



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 166 OF 2003

STANDARD ASSURANCE (K) LTD PLAINTIFF

VERSUS

JAMES ITOTIADEFENDANT

JUDGMENT

This suit was originated by plaint dated 19th February, 2003. it was pleaded that the plaintiff, acting upon a proposal form signed by the defendant, had issued a third-party motor vehicle insurance policy No. 010/081/1/003567/2002 for the motor vehicle registration number KAJ 777 R. Under this policy the plaintiff insured the said motor vehicle (i) for a period of one year from 4th May, 2002; (ii) as a public service vehicle; (iii) covering the defendant against third-party risks as provided for under the Motor Vehicle Insurance (Third Party Risks) Act (Capo. 405). It was a term and/or a fundamental condition of the said policy that the defendant would, in the event of any occurrence which may give rise to a claim, give notice thereof as soon as possible to the plaintiff, with full particulars, and every letter, claim, writ, summons or process would be forwarded to the plaintiff immediately on receipt. On 10th May, 2002 during the currency of the said policy, the defendant's vehicle was involved in an accident at the Old Nation Roundabout in Nairobi, causing injuries to one *Bernadicky Muiruri Thuo*. The plaintiff subsequently investigated the accident, and determined that the defendant had been in breach of the terms of the policy in the following aspects: (i) he had failed to keep the vehicle in a roadworthy state and this led to the failing of the braking system and caused the said accident; (ii) he failed and/or neglected to report the accident to the plaintiff; (iii) he failed to fill in the claim form, and did not co-operate with the plaintiff during the investigations and the documentation of the claim; (iv) he disposed of the motor vehicle to conceal the occurrence of the accident; (v) he failed to obtain and to forward to the plaintiff the Police Abstract Form; (vi) he failed to pay the excess levy within the stipulated time. The plaintiff pleaded that the actions of the defendant set out hereinabove did constitute non-disclosure and misrepresentation of material facts, and/or indeed amounted to breach of fundamental terms of the policy. It is pleaded that such acts on the part of the defendant have exposed the plaintiff to the risk of having to pay a high award, and have denied the plaintiff the opportunity to mitigate its possible loss. In these circumstances, the plaintiff sought to repudiate the policy. The plaintiff prayed for judgment against the defendant and for (i) a declaration that the plaintiff was entitled to repudiate the insurance policy which it had issued to the defendant; (ii) a declaration that, in the event of any claim against the defendant arising from the aforesaid accident or any other accident, the plaintiff is entitled to repudiate and be freed from any liability to indemnify the defendant; (iii) costs and interest.

Although service was duly effected upon the defendant, on 13th March, 2003 he failed to enter appearance. And so, on 13th May, 2003 the plaintiff made a formal request to the Deputy Registrar for default judgment. On 5th June, 2003 interlocutory judgment was entered in favour of the plaintiff.

Formal proof was conducted on 28th September, 2004. The witness, *Isaac Kiplangat Kitur* is the plaintiff's legal officer. He testified that the insurance policy was in force at the time of the accident, and that the insured was in breach of the conditions specified in the policy. He said the plaintiff had, on 16th November, 2002 informed the insured that the plaintiff intended to repudiate liability. He testified that the plaintiff had indicated specifically to the defendant his breaches of the terms specified in the insurance policy – such as failing to report the accident. The plaintiff had on that occasion drawn the defendant's attention to condition number 10 of the insurance policy which provided:

“The payment of the full premium within 60 days from the commencement date of this insurance or subsequent renewal; due observance and fulfillment of the Terms of this Policy insofar as they relate to anything to be done or not to be done by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the [plaintiff] to make any payment under this policy”.

In conveying this information, the plaintiff used the last known address of the defendant as provided by the defendant himself. The witness testified that the defendant failed to respond. He further averred that there was non-disclosure of material facts by the defendant. In the circumstances, the witness averred, the plaintiff was seeking to repudiate liability, by virtue of the Motor Vehicle Insurance (Third Party Risks) Act (Cap. 405), Section 10(2) and (4).

I hereby give judgment in favour of the plaintiff and order as follows:

- 1. It is hereby declared that the plaintiff is entitled to repudiate Motor Vehicle Insurance Policy No. 010/081/1/003567/2002 which it had issued to the defendant.**
- 2. It is hereby declared that, in the event of any claim against the defendant arising from the accident in question or any other accident involving the said motor vehicle number KAJ 777 R, the plaintiff is entitled to repudiate and be freed from any liability to indemnify the defendant.**
- 3. The defendant shall bear the plaintiff's costs in this suit, and interests thereon shall be payable from the date of filing suit.**

DATED and DELIVERED this 21st day of January, 2005.

J.B. OJWANG

JUDGE

Coram : Ojwang, J

Court Clerk – Mwangi

For the Plaintiff : Mr. Morara, instructed by M/s Morara

Apiemi & Co. Advocates

Defendant – absent and unrepresented