



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT NAIROBI  
MILIMANI COMMERCIAL COURTS  
CIVIL SUIT NO. 374 OF 2001**

**WAGUTHU FARMERS LIMITED ..... PLAINTIFF**

**VERSUS**

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

**JUDGMENT**

The plaintiff has filed this suit to recover the sum of Shs.1,820,833/= together with costs and interest thereon said to arise from an insurance policy No. IMP 4680 made between the plaintiff and the defendant by virtue of which the plaintiff was entitled to indemnity from the defendant for any loss or damage occasioned to motor vehicle registration number KAJ 067Q Subaru Impreza through an accident.

Briefly the facts of the case are that while the policy was current the plaintiff's said motor vehicle was involved in an accident on 12.12.1999 as a result of which it was damaged beyond repair. Subsequent to the accident, the plaintiff lodged a claim with the defendant being claim No. 99/1/20238/12 under the policy. Following that, the defendant agreed to compensate the plaintiff and in respect thereof forwarded to the plaintiff a Discharge Voucher by virtue of which the defendant was to pay to the plaintiff the sum of Shs.1,820,833/=.

The plaintiff duly executed the said discharge voucher as requested by the defendant but the defendant refused to release the said sum of Shs.1,820,833/= which the defendant was bound under the policy to pay to the plaintiff. The plaintiff has therefore, as stated above, filed this suit to recover the said sum.

In its written statement of defence, the defendant not only denied liability but went on to lodge a counter claim on the footing of alleged fraud and false misrepresentation. In the counter-claim, the defendant sought a declaration that the contract of insurance had been rescinded and determined and that it was null and void for lack of consideration.

When this matter came up for hearing before me on 18.12.2001, there was no appearance on the part of the defendant and on the application of learned counsel for the plaintiff, hearing of the suit proceeded ex parte. In the circumstances, no evidence was tendered to controvert what the plaintiff stated or to substantiate the defendant's counter claim. Accordingly, the counter claim stands unproven and is dismissed with costs.

As for the plaintiff's claim however, there is ample evidence to show that the defendant is bound to compensate it for the loss and damage it sustained in the accident. The claim has therefore been proved on a balance of probability, and accordingly, judgment is entered in favour of the plaintiff against the defendant as prayed in the plaint.

Dated at Nairobi this 20th day of December, 2001.

**T. MBALUTO**

**JUDGE**