



**APA Insurance Limited v Kamau (Civil Appeal E200 of 2024)
[2025] KEHC 5029 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5029 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E200 OF 2024
FN MUCHEMI, J
APRIL 24, 2025**

BETWEEN

APA INSURANCE LIMITED APPELLANT

AND

DANIEL NJAU KAMAU RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon. V. A. Oguttu (RM/Adjudicator)
delivered on 18th July 2023 in Thika Small Claims Court SCCC No. E598 of 2023)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Thika Resident Magistrate/Adjudicator in SCCC No. E598 of 2023 arising from a declaratory suit against the appellant compelling them to pay Kshs. 506,967/- and interest at court rates from 25th January 2023 till payment in full , costs of the claim and interest on the judgment as rendered in Thika SCCC No. E354 of 2022.
2. Dissatisfied with the court’s decision, the appellant lodged this appeal citing 3 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in law by failing to properly evaluate evidence on record thus reaching an erroneous decision in law.
 - b. The learned trial magistrate erred in law in failing, as he did, to find that the non injury claim, otherwise known as material damage claim herein is not enforceable against the appellant.
 - c. The learned trial magistrate erred in law by relying on extraneous and irrelevant factors that had no bearing on the evidence on record in determining the issues that were before him.
3. Parties disposed of the appeal by way of written submissions.



The Appellant's Submissions

4. The appellant submits that the suit in Thika SCCC No. E598 of 2023 arose from a road traffic accident that occurred on 8th July 2021 along Njambini Nairobi road near Kinale Area involving motor vehicle registration number KDB 985X and motor vehicle registration number KCS 519P as a result of which the respondent sustained bodily injuries. At the time of the accident, the respondent was a passenger aboard motor vehicle registration number KDB 985X. The respondent thus filed Thika SCCC No. E354 of 2022 Daniel Njau Kamau v Catherine Njeri Nganga being the primary suit against the registered owner of motor vehicle registration number KCS 519P and obtained judgment for the sum of Kshs. 506,967/-. The appellant submits that the respondent thus sought to recover the decretal sum from it as the alleged insurer of the respondent in the primary suit Thika SCCC No. E354 of 2022.
5. The appellant submits that it is not liable to satisfy the judgment in the primary suit for the reason that prior to the occurrence of the accident, it cancelled the insurance cover for motor vehicle registration number KCS 519P on 29th December 2020 on account of non payment of premiums. The appellant refers to Section 156(1) of the *Insurance Act* and argues that the non payment of the insurance premiums rendered the policy invalid. The appellant further argues that the respondent in the primary suit failed to meet the preconditions for issuance of a valid insurance cover and in particular payment of premiums. The appellant avers that it had produced into evidence an endorsement report which indicated the same and that the policy period ran from 1st August 2020 until 29th December 2020.
6. The appellant argues that the accident occurred on 8th July 2021 at a time when the subject policy had already been cancelled and was no longer effective. To support its contentions, the appellant relies on the case of *Insurance Company of East Africa v Marwa Distributors Limited* [2015] eKLR.
7. The appellant relies on Section 10(1) of the *Insurance (Motor Vehicles Third Party Risks) Act* and the case of *First Assurance Company Limited v Joshua Mutua Mwololo* [2021] eKLR and submits that it is not liable to settle the decretal sum obtained in the primary claim as the respondent failed to demonstrate to the court that the judgment obtained in Thika SCCC No. E354 of 2022 was obtained against its insured. Furthermore, the respondent failed to demonstrate that there was a valid subsisting policy in force at the material time of the alleged accident. To support its contentions, the appellant relies on the case of *Richard Makau Ngumbi & Another v Cannon Assurance Company Limited* [2016] eKLR.
8. The appellant submits that costs follow the event and having proved to the required standards that the claimant in the primary suit did not hold a valid insurance policy, it is entitled to costs of the appeal.

The Respondent's Submissions.

9. The respondent refers to Section 38 of the *Small Claims Court Act* and submits that the grounds raised in the appellant's memorandum of appeal contain factual matters and not questions of law.
10. The respondent relies on the case of *Republic v Institute of Certified Public Secretaries of Kenya ex parte Mundia Njeru Geteria* [2010] eKLR and submits that the suit is not a material damage claim as the primary suit and the declaratory suit are in the nature of a personal injury claim.
11. The respondent further relies on the cases of *APA Insurance Co. Ltd v George* [2014] eKLR and *Kenya Alliance Insurance Co. Ltd v Thomas Ochieng Apopa* [2020] eKLR and submits that the appellant does not deny issuing a certificate of insurance to their insured. Further as per the police abstract dated 13th May 2022, the said certificate showed that the said cover was valid from 1st August 2020 to the 31st July 2021 and the accident occurred on 8th July 2021, during the pendency of the cover.



