



Kimanthi v Kenindia Assurance Co Limited & another (Civil Case E119 of 2021) [2024] KEHC 12652 (KLR) (Civ) (17 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12652 (KLR)

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

**CIVIL
CIVIL CASE E119 OF 2021**

AN ONGERI, J

OCTOBER 17, 2024

BETWEEN

MARY NDUKU KIMANTHI PLAINTIFF

AND

KENINDIA ASSURANCE CO LIMITED 1ST DEFENDANT

TRIDENT INSURANCE CO LIMITED 2ND DEFENDANT

JUDGMENT

1. The plaintiff filed this declaratory suit against the defendants seeking to satisfy the decretal sum awarded in HCC 393 of 2004 against the defendant's insured.
2. Judgment was entered in favour of the plaintiff against the defendants jointly and severally in the sum of ksh.4,005,695.95.
3. The 2nd defendant filed a defence dated 27/1/2022 denying the plaintiff's claim.
4. The hearing of the case proceeded on 22/5/2024. The plaintiff said on 19/8/2001 she was travelling in motor vehicle registration no. KAM 064U owned by the 1st defendant in the primary suit which was being driven by the 2nd defendant in the primary suit.
5. The motor vehicle was insured by the 1st defendant Kenindia Assurance Company Ltd.
6. The plaintiff adopted her witness statement dated 18/5/2021 as her evidence in chief.
7. The plaintiff stated in the said statement that the suit arose out of a road accident which occurred on the on 19th August 2001, while she was lawfully travelling as an authorized passenger in motor vehicle registration No. KAM 064 U owned by Rumitex (K) Ltd and which was being driven by its



- authorized agent and/or driver a one Jacob Sentamu. The said motor vehicle was duly insured by Kenindia Assurance Co. Limited, under policy number 120/070/11/04222/201/08.
8. That the accident occurred when the said driver Jacob Sentamu negligently drove, and/or managed the said motor vehicle permitting it to collide and/or crash into another motor vehicle registration No. KAL 527K owned by Jaswinder Singh Enterprises Ltd and insured by Trident Insurance Company under policy number Comp 0419900361 and which had been unlawfully abandoned and/or carelessly parked along the Eldoret-Nakuru road, at Koinget farm.
 9. That as a result of this accident, the plaintiff suffered very serious injuries. Prior to filing suit, she complied and issued relevant statutory notices to both the Defendants who were the insurers of the subject vehicles, under the Insurance (Third party Risks) Act Cap. 405 of the Laws of Kenya.
 10. That further to the above, the she also issued demand notices to the owners and/or drivers of the subject motor vehicles, seeking their admission of liability.
 11. That since there was no response to the above demands, on April 20th 2004, she instituted proceedings for compensation in the primary suit at the High court of Kenya at Nairobi namely:
HCCC No.393 of 2004, Mary Nduku Kimanthi v Rumitex (K) Ltd, Jacob Sentamu & Jaswinder Singh Enterprises Ltd.
 12. That on 13th May 2004, the 3rd Defendant (Jaswinder Singh Enterprises Ltd) who was insured by the 2nd Defendant herein (Trident Insurance Co. Ltd) entered appearance and filed a defence.
 13. However in spite of the fact that the 1st and 2nd Defendants in the primary suit who were duly insured by the 1st Defendant (Kenindia Assurance Co. Ltd) were duly served with summons to enter appearance, and never filed a defence.
 14. That on 9th June 2004, she requested for interlocutory judgment against 1st and 2nd Defendants, and on 23rd May 2005 judgment was entered against the 1st and 2nd Defendants as prayed.
 15. That the primary case HCCC No.393/2004 then proceeded for full trial against the 3rd defendant and formal proof against the 1st and 2nd Defendants. And on 16th February 2018, she obtained judgment in her favour against the three (3) defendants jointly and severally for Kshs.4,005,639/95 together with costs and interest accruing thereon until payment in full.
 16. That she thereafter served a notice of entry of judgment on the Defendants and their respective insurance companies. And thereafter on 19th July 2018, she extracted a Decree totaling Kshs.4,005,639/95 plus costs and interest and served the same on the defendants and their insurers.
 17. That in spite of all the above, the Defendants have failed, refused and/or neglected to make good of the said judgement.
 18. Further on 1st March 2021, demand letters were sent out to Defendants herein (Kenindia Assurance Company Ltd and Trident Insurance Company Ltd) for settlement of the said judgment sum plus costs and interest and which service was acknowledged but have since declined to honour her demand.
 19. In the circumstances, she therefore pray that judgment be entered against the Defendants jointly as prayed in the Plaint for payment of Kshs.4,005,639/95 plus costs and interests.
 20. The defendants did not give evidence in this case.
 21. The sole issue for determination in this case is whether this court should issue a declaration that the defendants should satisfy the decretal sum in HCC no. 393 of 2004.



- 22. I find that the plaintiff has a valid judgment entered jointly and severally against the defendants' insured in HCCC no. 393 of 2004 in sum of kshs.4,005,639.95 together with costs of the suit and interest and court rates from the date of the decree until payment in full.
- 23. There is no dispute that that the 1st and 2nd Defendants in the primary suit who were duly insured by the 1st Defendant (Kenindia Assurance Co. Ltd) were duly served with summons to enter appearance, and never filed a defence.
- 24. The interlocutory judgment entered against 1st and 2nd Defendants on 23rd May 2005 in the primary suit still stands.
- 25. I find that the defendants in this case are liable satisfy the decretal sum awarded in HCC 393 of 2004 against their insured.
- 26. A declaration be and is hereby issued that the defendants do jointly satisfy the decretal sum in HCCC No. 393 of 2004 in the sum of ksh.4,005,639.95 together with costs and interest at court rates from the date of the decree in the primary suit until payment in full.
- 27. Judgment be and is hereby entered in favour of the plaintiff against the defendants jointly and severally in the sum of Ksh.4,005,639.95 together with costs and interest at court rates from the date of the decree in the primary suit until payment in full.
- 28. The defendants to pay the costs of this suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 17TH DAY OF OCTOBER, 2024.

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A. N. ONGERI
JUDGE

In the presence of:

- for the Plaintiff
- for the 1st Defendant
- for the 2nd Defendant

