



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**CIVIL SUIT NO. 120 OF 2016**

**PETER NJAU MERITA & JUSTER KANINI MANENE (Legal and personal  
representatives of the estate of LUCAS MUGO MERITA).....PLAINTIFFS**

**VERSUS**

**KENINDIA ASSURANCE CO. LIMITED.....DEFENDANT**

**RULING**

1. The Notice of Motion dated 8<sup>th</sup> December 2016 was taken out by the Plaintiffs who sought for the following defendants statement of defence to be struck out with costs.
2. The plaintiff also sought for judgement to be entered in favour of the plaintiff/applicant against the defendant as prayed in the plaint dated 19<sup>th</sup> April, 2016 plus costs.
3. The genesis of this suit is premised on HCC No. 419 of 2011 in the Plaintiffs filed a plaint under the Fatal Accidents Act and for the benefit of the deceased's estate under the Law Reform Act.
4. In that case, Samuel Ndirangu who was the 2<sup>nd</sup> Defendant was the owner of motor vehicle registration number KXL 621 Isuzu canter which was involved in a road accident along Ruiru Githunguri Road on 17<sup>th</sup> March, 2011.
5. The deceased was a lawful passenger and suffered fatal injuries leaving behind a widow and a child.
6. The defendant was held liable and judgment was entered in favour of the Plaintiffs in the amount of Kshs. 2,851,086.80.
7. The Motion was supported by the affidavit of Juster Kanini Manene. She argued that the Defendant's Statement of Defence did not raise triable issues. She stated that her late husband died as a result of a road accident involving motor vehicle registration number KXL 621 Isuzu canter belong to Samuel Ndirangu who was insured by the Defendants as per the motor vehicle policy insurance No. P/112/081/ 0880/2004/07 as extracted from the police abstract report. She argued that the Defendant was served with a Statutory Notice dated 18<sup>th</sup> April, 2011 which they acknowledged receipt of.
8. The Motion is opposed vide Replying Affidavit sworn by Winnie A. Paul, Head of Legal Department at Kenindia Assurance Company Limited. She argued that the Plaintiff had relied on the wrong provision under the Civil Procedure Rules and that the Supporting Affidavit was bad in law as it was commissioned by the Plaintiff's Advocates contrary to Section 4 (1) of the Oaths and Statutory Declaration Act.
9. The Defendant denied knowledge of the alleged road traffic accident and the resultant death of the deceased. She denied the existence and the contents of the police abstract. They confirmed that motor vehicle policy insurance No. P/112/081/0880/2004/07 had been issued to Samuel Ndirangu who was the owner of motor vehicle registration number KXL 621 Isuzu canter.
10. She averred that neither the police abstract nor the summons for the institution of the suit had been brought to their attention. She also denied knowledge of the original suit HCC No. 419 of 2011. She further denied knowledge of the judgement which was entered on 6<sup>th</sup> October, 2015 against Samuel Ndirangu in the amount of Kshs. 2,851,086.80 and urged court to dismiss the Application.

11. In their submissions, the Plaintiffs argue that judgement in HCCC No. 419 of 2011 had been delivered in open court on 6<sup>th</sup> October, 2015 and that the notice of the judgement had been served upon the Defendant's advocates on 18<sup>th</sup> December, 2015.

12. They argued that upon receipt of the Statutory Notice on 19<sup>th</sup> April, 2011, the Defendants did not deny liability. The Plaintiffs argue that denial by the Defendant was not a defence and that they were liable to pay the decretal sum. They argued that the Plaintiffs have suffered as the widow is not in gainful employment and that the Defendant was delaying paying the decretal sum.

13. I have considered the grounds stated on the face of the Motion and the facts deponed in support and against the Motion. It has been shown that the defendants served with the notice on 19th April, 2011 and that notice of judgement was served on their advocates on 18th December, 2015. They have not denied that they insured Samuel Ndirangu vide motor vehicle insurance policy No. P/122/081/0880/2004/07. It was their duty to keep tabs on which of their insured has been sued and the subsequent outcome. It is not sufficient for the Defendant to claim that the Statutory Notice was not served on the designated company officer.

14. This court finds that the Statement of Defence did not identify any triable issues based on any points of law and facts and as such the same ought to be struck out.

15. Judgment was entered in favour of the Plaintiffs and against Samuel Ndirangu the insured and this fact has not been denied. As the insurer, the Defendant owes a duty of care to its policy holders to ensure that their interest are well represented. In this case, it has been three years since judgment was delivered. The Plaintiffs have been patiently waiting for their settlement. This court finds that there lacks a reasonable explanation pertaining delay on the part of the Defendant to settle the decretal sum.

16. In the end this court issues an order to have the statement of defence struck out with costs

**Dated, Signed and Delivered in open court this 19<sup>th</sup> day of October, 2018.**

**J.K. SERGON**

**JUDGE**

In the presence of:

.....For the Plaintiffs

.....For the Defendants