



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 436 OF 2014

THE JUBILEE INSURANCE COMPANY LIMITED.....PLAINTIFF

VERSUS

GEORGE ANGESA RABALA..... DEFENDANT

JUDGEMENT

1. The Jubilee Insurance Company (K) Limited, the plaintiff herein filed an action against George Angesa Rabala, the defendant herein vide the plaint dated 21st November 2014. In the aforesaid plaint the plaintiff sought for judgement as follows:

a) A declaration that the plaintiff is not liable to indemnify the defendant against any claim whatsoever and to satisfy any judgment that may be arising out of the accident which occurred on 30th January 2011, involving the subject motor vehicle KAQ 407K.

b) A declaration that the policy of insurance in respect of motor vehicle registration no. KAQ 407K was invalidated as soon as the insured sold the subject motor vehicle to a third party and plaintiff is entitled to avoid the policy.

c) The costs of this suit together with interest thereon at court rates from the date of judgment until payment in full.

d) Such other or further relief that this honourable court may deem fit to grant.

2. A default judgement was entered against the defendant when the defendant failed to enter appearance and file a defence. Therefore this suit proceeded for hearing as a formal proof.

3. When this suit came up for hearing, the plaintiff summoned Collins Nyaema (PW1) to testify in support of its case. PW1 adopted the contents of his witness statement dated 21.11.2014 as his evidence in chief. He stated that the defendant made a proposal and declaration on 2nd July 2010 to secure an insurance cover for his motor vehicle registration no. KAQ 407K.

4. PW1 further stated that the defendant paid for the cover and the plaintiff issued him with an insurance cover for **private, social and domestic** purposes only. The proposed form and policy document was produced as an exhibit in evidence.

5. PW1 averred also that on 24.2.2011, the defendant filed a claim form in which it was reported that the insured motor vehicle was involved in a road traffic accident involving it and motor cycle registration K.M.C.E 604R along Ugunja-Sigomere Road. The witness stated that the defendant disclosed in the claim form that the subject motor vehicle at the material time was being driven by one George Oduor Ochuodho his authorised driver. The claim form too was produced as an exhibit in evidence.

6. PW1 further averred that the plaintiff instructed **Counterstrike Ltd**, investigators, to conduct an investigation on the accident involving the insured motor vehicle on 30.1.2011. It is said that the investigators conducted the investigation and handed over its report on 18.5.2012.

7. PW1 pointed out that the investigation report which was produced in evidence disclosed that the insured motor vehicle registration No. KAQ 407K had been sold to one George Oduor Ochuodho who was the driver of the aforesaid motor vehicle on the date of the accident. It is the evidence of PW1 that the insured did not inform the plaintiff over the change of ownership. It is also stated that the defendant misrepresented in the claim form that he was still the owner of the subject motor vehicle as at the time of the accident.

8. PW1 further averred that it was a term of the insurance policy and a requirement under Section 10(4) of the Insurance Motor Vehicle Third Party Risks, Act that no sum shall be payable by an insurer and the insurer is entitled to avoid any claims arising from an insurance policy obtained through a representation of facts which were false in some material particular.

9. The plaintiff's witness stated that the defendant did not have insurable interest in motor vehicle registration no. KAQ 407 as of 30th January 2011 and that the defendant was not entitled to indemnity under the policy.

10. At the close of evidence the plaintiff was invited to file written submissions. Having considered the evidence and the written submissions, the following issues arose for determination:

First, whether the defendant should be indemnified against the risk as stated in the claim form and whether the defendant had any insurable interest in the motor vehicle.

Secondly, whether the defendant breached the principle of utmost good faith.

11. The first issue as to whether the defendant had the insurable interest over motor vehicle registration KAQ 407K at the time of the accident. It is the submission of the plaintiff that the defendant lost the insurable interest over the aforesaid motor vehicle when he sold the motor vehicle.

12. I have considered the investigator's report prepared by **Counterstrike Ltd** and it is apparent from the report said that the insured motor vehicle registration KAQ 407K had been sold to one George Oduor Ochuodho. The report further shows that the owner was in possession and drove the same motor vehicle during the time of the accident. I am convinced that the defendant lost the insurable interest the moment he sold the motor vehicle. It was therefore his duty to have the policy under his name invalidated and having failed to do so then he was not entitled to indemnity hence the policy of insurance in respect of motor vehicle registration no. KAQ 407K should be invalidated.

13. The second issue is whether the defendant breached the principle of utmost good faith (uberrimae fides). The plaintiff presented evidence showing that the defendant filled a proposal from which indicates that the motor vehicle would not be let for hire. In the report prepared by **Counterstrike Ltd**, it is indicated that George Oduor Ochuodho had claimed he had hired the motor vehicle at the time of the accident. This position was contradicted by the findings of **Counterstrike Ltd**, which found him to have purchased the motor vehicle. If indeed the defendant had hired the insured motor vehicle then he did not show good faith while asking to be indemnified in the claim form. The defendant knew he had either sold the motor vehicle or in the alternative he had let it for hire thus going against the contract of insurance.

14. In the circumstances the Insurer is entitled to avoid and or repudiate the contract of insurance. The defendant misrepresented himself as the owner of the insured motor vehicle while filling the claim form.

15. In the end, I am satisfied that the plaintiff has established its case on a balance of probabilities. Consequently judgment is entered in favour of the plaintiff and against the defendant as follows:

a) A declaration that the plaintiff is not liable to indemnify the defendant against any claim whatsoever and to satisfy any judgment that may be arising out of the accident which occurred on 30th January 2011, involving the subject motor vehicle registration no. KAQ 407K.

b) A declaration that the policy of insurance in respect of motor vehicle registration no. KAQ 407K was invalidated as soon as the insured sold the subject motor vehicle to a third party and plaintiff is entitled to avoid the policy.

c) Cost of the suit.

Dated, signed and delivered at Nairobi this 12th day of July, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant