



**Kinanga v Directline Assurance Company Limited (Civil Suit  
E089 of 2023) [2024] KEHC 13127 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13127 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT E089 OF 2023  
JK NG'ARNG'AR, J  
OCTOBER 31, 2024**

**BETWEEN**

**JAMES ONDARI KINANGA ..... PLAINTIFF**

**AND**

**DIRECTLINE ASSURANCE COMPANY LIMITED ..... DEFENDANT**

**JUDGMENT**

1. Vide a Complaint dated 10<sup>th</sup> February 2020, the Plaintiff prayed for judgment against the Defendant for a declaration that the Defendant is obliged to pay the Plaintiff Kshs 100,000, interest at 14% per annum from 21<sup>st</sup> February 2023 until payment in full, and costs of this suit.
2. The Plaintiff averred that by the Third Party Policy Insurance No 04060487 and Certificate No A9459929 issued by the Defendant under the *Insurance (Motor Vehicle Third Party Risks) Act* to Shamsa Khalifa Issa in consideration of premium then paid to the Defendant by the said Shamsa Khalifa Issa, the Defendant herein agreed to indemnify the said Shamsa Khalifa Issa against inter alia all sums which the said Shamsa Khalifa Issa would become legally liable to pay in respect of any claim by any person including passengers, pedestrians, other third parties or motors caused by or arising out of the use of motor vehicle registration number KBL XXXR owned by Shamsa Khalifa Issa in addition thereto legal fees payable in connection with the suit claim.
3. That on 27<sup>th</sup> November 2019, the Plaintiff was traveling from Mombasa to Mazaras along the Southern bypass as a lawful fare paying passenger in motor vehicle registration number KBL XXXR upon reaching near the SGR weigh bridge area the Defendants' authorized driver, agent and/or servant negligently and recklessly drove the said motor vehicle registration number KBL XXXR that he lost control and management of the said motor vehicle and caused the same to hit a security light post along the road as a consequence of which the Plaintiff sustained severe injuries. That at the time of the accident, the Defendant herein had issued a Third Party Insurance Policy to Shamsa Khalifa Issa for motor vehicle registration number KBL XXXR and the policy was in operation.



4. That the Plaintiff on 19<sup>th</sup> February 2020 instituted an action for damages against the Defendants in in Mombasa Chief Magistrate Court Civil Case No 216 of 2020, James Ondari Kinanga v R. K. Issa and Shamsa Khalifa Issa for general and special damages. That prior to institution of suit on the said date, the Defendant herein was served with the requisite Statutory Notice in accordance with Section 10 (2) of the *Insurance Motor Vehicle (Third Party Risk Act)* on 29<sup>th</sup> January 2020.
5. That on 18<sup>th</sup> August 2021, the aforesaid case was concluded and judgment entered for the Plaintiff for general damages of Kshs 700,000, interest accrued on general damages of Kshs 14,000, special damages of Kshs 21,450, interest accrued on special damages of Kshs 4,290 plus costs assessed at Kshs 163,655 making a sum total of Kshs 903,395 plus interest. That the Defendant's insured has since paid up the amount.
6. That subsequent to the determination of the case in the magistrates court, the Defendant insured lodged Mombasa High Court Civil Appeal No E125 of 2021, R. K. Issa and Shamsa Khalifa Issa v James Ondari Kinanga herein which was withdrawn on 21<sup>st</sup> February 2023 and costs assessed at Kshs 100,000. That the Defendant became liable to pay the said sum but they have failed, refused and neglected to pay despite the demand and notice of intention to sue.
7. On 18<sup>th</sup> July 2024, the case proceeded with formal proof hearing where the Plaintiff tendered his evidence in respect to the above. The Defendant failed to enter appearance and/or file defence despite having been duly served. The court gave direction for closing submissions to be filed.
8. The Plaintiff in his submissions dated 2<sup>nd</sup> August 2024 argued that the issues pleaded had been proved on a balance of probability on the basis of the case of *Mitchell Cotts (K) Ltd v Musa Freighters*, C. A. No 104 of 2006. The Plaintiff therefore prayed for judgment against the Defendant as prayed in the Plaint.
9. Upon consideration of the evidence before this court, I find that the Plaintiff has proved his case against the Defendant on a balance of probability. I am satisfied that the Defendant is under statutory obligation to settle the decretal amount of Kshs 100,000 plus costs and interest from 21<sup>st</sup> February 2023 as per the costs in the judgment being enforced.
10. I therefore enter judgment for the Plaintiff as against the Defendant for the sum of Kshs 100,000 plus costs and interests as prayed in the Plaint.

**DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

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

**JUDGE**

In the presence of: -

Jengo Advocate for the Plaintiff

No appearance Advocate for the Defendant

Court Assistant – Mr. Samuel Shitemi

