



**Geminia Insurance Company Limited v Nchoe (Civil Appeal  
E004 of 2023) [2024] KEHC 15548 (KLR) (6 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15548 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KILGORIS  
CIVIL APPEAL E004 OF 2023  
F GIKONYO, J  
DECEMBER 6, 2024**

**BETWEEN**

**GEMINIA INSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**NELLY NASERIAN NCHOE ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. H.C. Maritim (SRM)  
delivered on 04/07/2023 in Kilgoris CMCC No. E024 of 2022)*

**JUDGMENT**

**Who is the insured?**

1. The appellant was aggrieved by the judgment of the Chief Magistrate's Court at Kilgoris in Civil Suit No. E024 of 2022 delivered on 04/07/2023 encapsulated in the following orders: -
  - a. The appellant is obliged and liable to satisfy the decree and costs of the suit and all other/further incidental costs arising from Kilgoris PMCC NO. 14 OF 2019.
  - b. Costs and incidentals to this suit.
  - c. Interests at court rates from the date of judgment in Kilgoris PMCC 14 OF 2019 till payment in full.
  - d. Interest on cost from date of assessment of costs.
2. The memorandum of appeal dated 10/07/2023 cited four (4) grounds of appeal as follows;
  - i. That the learned trial magistrate erred in law and fact by holding that the appellant was statutorily bound to compensate the respondent herein notwithstanding that the respondent had not obtained any judgment against the appellant's insured which decision is untenable, not founded in law and unjust to the appellant.



- ii. That the learned trial magistrate erred in law and fact by reaching a finding that is in conflict with the express provisions of section 10 of the Insurance (Motor Vehicles Third Party Risks) Act Cap 405 laws of Kenya which finding is untenable.
- iii. That the learned trial magistrate erred in law by disregarding case law cited by the appellant which she was bound to follow.
- iv. That the learned trial magistrate erred in law and fact by failing to judiciously analyze the evidence on record thereby arriving at a decision that is untenable and lacking any basis in law.

### **Background**

3. The respondent was injured on 12/11/2018. She instituted a suit Kilgoris PMCC NO. 14 of 2019 against the insured. The plaint, verifying affidavit, and notice of institution of suit were served upon the appellant as the insurers.
4. The respondent subsequently obtained judgment on 09/02/2021 for Kshs. 1,730,190/= being general and special damages as well as costs of Kshs. 210,945/= and interest of Kshs. 262,412/=. A decree and certificate of costs of Kshs. 2,203,547/= as the sums that sums that the appellant ought to pay as well as 14% interest per annum from 09/02/2021. The National Police Service failed to satisfy the decree arising out of that suit since the appellant was its insurer.
5. The respondent filed a declaratory suit for the appellant to satisfy the judgment in Kilgoris PMCC NO. 14 of 2019 as well as costs and interest at court rates.

### **Directions of the court**

6. The appeal was canvassed by way of written submission.

### **The Appellant's submissions**

7. The gist of the appellant's submissions is that, they insured motor vehicle GKB 212T. And according to the policy of insurance, the insured was Rentworks East Africa Ltd. They claimed that, there is no judgment that has been obtained against the insured which they are statutorily obligated to satisfy under section 10(1) of the Insurance (Third Party Motor Vehicle Risks) Act. Judgment herein was obtained against the AG who is not the insured, but, a stranger. Thus, they are not liable to satisfy the said judgment.
8. They cited *Bushel vs. Hammond* (1904) 2 KB 563, *Madison Insurance Company Ltd vs. Augustine Kamanda Gitau* [2020] eKLR, and *CIC Insurance Co Ltd vs. Ondego aka Ondeko* [2024] eKLR

### **The respondent's submissions**

9. The respondent's submissions were quite terse only referring to the submission filed in the trial court compelling the court to state thus:

### **Reference to submissions filed in the trial**

10. The memorandum of appeal sets forth the grounds of appeal. Order 42 rule 1. And, parties substantiate their arguments in support of or in objection to each ground of appeal which may not necessarily be attained by mere reference to submissions made in the trial court. Other robust arguments may emerge which require specific rejoinder that was not dealt at great length in the submissions in the trial court. Similarly, the appeal may be based on narrower or fewer grounds than



the issues at the trial. In case of a party who lost the suit, may not merely repeat arguments that did not succeed at trial, unless the party is convinced the rejection of them was an error forming the core of the appeal. The practice adopted herein should be avoided. Nevertheless, the court will consider the arguments.

## **Analysis And Determination**

### **Duty of court**

11. As the first Appellate Court, will evaluate the evidence afresh and make own conclusions albeit it must bear in mind that it did not have the opportunity of seeing or hearing the witnesses firsthand. See the case of *Selle & Anor –Vs- Associate Motor Boat Co. Ltd* 1968 EA 123.

### **Issues**

12. The major question which has been put to the court for determination is: -  
Whether the appellant is statutorily bound to satisfy a judgment obtained herein.
13. There is also the question of who pays the cost of the appeal and the declaratory suit.

