



**Gikurumi v Nzuve & another (Civil Appeal E1055 of 2022)  
[2025] KEHC 9616 (KLR) (Civ) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9616 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E1055 OF 2022**

**LP KASSAN, J**

**JULY 1, 2025**

**BETWEEN**

**PETER GIKURUMI ..... APPELLANT**

**AND**

**STEPHEN NAMYOON NZUVE ..... 1<sup>ST</sup> RESPONDENT**

**INVESCO ASSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. For determination is the motion dated 25/10/2024 by Stephen Namyoo Nzuve (hereafter the Applicant) seeking inter alia-;
  - a. Spent
  - b. Spent
  - c. That this honorable Court do give directions that Invesco Assurance Co. Ltd (hereafter the 2<sup>nd</sup> Respondent) is duty/statutorily bound to honor/pay the decretal amount herein in place/ on behalf of the Applicant.
  - d. That in case of default of payment of the decretal sum, execution to recover the same as may be levied by Peter Gikurumi (hereafter the Respondent) be against the 2<sup>nd</sup> Respondent only.
  - e. That the costs of this application be borne by the 2<sup>nd</sup> Respondent.
2. The motion is expressed to be brought among others pursuant to Section 3A of the *Civil Procedure Act* (CPA) and Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act on grounds amplified in the supporting affidavit sworn by the Applicant. The gist of his deposition is that the 2<sup>nd</sup> Respondent was his insurer of the accident motor vehicle registration No. KAD 992Y as at the time of accident



vide a Policy No. 016/000/11XXX900/2017/07. He states that his insurer is statutorily bound to settle claims in respect of the aforesaid vehicle to the tune of Kshs. 3,000,000/- under the Insurance Act. That this Court awarded the Respondent, who was a claimant, a total sum of Kshs. 2,107,150/- plus costs and interests whereas the entire award is under the limit of Kshs. 3,000,000/-. He further states that when the 2<sup>nd</sup> Respondent declined to instruct counsel to represent him, with respect to the Respondent's claim, he enjoined it to the said claim as a Third Party. That 2<sup>nd</sup> Respondent did not file any defence or challenge the claim made by the Respondent in any manner therefore the 2<sup>nd</sup> Respondent is liable to settle the decretal amount. He concludes by deposing that the Respondent does not stand to suffer any prejudice if the orders sought herein are granted whereas it is in the interest of justice that the motion is allowed.

3. The Respondent opposes the motion through the replying affidavit dated 18/11/2024. He assails the application by deposing that the basis of the Applicant's motion is that he has an insurance contract dispute with the 2<sup>nd</sup> Respondent which contract he was not a party to therefore he is precluded from being dragged into the said contractual dispute on accord of the doctrine of privity of contract. He states that the contractual dispute between the Applicant and 2<sup>nd</sup> Respondent would require determination by way of full hearing in a suit, to wit, the same cannot be determined summarily vide the instant motion by a Court exercising appellate jurisdiction. That despite the Applicant enjoining the 2<sup>nd</sup> Respondent as a Third Party before the trial Court, no evidence was led in respect of the contractual dispute consequently there was no basis for the trial Court to apportion liability against the 2<sup>nd</sup> Respondent whereas liability was wholly entered as against the Applicant.
4. He goes on to state that the appeal before this Court was solely on the question of quantum of damages meanwhile the Applicant did lodge a cross-appeal as against the decision of the trial Court. That vide the instant motion the Applicant seeks to invite this Court to exceed its appellate mandate by sitting as a Court of first instance on the contractual dispute between the Applicant and the 2<sup>nd</sup> Respondent. In summation, he states that the motion is incompetent, frivolous, vexatious and that it is in interest of justice that the same is dismissed with costs.
5. In rejoinder by way of the supplementary affidavit dated 17/01/2025, the Applicant iterates that the 2<sup>nd</sup> Respondent who is a party to the instant proceedings ought to satisfy the decretal amount whereas this Court has jurisdiction to grant the orders sought for given that the 2<sup>nd</sup> Respondent has neither contested the instant motion and has refused to settle the decretal amount. He concludes by stating that it is only fair and just that he be protected by the honorable Court by issuance of the orders sought.
6. The 2<sup>nd</sup> Respondent did not participate in the instant proceedings.
7. The motion was canvassed by way of written submissions of which this Court has duly considered alongside the rival affidavit material and the record before it.
8. The Applicant's motion invokes inter alia the provisions of Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act and Section 3A of the CPA, the latter which reserves the inherent power of the Court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court". Nevertheless, ex facie what the Applicant has sought vide motion is a statutory declaration as against the 2<sup>nd</sup> Respondent on the premise of Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act.
9. Section 10 (1), (2) & (4) of the Insurance (Motor Vehicle Third Party Risks) Act specifically provide that:-



