



Mwobobia v Invesco Insurance Co. Limited; Nkoroi (Interested Party) (Civil Suit 22 of 2019) [2023] KEHC 17733 (KLR) (23 May 2023) (Judgment)

Neutral citation: [2023] KEHC 17733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL SUIT 22 OF 2019
EM MURIITHI, J
MAY 23, 2023**

BETWEEN

FRANCIS MWOBOLIA PLAINTIFF

AND

INVESCO INSURANCE CO. LIMITED DEFENDANT

AND

MWIRIGI MUGUNA NKOROI INTERESTED PARTY

JUDGMENT

1. By a plaint dated 25/7/2019, the Plaintiff seeks a declaration that the Defendant is liable in law and in *Insurance Act* to satisfy the decree obtained in Meru CMCC No. 348 of 2014 and an order compelling the Defendant to satisfy the said decree plus costs of the suit and interest.
2. The Interested Party filed a statement of defence on 11/1/2022 admitting in entirety the averments made in paragraphs 3, 4, 5, 6 and 7 of the plaint and in support of the Plaintiff's claim.
3. The Interested Party further filed his statement dated 27/9/2022 urging that at the time of the accident involving the Plaintiff and his motor vehicle, the accident motor vehicle was insured by the Defendant. He later learnt that the Plaintiff had obtained a judgment against him in Meru CMCC No. 348 of 2014 for the sum of Ksh. 2,490,550. Thereafter he visited the offices of the Defendant to request them to settle the decretal sum but they refused. According to him, the Defendant is under a statutory obligation to pay the full decretal sum, costs and interest that have accrued so far, because the accident occurred during the currency of the policy and the Defendant cannot run away from its bargain of the policy of insurance. He prays that the court makes a declaration that the Defendant does pay the entire judgment sum in Meru CMCC No. 348 of 2014 plus costs of the suit.



Analysis and Determination

4. The Plaintiff seeks a declaration compelling the Defendant to settle the decretal sum of Ksh 2,490,550 entered against the Interested Party who at the material time was insured by the Defendant.
5. Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* provides for the duty of an insurer to settle a decretal amount as follows:- “(1) 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. Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in Section 5 (b) prescribed in respect thereof in the Schedule.”
6. The Plaintiff successfully sued the Interested Party in Meru CMCC No. 348 of 2014 where he obtained a judgment in his favour and a decree was subsequently issued. When no payment was forthcoming from the Interested Party, he was left with no choice but to drag the insurer vide this declaratory suit to court to enforce satisfaction of the decree. The Interested Party fully supports the Plaintiff’s claim to have the Defendant compelled to settle the decretal sum.
7. The Interested Party has exhibited a motor accident report form showing that the accident motor vehicle Registration No. KBA 398 A was at the time of the accident insured by the Defendant. The said policy was valid as its expiry date was 30/3/2012 while the accident occurred on 15/11/2011. The details of the Defendant as the insurer of the accident motor vehicle are further captured in the police abstract dated 17/11/2011.
8. The Defendant has not responded to the Plaintiff’s claim, and the same must be construed as unchallenged.
9. This Court finds that the Plaintiff and the Interested Party have proved on a balance of probabilities that the accident motor vehicle was insured by the Defendant at the material time.

Orders

10. Accordingly, for the reasons set out above, and pursuant to the provisions of section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act*, this court allows the Plaintiff’s claim in the following terms:
 - a. A declaration be and is hereby issued that the Defendant is liable in law and under *Insurance Act* to satisfy the decree obtained in Meru CMCC No. 348 of 2014.
 - b. An order is issued compelling the Defendant to satisfy the decretal sum of Ksh. 2,490,550 plus costs assessed at Ksh.228,784 together with interest until payment in full.

Order accordingly.

DATED AND DELIVERED THIS 23RD DAY OF MAY, 2023.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:



Ms. Vivian Aketch Advocate for the Plaintiff.

N/A for the Defendant.

Mr. Murango Mwendwa for the Interested Party.

