



**Kyalya (Suing as the Legal Representative of the Estate of Kilaku Kyalya
- Deceased) v British American Insurance Company (Civil Appeal
E689 of 2023) [2025] KEHC 13945 (KLR) (Civ) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E689 OF 2023

LP KASSAN, J

OCTOBER 2, 2025

BETWEEN

**SAMMY KYALYA (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF KILAKU KYALYA - DECEASED) APPELLANT**

AND

BRITISH AMERICAN INSURANCE COMPANY RESPONDENT

JUDGMENT

1. This is an appeal from the decision of Honourable Musiega striking out a defence. The nature of the suit is that of a declaratory suit. The appellant in this matter had filed defence in order to eschew liability as an insurance company. I have read the proceedings and wish to note the following being the reason as to why the lower Court struck out the defence;

Service of statutory notice;

2. The Appellant has indicated that it was not served with the statutory notice and the Court said in paragraph 5 of page 4 and I quote " I find that the defendant was served and duly received the statutory notice". This finding may not be correct because it is disputed and the Court has no expertise to say with certainty that service was proper without cross examination. It appears that the Court chose to believe one party. The question that begs an answer is " what if the service was not duly done?".

Abstract

3. A mere presence of a police abstract is not full proof of ownership and that is why abstract is rebuttable. Courts do subject this document to cross examination if its contents are denied as in this case. In fact, I have seen cases of two police abstract coming from the same police station and the only avenue for



scrutinizing this document is during full trial. By denying that it did not insure the Motor vehicle, the abstract becomes a document of interest to be subjected to cross examination. If this Court was to validate challenged documents, a pandoras box would be opened for parties to attach documents with no fear of cross examination.

Errors in Policy documents

4. In the present case there is what the lower Court termed as typographic error- and this is admitted by the Respondent. Taking into account the fact that this policy is being denied by the Appellant, there is more reason for a full trial and the Court cannot believe one party that the error was typographical.

Letters without prejudice

5. These letters although may portray admission can only be admitted upon being subjected to cross examination if the Court so wishes and cannot at this juncture be treated as admission of responsibilities so as to allow parties to have privileged conversations otherwise parties will cease exchanges before matters go to Court.
6. The conclusion above is that there are issues that can only be determined in full trial and to this end the Ruling dated the 21st day of July 2023 is set aside and the matter is transferred to the lower Court for allocation to a magistrate other than Hon Musiega. Each party shall bear own costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2ND DAY OF OCTOBER 2025.

HON. L. P. KASSAN

JUDGE

In the presence of:

Kinyanjui for Appellant

Kalii for Respondent

Carol – Court Assistant

