



**Chairman Board of Management Givole Secondary School v Xplic Insurance Company Limited
(Civil Case 6 & 7 of 2021 (Consolidated)) [2023] KEHC 21000 (KLR) (1 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21000 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL CASE 6 & 7 OF 2021 (CONSOLIDATED)
WM MUSYOKA, J
AUGUST 1, 2023**

BETWEEN

**CHAIRMAN BOARD OF MANAGEMENT GIVOLE SECONDARY
SCHOOL PLAINTIFF**

AND

XPLICO INSURANCE COMPANY LIMITED DEFENDANT

JUDGMENT

1. This is a declaratory suit by the plaintiff, with respect to several judgments that were obtained in suits at the Vihiga Principal Magistrates' Court, against him or the School whose Board of Management he chairs, for various sums of money. The defendant had insured motor vehicle registration number and mark KCA 637F, vide policy number 2017/35/084/000568, belonging to the plaintiff. The same had an accident on May 8, 2018, in which several passengers were injured. The said passengers sued the plaintiff, and obtained judgment against him, in the suits listed at paragraphs 5 and 6 of the plaints.
2. The defendant filed a defence, where it denied every allegation made in the plaints. To that defence, the plaintiff filed a reply, stating that the defendant had been notified of all the suits filed.
3. A trial was conducted, in which the plaintiff testified, and the defendant did not call a witness. The plaintiff stated that the defendant had insured the school bus, and produced the insurance policy document. He asserted that there existed a contractual relationship between the school and the defendant, but the defendant did not honour its obligations under the contract. He said that the property of the school ought not have been proclaimed, for the defendant should have settled the decrees made against the school, with respect to the accident claims, on account of the insurance contract.
4. The defence filed on behalf of the defendant comprises of mere denials. The allegations made in the plaints were not specifically controverted, by counter allegations. The plaintiff breathed life to the



allegations made in the plaints, and as no counter evidence was adduced, by way of testimony of a witness presented by the defendant, to counter the oral evidence presented by the plaintiff, it would mean that the oral evidence was not controverted. The burden of proof in civil cases remains that on a balance of probability. The plaintiff presented a policy document as evidence of the contract of insurance between the school and the defendant. The defendant did not provide counter proof that that document was not authentic. I am persuaded that the plaintiff has established his claim against the defendant to the required standard, and I do hereby allow it.

5. In the end, I enter judgment for the plaintiff, in terms of the prayers in the plaints, dated November 2, 2020 and November 9, 2020, filed in the 2 suits consolidated herein. The plaintiff shall have the costs of the suit.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 1ST DAY OF AUGUST 2023

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Lugadiru, instructed by Lugadiru & Company, Advocates for the plaintiff.

Mr. Cheruiyot, instructed by Mose & Mose, Advocates for the defendant.

