



**Pacis Insurance Limited v Muthoni (Suing as Personal Representative
of the Estate of Haron Mwangi Kamau – Deceased) (Civil Appeal
E362 of 2023) [2025] KEHC 11798 (KLR) (Civ) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11798 (KLR)

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

CIVIL

CIVIL APPEAL E362 OF 2023

DKN MAGARE, J

JULY 24, 2025

BETWEEN

PACIS INSURANCE LIMITED APPELLANT

AND

**MARY MUTHONI [SUING AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF HARON MWANGI KAMAU – DECEASED] RESPONDENT**

JUDGMENT

1. This appeal arises from the Judgment and decree of Hon. B. Cheloti (PM) delivered on 28.4.2023 in Milimani CMCC No. E878 of 2022.
2. The Appellant was the defendant in the declaratory suit. The Memorandum of Appeal dated 8.5.2023 was based on the following grounds:
 - a. The learned magistrate erred in law and fact in the evaluation of evidence.
 - b. The learned magistrate erred in law and fact by failing to appreciate that the suit is related to statutory liability and not tortious liability.
 - c. The learned magistrate erred in law and fact in finding liability under (Motor Vehicle Third Party Risks) Act CAP 405.
 - d. The learned magistrate erred in entering a declaratory judgment when there was no judgment entered against the Appellant’s insured.
3. The Appellant faulted court for having erred on three fronts. First, the magistrate is said to have improperly evaluated the evidence on record. Second, the magistrate failed to appreciate that the claim



was founded on statutory liability, not tortious liability. Third, the magistrate wrongly found liability under the Motor Vehicle (Third Party Risks) Act, Cap 405. Lastly, the magistrate erred in entering a declaratory judgment in the absence of any judgment having first been entered against the Appellant's insured.

4. The appellant forgot one linchpin to the case, the insured driver.

Pleadings

5. In the Plaintiff dated 22.2.2022, the Plaintiff sought a declaration that the Appellant was bound to settle the decretal sum of Ksh. 2,574,522/= arising from the judgment and decree in the primary suit, in Milimani CMCC No. 5644 of 2019.
6. The suit arose from judgment in the primary suit, Milimani CMCC No. 5644 of 2019 which was stated to have arisen from a road accident that occurred on 1.2.2016. The insured motor vehicle registration No. KAX 967M caused an accident along Korogocho Road in which the deceased sustained fatal injuries. Judgment was entered against the owner and the driver of the said vehicle.
7. The respondent was the administrator of the estate of a third party who died as a result of the accident. She filed a declaratory suit against the insurer of the accident motor vehicle. There is no dispute as to who the insurer is. The question is only who the insured was, for purposes of liability under the Motor Vehicle (Third Party Risks) Act, Cap 405.
8. The Appellant filed a defence to the suit denying the averments in the plaintiff. The Appellant was categorical in its defence that the declaratory suit was not appropriate as the defendants in the primary suit were not persons insured by the Appellant within the meaning of the Insurance (Motor vehicle Third Party Risks) Act.

Evidence

9. During trial, PW1 was the Respondent. It was her case that the Appellant was the insurer of the motor vehicle registration number KAX 967M under policy number 010/087/1/0005677/2014. That the deceased was riding his motorcycle registration number KMDE 692N at the time of the accident. She testified that the Appellant was served with statutory notice and judgment was entered on 28.1.2022.
10. DW1 was Dennis Muraga, the legal officer of the Appellant. It was his case that the Appellant had insured the suit motor vehicle and the policy was known to him. He testified that the Appellant had no obligation to settle the decree in the primary suit as the parties were not the insured.

