



**Chege v Wamugunda (Civil Appeal E025 of 2024)  
[2025] KEHC 13993 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13993 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CIVIL APPEAL E025 OF 2024  
LN MUTENDE, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**SAMUEL NGUME CHEGE ..... APPELLANT**

**AND**

**JESSEE MWANIKI WAMUGUNDA ..... RESPONDENT**

**JUDGMENT**

1. The Respondent, Jessee Mwaniki Wamugunda, was sued by Samuel Ngume Chege, the Appellant herein, who sought damages for injuries sustained as a result of a road traffic accident that occurred on 4<sup>th</sup> February, 2018 along Nakuru- Subukia road where he was riding Motor-cycle Registration Number KMCG 902X when Motor-vehicle Registration Number KCN 673A while overtaking another vehicle lost control and knocked the motorcycle where after he sustained injuries together with his pillion passenger. Liability was agreed upon by consent at 90:20 in favour of the plaintiff (Appellant). Ultimately, Judgment was entered at Ksh.578,420/-
2. Subsequently the Appellant obtained declaratory order declaring Invesco Assurance Company Ltd liable to satisfy the decretal sum in the lower court.
3. Through a Notice of Motion dated 26<sup>th</sup> January, 2023, the firm of Wagiita Theuri & Company Advocates sought leave to come on record in place of Njuguna & Kinyanjui Advocates for the Respondent herein. Further, it also sought inter alia issuance of a permanent stay of execution in light of the judgment and Decree in Nyahururu Chief Magistrate Court Civil Case Number 194 of 2019.
4. The application was premised on grounds that there was an intention to effect change of advocates as judgment had been entered; the defendant (Respondent) was exposed to execution over the decretal sum that was due as from him to the plaintiff and the court had previously issued warrant of attachment; that the court in a declaratory suit ( Nyahururu Magistrate Civil Suit Number 194 of 2019 Jesse Mwaniki Wamugunda v Invesco Assurance Co. Ltd) had declared that the Company was



compelled to satisfy the decretal sum together with interest and costs of the suit which calls for an order for stay of execution to be issued against the defendant in the light of the judgment.

5. In response thereto, through the firm of Nancy Njoroge, Kairu & Co. Advocates, the Plaintiff (Appellant) Advocates opposed the application arguing that the applicant (Appellant) had deliberately declined to notify the court that parties entered an agreement on 2<sup>nd</sup> September, 2019 where he committed to defray the outstanding decretal sum and in case of default execution proceedings would issue.
6. The trial court considered the application and allowed the application hence holding that the insurance was obligated to settle the decree in CMCC No. 188 and 189 of 2018.
7. The Appellants therefore proffered an appeal against the Ruling on the grounds that the learned magistrate erred in law and fact in relying on the wrong precedents hence arriving at an erroneous decision; by disregarding the appellant's submissions and evidence on record; and, that the court erroneously arrived at the decision in the wake of a valid agreement for settlement of the decretal sum by the Appellant.
8. The appeal was disposed through written submissions that I have taken into consideration. This being a first appeal, it is the duty of this court to review the evidence adduced before the lower court and satisfy itself that the decision was well founded. In *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions...”

9. I have considered arguments of both the Appellant and Respondent. The appeal arises from an application that was brought pursuant to the provisions of Order 22 Rule 22 of the Civil Procedure Rules that provide thus:

.....The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.

- (2) Where the property or person of the judgment-debtor has been seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the results of the application.
  - (3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor the court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit....
10. This is a case where the Respondent was an insured. Following entry of judgment against him pursuant to consent on liability, a declaratory suit was filed against the insurer and a declaratory judgment obtained. Section 10 of the Insurance (Motor Vehicle Third Party Risk) Act, Cap 405 provides:  
  
Duty of insurer to satisfy judgments against persons insured.



- (1) If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in section 5(b) prescribed in respect thereof in the Schedule.
- (1A) The Cabinet Secretary may, in consultation with the Director of Medical Services and the Insurance Regulatory Authority, prescribe compensation for other categories of disablement not provided for in the Schedule. (1B) The percentage of the sum specified in section 5(b) and prescribed in the Schedule under this Act shall include but not limited to the medical expenses on the judgment or claim.
- (2) No sum shall be payable by an insurer under the foregoing provisions of this section—
- (a) in respect of any judgment, unless before or within thirty days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
  - (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
  - (c) in connection with any liability if, before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
    - (i) before the happening of the event the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or
    - (ii) after the happening of the event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or
    - (iii) either before or after the happening of the event, but within a period of twenty-eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police in writing of the failure to surrender the certificate.
11. Following the declaratory judgment that was valid, the Insurer was statutorily obligated to satisfy the decree. The declaratory judgment was stated to have been obtained in CMCC No. 195 of 2019. Circumstances under which the Insurer shall not settle the decree are provided for by Section 10(4) of the Act which provides thus:
- ... (4) No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after, the commencement of the



proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it: Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto.

- (4A) Notwithstanding any other provision under this Act or any other written law, any person who willfully presents false or inaccurate information to the insurer or any court of competent jurisdiction with the intention of benefitting under this Act through—
- (a) falsification and alteration of treatment documents and records;
  - (b) exaggeration of injuries or degree of incapacitation;
  - (c) falsification and alteration of police documents and records; (d) falsification and alteration of identification documents and records, commits an offence and upon conviction, in addition to the applicable penalty, the claim or judgment the subject matter of the false or inaccurate information shall not be payable by the insurer...
12. There having existed a legal declaratory judgment the Insured could not be expected to circumvent it by entering into an arrangement with the Decree Holder unless otherwise. The replying affidavit introduced in evidence an agreement dated 2<sup>nd</sup> September, 2019 between the Appellant and Respondent. Notably the impugned Ruling delivered on 6<sup>th</sup> August, 2021 did not address issues raised in the Replying affidavit in that regard. This means the Respondent circumvented what the court ruled.
13. However, no reasons were given why he so acted. What can be discerned from the agreement that was not disowned is that the Respondent voluntarily entered into it. Ordinarily, such a consensual agreement to settle the Decretal amount would be filed in court so as to be part of the court record.
14. The omission by the court to interrogate evidence placed before it was erroneous. This is because a Judgment Debtor can enter into a settlement with the Decree holder despite existence of a Declaratory Judgment, the basis being encouragement of parties to settle suits by the law. This therefore brings in the question whether the order of stay of execution granted was justified?
15. The Order issued by the court was a permanent stay of execution which ideally indefinitely halted the enforcement of the judgment by the Appellant. The Respondent herein was liable and even consented to that fact, which resulted into damages being awarded against him. Subsequently a Declaratory Judgment was obtained, then he proceeded to enter into a settlement arrangement with the Appellant; seeking a permanent stay of execution with the intention of deterring payment of the Decretal sum was not justified.
16. In the upshot, the appeal succeeds and is allowed; and, I order thus;
- a. The Notice of Motion by the Respondent dated 26<sup>th</sup> January, 2021 be and is hereby dismissed with costs to the Respondent in the lower court. (Appellant herein).



b. Costs of the instant appeal shall be borne by the Respondent.

17. It is so ordered

**DATED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

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**L.N. MUTENDE**

**JUDGE**