### **Leasing of Motor vehicle**

14. The appellant has confirmed that it insured motor vehicle registration number GKB 212T. The appellant did not however, establish the ownership of the said vehicle. They only claimed that, according to their records, the insured in respect of this vehicle is Rentworks East Africa Ltd. But, the appellant acknowledged that the said vehicle was leased out by the insured to and for use by the National Police Service. It has not been claimed that this was not the insured or permitted use or user of the vehicle under the policy.
15. This subject, thus, is important; because the government has resorted to leasing or hiring of vehicles from private persons for use by government institutions. Care should be taken to ensure that such user of a motor vehicle is the permitted use and covered under the policy of insurance to avoid possible litigation around this area. Already this case should raise an alert; the type of policy that properly covers such relationships and use of motor vehicles rather than leave matters to standard form policies which create more obscurity than clarity.
16. Therefore, understanding the unique circumstances of this case is necessary and forms the functional foundation for determining the major issue herein.

### **Who is the person insured?**

17. In tackling this question, the appellant made the argument that the Attorney General was sued for the accident herein, yet, has no insurable interest in the vehicle. Insurable interest is rather broad term whose definition is difficult. The argument thereto will not exactly offer the answer to the main issue of this appeal. But, the appellant stated that the AG is a stranger to the appellant and is not the person insured which will be considered in determining the main issue.
18. Similarly, the appellant cited the exception in the section 4(3) of the Insurance (Motor Vehicle Third Party Risks) Act, particularly, that, ‘this section does not apply to a motor vehicle owned by the Government’, without establishing any ownership of the vehicle, rendering the submission a kind of prolepsis- a representation of a situation that they hoped existed. Therefore, the appellant’s attempt to bring this case within the exception in section 4(3) of the Insurance (Motor Vehicle Third Party Risks) Act is not appropriately situated. The argument does not also answer the issue at hand.



## Unpacking s. 10

19. Under section 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act, the insurer is under a statutory obligation to satisfy ‘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)’ which ‘is obtained against any person insured by the policy’
20. There must be a policy of insurance in accordance with section 5 of the Act, a judgment in respect of liability covered by the policy and obtained against the person insured by the policy. *Bushel vs. Hammond* (1904) 2 KB 563, *Madison Insurance Company Ltd vs. Augustine Kamanda Gitau* [2020] eKLR, *CIC Insurance Co Ltd vs. Ondego aka Ondeko* [2024] eKLR
21. The policy of insurance ‘insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road’ s. 5(b) of the Insurance (Motor Vehicle Third Party Risks) Act.
22. According to the appellant, the insured is Rentworks East Africa Ltd. DW1 produced the insurance policy as exhibit. On cross-examination, he stated that the policy does not indicate Rentworks East Africa Ltd is the owner of the insured motor vehicle. They did not also establish the owners of the said vehicle.
23. The court has perused the certificate of insurance and the said policy document. The certificate of insurance displayed in the vehicle did not indicate the name of the insured. Whereas Rentworks E.A Ltd is indicated to be the insured, the striking thing is that, the policy states under ‘LIMITATIONS AS TO USE: Use in connection with insured’s business (carriage of own goods) and National Police Service duties excluding use for Hire & reward.’
24. Therefore, use for National Police Service duties is permitted and insured use. The appellant admitted that the insured leased out the insured motor vehicle to the National Police Service. This arrangement and noting the permitted use, does not remove the National Police Service from the category of ‘such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road’
25. In the circumstances, the suing of the AG can be explained especially where the insured motor vehicle was, pursuant to the policy of insurance, in the possession and use of the National Police Service at the time of the accident. Ordinarily, the AG is the party in such proceedings involving a state organ. This is notorious procedure which does not require rocket science to understand.
26. The unique circumstances of this case, and the relationships created by the policy of insurance, imposes a statutory duty upon the appellant to satisfy the judgment herein which is as a result of liability arising from the use of the insured motor vehicle by the National Police Service as specified in the policy. This case should usher rethinking of possessory ownership in cases of leasing or hiring agreements; and properly situating of liability that such owner may incur for use of such vehicle on the road under an insurance policy covering such use. This is one area requiring grounded jurisprudence by the apex court.
27. The insurance was aware of the suit by third parties which arose out of the use of the vehicle on the road by National Police Service as specified in the policy of insurance; but chose not to provide the information in their records reserving it for use in the declaratory suit and appeal.



28. The circumstances of this case commend the dismissal of the appeal. The Appeal is dismissed.
29. Again, given the circumstances of the case, each party to bear own costs of the appeal.
30. Orders accordingly

**DATED, SIGNED, AND DELIVERED AT Kilgoris THROUGH THE TEAMS APPLICATION,  
THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024.**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

1. Ondimu h/b for Mugambi for appellant
2. Nyangosi for respondent
3. Nyangaresi C/A

