



REPUBLIC OF KENYA



**KENYA LAW**  
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**Britam General Insurance (Kenya) Company Limited v Simiyu (Civil Suit  
E002 of 2023) [2025] KEHC 316 (KLR) (17 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 316 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL SUIT E002 OF 2023  
REA OUGO, J  
JANUARY 17, 2025**

**BETWEEN**

**BRITAM GENERAL INSURANCE (KENYA) COMPANY LIMITED PLAINTIFF**

**AND**

**VALEN SIMIYU ..... DEFENDANT**

**JUDGMENT**

1. Britam General Insurance ( Kenya ) Company Limited hereinafter referred to as the plaintiff, has sued the defendant Valen Simiyu vide a plaint dated 14.8.2023, filed on the same day. The plaintiff avers that it insured the defendant's vehicle registration number KCX 962K Toyota Vitz ( the motor vehicle). The defendant is the legal and beneficial owner of the said vehicle. According to the plaintiff, the defendant took out a comprehensive insurance cover vide policy number 576/700/1/0440XXXX, for the period between 30/4/2022 to 29/4/2023. The class of insurance of the suit motor vehicle was that of a motor private use and as per the insurance contract, the said motor vehicle was limited to use for social, domestic, pleasure and professional use. On 5/9/2022 during the existence of the said policy of insurance the motor vehicle was involved in a road accident along Bungoma- Samoya road. The motor vehicle was at that time being used for hire and reward which is breach of the terms and conditions of the insurance policy. The accident was reported to the plaintiff in accordance to the contract and the defendant filed the accident report form. Thereafter, the plaintiff commenced investigations to establish the circumstances that led to the occurrence of the accident. Investigations established that the accident did occur on 5.9.2022 between the motor vehicle and a motorcycle registration number KMES 488A. At the time of the accident, the defendant was the one driving the said vehicle and was carrying a fare-paying passenger. The motor vehicle was being used for hire and reward, as a taxi to carry passengers contrary to the terms and conditions of the insurance policy, and as such the defendant was in breach of the insurance contract and/or policy document.
2. The plaintiff avers further that as a result of the aforementioned breach by the defendant, his servant, agent, and/or driver, the plaintiff as the insurer of the defendant's motor vehicle is expected to settle



claims/suits that may be instituted arising from the accident. In line with the insurance contract and/or policy agreement between the plaintiff and the defendant, the plaintiff is not liable to settle and/or contractually bound under the policy to settle claims instituted as a result of the said accident for want of breach of contract by the defendant, his servants, agent and/or employee. The defendant is therefore wholly liable for the accident and all claims arising from the accident.

3. The plaintiff seeks the following prayers;
  - a. A declaration that the defendant breached the express terms of the insurance contract and/or policy no. 576/700/1/0440XXXX entered into in respect of the motor vehicle registration number KCX 962K Toyota Vitz which breach entitles the plaintiff to repudiate the insurance contract
  - b. A declaration that the plaintiff is not liable and/or duty bound under the policy of insurance no. 576/700/1/0440XXXX and /or bound by contract to compensate and/or settled any claims arising from the road traffic accident occurred on the 5/9/2022 involving motor vehicle registration number KCX 962K, Toyota Vitz.
  - c. Costs of the suit.
4. The defendant was served with the summons to enter an appearance on 31/8/2023 and after he failed to enter appearance interlocutory judgment was entered against him on 25/7/2024. The plaintiff thereafter set down the suit for a formal hearing.
5. At the hearing the plaintiff called two witnesses, Pw1 Peter Ambayo Cocoran a claims officer with the plaintiff company, and Pw2 Martin George Mbuguah Nganga an assistant manager in the claims department with Topscan Insurance Investigators.
6. Pw1 adopted his written statement dated 6.5.2024 the plaint and all the documents in support of the plaintiff's claim namely; the signed copy of the policy schedule, signed copy of the private car insurance policy, and the signed copy of the investigation report. Pw1's statement reiterates what is averred in the plaint. Pw2 testified as follows; their client instructed them to investigate the accident. investigations were done and a report dated the 12.10.2022 was submitted.
7. The plaintiff filed written submissions. It is averred that the terms of the policy were that the plaintiff would only indemnify the defendant in the event his motor vehicle was involved in an accident caused and/or arising from the use of the said vehicle as a private vehicle and only if the information that was provided in the proposal form was true and complete to the best of his knowledge and belief. The defendant reported the accident to the plaintiff but at the time of filing the accident claim form the defendant concealed facts and misrepresentation to the plaintiff that the vehicle was being used for private use. The investigation revealed that the motor vehicle was being used for hire and reward contrary to the usage indicated in the proposal form, policy schedule, and insurance policy contract. The plaintiff referred to Section B of the proposal form dated 30.4.2022 filled by the defendant which indicates that the motor vehicle was solely for social, domestic, or pleasure purposes and by the insured in connection with the insured's business and profession but not for hire and reward. The type of policy was "motor private use". From the investigation's report at paragraph V of page 12, the defendant himself confirmed that he had been using the vehicle as a taxi from the time of purchase to the extent of drafting a car hire agreement, dated 12.6.2021 between the defendant and Ian Ongadi Songole. The report indicates that at the time of the accident, the defendant was carrying a fare-paying passenger who paid him Kshs. 1,000/- to ferry her to Northrift stage within Bungoma Town, see paragraphs X and Y of page 13. Reliance was made on section 104 of the Insurance (Third Party Motor Vehicle Risk) Act which entitles the plaintiff to avoid the policy on grounds that the same was obtained



