



REPUBLIC OF KENYA



**Rono v Monarch Insurance Co. Ltd; Livia (Interested Party) (Civil Suit E011 of 2023) [2025] KEHC 1987 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1987 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT E011 OF 2023  
JRA WANANDA, J  
FEBRUARY 7, 2025**

**BETWEEN**

**LUCY CHEMELI RONO ..... APPLICANT**

**AND**

**THE MONARCH INSURANCE CO. LTD ..... DEFENDANT**

**AND**

**JOY LIVIA ..... INTERESTED PARTY**

**JUDGMENT**

1. The Plaintiff, through Messrs Kogo Kimutai & Co. Advocates, filed this suit on 14/07/2023 seeking the following orders:
  - a. A declaration that the Defendant is liable to indemnify the Plaintiff and an order compelling the Defendant to pay the decretal sum, costs in full in Eldoret CMCC No. E269 of 2020 Joy Livia versus Lucy Chemeli Rono.
  - b. General damages.
  - c. Costs incidental to this suit.
2. In the Plaint, the Plaintiff pleaded that the Defendant issued to the Plaintiff the Policy of Insurance number ELD/0200/01049902/2020 over the motor vehicle registration number KBZ 827X within the meaning of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405 in consideration of a premium which was duly paid. She pleaded further that the purpose and effect of the policy was to insure the Plaintiff in respect of any injury to any liability which may be incurred by her on account of death or bodily injury to any person caused by or arising out of the use on the road of the said motor vehicle. She also pleaded that the policy insured the Plaintiff in respect of such liability as is required to be covered by the provisions of the said Act. She then pleaded that on 1/12/2020 during the pendency



of the policy, the said motor vehicle was involved in an accident in which the Interested Party suffered soft tissue injuries, upon which the Interested Party filed Eldoret Civil Suit No. E269 of 2020 against the Plaintiff for damages, and that on 30/03/2023, Judgment was delivered in favour of the Interested Party and an award of Kshs 416,739.95, plus costs and interest awarded. According to the Plaintiff, by virtue of the provisions of the said Act, the Judgment being in respect of liability which was required to be covered by the policy to the extent of the amount of the decree as well as costs and interest, the Defendant is liable to settle it. The Plaintiff thus accuses the Defendant of acting negligently and listed several particulars of negligence. According to her, the Defendant was privy to the proceedings, Judgement and the resultant decree.

### **Defendant's Statement of Defence**

3. The Defendant filed its Statement of Defence on 15/09/2023 through Messrs Omondi Otieno & Associates Advocates. In the Defence, the Defendant basically denied all the allegations made in the Plaint and pleaded that it is a stranger to the suit or Judgment in Eldoret CMCC No. E269 of 2020. The Defendant also denied ever issuing any insurance policy over the said motor vehicle or being in knowledge of the alleged accident. The Defendant averred that no notice of the accident or the Judgment was ever given to it and that the Defendant knew or ought to have known that any breach thereof would have led to repudiation of any liability to settle any Judgment. The Defendant then gave particulars of breach of the policy by the Plaintiff and also denied receipt of any demand letter nor any notice of intention to sue. The Defendant therefore prayed that the suit be dismissed.

### **Interested Party's Statement of Defence**

4. The Interested Party belatedly filed its Statement of Defence on 29/10/2024 through Messrs Mwinamo Lugonzo & Co. Advocates. In the Defence, the Interested Party denied that the Defendant acted negligently or in breach of the Insurance Policy and pointed out that Eldoret CMCC No. E269 of 2020 was properly defended as the Defendant duly appointed an Advocate who defended the Plaintiff effectively until conclusion of the matter. She pointed out that the Defendant failed to settle the Decree and following such failure, execution was levied against the Plaintiff. She further averred that the Interested Party is a stranger to the suit filed by the Plaintiff seeking to enforce the Judgment against the Defendant and that the issues between the Plaintiff and the Defendant should not affect the Interested Party's enjoyment of the fruits of the Judgment and the Interested Party is thus not a necessary party to this suit.

