REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Civil Case 83 of 2000

SHADRACK AMAKOBE TECHERA ……...…… PLAINTIFF

VERSUS

UNITED INSURANCE CO. LTD …….. DEFENDANT

JUDGMENT

The Plaintiff, Shadrack Amakobe Techera, brought this suit on behalf of the estate of Vincent Ayiko, deceased, against the Defendant, United Insurance Company Ltd. seeking-

"***(a) a declaration that the Defendant is liable and bound to satisfy the judgment in Vihiga SRMCC No. 18 of 1999 together with costs and interest."***

"***(b) payment of the sum of shs. 322,150/- together with costs of shs. 20,608/-."***

"***(c) costs of the suit"***

The claim for the reliefs sought in the suit was predicated on section 10(2) of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405. This is how it arose. Vincent Ayiko, on behalf of whose estate the suit was brought was the son of the Plaintiff. He was hit and fatally injured on 5.6.92 along Kakamega/Kisumu Road by motor vehicle registration No. KAH 241 J, a Peugeot Station wagon. The Plaintiff obtained a Grant of Letters of Administration on 4.3.1998 for the estate of his said son. He had, however, on 8.8.97 given a Statutory Notice under section 10 of the Insurance (Third Party Risks) Act to the Defendant of his intention to sue the insured because at the material time the Defendant had insured the said vehicle. He filed suit No 18 of 1999 in Vihiga S.R.M. Court against the owner of the said vehicle who was the Defendant's insured and obtained judgment for shs. 232,150/- plus costs of shs. 20,608 and interest. The decree was not satisfied and so he filed the suit herein.

When the suit came up for hearing before me on 22.3.04, Mrs. Amendi appeared for the Plaintiff while Mr. Kasamani appeared for the Defendant.

The defendant's statement of defence raised a number of defences. First it denied the plaintiff had locus standi to bring the suit. Secondly, it denied existence of a policy between it and the owner of the said motor vehicle. Thirdly, it denied, perhaps needlessly, negligent driving by the owner or the latter's driver. Fourthly, the Defendant contended that it had not been served with statutory notice pursuant to section 10(2) of the Insurance (Motor Vehicles Third Party Risks) Act Cap 405.

The Plaintiff adduced evidence and produced exhibits to prove that judgment had been given in his favour at Vihiga SRMCC No. 18 of 1999. The Defendant did not call any evidence. The issue for determination is whether the Plaintiff is entitled to the declaration that the Defendant is liable to satisfy the judgment in Vihiga SRMCC 18 of 1999. Mr. Kasamani, Counsel for the Defendant contended in his submission that the Plaintiff had no capacity to give Notice under section 10 of the Insurance (Motor vehicle Third Party) Risks Act because at the time the notice was given on 8.8.97, the Plaintiff had not sought or obtained Letters of Administration. In his view, the Notice given (on 8.8.97) was null and void. He contended that the suit in the lower court was instituted when there was no valid notice. Consequently, he said, the Plaintiff cannot maintain a valid claim against the Defendant. If the court finds that the statutory notice was valid, the Plaintiff's claim will be indefensible and the Defendant's resistance will be put paid.

Section 10 (1) of the Insurance (Motor Vehicle Risks) Act requires an insurer to satisfy judgment against Insured persons. Section 10(2) of the said Act provides that :-

"***10(2) No sum shall be payable by an insurer under the foregoing provision of this section-***

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

The judgment alluded to in this section is the judgment such as was obtained by the Plaintiff in Vihiga SRMCC No. 18 f 1999. At the time of the institution of the suit, the Plaintiff had given the Defendant notice dated 8.8.97. Was it valid and in conformity with section 10(2) of the Insurance (Motor Vehicles Third Party Risks) Act? The Act requires the insurer to have had notice of the institution of the suit. Section 10(2) (supra) focuses on receipt of the Notice by the insurer. The section does not make it mandatory that the notice must be given by the Plaintiff. It requires the notice to have been received by the insurer. All that is necessary is that the notice contains the necessary particulars of the accident. It can be given by or with the authority of the intending plaintiff where suit is not filed or where the suit has been filed by the Plaintiff or his agent. Where the suit is on behalf of the estate of a deceased person, the notice given before institution of the suit may be given by a person with interest in the estate regardless of whether such person has Letters of Administration or not. To require such person to have a grant of letters of administration is not only to read too much into S.10 (2) of Cap 405 but it is also to equate the notice to a Grant of Letters of Administration.. To do so would be to construe the section in a narrow sense and in a manner oppressive to the intending plaintiff. Suppose an intending plaintiff were to die weeks before the expiry of the limitation period and just before giving notice to the insurer of his intention to file suit, could not a relative give the 14 days notice and seek limited grant at the same time to enable him to file suit? Could the argument hold good that although the suit was filed by a person holding Grant of Letters, it would be bad because the plaintiff did not have letters at the time of giving the notice? It could never have been the intention of the legislature that such notice can only be valid where Letters of Administration were held by the plaintiff at the time of giving the notice. I hold that notwithstanding the Plaintiff did not at the time hold Letters of Administration, the notice given was valid for the purposes of the suit whether founded on the Law Reform Act or the Fatal Accidents Act or both.

The Defendant did not adduce any evidence. The Plaintiff proved his case on the balance of probabilities. In the circumstances, the Plaintiff is entitled to judgment.

Accordingly, I enter judgment for the Plaintiff as prayed in the plaint and award the costs of the suit to the Plaintiff

Dated at Kakamega this 25th day of February 2005

G.B.M. KARIUKI

J U D G E