



Madison Insurance Company v Maina; Muoki (Interested Party) (Civil Case 26 of 2019) [2023] KEHC 1964 (KLR) (17 March 2023) (Judgment)

Neutral citation: [2023] KEHC 1964 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE 26 OF 2019
MM KASANGO, J
MARCH 17, 2023**

BETWEEN

MADISON INSURANCE COMPANY PLAINTIFF

AND

GABRIEL MUTHUNDI MAINA DEFENDANT

AND

ONESMUS KELI MUOKI INTERESTED PARTY

JUDGMENT

1. Madison General Insurance, filed this case against the defendant Gabriel Muthundi Maina and interested party Onesmus Kili Muoki. Both defendant and the interested party did not file an appearance or defence within the requisite period and on Madison making an application in court on July 23, 2021 entered interlocutory judgment in favour of Madison.
2. Madison formally proved its case on June 15, 2022.
3. The uncontroverted evidence is that the defendant was issued by Madison with an insurance policy cover proposal for his motor vehicle registration No KBP 217F. Madison assigned to the defendant policy No THK/701/130683/2017. That policy would become effective on the defendant paying the requisite premium for one year commencing September 3, 2018 to August 2, 2019. It was a term of the policy proposal that the defendant was required to pay premium for the policy before effective commencement of the policy. The defendant was permitted by Madison to settle full premium in three instalments. On payment of the first instalment, the defendant was issued with a certificate of insurance while awaiting the pay of the other two instalments. The defendant failed to honour the further instalments and consequently, the insurance policy did not take effect. Madison wrote to the defendant reminding him to make payment. The payments were not made.



4. On April 27, 2019 defendant's afore said motor vehicle was involved in an accident along Kiambu/ Nairobi road. The defendant was sued before Kiambu Chief Magistrate's Court Civil Case No 383 of 2019.
5. Madison enumerated particulars of defendant's breach of policy terms as:-
 - a. Failing to abide by the terms of the policy.
 - b. Failing to pay requisite premium.
 - c. Failing to surrender the certificate of insurance after the lapse of the insurance policy.
 - d. Misrepresenting road users he had a valid insurance policy with Madison.
6. The defendant has been served with notice of repudiation of the policy.
7. In view of the above evidence, I find that Madison is entitled to the declaratory orders it seeks.

Disposition

8. Judgment of this court is:-
 - a. A declaration is hereby made that the plaintiff is not bound to pay/or satisfy the judgment in Kiambu CMCC No 383 of 2019 and/or indemnify the defendant against any claim in respect of death, bodily harm/injury to any person, damage or property or satisfy any claim whatsoever arising out of the accident on April 27, 2017 along Kiambu/Nairobi road involving motor vehicle registration No KBP 2017F.
 - b. The plaintiff is awarded costs of this suit to be paid by the defendant.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 17TH DAY OF MARCH, 2023.

MARY KASANGO

JUDGE

In the presence of:-

Coram:

Court Assistant :- Mourice

Instructed by Kibatia & Co. Advocates for the Plaintiffs:- Ms. Wakarima

For Defendants :- N/A

For Interested Party:- N/A

Court

Judgment delivered virtually.