### **Hearing of the suit**

5. While delivering a Ruling on 20/09/2024 determining an Application herein seeking stay of execution of the Decree in Eldoret CMCC No. E269 of 2020 pending determination of this suit, I proposed to the parties, as a means of fast-tracking the determination of this suit, and considering the nature thereof, to consider doing away with the necessity of viva voce taking of evidence and consider, instead, canvassing the suit by way of documents only. The parties accepted this proposal and by the consent order recorded on 22/10/2024, they allowed the Court to determine the suit on the basis of documents only.
6. The parties then, on the same 22/10/2024, agreed to file written Submissions. Pursuant thereto, the Defendant filed its Submissions on 16/12/2024 while the Interested Party filed earlier on 6/12/2024. As regards the Plaintiff however, despite the strict timelines agreed upon, up to the time of concluding this Judgment (about 1 ½ months ago), I had not come across any Submissions filed by or on her behalf, not in the Judiciary Case Tracking System (CTS), and not in the Court file. I also observe that when the matter came up on 16/12/2024 for confirmation on whether the parties had filed their Submissions,



it transpired that only the Plaintiff had not yet filed her Submissions. Mr. Mabonga, Counsel for the Plaintiff then pleaded with the Court to extend time for him to file such Submissions stating that he had been unwell. I obliged and gave Counsel 14 more days to file the Submissions. However, as aforesaid, to date, there is no evidence that any Submissions were filed for or on behalf of the Plaintiff as directed.

7. Further, I also notice from the CTS that without any evidence of leave sought from or granted by the Court, long after the pleadings had closed and long after directions had been given on filing of written Submissions, the Plaintiff, on 8/11/2024, filed a Further List of Documents. Mr. Otieno, Counsel for the Defendant also confirmed this fact and stated that although he had spotted the Further List of Documents in the CTS, he had not been served with it. On his part, Mr. Mabonga, Counsel for the Plaintiff did not even bother to ask the Court to ratify or admit the Further List of Documents filed out of time and without leave. In fact, he never even mentioned anything at all about this belatedly filed pleading.
8. I note that in its Submissions, the Defendant's Counsel has opposed admission of the Further List of documents. He submitted that the documents were never served upon the Defendant, and that had they been served, the Defendant would have had the chance to interrogate their sources.
9. I have agonized on whether to admit the said Further List of Documents in spite of the obvious irregularities surrounding its filing. I have decided to admit it strictly in the interest of justice so as not to punish the Plaintiff for the acts of her Advocate.
10. It should however be noted that admitting the documents in evidence does not mean that their authenticity or contents has been proved. That will only be determined upon the Court's scrutiny thereof.

### **Defendant's Submissions**

11. Counsel for the Defendant submitted that whoever wishes that a fact be proved in his favour is under the obligation to lay down those facts so convincingly as to have a finding made in his favour. He submitted that while the Plaintiff has alleged that the said motor vehicle was insured by the Defendant, there is no single document that has been produced to prove the same. Regarding the police abstract produced as a nexus to the alleged policy, he submitted that the High Court has, time and again, posited that the only conclusive evidence for insurance is either a policy document or a certificate of insurance. He cited the case of Richard Makau Ngumbi & Another v Cannon Assurance Co. Ltd [2011] eKLR, the case of Kasereka versus Gateway Insurance Co. Ltd [2013] eKLR and also Section 107(1) as read with Section 109 of the [Evidence Act](#). He conceded that the Defendant, too, has not brought any documents on the issue but submitted that such omission does not lessen the Plaintiff's burden to prove the existence of the Insurance policy.
12. Regarding the documents filed vide the Further List of documents, without prejudice to his opposition to admission of the documents in evidence as aforesaid, Counsel submitted that the Claim Form and Endorsement dated 29/07/2020 only shows that a payment of Kshs 1,500/- was supposed to have been made via Mpesa Paybill but no proof of such payment has been produced. He also observed that the provision on "sum insured" on the endorsement reads "0/=" and submitted that the endorsement in itself is not proof of existence of the Insurance Policy. Regarding issuance of a notification to the Defendant before commencement of Eldoret CMCC No. E269 of 2020, Counsel submitted that the obligation that an insurer satisfies a third-party claim in the event Judgment is entered against an insured is tied to the condition that notice of the suit or intended suit is given before commencement, or at least 30 days after the commencement thereof. He observed that in this case, there is no evidence that either the Plaintiff or the Interested Party notified the Defendant as required by law. He cited



Section 10(2) of the Insurance (Motor Vehicles Third Party Risks). In conclusion, he prayed that the suit be dismissed with costs and cited Section 26 of the Civil Procedure Court on awarding of costs.

