



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 389 OF 2017

SAHAM ASSURANCE COMPANY KENYA LIMITED.....PLAINTIFF

VERSUS

TRIDENT INSURANCE COMPANY LIMITED.....DEFENDANT

JUDGMENT

1. **SAHAM ASSURANCE COMPANY LIMITED**, the plaintiff filed this case against **TRIDENT INSURANCE COMPANY LIMITED**, the defendant. This case was referred to Mediation that is the court Annexed Mediation. The defendant failed to file a case summary in accordance with the Mediation Practice directions 2017 and on **13th June 2019**. When the defendant was required to show cause why the court should not take action for its aforesaid failure, the defendant failed to attend court. Accordingly the court, in the absence of any cause being shown by the defendant the defendant's defence was on that date struck out.

2. The case proceeded for hearing on **17th September 2019** by way of plaintiff formally proving its case.

3. The evidence of the plaintiff was led by **Sarah Weru** the plaintiff's senior legal officer.

4. The said witness stated in evidence that the plaintiff insured Tusker Mattresses Limited (Tuskys) for the period between **1st March 2015** and **1st March 2016**. The defendant contractually took up 40% of the risk upon re-insuring Tuskys.

5. On **17th May 2015** one of Tuskys branches caught fire which led to claims being made by Tuskys for material damage and loss of profit. An adjuster was appointed and all reinsurers, including the defendant were notified. The material damage claim was adjusted at Ksh 67,517,001/= and the adjustment fee for that claim was Ksh 1,851,360/=. The defendant's liability for 40% of the claim was Ksh 27,747.40. The loss of profit was fully adjusted at Ksh 72,706,725/= and the adjusters fees was Ksh 928,000/= The defendant's liability at 40% of that claim is Ksh 29,453,885.60. The defendant on receiving demand to pay, from the plaintiff, only made partial payment. The defendant's total liability together with interest and costs of recovery is Ksh 33,427,695.61 as at 16th August, 2017.

6. The plaintiff has made several demands of settlement of the amount due but the defendant has failed to settle the same. It is on that basis plaintiff prays for judgment for **Ksh 33,427,695.61** as at **16th August 2017** together with interest and costs.

7. Since there is no defence to the plaintiff's claim and because the plaintiff's claim is supported by document, I find the plaintiff's claim is merited.

CONCLUSION

8. Accordingly the judgment of the court is as follows:

9.

a. Judgment is hereby entered for the plaintiff against the defendant for Ksh 33,427,695.61 with interest at court rate from the date of filing suit until payment in full.

b. The plaintiff is awarded costs of the suit.

DATED, SIGNED and DELIVERED at NAIROBI this 4th day OCTOBER, 2019.

MARY KASANGO

JUDGE

Judgment Read and Delivered in Open Court in the presence of:

Sophie.....COURT ASSISTANT

.....FOR THE PLAINTIFF

.....FOR THE DEFENDANT