- (1) If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of Section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in section 5(b) prescribed in respect thereof in the Schedule.

(1A) .....

(1B) .....

- (2) No sum shall be payable by an insurer under the foregoing provisions of this section—

- (a) in respect of any judgment, unless before or within thirty days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
- (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
- (c) in connection with any liability if, before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
- (i) before the happening of the event the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or
- (ii) after the happening of the event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or
- (iii) either before or after the happening of the event, but within a period of twenty-eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police in writing of the failure to surrender the certificate.

- (3) It shall be the duty of a person who makes a statutory declaration, as provided in subparagraphs (i) and (ii) of paragraph (c) of subsection (2), to cause such statutory declaration to be duly served upon the insurer together with a disclosure under oath of all the documents intended to be used to prove the claim whether in or out of court.

(3A) .....

(3B) .....

- (4) No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after, the commencement of the



proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto.

- (5) ....
- (6) ....
- (7) ....
10. The purport of Section 10 (1) & (2) of the Insurance (Motor Vehicle Third Party Risks) Act was laconically addressed by the Court of Appeal in *Jiji v Gateway Insurance Co. Ltd* [2022] KECA 368 (KLR) wherein it was observed that for declaration such as the one sought by the Applicant to issue, the claimant must satisfy the Court that -; (a) he is a claimant within the meaning of Section 5(b) of the Insurance (Motor Vehicle Third party Risks) Act; (b) that judgment is as against the Insurer's insured; (c) service of the statutory notice was effected upon the Insurer and; (d) existence of a valid policy of insurance between the Insurer and its insured at the time of the accident.
11. While calling to aid the provisions of Section 4 & 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act and the decision in *Gitau* (suing as administrator and personal representative of Agnes Mwihaki Mwangi (Deceased) v Africa Merchant Assurance Co. Ltd (Amaco) [2022] KEHC 12693 (KLR), the Applicant argues that he had lawfully insured motor vehicle registration No. KAD 992Y with the 2<sup>nd</sup> Respondent vide [Policy No. 016/0600/11XXX900/2017/07](#) at the time of the accident. That the 2<sup>nd</sup> Respondent was duly notified of the claim, later enjoined to the proceedings before the trial Court, having failed to take up the matter, therefore is it duty bound to satisfy the decretal amount in place of the Applicant up to a maximum of Kshs. 3,000,000/-.
12. In retort, the Respondent submits that despite the Applicant enjoining the 2<sup>nd</sup> Respondent in the proceedings before the trial Court, it never led any evidence against it regarding existence or breach of the insurance contract. Consequently, no judgment was entered against the 2<sup>nd</sup> Respondent by both the trial Court and this Honorable Court. Citing the decisions in *Catherine Makanda Kioko v Joseph Mwaura Karagu* [2025] eKLR, *Nicholas Njeru [Suing for himself and as representative of Mukera Clan of Mbeere] v The Honourable Attorney General and 8 Others* [2013] eKLR and *Peterson Kamau Kiarie v Marieta Mukeli Kitavi*, [2024] eKLR the Respondent augments that the issues canvassed by the Applicant vide the instant motion were never litigated upon either before the trial Court or appellate Court; that the Respondent was not privy to the contract between the Applicant and the 2<sup>nd</sup> Respondent; and that the Respondent is neither a policy holder or creditor of the 2<sup>nd</sup> Respondent as such any moratorium in respect of the 2<sup>nd</sup> Respondent by dint of Section 67C (10) & (11) of the [Insurance Act](#) is not applicable to the Respondent, to wit, the instant motion ought to be dismissed for being an abuse of the Court process.



