



**Obadha v Invesco Assurance Co. Ltd (Civil Case E016 of 2021)
[2024] KEHC 12149 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12149 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E016 OF 2021
MS SHARIFF, J
SEPTEMBER 30, 2024**

BETWEEN

MICHAEL OBADHA PLAINTIFF

AND

INVESCO ASSURANCE CO. LTD DEFENDANT

JUDGMENT

1. *Vide* a plaint dated 16th August, 2021 the Plaintiff approached this court seek the following orders:-
 - a) A declaration that at the time of the accident on 1st June 2019 at Oyugis along Kisumu-Oyugis Road involving the motor vehicle Reg. No. KBV 211X the Plaintiff was in compliance to the terms, conditions and warranties of the insurance policy.
 - b) A declaration that the Defendant's action of failing to act/defend the suit(s) arising from the accident that occurred on 1st June, 2019, is in breach of the terms and conditions of the contract of motor vehicle insurance policy number 065/0804/1/008533/2014/07 to cover 3rd party liability in respect of motor vehicle registration number KBV 211X.
 - c) A declaration that the Plaintiff shall not be personally liable in respect of any loss and damage or liability caused, sustained or incurred on the 1st June 2019 along Busia Road involving the motor vehicle reg. no. KBV 211X.
 - d) A declaration that the Defendant is liable to settle all the proven claims from the interested parties and any other interested party against the Plaintiff arising from the accident that occurred on the 1st June 2019.
 - e) A mandatory injunction is issued compelling the Defendant to give instructions to an advocate to defend Oyugis SPMCC 134 of 2019 – *Zedekiah Moseet Ogumbo Stevens v Michael Obadha* all pending claims arising from the accident that occurred on the 1st June, 2019.



- f) Costs of the suit and interest on (f) at court rates.
- g) Any other relief that the court shall deem fit to grant.
2. Whereas the Defendant was duly served with summons to enter appearance on 7th February 2022 at 3.30pm at its office located at Chalbi Drive, Lavington Nairobi by one Leonard Kimanzi Ndewa a court process server, who duly filed his return of service on 1.9.2022, it did not enter appearance and the Plaintiff requested for judgment on 7.5.2024 which request was acceded to by this court on 4.6.2024 and interlocutory judgment duly entered against the Defendant.
3. On 25.9.2024 this matter proceeded on formal proof and one Michael Obadha testified. He adopted his statement dated 22.2.2021 as his evidence in chief and produced 5 exhibits in the manner listed.
4. It was the Plaintiff's evidence that he had entered into an insurance contract with the Defendant who issued him with an insurance policy No. 065/0804/1/008533/204/07 in respect of his motor vehicle registration No. KBV 211X. The same was 3rd party risk. That during the pendency of the said insurance policy, specifically on 1.6.2019 the said vehicle was involved in a road traffic accident at Oyugis and the Plaintiff notified the Defendant immediately thereafter and forwarded the police abstract to the Defendant.
5. The Plaintiff testified that subsequent to the accident he was served with summons to enter appearance in Kisumu CMCC No. 441 of 2019 and in Oyugis SPMCC No. 134 of 2019. He suspects that there could be more claims filed against him.
6. It was the Plaintiff's evidence that whereas the Defendant had instructed the law firm of Otieno Oyoo & Company Advocates to defend the claims filed in Kisumu Chief Magistrate's court, the case No. Oyugis SPMCC No. 134 of 2019 remains undefended. Further that he has been served with notices of proclamation by Demigen Auctioneers on behalf of the Plaintiffs in *Kisumu CMCC No. 441 of 2019 (Bill Arnold v Michael Obadha & Kisumu CMCC No. 442 of 2019 (Haya Hellen Onyango v Michael Obadha)* and has learnt that demand notices payment of the judgment was first sent to his advocates on record who failed to inform him that judgment had already been entered against him.
7. The Plaintiff maintains that he has made several visits to the Defendant to urge it to take up the defence in Oyugis court and settle the judgments in Kisumu court but the Defendant has been unresponsive. He is thus apprehensive of imminent execution in which case he will suffer loss, damages and financial ruin. The Plaintiff maintains that the Defendant is obligated to pay the claims arising from the said accident, as it is a going concern.
8. The Plaintiff's Counsel made oral submissions and urged this court to grant the Plaintiff the orders sought in the plaint.

Analysis and Determination:

Issues:

- i. Whether the policy of insurance was in force at the material time;
 - ii. Whether the Defendant has breached the terms and conditions of the said insurance policy;
 - iii. Whether the Defendant has a duty to settle the claims arising from the accident.
9. It is not in dispute that the Plaintiff had a valid and subsisting insurance policy o. 065/0804/1/008533/2014/07 which covered third parties from 8th May 2019 to 7th June 2019 and the



insured subject motor vehicle registration No. KBC 211X was involved in a road traffic accident on 1st June, 2019.

10. The evidence presented before this court proves by way of the police abstract that the Plaintiff was disclosed as the owner of the motor vehicle registration No. KBV 211X and whereas no records were availed from the registrar of motor vehicle as to who is the registered owner of the subject motor vehicle, the said police abstract will suffice wherefore I do find that ownership of the vehicle has been proved on a balance of probability and the Plaintiff had an insurable interest in the said motor vehicle. In the case of *Halford v Kymer* (1930) 10 B.C 724 the court held that insurable interest connotes a pecuniary or proprietary interest. The Plaintiff herein is per the insurance policy entitled to be indemnified of any loss that he might incur once the insured risk matures. In this case the risk has matured wherefore the Defendant is legally bound to settle the claims arising from the accident that occurred on the 1.6.2019. On the balance I do find that the Plaintiff has proved his case on the requisite balance of probability and I therefore enter judgment in his favour and make the following orders:-
- a. A declaration is hereby made that as of the 1st of June 2019 the Plaintiff was in full compliance with the terms, conditions and warranties of the insurance policy No. 065/0804/1/0085-33/2014/07 in respect of motor vehicle No. KBV 211X.
 - b. A declaration is hereby made that the Defendant's failure to instruct advocates to defend suits arising from the road traffic accident that occurred on 1.6.2019 involving the insured's motor vehicle registration No. KBV 211X amounts to a breach of the terms and conditions of contract of insurance policy No. 065/0804/1/008533/2014/07.
 - c. A declaration is hereby made that the Plaintiff is not personally liable to settle any claims of loss and or damages caused, sustained or incurred by any Claimant on 1.6.2019 along Busia Road as a result of involvement of motor vehicle registration No. KBV 211X in a road traffic accident.
 - d. A declaration is hereby made that the Defendant is liable to settle all the proven claims of 3rd parties and any other interested parties made against the Plaintiff arising from the road traffic accident that occurred on 1.6.2019 involving the Plaintiff's motor vehicle registration No. KBV 211X.
 - e. A mandatory injunction is hereby issued compelling the Defendant to instruct an advocate to defend *Oyugis SPMCC No. 134 of 2019* and any suit and or claim arising from the accident that occurred on 1.6.2019 involving the Plaintiff's motor vehicle registration No. KBV 211X.
 - f. The Plaintiff is awarded costs of this suit and interest at court rates.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 30TH DAY OF SEPTEMBER, 2024.

M. S. SHARIFF

JUDGE

