

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 360 OF 2014

BRITISH AMERICAN INSURANCE CO. LTD.....PLAINTIFF

VERSUS

BENJAMIN NDOLO KIMOTE.....DEFENDANT

JUDGMENT

The plaintiff in this suit insured the defendant in relation to his motor vehicle registration No. KBP 723 Z, and issued a private comprehensive motor policy to that effect. The cover restricted the use of the motor vehicle to private purposes only. It was an express term of the policy that the motor vehicle would not be used for any other business, and more so public service or taxi operations.

While the said policy was still operational, on 9th June 2014 the said motor vehicle was involved in an accident while being used as a taxi, ferrying a fare paying passenger in violation of the policy aforesaid.

This suit has been brought for orders that, it be declared the plaintiff is entitled to avoid or repudiate the policy aforesaid in view of the defendant's breach thereof. The defendant was served with summons to enter appearance but did not comply or file any defence.

On 24th March, 2015 upon an application by the plaintiff, an interlocutory judgment against the defendant was accordingly entered. A formal proof then followed and submissions filed on behalf of the plaintiff.

This is a very straightforward matter because the facts speak for themselves. The policy produced and other exhibits tendered in the trial, exonerate the plaintiff from any liability that may arise by way of any suit or claim raised against the defendant. The use of the motor vehicle as a taxi was in violation of the policy aforesaid. The defendant's driver, according to the investigation report, was to blame for the accident. That cannot be assigned or transferred to the plaintiff herein.

The defendant was issued with a notice to repudiate the policy dated 6th October, 2014 using his known address as provided by him to the plaintiff. The notice was delivered to him by registered post and there is no evidence that it was returned to the plaintiff. He therefore had notice of repudiation. He knew he had breached the terms of the policy. He was duly served with summons to enter appearance. There is no doubt whatsoever from the pleadings and the evidence that the plaintiff's suit must succeed.

Accordingly, guided by the evidence presented on behalf of the plaintiff, I enter judgment in favour of the plaintiff as prayed in the plaint. The plaintiff shall also have the costs of the suit.

Dated, signed and delivered at Nairobi this 7th Day of May 2020.

A. MBOGHOLI MSAGHA

JUDGE