### **Interested Party's Submissions**

13. Counsel for the Interested Party submitted that it is the Plaintiff who is liable to settle the decretal sum in the primary suit, that the primary suit was defended by the Plaintiff through her Counsel on record, and that the Interested Party has a valid decree against the Plaintiff and not the Defendant. He submitted further that this Court in its Ruling of 20/09/2024 intimated that the primary obligation of settling the decree falls squarely on the Plaintiff, that the Interested Party is being involved in a tussle between the Plaintiff and the Defendant yet she is not privy to the Insurance contract between the two and that the Interested Party has been kept waiting from enjoying the fruits of her Judgment. He cited the case of Andrew Linge Mutua vs Geminia Insurance & Another quoted in the case of Titus Ndaka vs Kenya Orient Insurance Ltd & 2 Others.

### **Determination**

14. The issue in this suit is “whether the Defendant was, at all material times, the insurer of the Plaintiff’s motor vehicle the subject hereof and whether therefore, the Defendant should be ordered to satisfy the Judgment entered in a road/traffic accident suit filed against the Plaintiff herein as owner of the alleged insured motor vehicle”.
15. In determining the above issue, it is relevant to appreciate that this suit is anchored on the provisions of Sections 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act which provides as follows:
  - “ 10. Duty of insurer to satisfy judgments against persons insured
    1. If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of Section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.”
16. The obligation of an insurer to satisfy or settle decrees passed against its insured is therefore a statutory duty which emanates from the said Sections 10(1) aforesaid.
17. However, Sections 10 (2), (3A), and (4) of the same Act provide as follows:
  - (2) No sum shall be payable by an insurer under the foregoing provisions of this section—
    - (a) in respect of any judgment, unless before or within thirty days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
    - (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or



- (c) in connexion with any liability if, before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
  - (i) before the happening of the event the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or
  - (ii) after the happening of the event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or
  - (iii) either before or after the happening of the event, but within a period of twenty-eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police in writing of the failure to surrender the certificate.
- (3A) No judgment or claim shall be payable by an insurer unless the claimant had, before determination of liability at the request of the insurer, subjected themselves to medical examination by a certified medical practitioner.
- (4) No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto.”

- 18. From the foregoing, it is evident that, notwithstanding the provisions of Section 10(2) above, an insurer is exempted or can avoid liability to satisfy a decree passed against its insured where there is an order stay of execution, or where the policy has been cancelled and the certificate of insurance surrendered, or where no notice of institution of the suit giving rise to the judgment sought to be enforced was served, either before institution of the suit or within 14 days after institution thereof, or where the insurer has obtained a decree entitling it to avoid liability under the policy.
- 19. In this case, as aforesaid, the Defendant filed a Statement of Defence denying that it had insured the motor vehicle or issued the Policy. The Defendant also denied that it was ever notified of nor did it have any knowledge of the accident or of the primary suit in which the Judgment was entered by the Magistrate’s Court, namely, Eldoret CMCC No. E269 of 2020. According to the Defendant therefore, even assuming that it had indeed insured the Plaintiff, it would under the provisions of Sections 10(2)



of the Insurance (Motor Vehicle Third Party Risks) Act, still be exempted from the obligation to satisfy the decree by virtue of not having been notified of the accident or of the resulting suit.

