



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT NO. 299 OF 2004

GEMINA INSURANCE COMPANY LIMITED
PLAINTIFF

-VS-

GABRIEL M. MUGAMBI
DEFENDANT

JUDGMENT

The Plaintiff is filed by the Insurance company seeking prayers for:-

- a. A declaration that it is and has at all material times been entitled to avoid the policy of insurance number PC/03/0037773/1 dated 4th April, 2000 in relation to the accident in question on the grounds that the Defendant failed to notify and/or inform the Plaintiff of the sale of the insured motor vehicle prior to the expiry of the policy cover and to therefore surrender the certificate of insurance to the Plaintiff as stipulated in the policy.***
- b. A declaration that it is not liable to indemnify the Defendant for claims by the pedal cyclist injured as a result of the said accident under the police or under the Insurance (Motor Vehicles Third Party Risks) Act Cap. 405.***
- c. Costs of this suit.***
- d. Any other relief that the Court may deem fit to grant.***

The Plaintiff is evidently premised under the provisions of Sec. 10 of the Insurance (Motor Vehicle Third Party Risks) Act (Cap 405) (hereinafter referred to as "The Act").

On the date when hearing was scheduled, the Defendant failed to appear to prosecute his defence although adequately served and thus the court directed the suit to be heard ex-parte.

The evidence on record is in brief as under.

The Plaintiff insured the Defendant's motor vehicle registration No. KAE 397B. The policy was issued and contract of insurance was validly executed. However, while the contract was subsisting the Defendant, without any notice or information to the Plaintiff, sold the said motor vehicle to a third party. It is contended that the contract by the said act of the Defendant, stood terminated and any insurable interest Defendant had as a result of the said contract became extinguished.

The fact of sale of the motor vehicle has been admitted by the Defendant and the motor vehicle having involved in an accident. Despite that fact the Defendant ignored or neglected to inform the Plaintiff, and as the Defendant had intention to remove the insurance sticker from the motor vehicle after the sale his knowledge of termination of the contract is imputed.

The Plaintiff relied upon the case of *Standard Insurance (K) Ltd. -vs- James Itotia HCCS No. 166 of 2003 (2005) e KLR.*

It is trite that non-disclosure of material facts by the insured entitled the Insurance company to repudiate the liability (See. Sec. 10 (4)).

I therefore, give judgment to the Plaintiff as under:-

- 1. I declare that the Plaintiff is entitled to avoid the policy of insurance No. PC/03/0037773/1 dated 4th April, 2000 in relation to the Accident occurred on 25th February, 2002 involving the said motor vehicle and third party cyclist.**
- 2. I further declare that the Plaintiff is not liable to indemnify the Defendant for claims from the pedal cyclist injured as a result of the said accident.**
- 3. The Plaintiff shall have costs of the suit.**

Orders accordingly.

Dated, signed and delivered at Nairobi this 8th day of **April, 2011**

K. H. RAWAL

JUDGE

8.04.2011