



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO.83 OF 2009

COOPERATIVE INSURANCE OF KENYA LTD..... PLAINTIFF

VERSUS

CALVINS ODHIAMBO AYOMA.....1ST DEFENDANT

PAUL ODHIAMBO.....2ND DEFENDANT

DANIEL OWINO ONGOYA.....3RD DEFENDANT

THE BOARD OF GOVERNORS SILVER BRIDGE SCHOOL.....4TH DEFENDANT

J U D G M E N T

INTRODUCTION

The Plaintiff herein filed this suit against the Defendants seeking the following order:-

1. A declaration that Policy Number 400/000300 is null and void *ab initio* and the same is repudiated henceforth.
2. Refund of Kshs. Six Million Six Hundred and Seventy Five Thousand Six Hundred and Ninety Eight.
3. Spent.
4. An order authorizing the Plaintiff to withdraw money from Ac.no.[...] Cooperative Bank Githurai Branch in redemption of Plaintiffs claim.
5. Interest on prayer 2 at Courts rate

The Plaintiff filed this suit together with an application seeking to freeze monies in Account No. [...] Cooperative Bank Githurai Branch. The Plaintiff contends that after the 1st Defendant fast tracking clearance of cheques, they transferred funds to third parties who are 3rd and 4th Defendants respectively. The Plaintiff's evidence is that after clearing cheques issued by the Plaintiff, the 1st Defendant purchased a school immediately. The Plaintiff obtained orders freezing the account on 31st July 2009. what is pending for Courts determination is an order repudiating the policy and refund of Kshs. 6,675,698.

The Defendants herein failed to enter appearance and file defence. Request for interlocutory judgment was filed on 10th February 2010. Interlocutory judgment was entered on 18th of February 2010.

The case proceeded for formal proof on 15th October 2018. The Plaintiff availed one witness Calvins Ojowi Onduru the Operations Officer CIC Life Insurance which is a subsidiary of the Plaintiff.

He testified that the 1st Defendant was listed as beneficiary of the purported policy issued to William Oyoma Otieno (deceased).

He testified that the cover was twofold as set out hereunder:-

1. Basic cover of 3.229M which would be paid if the assured died.

2. Personal accident of 3.299M which would be paid if the death resulted from an accident.

He added that there was another benefit of Kshs. 100,000 being funeral expense; total being 6,5998M.

Pw1 testified that the 1st Defendant went to the Plaintiffs office and made a claim indicating that the insured died due to fatal road accident at Jogoo Road. The Plaintiff issued a letter of condolence and paid Kshs. 100,000 as last expense to help family cater for funeral expenses.

He testified that the insurance paid a total of Kshs. 6,5998M less outstanding payments at that time; that the net amount paid was Kshs. 6,575,698. He showed Court the letter and proof of payment.

Pw1 testified that the Plaintiff discovered that there was fraud when the Plaintiff's official was seen with the 1st Defendant following up cashing of the cheques. He said the purported beneficiary opened an account in the branch where the insurance had an account. He testified that the opening of account was intended to deposit and encash the cheque. He said that according to Death Certificate, the imposter died on 17th November 2008 and they were able to get the claim in less than a month. The Plaintiff found the speed of processing the payment suspicious.

Pw1 testified that investigations revealed that the body collected from Jogoo Road was for unknown person and the person processed by the 1st Defendant was not therefore for the insured.

What I wish to consider is whether the Plaintiff has proved its case on a balance of probabilities.

The Plaintiff adduced evidence to the effect that the documents presented by the 1st Defendant for claim of insurance benefits were not genuine. Plaintiff has demonstrated the fact that the purported insured who was alleged to have died in a road accident was nonexistent and that the 1st Defendant was a fraudster who was assisted by an employee of the Plaintiff to process the illegal claim.

The Plaintiff's evidence has not been controverted. The Plaintiff has established that the 1st Defendant fraudulently obtained fictitious claim from the Plaintiff.

From the foregoing, I find that the Plaintiff has proved its case on balance of probabilities.

FINAL ORDERS

1. Insurance Policy Number 400/000300 is declared null and void.

2. Refund of Kshs. Six Million Five Hundred and Seventy Five Thousand Six Hundred and Ninety Eight (Kshs 6,575,698) be paid to the Plaintiff.

3. Plaintiff is hereby authorized to withdraw money from Ac. No. [...] Cooperative Bank Githurai Branch to satisfy the Plaintiff's claim above.

4. Interest on 2 above be paid at Courts rate from the date of filing this suit.

5. Costs to the Plaintiff.

Judgment Delivered, Dated and Signed at Nairobi this 6th day of December, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

SAKINA: **COURT ASSISTANT**

NGANGA: **COUNSEL FOR THE PLAINTIFF**

NO APPEARANCE: **1ST DEFENDANT**

NO APPEARANCE: **2ND DEFENDANT**

NO APPEARANCE: **3RD DEFENDANT**

NO APPEARANCE: **4TH DEFENDANT**