CIC General Insurance Company Limited v Mati (Civil Appeal E708 of 2024)
[2025] KEHC 13390 (KLR) (Civ) (30 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13390 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E708 OF 2024

AC MRIMA, J

SEPTEMBER 30, 2025

BETWEEN

CIC GENERAL INSURANCE COMPANY LIMITED ..... APPELLANT

AND

NICHOLAS MWAKAVI MATI ..... RESPONDENT

(Being an appeal arising out of the judgment and decree of Hon. Muthoni Njagi (Principal Magistrate) in Nairobi [Milimani] Chief Magistrate's Court Civil Case No. E5244 of 2022 delivered on 16/05/2024)

JUDGMENT

Introduction:

1. This matter revolves around a very common subject on compensation arising from road traffic accidents. It involves a scenario where judgment was obtained by a Claimant against an insured in a primary suit.

2. When the judgment was not settled, the Claimant filed a declaratory suit against the insurer. Upon judgment being entered against the insurer in favour of the Claimant, the insurer lodged the instant appeal.

3. The appeal was vehemently opposed.

The Background:

4. The Respondent herein, Nicholas Mwakavi Mati, was the Plaintiff in Mavoko CMCC No. 377 of 2019; Nicholas Mwakavi Mati vs. Samuel Gitonga Nguo (hereinafter referred to as 'the Primary suit'). The suit was filed on 3rd June, 2019. The Respondent filed the primary suit as the one who suffered

bodily injuries out of an accident that occurred on 30th March 2019 involving motor vehicle registration number KCB 084M wherein the Respondent was a passenger [hereinafter referred to as 'the offending vehicle'] and motor vehicle registration number KCD 176H.

5. The primary suit was undefended despite proper service and by a judgment rendered on 1st September 2022 the Respondent was awarded damages amounting to Kshs. 211,291/= together with costs and interest. No appeal was preferred against the said decision. Desirous of enjoying the fruits of the judgment in the primary suit, and citing non-satisfaction thereof, the Respondent herein filed Nairobi [Milimani] Chief Magistrate's Court Civil Case No. E5244 of 2022 Nicholas Mwakavi Mati vs. CIC General Insurance Co. Limited (hereinafter referred to as 'the Declaratory suit'). This suit was against the insurer of the offending vehicle.

6. The declaratory suit was defended. Witnesses testified and, in its judgment, rendered on 16th May 2024, the trial Magistrate allowed the suit as prayed. Dissatisfied with the said decision, the Appellant herein lodged the appeal subject of this judgment.

The Appeal:

7. The Appellant filed a Memorandum of Appeal dated 14th June, 2024 where it raised four grounds of appeal in disputing the rendition by the trial Court. The grounds mainly challenged the Appellant's liability in light of the provisions of the *Insurance (Motor Vehicles Third Party Risks) Act*, Cap. 405 of the Laws of Kenya. On the directions of this Court, the appeal was heard by way of written submissions. Both parties duly complied. The submissions were comprehensive and referred to various decisions. This Court was urged to find in the respective parties' favour.

Analysis:

8. This Court has duly considered the entire record and the parties' submissions as well as the decisions referred to. The High Court, as the first appellate Court, is enjoined to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of Selle & Ano. vs. Associated Motor Boat Co. Ltd (1968) EA 123). This Court, nevertheless, appreciates the settled principle that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in Mwanasokoni -versus- Kenya Bus Service Ltd. (1982-88) 1 KAR 278 and Kiruga -versus- Kiruga & Another (1988) KLR 348).

9. The gravamen of this appeal is whether the Appellant is liable to settle the judgment in the primary suit in light of the provisions of the *Insurance (Motor Vehicles Third Party Risks) Act* (hereinafter referred to as 'the *Insurance Act*'). The Appellant does not deny issuing an insurance cover on the offending vehicle. What is in dispute is the insured. According to the Appellant, its insured was one Charles Mugambi and not the Defendant in the primary suit and as such the Appellant pleads inability to settle the primary suit for lack of a contract between itself and the Defendant in the primary suit. To that end, the Appellant produced an extract of the insurance cover during the trial in the declaratory suit. It also contended that it only learnt of the matter when it was served with the pleadings in the declaratory suit thereby positing failure to comply with the mandatory provisions of the *Insurance Act*.

10. The Respondent was of the contrary position. He posited that the Appellant was duly served with the requisite statutory notice and pleadings and that it was bound to settle the primary suit.

11. The Preamble of the *Insurance Act* has that it is an Act of Parliament to make provision against third party risks arising out of the use of motor vehicles. Section 4 thereof provides for mandatory cover

of vehicles. The Court of Appeal in Corporate Insurance Company Ltd Vs Elias Okinyi Ofire [1999] eKLR explained the nature of the mandatory cover under the *Insurance Act*, as follows: -

> The compulsory insurance cover for use of a vehicle on a road especially in regard to fare-paying passengers is required in respect of vehicles like buses and 'matatus' whose owners use it for hire or reward. But an owner of a vehicle who is not supposed to use his vehicle for carrying fare-paying passengers is not bound to insure the passengers and if he carries such passengers he does so at his own risk and in fact he commits an offence if he uses the vehicle for such purpose without relevant cover as provided for in section 4(2) of the Act.

12. Section 10 provides for the duty of an insurer to satisfy judgments against persons insured. Sub-section (1) provides as follows: -

> (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.

