



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

CIVIL SUIT NO. 8 OF 2015

PHOENIX OF EAST AFRICA ASSURANCE COMPANY.....PLAINTIFF

VERSUS

WILLIAM TENYEGA OMINO.....1<sup>ST</sup> DEFENDANT

FRANCIS MOMANYI.....2<sup>ND</sup> DEFENDANT

JUDGMENT

1. The plaintiff in its plaint dated the 23<sup>rd</sup> of June 2016 prays for a declaration that the plaintiff is not entitled to satisfy any claims, judgment on claim arising out the use of Certificate of Insurance No. C5991197 after 14<sup>th</sup> November 2009 on grounds that the said Certificate of Insurance had been cancelled.

2. The plaintiff's evidence and pleadings are that it had insured motor vehicle registration number KBB 742H Toyota. The insured were James Kamau, Boniface Maina and Equity Bank Limited. Their insured paid for the insurance cover for the period between 29/4/2009 to 28/4/2010. On the 14/11/2009 the said vehicle KBB 742H was stolen. Their insured reported the theft to the plaintiff and after investigations the policy of insurance in respect of the motor vehicle was cancelled.

3. Later on the plaintiff received a demand letter from M/s Ochillo and Company Advocates informing them that 1<sup>st</sup> defendant William Tengeya Omino had filed suit against the 2<sup>nd</sup> defendant Francis Momanyi seeking compensation for injuries sustained in a road traffic accident on 24/3/2010 involving vehicle registration number KBB 742H and vehicle registration number KAZ 214V. From the demand letter M/s Ochillo and Company Advocates seem to suggest that the 2<sup>nd</sup> defendant is the insured of the plaintiff and that the plaintiff was liable and obligated to take up the matter and settle the plaintiff's claim in Ogembo PMCC No. 103 of 2011- William Tengeya Omino vs- Francis Momanyi Obiero. That in response the plaintiff did a letter to M/s Ochillo and Company Advocates denying liability on grounds that vehicle registration number KBB 742H was stolen and the policy cancelled in line with Cap 405 Laws of Kenya.

4. The defendants were served through substituted service. No defence was filed. The 2<sup>nd</sup> defendant was the alleged owner of vehicle registration no. KBB 742H at the time of the alleged accident whilst the 1<sup>st</sup> defendant was the claimant in Ogembo PMCC No. 103 of 2011. The matter proceeded to formal proof.

5. The issues for determination is whether the plaintiff is entitled to the declaration sought?

At the hearing the plaintiff's witness took the court through the documents relating to vehicle registration no. KBB 742H the subject of this suit. The plaintiff demonstrated that after they insured the vehicle they issued a policy document and a Certificate of Insurance No. C. 5991197 commencing the 29<sup>th</sup> May 2009 and expiring on the 28<sup>th</sup> April 2010. As per the abstract from police records James Kamau Nganga their insured reported the theft of the said vehicle KBB 742H on the 14/11/2009. They paid off their insured after investigations and they did a letter on the same. That at one time the 2<sup>nd</sup> defendant went to their offices and indicated that he wanted to settle their outlay now that he was the one in possession of the said vehicle. That he defaulted and did not settle the amount. From this evidence it is clear that the plaintiff's and the 2<sup>nd</sup> defendant had no contract. The contract of insurance was between the Plaintiff Company and James Kamau and Boniface Maina the policy holders. The plaintiff has also shown that the vehicle they insured was stolen in November 2009. The alleged accident took place on the 24/3/2010, they were not the insurers of the vehicle on the said date, and they had cancelled the Insurance Certificate in compliance with the provisions of Cap 405 of the Laws of Kenya. The plaintiff had no contract with 2<sup>nd</sup> defendant, he was not their insured. Thus the plaintiff cannot be obligated to take up responsibility and liability of the claims arising from the use of motor vehicle registration number KBB 742H whilst it was in the possession and control of the 2<sup>nd</sup> defendant who are not its insured. The plaintiff is not liable for any claims arising from the use of the said vehicle as the 2<sup>nd</sup> defendant had no contract with the plaintiff. The plaintiff is thus entitled to the order sought. **The plaintiff is not entitled to satisfy any claims, judgment on claim arising out of the use of Certificate of Insurance No. C5991197 after 14<sup>th</sup> November 2009, the Certificate of Insurance having been cancelled.** No order as to costs.

**Dated signed and delivered this 8<sup>th</sup> day of November 2018**

**R. E .OUGO**

**JUDGE**

In the presence of;

**Miss Kebungo h/b Mr. Onyinkwa      For the Plaintiff**

**1<sup>st</sup> and 2<sup>nd</sup> Defendant      Absent**

**Ms.Rael      Court/ clerk**