20. To prove her case, the Plaintiff produced two versions of a Police Abstract, one dated 2/12/2020 vide her initial List of Documents dated 14/07/2023 and the second, dated 4/02/2020. Both versions indicate that they were issued by the Base Commander Eldoret and both indicate that indeed the accident the subject of this suit occurred on 1/12/2020. Both versions also indicate that said motor vehicle registration number KBZ 827X was indeed involved in the accident the subject thereof and that the said motor vehicle was owned by the Plaintiff herein. These matters are not in contention as they were accepted by the Magistrate Court in the primary suit and formed the basis of the Judgment therein.
21. Regarding the entries made in the police abstracts, of relevance to this suit and what is in contention herein is the entry indicating that the said motor vehicle was, as at the material time, insured by the Defendant herein, “The Monarch Insurance Co. Ltd”, under the *Policy No. ELD/0700/010490/2020*. I note that this policy description is slightly different from the policy number stated in the Plaintiff by one digit, namely, ELD/0200/010490/2020. I will however deem this to be a mere typographical error and excuse it. As correctly submitted by the Defendant’s Counsel, an entry in a police abstract indicating that a motor vehicle is insured by a certain insurance company, by itself, is not, and cannot amount to conclusive proof that indeed the insurance company indicated is indeed the insurer. Much more evidence has to be available to corroborate the contents of the police abstract. This is because the entry made in the police abstract as regards the particulars of an insurer, is presumably what the police simply pick out from what is contained in the insurance sticker affixed on the motor vehicle windscreen. That alone cannot be conclusive evidence. The question therefore is whether in this case, there is such further evidence confirming, supplementing or corroborating what is indicated in the police abstract in respect to the motor vehicle’s insurer.
22. The only other evidence produced by the Plaintiff in an attempt to prove the allegation of insurance by the Defendant are those introduced through the Further List of Documents which, as aforesaid, I have admitted in evidence despite being filed out of time long after close of pleadings, without leave of Court and after directions had already been taken in respect to filing of Submissions. The first document is a Motor Accident Claim Form dated 1/12/2020 filled by the Plaintiff presumably reporting the accident to the Defendant. The same is in the Defendant’s letter-head. The second one is a document described as “Endorsement” signed by an entity described as an “Agency” known as “Jaybi Commercial And Assurance Agency”. This document is, too, in the letter-head of the Defendant. I understand the Plaintiff to be advancing the narrative that the said “Jaybi Commercial And Assurance Agency” is an Insurance Agency appointed by the Defendant to handle the Plaintiff’s portfolio. I say so because the document indicates that it is “signed for and on behalf of” “The Monarch Insurance Company Limited”.
23. Regarding the said documents however, as aforesaid, the Defendant’s Counsel has opposed the Further List of documents on the ground that the documents were never served upon the Defendant. He has submitted had they been served, the Defendant would have had the chance to interrogate their sources. This is not an unreasonable submission. Indeed, the documents having been filed too late in the day, and there being no evidence that the documents were even served, although I did admit them in evidence in the interest of justice in the exercise of my discretion, the evidentiary weight of the documents has been severely weakened by the fact that the Defendant has not had a chance to interrogate their authenticity, and secondly, even if authentic, to verify the correctness of the interpretation subscribed to them by the Plaintiff. For this reason, I am unable to deem or consider the documents as corroborating or confirming what is contained in the police abstract as regards the



insurance of the motor vehicle the subject herein. The Plaintiff and her legal team therefore have themselves to blame for introducing the documents too late in the day.

24. Further, by her Counsel failing to file Submissions despite being granted an extension to do so, the Plaintiff lost the last opportunity available to her to persuade or convince this Court on the authenticity or interpretation of the two documents, and also their evidentiary weight.
25. I also consider that the Plaintiff did not give any explanation why she did not produce the Insurance Policy itself or at least the duplicate insurance sticker for the motor vehicle. Similarly, she never produced any demand letter served upon the Defendant prior to filing the suit and neither did she even disclose whether any was even served in the first place. Had a demand letter been served, then the Defendant's response or lack thereof would have shed more light on the matter and assisted this Court to take a firm position.
26. It is also not lost on me that according to the Interested Party's Statement of Defence, the Defendant appointed an Advocate to represent the Plaintiff in Eldoret CMCC No. E269 of 2020. She however did not produce any evidence of this allegation. I notice that, on her part, the Plaintiff did not even respond to or address this statement at all. In view thereof, there is nothing to show that the Defendant has at any time, either previously or by conduct, previously admitted to being the Plaintiff's insurer.
27. Under Section 107 and 108 of the *Evidence Act*, Cap. 80, the burden of proof lies squarely on the Plaintiff. As aforesaid, to prove the insurance, the Plaintiff relied on a police abstract but a police abstract is not, by itself or on its own, conclusive proof of evidence of a insurance contract. The Plaintiff ought to have produced at least a copy of the policy or the duplicate certificate of insurance bearing her name, or receipts for payment for the premium. As aforesaid, although the Plaintiff belatedly produced a filled claim form, the same having been introduced in evidence too late in the day, its evidentiary value has been severely watered down by the reason that the Defendant has not had an opportunity to confirm or verify its source, authenticity or interpretation.
28. In the end, the impression I get is that the Plaintiff and/or her legal team very casually handled this suit with no seriousness. It seems to have been a half-hearted attempt undertaken without any conviction. The failure or omission to produce what are presumably easily available evidence or to respond to straight-forward queries remains inexplicable to me. Is it that that such evidence never existed in the first place? I may never know.

### **Final Orders**

29. The upshot of my findings above is that this suit is dismissed with costs to the Defendant.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 7<sup>TH</sup> DAY OF FEBRUARY 2025**

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

Plaintiff present in person

N/A for Plaintiff's Advocate

Matekwa for Interested Party

Brian Otieno for Defendant

Court Assistant: Brian Kimathi

