

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 73 OF 2001

SILVIA OWUREPLAINTIFF

VERSUS

GATEWAY INSURANCE COMPANY LIMITEDDEFENDANT

RULING

This is an application under Order VI Rule 13 (1) (b) and (d) of the Civil Procedure Rules, section 3A of the Civil Procedure Rules, Section 3A of the Civil Procedure Act (Cap. 21) and Section 10 (2)(a) of the Insurance (Motor Vehicle Third Party Risks) Act (Cap. 405). In it, the Defendant seeks to have the Plaintiff's Plaint struck out.

It is common ground that this action can only be maintained if a statutory Notice under Cap. 405 was served upon the Defendant. The Defendant says that no such notice was served. The Plaintiff on his part relies on an affidavit sworn on August 3, 2000 by the Defendant's insured one Simon Ng'ang'a Kamau in HCCC No. 334 OF 2000 between the said insured and the Defendant and the Plaintiff in which he stated that the Plaintiff informed the Defendant of the relevant action by a letter dated October 26, 1992. I did not see that letter but there was no allegation that no such letter existed. I am warned that the remedy sought by the Defendant is a draconian one which will have a final effect of putting the Plaintiff out of the seat of justice and that remedy ought to be exercised sparingly and in the clearest cases only. That is not the case here. I, therefore, dismiss the Defendant's application dated May 18, 2001 with costs.

Dated and Delivered at Nakuru this 30th day of July, 2003.

ALNASHIR VISRAM

JUDGE