Kiogora v Kenya Alliance Insurance Co Ltd (Civil Case E152 of 2022) [2024] KEHC 7205 (KLR) (13 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7205 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

CIVIL CASE E152 OF 2022

TW CHERERE, J

JUNE 13, 2024

BETWEEN

ROBERT KIOGORA ..... APPELLANT

AND

KENYA ALLIANCE INSURANCE CO LTD ..... RESPONDENT

JUDGMENT

1. Appellant obtained judgment in Meru CMCC No 482 of 2007 against the Respondent's insured Kenya Business Community Co-op Savings Credit Society for in the sum of Kshs 945,581/- plus costs and interest arising out of injuries occasioned to the Appellant and damages to his motor vehicle KAN 875X which collided with the Respondent's insured's motor vehicle KAV 138N.

2. Subsequently, Appellant filed Meru CMCC No 74 of 2017 seeking an order of declaration that Respondent was liable to satisfy the decree against its insured in Meru CMCC No 482 of 2007.

3. By judgment dated 07th October, 2022, the trial court rendered its judgment and dismissed the case on the ground that the Respondent had not been served with the statutory notice under Section 10 of the of the *Insurance (Motor Third Party Risks) Act* Cap 405 Laws of Kenya (The Act).

4. The decision provoked this appeal which is based on the grounds that the trial court erred in its interpretation of Section 10 of the Act and in its finding that Respondent did not have notice of the institution of the primary suit.

5. I have considered the appeal in the light of the evidence on record and on the submissions filed on behalf of the Appellant the Respondent not having filed any.

6. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower court and satisfy itself that the decision was well-founded. In *Selle & another v Associated Motor Boat Co. Ltd & others* [1968] EA 123, this principle was enunciated thus:

> " ...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

7. I have considered the provisions of Section 10 of the *Insurance (Motor Third Party Risks) Act* which provide as follows:

Section 10 Duty of insurer to satisfy judgments 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;
    b. .....
    c. .....

8. The evidence for the Respondent and which the court relied upon to dismiss the Appellant's case was that the statutory notice under Section 10 (2) of the Act was not served.

9. Contrary to the Appellant's contention that Respondent did not plead non-service, the Respondent at paragraph 6 of its statement of defence denied having been served with any documents relating to Meru CMCC No 482 of 2007.

10. After careful analysis of the letter by which Appellant alleged the notice was served, the trial court found as a fact that the address thereon was not the Respondent's address.

11. From the foregoing, I find that the trial court was justified in arriving at the conclusion that there was no evidence that the statutory notice under Section 10 (2) of the Act had been served.

12. In the end, I find that the appeal has no merit and it is hereby dismissed with costs to the Respondent.

DELIVERED IN MERU THIS 13TH DAY OF JUNE 2024

WAMAE.T. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Appellant - Kiogora for Mithega & Kariuki Advocates

For Respondent - N/A for Kiruki & Kayika & Co. Advocates