



Supati & another (Suing as the Administrators of the Estate of Simon Mwaniki Ng'ang'a (Deceased)) v CIC General Insurance Company Limited (Civil Appeal E1171 of 2023) [2024] KEHC 14260 (KLR) (Civ) (15 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14260 (KLR)

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

CIVIL

CIVIL APPEAL E1171 OF 2023

RC RUTTO, J

NOVEMBER 15, 2024

BETWEEN

NAIPANOI SUPATI 1ST APPELLANT

ZIPPORAH MUKAMI NG'ANG'A 2ND APPELLANT

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF SIMON MWANIKI
NG'ANG'A (DECEASED)**

AND

CIC GENERAL INSURANCE COMPANY LIMITED RESPONDENT

*(Being an appeal from the Judgment of Hon. B. Kasavuli (Principal Magistrate)
in Nairobi CMCC No. E11066 of 2021, delivered on 4th October, 2023)*

JUDGMENT

1. This appeal arises from a judgment and decree in Nairobi CMCC No. E11066 of 2021. In this case, the Appellants filed a declaratory suit seeking to compel the Respondent to satisfy the judgment in Kajjado CMCC No. E036 of 2020, Niapanoi Supati and Zipporah Mukami Ng'ang'a versus Margaret Ambogo Njihia and Daniel Njihia Mbugua.
2. The trial court found that the Respondent was not liable for the settlement of the amount claimed and dismissed the suit.
3. Aggrieved by the judgment, the Appellant lodged an appeal dated November 3, 2023, outlining the following grounds of appeal, which I present verbatim and seriatim:



- i. The Learned Magistrate erred in law and fact in holding that there was sufficient evidence proving Stephen Okwemba had been issued with the policy in question.
 - ii. That the learned Trial Magistrate erred in law and in fact in holding that there was no evidence to demonstrate that Margret Ambogo Njihia and Daniel Mbugua Njihia were the insured.
 - iii. The Learned Trial Magistrate erred in law and fact in holding that the insurance policy had been cancelled.
 - iv. The Learned Trial Magistrate erred in law and fact in holding that the cancellation of the alleged notices had been properly communicated.
 - v. The Learned Trial Magistrate erred in Law and in fact in failing to note that the alleged cancellation had not been communicated to the Appellants.
 - vi. The Learned Magistrate erred in Law and Fact in holding that there was no valid policy for the subject motor vehicle.
 - vii. The Learned Trial Magistrate erred in Law and Fact in holding that the simple facts of the case had been convoluted.
 - viii. The Learned trial Magistrate erred in law and fact in taking into account irrelevant issues and arriving at a wrong conclusion.
 - ix. That the Learned trial Magistrate erred in law and in fact in canvassing issues not before the court and arriving at a wrong conclusion.
 - x. That the Learned trial Magistrate erred in law and in fact in failing to consider the Appellants' overwhelming evidence on record and submissions and thereby unfairly dismissing their case.
4. The Appellants sought that the trial court's decision against the them be discharged and set aside. The Appeal was canvased by way of written submissions.

The Appellants' Submissions

5. The Appellants' submissions, dated June 1, 2024, summarize the issues for determination into two main questions: (1) Who was the owner and insured of the subject motor vehicle? and (2) Was the insurance policy valid or cancelled at the time of the accident?
6. On the first issue, the Appellant relied on the police abstract and the copy of Records from NTSA to prove ownership. They relied on the case of Esther Muthoni Munyiri v Amaco Insurance Company Limited [2021] eKLR, and asserted that they sued Margaret Ambogo Njihia and Daniel Njihia Mbugua as the owners of the vehicle based on uncontested information from the police abstract and NTSA records. The Appellant faulted the trial court for contradicting itself when one hand it held that the motor vehicle was owned by the primary defendants then went on to find that there was no evidence to show they were the valid registered and beneficial owners of the insured.
7. The Appellants contested the veracity and validity of the policy documents produced by the Respondent, which indicated that an unknown individual, Stephen Okwemba, was the insured owner. They argue that the document was computer-generated, unsigned, and undated, as acknowledged by the Respondent's witness.
8. It was their further submission that the policy was printed long after the declaratory suit was filed and the Respondent did not produce a Certificate of Insurance to prove that Stephen Okwemba was the insured owner.



9. The Appellants submitted that before an insurance is issued ownership of the vehicle must be proved to the insurance company through a logbook or even a sale agreement and none of this was ever produced since such evidence would not have supported the Respondent's position. They cite *Nguku v Republic* [1985] KLR 412 in support of this argument, and content that the police abstract, which included insurance policy details, aligned with the guidelines pronounced in *Esther Muthoni Munyiri v Amaco Insurance Company Limited (Supra)* hence they faulted the trial court for holding that there was no evidence on record to demonstrate that the defendants in the primary suit were the insured.
10. On the second issue, whether the insurance policy was valid at the time of the accident, the Appellants submitted that the trial court erred by relying on alleged cancellation notices to hold that the policy had been cancelled by the date of the accident. They contended that they sufficiently demonstrated that the insured parties were Margaret Ambogo Njihia and Daniel Njihia Mbugua, as evidenced by the police abstract. Furthermore, they argue that there was no proof that the alleged cancellation notices were communicated or served to any parties, as required under Paragraph 10(b) of the policy document.
11. The Appellants referenced *Madison Insurance Company Limited v Mwai (Civil Appeal 30 of 2019)* [2022], KEHC 9862 (KLR) to argue that the Respondent's failure to demonstrate proper service of the cancellation notice entitled them to compensation. They maintain that the trial court reached an incorrect conclusion on this matter.
12. The Appellants assert that the court contradicted itself and applied the wrong standard of proof as the appropriate standard should have been on a balance of probabilities. It was their submission that there was no evidence of convoluted facts on the Appellants' case but there was sufficient evidence that the Respondent had indeed convoluted the facts and evidence of its case.
13. Ultimately, the Appellants prayed for the appeal to be allowed with costs.

Respondent's Submissions

14. The Respondent, in its submissions dated May 24, 2024, addressed each ground of appeal. It was its submission that sufficient evidence was presented to prove that Stephen Okwemba Inzalikhi was the insured party and had an insurable interest. A policy document was produced, indicating that the policy was to run for the period November 25, 2018, to November 24, 2019.
15. The Respondent pointed out that their witness was comprehensively cross-examined on the policy document, leaving no doubt that Stephen Okwemba Inzalikhi had an insurable interest in the motor vehicle at the time he entered into the insurance contract.
16. The Respondent argues that insurance is conducted through formal documentation, and a valid insurance cover established through an insurance contract or policy. They assert that Margaret Ambogo Njihia and Daniel Njihia Mbugua did not prove that they were insured by the Respondent thus the trial court could not impose a contract where none existed. The Respondent cited the case of *Mbuthi Mcharia v Annah Mutua Ndwigwa & Another* [2017] eKLR to argue that the burden of proving that the judgment debtors were insured by the Respondent rested entirely on the Appellants.
17. The Respondent also submitted that the cancellation of an insurance policy was a factual matter to be proved through documentation.
18. They submitted that policy number 017/083/015496/2017/TPO between the Respondent and Stephen Okwemba Inzalikhi imposed obligations on both parties. That one fundamental condition of the policy was for the insured, Mr. Stephen Okwemba Inzalikhi, to pay premiums as they became



due. Upon his breach of this condition, the Respondent had no option but to cancel the policy as, in line with section 156 of the *Insurance Act*, no insurer assumes risk where premiums have not been paid.

19. The Respondent submitted that the trial court properly exercised its discretion in this case and, as such, urged this court not to overturn the trial court's decision. The Respondent relied on the case of *Peter Okello Omondi v Clement Ochieng, Kisumu HCCA No. 196 of 2003*.

Analysis and Determination

20. This is a first appellate court and I must adhere to the requirements of section 78 of the *Civil Procedure Act* to review, reassess and re-evaluate the evidence adduced in the trial court before arriving at my own independent decision bearing in mind the fact that I neither saw nor heard the witnesses as they testified. See the case of *Selle v Associated Motor Boat Co* [1968] EA 123.
21. After considering the record of appeal and the submissions of the parties. The only issue for determination before this court, is whether the Respondent is liable to pay the Appellants claim under the declaratory suit?
22. The Appellants have a duty to demonstrate, through evidence, that the motor vehicle involved in the accident belonged to the defendants in the primary suit and that there existed a valid insurance policy between the owners of the motor vehicle and the Respondent as at the time of the accident.
23. In this instance the dispute is whether there existed a valid insurance between the Respondent and the defendants in the primary suit. The Appellants' case was that they had been awarded judgment for compensation in *Kajiado CMCC No. 036 of 2020* and were now seeking a declaration to compel the Respondent to satisfy the judgment.
24. The Respondent's position was that insurance policy number 017/083/015496/2017/TPO was between themselves and Stephen Okwemba Inzalikhi and not Margaret Ambogo Njihia and Daniel Njihia Mbugua as alleged by the Appellants. Further, that the policy was cancelled due to non-payment of the premiums and upon this breach they were relieved all obligations.
25. The Appellants relied upon information received from the police abstract produced by PW1 PC Simon M Ngonga which provided the insurance details obtained from the motor vehicle insurance sticker. The Appellants further conducted a search which established the ownership of the motor vehicle. On the other hand, the respondent relied upon a policy document, which it contends was the insurance agreement between itself and one Stephen Okwemba Inzalikhi. Additionally, the Respondent produced two letters referenced as cancellation notices dated 4th June 2019 and 24th June 2019 addressed to Stephen Okwemba Inzalikhi P.O Box 228-00242 Kitengela.
26. This Court notes that the basis for the Appellant filing the declaratory suit was the information submitted to them and contained in the Police abstract. This information was to the effect that policy number 017/083/1/015496/2017/TPO was issued to Margaret Ambogi Njihia and Daniel Njihia Mbugua by the respondent. The respondents have contested this position and provided a Policy document indicating that the policy over the motor vehicle was issued to Stephen Okwemba Inzalikhi. They have also provided cancellation notices to show that the policy was cancelled as a result of non-payment of premiums.
27. Faced with such evidence, the trial magistrate concluded, that the facts of this case have been convoluted and there was no basis to find merit in the Appellants case.
28. This court notes that the policy number and registration number for a motor vehicle provided by both the Appellant and Respondent are similar. There are competing documents, as pointed out by the trial



court. While the Appellants established ownership of the motor vehicle, which was not contested by the Respondent, they failed to prove that the subject motor vehicle was insured by the Respondent. On the other hand, while the Respondent confirmed having issued the said policy in respect of the said motor vehicle, it denies knowing the persons against whom judgment was issued but instead offers the name of a different person who the respondent claims is the insured. This calls for interrogation as to whether the insurance policy covers the liability arising from the accident involving the motor vehicle or attaches to the person paying the premiums.

29. Sections 107,108 and 109 of the Evidence Act, Chapter 80 of the Laws of Kenya, are explicit to the effect that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist and the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
30. Consequently, this court takes note of the holding in *Richard Makau Ngumbi & Another v Cannon Assurance Co Ltd* [2011] eKLR where it was held that proof of insurance is by a policy document or a certificate of insurance. Also, in *Kasereka v Gateway Insurance Co Ltd* [2013] eKLR where it was held that a Police Abstract is not sufficient proof of existence of a policy of insurance. Guided by this, decisions, I do agree with the trial court's decision, that the appellants fell short of proving their claim against the respondent on a balance of probabilities mainly on account of satisfactory evidence by the Respondent that the policy had been cancelled for lack of payment of premiums and that it was not valid at the time of the accident.
31. Given the circumstances of this case I do concur with the trial court's determination in that respect and see no need to interrogate the liability under the policy any further under section 10 of the Insurance (Motor Vehicles Third Party Risks) Act. None of the parties should be condemned to pay costs. Accordingly, each party shall bear its own costs.

The Appeal is dismissed with no orders as to costs.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 15TH DAY OF NOVEMBER 2024

For Appellants:

For Respondent:

Court Assistant:

