



**Kirimi ((Suing as the legal representative of the Estate of Justin Guantai (Deceased)) v Energy Technologies Limited & another (Civil Appeal 621 of 2019) [2024] KEHC 4590 (KLR) (Civ) (16 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4590 (KLR)

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

**CIVIL**

**CIVIL APPEAL 621 OF 2019**

**DAS MAJANJA, J**

**APRIL 16, 2024**

**BETWEEN**

**LEONARD KIRIMI ..... APPELLANT**

**(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JUSTIN GUANTAI (DECEASED))**

**AND**

**ENERGY TECHNOLOGIES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**AIG KENYA INSURANCE LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. L.L. Gicheha, CM dated 11th October 2019 at the Magistrates Court at Milimani, Nairobi in Civil Case No. 8513 of 2016)*

**JUDGMENT**

**Introduction and Background**

1. On 15.12.2016, the Appellant filed suit on behalf of the estate of the Deceased against the Respondents seeking compensation from the 2<sup>nd</sup> Respondent as a result of an accident that occurred on 24.02.2016 along North Airport road involving inter alia motor vehicle registration number KCB \*H Nissan Murano (“the motor vehicle”) owned by the 1<sup>st</sup> Respondent and that was being driven by the Deceased at the time.
2. The Appellant contended that the Deceased had a friend and a neighbor by the name Moses Orlando who owned the motor vehicle and that once in a while the Deceased used to assist Mr. Orlando in dropping his children to school especially in the morning when Mr. Orlando was tied up. That on



- the material day, Mr. Orlando authorized the Deceased to drive the motor vehicle and on his way back from dropping the children, the accident occurred fatally injuring the Deceased.
3. The Appellant contends that at the time of the accident, the 1<sup>st</sup> Respondent had comprehensively insured the motor vehicle with the 2<sup>nd</sup> Respondent under Policy Number P/ 012364763 commencing on 05.08.2015 and expiring on 04.08.2016 (“the policy”). That the policy provided at clause 21 that the cover extended to include inter alia death of the insured authorized driver as a result of a road accident and that the benefit was payable only if death occurs as a direct result of inter alia the road accident within twelve months from the date of accident. The said Clause 21 of the policy excluded death as a result of driving under the influence of alcohol, drugs or narcotics, committing suicide or any act of intentional self -injury.
  4. The Appellant claimed that the Deceased was an authorized driver of the owner of the motor vehicle and therefore his estate was entitled to compensation from the 2<sup>nd</sup> Respondent under the aforementioned clause. The Appellant stated that 2<sup>nd</sup> Respondent denied liability under the policy on the ground that the Deceased was an employee of the owner of the motor vehicle. Further that the fatal accident arose out of and in the course of Deceased’s employment with the owner of motor vehicle and that the claim would therefore not fall under the policy. However, the Appellant maintained that the Deceased’s death fell within clause 21 of the policy. That as a result of denial of liability by the 2<sup>nd</sup> Respondent, the Appellant filed this suit seeking compensation from the Respondents under clause 21 of the policy, general and special damages.
  5. The 1<sup>st</sup> Respondent urged the court to dismiss the suit. It admitted that it owned the motor vehicle at the time of the accident and that it was being driven by the said Mr. Orlando who was its employee. The 1<sup>st</sup> Respondent admitted that Mr Orlando used the Deceased to take his children to school and that on the date of the accident, he had given the motor vehicle to the Deceased to take his children to school. It also admitted that the motor vehicle had a valid comprehensive insurance cover with the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent denied that the Deceased was its employee but admitted that he was authorized by Mr. Orlando to drive the motor vehicle at the time of the accident. It also admitted that in the claim form filed with the 2<sup>nd</sup> Respondent, it stated that the Deceased was its employee for a year but that he was a casual. It also stated the Deceased was being paid by Mr. Orlando.
  6. The matter was set down for hearing where the Appellant and the 1<sup>st</sup> Respondent gave evidence along the lines I have summarized above. The Appellant testified on his own behalf (PW1) and also called Peter Murungi, the Deceased’s father’s cousin (PW2) and Benedict Mutuku, a process server and investigator (PW3). The 1<sup>st</sup> Respondent called its employee, Jabez Owino (DW1). The 2<sup>nd</sup> Respondent did not call any witnesses but relied on the policy document produced.
  7. After the hearing, the Subordinate Court rendered its judgment on 11.10.2019. It held that it was not in issue that the accident did occur and that at the time of the accident, the Deceased had been authorized to drive the motor vehicle by Mr. Orlando and that the only issue was whether he could be compensated under the policy issued by the 2<sup>nd</sup> Respondent.
  8. The Subordinate Court stated that the insured in this case was the 1<sup>st</sup> Respondent and that it was not in dispute that it had allocated the motor vehicle to Mr. Orlando for his own use and it was Mr. Orlando who authorized the Deceased to drive the motor vehicle. As to whether the Deceased was the insured’s authorized driver, the trial court held that it was not in dispute that the Deceased was not an employee of the 1<sup>st</sup> Respondent as it was confirmed by DW1 that he was not in their payroll and that the insured authorized driver as far as the motor vehicle was concerned was Mr. Orlando as he was the one employed by the 1<sup>st</sup> Respondent. On whether Mr. Orlando was in a position to transfer such a right



