



**Ngari v Invesco Assurance Company Ltd; Kerich (Suing as Personal Representative of the Estate of Elisha Kipsigei Kerich) (Interested Party) (Civil Suit 1 of 2020) [2023] KEHC 19687 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19687 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL SUIT 1 OF 2020**

**JK SERGON, J  
JULY 6, 2023**

**BETWEEN**

**LILIAN MUTHONI NGARI ..... PLAINTIFF**

**AND**

**INVESCO ASSURANCE COMPANY LTD ..... DEFENDANT**

**AND**

**DAVID KERICH (SUIING AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ELISHA KIPSIGEI KERICH) ..... INTERESTED PARTY**

**JUDGMENT**

1. The plaintiff in the present instance filed a plaint dated January 13, 2020 and sought for judgment against the defendant in the following manner:
  - a) A declaration that the defendant herein is obligated to pay/meet the terms of the judgment issued in Kericho Cmcc Number 302 of 2016 and/or indemnify the Plaintiff against any claim in respect of death, bodily injury to any person, damage to property or satisfy any claim whatsoever arising out of the accident which allegedly occurred on August 23, 2015 along Nakuru-Kericho Highway involving the Defendant’s motor vehicle Registration Number KBK 129U Toyota Matatu.
  - b) The Defendant be compelled to pay the total sum of Kshs 2,306,090.32 to the Interested Party (the Plaintiff in Kericho CMCC Number 302 of 2016) being the decretal sum therein plus costs and interest.
  - c) Costs of the suit
  - d) Any other relief that this Honourable Court may deem fit and just to grant



2. The plaintiff pleaded in her plaint that on August 23, 2015 or thereabout, the Plaintiff's motor vehicle registration number KBK 129U was involved in a road traffic accident with a pedestrian by the name Elisha Kipsigei Kerich along the Nakuru-Kericho Highway that resulted to the pedestrian's death.
3. The plaintiff further pleaded in her plaint that she had insured the motor-vehicle registration number KBK129U with the defendant herein under policy number 015/0804/1/023653/2015/08-TPO covering such persons or class of persons as specified in the policy in respect of injury or damages caused or arising out of the use of the said motor-vehicle and the said accident is a liability covered by the said policy within the meaning of section 5(b) of Cap 405 of the Laws of Kenya.
4. It was pleaded in the plaint by the plaintiff that on August 4, 2016, the Plaintiff therein ,David Kerich suing as a Personal Representative of the estate of Elisha Kipsigei Kerich, commenced compensation proceedings against the Plaintiff herein being the insured in Kericho CMCC Number 302 of 2016 and on October 23, 2018 or thereabout judgment was entered in favour of the Plaintiff (in Kericho CMCC Number 302 of 2016) against the Defendant/Insured for the sum of Kshs 1,557,588/= general damages plus costs and interests.
5. It was also pleaded by the plaintiff that the said judgment was in respect of liability covered by the said policy under paragraph (b) of section 5 of Cap 405 which is covered by the terms of the policy and was obtained against the insured and therefore the defendant herein was bound to pay the Plaintiff's total decretal amount under section 10(1) of [Cap 405](#) of the laws of Kenya.
6. It was further pleaded that the total sum now due and owing is Kshs 2,306,090.32 being the principal sum, Costs, Interest on decretal amount, Further costs, collection fees and auctioneers' fees which sum the plaintiff herein now wants the Defendant to be compelled by this honorable court to settle in Kericho CMCC No 302 of 2016
7. The Defendant failed to enter appearance despite being served with the Summons to enter Appearance and being notified of the matter through mention notices and hearing notices hence the matter proceeded for formal proof hearing.
8. At the hearing, the plaintiff testified as PW1 and adopted her executed witness statement dated January 13, 2020 as evidence in chief and produced her list and bundle of documents dated January 13, 2020.
9. The plaintiff stated that on August 23, 2015 her motor vehicle registration number KBK 129U was involved in a road traffic accident with a pedestrian named Elisha Kipsigei Kerich along Nakuru-Kericho Highway and consequently the said pedestrian sustained fatal injuries hence a Personal Representative of his estate David Kerich filled injury compensation claim against the Plaintiff vide matter serialized as Kericho CMCC Number 302 of 2016.
10. It was also the plaintiff's testimony that the said matter did come up for hearing on several occasions and on October 23, 2018, the trial court found the plaintiff liable and condemned her to pay damages to the tune of Kshs 1,557,588.00/= plus costs and interest of the suit and that from the occurrence of the said accident to the hearing and determination of the case, the firm of Murimi, Ndumia and Muchela Advocates represented the Plaintiff in their capacity as advocates of the defendants herein as the insurer of the said motor vehicle registration number KBK 129U.
11. The plaintiff stated that it was regrettable that despite being advised of the outcome of the case, the defendant herein had failed to honour its obligation under the insurance policy and as such the vehicle had been proclaimed by the plaintiff in primary suit and the said plaintiff had commenced execution process threatening to attach the plaintiff's property.



