

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 24 of 2000

RAJESH R. SHAH1ST PLAINTIFF

JAVA R. SHAH.....2ND PLAINTIFF

VERSUS

BRITISH AMERICAN INSURANCE CO. LTD DEFENDANT

JUDGMENT

The defendant of this case was served with the hearing notice for 15th July 2009. On the 15th of July 2009 Mr. Mbaabu learned counsel appeared holding brief for Mr. Gitura for the defendant. His attempt to get an adjournment on the basis that the parties were negotiating was not successful. When the case was called up later in the day for hearing, counsel appearing for the defence was not in court nor was the defendant. The case proceeded for hearing in their absence. There are two plaintiffs in this case and their claim is for a declaration that the defendant is liable to pay them for the life policy of their late father and husband respectively. The first plaintiff, the son of the policy holder that is, Latilal Shah, deceased stated in evidence that his late father passed away on 11th March 1999. The first plaintiff who was the only witness to give evidence to prove the plaintiff's case. The 2nd plaintiff did not give evidence. There was no evidence before court that the first plaintiff had been given power of attorney to give evidence on behalf of the 2nd plaintiff. No explanation was given to the court in respect of the absence of the 2nd plaintiff. For that reason, the 2nd plaintiff's case must fail. First plaintiff stated that his late father had obtained two life insurance policies from the defendant. One was dated 1st September 1998 being police No. 01886416 for Kshs. 1million. The beneficiaries in that policy were stated as the 1st and 2nd plaintiffs. The second policy was for Kshs. 800,000/=, which again was issued by the defendant being policy No. 01854447. His late father, according to his evidence, had paid all the monthly premiums for both policies. On his death, the first plaintiff made a death claim with the defendant for both policies. In response, the defendant paid to the first defendant a cheque for Kshs. 400,000/= and also paid the 2nd plaintiff a cheque of Kshs. 400,000/=. Payment for both those cheques was stopped by the defendant. The plaintiff in giving evidence did not assign any reason for that stoppage. Both those cheques were dated 26th November 1999. The defendant paid to the first plaintiff a further cheque for Kshs. 256,000/= which amount represented the medical claim for his late father. That cheque was dated 13th September 1999. First plaintiff said that it was honoured when it was presented for payment. The first plaintiff however stated that the defendant had failed to pay for the two life policies and therefore prayed that judgment be entered for the amounts stated in those policies. As stated before, the defendant did not attend the hearing and accordingly its counter claim must fail. The policies provided that the beneficiaries were both the plaintiffs. They did not however provide how the amount in those policies was to be divided amongst the two plaintiffs. In my view, in the absence of one beneficiary, the other available beneficiary would only get the half amount of the policy. For that reason, my finding is that the 1st plaintiff is entitled to judgment as prayed and to that end he is entitled to judgment for the half amount of both policies. The 1st plaintiff did prove his case on a balance of probability which was uncontroverted by the defendant. The 2nd plaintiff did not prove her case and the same fails. The judgment of this court is as follows:-

1. The 2nd plaintiff's case is dismissed with no orders as to costs.

2. *Defendant's counter claim is dismissed with costs to the first plaintiff.*

3. *Judgment is hereby entered for the 1st plaintiff as against the defendant for Kshs. 900,000/=. The first plaintiff shall however have to pay further court fees for the judgment amount before a decree hereof is extracted.*

4. *The first plaintiff is awarded costs of the suit and of the counter claim.*

Dated and delivered at Meru this 1st day of October 2009.

MARY KASANGO

JUDGE