



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 581 OF 2009

CORPORATE INSURANCE COMPANY LIMITED.....PLAINTIFF

VERSUS

IBRAHIM GICHUHI MUGO.....DEFENDANT

JUDGMENT

1. The plaintiff, **CORPORATE INSURANCE COMPANY LIMITED** had provided an insurance policy in respect to the defendant's motor vehicle.
2. The defendant, **IBRAHIM GICHUHI MUGO** confirmed that he had taken out a comprehensive insurance cover, in respect to his motor vehicle Registration **KBA 163 E**.
3. As far as the plaintiff was concerned the insurance cover was confined to the use of the vehicle by the defendant for private and personal use. It was the plaintiff's further contention that provided the vehicle was used in the prescribed manner, the plaintiff would indemnify the defendant in the event that there was an accident involving the insured motor vehicle. The indemnity would cover Third parties and authorized passengers who would have either suffered death or who had suffered bodily injuries.
4. In his defence, the defendant denied the contention that the policy of insurance issued by the plaintiff confined the use of the vehicle in the manner described by the plaintiff.
5. It was common ground that the insured motor vehicle was involved in an accident on 10th April 2009. The said accident also involved another motor vehicle, Registration Number KBB 527 D.
6. As a consequence of the said accident some passengers were killed, whilst some others sustained injuries.
7. The personal representatives of the deceased passengers, as well as the passengers who sustained injuries notified the plaintiff of their intention to institute civil proceedings against the insured and the insurer.
8. Faced with the prospects of the intended civil proceedings, the insurer moved to this court seeking a declaration, that it was, at all material times, entitled to avoid the policy of insurance because the said cover was obtained by non-disclosure of material facts.
9. Secondly, the plaintiff asked the court for a declaration that the plaintiff was not obliged to indemnify the defendant for the claims by either the personal representatives of the deceased persons or by the passengers who were injured during the accident.
10. On the other hand, the defendant expressed the view that the terms of the policy of insurance extended to and did cover the vehicle when it was in use by the defendant in person, during

- domestic, social and pleasure purposes.
11. The defendant categorically denied the plaintiff's assertion, that the vehicle was involved in the accident at a time when the vehicle was being used for hire or reward.
 12. The defendant asserted that because the person who was driving the insured vehicle at the material time had been duly authorized to do so by the defendant, the plaintiff was obliged to indemnify the defendant for the claims arising out of the accident.
 13. In the circumstances, it was the defendant's case that the plaintiff should indemnify him for the claims made by the personal representatives of the deceased persons; the persons who were injured; and also for the damage to the insured vehicle.
 14. Being of that persuasion, the defendant had lodged his claim with the plaintiff. Therefore, because the plaintiff had failed to indemnify him, the defendant asked this court to declare that the plaintiff was liable to indemnify the defendant.
 15. The defendant also claimed General Damages for the loss of his vehicle.
 16. When the case came up for hearing on 9th October 2014, the defendant did not attend court. The advocate for the defendant was also absent. However, after the court satisfied itself that the defendant had been served with a Hearing Notice, the court permitted the plaintiff to proceed with the Hearing, in the absence of the defendant.
 17. **PW1, NANCY WATIRI SHIKUKU**, was the Chief Legal Officer of the plaintiff, Corporate Insurance Company Limited.
 18. Nancy testified that the defendant did fill in a Proposal Form through an agency called **HIGH VISION INSURANCE AGENCY**. The said Proposal Form was produced in evidence as "*Exhibit 1*".
 19. In the Proposal Form the defendant indicated that the vehicle could be driven by any authorized driver who had a valid Driver's Licence.
 20. The defendant also specified that the vehicle would be used for social, domestic and pleasure purposes.
 21. After giving consideration to the defendant's request for an insurance cover, the plaintiff issued him with a "*Private Car Policy*".
 22. It was the evidence of Nancy that the insured vehicle was involved in an accident on 10th April 2009, but that the defendant only reported the said accident to the plaintiff on 27th April 2009. In the report, the defendant told the plaintiff that at the time of the accident, the vehicle had been given out by the defendant, to a friend of his, who was using it to go to a funeral.
 23. After the plaintiff got the report, it engaged a Private Investigator, **TARBULL INSURANCE LOSS ADJUSTERS**, with instructions that they were to investigate the circumstances of the accident which the defendant had reported.
 24. **PW2, JONATHAN MWALILI**, was an Investigator, who ordinarily handled insurance matters. It is he who practices under the name **TARBULL INSURANCE LOSS ADJUSTERS**.
 25. PW2 testified that Corporate Insurance had instructed him to establish;
 - a. *The loss of the vehicle at the time of the accident; and*
 - b. *Other circumstances about the accident.*
 26. Having carried out his work, Jonathan learnt, from the defendant, that the defendant had, allegedly, given the insured vehicle to friends of his who needed transport to go and attend a funeral.
 27. However, when Jonathan asked the insured to make available the said friends, the insured said that the friends had died in the accident.
 28. The alleged friends of the insured were named **OSCAR NYAGA** and **PETER OKELO**.
 29. According to Jonathan, he was later informed by the insured that Peter Okelo actually survived the accident. Notwithstanding that development, the insured failed to make available to Jonathan, the said Peter Okelo.
 30. Further investigations by Jonathan revealed that the person who had approached the insured, to ask for the insured vehicle, was **GEORGE KAGEMA**. The said George Kagema informed Jonathan that he was in the business of hiring out vehicles. That piece of information fortified Jonathan's evaluation of the insured, which was that the said insured had hired out the vehicle for reward.

