



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. 2309 of 96[1]**

**JOSEPH NDUNGU GACHOKA.....PLAINTIFF**

**V E R S U S**

**UNITED INSURANCE COMPANY LIMITED.....DEFENDANT**

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

The Plaintiff herein obtained a policy of insurance on motor vehicle registration number KWG 250, Isuzu lorry on 26th April, 1994. It was a one year comprehensive policy covering inter alia, the event of theft of the motor vehicle and the insured value was K.Shs. 1 million. As the motor vehicle went about the business of the insured, on 28th November, 1994, it was stolen from his employees and the matter was reported to the Police and the Defendant. Shortly thereafter it was found but it was completely vandalized leaving only the shell. The Plaintiff called upon the Defendant to comply with the terms of the policy and completed claim forms. The Defendant did not pay and so he came to Court on 13th September, 1996 and filed this suit.

The Defendant filed a defence claiming that it was the Plaintiff who was responsible for cannibalization of the motor vehicle or in the alternative that the policy was not binding since theft was not covered in the policy; there was non-disclosure of material facts before the Insurance contract was entered into; and there was breach of terms of the Insurance contract. Issues were framed and the suit was set down and confirmed for hearing on 10th and 11th April, 2002. The Defendant's Advocates on record were served with the hearing Notice on 13th March, 2002 and they confirmed receipt of the Notice. There is also an Affidavit of service filed but neither the Advocates nor the Defendant attended the hearing of the suit which proceeded as scheduled.

I heard the Plaintiff and his one witness who was his employee. The policy of Insurance was produced in evidence as well as the certificate of ownership of the vehicle. The Policy is clear beyond doubt that the event of theft is covered under the Policy. The driver, P.W.2 gave evidence on how the theft occurred and he was not challenged on that evidence. The Plaintiff also gave evidence on the reports made to the Police on the theft and on the discovery of the vehicle by the Police in its dilapidated state. Again there was no challenge on that evidence. The Alternatives pleaded in the defence were not established and were in any event denied. In all the circumstances I have no reason to reject the Plaintiff's evidence which establishes his claim on a balance of probability. In the event I issue the declaration sought in prayer (a) of the plaint and order that the costs of the suit be paid to the Plaintiff.

**DATED at NAIROBI this 12th day of April, 2002.**

**P.N. WAKI**

**JUDGE**