



Kimani & 2 others v Britam General Insurance Company (K) Ltd & another (Civil Case E566 of 2024) [2025] KEHC 11051 (KLR) (Commercial and Tax) (25 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11051 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E566 OF 2024
FG MUGAMBI, J
JULY 25, 2025**

BETWEEN

**NANCY NJERI KIMANI 1ST PLAINTIFF
MOREEN WAKESHO KIMANI 2ND PLAINTIFF
BRIAN MUNA KIMANI 3RD PLAINTIFF**

AND

**BRITAM GENERAL INSURANCE COMPANY (K) LTD 1ST DEFENDANT
EQUITY BANK (K) LTD 2ND DEFENDANT**

RULING

Background and Introduction

1. By a Plaint dated 20th September 2024, the plaintiffs instituted the present suit against the defendants, arising from a loan facility of Kshs. 50,000,000/= that was advanced to the late Paul Kimani Muna. The facility was secured by a charge over several parcels of land, namely Plot NO. Murang'a/Municipality Block 2/171, Plot NO. Murang'a/Municipality Block 3/96 and LR NO. LOC.11/Maragi/2022 (the suit properties). The suit properties were jointly owned by the deceased and the 1st plaintiff.
2. The plaintiffs contend that the said facility was, or ought to have been, insured by the 2nd defendant, BRITAM, through a policy that would cover the outstanding loan in the event of the borrower's demise. According to the plaintiffs, following the death of Paul Kimani Muna, the 1st defendant, the Bank, continued to demand payment of the outstanding loan from the plaintiffs and issued a statutory notice in respect of the suit properties.



3. The plaintiffs seek, among other reliefs, a declaration that the loan facility was insured or ought to have been insured and that the premium paid in the sum of Kshs. 281,064.00/= ought to have included a life policy for the deceased. They further contend that, if the Bank failed to procure such a policy, it was negligent and must bear the consequences. Additionally, they seek a mandatory injunction compelling BRITAM to settle the outstanding loan balance on account of insurance policy No. MPP/003/521749/18 issued in the deceased's name.
4. It is in this context that BRITAM filed the present application dated 14th October 2024, brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act*; Order 2 Rule 15(1)(b), (c), and (d); Order 51 Rule 1 of the Civil Procedure Rules; and Section 111(5) of the *Insurance Act*. The application seeks an order striking out the suit against BRITAM with costs and is supported by the affidavit of JACKSON KIBOI.
5. BRITAM avers that it has been improperly joined in these proceedings, asserting that no premium was ever paid in respect of a life insurance policy covering the deceased, nor did it issue any such policy. It maintains that the plaint discloses no reasonable cause of action against it and that the suit amounts to an abuse of the court process.
6. In support of this position, BRITAM relies on letters dated 24th July 2024 and 19th August 2024 from the Bank, addressed to the plaintiffs' advocates. These letters clarify that the insurance cover in question was a mortgage protection policy, not a credit life insurance policy and further confirm that the loan facility advanced to the deceased was not covered by any credit life policy. BRITAM further contends that, if any party is to be held liable in respect of insurance arrangements relating to the facility, it would be Equity Insurance Agency, now operating as Equity Bancassurance Intermediary Limited and not them.
7. The application was canvassed through written submissions, which I have duly considered together with the supporting affidavit and annexures. As of the date of writing this ruling, the plaintiffs had not filed any response to the application. While BRITAM's averments remain uncontroverted owing to the plaintiffs' failure to respond, this Court nonetheless bears the duty to scrutinize the evidence on record and determine whether the applicant has made out a case for striking out in accordance with the applicable legal principles.

