



**Chebet v African Merchant Assurance Company Limited; Shitindo (Interested Party)
(Civil Suit E001 of 2020) [2023] KEHC 22459 (KLR) (20 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL SUIT E001 OF 2020
JK SERGON, J
SEPTEMBER 20, 2023**

BETWEEN

MILLICENT CHEBET PLAINTIFF

AND

AFRICAN MERCHANT ASSURANCE COMPANY LIMITED RESPONDENT

AND

JOHN ATANDI SHITINDO INTERESTED PARTY

JUDGMENT

1. In her amended plaint dated November 10, 2022, the plaintiff herein instituted a declaratory suit against the defendant, Africa Merchant Assurance Company Limited, seeking to have the defendant compelled to settle the decretal sum in Kericho CMCC Suit No 447 of 2018 plus any accruing interest from the decree.
2. In the primary suit which was filed against Millicent Chebet ('the insured', the plaintiff sought general and special damages arising out of a road traffic accident which occurred on or about April 12, 2017 along Mama Ngina Road, Naivasha involving the motor vehicle registration number KBxx 7xx ('the subject motor vehicle') belonging to the insured, as a result of which the plaintiff sustained severe injuries.
3. Going by the record, the defendant upon being served with summons entered appearance and filed a statement of defence but the matter proceeded ex parte as the defendant did not attend court on the day of the hearing. The plaintiff's testimony was uncontroverted. The court in the primary suit delivered its judgment on August 21, 2019 in favour of the plaintiff and against the insured in the sum of Kshs 962, 825/= together with costs and interest thereon.



4. It is alleged in the instant suit that, the defendant herein had insured the subject motor vehicle vide a Policy of Insurance Number A51/070/1/070984/2017 which was in force from March 25, 2017 to March 24, 2018. It is her case that while the insurance cover was still in force, her aforesaid motor vehicle was involved in an accident along Mama Ngina Road within Naivasha Town on April 12, 2017.
5. In a blatant breach of contract of insurance, the defendant neglected and/or reneged to pay the decretal sum in Kericho CMCC Suit No 447 of 2018 and warrants of attachment and sale were issued on October 30, 2019 for sale of the plaintiff's property for the decretal sum and that the same were re-issued against the plaintiff on September 23, 2020 for the decretal sum.
6. Upon failure to settle the aforementioned decretal sum, the plaintiff has now filed the instant suit under Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act*, Cap 405 Laws of Kenya ('the Act').
7. Going by the record, the defendant was served with a statutory notice of intention to sue and summons but failed to enter appearance and/or file a statement of defence. Consequently, the matter proceeded for formal proof. At the formal proof hearing, the plaintiff chose to rely on her signed witness statement as her evidence -in-chief and her list of documents filed on 28th September, 2020 which she produced as P Exhibits 1-7.
8. Upon close of the formal proof trial, the plaintiff filed written submissions wherein she reiterated that she had insured her motor vehicle KBxx 7xx vide policy number A51/070/1/070984/2017 which policy was issued by the defendant and upon occurrence of an accident on 12th April, 2017 involving the aforesaid motor vehicle, she was sued in Kericho CMCC No 447 of 2018 wherein judgment was entered against her for a total of Kshs 962, 825/= and pursuant to the warrants issued, Crater View Auctioneers have already threatened to attach her property. The plaintiff thus filed the declaratory suit herein seeking to compel the defendant to satisfy the decretal sum.
9. I have considered the evidence adduced by the plaintiff and I find that the main issues for determination are:
 - (i) Whether motor vehicle registration No KAxx 9xx was insured by the defendant; and if so,
 - (ii) Whether the defendant should satisfy the decretal sums claimed.
10. On whether the motor vehicle registration No KBxx 7xx was insured by the defendant, the plaintiff in her evidence told the trial court that the said motor vehicle was insured by the defendant and that the insurance cover was still valid when the motor vehicle was involved in an accident along Mama Ngina Road within Naivasha. It was her statement that as a result of the accident, she was sued vide Kericho CMCC No 447 of 2018.
11. It is trite that the duty of the Insurance Company (insurers) to satisfy or settle decrees against their insured is a statutory duty which stems from sections 10 (1) and (2) of the *Insurance (Motor Vehicles Third Party Risks) Act* CAP 405, section 10 (1) of the said Act provides as follows;
Duty of insurer to satisfy judgments against persons insured
' 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 canceled, 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.'

12. The plaintiff maintained that her cause of action is based on the contract she had with the defendant in the form of an insurance policy and she produced her proof in the form of a certificate of insurance. I have considered the evidence adduced at the trial as well as the submissions and cited authorities. In the absence of contrary evidence, and going by the pleadings and judgment in the primary suit, which were produced as exhibits, I am satisfied that at the time of the material accident, the defendant herein had insured the subject motor vehicle.
13. The plaintiff having proven that she was insured by the defendant on the material time and the fact that from the record, it is apparent that the judgment entered in the primary suit has not been set aside or challenged on appeal. I find that the insurer is entitled to satisfy the decretal sums claimed.
14. In view of the foregoing, this court finds that the plaintiff has proven her case on a balance of probability, I hereby enter judgment in favour of the plaintiff against the defendant giving rise to issuance of the following Orders:-
 - (i) A declaratory order is issued that the defendant is by law and contract obligated to pay the decretal amount in Kericho CMCC No 447 of 2018 to the interested party.
 - (ii) An order is issued directing the defendant to pay the balance of the decretal sum due in Kericho CMCC No 447 of 2018, interests accrued thereon together with the costs.
 - (iii) Costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF SEPTEMBER, 2023

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J. K. SERGON

JUDGE

IN THE PRESENCE OF:

C/ASSISTANT – RUTOH