12. It was the plaintiff's testimony that as a result of the defendant's failure to pay the decretal amount due which is now Kshs 2,306,090.32 on account of interest and other charges and prayed that the court makes a declaration compelling the defendant to meet the terms of the judgment of the primary suit.
13. At the close of the plaintiff's case, this court directed the Plaintiff to file written submissions.
14. The Plaintiff via her written submissions dated May 29, 2023 framed four issues for determination as follows:
  - i. Whether the plaintiff had a valid insurance cover at the time of the accident;
  - ii. Whether the defendant was notified of the accident and this suit;
  - iii. Whether the Plaintiff settled the decretal sum; and
  - iv. Whether the judgment should be entered in favour of the plaintiff against the defendant herein.
15. Regarding the first issue, the plaintiff submitted that the accident occurred on August 23, 2015, the Plaintiff herein had taken up an insurance cover over the motor vehicle that allegedly caused the accident on August 11, 2015 and its expiry date was on September 10, 2016 and the accident occurred barely two weeks after the plaintiff had paid for the insurance cover hence the defendant owed the plaintiff a duty to satisfy the claim against the plaintiff and/or indemnify the plaintiff as well as settle the decretal sum as the accident happened within the period when the defendant herein had covered the plaintiff's motor vehicle.
16. The plaintiff cited Section 5 a, b(iv) of the *Insurance Act* Cap 405 in submitting that the decretal amount in Kericho CMCC 302 of 2016 which the defendant herein was required to settle is Kshs 2,190,000/= which is less than what is provided by the *Insurance Act* on the limits on how much should be paid by the insurer hence the defendant should be compelled to indemnify the Plaintiff herein all the costs incurred in settling the decretal amount, auctioneers' costs and the cost of the suit.
17. On the second issue the Plaintiff submitted that the defendant was notified of Kericho CMCC 302 of 2016 when the plaintiff herein was sued and when judgment was delivered, the defendant was asked to indemnify the interested party herein but it ignored, refused and/or failed to comply and that the defendant is aware of the instant suit as notice to sue was duly served upon it but it failed to enter appearance and/or file any documents in the instant suit despite being served with summons to enter appearance, mention notices and hearing notices hence the plaintiff prayed that the court enters judgment in favour of the Plaintiff and the defendant be compelled to settle all the sums of money paid to the interested party and the auctioneers fees.
18. Concerning the third issue the Plaintiff submitted that upon her motor vehicles being proclaimed by hegemony auctioneers, she was forced to pay the decretal amounts to the interested party and she produced receipts issued by Meroka & Co. Advocates showing receipt of money paid towards settling the decretal sum of Kshs 2,190,000/=.
19. With regard to the fourth issue, the Plaintiff submitted that judgment should be entered in favour of the plaintiff as against the defendant compelling the defendant to pay the plaintiff all the sums of money that she used to settle the decretal amount as well as the money used to pay the auctioneers fees.
20. The Plaintiff relied on the case of *David Musili Muthui v Directline Insurance Company Limited & 2 others* [2019] eKLR to submit that it is trite law that the insurer should satisfy courts judgments and decrees, that if the defendant herein had satisfied the decree as required of them as per the insurance



agreement, the plaintiff would have never incurred losses and damages satisfying the decree or even instituting the instant suit hence the Plaintiff's claim is merited as the rules of natural justice advocates for fairness in judicial proceedings and urged the court to enter judgment in favor of the plaintiff and the defendant be compelled to pay the plaintiff Kshs 2,190,000/= being the amount paid to Meroka & Co. Advocates, Kshs 409,455/= being the auctioneers fees and the cost of the instant suit.

21. As can be seen from the summary of the pleadings and evidence adduced, the Plaintiff stated that at the time of the accident involving the deceased she had insured the motor-vehicle registration number KBK 129U with the defendant herein under policy number 015/0804/1/023653/2015/08-TPO covering such persons or class of persons as specified in the policy in respect of injury or damages caused or arising out of the use of the said motor-vehicle and the said accident is a liability covered by the said policy within the meaning of section 5(b) of Cap 405 of the Laws of Kenya. I find that the only issue for my determination in this case is whether under Section 10 of the Act, the defendant is liable to satisfy the decretal amount awarded to the Interested Party herein in full claimed by the plaintiff.
22. The subject matter of the suit herein is a declaratory suit, brought under the provisions of the Insurance (Motor Vehicles Third Party Risks) Act, seeking to have the defendant, an insurance company settle the decree. The decree was for an award of damages of Kshs 1,557,588/= entered against the plaintiff who at the material time was insured by the defendant which sum now stands at Kshs 2,306,090.32 being the principal sum, Costs, Interest on decretal amount, Further costs, collection fees and auctioneers' fees.
23. 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: -

“Duty of insurer to satisfy judgments against persons insured

- (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.

24. In the end I do find that the plaintiff and the defendant had a valid insurance policy/contract when the accident occurred on August 23, 2015, that the policy covered the material risk that occurred on August 23, 2019 involving a pedestrian, and finally that the defendant is required by law to settle claims arising from accidents under section 10(1) of the Insurance (Motor Vehicles Third Party Risks) Act Cap 405 Laws of Kenya clearly stipulates.
25. In the case of *Kenindia Assurance Co. Ltd v James Otiende* [1987]2 KAR 162 the court held as follows:

“We have listened to both advocates and the authorities produced. The main body of s10 (1) of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405 is in our opinion clear. It



says: 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.”

26. From the foregoing, I am satisfied that the plaintiff has proved her case to the required standards in Civil Cases. Consequently, judgment is entered in favour of the plaintiff and against the defendant. An order of declaration is issued under section 10 (1) of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#), that the defendant is liable to pay the plaintiff a sum of Kshs 2,306,090.32 plus Costs. The amount shall attract interest at court rates from today’s date until full payment. The aforesaid amount is payable to the Interested Party.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 6<sup>TH</sup> DAY OF JULY, 2023.**

.....

**J. K. SERGON**

**JUDGE**

**In the presence of:**

**C/Assistant - Rutoh**

**Wanjiru for the Plaintiff**

**No Appearance for the Defendant**

**No Appearance for Meroka for Interested Party**