Submissions

11. The Appellant filed submissions dated 28.10.2024. It was submitted that the Respondent had not proved the existence of a valid judgment against persons insured under the policy as required under Section 10(1) of Cap 405.
12. The Appellant cited UAP Insurance Co. Ltd v Patrick Charo Chiro (2021) eKLR as follows:

The import of the above provision of the law is that for liability to accrue under section 10 of the Insurance (Motor Vehicle Third Party Risks) Act CAP 405, there is a 4-fold test to be met. Firstly, that the motor vehicle in question was insured by the appellant; Secondly, that the respondent has a judgement in his favour against the insured; Thirdly, that statutory notice was issued to the insurer either at least 14 days before the filing of the suit wherein



judgement has been obtained or within 30 days of filing the suit where judgement has been obtained and finally the respondent was a person covered by the insurance policy.

13. The Respondent filed submissions dated 7.11.2024. It was submitted that the Respondent satisfied the requirements of Section 10(1) of the Insurance (Motor vehicle Third Party Risks) Act.
14. It was further submitted that the evidentiary burden was on the Appellant to prove that the defendants in the primary suit were not insured under the accident motor vehicle. That there was no insurance certificate produced and the information provided by the Respondent was uncontroverted. They cited Section 107 of the Evidence Act and the case of Ann Wambui Ndiritu v Joseph Kiprono Ropkoi & Another (2005) EA 334.
15. It was also submitted for the Respondent that the Appellant was obligated by law to provide third parties who suffered injury as a result of accidents arising from motor vehicle that the Appellant insured. Reliance was placed on Africa Merchant Co Ltd v Jane Otieno (2014) eKLR.

Analysis

16. The issue for determination is whether the lower court erred in its finding that the Appellant was under duty to settle the decretal sum as prayed in the declaratory suit.
17. The Appellant's defence was that the defendants in the primary suit were not the insured of the Appellant and as such the Appellant had no statutory obligation to settle the decretal sum. The Appellant faulted the lower court for allowing the declaratory suit.
18. The Appellant was, however, duly served with a statutory notice as required by law. In response, the Appellant relied on the accident claim form, which indicated that the policy holder of motor vehicle registration number KAX 967M was not the defendant in the primary suit. More fundamentally, there was no disavowing of the driver. There is no allegation that the driver was not an insured driver. If so, then there was a need for a declaratory suit that they are not liable under Section 10(4) of the Insurance (Motor vehicle Third Party Risks).
19. The Appellant did not seek to avoid the policy on any grounds provided in law. The Appellant had the pathway to avoid the policy 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. Secondly, there was no Section 10 of the Insurance (Motor Third Party Risks) Act, Cap 405 as follows:

- (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 judgement 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 judgement 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.



20. As was correctly submitted by the Respondent, the burden was on the Appellant to prove that the policy holders were not the insured. This was by the production of the log book for the motor vehicle and the certificate of insurance. More particularly to provide for the insured driver. The insured driver is covered as well as the owner in respect of liability under the Insurance (Motor vehicle Third Party Risks).
21. As to the Respondent, she obtained judgment in the primary suit. There was no evidence that the said judgment had been set aside or appealed. The presumption was that the judgment was valid and against the Defendant, one Anthony Nganga Gichuru who was the registered and beneficial owner of the accident motor vehicle registration No. KAX 967M at the time of the accident. There was also Paul Ndung'u Karengi who was the driver of the said vehicle. This was the insured driver. He was not in any way impeached. If he was not driving for the insured, then this could only be cured by a declaratory suit. In that suit, the Appellant ought to have 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 apart from any provision contained in it.
22. The Appellant did not dispute that it insured the accident motor vehicle at the time of the accident. The Appellant appeared to rely solely on an accident claim form dated 26.4.2016 which was not a source document showing the persons insured. It also did not dispute the insured driver. Insurance companies should be strong enough to pay claims instead of clutching on straws. This was clearly a misplaced appeal.
23. The Appellant was entitled to satisfy the decretal arising from an accident involving its insured motor vehicle registration number KAX 967M. Consequently, the lower court was correct in its finding that the Appellant had not avoided the policy or proved that the insured persons were not persons insured by the Appellant. In *Gateway Insurance Company Limited v Sudan Mathews* [2003] eKLR it was held as follows:
- As regards the ambit and scope of Section 10, it is clear to me that the insurer is under a duty to satisfy only such judgements as have been obtained against persons who are insured against such liabilities as are required to be covered by a policy under paragraph (b) of Section 5 and which are actually covered by the terms of the policy. And one of the circumstances in which the insurer may escape liability for such a judgement is where it has obtained a declaratory order that it is entitled to avoid the policy on the basis that the same was obtained by the non-disclosure or misrepresentation of a material fact. That being so, it is not open to the plaintiff to seek such declaratory relief in the circumstances of this case as the risk of injury to a passenger in the defendant's vehicle was not a liability required to be covered by the policy under paragraph (b) of Section 5. In short the prayer for a declaration that the plaintiff is entitled to avoid the policy is misconceived.
24. The court is also alive to the common ground that Appellant was served with the statutory notice but did not participate in the primary suit. The Appellant did not also state whether or not the person sued as defendant in the primary suit was insured. I cannot see a notice served in accordance with Section 12 of the Insurance (Motor vehicle Third Party Risks) Act. It provides as doth:
- (1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 shall, on demand by or on behalf of the person making the claim, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of this Act or would have been so insured if the insurer had not avoided or cancelled the policy and, if he was or would have been so insured, give such



particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof under section 7.

(1A) The insurer shall, upon being served with the statutory notice and documents, admit or deny liability for the claim or judgment by a notice in writing to the person or persons presenting the claim or judgment.

(1B) The claimant or judgment debtor or his representative shall upon receipt of the admission of liability shall allow the insurer a period of not more than sixty days to settle the claim or judgment out of court and both the insurer and the claimant or judgment debtor or his representative commit to arbitration or mediation during that period before resorting to court.

(2) If, without reasonable excuse, any person fails to comply with the provisions of this section, or willfully makes any false statement in reply to any such demand as aforesaid, he shall be guilty of an offence.

25. As a parting shot, matters of the existence of a valid contract are within the knowledge of parties to a contract. The existence or otherwise of a policy of insurance is a fact in the best knowledge of the insured and the insurer. The Appellant was served with a notice under the Insurance (Motor vehicle Third Party Risks). The Appellant was required to answer the same under section 12 of the said Act.

(1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 shall, on demand by or on behalf of the person making the claim, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of this Act or would have been so insured if the insurer had not avoided or cancelled the policy and, if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof under section 7.

(2) If, without reasonable excuse, any person fails to comply with the provisions of this section, or willfully makes any false statement in reply to any such demand as aforesaid, he shall be guilty of an offence.

26. By failing to answer the notice issued under section 10 of the Act, the Appellant was non-suited. It would consequently be a burden so unbearable if this court were to declare this too late in the day, without basis, that the Appellant had insured a different person other than the Defendant in the primary suit.

27. The law granted the Appellant all avenues of how to respond to issues of an uninsured person claiming to be the insured and the Appellant never applied any of those avenues. Parliament had the intention of remedying such eventualities as in this case by enacting Insurance (Motor vehicle Third Party Risks) Act. Lord Denning in *Escoigne Properties Ltd – Vs - I.R. Commissioners (15) [1958] A.C at 565* stated that:

“A statute is not named in a vacuum, but in a framework of circumstances, so as to give a remedy for a known state of affairs. To arrive at its true meaning, you should know the circumstances with reference to which the words were used, and what was the object, appearing from those circumstances, which parliament had in view.”

28. The Appellant was properly sued and found liable. In the circumstances, the appeal lacks merit and is hereby dismissed.



Determination

29. In the upshot, I make the following orders: -

- a. The appeal is unmerited and is dismissed in limine.
- b. The Appellant shall pay costs of the appeal assessed at Kshs. 95,000/= to the Respondent.
- c. 30 days stay of execution.
- d. File is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 24TH DAY OF JULY, 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Ms. Too for the Appellant

No appearance for the Respondent

Court Assistant – Michael

