

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C.C.CIVIL CASE NO.1367 OF 1999

MBURU GATUMU PLAINTIFF

VERSUS

STALLION INSURANCE CO., LTD DEFENDANT

R U L I N G

The defendant was the insurer of Motor Vehicles registration No.KZU 552 which was involved in an accident in which one GIBSON MUITI MBURU now deceased was travelling.

The applicant who is the personal Representative of the Estate of the deceased file a suit against the insured one JEDIDAH NDEGWA being MILLIMANI P.M.C.C. NO.5932 of 1997. The defendant engaged a lawyer who filed a defence but later after negotiations Judgment was entered by consent for Shs.90,952/= all inclusive.

The Plaintiff filed this suit in the High court for orders to compel the defendant, the insurer to satisfy the judgment under the Provisions of the Insurance (Motor Vehicles Third Party Risks) Act Cap 504 Laws of Kenya.

The defendant filed a defence and by this application the Plaintiff seeks orders to have the said statement of defence filed by the defendant herein struck out for being scandals, frivolous and vexatious and Judgment be entered for the Plaintiff as prayed.

Under the Provisions of section 10 Cap 405 Insurance (Motor Vehicles Third Party Risks) Act, the Insurer has a duty to satisfy Judgments against persons injured.

The only grounds for opposing this suit is that the defendant was not the Insurer for the accident motor vehicle. But having recorded a consent Judgment in MILIMANI P.M. C.C. NO.5932 OF 1997, the defence herein does not raise any arguable issue.

For the above reasons this application succeeds, and the defence filed herein on 26th July, 1999 is struck out and Judgment is entered for the Plaintiff as prayed in his plaint filed herein on 7th July, 1999.

The Plaintiff is also entitled to the costs of this suit.

Dated and delivered at Nairobi this 21st day of September, 2000

J.L.A. OSIEMO

JUDGE