



**REPUBLIC OF KENYA**

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

**Civil Case No. 67 Of 2017**

**M W M (Suing as a personal representative of the  
estate of T C M).....PLAINTIFF**

**VERSUS**

**INVESCO ASSURANCE CO. LTD .....DEFENDANT**

**JUDGMENT**

The plaintiff herein is the mother of the late T C M and also the personal representative of his estate. The late T died as a result of a road traffic accident that took place on 6<sup>th</sup> December, 2011 along the Northern Bypass at a place called Githongoro shopping centre. The deceased was allegedly knocked down by motor vehicle registration No. KBQ 783Y which veered off the road while attempting to overtake another motor vehicle.

The said motor vehicle was owned by one Tabitha Wambui and driven by one Anthony Gatura Waweru at the time of the accident. Following the said accident, the plaintiff herein instituted civil suit No. CMCC 731 of 2013 against the owner and driver of the motor vehicle.

The material presented before me shows that the defendants in the said suit did not enter appearance or file any defence; as a result following a formal proof judgment was entered in favour of the plaintiff in the sum of Kshs. 1,715,772 /= plus interest at court rates. This judgment is dated 17<sup>th</sup> January, 2017.

The motor vehicle was insured by the defendant in the present suit. The defendants in the lower court having failed to satisfy the decree, the plaintiff lodged this suit for a declaration that the defendant is liable to satisfy the decree obtained in the lower court together with interest thereon until payment in full, and that an order be given for execution thereof against the defendant.

The record shows that the defendant was served with summons to enter appearance but did not comply and upon application by the plaintiff, an interlocutory judgment was entered on 4<sup>th</sup> May, 2017 followed by the formal proof.

The plaintiff gave evidence and produced documents relating to the lower court proceedings and judgment thereunder. This was followed by submissions filed on her behalf by her advocate. The defendant has not repudiated the plaintiff's claim in the lower court, neither has it filed any declaratory suit against its insured.

Section 10 (1) of the Insurance Motor Vehicle Third Party Risks Act provides as follows,

**“10.(1) If after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of Section 5 (being liability covered by the terms of the policy) is obtained against any person insured by the policy then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy the insurer shall subject to the provisions of this Section pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of interest on that sum by virtue of any enactment relating to interest of judgments.”**

See also - **Nairobi HCCC No. 53 of 2014 FO and SO Vs. APA Insurance Company Limited.** The defendant had notice of plaintiff's case in the lower court. If not, the service of the plaint and summons to enter appearance in this case contained sufficient material relating to the case in the lower court. The evidence of the plaintiff herein remains uncontroverted.

The law is also against the defendant and it cannot escape liability in the circumstances of this case. The plaintiff had proved her case against the defendant to warrant judgment in her favour.

Accordingly there shall be judgment for the plaintiff against the defendant and in particular a declaration that it is liable to pay the plaintiff and satisfy the decree plus costs in CMCC No. 731 of 2013 plus interest from the date of that judgment. The plaintiff shall also have the costs of this suit.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 14<sup>th</sup> Day of December, 2017***

**A. MBOGHOLI MSAGHA**

**JUDGE**