



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**CIVIL SUIT NO. E003 OF 2021**

**CIC GENERAL INSURANCE LIMITED.....**

**PLAINTIFF**

**VERSUS**

**FREDRICK OTIENO.....**

**DEFENDANT**

**JUDGMENT**

1. The plaintiff instituted the suit against the Defendant vide the  
plaint dated 12<sup>th</sup> March 2021, seeking the following orders: -

- i. A declaration that it is and has at all material times been entitled to avoid the aforesaid policy insurance number 10/070/1/173563/2017/01 apart from any provisions contained therein on the grounds that the defendant failed to pay his premiums.

ii. A declaration that it is not liable to make any payment under the aforesaid policy insurance number 10/070/1/173563/2017/01 in respect of any claim against the defendant herein arising out of the injuries sustained by the plaintiff in civil suit no E127 of 2020 Limuru Stephen Kiguru Kamau vs Fredrick Otieno & anor in the accident of 1<sup>st</sup> January 2018 involving motor vehicle registration number KAJ362F

iii. Costs of the suit.

2. The Defendant did not participate in the proceedings and the suit was set down for formal proof. The plaintiff adopted his witness statement, stated his claim and produced list of documents as his evidence in chief.

### **PLAINTIFF'S SUBMISSIONS**

3. Counsel filed written submissions and submitted that the Respondent was a private vehicle insurance policy holder with the Plaintiff paying a premium of Kshs.7,534/= for the period running from 18<sup>th</sup> January 2017 to 17<sup>th</sup> January 2018. The Defendant issued the Plaintiff with a cheque for payment but

the cheque bounced forcing the plaintiff to terminate the Defendant's insurance policy on 8<sup>th</sup> February 2017 for non-payment of premiums and the communication was sent to the Defendant through a policy cancellation on 14<sup>th</sup> February 2017.

4. Counsel submitted that the plaintiff is therefore not liable to repay the claim of 1<sup>st</sup> January 2018 involving Fredrick Otieno's Motor Vehicle KAJ362F.

### **ANALYSIS AND DETERMINATION**

5. I have considered the plaintiff's pleadings, witness statement and the documents in support of the suit. The issues for determination are Whether policy insurance number 10/070/1/173563/2017/01 was legally terminated and whether Plaintiff is liable to make any payment under the aforesaid policy insurance number 10/070/1/173563/2017/01 following accident involving the vehicle on 1<sup>st</sup> January 2018.
6. Despite the defendant having been served with summons to enter appearance and plead, he did not file enter appearance or participate in the proceedings.
7. The plaintiff in an attempt to prove its case adduced the insurance document issued to the Defendant. According to the

plaintiff, the Defendant approached the plaintiff and requested insurance cover in respect to Motor Vehicle KAJ362F. The plaintiff issued the Defendant with an insurance policy number 10/070/1/173563/2017/01 for the premium of kshs.7,534/=.

8. Pw1 testified that the Defendant issued a cheque to Plaintiff but the same bounced forcing the plaintiff to cancel and or terminate the insurance policy issued to the Defendant on 8<sup>th</sup> February 2017, a copy of the cancellation letter has been adduced in court.

9. The accident occurred on 1<sup>st</sup> January 2018, a time when the insurance had already been terminated it. It therefore follows that the Plaintiff is not liable to compensate the Defendant for any claims arising from the accident involving Motor Vehicle KAJ 362F.

10. **FINAL ORDERS: -**

1) I hereby declare that insurance policy number 10/070/1/173563/2017/01 was legally terminated on 8<sup>th</sup> February 2017.

2) I hereby declare that the plaintiff herein is not liable to make payment to Plaintiff in Civil Suit No. E127 of

2020 Limuru Stephen Kiguru Kamau Vs Fredrick Otieno & Anor following the accident of 1<sup>st</sup> January 2018 involving Motor Vehicle registration number KAJ362F.

3) Costs to the Plaintiff.

**Judgment** delivered, dated and signed virtually at **Kabarnet**  
**This 30<sup>th</sup> day of March, 2023**

.....  
**RACHEL NGETICH**  
**JUDGE**

**In the presence of:**

Martin - Court Assistant

Mr. Safari holding brief for Ms Kimachia for Plaintiff

No appearance for Defendant.