

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

Civil Appeal 414 of 2004

STANDARD ASSURANCE CO. LTD. APPELLANTS

VERSUS

JANE NJERI NG'ANG'A RESPONDENT

**(An appeal from the Judgment and decree of the Senior Resident Magistrate's Court at
Limuru Honourable Ezra O. Awino dated 25th May 2004)**

JUDGMENT

The central issue in this Appeal revolves around the interpretation of Section 10(2) (a) of The Insurance (Motor Vehicles Third Party Risks) Act, Cap. 405 of the Laws of Kenya

inafter "the Act").

It states as follows:

(2) No sum shall be payable by an insurer under the foregoing provisions of this section -

(a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or

The Appellant insurance company has refused to satisfy a Judgment obtained by the Respondent against its insured, on the ground that it was not served with the mandatory notice within the 14 days prescribed in the Act.

Here is what happened in the Lower Court. The Respondent brought an action (Civil Suit No. 96 of 2001) against three Defendants, arising from injuries suffered in a motor vehicle accident. On 25th October, 2001 she filed an application to amend the Plaintiff to join one Francis Kibet Serem, the insured of the Appellant insurance company. That application was allowed, and leave to bring him on board, given on 15th November, 2001. On 23rd November, 2001, that is within **eight days**, the Respondent served the Appellant the 14 day statutory notice under the Act. All that would have been completely regular, except for one small incorrect procedure at the Registry, that landed this case here on appeal. By mistake, the Registry issued summons to join in the Fourth Defendant (the insured) on 26th October, 2001 – the day when the application to enjoin the insured was **filed** in Court, instead of on or after 15th November, 2001 when the Order was made. The Appellant is now counting its 14 days from 26th October, 2001 and not from 15th November, 2001. Indeed, if the 14 days began on 26th October, 2001, the Appellant was not served within the time prescribed by the Act, and is not liable to satisfy the Judgment.

So, when did the time for the 14 day notice begin to run? I have absolutely no doubt in my mind that it began to run from the date the Court allowed the joinder of the insured (Fourth Defendant) - that is on 15th November, 2001. Until that leave to enjoin him was not granted, there was no suit against him. It matters not that the summons was prematurely and irregularly issued on 26th October, 2001. That is a mistake of the registry, and cannot be visited on a litigant who had no control over it.

The Appellant has argued that the summons was invalid, and the Judgment is therefore invalid. That may be so, but that Judgment has not been set aside, and until that is done, it is a valid Judgment of the Court.

I have no hesitation in finding that the Appellant was served with the notice required under the Act within the time prescribed, and is fully liable to satisfy the Lower Court Judgment. The Lower Court came to the correct decision in holding it liable.

Accordingly, I dismiss this Appeal with costs.

Dated and delivered at Nairobi this 28th day of January, 2007.

ALNASHIR VISRAM

JUDGE