



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 23 OF 2015**

**CIC GENERAL INSURANCE COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**KEFA MUKAMI BULOKO.....DEFENDANT**

**JUDGMENT**

1. The plaintiff herein filed this suit against the defendant seeking for:-

(i) A declaration that the plaintiff is and has at all material times been entitled to avoid the aforesaid policy of insurance No. 600/080/1/042117/2014/05 apart from any provisions contained therein on the ground that the said policy of insurance was obtained by:-

(a) Non-disclosure of a material fact or facts; or

(b) Representations of facts which were false in material particulars; or

(c) Both (a) and (b) above.

(ii) A declaration that the plaintiff is not liable to make any payment under the aforesaid policy of insurance No. 600/080/1/042117/2014/05 in respect of any claim against the defendant herein arising out of injuries or death sustained in the accident alleged to have occurred on or about 14/08/2014 involving motor vehicle registration number KBY 568Z.

(iii) A declaration that motor vehicle registration number KBY 568Z was being used for uninsured purposes on or about 14/08/2014 and therefore the plaintiff is not liable to pay any claim arising out of the accident on or about 14/08/2014.

(iv) An order that the defendant pay the costs of this suit.

2. The defendant was served with summons to enter appearance but did not do so. The matter then proceeded ex parte.

3. It was the case for the plaintiff that it is an insurance company. That the defendant was their insured who had taken out a commercial motor vehicle policy for his motor vehicle registration number KBY 568Z. The policy provided that the vehicle was to be used for commercial purposes only and did not cover the use of the vehicle for hire and reward purposes. That on the 14/8/2014 the vehicle was involved in an accident. The plaintiff engaged a private investigator to establish the facts of the accident. The investigations revealed that at the time of the accident the vehicle was on hire to transport a body to hospital for preservation in company of passengers. That two of the passengers died and others were injured. The investigator found that the vehicle was regularly used for hire and reward which was in breach of the use clause in the policy. The plaintiff filed the instant suit.

4. Before the plaintiff accepted to cover the vehicle the defendant had filled a proposal form P.Ex 1 for consideration by the plaintiff. The defendant stated in the proposal form that he intended to use the motor vehicle for his own commercial use for carriage of his own goods and in connection with his profession. The plaintiff then issued the policy, D.Ex 2.

5. Clauses 12 of the cover limited the use of the motor vehicle to the insured's –

(i) Social, domestic and pleasure purposes and his business or profession.

(ii) Use for the carriage of passengers in connection with his business.

The policy stated that the policy did not cover carriage of passengers for hire and reward.

6. I have considered the evidence adduced in court by the plaintiff. The evidence adduced before the court is that the defendant was using the motor vehicle for purposes other than those insured. There is no evidence that the defendant obtained the policy by non-disclosure of material facts. The fact that the defendant subsequently used the motor vehicle for uninsured purposes does not prove that he obtained the policy by non-disclosure of material facts. There is no prove that the policy was obtained by misrepresentation of facts to the plaintiff. Prayer 1 is thereby not proved.

7. The defendant admitted to the investigator that he was using the motor vehicle for purposes other than those insured. The defendant was using the vehicle for hire when the accident of 14/8/2014 occurred. The vehicle was not covered for this purpose. The plaintiff is thereby not liable to make any payment arising from the said accident.

8. In the premises prayer (i) as sought by the plaintiff is dismissed. Prayer (ii) and (iii) have been proved and they are thereby granted as prayed.

The plaintiff to have the costs of the suit.

**Delivered, dated and signed in open court at Kakamega this 31<sup>st</sup> day of July, 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

Mr. Matete holding brief for Karanja for the plaintiff

Parties:

Plaintiff – absent

Defendant - absent

Court Assistant - George