



Platinum Credit Limited v Jubilee General Insurance Limited (Civil Appeal E613 of 2022) [2024] KEHC 10546 (KLR) (Civ) (3 September 2024) (Judgment)

Neutral citation: [2024] KEHC 10546 (KLR)

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

**CIVIL
CIVIL APPEAL E613 OF 2022**

**WM MUSYOKA, J
SEPTEMBER 3, 2024**

BETWEEN

PLATINUM CREDIT LIMITED APPELLANT

AND

JUBILEE GENERAL INSURANCE LIMITED RESPONDENT

(An appeal arising from the judgment of Hon. C. Ndumia, Senior Resident Magistrate, SRM, delivered on 8th July 2022, in Nairobi SCCC No. 1199 of 2022)

JUDGMENT

1. The suit, at the primary court, was initiated by the appellant, against the respondent, for a sum of Kshs. 904,000.00, or, in the alternative, a sum of Kshs. 189,580.85 being an amount due to it. The case by the appellant was that it loaned some money to a person who had insured his motor-vehicle, registration mark and number KCC 583A, with the respondent, with that motor-vehicle as security, on the understanding that the appellant would be entitled to full benefit of the insurance contract in the event of loss or damage to the motor-vehicle. It was further the case that the respondent had, by endorsement, undertaken to pay any claim payable under the insurance contract to the appellant. The risk insured against attached, on 23rd December 2020, when the insured motor-vehicle was involved in an accident, and was declared a total loss, whereupon the respondent resolved to settle the claim at Kshs. 904,000.00, causing the appellant to execute the relevant documents, but the respondent thereafter declined to pay.
2. The respondent filed a defence, in which it denied liability, on the basis that it was wrongly sued, for it had settled its obligation under the insurance contract, by paying to the insured person under the insurance contract what was due to him. It further averred that it was not privy to whatever agreement there might have been between the appellant and the insured person.



3. A formal hearing was conducted, on 7th June 2022, when 1 witness each testified for the appellant and the respondent. Judgment was delivered on 8th July 2022, in favour of the respondent. The claim by the appellant was dismissed.
4. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 3rd August 2022, turn on the trial court erring in finding that the appellant was not privy to the insurance contract; failing to find that there was no new contract between the insured and the respondent, given that the contract was renewed automatically; failing to find that the insurance contract terms had not changed; failing to consider the endorsement of the rights or interests of the appellant in the insurance contract; failing to consider the proprietary interest or right by the appellant in the insured motor-vehicle; failing to consider the essence of the discharge voucher that the appellant had executed; and failing to consider the evidence that the appellant had tendered at the trial.
5. Directions, on the disposal of the appeal, were given on 26th September 2023, for canvassing of the appeal by way of written submissions. Both sides have filed written submissions.
6. The appellant identified 2 issues for determination. The first being whether there was privity of contract, and the second being whether the appellant had a proprietary interest in the insured motor-vehicle. On the first issue, the appellant relies on an endorsement, by the insured on the insurance policy, or contract, in favour of the appellant, and a letter of endorsement, executed by the respondent on 22nd May 2020. It is submitted that upon expiry of the original policy or insurance, the same was automatically renewed under the same terms. On the second issue, it is averred that the vehicle was jointly registered in the names of the appellant and the insured. The decision in *Mark Otanga Otiende v. Dennis Oduor Aduol* [2021] eKLR (Aburili, J), is cited, on the will of the parties to a contract being respected.
7. On his part, the respondent argues on only 1 issue, privity of contract, on the basis that the appellant had no insurable interest in the insured motor-vehicle, and that a contract could only be enforced by the persons party to it. *Anetol v. Manufacture Life Insurance Company Limited* [1899] AC 604 and Kenya National Oil Corporation Limited v. Albert Mairo Cordeiro & another [2014] eKLR (Visram, Maraga & Okwengu, JJA) are relied on. It is submitted that privity of contract was not proved. Secondly, it is submitted that the initial contract of insurance expired, and the insured renewed the contract without involving the appellant. It is submitted that the endorsement, of 22nd May 2022, was not transposed into the new contract, and to argue otherwise, would be to re-write the contract between the parties, contrary to the pronouncement by the court in *Hussamudin Gulambusein Potbiwalla administrator, Trustee and Executor of the Estate of Gulambusein Ebrahim Potbiwalla v. Kidogo Basi Housing Cooperative Society Limited & 31 others (Tunoi, O’Kubasu & Githinji, JJA). Fredrick Kariuki Munene & another v. Joseph Musyoka Nzavu* [2022] eKLR (Limo, J) is cited, to make the point that an insurance policy is not transferrable to a purchaser of a motor-vehicle, even if sold when the cover existed, whether the cover was comprehensive or third party.
8. There is really only 1 issue for determination, whether the appellant was privy to the contract of insurance between the respondent and the insured.
9. There is no dispute that the interest by the appellant in the insured motor-vehicle was endorsed in the insurance contract running between 7th December 2019 and 6th December 2020. That made the appellant privy to that contract. After that policy or contract expired, there was a renewal. The new insurance contract or policy was to cover the period 7th December 2020 and 6th December 2021. The witness, presented by the appellant, at the trial, conceded that the appellant was not party to the renewal, but argued that such renewal of contract was automatic. He did not cite any provision in



the policy to that effect. The witness, presented by the respondent, testified that the new contract did not involve the appellant, the insured did not disclose the interest of the appellant at the renewal, and the interest of the appellant was not endorsed. To the extent that the appellant was not party to the renewal, and its interest in the renewed policy was not noted or endorsed in that contract, meant that the appellant was not privy to that contract. The accident of 23rd December 2020 happened when the appellant was not privy to the policy, and it was not entitled under it.

10. The appellant argued that the respondent sent to it a discharge voucher for Kshs. 904,000.00, which it filled and returned, but the same was never paid. I have not been able to find a copy of the said discharge voucher amongst the documents that the appellant was relying on. However, whether the respondent sent to the appellant such a document, and the appellant executed it, would not change the fact that the appellant was not privy to the contract to provide cover with respect to the insured vehicle, as at the date of the accident on 23rd December 2020. The appellant further argued that the motor-vehicle was registered jointly between it and the insured, yet it did not place before the trial court evidence that as at 23rd December 2020, it jointly owned the motor-vehicle with the insured. In any case, in a policy of insurance taken out by one owner, without inclusion of the name of the other owner, would still mean that that other owner would not be privy to the contract, and cannot enforce it against the insurer.
11. Overall, I find no merit in the appeal herein, and I hereby dismiss it, with costs. It is so ordered.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 3RD DAY OF SEPTEMBER 2024.

W MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani.

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Eva Adhiambo, Legal Researcher, Busia.

Advocates

Ms. Mwanzighe, instructed by CW Chege & Company, Advocates for the appellant.

Mr. Ombati, instructed by Ombati Ong'au & Company, Advocates for the respondent.

