

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 2702 OF 1997

MBAIKA MAKAU KALIMA

AND ANOTHER.....PLAINTIFF

-versus-

STALLION INSURANCE COMPANY LTD.....DEFENDANT

R U L I N G

This is an application to struck out the defence filed against the plaintiff's claim. The application is made under Order 6 Rule 13 (sub-rule (1) (c) & (d) of the Civil Procedure Rules of section 3A of the Civil Procedure Act. This is supported by an affidavit swon by Mbaika Makau which is annexed to the application.

The application is opposed and the defendant has filed grounds of opposition and a replying affidavit. The plaintiff obtained judgment against the party which had insured the defendant herein. That party did not satisfy the judgment. There followed a suit against the present defenda nt which insured the said party. They now seek the declaration that the defendant is liable to satisfy the decree against the defendants insured. The defendant has filed a defence and said among other things that, the motor vehicle which was involved in the accident was not insured to carry passengers but was covered for commercial purposes only.

It is true that the copy of the Policy has not been annexed to this application by the defendant but clearly that is a triable issue which if upheld in favour of the defendant, the orders sought can not be granted.

In the circumstances I find that the application fails and is accordingly dismissed with costs.

Dated and delivered at Nairobi this 21st day of May, 1998.

A. MBOGHOLI MSAGHA

JUDGE