by non-disclosure and/or misrepresentation of one or more material facts. The plaintiff also relied on a Court of Appeal decision in Cooperative Insurance Company Ltd vs David Wachira Wambugu [2010] 1KLR 254 where the court held that a contract of insurance is voidable for misrepresentation of material facts.

8. The issues for determination are; whether the defendant breached the terms and conditions of his policy document with the plaintiff and whether the orders sought by the plaintiff are merited.
9. The plaintiff adduced evidence that the defendant was their insured. He paid for a policy to insure his vehicle and was issued with policy number 576/700/1/0440XXXX, valid for the period of 30<sup>th</sup> April 2022 to 29<sup>th</sup> April 2023. The policy was a private car insurance policy. The vehicle that was insured was vehicle registration number KCX 962K a Toyota, the cover type was comprehensive. In the combined application/ proposal form the defendant declared under “use of vehicle” to be used for social , domestic or pleasure purposes and by the insured and in connection with the business and profession. The plaintiff claims that at the time of the accident, the motor was being used as a taxi contrary to the conditions set out in the policy and to prove this they attached identification of rental service between the defendant and Lonah Wafula for the hire of the said motor vehicle. The defendant was not using it for social domestic or pleasure purposes. The policy cover which he had with the plaintiff was for a private vehicle not for hire for reward. The policy schedule he signed too was for motor-private. The taxi business is not for social, domestic, or pleasure purposes. Though he indicates in the policy schedule that he was a businessman, the kind and nature of business is not indicated nor did the defendant indicate he was to use the vehicle for his business. He had a duty to use the vehicles for the purposes he had indicated and failure to do so amounts to being a breach of the policy cover. The Court of Appeal in the case of Cooperative Insurance Company Ltd vs David Wachira Wambugu [2010] 1KLR 254 held that;

The learned Judge was right in saying that a contract of insurance is one of *uberrimae fidei*. The insurer is entitled to be put in possession of all material information possessed by the insured. In policies of insurance, whether marine insurance or life insurance, there is an understanding that the contract is *uberrimae fidei*, if you know any circumstances at all that may influence the underwriter’s opinion as to the risk he is incurring, and consequently as to whether he will take it, you will state what you know. There is an obligation there to disclose what you know, and the concealment of a material circumstance known to you, whether you thought it material or not, avoids the policy...Contracts of insurance are contracts of utmost good faith and this gives rise to a legal obligation upon the insured, prior to the contract being made, to disclose to the insurer all material facts and circumstances known to the insured which affect the risk being run. Insurance is a contract of speculation and the special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the *risqué* run is really different from the *risqué* understood and intended to be run at the time of the agreement. The policy would be equally void against the underwriter if he concealed. The governing principle is applicable to all contracts and dealings. Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact and his believing the contrary.”



8. Insurance contracts are made in good faith. The insured had the duty to use the vehicle not for taxi business but for social and domestic use. The plaintiff has demonstrated that it is not liable to indemnify the defendant for any claims arising while the vehicle was being used contrary to the limitation as to use clause and for misrepresentation and non-disclosure of material facts. The plaintiff's case is merited.
9. The evidence adduced by the plaintiff's witness Pw1 is that the accident happened on 5.9.2022. The investigation's report from Topscan Insurance Investigators indicates that the accident happened on the 3.9.2022 at 0600 hours. This is the date in the policy abstract and the Notice of Intended prosecution issued to the defendant. The claim form filled by the defendant indicates that the accident happened on 5.9.2022, in my view this error does not prejudice the plaintiff's case. An accident happened whilst the defendant had the vehicle.
10. In my view the plaintiff demonstrated that it is entitled to the orders sought as follows;
  - a. The defendant breached the express terms of the insurance contract and/or policy no. 576/700/1/0440XXXX entered into in respect of the motor vehicle registration number KCX 962K Toyota Vitz which breach entitles the plaintiff to repudiate the insurance contract
  - b. The plaintiff is not liable and/or duty-bound under the policy of insurance no. 576/700/1/0440XXXX and /or bound by contract to compensate and/or settle any claims arising from the road traffic accident that occurred on 5/9/2022 involving motor vehicle registration number KCX 962K, Toyota Vitz.
  - c. Costs of the suit. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 17<sup>TH</sup> DAY OF JANUARY 2025.**

**R. OUGO**

**JUDGE**

**In the presence of:**

Miss Chebet - For the Plaintiff

Defendant - Absent

Wilkister - C/A

