



Nyabando & another (Administrators of the Estate of Brian Nyabando Makori (Deceased)) v CIC Insurance Limited & another (Civil Appeal E011 of 2024) [2025] KEHC 13559 (KLR) (1 October 2025) (Judgment)

Neutral citation: [2025] KEHC 13559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E011 OF 2024
SM MOHOCHI, J
OCTOBER 1, 2025**

BETWEEN

**ERICK MAINA NYABANDO 1ST APPELLANT
ANTHONY MAKORI NYAMOCHENGA 2ND APPELLANT
ADMINISTRATORS OF THE ESTATE OF BRIAN NYABANDO MAKORI
(DECEASED)**

AND

CIC INSURANCE LIMITED & ANOTHER RESPONDENT

(Being an Appeal against the Ruling of the Honourable Magistrate L. Okoth dated 25th January 2025 in the Chief Magistrate's Court Nakuru Civil Case No E242 of 2023)

JUDGMENT

Introduction

1. Before me is an interlocutory Appeal where the 1st Respondent CIC Insurance had insured a motor, vehicle belonging to the 2nd Respondent New Mega Ltd which was involved in an accident as a result of which the Deceased herein Brian Nyabando Makori died.
2. The Administrators of the Estate of the Deceased herein (Now Appellants) filed a compensation claim Nakuru CMCC No. E-914 of 2022, seeking compensation arising from the accident herein.
3. The 1st Respondent filed the avoidance suit in Nakuru CMCC No. E-242 of 2022, seeking to have a declaration that it is not liable to settle claims arising from the said accident (among them the compensation suit herein) and proceeded to obtain orders for stay of the Appellants compensation claim pending the hearing and determination of the avoidance suit.



4. The Appellants moved the lower court by way of Application dated 13th October 2023, subject of this Appeal, seeking to be enjoined in suit in Nakuru CMCC No. E-242 of 2022 as interested parties which the 1st Respondent opposed vide a Replying Affidavit and the court directed that the Application be canvassed by way of written submissions, which only the Appellants filed and the court delivered its Ruling on the 24th January 2024, dismissing the Application and the Appellants being dissatisfied with the same preferred this Appeal.
5. The Appellant has premised their Appeal on the following grounds that;
 - i. The Learned Trial Magistrate erred in law and fact, by not allowing the Appellants application to be enjoined in the lower court suit as interested parties.
 - ii. The Learned Trial magistrate erred in law and fact, by not appreciating that the Appellants herein having instituted a Road Traffic Accident Claim against the 1st Respondent's insured (2nd Respondent herein) are mandatory, necessary and proper parties in the avoidance/disclaimer suit by the 1st Respondent herein against the 2nd Respondent by virtue of Section 8.10 and 11 of CAP 405 which gives the Appellants herein a statutory right to be enjoined, participate and be heard in the avoidance/disclaimer suit.
 - iii. The Learned Trial magistrate erred in law and fact, by not exercising her discretion/powers to enjoin the Appellants herein as interested parties in the lower court suit properly, judiciously, fairly and or in tandem with the well-established principles/consideration of law in respect thereto.
6. Upon admission of the Appeal the court had directed the Appeal be canvassed and argued by way of filed written submissions

Appellants Case

7. It is the Appellants case and submission that, 7. the learned trial magistrate erred in law and fact by dismissing the Appellants aforesaid application for the following reasons among others: -
 - a. Firstly, the learned trial magistrate erred in law and fact by holding that the Appellants were got entitled to be enjoined in this avoidance suit since the question for determination in the Avoidance suit and the compensation suit were different. This is because whether or not one an interested party in a suit is not only tied, determined or confined to the issues for trial but also extends to whether or not such persons will be affected by the outcome of the suit in one way or the other. See the case of *John Harun Mwau v Simone Haysom & 2 others; Attorney General & 2 others (Interested Parties)* [2021] eKLR where the court buttressed the same and held that an interested party to a suit is either one who has a stake in the Proceedings or who will be affected by the decision of the Court and hence such a party need frame its own issues for determination in the suit but only prove that it will be affected by the decision of the court in one way or the other. As such and the Appellants herein being one of the persons who would be affected by the judgement in the avoidance suit, since their right to be compensated by the 1st Respondent herein (CIC INSURANCE) as envisaged in Section 9, 10 and 11 of CAP 405 will be taken away, they ought to have been enjoined in the avoidance suit herein.



