



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CIVIL APPEAL NO. 62 OF 2011.

APA INSURANCE LTD. ::: APPELLANT.

VERSUS

MILDRED NELIMA JUMA ::: RESPONDENT.

J U D G M E N T.

This appeal arises from the decision and judgment of the Principal Magistrate at Kitale in Kitale CMCC No. 204 of 2008 in which the respondent, **Mildred Nelima Juma**, had sued the appellant, **APA Insurance Co. Ltd.**, for a declaration that the appellant was liable to satisfy the decree in Kitale SPMCC No. 2344 of 2004 in which the respondent was awarded damages against Kenya Bus Services Ltd in the sum of Ksh. 91,500/= as a result of injuries suffered in a road traffic accident which occurred on 16th January, 2004 along the Kitale/Webuye road.

The Learned trial magistrate ruled in favour of the respondent in the declaratory suit thereby prompting this appeal by the appellant on the basis of the grounds contained in the memorandum of appeal dated 7th September, 2011.

At the hearing of the appeal, Learned Counsel, **Mr. Mokuu**, appeared for the appellant and presented written submissions while Learned Counsel, **M/s. Mufutu**, appeared for the respondent and made oral submissions.

Having considered the grounds of appeal in the light of the submissions by both sides, the duty of this court was to reconsider the evidence afresh and arrive at its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

In that regard, the court considered the evidence adduced in support of the respondent's case by the respondent **Mildred Nelima Juma (PW1)** and the evidence adduced in support of the appellant's case by the appellant's legal officer, **Antony M. Njogu (DW2)**.

In this court's opinion, there was no substantial dispute that the respondent was a passenger in a bus belonging to Kenya Bus Services Ltd. Which was involved in a road traffic accident thereby occasioning bodily injuries to the respondent. There was also no dispute that the respondent instituted a suit for damages against the said bus company and was indeed awarded damages by the court.

There was further no dispute that at the material time of the accident, the bus company had taken a policy of invariance with a company known as Pan African Insurance Company Ltd.

The said Insurance Company was therefore obliged to satisfy the decree issued in favour of the respondent in Kitale SPMCC No. 223 of 2004 in terms of section 10 of the Insurance (Motor Vehicles third party risks) Act (Cap 405 LOK) so long as the necessary statutory notice was issued to the insurer and the policy was valid.

There was no dispute or substantial dispute that a statutory notice was issued to Pan African Insurance Co. Ltd and that the existing policy was valid.

However, the respondent sued the appellant for purposes of satisfying the judgment entered in her favour against Kenya Bus Services Ltd arguing that the appellant took over the liabilities and obligation of Pan African Insurance Co. Ltd., an allegation which was vehemently denied by the appellant arguing that it took over the liabilities and obligations of a company known as Pan African General Insurance Ltd and a company known as Apollo Insurance Co. Ltd which merged to create APA Insurance Ltd.

The issue for determination by the trial court was therefore whether Pan African Insurance Co. Ltd. was succeeded or taken over by the appellant company so that the appellant be obliged to satisfy the decree obtained by the respondent against Kenya Bus Services Ltd.

This is also the bone of contention in this appeal. The learned trial magistrate considered the point and observed that the appellant's witness (DW1) stated that APA Insurance Ltd arose out of a merger between Apollo Insurance Co. Ltd and Pan African General Insurance Co. Ltd which was not similar to Pan African Insurance Co. Ltd. However, he (DW1) failed to produce any documentary evidence to prove that Pan African Insurance Co. Ltd and Pan African General Insurance Co. Ltd. Were distinct legal entities. The learned trial magistrate further observed that the copies of gazette notices produced by the appellant failed to demonstrate the difference between the aforementioned entities and were indeed not conclusive prove that the two entities were distinct from each other.

The foregoing observations were made on the basis of the evidence presented before the trial court and this court, having re-visited that evidence finds no good reason to disagree with the observations and findings reached by the learned trial magistrate.

Consequently, this appeal is devoid of merit and is hereby dismissed with costs to the respondent.

[Delivered and signed this 22nd day of May, 2014].

J.R. KARANJA.

JUDGE.