

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 29 OF 2012

GATEWAY INSURANCE COMPANY LIMITED.....APPELLANT

VERSUS

JAPHETH ARITHO KINYUA.....RESPONDENT/APPLICANT

JUDGMENT

The appellant had insured a motor vehicle owned by respondent herein. That motor vehicle was stolen. The respondent lodged a claim which the appellant declined followed by the suit in the lower court. There was no dispute that the appellant was the insurer of the motor vehicle. The motor vehicle, from the evidence, was said to have been purchased at Kshs. 520,000/=. The insurance cover was Kshs. 500,000/=.

Two assessment reports were presented by the parties. The appellant presented an assessment report indicating the pre accident value of the stolen motor vehicle to be Kshs. 380,000/= while the respondent submitted a report showing the value of Kshs. 450,000/=.

It is my duty to evaluate the evidence presented before the lower court to arrive at independent conclusions. This I have done. I have also looked at the submissions of both parties and related the same to the Memorandum of Appeal. I agree with the submission that in the circumstances of such cases, it is not the insured sum that is payable but the value of the motor vehicle at the time of the loss. See - **Jiwaji and Others vs. Jiwaji and Another (1968) EA 547.**

The submissions advanced by both parties and related to the memorandum of appeal appear to address the issues which ought to have been placed before the trial magistrate. This is not the forum for such an approach.

I believe the end result of this appeal depends on the contested valuations by either party. The difference between the parties is Kshs. 70,000/=. In a delicate balance of the interests of the parties, I shall split this figure by half such that the respondent is entitled to Kshs. 415,000/= as compensation for his lost motor vehicle. To that extent only the appeal succeeds.

This suit would not have proved necessary had the appellant agreed to meet its obligation under the policy. In that regard therefore the appellant must pay the costs of the suit and interest at court rates.

Dated, signed and delivered at Nairobi this 29th day of May, 2018.

A. MBOGHOLI MSAGHA

JUDGE