

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL DIVISION –MILIMANI

CIVIL CASE NO. 371 OF 2002

**LUCY WANGECHI
BERNARD GITHAIGA (both suing through
Their next friend)**

**EMILY NJERI KARANJA :::
PLAINTIFFS**

VERSUS

**UNITED INSURANCE CO.
LTD ::DEFENDANTS**

JUDGMENT

This is a declaratory suit. It arises from another suit being Nairobi CMCCC No.308 of 2000. In that suit the present Plaintiffs were the Plaintiffs and Gabriel Kinyanjui Njoroge and Philip Kimani were the Defendants. In the lower Court judgment was entered in favour of the Plaintiffs for the sum claimed in this suit.

This declaratory suit is brought under the provisions of Section 10(1) of the Insurance (Motor Vehicles Third Party Risks) Act (herein after called the Act) against the Defendant as the insurer of motor vehicles registration numbers KWH 870 and KAE 984 M which were involved in an accident and as a result of which the Plaintiffs were injured.

The Plaintiffs in their plaint filed on 8.1.2004 aver that at the time of the accident on 14th December,1996, the Defendant was the insurer of the said motor vehicles owned by Gabriel Kinyanjui Njoroge and Philip Kimani. The Plaintiffs were traveling in Motor Vehicle registration No. KWH 870 when the same was involved in an accident with motor vehicle registration No. KAE 984M. The Plaintiff's through their next friend filed Nairobi Chief Magistrates Court Civil suit No. 308 of 2000 against the Defendants insured pursuant to which the Plaintiffs obtained judgment against the insured in the sum of 164,050.30 inclusive of costs.

The Plaintiff contends that in the circumstances the Defendant is obliged to satisfy the judgment entered in CMCCC No.308 of 2000 by virtue of Section 10 (1) of the said Act. This section provides as follows:-

“10(1) If after a policy of Insurance has been effected judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of Section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section pay to the persons entitled to the benefit of the judgment any sum payable there under in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.”

The Defendant's defence denied the Plaintiff's claim on the basis that it was not given any notice 14 days before or after instituting the proceedings in the lower court. The Defendant further avers that the

lower Court judgment was not against its insured and is therefore not under an obligation to satisfy the decree, costs and interest obtained in the said case.

At the trial of this suit the Plaintiffs called two witnesses. Their evidence reiterated the averments in the Plaint. The evidence established that the Plaintiffs were awarded the sums claimed in this suit. It also established that the requisite notice was served upon the Defendant. The Abstract from Police on a road accident in respect of the subject accident was produced by P.W.2 P.C. Peter Muthama. This abstract confirmed that indeed an accident occurred on 14th December, 1996 involving Motor vehicle registration numbers KWH 870 and KAE 984 M. The police abstract further confirmed that motor vehicle registration number KAE 984 M was insured by the Defendant who had issued policy No.12 NMCP 17383 to one Philip Kimani the registered owner of the said motor vehicle. The said Philip Kimani was one of the Defendants in the suit in the lower Court.

The Defendant called no witness. The evidence of the Plaintiffs therefore remains uncontroverted. On the basis of that evidence, I am satisfied that the Plaintiffs have established their case against the Defendant on a balance of probabilities. Accordingly judgment is entered in favour of the Plaintiffs against the Defendants as prayed in the Plaint. The Plaintiffs costs will be borne by the Defendant.

For avoidance of doubt this judgment is not in respect of HCCC No.369 and HCCC No.3 of the 2002. Although Ondeyo J. ordered that those cases be consolidated with this case it never came to be and the Plaintiffs only lead evidence in this suit and not in HCCC no.369 and 370 of 2000. These suits will therefore be tried separately.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF DECEMBER 2004.

F. AZANGALALA

AG. JUDGE

Read in the presence of:-