



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 273 OF 2014

**IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT CAP 22 OF THE LAWS OF
KENYA**

JUBILEE INSURANCE COMPANY OF KENYA LTD.....APPLICANT

-V E R S U S-

1. **NELSON NJENGA MUNENE**
2. **MAJALIWA KASSIM BILLO**
3. **ZAWADI MOHAMMED GAMUDA**
4. **RASHID ALI TAPHA**
5. **RAJAB HASSAN KISUSE**
6. **MUTUKU MAUNDU**
7. **MASOUD NGALA**
8. **HAMISI ALI KODI**
9. **JACKSON KAMUYA KINYAE**
10. **ALI ABDALLA MWAKUGULARESPONDENTS**

JUDGMENT

1. Before me is an ex parte Originating Summons filed by Jubilee Insurance Company of Kenya Ltd, herein after referred to as the Applicant.
2. By Originating Summons dated 14th July 2014 Applicant seeks leave to file a declaratory suit out of time. The same is directed at nine suits filed in Kwale Magistrate's Court.

BACKGROUND

3. The 1st Respondent was insured by the Applicant in respect of motor vehicle registration No. KBJ 275V. Whilst driving the said vehicle on 2nd February 2014, 1st Respondent was involved in collision with another vehicle which resulted in injuries to the 2nd upto the 10th Respondent. Those Respondents sued the 1st Respondent. The Applicant, being the insurer, instructed Counsel to represent the 1st Respondent. Necessary defences were filed in those actions.
4. Applicant initiated an investigation on that accident which investigation revealed that 1st Respondent contrary to the terms of the Insurance Policy the 1st Respondent was using the vehicle for commercial passenger service. On receiving that investigation report Applicant filed the present Originating Summons.

DETERMINATION

5. Although the Applicant in its Originating Summons relied on the provisions of the Limitation of Actions Act Cap 22 in my view applicant erred but should have relied on the inherent power of the Court and also on the provisions of Section 10 of the Insurance (Motor Vehicle Third Party) Risk Act Cap 405. This is because Section 27 of the Cap 22 only relates to extension of Limitations of Action under that Act. Here the limitations the Applicant is faced with is as provided in Section 10 of Cap 405. That error however is not fatal.
6. Section 10 of Cap 405 obligates an Insurer to settle judgment amount decreed against its insured unless, amongst other things, the Insurer gave, fourteen days notice, after commencement of action against its insured, repudiating liability. In this case the Applicant did not give that notice within that period.
7. The reason given for failing to give that notice within that period is that the Applicant did not realize the 1st Respondent was using the vehicle contrary to provisions of the Insurance Policy until their investigator concluded its investigation which was after the fourteen (14) days provided under Cap 405.
8. In my view the reason given for that failure is acceptable and this Court is of the view that the leave sought may be granted.
9. Accordingly the Court grants the following orders-
 - a. **Leave is hereby granted to Jubilee Insurance Company of Kenya Limited to file declaratory suit against the Respondents within fourteen (14) days from this date hereof.**
 - b. **There shall be no order as to costs hereof.**

DATED and DELIVERED at MOMBASA this 4TH day of DECEMBER, 2014.

MARY KASANGO

JUDGE