12. The respondent argues that once an insurance company issues a certificate of insurance covering a certain period of time, the same is construed by all right thinking members of the society that the same remains valid for the said period and the appellant is thus estopped from denying that fact. The respondent further relies on the case of *Gerald Njuruguna Mwaura v Africa Merchant Assurance Co. Limited* [2020] eKLR and submits that the breach of terms and conditions of the policy by the insured such as the ones claimed herein cannot affect 3rd parties who are strangers to the said contract. The respondent submits that the settlement of the current decree is a mandatory obligation on the insurer, cancellation of the certificate notwithstanding.
13. The respondent relies on the case of *Blueshield Insurance Co. Ltd v Raymond Buuri M'rimberia* (supra) and submits that there is a process provided for in law on how the appellant could have by law avoided liability in the cover and yet none of the steps were ever taken and or pleaded in the current matter.
14. The respondent further refers to Section 10 of the *Insurance Act* and the case of *Africa Merchant Assurance Co. Limited v Jane Atieno* [2014] eKLR and submits that the appellant cannot run away from its obligation to settle the claim on the basis that it had cancelled the policy since the law obligates them to pay despite their antecedent right to cancel.

Issues for determination

15. The main issues for determination are:-
 - a. Whether the Small Claims Court had jurisdiction to entertain a declaratory suit;
 - b. Whether the appeal raises questions of fact as opposed to questions of law;
 - c. Whether the appeal has merit.

The Law

16. The Court of Appeal while referring to a second appeal, which is essentially on points of law and thus similar to the duty of this court under Section 38 of the *Small Claims Court Act*, set out the duty of the second appellate court in the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR as follows:-

I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

17. In distinguishing between matters of law and fact the Court of Appeal stated in *Kenya Breweries Ltd v Godfrey Odoyo* [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of retrial and facts must be revisited and analysed a fresh. See *Selle and Another v Associated Motor Boat Company Limited and Others* (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters



they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

Whether the Small Claims Court had jurisdiction to entertain a declaratory suit

18. The law on the question of jurisdiction was enunciated in the case of Owners of the Motor Vessel “Lilian S” v Caltex Kenya Limited [1989] KLR 1 where the court held:-

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

19. On the source of jurisdiction, it was held in the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others [2012] eKLR that:-

A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

20. The jurisdiction of the Small Claims Court is set out in Section 12 of the *Small Claims Court Act* and it provides:-

1. Subject to this Act, the rules and any other law, the court has jurisdiction to determine any civil claim relating to-
 - a. A contract for sale and supply of goods or services;
 - b. A contract relating to money held and received;
 - c. Liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of moveable property;
 - d. Compensation for personal injuries; and
 - e. Set off and counterclaim under any contract
2. Without prejudice to the generality of subsection (1), the court may exercise any other civil jurisdiction as may be conferred under any other written law.

21. Section 17 of the Act provides that the Small Claims Court exercises its own procedure having regard to principles of natural justice. It provides:-

Procedure of Small Claims Court subject to this Act and Rules, the court shall have control of its own procedure in the determination of claims before it and, in the exercise of that control, the court shall have regard to the principles of natural justice.

22. It is evident from the record that the suit in Thika SCCC No. E598 of 2023 arose from a road traffic accident which occurred on 8th July 2021 between motor vehicle registration number KDB 985X and KCS 519P whereby the respondent was a passenger in motor vehicle registration number KDB 985X. The respondent instituted a claim being Thika SCCC No. E354 of 2022 Daniel Njau Kamau v Catherine Njeri Nganga being the primary suit against the registered owner of motor vehicle registration number KCS 519P and obtained judgment for the sum of Kshs. 506,967/-. The respondent sought to recover the decretal amount from the appellant herein as the insurer of the respondent in the primary suit Thika SCCC No. E354 of 2022. Thus it is evident that the suit in Thika SCCC No. E598 of 2023 is a declaratory suit and not a material damage claim as argued by



the appellant. The purpose of a declaratory suit is that it seeks to compel a judgment debtor's insurer to settle the decree passed against the insured. Section 12 of the *Small Claims Court Act* provides for the jurisdiction of the said court. A declaratory suit does not fall within the jurisdiction of the Small Claims court.

23. It is my considered view that the Small Claims Court does not have jurisdiction to entertain a declaratory suit. As such, it follows that the trial court erred in law by hearing and determining the suit in Thika SCCC No. E598 of 2023.
24. Having considered that the trial court had no jurisdiction to hear and determine the suit, I need not delve into the analysis of the evidence which is the basis of this appeal.
25. Consequently, the judgment of Hon. V. A. Ogutu (RM Adjudicator) is hereby set aside.
26. Due to the nature of the claim, I hereby order that each party meets its own costs of this appeal.
27. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24TH DAY OF APRIL 2025.

F. MUCHEMI

JUDGE

