail.

14. The upshot of the above is that the appeal herein lacks merit. It is hereby dismissed with costs to the respondent.

It is so ordered.

**DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 25<sup>TH</sup> DAY OF JULY, 2024.**

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**J.K. NG'ARNG'AR, HSC**

**JUDGE**

In the presence of: -

Muriuki Advocate for the Appellant

A.K. Mutua Advocate for the Respondent

Court Assistant – Peter Ong'idi

