



**Okoth (Suing as the legal administrator of the Estate of Teresa Achieng Nicholas - Deceased) v Jubilee Insurance Company Limited (Civil Case E002 of 2022) [2023] KEHC 2267 (KLR) (21 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2267 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL CASE E002 OF 2022  
KW KIARIE, J  
MARCH 21, 2023**

**BETWEEN**

**HENRY OKOTH (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF TERESA ACHIENG NICHOLAS - DECEASED) ..... PLAINTIFF**

**AND**

**JUBILEE INSURANCE COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. Henry Okoth the plaintiff herein, brought an application by way of Notice of Motion dated September 12, 2022. It was brought under section 3 of the *Civil Procedure Act*, Order 2 Rule 15, Order 51 Rules 1 & 3 of the *Civil Procedure Rules*. He is seeking the following orders:
  - a) This court be pleased to strike out the defence dated August 18, 2022 and filed on August 23, 2022 by the defendant/respondent since it discloses no defense in law and is therefore an abuse of the process of court and is only meant to delay and embarrass the conclusion of this suit.
  - b) Judgment be entered in favour of the plaintiff as prayed in the plaint dated June 6, 2022 and filed on the June 22, 2022.
  - c) The costs of this application be provided for.
2. The application was premised on the following grounds:
  - a) On the December 19, 2016 judgment was entered vide Homa Bay Chief Magistrate's Court Civil Suit No. 87 of 2015 in favour of the plaintiff as against the defendant's insured following a road accident which occurred on the February 10, 2015.



- b) That as a result of the said judgment, sometimes 2017, the respondent lodged an appeal in High Court, being Homa Bay Civil appeal No. 3 of 2017, challenging the decision of the court in Homa Bay Chief Magistrates court Civil No.87 of 2015.
- c) The said appeal was dismissed with costs and interest in favour of the applicant/plaintiff on the 30<sup>th</sup> day of November, 2020.
- d) The plaintiff/applicant successfully filed before this court a part & party bill of costs dated the 9<sup>th</sup> day of January, 2021 in Homa Bay high Court Civil Appeal Number, 3 of 2017 and a Certificate of Costs dated the 5<sup>th</sup> day of August, 2021 was issued in his favor for the sum of kshs.308,540/-.
- e) The plaintiff, served or caused to be served a statutory notice and a copy of the demand letter upon the defendant/respondent herein vide letters dated October 23, 2015 and October 19, 2015 respectively, which gave rise to the Homa Bay Chief Magistrate's court Civil Suit No.87 of 2015.
- f) The defendant/respondent never denied being the insurer of motor vehicle registration number KBN 355J and unsuccessfully defended its insured in Homa Bay Chief Magistrate's court Civil Suit No.87 of 2015.
- g) The defendant/respondent, after unsuccessfully prosecuting the said appeal on behalf of its insured being Homa Bay Civil Appeal Number 3 of 2017, paid up the decretal amount of kshs.3,000,000/- leaving a balance of kshs.88,400/- plus costs and interest as was awarded in Homa Bay Chief magistrates Court Civil suit No.87 of 2015.
- h) Notwithstanding the aforementioned admissions and evidence contained in an exchange of correspondence and court records, the defendant/respondent filed a defense on the 23<sup>rd</sup> of August, 2022 denying the claim in this suit.
- i) The defendant was duly served with the both the said part & party bill of costs and certificate of costs but refused to attend court to defend the bill of costs and settle the costs as was awarded by the high court on behalf of its insured.
- j) The matter relates back to Homa Bay chief magistrate's court Civil Suit No.87 of 2015 where the plaintiff sued the defendant's insured for negligence arising from a road accident that occurred on 10/2/2015 while the deceased was travelling along Rodi-Kopany-Ndhiwa road Ongeng' area, in a motor vehicle registration number KBN 355J insured by the defendant, and succumbed on the spot due to the said road traffic accident.
- k) The estate of the deceased was awarded damages and costs after which the defendant lodged the said appeal in Homa Bay High court Civil Appeal Number 3 of 2017 which was dismissed with costs and consequently brought forth the certificate of costs aforesaid.
- l) The defendant/respondent herein is the insurer of motor vehicle registration number KBN 355J as evidenced in the police abstract and being the insurer, unilaterally proceeded with the appeal incurring more expenses on the plaintiff to successfully defend the said appeal. Further, the actions of the defendant to prefer an appeal despite having knowledge that it will incur additional expenses, as to costs, were primarily to defeat the cause of justice and to delay plaintiff's enjoyment of the fruits of his judgment.



- m) Since the respondent, having been served with the certificate of costs and having knowledge of the proceedings on the party & party bill of costs, aforesaid, failed and or refused to settle the sum of kshs.308, 540/- being the stated costs awarded in favour of the plaintiff.
  - n) The plaintiff/applicant filed a declaratory suit against the defendant/respondent herein for the aforesaid stated costs.
  - o) The defendant/respondent has filed a defense dated the 18<sup>th</sup> day of August, 2022 denying the claim despite being served with all the pleadings regarding the said suit.
  - p) The said defense, was also filed and served as an afterthought after the plaintiff wrote, through its advocates, to the defendant advising them to file their defense.
  - q) The said defense raises no defense in law and has no triable issues, joined, as it is merely denials. Further, it is to note that it is because of the actions of the defendant, and not its insured, of preferring non-meritorious appeal that the additional costs as stated in the said certificate of costs came to be.
  - r) Since the defendant filed its defence on the 23<sup>rd</sup> day of August 2022, they have refused and or delayed, deliberately, to file its statement and without the intervention of this honorable court the plaintiff/applicant stands to suffer prejudice and his quest for a fair and expeditious trial and disposal of the suit is intentionally delayed by the defendant.
  - s) The said defense unless struck out will prejudice, embarrass and delay a fair and expeditious hearing and disposal of the action herein.
  - t) The plaintiff/applicant will be prejudiced if the pleadings are not struck out.
  - u) It is expedient, cost-saving and in the interest of justice for the orders prayed for to be granted.
3. The defendant opposed the application and raised the following grounds:
- a) That the defence discloses a reasonable cause of action.
  - b) That the defendant has remitted the decretal sum.
  - c) That the defendant will suffer irreparable loss.
4. Section 10 of the *Insurance (Motor Vehicle Third Party Risks) Act* provides for the duty of insurer to satisfy judgments against persons insured. This is what it states:
- If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. [Emphasis added]
5. The argument by the defendant/respondent that she has no obligation to pay costs is fallacious and not based on law. Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act is very clear on this issue.



6. I therefore find that the defence raises no triable issues and I accordingly strike it out with costs and grant the orders prayed for in the plaint.

**DELIVERED AND SIGNED AT HOMA BAY THIS 21<sup>ST</sup> DAY OF MARCH, 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

