



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 1064 of 2001

INVESCO ASSURANCEPLAINTIFF

VERSUS

ANDERSON KIAGO WANJOHIDEFENDANT

1. Civil suit
2. Declaratory suit
3. Defendant insured pick up with defendant – 3rd party policy
 - i) Limitation of use of vehicle
 - a) Only for defendants business
 - b) Passengers carried in connection with defendants business
 - c) Social domestic pleasure
 - ii) The policy excludes:-
 - a) Use for racing competition
 - b) Carriage of passengers for hire or reward
4. Defendant failed to enter appearance and file defence
5. Hearing Held
6. Findings:- Declaratory suit allowed. The defendant used vehicle for hire with fare paying passengers. Cost to the plaintiff
7. Case law
 - a) Corporate Insurance Co. Ltd v Ofire
1999 2 EA 61.

b) Kenindia Assurance Co Ltd v Kamithi & Another

(2004) 2 EA 115

8. Advocates:-

H.M. Narangwi for Gachiri Kariuki & Co. Advocate for the plaintiff

Anderson Kiago Wanjohi – the defendant

JUDGMENT

1: BACGROUND

1. This is a declaratory suit brought herein by M/s Invesco Assurance Co. Ltd, the plaintiff herein, against Anderson Kiago Wanjohi, the defendant herein.

2. On the 9.10.99 the plaintiff insured the defendants motor vehicle registration KRY 878 Toyota Pick up make 1978 for Ksh.4,200/- basic premium. The said policy insured to him was for a third party only. It was to carry goods and a total of 3 passengers including the said driver. The vehicle was limited to the use of business committed to defendants business. The passenger carried would only be for the defendants business and the vehicle would be used for domestic and pleasure purposes . Further the vehicle was NOT used to carry passenger for hire and reward.

3. On the 5 June 2000 the defendant actually transported fare paying passenger along Karatina-Mukurweini road when the said vehicle was involved in a road traffic accident. The defendant and his driver were sued in the Nyeri CMCC 100/2000 by the plaintiffs. The plaintiff on discovering this, filed this suit seeking a declaration entitling him to avoid liability in respect of the said accident.

4. The representative of the plaintiff company attended court and gave evidence producing the policy document which I have had sight of. I have also noted that an investigations report carried out by “insight adjustment services” showed that the vehicle was carrying passengers of whom six were injured. These passengers were fare paying and thus out of the scope of the insurance policy.

5. I hereby find that the plaintiff has duly proved that the policy be repudiated. I hereby give the plaintiff their declaration and enter judgment for them together with costs.

Dated this 30th day of January 2007 at Nairobi.

M.A. ANG’AWA

JUDGE

H.M. Narangwi for Gachiri Kariuki & Co. Advocates for the plaintiff

Anderson Kiago Wanjohi – the defendant - absent