31. But Jonathan did not stop at that. He procured a copy of the police abstract dated 7th July 2009, from the Pangani Police Station. From that abstract, the investigator ascertained that the person who was driving the vehicle at the material time was a lady named **MARY WANJIKU KARIUKI**. That lady, regrettably, died in the accident.
32. The significance of that information was that it contradicted the assertion of the insured, who had said that the person he had authorized to drive the vehicle was **PETER OKELO**.
33. In effect, if it was Mary Wanjiku Kariuki who was driving the motor vehicle at the material time, that fact was unknown to the insured. It would therefore follow that the insured cannot have given authority to Mary Wanjiku Kariuki to drive the insured vehicle. Consequently, if Mary Wanjiku Kariuki was driving the vehicle, she did so without the authority of the insured.
34. Meanwhile, the person whom the insured had allegedly authorized to drive the vehicle, (i.e Peter Okelo), was not even named in the police abstract, as having been either the driver or a passenger in that vehicle.
35. Both the insurer and the investigator testified that the vehicle was being used for hire for reward, at the time it was involved in the accident. That evidence was uncontroverted.
36. Secondly, it is clear that the person who was driving the vehicle at the material time, did not have the authority of the insured to do so.
37. The policy of insurance covered the vehicle when it was being used for social, domestic or pleasure purposes. That is what the insured had asked for, and that is what the insurer provided.
38. Therefore, when the vehicle was being used for hire for reward, the policy of insurance did not provide cover. In the event, the plaintiff was entitled to avoid the policy because the insured used the vehicle for a purpose other than that which he had declared it would be put to.
39. Secondly, the person who was driving the vehicle at the material time was not authorized to do so by the insured.
40. For those two reasons, the plaintiff is not liable to indemnify the defendant for the claims by the passengers who were injured in the accident or for the claims by the personal representatives of the passengers who died in the accident.
41. Accordingly, I grant the reliefs prayed for in paragraphs (a) and (b) of the Plaint. The plaintiff is also awarded the costs of the suit.

DATED, SIGNED and DELIVERED at NAIROBI this 2nd day of March 2015.

FRED A. OCHIENG

JUDGE

Judgment read in open court in the presence of

Muturi for the Plaintiff.

..... for the Defendant.

Collins Odhiambo – Court clerk.