

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL SUIT NO. 64 OF 2003

EVANS MOKAYA RONDI PLAINTIFF/APPLICANT

VERSUS

M/S UNITED INSURANCE CO. LTD. DEFENDANT/RESPONDENT

RULING:

The plaintiff/applicant seeks court to strike out the defendant's defence and enter judgment in his favour. The plaintiff was involved in a road accident on 7th December 1995 along Kericho-Nakuru road. He was a passenger in m/v Reg. No. KAL 564 A owned by JULIUS N. OGETO. Plaintiff sustained injuries. Subsequently he sued the said Julius Ogeto vide Kericho HCCC No.10 of 2000. Judgment was entered in favour of the plaintiff in the sum of shs.2 million as general damages, shs.500,000/= cost of future medical care, shs.1,620,000/= loss of earnings and shs.2,100/= special damages together with costs of the suit. Later costs were agreed by the parties at shs.160,000/=.

The vehicle belonging to Julius was insured by the defendant insurance company. A statutory notice was issued to the defendant company before the original suit was filed. After this suit was filed and served the defendant on 8th May 2003 the defendant paid the plaintiff a sum of shs.300,000/= vide cheque No. 059561 after they signed a discharge voucher. The plaintiff/applicant therefore submitted that the defence filed by the defendant is only meant to delay a quick disposal of this case and is an abuse of due process of the court and it should be struck out.

The defendant/applicant vehemently opposed the application and submitted that there are triable issues.

He submitted that he was not aware of the original case and that the claim was a fraud as reviewed by an investigation done by one J.M. Bosire of their investigating department.

There is no dispute that the claimed sum by Hon. A Visram vide his judgment delivered on 27th November 2002. The defendant in that case was represented. It is clear that the defendant had insured the vehicle involved in the accident vide policy No.4NMCP7226. A statutory notice was sent to the defendant vide copy of letter dated 19th July 1996. The purpose of a statutory notice is to inform the insurer of any intended suit so that if he disputes it he can do so. After being served he did not intimidate that he had not insured the vehicle in question. Moreover after this suit was filed he admitted part of the claim by paying part of the claim. A copy of the cheque of shs.300,000/= issued to the plaintiff by the defendant is annexed to the affidavit. Defendant does not deny issuing this cheque. In fact even the report by their investigating officer states that part of the claim has been admitted and the only out was to fight the excess award. The judgment passed by Kericho Court was not appealed against either by the defendant in that case or defendant in this case. It still stands two years down the lane. The defendant could not have paid a whole shs.300,000/= to the plaintiff if indeed he had not insured the vehicle in question. If the insured had breached any contract between them do not affect his responsibility to satisfy the claim.

In the circumstances the application is allowed. The defence filed herein is hereby struck out and judgment entered as prayed in the plaint.

Dated this 8th of October 2004.

KABURU BAUNI

JUDGE

8/10/04