13. With the above in reserve, it warrants setting out a brief history of the matter as can be gathered from the record. The Respondent had filed a cause of action founded on tort as against the Applicant in respect of an accident that occurred on 15/11/2017 involving himself and motor vehicle registration No. KAD 992Y, purportedly insured by the 2<sup>nd</sup> Respondent. In the course of proceedings before the trial Court it would appear that the 2<sup>nd</sup> Respondent was enjoined as a Third Party whereafter vide a decision delivered by the trial Court on 25/11/2022 judgement on liability was entered solely as against the Applicant with damages being awarded in favour of the Respondent. Aggrieved with the award on damages the Respondent preferred the instant appeal, which was determined vide a judgment delivered by this Court on 30/07/2024.
14. As rightly argued by the Respondent, the Applicant neither litigated nor challenged the contractual dispute between himself and the 2<sup>nd</sup> Respondent both before the trial Court and the appellate Court. As is, the decision of the trial Court on liability as against the Applicant has not been challenged and or set aside. By the instant motion, the Applicant appears to be attempting to litigate Section 10 (1) & (2) of the Insurance (Motor Vehicle Third Party Risks) Act and the Contract of Insurance between himself and the 2<sup>nd</sup> Respondent, post the appellate decision on damages. Palpably, the latter were not issues for consideration before the trial Court, to wit, this Court can now proceed and or purport to address itself on presently. Notwithstanding, joinder of the 2<sup>nd</sup> Respondent as a party to the proceedings before the trial Court, the provision of Section 10 (1) & (2) of the Insurance (Motor Vehicle Third Party Risks) Act and the Contract of Insurance between Applicant and the 2<sup>nd</sup> Respondent were equally not canvassed before this Court.
15. The duty of a first appellate Court as pronounced in *Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR has since long been settled and requires no restatement. That said, it is equally trite that the issues for determination before a Court generally are derived from the pleadings. This was emphasized by the Court of Appeal in *North Kisii Central Farmers Limited v Jeremiah Mayaka Ombui & 4 others* [2014] eKLR. Here, the pleadings before the trial Court constituted a plaint and before the appellate Court a memorandum of appeal. The orders as sought by the Applicant vide the instant motion are substantive in nature that would require litigation by way of suit and adducing of documentary evidence before the trial Court. By his motion, the Applicant seeks to turn the appellate Court, into a trial Court, which must in all attempts be frowned upon.
16. The Civil Procedure Rules (CPR) or *Civil Procedure Act* (CPA) and by extension the Insurance (Motor Vehicle Third Party Risks) Act do not contemplate the determination or rendering of declaration pursuant to Section 10 (1) & (2) of the Insurance (Motor Vehicle Third Party Risks) Act, through an application. Had the rules committee intended so, the same would have been specifically provided for in the CPR whereas Section 3A of the CPA, is not a panacea to warrant such substantive orders of declaration under Section 10 (1) & (2) of the Insurance (Motor Vehicle Third Party Risks) Act. Even if the Court were to entertain the motion as is, its bereft of any supporting documentary material illustrative of compliance with pre-requisites of Section 10 (1) & (2) of the Insurance (Motor Vehicle Third Party Risks) Act as addressed by the Court of Appeal in *Jiji v Gateway Insurance Co. Ltd* (supra). And in any event that if there was sufficient material to latter, the approach by the Applicant or litigating the provisions of Section 10 (1) & (2) of the Insurance (Motor Vehicle Third Party Risks) Act by way of motion would in all certainty be an improper approach notwithstanding the perceivable intent of the Applicant.
17. By parity of reasoning, the Applicant's motion lacks merit and is bereft of any anchor. The motion dated October 25, 2024 is thereby dismissed with attendant costs in favour of the Respondents.



**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1<sup>ST</sup> DAY OF JULY 2025**

**L. P KASSAN**

**JUDGE**

In the presence of;

Ochieng for Applicant

Muli holding brief Nzau for 1<sup>st</sup> Respondent

Omariba for 2<sup>nd</sup> Respondent

Carol – Court Assistant

