



REPUBLIC OF KENYA



**Canon General Insurance (K) Limited v Sigei (Civil Suit E004 of 2024)
[2025] KEHC 14264 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 14264 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL SUIT E004 OF 2024
GL NZIOKA, J
SEPTEMBER 24, 2025**

BETWEEN

CANON GENERAL INSURANCE (K) LIMITED PLAINTIFF

AND

KIPKORIR ROBERT SIGEI AKA ROBERT KIPKORIR SIGEI DEFENDANT

JUDGMENT

1. By a plaint dated 11th April 2024⁹, the plaintiff sued the defendant seeking judgment against the defendant for the following orders: -
 - a. A declaration that the plaintiff is and has at all material times been entitled to avoid the policy of insurance No. 0101/07/68117/23 (TPO) apart from any provision contained therein on the ground that the said policy of insurance was obtained by: -
 - i. Non-disclosure of a material fact of facts; or
 - ii. Representations of facts which were false in material particulars; or
 - iii. Both (i) and (ii) above.
 - b. A declaration that the plaintiff is not liable to make any payment under the policy of insurance No. 0101/07/68117/23 (TPO) in respect to any claims against the defendant herein arising out of damage to any motor vehicle or bodily injuries, loss or damage sustained by any party in the accident on 15/12/2023 involving motor vehicle registration number KCM 846K including but not limited to the judgment that shall arise out of Naivasha SCCC/E106/2024 – Celestine Imali Mwanga vs Kipkorir Robert Sigei.
 - c. A declaration that the motor vehicle registration number KCM 846K was being used for uninsured purpose on 15/12/2023 and therefore the plaintiff is not liable to pay any claim arising out of the accident of even date.



- d. Costs of this suit.
2. The plaintiff case is that the defendant requested it to issue him with a third party motor vehicle policy of insurance for motor vehicle registration number KCM 846K Honda Station Wagon.
 3. That the defendant paid the insurance premium and the plaintiff issued him with a third party motor vehicle policy of insurance No. 0101/07/68117/23 (TPO) for a period of one (1) year from 18th October 2023 to 17th October 2024.
 4. That it was a term of the policy that during the policy period the plaintiff would indemnify the defendant for any sum he would become legally liable to pay inter alia in the event of an accident caused by or out of the use of vehicle in respect to death and/or bodily injury to any third party as required under section 5(b) of the Insurance (Motor Vehicle Third Party Risks) Act (hereinafter “the Act”).
 5. The plaintiff avers that on 14th December 2023, one Felix Kipkorir hired the subject vehicle from the defendant at hiring fees of Kshs. 11,000 paid via Mpesa receipt RLE563AQLJ.
 6. That on or about the 15th December 2023, while Felix Kipkorir was driving the said vehicle towards Bomet and when he reached Dry Port Area along the Maai Mahiu–Narok Road the vehicle was involved in a road traffic accident and as a result passenger in the vehicle were allegedly injured.
 7. That at the time the defendant obtained the insurance policy, he did not indicate that the vehicle would be used for any other purpose other than his own private use, that is, for social and domestic purposes.
 8. That in the circumstances, the insurance policy was obtained by non-disclosure of material acts and/or misrepresentation of facts and in particular that, the defendant after being issued with the policy used the vehicle for hire and reward which was completely contrary to and in contravention of the policy terms and conditions. The plaintiff avers that by reason of the aforesaid it is entitled under section 10(4) of the Act to avoid and does avoid the said policy of insurance.
 9. Be that as it may, the defendant was served with summons to enter appearance and/or file a defence, but failed to do so and as a result, judgement in default of appearance was entered in favour of the plaintiff on 14th July 2024.
 10. The matter was fixed for formal proof hearing. At the hearing, the plaintiff’s case was supported by the evidence of its legal officer of (PW1) Racheal Apollo, who adopted her witness statement dated on 11th April 2024 and produced the documents filed on 12th April 2024 save for item No. 5 of the plaintiff’s list of documents dated 11th April 2024.
 11. The statement reiterates the averments in the plaint. That the defendant was issued with a policy risk note that limited the use of the subject vehicle to social, domestic and pleasure purposes. That after the occurrence of the accident, the plaintiff instructed Mirox Insurance Investigators to investigate the circumstances under which the accident occurred.
 12. That at the conclusion of investigations it was established that the defendant, through his wife Nancy Kanyi Wanjiku, hired out the vehicle to Felix Kipkorir and at the time of the accident the vehicle was being used for a purpose not covered by the insurance policy. That the plaintiff wrote to the defendant and informed him that the plaintiff would not accept liability for any claim arising out of the accident and had repudiated the insurance policy.
 13. The plaintiff’s case was further supported by (PW2) Sharon Muoti, an investigator. She averred that the plaintiff instructed her to investigate the accident in relation to the subject vehicle. That during investigations, the insured informed her that his wife was using the subject vehicle and it was her who



gave it to the defendant (sic). That both the driver and the insured's wife confirmed there was payment for the subject vehicle and there was an Mpesa statement in proof of the same.

