



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 235 of 2004**

**GEMINIA INSURANCE COMPANY LIMITED.....  
.....PLAINTIFF**

**VERSUS**

**BEATRICE WANJIRU & ANOTHER.....  
.....DEFENDANTS**

**JUDGEMENT**

The plaintiff by a plaint dated 3.5.2004 seeks a declaration that the plaintiff is not entitled to satisfy any judgment on a claim arising out of the use of Certificate of Insurance No.C.2495245 after the 5<sup>th</sup> November, 2003 on the ground that the said Certificate of Insurance had been cancelled.

The 1<sup>st</sup> defendant filed her defence and counterclaim on 30.7.2004. On 6.10.2004, the same defendant purported to file an amended statement of defence and counter claim. On the plaintiff's application dated 10.11.2004 and filed on 19.11.2004, I struck out both the said 1<sup>st</sup> defendant's defence and counterclaim and amended defence and counterclaim. The plaintiff then fixed the suit for formal proof which came up before me on 27.7.2006.

The defendants did not attend court at the formal proof. The plaintiff called one witness; Jared Muga, who testified that he was the plaintiff's Claims Supervisor and knew the 1<sup>st</sup> defendant who took out a Motor Insurance policy with the plaintiff. He was issued with a motor policy document No.PC/01/0341091/1M in respect of motor vehicle registration number KAM 540N. The policy was issued to cover the period between 25.3.2003 and 24.3.2004. To support his testimony he produced the policy as P EX.1. During the currency of the policy, the 1<sup>st</sup> defendant wrote to the plaintiff that she had lost her certificate of insurance and to confirm that fact swore a Statutory Declaration which was produced as P EX.2. The policy was accordingly cancelled on 5.11.2003 and the Registrar of Motor Vehicle was duly informed by a letter dated 19.11.2005. The cancellation and the said letter to the registrar of motor vehicles were produced as P.EX.3 and 4.

Jared Muga further testified that the plaintiff subsequently received a copy of a Statutory Notice dated 2.4.2004 from M/s Penina Oloo & Company Advocates addressed to the 2<sup>nd</sup> defendant. The policy number referred to in the notice was the cancelled one and was alleged to be in respect of motor vehicle registration number KAM 540W. The plaintiff also received a copy of another demand letter from the same firm of advocates dated 15.4.2004 which referred to motor vehicle registration number KAM 540N addressed to the 1<sup>st</sup> defendant. The cancelled policy number and certificate of insurance were quoted. The two letters were produced as P.EX.5 and 6 respectively. The plaintiff concluded that the certificate of insurance had not been lost but was being used on the said motor vehicle which had been sold. To protect itself, the plaintiff filed this suit and served the said advocates with notice of commencement of proceedings dated 21.12.2004. The notice was produced as P.EX.7.

Upon the uncontroverted testimony of PW1 Jared Muga, I am satisfied on a balance of probabilities that policy number PC/01/0341091/1M and the Certificate of Insurance No.C2495245 were cancelled on 5.11.2003 and the plaintiff is entitled to avoid claims arising out of the use of the cancelled policy and certificate after 5.11.2003. I will in the circumstances enter judgment as prayed in the plaint.

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 28<sup>TH</sup> day of SEPTEMBER, 2006.**

**F. AZANGALALA**

**JUDGE**

**28/9/2006**

Read in the presence of: