



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL CASE NO. 30 OF 2019

BETWEEN

JUBILIEE INSURANCE COMPANY OF KENYA LTD..PLAINTIFF

VERSUS

GEORGE KINGORI NDUNGU.....DEFENDANT

JUDGMENT

1. **George Kingori Ndungu** is the defendant hereof. He has been sued by his insurer the Jubilee Insurance Company of Kenya Limited, hereafter the insurance. The defendant failed to file an appearance or defence and interlocutory judgment was entered for the Insurance. This case proceeded as a formal proof.
2. The defendant requested the Insurance to issue him and insurance cover of his motor vehicle KCN 1722G. The Insurance issued him with a comprehensive insurance policy number P/NRB/2065/2017/195438 to cover, amongst others, liability the third parties risk in respect to the afore stated motor vehicle. The insurance policy contained binding terms and conditions. The policy was valid between 3rd November 2017 and 2nd November 2018.
3. The Insurance through its witness, **Nancy Kasyoka**, stated that one of the terms of the policy of insurance was that in the event of any occurrence which could give rise to a claim under the policy the defendant was required to notify the Insurance with full particulars.
4. The defendant's motor vehicle was involved in an accident on 6th May 2018 and the witness stated that in blatant breach of the express term of the policy of the defendant failed to report the said accident to the Insurance. An action was commenced by the legal representatives of the deceased who was fatally injured in aforesaid accident being case Chief Magistrates Court Kigumo, Civil case No. 79 of 2019.
5. The witness stated that as a result of the defendant's aforesaid breach the Insurance was exposed to risk of liability and damages potentially arising from the claim by the deceased's estate. The Insurance therefore prays for declaration that due to the said breach it is discharged from liability in respect to any claim arising from the said accident.

ANALYSIS

6. The policy of insurance under clause 5 provides that the defendant shall as soon as possible give the Insurance notice of any occurrence which may give rise to a claim against the Insurance. There is uncontroverted evidence that the defendant failed to notify the Insurance of the accident that occurred on 6th May 2018 involving motor vehicle KCN 172G. The Insurance is entitled to the prayers it seeks.

DISPOSITION

7. The judgment of this court is as follows:

(a) A declaration is hereby made that the Defendant has breached fundamental warranties of the insurance policy number **P/NRB/2065/2017/195438** thereby discharging the plaintiff from liability in respect of any claim arising from the accident involving motor vehicle registration number **KCN 172G** on **6th May 2018**.

(b) A declaration is hereby made that the Plaintiff is not liable to satisfy any judgment claims arising out of an accident which occurred on 6th May 2018 involving motor vehicle registration number **KCN 172G**.

(c) A declaration is hereby made that the accident on 6th May 2018 involving Defendant's motor vehicle registration number KCN 172G has not been reported and documented by the Defendant which was in breach of the warranties of the insurance policy number **P/NRB/2065/2017/195438**.

(d) Costs of this suit are awarded to the Plaintiff.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 16TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Mr. Ombati for the Plaintiff: **Present**

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE