



**Masinde v GA Insurance Limited (Civil Appeal 98 of 2023)
[2025] KEHC 3728 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 98 OF 2023
SC CHIRCHIR, J
MARCH 20, 2025**

BETWEEN

AUGUSTINE MASINDE APPELLANT

AND

GA INSURANCE LIMITED RESPONDENT

(Being an Appeal against the Ruling of Hon. Sylvia Wayodi (RM) at the small claims court at Kakamega in SCCC NO. E093 OF 2023 delivered on 2nd June 2023.)

JUDGMENT

1. The Appellant herein filed a declaratory suit at the small claims court , seeking a declaration that the respondent herein is liable to satisfy a judgment arising from Kakamega SCCC NO. E038 OF 2022. The Judgment was for a sum of ksh. 862, 991 being damages for material loss, attributed to a road accident, and in which the respondent’s insured client, one Gregory Muindi Masako was found liable.
2. It is the Appellant’s Case that the Respondent was under an obligation to satisfy the Judgment in SCCC No. E038/2022 pursuant to the provisions Section 5 and 10 of the Insurance (Motor Vehicle Third Party Risks)Act, Cap 405.
3. In response , the Respondent filed an Application seeking for the dismissal of the suit on grounds that the suit was a non- starter as there was no legal requirement to satisfy such a judgment. The trial court heard the Application and returned a verdict in favour of the respondent.
4. Aggrieved by the Judgment, the Appellant filed the present Appeal.

Grounds of Appeal

5. The Appellant has set out the following grounds:



- a). That the Honourable Court mis-directed herself by determining the application solely based on CAP 405 without appreciating that the claim was also anchored on the insurance contract between the Respondent and its insured.
 - b). That the Honourable Court erred in fact and in law by failing to appreciate that insurance contracts are entered into for the benefit of Third Parties such as the Appellant herein.
 - c). That the Honourable Court erred in law and fact in failing to take into account the case law cited by the Claimant whose net effect was, and still is, that for an Insurance Company to avoid the enforcement of a material damage claim against it, then it is required to produce its policy document or some acceptable evidence that exonerates it from liability.
 - d). That the Honourable Court erred in law in failing to appreciate that no evidence was produced by the Respondent to discharge it from its liability to settle the claim pursuant to the contract of insurance between the Respondent and its insured.
6. The Appeal was canvassed by way of written submissions, which I have read and considered. I have also considered

Analysis and Determination

7. The only issue in this Appeal is whether material damage suffered as a result of a Road Accident falls under the purview of Insurance (Motor vehicle Third Party Risks) Act Cap.405, laws of Kenya (hereafter referred to as the Act).
8. Third party insurance , as the insurance under the Act is commonly known, is compulsory for most classes of vehicles with only a few exceptions. The compulsory nature is found in Section 4 which provides as follows;
 1. Subject to this Act, no person shall use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Act.
 - (2) Any person who contravenes subsection (1) shall be guilty of an offence and be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both, and such person upon a first conviction for such offence may, and upon a second or subsequent conviction for any such offence shall, unless the court for special reason thinks fit to order otherwise, be disqualified from holding or obtaining a driving licence or provisional licence under the *Traffic Act* (Cap. 403) for a period of twelve months from the date of such conviction or for such longer period as the court may think fit.
 - (3) This section shall not apply to any motor vehicle owned by the Government, or to a motor tractor or other motor vehicle used solely or mainly for agricultural purposes, if the use of such motor tractor or other motor vehicle on a road consists only of moving it by road from one part of the land of the owner thereof to another part of the land of such owner.
8. The requirements for such third-party policy are set out in Section 5 The section states:
 5. Requirements in respect of insurance policies:
In order to comply with the requirements of section 4, the policy of insurance must be a policy which:—



- (a) is issued by a company which is required under the *Insurance Act* (Cap. 487) to carry on motor vehicle insurance business; and
 - (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road.(Emphasis Added)
9. There is no ambiguity in section 5. Simply put, the compulsory insurance that section 4 of the Act demands of is only that which cover people who suffer bodily injury or death as a result of a vehicle being used on the road as set out under section 5. These are passengers, pedestrians, bystanders who get injured.
10. It follows that before one invokes section 10 of the Act to compel an insurance company like the respondent herein to satisfy a judgment, he / she needs to go back to section 5 to ascertain whether their claim is covered under section 5. In other words, compulsory insurance is only available for classes of people referred to in section 5.
11. Put differently. A literal reading of section 5(b) shows that damages to other vehicles on the road or things are not covered by the Act, for the simple reason that the section talks of “persons”, “death” “injuries”. The “third party” in cap 405 are persons, and again, only persons not excluded by section 5(b) (i)(ii) (iii). Consequently, I entirely associate myself with the decision of David Kinyanjui & 2 others vs meshack Omari Monyori (1998) e KLR, cited by the Appellant, which decision is binding on this court in any event as it is a court of Appeal decision.
12. The Appellant has faulted the trial court for basing its decision solely on the Act and ignoring the contract of insurance between the respondent and the owner of the vehicle. However the contract of insurance, like any other contract only binds the two parties. Third parties, including those covered by cap 405, are not privy to it.
13. Further it should be pointed out that declaratory suits are not based on any contractual relationship. They are based on law, namely cap 405. One can not use a contract of insurance to enforce the rights conferred by cap 405. There was no error therefore on the part of the trial court by relying solely on the provisions of the Act.
14. Related to the above is the respondent’s argument that the respondent is required to produce the policy document every time it disputes its liability to a third party. While I agree that the policy document may become necessary, the policy document only comes into play once the claimant jumped over the hurdle that is section 5 (b) of cap 405.
15. In a nutshell, material damage claims do not fall under the purview of Insurance (Motor vehicle third party) Risks Act. The Appellant’s claim herein was for material loss, therefore a declaratory suit against the Appellant in that respect could not, and is not sustainable. The Appeal has no merit. It is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 20TH DAY OF MARCH, 2025 .

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin Luyundi- Court Assistant



Mr. Masinde for the Appellant

Mr. Munyiri for the Respondent.

