



**Directline Assurance Company Limited v Omanyia (Civil Appeal E232 of 2024)
[2024] KEHC 16990 (KLR) (Civ) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 16990 (KLR)

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

CIVIL

CIVIL APPEAL E232 OF 2024

AB MWAMUYE, J

OCTOBER 17, 2024

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED APPELLANT

AND

GEORGE ONYANGO OMANYA RESPONDENT

*(Being an Appeal against the Judgment and Decree of the Hon. G. Simatwo
(Adjudicator) delivered on 27th October, 2023 in Nairobi SCCC No. E2445 of 2023)*

JUDGMENT

1. The Appellant is aggrieved with the Judgment of the Trial Court in which the lower court awarded the Respondent Kes. 301,333.00 as damages for breach of contract. The Memorandum of Appeal dated 19th February 2024 elucidates three key grounds, being:
 - i. That the learned adjudicator erred in law and fact in finding that the Appellant had breached the terms of its contract with the Respondent.
 - ii. That the learned adjudicator erred in law and fact by grossly misinterpreting the provisions of Section Four (C)1(J) of the Insurance Policy between the parties.
 - iii. That the learned adjudicator erred in law and fact in failing to take into account the evidence adduced on behalf of the Appellant.
2. The Appellant buttressed its position through the Appellant's Written Submissions dated 16th May, 2024. The Appellant advanced the following arguments:
 - i. The Respondent was in breach of the contract by failing to provide the Appellant with the summons and pleadings in Kajiado SCCC No. E221 of 2022 served upon him.



- ii. The Respondent notified the Appellant of the accident after Judgment in Kajiado SCCC No. E221 of 2022 had been entered contrary to the terms of the insurance policy between the parties.
3. Unsurprisingly, the Respondent finds no fault in the Learned Adjudicator's Judgment. The Respondent's Written Submissions dated 27th May, 2024 contend that the Appellant indeed breached its contractual obligations outlined in the insurance policy, by failing to handle Kajiado SCCC No. E221 of 2022 on behalf of the Respondent. The Respondent's Written Submissions further contend that the Appellant was aware of the case Kajiado SCCC No. E221 of 2022 as evidenced by their letter dated 16th January, 2023.
4. Having considered the record of the Trial Court, the Memorandum of Appeal, and the written submissions of the parties, I find that the issues for determination are whether the trial court erred in finding that there was a breach of contract, and whether the trial court erred in awarding the Respondent damages and costs of the suit.
5. In *National Bank of Kenya Ltd vs. Pipe Plastic Samkolit (K) Ltd* (2002) 2 E.A. 503, (2011) eKLR, as cited by the Respondent, the Court of Appeal at page 507 stated as follows: -

“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”
6. Section Four (C)1(J) of the Insurance Policy between the parties reads as follows;

“Notification Of Accidents

In the event of any occurrence that may give rise to a claim under this policy, the insured shall notify the company with full particulars immediately but not later than fourteen (14) days after the happening of such event.

Every letter, claim, written summons and process shall be notified or forwarded to the company immediately on receipt. Notice shall also be given to the company immediately the insured or any other person claiming to be indemnified shall have knowledge of any impending prosecution, inquest or fatal inquiry in connection with any such occurrence.

In the event of a theft or fire incident, the insured must notify the company immediately and within 7 days, failure to which the company reserves the right to repudiate the claim.

In case of theft or other criminal act which may give rise to a claim under this policy, the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender.”
7. The gist of the above clause is that the insurer is to be notified within 14 days of the occurrence of any event that may give rise to a claim under the policy. It also entails that the insured should forward any letter, claim, written summons and process to the insurer on receipt.
8. The Appellant argues that it was never notified of the accident within the 14 days as stipulated in the insurance policy. The Respondent counters this position and states that he placed reliance on the letter dated 16th January, 2023 and is therefore entitled to the damages awarded by the Trial Court.
9. The Appellant's letter to the Respondent dated 16th January, 2023 reads;

“RE: Accident Involving Kbl 989h And Kce 770h Accident 25/10/2022



We refer to the above matter and a demand letter received from Tp Insurer.

We note you are yet to remit the applicable policy excess and documentation. However, we will consider handling this claim on your behalf on condition that you pay the third party property damage policy excess of Ksh. 10,000/= in cash/bankers cheque within the stipulated time on 25/04/2023 failure to which the claim stands repudiated.”

10. From the letter dated 16th January,2023, it is clear that the Appellant was notified of the accident and was aware of the claim against the Respondent. Moreover, from the Appellant’s own words, the claim was to only stand repudiated if the Respondent failed to pay Kes. 10,000.00 in third party property damage policy excess. The Respondent did pay the Kes. 10,000.00 as proved by the receipt dated 21st January, 2023. The Appellant therefore breached the terms of the contract between the parties by failing to handle case SCCC No. E221 of 2022 on behalf of the Respondent. The Appellant’s letter introduced conditions to the contract between the parties, which condition was satisfied by the Respondent. I find that the Appellant’s appeal fails.
11. The Trial Court properly interpreted the insurance policy and found that the Appellant was in breach of contract, and lawfully exercised discretion in awarding costs and interests to the Respondent. The appeal is dismissed with costs to the Respondent.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 17TH DAY OF OCTOBER, 2024.

BAHATI MWAMUYE

JUDGE

In the Presence Of:

Counsel for the Appellant – Ms. Karichi

Counsel for the Respondent – Ms. Waithera

Court Assistant – Mr. Guyo

