



**Monarch Insurance Company Limited v Ekajja (Civil Case 001A of 2021)
[2024] KEHC 11679 (KLR) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL CASE 001A OF 2021
REA OUGO, J
SEPTEMBER 27, 2024**

BETWEEN

THE MONARCH INSURANCE COMPANY LIMITED PLAINTIFF

AND

MICHAEL OTWANI EKAJJA DEFENDANT

JUDGMENT

1. Monarch Insurance Company Limited hereinafter referred to as the plaintiff sued the defendant a plaintiff dated the 15th December 2015. The plaintiff seeks judgment against the defendant for; a declaration that the plaintiff is not liable or bound to make payments or indemnify the defendant under the said insurance policy or cover in respect of any claim in respect of death or bodily injury to any person or passenger being carried arising out of the road traffic accident which occurred on 6th April 2014 along Malakisi- Kolanya road involving the defendant's motor vehicle registration number KBM 228T Toyota Hilux Pick up.
2. The plaintiff's claim as per its plaint is as follows; on the 1st February 2014, the defendant at his instance requested the plaintiff to issue him with a motor commercial third party only insurance policy cover for his motor vehicle registration number KBM 228T Toyota Hilux Pick up which vehicle as per his declarations and representation was to be used for commercial purposes only. The plaintiff in reliance on the declarations and representations by the defendant in the policy cover proposal form and believing the same to be true issued the defendant with an insurance policy cover number KSI/0800/000004/2014- Motor Commercial Third Party only upon payment of the requisite insurance premiums for the period commencing 1st February 2014, and expiring on 31st January 2015 in respect of the defendant's said motor vehicle.
3. The plaintiff further avers that it was an express and or implied term of the said policy cover that the insurance provided was a motor commercial third party only and it did not cover liability or risks in respect of the death of or bodily injury to passengers (s) being covered in or upon entering or alighting



- from the subject motor vehicle or pedestrian at the time of the occurrence of the event out of which any claim and consequently that the plaintiff was not bound to indemnify the defendant in any event of an accident caused or loss occasioned to Third Parties during the pendency of the Policy Cover except as provided in the Policy Cover.
4. The plaintiff claims that on or about the 6th of April 2014 the defendant's motor vehicle registration number KBM 228T Toyota Hilux Pick up while in the course of engaging in transportation business on hire and reward contrary to the policy in force at the time was involved in a road traffic accident along Malakisi- Kolanya road wherein one passenger died. It is further averred that the defendant was not insured or covered against any liability arising in respect of the death or bodily injury to passengers (s) being covered in or upon entering or getting into or alighting from the subject motor vehicle or pedestrians at the time of the occurrence of the event and/or the aforesaid accident involving the defendant's subject motor vehicle.
 5. The plaintiff claims that the defendant breached the terms and conditions of the policy cover no. KSI/0800/000004/2014 as follows:
 - a. Failing to comply with the Third Party Only Motor Commercial Insurance Policy terms while, driving, using and/or hiring motor vehicle registration number KBM 228T Toyota Hilux Pick Up.
 - b. Using motor vehicle registration number KBM 228T Toyota Hilux Pick Up to carry passengers for hire and reward within Busia County and plying the Malakasi-Kolanya road other than for Motor Commercial purposes only as stipulated and represented in the subject Insurance Policy Covering document.
 - c. Misrepresenting or giving false and untrue information while proposing and applying for the subject insurance policy cover with the plaintiff.
 - d. Authorizing an incompetent driver who did not possess and/or have a PSV Public Service Vehicle Licence to drive the motor vehicle registration number KBM 228T Toyota Hilux Pick Up.
 - e. Engaging in non-disclosure of true and material facts while proposing for policy cover with the plaintiff.
 - f. Using or permitting use of motor vehicle registration number KBM 228T Toyota Hilux Pick Up contrary to the terms and conditions of the policy cover form.
 - g. Otherwise using the said motor vehicle contrary to and in total breach of the insurance policy cover terms and conditions.
 6. The defendant was served with the plaint and summons to enter an appearance but failed to enter an appearance and did not file his defence. The matter proceeded ex parte with Titus Mungiti, the legal officer in the plaintiff testifying as Pw1. He adopted his witness statement dated 9/4/2024 and produced the documents attached to the list of documents as exhibits. I have considered his statement and the exhibits attached.
 7. The plaintiff in its submissions identified two issues for the court's determination: whether the plaintiff insured the defendant's motor vehicle registration number KBM 228T and whether the plaintiff is deserving of the reliefs sought.



