



REPUBLIC OF KENYA



**Directline Assurance Company Ltd v Kabai (Civil Appeal  
E020 of 2024) [2025] KEHC 7045 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7045 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E020 OF 2024**

**H NAMISI, J  
MAY 23, 2025**

**BETWEEN**

**DIRECTLINE ASSURANCE COMPANY LTD ..... APPELLANT**

**AND**

**JAMES WAINAINA KABAI ..... RESPONDENT**

*(Being an Appeal from the judgement Hon. Mary Kamau, Adjudicator  
on 25 January 2024 in Thika Small Claims Case No. E928 of 2023)*

**JUDGMENT**

1. The appeal herein arises from a claim filed in the Small Claims Court by the Respondent against the Appellant seeking the following reliefs:
  - i. A declaration that the respondent is obligated to honor in full the judgement entered on 20 December 2022 in Thika SMCC No. E400 of 2023 James Wainaina Kabia -vs- Patrick Njiru Kuria & 2 Others pursuant to the terms of the Insurance policy;
  - ii. Interest on the decretal sum from the date of filing suit until payment in full;
  - iii. Costs of the claim (to be assessed by the Court)
2. The Respondent's claim arose a primary suit (Thika SCCC NO. E400 of 2023) in which the Respondent sued Patrick Njiru Kuria and 2 others following a road traffic accident involving the Respondent's motor vehicle BL 278L and the Defendants therein motor vehicle registration number KCC 770J. The primary suit was heard and determined and judgement entered in favor of the Respondent herein in the sum of Kshs 106,095/=, costs of Kshs 23,600/= [;us interest from the day of filing the claim until payment in full.
3. The Appellant entered appearance in the trial court and filed their Response to Statement of Claim dated 28 August 2023. In its response, the Appellant averred that the claim was not among the claims



- anticipated and provided for under sections 4 and 5(b) of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#), Cap 405 of the Laws of Kenya.
4. The Appellant further averred that the owner of motor vehicle registration number KCC 770J (the insured) and the Appellant voluntarily entered into and duly executed the policy agreement, which required the Insured to pay the excess amount immediately upon presentation of a third-party claim to enable the Appellant take up the claim. It was the Appellant's averment that the Insured failed to pay the excess within the stipulated time, thus the Appellant exercised its right to repudiate the claim.
  5. Parties proceeded by way of submissions, pursuant to the provisions of section 30 of the [Small Claims Court Act](#).
  6. In its judgement, the trial Court made reference to the provisions of sections 4, 5(b) and 10 of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#). The trial Court found in favor of the Respondent and awarded costs and interest.
  7. Being aggrieved by the judgement of the trial court, the Appellant lodged an appeal on the following grounds:
    - i. That the learned Magistrate erred in disregarding the provisions of section 5(b) of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#), while arriving at his decision as per the judgment delivered on 25 January 2024 despite the claim in the trial court having its roots on the said section in Cap 405;
    - ii. That the learned Magistrate erred, misinterpreted and misdirected herself in failing to internalise the import of section 5(b) of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#) in reference to the Respondent's response to the Claimant's claim and consequently the decision of the learned trial court is against the spirit and the letter of the law i.e section 5(b) of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#), Cap 405;
    - iii. That the learned Adjudicator erred in law and in fact in wholly disregarding the evidence adduced on behalf of the Appellant and grossly misdirected herself in failing to consider the principles applicable and relevant authorities on the application of the provisions of section 5 of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#), in reference to filing of declaratory suits in matters arising out of material damage claims;
    - iv. That the learned Magistrate erred in law in holding that the Appellant was liable to settle the decretal sum, costs and interest in Thika SCC No. E400 of 2023 and consequently erred in law and in fact in awarding cost and interest in Thika SCCC No. e928 of 2023;
    - v. That the learned trial Magistrate's judgement was rendered/delivered per incuriam.
  8. The appeal was canvassed by way of submissions.

### **Analysis & Determination**

9. Section 38 of the [Small Claims Court Act](#) provides as follows:
  1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;
  2. An appeal from any decision or order referred to in sub section (1) shall be final.



10. The duty of this Court is essentially to re-evaluate the decision of the trial court on points of law. In the case of *J N & 5 Others -vs- Board of Management, St. G School Nairobi & Another* [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

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11. Turning to the appeal herein, there is one clear issue of law for determination by this Court; Whether the Appellant bears any statutory liability to satisfy the judgement and decree issued in favor of the Respondent pursuant to and within the meaning of the provisions of Section 5(b) of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#), Cap 405 Laws of Kenya.

12. Section 5 of the Act, which provides as follows:

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:

Provided that a policy in terms of this section shall not be required to cover—

- (i) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or
- (ii) except the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arose; or in
- (iii) any contractual liability;



- (iv) liability of any sum in excess of three million shillings, arising out of a claim by one person.  
(emphasis mine)

13. The import of the section is that an insurer can be held statutorily liable for a claim relating to personal injury or death. The Court of Appeal in the case of David Kinyanjui & 2 Others -vs- Meshack Omari Monyori [1998] KECA 104 (KLR) stated thus:

“It must be borne in mind that in respect of a material damage claim the party suffering damage cannot eventually proceed against the tortfeasor insurer as there is no provision in our law for such eventuality. The *Insurance (Motor Vehicles Third Party Risks) Act*, Cap 405, Laws of Kenya gives right to such a person to file a declaratory suit against the tortfeasor’s insurer if the claim is for physical injuries or death.”

14. This position was reiterated in the cases of Lelei -vs- *Direct Line Assurance Company Ltd (Civil Case No E004 of 2023)* [2024] KEHC 12795 (KLR) and *Directline Assurance Co Ltd v Mutai (Civil Case E186 of 2023)* [2024] KEHC 6389 (KLR).

15. The Respondent’s decree having arisen from a material damage claim falls outside the purview of the *Insurance (Motor Vehicles Third Party Risks) Act*. The Appellant is, therefore, not required to settle the same.

16. The upshot is that the appeal is meritorious. I, hereby, make the following orders:

- i. The judgement in Thika SCCOMM E928 of 2023 dated 25 January 2024 is hereby set aside in its entirety and substituted with an order dismissing the Respondent’s suit in total.
- ii. Costs of the trial and appeal herein shall be borne by the Respondent.

**DATED AND DELIVERED AT THIKA THIS 23 DAY OF MAY 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Ms. Omollo h/b Ms. Kahiti ..... for the Appellant

.Ms. Mwangi h/b Mr. Mbanda..... for the Respondent

Libertine Achieng ..... Court Assistant

