



**UAP Insurance Company Limited v Kamau (Civil Case  
1 of 2020) [2024] KEHC 7544 (KLR) (17 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 7544 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE 1 OF 2020  
DO CHEPKWONY, J  
MAY 17, 2024**

**BETWEEN**

**UAP INSURANCE COMPANY LIMITED ..... PLAINTIFF**

**AND**

**GEOFFREY SOLOMON KAMAU ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff's claim against the Defendant is as elucidated in the Plaint dated 29<sup>th</sup> January, 2020 wherein it seeks the following orders:-
  - a. A declaration that the Plaintiff is not liable or bound to make payments or indemnify the Defendant under the said Insurance Policy Cover in respect of any claim in respect of death or bodily injury to any person or passenger being involved in an accident with Motor vehicle Registration No.KBL 620B particularly on or arising out of traffic accident which allegedly occurred on 4<sup>th</sup> March, 2019 along Nairobi-Naivasha highway involving the Defendant's Motor Vehicle Registration No.KBL 620B.
  - b. Costs of the suit.
2. The Plaintiff served the said pleadings upon the Defendant and an Affidavit of Service to confirm this sworn by Paul Biage Motanya was filed on 1<sup>st</sup> September, 2020. Despite being so served, the Defendant neither entered appearance nor filed his defence. The Plaintiff has filed a request for Judgment dated 7<sup>th</sup> September, 2020 and an interlocutory Judgment was entered against the Defendant. The matter was then fixed for formal proof hearing, which proceeded on 21<sup>st</sup> November, 2023 whereby M/S Joy Muthoka, the former Legal Officer for the Plaintiff testified on its behalf.
3. The Plaintiff's case is that upon his request, the Defendant was issued with a Motor Vehicle Policy Cover for his Motor Vehicle Registration Number KBL 620B hereinafter " the subject motor vehicle"



on 12<sup>th</sup> January, 2019 being No. 060/080/1/001366/2017 which commenced on 12<sup>th</sup> January, 2019 and was to expire on 11<sup>th</sup> January, 2020.

4. According to the Plaintiff, it was an express/implied term of the cover that in the event the subject motor vehicle was to be involved in any form of accident, the Defendant would immediately inform the Plaintiff. However, on 4<sup>th</sup> March, 2019, the subject Motor Vehicle knocked a Motor Cycle at Gichagi area along Nairobi-Naivasha Highway which resulted in fatal injuries of a passenger by the name Patrick Munyaka Kamau who was abode the motor cycle.
5. The Plaintiff then goes on to argue that it is not liable to indemnify the Defendant for any loss or damage claimed by the legal representatives of the deceased. It blamed the Defendant for the accident as the particulars of breach of the terms and conditions of the policy cited at Paragraph 7 of the Plaintiff as follows:-
  - a. Failing to comply with the Motor Vehicle Policy Cover terms using Motor Vehicle Registration Number KBL 620B.
  - b. Failing to report the alleged accident of the insured's Motor Vehicle Registration Number KBL 620B was involved in as per the policy contract.
  - c. Breaching the insurance contract policy the Plaintiff and the Defendant agreed.
  - d. Misrepresenting or giving false and untrue information while proposing for policy cover with the Plaintiff.
  - e. Engaging in non-disclosure of true and material facts while proposing for policy cover with the Plaintiff.
  - f. Otherwise using the said Motor Vehicle Registration Number KBL 620B contrary to and in breach of the Insurance Policy Cover terms and conditions.
6. During the hearing, Ms Joy Muthoka, the Legal officer of the Plaintiff whose evidence was as stated in the Plaintiff and her written statement dated 29<sup>th</sup> January, 2020 had the same adopted as her evidence in-chief. She also produced her list of documents being the Police Abstract for the accident, Policy Document 060/080/1/001366/2017, Motor Vehicle Policy schedule and pleadings filed in the instant suit as PExh. 1 to 4.
7. It was her evidence that the failure of the Defendant to report the occurrence of the accident was a breach of terms of the Insurance and urged the court to grant the prayers sought in the Plaintiff dated 29<sup>th</sup> January, 2020.
8. The Plaintiff filed submissions dated 15<sup>th</sup> December, 2023, wherein its arguments as stated in the pleadings have been reiterated by the Applicant.
9. The legal ambit upon which the Respondent's claim is hinged in this case falls under Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act*, Chapter 405 of the Laws of Kenya which provides as follows:-

“Duty of insurer to satisfy judgements against persons insured:

- (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.

- (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 fourteen 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 connexion 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 provisions 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) .....
- (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 the 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.

10. Also, in regard to the same issue, the Court in the case of *UAP Insurance Co. Ltd -vs- Patrick Charo Chiro* [2021] eKLR stated thus in respect of the provisions on the said issue 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 Judgment 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 Judgment has been obtained or within 30 days of filing the suit where Judgment has been obtained and finally the Respondent was a person covered by the Insurance Policy.”

11. In this case the main issue in question is that the Plaintiff was not notified of the accident or even the filing of the case as required by law by the Defendant for that reason it is entitled to avoid the policy. Despite being served, hence being aware of this case, the Defendant failed to enter appearance or file a Defence to confirm whether or not, he notified the Plaintiff of the said accident as required by law.

12. In absence of such evidence the court finds that the Plaintiff's case has merit and proceeds to allow the prayers sought therein in the following terms:-

- a. A Declaration is hereby given that the Plaintiff is not liable or bound to make payments or indemnify the Defendant under the said Insurance Policy of cover in respect of any claim in respect of death or bodily injury to any person or passenger being involved in an accident with Motor Vehicle Registration Number KBL 620B particularly on or arising out of the traffic accident which allegedly occurred on 4<sup>th</sup> March, 2019 along Nairobi- Naivasha Highway involving the Defendant's Motor Vehicle Registration Number KBL 620B.
- b. The Plaintiff is awarded costs of the suit.

It is so ordered.

**JUDGMENT DELIVERED, DATED AND SIGNED AT KIAMBU THIS ..... 17<sup>TH</sup> ....DAY OF MAY, ....., 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Nyakara holding brief for M/S Ombwori for Plaintiff

No appearance by counsel for the Defendant

Court Assistant - Martin

