



**Ndaka v Kenya Orient Insurance Ltd & another; Mutambu (Interested Party)
(Civil Case E004 of 2024) [2025] KEHC 4641 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CIVIL CASE E004 OF 2024
LW GITARI, J
MARCH 17, 2025**

BETWEEN

TITUS T. NDAKA PLAINTIFF

AND

KENYA ORIENT INSURANCE LTD 1ST DEFENDANT

MADISON INSURANCE COMPANY LTD 2ND DEFENDANT

AND

DENNIS MUTINDA MUTAMBU INTERESTED PARTY

RULING

1. The plaintiff vide a plaint dated 25/04/2024 seeks the following orders:
 - a. A declaration that the defendant herein is liable to settle the entire decretal sum in Kitui Chief Magistrate Civil Case No. E149/2021.
2. The suit is premised under Section 10 of the Insurance (Motor Vehicle 3rd Party Risks (Cap 405 Laws of Kenya). The suit was coming up for hearing today. The parties took the date on 28/10/2024 and hearing was scheduled for 5/2/2025 when it did not proceed as the counsel for the defendant was unwell.
3. The matter was listed for hearing today by consent of all the parties. However, the counsel for the 1st defendant submitted that he had filed an application to transfer the matter to the lower court as it has jurisdiction.
4. The counsel for the plaintiff submits that the suit may be filed in this court or in the lower court. The 2nd defendant did not oppose the application.



5. I have perused the record and also have considered the issues raised by the parties. I note that the 1st defendant filed the Notice of Motion dated 14/3/2025 seeking to transfer this suit to the Chief magistrate's Court. This application has not been heard and determined. It is a rule of procedure that all interlocutory and substantive applications should be disposed off before the substantive suit is heard on merits.
6. It is therefore my view that the application should be heard and determined before the substantive suit can be heard and determined. The application should therefore be heard first.

DATED, SIGNED AND DELIVERED AT KITUI THIS 17TH DAY OF MARCH 2025

HON. LADY JUSTICE L. GITARI

JUDGE

