



REPUBLIC OF KENYA



**Mui v First Assurance Company Limited (Civil Appeal E645 of 2024)  
[2024] KEHC 13794 (KLR) (Civ) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13794 (KLR)

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

**CIVIL**

**CIVIL APPEAL E645 OF 2024**

**H NAMISI, J**

**NOVEMBER 7, 2024**

**BETWEEN**

**BOB SINGA MUI ..... APPELLANT**

**AND**

**FIRST ASSURANCE COMPANY LIMITED ..... RESPONDENT**

*(Being an Appeal arising from the Judgement of the Small Claims Court at Nairobi delivered by Hon. V.K. Momanyi on the 17 day of May 2024 in SCCC No. E1417 of 2024)*

**JUDGMENT**

1. This appeal arises out of a suit filed in the Small Claims Court by the Appellant against the Respondent seeking the following orders:
  - i. The sum of Kshs 329,110/= with interest at court rates with effect from 22 December 2023 until payment in full;
  - ii. Costs of this suit together with interest
2. The Appellant's claim arose out of an accident that occurred on 12 August 2023, along Moi Avenue, Nairobi involving the Appellant's motorcycle KMDA 574G and motor vehicle registration number KCE 397T driven by one Daniel Miruru Muiuru. The Appellant filed suit against the driver of the motor vehicle for compensation, which suit was determined in favor of the Appellant in the following terms:

Principal Amount - Kshs 255,890/=

Interest on principal amount - Kshs 11,020/=

Costs - Kshs 62,200/=



Total - Kshs 329,110/=

3. The Respondent did not enter appearance and interlocutory judgement was entered against them on 7 May 2024. The matter proceeded to formal proof by way of documents.
4. The trial court delivered its judgement on 17 May 2024. In dismissing the claim, the trial court noted that the issuance of a statutory notice is a mandatory requirement for liability to accrue against an Insurer under section 10 of the Insurance (Motor Vehicle Third Party Act, Cap 405 of the Laws of Kenya. Thus, the court held that the Appellant had not proved his case on a balance of probabilities.
5. The Appellant, being dissatisfied by the judgement, lodged an appeal on the following grounds:
  - i. That the learned Magistrate erred in law and in fact in holding that the demand letter dated 4th September 2023 lacked sufficient particulars to give the notice envisaged under Section 10 (2)(a) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 of the Laws of Kenya;
  - ii. That the learned Magistrate erred in law and in fact in failing to consider the submissions and authorities filed by the Appellant confirming that a Demand Letter suffices as a Statutory Notice as envisaged in Section 10 (2)(a) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 of the Laws of Kenya;
  - iii. That the learned Magistrate erred in law and in fact in holding and reasoning that the Appellant herein attempted to cure the defect in the demand letter dated 4 September 2023 by preparing a proper statutory notice dated 14 March 2024 and physically serving it upon the Respondent on 25 March 2024;
  - iv. That the learned Magistrate erred in law and in fact in failing to consider that the demand letter dated 4 September 2023 and the statutory notice dated 14 March 2024 serve different purposes and are served at different stages in road traffic accident claims;
  - v. That the learned Magistrate erred in law and in fact in failing to consider that the statutory notice dated 14 March 2024 serves the purpose of informing the Respondent herein of the impending or existing declaratory suit as provided for under Section 10 (2)(a) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 of the Laws of Kenya following the delivery of judgment against its insured;
  - vi. That the learned Magistrate erred in law and fact by misrepresenting the purpose of Section 10 (2)(a) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 of the Laws of Kenya thus dismissing the suit;
  - vii. That the learned Magistrate erred in law and in fact in declining to enter judgement in favor of the Appellant in accordance with Section 10 (2)(a) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 of the Laws of Kenya despite Hon. T.K. Nambisia entering judgement in the Appellant's favor in SCCC NO. E5222 of 2023 and the Appellant having satisfied all the necessary and requisite conditions envisaged under Section 10 (2)(a) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 of the Laws of Kenya
6. Directions were given to canvass the appeal by way of written submissions. The Appellant filed their submissions dated 21 August 2024. The Respondent did not file any submissions despite being accorded sufficient time to do so.

### **Analysis & Determination**

7. Section 38 of the [Small Claims Court Act](#) provides as follows:



1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;
  2. An appeal from any decision or order referred to in sub section (1) shall be final.
8. In the case of *Otieno, Ragot & Company Advocates -vs- National Bank Kenya Ltd* [2020] eKLR, the Court of Appeal addressed the duty of a court considering points of law.

“This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).”

9. Similarly, in the case of *Mwita v Woodventure (K) Limited & another (Civil Appeal 58 of 2017)* [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:

“This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of *Stanley N. Muriithi & Another v Bernard Munene Ithiga* [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR in which it was held that: “In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

10. The duty of this Court, in this instance, is similar to that stated herein above, which is essentially on points of law. In the case of *J N & 5 Others -vs- Board of Management, St. G School Nairobi & Another* [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a “finding of fact”) usually depends on particular circumstances or factual situations.”

11. I have considered the Record of Appeal. The only issue for determination is whether there was service of the statutory notice as provided under Section 10 (2)(a) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 of the Laws of Kenya.



12. Section 10 (2) (a) provides that:

No sum shall be payable by an insurer under the foregoing provisions of this section in respect of any judgement, unless before or within 30 days of the commencement of the proceedings in which the judgement was given, the insurer had notice of the bringing of the proceedings.

13. In this instance, the Statement of Claim filed in the trial court is dated 11 March 2024. Presumably, the suit was instituted on or about 11 March 2024. The primary suit was filed on 12 October 2023. Prior thereto, the Appellant had issued a Demand Letter dated 4th September 2023 from Orengo & Odhiambo Company Advocates addressed to Daniel Muiruri Muiru and copied to the Respondent herein. The contents of the letter included the names of the Appellant and insured, date and place of the accident and the motor vehicle registration number.

14. The question that arises then is whether this demand letter meets the test under section 10(2)(a) of the Act. In addressing itself to this question, the trial court observed that the demand letter fell short of the requirements since the same did not indicate that the motor vehicle was insured by the Respondent, nor did it provide the full particulars of the Policy Number 17/11/HOD/000569/10. In an attempt to cure this, the Appellant prepared and served a Statutory Notice dated 14 March 2024, which was physically served upon the Respondent on 25 March 2024, after the commencement of the declaratory suit. In the trial court's considered view, the demand letter dated 4 September 2023 lacked sufficient particulars to give notice envisaged under section 10 (2) (a) of the Act.

15. The provision of section 10(2)(a) is a substantive legal provision that serves to ensure that a third party who has suffered injury or loss due to the acts or omissions on the part of an insured motor vehicle is assured of compensation in the event that the owner or driver of the insured motor vehicle is unable to settle the claim.

16. The Appellant relied on the case of Philip Kimani Gikonyo -vs- Gateway Insurance Company Ltd [2007] eKLR, in which the Court stated thus:

So, what form should a notice take? It simply does not matter. A notice is a notice. The main purpose of a notice is to alert the insurer of a potential claim, a potential liability, so that the insurer can take steps to protect its interest by defending the action, investigating the same, attempting to settle the same and doing anything it wants to in order to protect its rights and interests. The notice need not be in any particular format, and with due respect to the lower court, there is nothing like an "actual" notice or a "not-so-actual" notice. Any notice, howsoever given, as long as it sufficiently outlines the happening of an event giving rise to a claim under the insurance policy, is good notice under the Act."

17. The Appellant also relied on the case of Kenya Alliance Insurance Co. Ltd –vs- Thomas Ochieng Apopa (suing as Administrator of the Estate of Pamela Agola Apopa) (deceased) [2020] eKLR, in which the Court stated this:

"The company was well aware of the Plaintiff's claim, that the Notice was adequate to meet the requirements of Section 10 (2)(a) of the Insurance (Motor Vehicles Third Party Risk) Act and that it had been effectively served. I am persuaded that the Demand Notice dated 14/10/2023 has sufficient particulars to give notice to the appellant of what the respondent intended to claim from the appellant's insured Jecinta Wairimu."



18. Based on the authorities cited by the Appellant himself, I could not agree more with the trial court. Although the form of the Statutory Notice is not provided, and the same can take the form of a demand letter, what is crucial is that the document contains sufficient particulars as envisaged in section 10 (2) (a) to enable an insurer fully comprehend the claim and extent of liability. Those particulars were missing from the Appellant’s demand letter. Although the Appellant issued a statutory notice containing the full particulars, the effort came a little too late in the day, since the same was served outside the time lines provided by the Act. Where the notice was not served prior to the commencement of the primary suit or within 14 days of the suit being filed, then the insurer is by statute absolved from any liability. The service of the notice is a legal requirement upon the Respondent, and, therefore, an obligation that cannot simply be wished away. This was well enunciated in the case of John Langa -vs- Kipkomo Terer & 2 Others; Kisumu HC Civil Appeal No 21 of 2013 where the court stated:

“The court is enjoined to not only protect the Constitution but all laws enacted by Parliament.”

19. In view of the foregoing, the appeal fails and the same is dismissed. Bearing in mind the outcome, each party shall bear its own costs of the appeal

**DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF NOVEMBER 2024.**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Otieno..... for the Appellant

Ms. Muhoro..... for the Respondent

