



**Kireti v UAP Insurance Company Limited (Civil Appeal
E124 of 2023) [2024] KEHC 7015 (KLR) (4 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E124 OF 2023**

TA ODERA, J

JUNE 4, 2024

BETWEEN

LUCAS NYANCHAM KIRETI APPELLANT

AND

UAP INSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Appellant moved. the lower court seeking:
 - a. A declaration that the defendant breached the contract of insurance contained in the policy number 469/070//1/00933439/2018.
 - b. A declaration that the plaintiff do avoid all claims against the contract of insurance contained in policy no. 469/070//1/00933439/2018.
 - c. Costs of the suit.

This is an appellate court and the duty of this court is to re-evaluate the evidence on record and arrive at its own conclusion bearing in mind that it did not get an opportunity to see the witnesses.

2. It is the case of the plaintiff that it had insured the defendants motor vehicle registration no. KBR 819 F and that the said vehicle was involved in an accident with Motor cycle registration No. KMEE 500M. Also that the defendant failed to report the said accident as per the policy requirements. Further that the insurance contract between them was that of utmost good faith and he was to fully disclose all the material facts in case of an accident. This was supported by the evidence of PW1 Erick Onderi who testified that the plaintiff was not obligated to Honour a contract which the insured has dishonoured though premiums have been paid. he said that the defendant failed to report the accident and also to cooperate with the insurance company to fill the claim forms and provide documentation even upon being contacted. PW2 Corporal Mulatia testified that the accident indeed occurred on 25.12.18 and



motor vehicle registration number KBR 819 F was involved in an accident with a motor cycle which it hit and the driver was to blame for failing to give way to the motor cycle.

3. The defendant filed statement of defence in which he admitted the existence of the contract but denied any negligence in the accident of 25.12.18 and pleaded that in case there was any negligence then the plaintiff was solely to blame or contributed to it. This was supported by evidence of defendant who said that the vehicle was comprehensively covered and that he was with the same vehicle in Kitale with his family on 25.12.18. He said he reported to the insurance in January 2019 when he became aware of the accident. He said that Paul Maina who was allegedly driving the said vehicle at the material time is not known to him. On cross examination he admitted that since he was not aware of the accident the insurer should not honour the claims arising from it.
4. The appellant submitted that the appellant fully paid up the premiums and so under Section 10 of the Insurance (Motor vehicle third party Risks) Act, the insurer has an obligation to pay the persons entitled to the benefit under the said Act and cited the case of Joseph Mwangi Gitundu vs Gateway Insurance Company Ltd - GIkonyo J. It was submitted that the accident did not occur along Kisii - Nyamira road and that the respondent is avoiding to pay for claims which arose from an accident which occurred in Nairobi in January 2019. Further that it is not true that reaching appellant was impossible as he is an employee of the respondent.
5. Respondent submitted that there was a breach of contract by the appellant as he did not fully disclose the accident and the particulars despite several requests to him. It cited the case of Co-operative Insurance Company Limited vs Wambugu (201) eKLR where it was held that “a contract of insurance is one of Uberrimae fidei. The insurer is entitled to be put in possession of all material information possessed by the insured”. Also that the UPA Insurance Company Ltd vs Lemmy Mutua Kavili (2018) and Margaret Nduta Kamiti & George Njenga Kamithi vs Kenindia Assurance Co. Ltd (s2001) eKLR where it was held that an insured must disclose to the insurer every material circumstance which is known to the insured and if he fails to make such disclosure, the insurer may avoid the contract.
6. The issues for determination are as follows:
 - i. Whether the appellant breached the contract of insurance.
 - ii. Whether the respondent is entitled to avoid all claims of liability and satisfaction of all decrees that may result or be issued against the contract insurance between the appellant and the respondent.

On whether the appellant breached the contract, it is not denied that the contract existed between the parties. Pw1 testified that the insurance contracts are based on utmost good faith and that the appellant breached the same by failing to report the accident to them and that they also wrote to him to fill the forms but he did not respond. Defendant said he did not report the accident as he was not aware of it and that he became aware of the accident when he went to report another accident in Nairobi in January 2019. PW2 confirmed that the accident occurred. The appellant had a duty to report any accident to the insurer as per the contract but he did not. He says he does not know the driver who allegedly had the vehicle on the material day and that he was away in Kitale that day. The trial magistrate found that the respondent did not deny that he was called severally by the respondent to give out information relating to the accident in vain and that he did not state the steps he took upon the respondent refusing to honour the said January 2019 claim. Also that he breached his obligation of utmost good faith. Courts have no jurisdiction to rewrite contracts on behalf of parties. I agree with the trial magistrate that the appellant breached his duty to report the accident and provide information about the accident to the respondent.



On whether the respondent is obliged to honour the decrees. The appellant did not disclose the circumstances of the accident to the respondent and Section 10 (4) of the Insurance Third Party Risks) Act provides that the Insurer is entitled to avoid a contract on the ground of non-disclosure of information. In the case of March Cabaret Club & Caseno Ltd vs London Assurance; March Cabaret Club vs Thompsn Bryan Ltd where it was held “the assured must disclose to the insurer ...every material circumstances which is known to the assuredif he fails to make such disclosure ,the insurer may avoid the contract. This was the position in he cooperative case and Margaret Nduta (Supra). However, in the case of Joseph Gitundu (Supra) cited by the appellant Justice Gikonyo differed and held that the insurer has a duty to pay claims provided that the contract was in force.

At the material time. I differ with the said Joseph Gitundu decision and my view is that the duty of material disclosure must be effected to the letter to avoid payment of fake claims and the ones in total breach of the contract which is binding upon all parties to it.

7. The trial magistrate did not err when she found that the appellant breached the contract of insurance contained in the Policy number 469/0701/00933439/2018 and a declaration that the respondent do avoid all claims against the contract of insurance contained in policy no. 469/0701/00933439/2018. I uphold the said decision.
8. I thus find no merit in the appeal and I proceed to dismiss it with costs.

T. A. ODERA

JUDGE

6.2024

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

Kebaya for respondent – present

Maosa for appellant -Absent

Court Assistant- Oigo

