

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL CASE NO. 39 OF 2007

JOHN MWONGERAPLAINTIFF

VRS

INVESCO ASSURANCE CO.LTD.....DEFENDANT

J U D G M E N T

1. The Plaintiff through a plaint dated 2nd April, 2007 sued the defendant for a declaration that the defendant is liable to satisfy the decree, costs and interest in Meru HCCC No. 32 of 2004 under Policy No. INI/080/1/004132 and for an order to compel the defendant to satisfy the said decree plus any accruing costs and interest with costs of the suit.
2. The defendant upon being served with summons to enter appearance it filed memorandum of appearance through the firms of M/S J.G. Gitonga & Co. Advocate dated 9th day, 2007 and further appearance dated 14th May, 2007 through the firm of M/S Muthoga Gatura & Co. Advocates, M/S J.C. Gitonga and Co. Advocates filed statement of defence on 18th May, 2007. The plaintiff filed Reply to defence through the firms of M/S B.G. Kariuki & Co. Advocates on 8/6/2007. The firm of M/S Muthoga Gatura & Co. Advocates filed notice of change of Advocates on 9/10/2007 replacing the firm of M/s J.G. Gitonga. On 11th July, 2012 the plaintiff instructed the firm of M/S Maitai Rimita & Co. Advocates to act for him jointly with the firms of M/S B.G. Kariuki & co. Advocates.
3. On 24/1/2014 the instant suit was fixed for hearing on 31/3/2014. Defendant's counsel and the defendant herein were served with a hearing notice as per affidavit of services dated 31st March, 2014. The defence counsel and the defendant did not attend hence the matter proceeded to hearing in their absence. The plaintiff gave evidence and called no witnesses whereas the defendant interested in HCCC 32 of 2004 gave evidence and called no witness.
4. I have carefully considered the pleadings and the evidence as well as the submissions on behalf of the plaintiff. The issue for consideration is whether the plaintiff has satisfied the conditions set out under Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act to call the defendant herein as the insurer of the defendant in HCCC 32 of 2004 to satisfy the judgment against its insured in favour of the Plaintiff herein.
5. The plaintiff evidence was unchallenged and was supported by DW1 Stanly Maingi Ngeera. PW 1 was the plaintiff in HCCC 32 of 2004, in which he produced a copy of the Court's decree in his favour as exhibit P1, certificate of taxation as exhibit P2; demand notice which had been issued before action as exhibit P3, defendant's reply as exhibit P4; police abstract as exhibit P5, and notice to settle payment as exhibit P6. PW 1 testified that the defendant who had duty to satisfy the judgment declined to do so leading to the filing of the instant suit.
6. DW 1 Stanley Maingi Ngeera testified that the plaintiff sued him in case No. HCCC 32 of 2004 in which court entered judgment against him and in favour of the plaintiff. He testified that his vehicle No. KAB 935A was insured by the M/S Invesco Insurance company who had engaged the firm of M/S Mithoga & Co. Advocates to defend the suit on his behalf. DW1 had been given a

copy of letter by the defendant dated 19th May, 2005 which he produced as exhibit D1. That after judgment DW1 testified that he was asked by the defendant to pay excess which he paid and produced copy of the letter as exhibit D2. He testified that the insurance has not sued him denying the claim. He prayed that the plaintiff's suit be allowed as against the defendant.

7. The provision which makes it a duty of insurer to satisfy judgment against persons insured is Section 10 (1) (2) (a) of the Insurance (Motor Vehicles Third Party Risks) Act which provides:

If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of [section 5](#) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

No sum shall be payable by an insurer under the foregoing provisions of this section—

in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given, the
(a) *insurer had notice of the bringing of the proceedings; or in respect of any*
) *judgment, so as execution thereon is stayed pending an appeal, or.....”*

8. In the instant case DW 1 confirmed in his evidence that he was insured by the defendant. That the defendant instructed a defence Counsel in HCCC 32 of 2004 to file defence and wrote a letter to DW 1 to that effect, and demanded excess fees of KShs.5000/= which DW1 paid. The defendant conduct confirms, that DW1 was a person insured by the defendant and who confirmed judgment was obtained against him. He confirmed the insurer has not avoided or cancelled the policy. PW 1 demonstrated that before an action or commencement of the proceedings in which judgment was given in HCCC 32 of 2004 insurer had notice of the bringing of the proceedings and did in fact reply to the demand notice. I am therefore satisfied that the plaintiff met the conditions required for enforcement of judgment against the defendant's insurer in HCCC 32 of 2004. The defendant insurance company herein is therefore obligated to satisfy the judgment against its insured DW1 herein.

9. The upshot is that the plaintiff's suit succeeds. I declare that the defendant M/S Invesco Insurance company is bound to satisfy the decree, costs and interest in Meru HCCC No. 32 of 2004 under Policy No. INI/080/004132 with costs of this suit and interest.

Dated at Meru this 17th day of July 2014.

J.A. MAKAU

JUDGE

Delivered in open court in presence of

Mr. Rimita Advocate jointly with Mr. B.G. Kariuki for plaintiff

Mr. Kiogora for interested party/Defendant

N/A for the defendant

J.A. MAKAU

JUDGE