



REPUBLIC OF KENYA

Karanja v Phoenix of EA Assurance Co Ltd

High Court, at Kisumu April 12, 1991

Tunoi J

Civil Case No 56 of 1987

Agency – principal and agent - liability of principal for the act of his agent - when principal is bound by a fraudulent act of his agent - issue of a forged certificate of insurance - whether the person issuing was an agent for the insurer or the insured - whether insurer bound under the insurance policy.

Insurance law - insurance agent - when insurer may be bound by the fraudulent act of an agent - issue of a forged certificate of insurance - whether insurer bound to honour the insurance policy.

The plaintiff sued the defendant insurance company seeking a declaration that that he was entitled to be indemnified by the defendant against all risks covered by a certificate of insurance allegedly issued by the defendant.

It was the plaintiffs contention that he had approached the defendants agents known as Sotik Agencies and met a Mr Chepkwony to whom he paid the requisite premium and was issued with a certificate of insurance. The defendant however repudiated liability claiming that the certificate of insurance had been reported lost and it somehow came to the hands of Mr Chepkwony who may have forged it and purported it to have been issued by the defendant. The defendant argued that it was not liable for Mr Chepkwony's fraudulent activities.

Held:

1. Sotik General Insurance Agencies were acting as agents of the defendant and not as agents of the plaintiff at the material time.
2. An act of an agent within the scope of his actual or apparent authority does not cease to bind his principal merely because the agent was acting fraudulently and in furtherance of his own interests.
3. The plaintiff, an innocent and rustic matatu owner, accepted the cover not issued by Mr Chepkwony in good faith and believed that Mr Chepkwony was authorised to issue the document.
4. The act of Mr Chepkwony was within the scope of his apparent authority.

He might have acted fraudulently but his principal, the defendant is bound and is held liable.

Cases

Anglo African Merchants Limited v Bayley [1970] 1 QB 311; [1969] 2 All

Texts

Reynolds, FMB; Davenport, BJ (1968) *Bowstead on Agency* London:

Sweet & Maxwell 13th Edn Art 84

Statutes

No statutes referred.

Advocates

Mr Kinyanjui for the Defendant.

April 12, 1991 **Tunoi J** delivered the following Judgment.

The plaintiff, a *matatu* owner, prays for a declaration against the defendant, an insurance company, that at all material times he was and has been entitled to be indemnified by the defendant during the currency of a certificate of insurance number A035122 issued by the defendant's agents, Sotik General Insurance Agencies, against any claims that may be made as a result of a collision involving his *matatu* registration number KWD 190 which occurred on 8.7.1986 and that the defendant do issue a Policy of insurance covering the period for which the certificate of insurance was issued.

The facts of this case are largely not in dispute.

The plaintiff, educated up to Standard 7, resides at Sotik. In 1985 he owned a *matatu* vehicle registration number KWD 190. Its certificate of insurance had expired and he wanted to renew it. He looked for a company of insurance which was close and near to him. There was a big notice board displayed outside an office at Sotik. It had the name of the defendant on it. Its agent had displayed it. He went into the office and approached a Mr Chepkwony who agreed to insure his *matatu* and in this respect issued him with a certificate of insurance number A153726. The period covered passed without any incidence. On 18.5.1985 he renewed it for another year. At the beginning he was issued with a temporary certificate of insurance No D454865. After this he was given a full cover its number being A035122. Mr Chepkwony collected from him a total of shs 8,000/- by way of instalments towards the payment of premium. The purported certificate of insurance was for Third Party Risks only.

Unfortunately on 8.7.1986 the plaintiff's *matatu* vehicle while being driven by its driver Joel Kipkurui Rono was involved in an accident in the course of which a number of passengers were injured. He reported the incident to the defendant who disclaimed liability.

It is the defendant's case that Sotik General Insurance Agencies were its agents paid commission only on business transacted. Mr Chepkwony was never at any time an employee of the defendant and it had no control on a day to day basis on how he ran his business. Moreover, Mr Chepkwony's relationship with the defendant did not require him to place all his business with it.

Certificate No 035122 was issued to Kenindia Insurance Company Limited on 14.5.1980 but was stolen from it and somehow ended up in the hands of Sotik General Agencies. Kenindia advertised and reported the loss of this certificate. It was forged.

It would appear that Mr Chepkwony and or a person known to him forged the said certificate purporting it to have been issued by the defendant in favour of the plaintiff.

There are five issues for determination.

First, were Sotik General Insurance Agencies acting as agents of the defendant at the material time or of the plaintiff at the material time? According to the testimony of the defendant's Branch Manager, Kisumu, Sotik General Insurance Agencies were supposed to procure business for the defendant and were authorised to issue notes on its behalf but not the annual certificates. Mr Chepkwony had a duty to explain to a prospective client the defendant's field of coverage, fill a proposal form, receive the full premium and send them to the defendant. When Mr Chepkwony issued the cover note he did so with the authority of the defendant.

Mr Kinyanjui, for the defendant, has submitted that it is trite law that in all matters relating to the placing of insurance the insurance broker is the agent of the insured, and the insured only. He relied on the case *Anglo African Merchants Limited vs Bayley* (1970) 1 QB 311. In my view, this dictum is not applicable in the particular case before this Court. Mr Chepkwony did not and cannot qualify to be termed in insurance broker.

I answer the first issue in the affirmative. Sotik General Insurance Agencies were acting as agent of the defendant at the material times and not those of the plaintiff.

It is abundantly clear that Sotik General Insurance Agencies issued the forged certificate to the plaintiff. Mr Chepkwony had apparent authority to issue such a certificate. What specific authority had been delegated to him could not have been known to the plaintiff.

Article 84, Bowsfead on Agency, 13th Edition reads as follows:

“An act of an agent within the scope of his actual or apparent authority does not cease to bind his principal merely because the agent was acting fraudulently and in furtherance of his own interests”.

On receipt of the payment Mr Chepkwony issued the cover note for the first 14 days and then for one year. The plaintiff, an innocent rustic *matatu* vehicle owner accepted the same in good faith and believed that Mr Chepkwony was authorised to issue such documents. Similarly, I answer the second issue in the affirmative. The defendant is deemed to have issued the certificate of insurance number A035122 through its agents to the plaintiff in respect of the motor vehicle registration number KWD 190 effective from 18.5.1986 to 17.5.1987.

The act of Mr Chepkwony was within the scope of his apparent authority. He might have acted fraudulently but his principal, the defendant is bound and is held liable.

It is plainly clear that the certificate of insurance No A035122 is forged but this finding is of no consequence having found for the plaintiff in respect of issues numbers 1 and 2.

I hold that the plaintiff is entitled to be indemnified by the defendant in respect of any claims which might arise in respect of an accident which occurred on 8.7.1986 as alleged in the plaint. Further, he is entitled to a Policy of insurance covering the period for which the said certificate of insurance was issued from the defendant. The plaintiff will have the costs of the suit.