



**Pacis Insurance Company Limited v Kevita International Co Ltd (Civil Appeal
496 of 2019) [2023] KEHC 20883 (KLR) (Civ) (25 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20883 (KLR)

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

CIVIL

CIVIL APPEAL 496 OF 2019

JN MULWA, J

JULY 25, 2023

BETWEEN

PACIS INSURANCE COMPANY LIMITED APPELLANT

AND

KEVITA INTERNATIONAL CO LTD RESPONDENT

*(Being an Appeal against the Judgment and Decree of the Chief Magistrate Court at
Milimani in CMCC No. 2025 of 2016 delivered by Hon. P. N. Gesora (CM) on 30th July 2019)*

JUDGMENT

1. Vide a Complaint dated March 3, 2016, the Respondent instituted Milimani CMCC No 2025 of 2016 against the Appellant seeking payment of Kshs 8,000,000/- being the value of an insured motor vehicle, costs of the suit and interest thereon.
2. The Respondent pleaded that it insured its motor vehicle registration number xxxx BMW X6 Station Wagon with the Appellant at a value of Kshs 8,000,000/-. The said motor vehicle was involved in an accident on December 10, 2014. However, the Appellant offered to pay it a sum of Kshs 1,950,000/- as final settlement alleging that the Respondent had insured the vehicle at a sum of Kshs 2,000,000/- hence necessitating the suit in the lower court.
3. The Appellant denied the claim through a statement of defence dated April 26, 2016.
4. After a full trial, the lower court found that the Respondent had proved its case to the required standard and entered judgment for the Respondent as prayed. Aggrieved by the said decision, the Appellant lodged the instant appeal vide a Memorandum of Appeal dated August 23, 2019 in which it raised 8 grounds of appeal and urged inter alia that the lower court's judgment be set aside and this Court be pleased to do its own assessment of the sums payable to the Respondent.



5. The ideal course of action at this point would have been for this court to set out the grounds of appeal, then proceed to review and evaluate the evidence on record and draw its own conclusions as the first appellate court; See *Selle & Another v Associated Motor Boat Co Ltd & Others [1968] EA 123*. That is however impossible in the circumstances of this appeal as the court found that there was a serious anomaly in the Record of Appeal which the court cannot ignore as it goes into the competency of the appeal. This is despite the fact that the irregularity has not been raised or addressed by either party hereto in their respective written submissions.
6. The court has carefully examined the Record of Appeal dated November 4, 2021 and Supplementary Record of Appeal dated September 22, 2022. The court finds that the copies of the documents and/or exhibits that were produced in the lower court are conspicuously missing in the Record of Appeal. This is contrary to the provisions of Order 42 Rule 13(4) of the [Civil Procedure Rules](#) which sets out the contents of a Record of Appeal as follows: -
 - ' Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record and that such of them as are not in the possession of either party have been served on that party that is to say:
 - a. The memorandum of appeal;
 - b. The pleadings;
 - c. The notes of the trial magistrate made at the hearing;
 - d. The transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
 - e. All affidavits, maps and other documents whatsoever put in evidence before the magistrate;
 - f. The judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal;Provided that-
 - i. A translation into English shall be provided of any document not in that language;
 - ii. The judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).'
7. Without the said documents or exhibits, which both parties have variously made reference to, it is impossible for the court to determine the Appellant's appeal. The appeal is thus incompetent and a non-starter.
8. Notably, courts have severally struck out appeals on the basis of incompleteness of Records of Appeal. See for instance [Ndonyi Mutinda v Mutune Malului \[2019\] eKLR](#), [Trans Mara Sugar Co Ltd v James Omondi Obudho \[2020\] eKLR](#) and [Fredrick Mwangi Njuguna v East African Growers Ltd \[2015\] eKLR](#).
9. For the foregoing, the court strikes out the Appellant's Appeal with costs to the Respondent.

Orders accordingly.

DATED, DELIVERED AND SIGNED IN NAIROBI THIS 25TH DAY OF JULY 2023.

JANET MULWA



JUDGE