Analysis and Determination

8. The principles governing the exercise of the jurisdiction sought are well settled. The court is required to determine whether an impugned pleading, even if all its averments were assumed to be true, discloses a sustainable legal claim. The jurisdiction to strike out must be exercised cautiously, as it denies a party the opportunity to be heard at a full trial. However, it is equally true that this power is designed to prevent the misuse of judicial time and to shield parties from being dragged through proceedings that are plainly bound to fail. (See *DT Dobie & Company (Kenya) Ltd V Muchina*, [1982] KLR 1).
9. In the present case, the plaintiffs' claim against BRITAM is anchored on the assertion that the deceased borrower, Paul Kimani Muna, was insured under a credit life insurance policy issued by BRITAM and that upon his demise, BRITAM became liable to settle the outstanding loan of Kshs. 50,000,000/= advanced by the Bank. The plaintiffs point to premium payments amounting to Kshs. 281,064.00 as indicative of such coverage, and rely on Policy No. MPP/003/521749/18, which they claim supported this insurance arrangement.
10. BRITAM, however, has denied issuing any credit life policy. It asserts that the insurance product in question was a mortgage protection cover, not a credit life cover, and therefore does not support the



reliefs sought by the plaintiffs. This position is supported by two letters from the Bank dated 24th July 2024 and 19th August 2024, addressed to the plaintiffs' advocates.

11. In the letter dated 24th July 2024, the Bank clarified:

“Please note the loan facility advanced to Paul Kimani Muna T/A Kimunas General Stores ... was not insured for credit life, facts of which were within the knowledge of the deceased borrower and the guarantor Nancy Njeri Kimani. The decision to give credit life insurance is purely a credit appraisal function, a step in which the customer was involved all through.”

12. Similarly, in its 19th August 2024 letter, the Bank reiterated:

“We wish to reiterate that the loan of Kenya Shillings Forty-Eight Million only (Kshs. 48,000,000/=) ... was not insured for credit life. The policy that you are referring to under internal policy number MPP/003/521749/18 in favour of Nancy Njeri Kimani & Paul Kimani Muna T/A Kim Munas Gen Stores was not a credit life cover but a mortgage protection risk cover running for the period between 30/07/2018 to 29/07/2019.”

13. Upon reviewing the documents filed by the plaintiffs, I note that the referenced Mortgage Protection Endorsement dated 20th March 2018 indeed names BRITAM as the insurer. It became effective from 26th July 2018 and formed part of Policy No. MPP/003/521749/18, jointly issued in the names of the 1st plaintiff and the deceased. There is also evidence that the sum of Kshs. 281,064.00 was paid as premium.

14. However, the existence of this policy does not assist the plaintiffs. A mortgage protection policy is fundamentally different from a credit life policy. The former is typically designed to indemnify the lender against default within the policy period and does not necessarily extinguish the borrower's obligation upon death unless specifically so stated.

15. The plaintiffs have not produced the full policy document, nor have they pleaded or demonstrated that its terms obligated BRITAM to pay the loan balance upon the death of the deceased. There is no clause cited, no schedule exhibited and no privity of contract established between the plaintiffs and BRITAM in respect of the obligation claimed.

16. The basis of any allegation of a life cover must be a valid and enforceable insurance contract between the plaintiffs (or the deceased) and BRITAM. None has been produced. The plaintiffs' case, as presented, therefore rests on mere inference and assumption rather than legal entitlement. Even assuming all the facts in the plaint to be true, the claim against BRITAM lacks the necessary legal and evidentiary foundation.

17. While striking out a party from proceedings is a drastic and exceptional remedy, this Court also takes the view that permitting a suit to hang over a party where there is no prospect of success is unfair, unjust and contrary to the overriding objectives of the Court under Sections 1A and 1B of the [Civil Procedure Act](#). Judicial resources must be focused on disputes that raise triable issues.

18. Even if the Court were to allow the matter to proceed to full hearing, the material before the Court clearly shows that the claim against BRITAM is unsustainable. That position is only strengthened by the fact that the plaintiffs have not challenged or rebutted the evidence presented by BRITAM, despite having had the opportunity to do so.



Disposition

19. Accordingly, I find merit in the application dated 14th October 2024. Accordingly, I make the following orders:

- i. The suit against the 2nd defendant, BRITAM Life Assurance Company (K) Limited, is hereby struck out.
- ii. The plaintiffs shall bear the costs of the application and of the suit as against the 2nd defendant who had entered appearance and filed a statement of defense.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

F. MUGAMBI

JUDGE

