



**Miriti & another v Directline Assurance Company Limited; Njeru (Interested Party)  
(Commercial Case E001 of 2024) [2025] KEHC 2771 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2771 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
COMMERCIAL CASE E001 OF 2024  
RM MWONGO, J  
MARCH 12, 2025**

**BETWEEN**

**FRANCIS NJUE MIRITI ..... 1<sup>ST</sup> PLAINTIFF**

**MOLLY BRIDGET NJUE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DIRECTLINE ASSURANCE COMPANY LIMITED ..... DEFENDANT**

**AND**

**REGINA MUENI NJERU ..... INTERESTED PARTY**

**JUDGMENT**

1. By a plaint dated 3<sup>rd</sup> July 2024, the plaintiffs seek judgment against the defendant for:
  1. A declaration that the defendant be bound to fully satisfy the judgment and decree entered in Embu Civil Suit No. E042 of 2020 together with costs; and
  2. Costs of this suit.
2. In the plaint, it was averred that the plaintiffs are the registered owners of motor vehicle registration number KBT 248S which was involved in a road traffic accident, where the interested party was injured. The plaintiffs are also policy holders with the defendant through policy number 08011104 by which the said motor vehicle was insured. Following the accident, the interested party obtained orders through Embu Civil Suit No. E042 of 2020 whereby she was awarded damages as detailed in the said judgment delivered on 20<sup>th</sup> June 2023.
3. It is the plaintiffs' averment that they notified the defendant of the judgment but it has failed, refused and/or neglected to pay the amount owing to the interested party. The defendant filed Embu Civil Miscellaneous Application no. E073 of 2022 seeking stay of execution and leave to appeal out of time



against the decision in Embu Civil Suit No. E042 of 2020. The application was allowed conditionally, but the defendant failed to meet the conditions set by the court, and the orders lapsed.

4. Consequently, the interested party moved to execute against the plaintiffs for the decretal amount through auction. It is the plaintiff's case that according to the provisions of the Insurance (Motor Vehicle Third Party Risks) Act, the defendant owes the plaintiffs the statutory obligation to settle the decretal amount. As such, it should be compelled to pay the decretal amount in the primary suit through the declaration sought.

### **Defence**

5. The defendant did not file a defense. Accordingly, the plaintiffs moved the court for judgment.

### **Hearing- Formal proof**

6. Judgment was entered in favour of the plaintiffs, and a formal proof hearing followed. The 1<sup>st</sup> plaintiff produced his written statement and exhibits as evidence. It was his testimony that his motor vehicle was indeed insured by the defendant and there was no appeal against the findings of the trial court in the primary suit. He stated that he faces a real threat of loss of his livelihood if the interested party is left to execute for the decretal amount.

### **Issues for determination**

7. The core issues for determination are the following:
  1. Whether the suit properly lie in this court; and
  2. Whether the plaint has merit.

### **Analysis and Determination**

8. The declaratory suit herein was filed following the judgment of the court in Embu Civil Suit No. E042 of 2020 where judgment was entered against the plaintiffs. It is the plaintiff's case that: The motor vehicle involved in the accident where the interested party was injured, was insured by the defendant; The defendant has since refused to settle the decretal amount.
9. In my view, a declaratory suit should be filed in the same court where the primary suit was heard and determined. Its purpose is to compel the insurance company to make good the decretal amount once the plaintiff in the primary suit has become the judgment-debtor. On this point, in *Kenya Orient Insurance Limited v Otiemo* [2024] KEHC 7637 (KLR) the court stated:

“Upon entry of judgment in such accident claims where the Defendant was insured, the above provisions require the insurer to settle the decretal amount as awarded and in accordance with the provisions of the Act. It is however not always the case that the insurers willingly settle the claim and this necessitates the filing of a declaratory suit to compel the insurer to settle the decree. Ordinarily, such declaratory suits may be filed by the Defendant and/or Judgment Debtor in the primary suit. However, that can only happen if there is jurisdiction conferred on the court to hear such claims albeit they are claims arising from or as a consequence of a judgment and in effect, to give effect to a judgment or decree in those specific cases. What then is a declaratory suit? Relevant to this case, a declaratory suit is one that seeks to compel a judgement debtor's insurer to settle the decree passed against the insured.” [Emphasis added]



10. Moreover, section 11 of the *Civil Procedure Act* provides:

“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same county competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:

Provided that—

- i. if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
- ii. nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same county.”

11. The above cited provision is couched in mandatory terms, it demands that any suit should be instituted in the lowest grade court competent to try it. The Resident Magistrate acted within her jurisdiction in determining the primary suit between the parties. The same court is to be held to have sufficient jurisdiction to hear and determine the declaratory suit arising from the judgment in that primary suit.

12. Since there was no appeal against the judgment in the primary suit, the proper position is to refer the matter back to that court for determination of this declaratory suit. This means that it is unnecessary to determine the second issue herein since that should be done by the trial court that heard the primary suit.

13. The High Court has jurisdiction to transfer a suit on its own motion, at any stage of the proceedings. The proceedings before this court arise from the judgment of the primary suit, which also bears jurisdiction to determine this declaratory suit. Section 18 of the *Civil Procedure Act* provides thus:-

“On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-

- a. Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- b. Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-
  - i. Try or dispose of the same; or
  - ii. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
  - iii. Retransfer the same for trial or disposal to the court from which it was withdrawn.”



### **Conclusion and Disposition**

14. In light of the foregoing, this Court hereby invokes Sections 11 and 18 of the [Civil Procedure Act](#) enabling the Court to transfer this matter from this Court to the Magistrate's Court.
15. Accordingly, in compliance with the said provisions, this matter is hereby transferred to the Embu Magistrate's Court which determined the suit and awarded damages, for hearing of this declaratory suit.
16. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 12<sup>TH</sup> DAY OF MARCH, 2025.**

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**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Ms. Kavungura holding brief for Ndolo for last Party

No appearance by Mr. Kariuki for Plaintiffs

No appearance for Directline

Francis Munyao - Court Assistant

