



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION, MILIMANI**

**Civil Suit 1650 of 2001**

**INSURANCE COMPANY OF EAST AFRICA .....PLAINTIFF**

**VERSUS**

**WELLINGTON OMODHO .....DEFENDANT**

**J U D G M E N T**

On 9th February 2005, when this case came up for hearing the plaintiff was not present and the defendant proceeded with the proof of his counter-claim. It is note worthy that the hearing date was taken by consent.

On 25th December 2000 the defendant was in the motor vehicle KAM 905Y. The vehicle was being driven by JOU WAAGE. The defendant was dropped at his home in Karen at around 9.30 p.m. He confirmed that the purpose of the vehicles was that it was be used as private commercial vehicle. There was one other passenger in the vehicle, namely JOHN OMONDI, who together with JOU WAAGE were employees of PECK AIR LTD.

After dropping the defendant the vehicle was involved in accident. The vehicle was insured by the plaintiff and the insurance was valid for the period from 4.12.2000 to 3.12.2001. The insurance cover was provided by the plaintiff through its broker Maj Insurance Agency. The defendant said that he paid kshs 52, 144 as the premium and when he obtained the cover he informed the broker the registration number of the vehicle and he further informed him that he was taking the cover in his name. The broker did not ask other questions. The request for insurance was made through the telephone and cover note was issued to defendant thereof. The defendant said that it was not his first time to make a request for insurance by telephone and it was later that he gave the broker the Peck Air Ltd resolution authorizing him to hold beneficial insurance interest on behalf of Peck Air Ltd.

D.W. 1 said that immediately the accident occurred the plaintiff was informed and the plaintiff, in turn, sent investigators. After the investigators completed their work the plaintiff sent to the defendant a discharge voucher for shs 540, 000 which the defendant signed. D.W. 1 did not however receive the money. The plaintiff was paying the defendant as the policyholder. DW 1 attributed the plaintiff's refusal to pay on the basis that third parties who were injured in the accident made claim to the plaintiff, and DW 1 further said that he thought plaintiff refused to honor its payment to him because it realized the third party's claim was heavy. The plaintiff, however, informed the defendant that the reason of repudiating liability was because the insurance policy was in the defendant's name and yet the vehicle KAM 905 Y was not registered in his name.

On the basis of the policy the defendant prayed that the court will declare that the plaintiff should honor the defendant's claim for compensation and a declaration that the plaintiff was obliged to settle the third parties claims.

D.W. 2, JOHN OGUTU OMONDI said he was a dispatcher for Peck Air Ltd. He confirmed that he was in the vehicle when the accident occurred on 25th December 2000. He confirmed that the insurance was in the name of the defendant, the majority shareholder of Peck Air Ltd. He said that the defendant had purchased the vehicle for Peck Air Ltd.

As I begin to consider my judgment I must begin by dismissing the plaintiff's claim for non-attendance as provided under Order 9B Rule 4 (1) of the Civil Procedure Rules.

Having reviewed the defendant's evidence I find that he has proved his case on a balance of probability. I find, also that the policy document, and indeed as stated by the defendant, was taken in the name of the defendant as per the resolution of Peck Air Ltd. The insurance was effected on motor vehicle registration No. KAM 905 Y. On the issue whether or not the defendant had an insurable interest the book of E.R. Hardy Iramy 'General Principles of Insurance Law' states.

**“In the case of goods, or other property, insurable interest may be based on ownership and this ownership may be either sole or joint; absolute or limited; legal or equitable. Ownership is not, however, necessary; insurable interest may be founded on contract... The fact that the interest of the assured is precarious, and that other persons are entitled at any moment to call on him to had over the object insured to then, does not, therefore prevent his interest form being sufficient to support a contract of insurance.**

That quote is pertinent to this case since the vehicle insured is registered in the company's name but the policy issued was in the defendant's name. The defendant provided proof that Peck Air Ltd made a resolution to allow that policy to be in the defendant's name and that, without any other evidence to controvert suffices. In proof of the amount of special damages, the defendant only produced the discharge voucher for kshs 540, 000/-.

That amount is the only amount that the court can enter judgment in special damages. The defendant's claim for general damages was not proved.

The court does find that the plaintiff is liable, under the policy to compensate third parties.

The judgment of this court is for the defendant for: -

- (1) Kshs 540, 000;
- (2) A declaration that the plaintiff is liable under the policy 020/980/10/13570/2000 to compensate third party's claim in relation to the accident that occurred on 25th December 2000 with vehicle KAM 905Y.
- (3) The plaintiff's claim is dismissed for non-attendance.
- (4) Costs of the plaint and counter claim are awarded to the defendant.

**Dated and delivered this 8th day of March 2005**

**MARY KASANGO**

**JUDGE**