



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL APPEAL NO. 171 OF 2018**

*(An appeal arising from the judgment and decree of the Hon. W. Lopokoiyit,*

*Resident Magistrate (RM), in Kakamega CMCCC No. 313 of 2017,*

*of 29<sup>th</sup> November 2018)*

**ISAYA OMULIMA.....APPELLANT**

**VERSUS**

**INVESCO ASSURANCE LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit at the trial court was initiated by the appellant herein against the respondent, for a declaratory order that the respondent, who had insured the accident vehicle in Kakamega CMCCC No. 204 of 2014, in favour of one Bernard Kariuki, was bound to satisfy the decree of the court made in that suit, to the tune of Kshs. 408, 590.00. At the trial, the appellant produced a police abstract to support his case, saying that the same bore a policy number, which was evidence that the accident vehicle had been covered by the respondent.

2. In the end, the trial court made a finding, that the only document that could prove existence of a contract of insurance was a certificate of insurance, and that since such evidence was not brought forth, the case by the appellant had failed, and was dismissed. The appeal before me arose from that finding.

3. The appeal herein turns on only one issue, eventhough four grounds are listed, whether the certificate of insurance was the only way to establish liability on the part of an insurer.

4. It was held, in *APA Insurance Co. Ltd vs. George Masele* [2014] eKLR (Mabeya J), that a police abstract was good enough as evidence that there had been a policy of insurance in force, and that it was unreasonable to expect the injured victim to produce a certificate of insurance, given that he was not privy to the contract between the insured and the insurer, and that the details, as captured in the police abstract, are from the certificate of insurance affixed to a motor vehicle or supplied by the insured.

5. I agree entirely with *APA Insurance Co. Ltd vs. George Masele* [2014] eKLR (Mabeya J). The trial court need not have looked further than from the police abstract. The appellant had established on a balance, from the police abstract, that there was a valid insurance policy in force, and the burden shifted to the respondent to prove otherwise.

6. Consequently, it is my finding that the appeal herein has merit, and I hereby find in favour of the appellant. The order made, in Kakamega CMCCC No. 313 of 2017, dismissing the said suit, is hereby substituted with an order allowing the same in terms of prayers (a), (b) and (c) of the plaint, dated 7<sup>th</sup> July 2017. The appeal herein is allowed in those terms.

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29<sup>th</sup> DAY OF October 2021**

**W. MUSYOKA**

**JUDGE**