13. Sub-section (2) provides for instances where the insurer's liability is repudiated as follows: -

> (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;

14. Sub-section 4 further provides as follows: -

> (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.

15. As demonstrated above, whereas Section 10 of the *Insurance Act* provides for the duty of an insurer to satisfy judgments against persons insured, there exists some conditions that must be satisfied before the duty yields. The conditions have been discussed in many decisions including Roseline Violet Akinyi vs. Celestine Opiyo Wangwau (2020) eKLR and Stephen Kiarie Chege vs. Insurance Regulatory Authority & Another (2009) eKLR. They are the following four: -

    i. The subject motor vehicle was insured by the insurer.

    ii. There is a judgment in favour of the Claimant/third party.

    iii. The issuance of the statutory notice.

    iv. The Claimant was covered under the policy.

16. Going forward, this Court will consider each of above conditions separately.

Whether the subject motor vehicle was insured by the insurer:

17. This condition is settled in the affirmative. The Appellant admits issuing an insurance cover on the offending vehicle.

Whether there is a judgment in favour of the Claimant:

18. This condition is also settled in the affirmative. There is indeed a judgment in favour of the Respondent herein in the primary suit. That judgment has neither been set-aside, appealed against nor reviewed.

Whether the Respondent was covered under the policy:

19. Again, this condition is settled in the affirmative. It was discussed in the foregoing part of this decision.

Whether the statutory notice was duly issued:

20. Section 10(2)(a) requires a Claimant to issue a statutory notice to an insurer either before or within 30 days of filing of the primary suit. In this case, it is on record that the Respondent served the Statutory Notice upon the Appellant on 29th May, 2019 (See page 29 of the Record of Appeal). The primary suit was instituted on 3rd June, 2019. Further, the Appellant was served with another Notice and the pleadings in the primary suit on 4th June 2019 [See pages 30-35 of the Record of Appeal], a day after the suit was filed. Therefore, since the primary suit was filed on 3rd June 2019, then the Respondent fully complied with Section 10(2)(a) of the *Insurance Act* by both issuing the statutory notice before instituting the primary suit and by further serving the pleadings within 30 days of institution of the primary suit.

21. Closely related to the above is the argument by the Appellant that it did not insure the Defendant in the primary suit. Simply put, the Appellant contends that whereas it insured the offending vehicle, its insured was not sued and as such it was denied the opportunity to defend the primary suit. This argument, therefore, revolves around the issue of a disclaimer suit.

22. In dealing with the issue, this Court will address the rationale behind Section 10(2)(a) of the *Insurance Act*. The provision is intended to notify the insurer of intended or current proceedings in respect of a party alleged to be its insured. By issuing such notice or serving the pleadings in time, the insurer is accorded an opportunity to exercise its rights on whether to take up the matter or to lawfully so, decline and to avoid the policy. It is for that reason that in the event the insurer is not made aware accordingly, it is entitled in law to decline to satisfy any resultant judgment or sums decreed against the insured. The

requirement in Section 10(2)(a) of the *Insurance Act* is in tandem with the fair hearing prerequisites in Article 50(1) of *the Constitution*. That requirement must be weighed against the calling in Article 159(2)(d) of *the Constitution* which roots for dispensation of justice without due regard to procedural technicalities.

23. Once the requirements of Section 10(2)(a) of the *Insurance Act* are complied with, like in this matter, and the insured, for whatever reason[s] posits that it is not liable under the law, then the insured has a recourse in Section 10(4) of the *Insurance Act*. The provision accords the insured two options to avoid liability under a policy. The first option is for the insurer to file a disclaimer or declaratory suit avoiding the policy against the insured or alleged insured, as the case may be, with notice to the Claimant(s). The second option is for the insurer to rely on the provisions in the policy which expressly avoids liability. However, in the event an insurer settles for the second option, it must nevertheless ensure that the Claimants are made aware of such a position.

24. In the case at hand, the Appellant, upon service of the notices and the primary suit documents, did not take any action. It simply let the primary suit proceed and eventually judgment was entered and the declaratory suit filed. Therefore, the Appellant having been properly notified of the intended proceedings before the primary suit was filed and again after the filing of the primary suit and having neither filed a disclaimer suit nor having not entered a limited appearance in the primary suit and further coupled with the fact that the insured admits insuring the offending vehicle through another party and not the Defendant in the primary suit, then the insured is hereby estopped from contending that it was not bound to satisfy the judgment in the primary suit.

25. This Court further posits that *the Constitution* of Kenya, 2010 ushered in a transformative trajectory in the governance of the country. For instance, prior to 2010, equity was only a common law doctrine whose remedies were purely discretionary. However, the 2010 Constitution elevated equity to a constitutional principle under Article 10(2)(b). In such a scenario, even the maxims of equity were also so elevated. (See the Court of Appeal in Willy Kimutai Kitilit v Michael Kibet [2018] eKLR). In this case, the Appellant is caught up by the doctrine 'equity aids the vigilant and not the indolent'.

26. Having said as much, this Court is persuaded that the foregoing is sufficient to determine the appeal.

Disposition:

27. Deriving from the foregoing, this Court hereby makes the following final orders in this appeal: -

    a. The appeal is wholly unsuccessful. It is hereby dismissed.

    b. The Appellant shall bear the costs of this appeal.

    Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment delivered virtually and in the presence of:

Mr. Karicho, Learned Counsel for the Appellant.

Mr. Kiptanui, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.