



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 1156 OF 2000**

BENJAMIN KIPTOO.....PLAINTIFF

VERSUS

STALLON INSURANCE CO LTD.....DEFENDANT

RULING

This is the plaintiffs application for an order that

1. Memorandum of Appearance and Defence be struck out
2. Judgment be entered as prayed in the plaint

The application is made under Order III Rule 2 C and order VI Rule 13(1), (b), (C), and (d) of Civil Procedure Rules.

Plaintiffs claims shs 1770,071.85 from defendant pursuant to S. 10(1) of the Insurance (motor vehicles Third Party Risks) Act – cap 405. Plaintiff avers that the High Court in HCCC No. 2994/97 entered judgment against Miriti Erastus Mwongera the defendant’s insured on 19.4.2000 for a sum of shs 1654324.15 and shs 115,747.70 as costs as a result of negligent driving causing injuries to the plaintiff.

Defendant filed a Memorandum of Appearance on 20.9.2000.

The Memo of Appearance bears the name of the defendant. Above the defendants name it is written by hand “on behalf of”. A signature appears beside those words.

Defendant also filed a Defence executed in the same manner as the memo of Appearance.

Applicants counsel contends that the Memo of Appearance and Defence filed are contravention of order III rule 2© of Civil Procedure Rules By order III (1) CP Rules, appearance or any other act in court may be in person or by a recognized agent or by an advocate. By Order III Rule 2© a recognized agent in respect of a corporation is an officer of a Corporation duly authorized under a Corporate seal. By Order VI Rule 14 Civil Procedure Rules, a pleading filed by a Corporation has to be signed by an officer of a Corporation duly authorized under a corporate seal. Section 2 of the Companies Act defines an “Officer” of a body Corporate as including a director Manager of secretary.

A Memo of appearance or a pleading filed by a Corporation has to appear on the face of it as being in conformity with the law. Unless the person signing the memo of Appearance or a pleading for the Corporation, identified himself by name and also specifies the office held, such as Director, Secretary, manager etc, then the document will not prima facie be in conformity with the law. Firstly, as the person

who signed the memo of Appearance and the Defence has not identified himself/herself by name and also identified his office in the defendant company, the Memo of Appearance and the Defence are not ex facie in conformity with the law and those documents are invalid. It follows, among other things, that the Defence filed is incompetent.

Secondly, the defence raised is that defendant has never insured the motor vehicle and that even if it did, the insured breached fundamental terms of the policy. That defence is equivocal.

Thirdly, applicant has enclosed open correspondence from defendant i.e letters dated 15.5.97, 20.3.98, 11.5.97 agreeing to settle the claim and which did not raise the issues now raised in the Defence.

Lastly, Respondent did not file a replying affidavit nor attend the hearing. So the application is not opposed.

I am satisfied that there is no competent defence or record and that in any case the Defence is frivolous and an abuse of the process of the court.

I allow the application with costs, strike out the defence and enter judgment for plaintiff as prayed in the plaint dated 18.7.2000.

E. M. Githinji

Judge

27.3.2000

Mr. Issa holding brief for Mr. Kipkorir present