8. The plaintiff submits that he who alleges must prove and cite sections 107 and 108 of the *Evidence Act*. The plaintiff relied on the case of *Muriungi Kanoru Jeremiah v Stephen Ungu M'mwarabua* [2015] eKLR where the court discussed the burden of proof in civil cases. The plaintiff submits that it tendered evidence before the court to prove that it had insured the accident motor vehicle and that its owner was the insured. The plaintiff produced the policy documents, motor cover policy schedule as part of the documents in the Amended List of Documents dated 13th July 2022.
9. The plaintiff submits further that there is evidence that the defendant breached the terms of the policy. In *Kenya Alliance Insurance Company Limited v Rose Achieng Abdullah* [2021] eKLR the court held that:
 - “ 50. Therefore, the fact that the Plaintiff put to use the insured vehicle the purpose for which it was not insured, that amounted to a breach of the terms and conditions of the insurance proposal and policy. That being the case, the plaintiff insurance company would not be liable to indemnify the defendant for any claims arising from an accident which occurred when the motor vehicle was being used as a public service vehicle and carrying fare paying passengers as opposed to it being used as a private vehicle used to carry shop items...
 51. It is therefore my finding that the Defendant violated the terms and conditions for which the suit vehicle registration No. KCC 043R was insured. As the Defendant’s vehicle was clearly employed for the use for which it was not insured by the Plaintiff, the Plaintiff is not under any legal obligation to honour and/or satisfy the claims arising from and/or to indemnify the Defendant for the bodily injuries sustained by the passengers who at the time of the accident were in the Defendant’s motor vehicle Reg. No. KCC O43R or to compensate any person for any damage or loss to property as a result of the said accident.
 52. In the end, I find the plaintiff’s claim against the defendant for a declaration to repudiate the cover on liability against any risks or claims filed under the policy of insurance is merited.”
10. The plaintiff submits that it has proved its case and is entitled to the costs of the suit and interest at court rates.

Analysis And Determination

11. I have considered the evidence on record, and the submissions by the plaintiff and the key issue is whether the Defendant breached the terms and conditions of Insurance Policy Cover Number KSI/0800/000004/2014.
12. The plaintiff has accused the defendant of non-disclosure of material facts and carrying passengers for hire and reward within Busia County and plying the Malakasi-Kolanya road other than for Motor Commercial purposes only. However, in the Proposal Form for Commercial Vehicle Insurance, under the heading ‘Use Of Vehicle(s)’, the defendant disclosed the following information:
 - a. State the purpose for which the vehicle will be used solely: Commercial Purpose
 - b. General nature of goods to be carried? Own goods/General goods
 - c. Do you carry other people’s goods for hire or reward? Yes
 - d. Will the vehicle be let on hire? Yes



13. The defendant disclosed that the car would be hired out and therefore it was anticipated that there would be passengers in the vehicle. Similarly, Section II of the Commercial Vehicle Insurance Policy provided as follows:

Section II – Liability To Third Parties

1. Indemnity to you or your authorized driver or any person in or getting into or out of the vehicle.

We will cover you or any authorized driver or any person in or getting into or out of the vehicle against legal liability for damages (including the related costs and expenses) for:

 - a. death or bodily injury to any person
 - b. damage to property arising as a result of an accident by or in connection with your vehicle, including while loading and unloading the vehicle as long as such costs will not exceed the amounts of cover provided for under this policy.
14. According to the Proposal Form for Commercial Vehicle Insurance and the Commercial Vehicle Insurance Policy, the allegation by the plaintiff that the defendant was not covered against liability arising in respect of the death of or bodily injury to passengers is not correct.
15. The plaintiff has failed to prove his case on a balance of probability and his suit is hereby dismissed with no costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF SEPTEMBER 2024.

R.E. OUGO

JUDGE

In the presence of:

Miss Opinde -For the Plaintiff

Defendant - Absent

Wilkister -C/A