14. That according to investigations evidence, at the time of the accident the subject vehicle was being used for hire and reward. She produced an investigation report dated 16th March 2024 (Pexh 2).
15. At the close of the hearing, the plaintiff filed written submissions dated 16th December 2024, submitting that a contract of insurance is one of good faith and that the defendant had a duty to disclose everything to the plaintiff with relation to risk so as to enable the plaintiff to issue the appropriate policy of insurance. The plaintiff relied on the case of; *Co-operative Insurance Co. Ltd v David Wachira Wambugu* [2010] eKLR where the Court of Appeal stated that a contract/policy of insurance is one of *uberrimae fidei* and that an insured has a legal obligation to disclose all material circumstances and facts to the insurer of the risk it is incurring, failure of which the insurer is entitled to repudiate the policy.
16. The plaintiff reiterated the evidence adduced by its witnesses and argued that it had proved the defendant misrepresented and failed to disclose that he intended to hire out the subject vehicle and as a result influenced the plaintiff to issue a policy for domestic, social and pleasure purposes instead of one for hire and reward. That the defendant is guilty of material non-disclosure and misrepresentation and is therefore the plaintiff is entitled to repudiate the contract.
17. The plaintiff referred the court to the case(s) of *Heritage Insurance Co. Ltd v Alex N. Migore* [2009] eKLR and *Rehema Koriomat Investment Ltd v Real Insurance Co. Ltd* [2017] eKLR where the High Court held that the insured had used the motor vehicle contrary to the purpose it was specifically insured for and amounted to material non-disclosure and the insurer was not bound to indemnify the insured for the use of the vehicle and against any third party claims arising out of the resultant accident.
18. The defendant did not file any submissions.
19. At the conclusion of the case, I note that section 10 (4) of the Insurance (Motor Vehicle Third Party Risks) Act (Cap 405) Laws of Kenya states as follows: -

“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:”

20. In the case of; *In Co-operative Insurance Company Ltd v David Wachira Wambugu (Supra)* the Court of Appeal stated that: -

“The learned judge was right in saying that a contract of insurance is one of good faith. As was said in *Joel v Law Union & Crown Insurance Company (2)* [(1908) 2 K B at page 883] by Fletcher Moulton, L.J.:

“The contract of life insurance is one of *uberrimae fidei*. The insurer is entitled to be put in possession of all material information possessed by the insured. This is authoritatively laid down in the clearest language by Lord Blackburn in *Brownlee v Campbell* 5 A C 925 at page 954:



‘In policies of insurance, whether marine insurance or life insurance, there is an understanding that the contract is uberrimae fidei, that, if you know any circumstance at all that may influence the underwriter’s opinion as to the risk he is incurring, and consequently as to whether he will take it, you will state what you know. There is an obligation there to disclose what you know, and the concealment of a material circumstance known to you, whether you thought it material or not, avoids the policy.’”

The learned authors of Bullen & Leake, Precedent of Pleadings, 14th Edition, Vol. 2 states at page 908: “Contracts of insurance are contracts of the utmost good faith. This gives rise to a legal obligation upon the insured, prior to the contract being made, to disclose to the insurer all material facts and circumstances known to the insured which affect the risk being run. Lord Mansfield’s words in *Carter vs Boehm* (1766) Burr. 1905 have stood the test of time:

“Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist and to induce him to estimate the risk as if it did not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement... The policy would be equally void against the underwriter if he concealed... The governing principle is applicable to all contracts and dealings. Good faith forbids either party, by concealing what he privately knows to draw the other into a bargain from his ignorance of the fact and his believing the contrary...” [Emphasis supplied].”

21. Further, in the case of *ICEA Lion General Insurance Company Limited v Noble Merchants Shipping Limited & another* [2023] KECA 1061 (KLR) the Court of Appeal stated that: -

“68. The issue of non-disclosure of ownership, if there was such non-disclosure and insurable interest ought to be determined in light of the opinion of Lord Lloyd in *Pan Atlantic Insurance Co. Ltd v Pine Top Insurance Co. Ltd* [1993] 3 All ER 581 where it was held that:

“Whenever an Insurer seeks to avoid a contract of insurance on the ground of misrepresentation or non- disclosure, there will be two separate closely related questions

1. Did the misrepresentation or non-disclosure induce the actual Insurer to enter into contract on those terms.
2. Would the prudent Insurer have entered into the contract on the same terms if he had known of the misrepresentation or non- disclosure immediately before the contract was concluded. If both questions are answered in favour of the Insurer, he will be entitled to avoid the contract but not otherwise.”

22. In the instant the plaintiff has produced a copy of the private car insurance policy executed by the parties herein, and it is noted that under the “General exceptions” provisions, it is stated at clause 1



- (b) that the insurer would not be liable for any loss that arise as a result of use of the insured vehicle contrary to the limitation to the use clause.
23. The investigation report by Mirox Insurance Investigators revealed that at the time of the accident the vehicle was being used for car hire and not private use as per the policy terms.
 24. The defendant has not availed any evidence to rebut the plaintiff's case.
 25. It suffices to note that an insurance company can avoid liability if the policyholder provides false information (misrepresentation or fraud), fails to disclose relevant information, breaches the terms of the policy for example; using a vehicle for a purpose not covered by the policy, or if the claim falls outside the scope of the policy's coverage or is filed after the statute of limitations has expired.
 26. Consequently, the defendant having used the subject vehicle herein for the purpose outside the authorized use, it is the finding of this court that pursuant to the provisions of section 10 (4) of the Insurance (Motor Vehicle Third Party Risks) Act, the plaintiff is entitled to repudiate the contract and/or the policy herein.
 27. As a result of the aforesaid judgment is entered in favour of the plaintiff as prayed for in the plaint.
 28. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 24TH DAY OF SEPTEMBER 2025.

GRACE L NZIOKA

JUDGE

In the presence of;

Ms. Mshila for the plaintiff

N/A for the defendant

Ms. Hannah: court assistant