See the case of *Egal Mohamed Osman v Inspector General of Police & 3 others* [2015] eKLR where the court held that:-

“is a cardinal rule of natural justice that no one should be condemned unheard. Natural Justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase 'audi alteram partem' literally translates into hear the parties in turn, and has been appropriately paraphrased as 'do not condemn anyone unheard. As such, a court of law has a natural, inherent and solemn duty to hear a party who will be affected by its decision in one way or the other.

- b. As such and by the trial court tying the issue of joinder of an interested party to issues for determination in the suit ONLY as opposed to also considering whether or not the Appellants would be affected by the decision/outcome therein, that constitutes mistake/misapprehension of law, disregard of relevant principles and failure to take into account relevant materials when deciding on the Joinder Application herein which entitles this honourable court to interfere with the court's decision as a matter of right. See the case of *Hellen Gathoni Mbuthia & another v Nelson Wachira Murage* [2016] eKLR
- c. Secondly, the learned trial magistrate erred in law and fact, by failing to appreciate that the Appellants herein being the Plaintiffs in the compensation suit are mandatory, necessary and proper parties in the avoidance suit herein as envisaged in Section 9, 10 and 11 of CAP 405 which gives them an automatic legal right to be enjoined, participate and be heard in avoidance suit such as this one. As such, their joinder in the avoidance suit was NOT a discretionary issue as the court erroneously held in its ruling BUT rather a matter of right/law which the court had a duty to comply with but which it didn't. See the case of *Kassam Hauliers Ltd v Takaful Insurance of Africa Limited; Juliah Wambui Ngaruiya (Interested Party)* [2022] eKLR where the court while dealing with a similar application held as follows: -

An interested party is the one who has a stake in the proceedings though he was not a party in the cause ab initio. This is in line with the definition quoted above. The party must demonstrate that it is necessary for him to be joined as a party to enable the court to settle all the questions involved in the suit. It is not sufficient for a party to state he has an interest he must convince the court that his being enjoined in the suit is crucial and will be necessary to assist the court in the determination of the questions involved in the suit. The applicant has stated the factual basis for this application which she has indicated is not in dispute and the facts are pleaded in the plaint. The pleading by the plaintiff is alleging a breach of the policy. Simply stated the plaintiff is seeking to avoid liability to pay the interested parties. It is based on a claim that the defendant was not using the motor vehicle on that particular day for the stated purpose. The plaintiff seeks a declaration that he is not bound to settle decree in Baricho RMCC Nos. 36, 37, 38, 39, 40 & 41 of 2013 or any other suit that maybe filed in future In account of suits having arisen in breach of the express provisions of the own goods master comprehensive policy No. MC 03312 887. There is no doubt that the decision of this court will affect the rights and interests of the interested party. The interested party has a stake and or protest in the case. This was well stated in the Supreme Court in *Trusted Society of Human Rights Alliance -v- Mumo Materu& Others, (Supra)*. The applicant will be affected by the



decision and has a stake in the proceedings. The interest of Justice demands he be party in the proceedings. This matter is brought under section 10 of the Insurance Motor Vehicle 3rd Party Risk) Act. The provision makes it mandatory for the Insurer to settle the Judgment(s) in respect of persons it has insured against claims by 3rd parties. Such claims are where death or bodily injuries has resulted from an accident involving the vehicles insure under the Act. Section 10(4) is mandatory that a person who has been given notice of the proceedings to repudiate liability shall be entitled if he thinks fit to be made a party thereto. It means that if such a party wishes to be enjoined in the suit, the court has no discretion, it has to allow such party to be enjoined in this suit. I am in agreement with the decision of Justice Ibrahim as he then was in the case of Gateway Insurance Co. Ltd-V-Moses Jaikaluvai, (Supra) that if the party applies to be joined in the suit the court is without discretion, it must allow him. Where a party has been given a right by a statutory provision to be enjoined in a suit, the plaintiff or the party cannot take away the right. I am in agreement with the counsel for the interested parties that the interested party has the legal basis in Section 10(4) of *Insurance Act* to be enjoined in this suit.