to the Deceased, the motor vehicle having been allocated to him, the trial magistrate took the view that the said policy only covered the drivers authorized by the 1<sup>st</sup> Respondent. That drivers employed by their employees could not have been covered by the policy hence the Deceased having been authorized to drive the motor vehicle by Mr. Orlando who was an employee of 1<sup>st</sup> Respondent meant that the Deceased was not the driver authorized by 1<sup>st</sup> Respondent and could not be compensated under the policy.

9. The Subordinate Court dismissed the suit with costs on the ground that the Appellant failed to prove that the Deceased was the 1<sup>st</sup> Respondent's authorized driver. The Appellant is dissatisfied with this decision and has proffered an appeal to the court through its amended memorandum of appeal dated 25.11.2019. The appeal has been canvassed by way of written submissions which are on record and since they regurgitate the parties' positions I have already summarized above, I will not highlight the same but only make relevant references in my analysis and determination below.

### **Analysis and Determination**

10. In determining this appeal, the court is guided by the principle that it is its duty to re-evaluate the evidence independently and reach its own conclusion as to whether to uphold the judgment. In doing so, the court must make an allowance for the fact that it neither heard nor saw the witnesses testify (see *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123).
11. From the summary of the background highlighted in the introductory part, much of the facts giving rise to the suit and now this appeal are not in dispute. The 1<sup>st</sup> Respondent was the owner of the motor vehicle which was insured by the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent had assigned the motor vehicle to its employee Mr. Orlando who had in turn authorized the Deceased to drive it on a number of occasions including on 24.02.2016 when the Deceased was fatally involved in an accident. There is also no dispute that as per Clause 21 of the policy, the policy extended to include "death of the insured authorised driver as a result of a road accident..."
12. The question then was who was this "insured authorised driver"? As per the policy, it was not in dispute that the 1<sup>st</sup> Respondent was the "insured". There was also no dispute that Mr. Orlando was its "authorized driver". Therefore, the inexorable conclusion is that Mr. Orlando was the "insured authorized driver". On the other hand, the evidence supports the fact that the Deceased was Mr. Orlando's authorized driver. The question then arises, like it did in the subordinate court, whether Mr. Orlando could transfer his authority over the motor vehicle to the Deceased and thus bring him under the ambit of the "insured authorised driver". The policy document does not support this position and I am inclined to agree with the Respondents that Clause 21 of the policy only extended to the 1<sup>st</sup> Respondent's authorised drivers, in this case, Mr. Orlando. The Deceased was not its authorized driver or its employee and as such the insurance cover did not extend to him. I do not therefore find any fault in the subordinate court coming to the same conclusion.

### **Disposition**

13. The Appellant's appeal therefore lacks merit. It is dismissed with costs assessed at Kshs 40,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF APRIL 2024.**

**D. S. MAJANJA**

**JUDGE**

Mr Kangethe instructed by Ayieko Kengethe and Company Advocates for the Appellant



Mr Isolio instructed by Otieno Adum and Company Advocates for the 1<sup>st</sup> Respondent  
Tindi Munyasi and Company Advocates for the Respondent

