



**Imetha Water & Sanitation Co Ltd v Trident Insurance Co Ltd; Kiogora (Interested Party)  
(Cause E010 of 2023) [2024] KEELRC 2190 (KLR) (12 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2190 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
CAUSE E010 OF 2023  
ON MAKAU, J  
SEPTEMBER 12, 2024**

**BETWEEN**

**IMETHA WATER & SANITATION CO LTD ..... CLAIMANT**

**AND**

**TRIDENT INSURANCE CO LTD ..... RESPONDENT**

**AND**

**STANLEY KIOGORA ..... INTERESTED PARTY**

**JUDGMENT**

1. This suit arises from a Work Injury claim by the Interested Party against the claimant. The interested party was injured while in the cause of employment by the claimant and compensation was assessed by the Director of Occupational Safety and Health (DOSHS) on 21<sup>st</sup> August 2017 at Kshs.840,635.10. Subsequently, the claimant notified the respondent (its insurer) of the claim vide the letter dated 13<sup>th</sup> February 2018 but the claim was not settled. However, the respondent wrote to the claimant on 18<sup>th</sup> January 2019 requesting the claimant to refer the interested Party to a second medical examination by Dr.Wambugu P.M.
2. Nothing came out of the foregoing exercise and the Interested Party filed application for adoption of the Directors award and enforcement. The claimant opposed but after hearing the parties the court allowed the application as prayed.
3. The claimant then filed the instant suit seeking the following orders against the respondent.
  - a. A declaration that the Defendant is liable to satisfy the judgment/decree in Meru Elrc Misc Appl.No. E009 Of 2022.
  - b. Costs of the suit.



4. The respondent never filed any response after service but the Interested Party did. The suit was first listed for hearing on 9<sup>th</sup> November 2023 when the claimant called its Chief Executive Officer (CEO) as its witness (CW1).
5. In brief, CW1 stated that the interested party was involved in a motorcycle accident while in the course of duty on 23<sup>rd</sup> December 2016 and a report was made to the DOSH. On 21<sup>st</sup> August 2017, compensation of damages was then assessed by DOSH at Kshs.840,635.10 and it notified the respondent vide the letter dated 13<sup>th</sup> February 2018.
6. The award was never paid and the interested party filed Meru ELRC Misc.Application [No. E009 of 2022](#) for adoption of the award by Dosh as a decree of the court. The application was allowed and execution commenced. He prayed for judgment as prayed because at the time of the material accident, the claimant had taken out an insurance cover from the respondent.
7. On cross examination, CW1 admitted that he did not produce the insurance contract between the claimant and the respondent. However, he contended that the respondent had made a proposal to pay six years ago (see Document No.8). He further admitted that the DOSH never wrote any demand for payment to the respondent. He also admitted that the NCAJ (Ombudsman) wrote to the claimant to pay the claim to the interested party.
8. He stated that he served the respondent with a copy of the court judgment and decree in the primary suit but he failed to produce it as exhibit herein. He contended that the obligation to settle the compensation to interested party is on the respondent because it had insured him. However, the respondent had failed to pay despite every effort being made to pursue it. He admitted that the Interested Party was not a party to the contract between the claimant and the respondent.
9. When the suit came up for hearing of the interested party's case on 8<sup>th</sup> April 2024, his counsel told the court that the judgment debt in the primary suit had been fully settled by the claimant. The claimant confirmed the settlement and prayed for the claim against the interested party to be struck out and it be given 14 days to file written submissions.
10. The claimant filed submissions which basically reiterates the facts of the case as they appear in the pleadings and the evidence save that it was argued that section 7 of WIBA makes it mandatory for employer to take out and maintain insurance policy to cover employees. That since the claimant had taken out insurance cover from the respondent, it is only proper that declaratory order sought in the suit be granted.
11. For emphasis, reliance was placed on Margaret Gakenia Mwaniki v Kenya Orient Insurance Limited (2020) eKLR where the court found that the Insurance Company had a legal duty to indemnify the insured for liabilities incurred as a result of accident that damaged a vehicle.

## **Analysis**

12. The only issue for determination is whether the respondent should indemnify the claimant for the financial loss incurred when it settled the claim for the interested party. Having considered the pleadings and the evidence on record, there is no dispute that the respondent had voluntarily entered into an insurance contract with the claimant to cover work- injury claims by the claimants' employees.
13. There is also no dispute that the interested party was injured while in the course of employment by the claimant. It is also a fact that the DOSH assessed compensation of Kshs.840,635.10 in favour of the interested party and the respondent was made aware of the same. It is also a fact that the respondent did not settle or challenge it as required under section 51 and 52 of the WIBA.



14. As a result of the foregoing, judgment was entered in favour of the interested party and during the pendency of this suit, the decree was settled. Since the respondent never filed defence to challenge the suit herein, I am satisfied that the claimant is entitled to the reliefs sought. Consequently, I enter judgment in favour of the claimant in the following terms: -
- a. A declaration be and is hereby made that the respondent is liable to satisfy the judgment/decree in Meru ELRC Misc. Application *No. E009 of 2022*.
  - b. Costs of the suit to the claimant.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