8. Reference is made to the case of Jubilee Insurance Company Limited v Francis Muriithi Githinji; Ann Mumbi Kabla & another (Suing as the Administrators of the Estate of Benson Ngugi deceased) (Intended interested Parties) [2021] eKLR where the court while dealing with a similar application held as follows:-

“An interested party is the one who has a stake in the proceedings...or he who is affected by the decision of the court when it is made either way. Such a person feels that his or her interest will not be well articulated unless he himself appears in the proceedings... The Intended Interested Parties posit that they are a beneficiary of the policy in question and, therefore, they do have an identifiable and proximate stake in the case. I do agree with the Intended Interested Parties in the sense that the Plaintiff/Respondents' case lies on the policy advanced to the Defendant/Respondent in which the Intended Interested Parties seek indemnity from. It is the Applicants' position that should the court grant any of the orders in the suit without their participation, the same affects them directly as the Declaratory Suit stands stayed and the decree will be good only on paper. I am of the view that the Intended Interested Parties have demonstrated to the satisfaction of this court the prejudice they stand to suffer in the event that they are not enjoined in the suit. The Intended Interested Parties have raised two pertinent issues they intend to submit on. The first issue is on the statutory timelines within which to bring a suit on avoidance of liability and the second being the fact thiet the policy in question was issued under Insurance (Motor vehicle Third Party Risk) Act Chap 405 Laws of Kenya which covers the Defendant/Respondent and any Third Party. The Applicants' further observed that this suit is undefended and the Applicants' submissions will be of great help to court since the Plaintiff/Respondent cannot submit against itself. The Applicants have satisfactorily presented an overview of their case and submissions they intend to make before this court and have shown their relevance to the suit. To buttress the Plaintiff/Respondent's view that the Applicants are estopped from litigating on the policy as between itself and the Defendant by the doctrine of privity of contract, it is worth noting that there exists an exception to this general principle. The exception was well illustrated by the High Court in David Njuguna Ngotho v Family Bank Limited & another [2018] eKLR that: "An exception to the Privity Rule suffices where the contracting clearly intended to benefit a third party from their agreement and the third party would be able to rely on and or enforce the agreement if it is not carried out properly.



"The policy in question was advanced by the contracting parties (the Plaintiff/Respondent and the Defendant/Respondent herein) with the sole intention of benefiting a Third Party (the Applicants herein and any other Third Party). The issue at hand is covered by the exception hence the issue of privity of contract does not arise. I am therefore, in agreement with the Intended Interested Parties/Applicants' submission.. In the upshot, the application is merited and is hereby allowed with costs in cause.

9. As such, it goes without saying that joinder of the Appellants in the avoidance suit is meant to able and give them a chance to protect their right of compensation by an insurance company as envisaged under CAP 405.
10. This is more so in the case herein since the 1st Respondent intends to do so unlawfully and unfairly vide the avoidance suit herein which is statutory barred and hence untenable since it was filed out of time and the ex-parte leave granted to institute the same was obtained through non-disclosure of facts as there is no provision of law which allows for extension of time to file avoidance suit and which issue can only be canvassed in the suit if the Appellants herein are made parties thereto. See the case of Corporate Insurance Co. Ltd v Reuben Murigi Mwangi [2018] eKLR where the court hold that Section 27 of Cap. 22 provides for the extension of limitation period only in actions for negligence, nuisance or breach of duty where damages are claimed in respect of personal injuries of any person to the exclusion of a declaratory suit such as this one as the same is based on contract.
11. As such, failure by trial court to appreciate that joinder of the Appellants in the avoidance suit was NOT a discretionary matter BUT rather a matter of law/legal right equally constitutes mistake/misapprehension of law, disregard of relevant principles and failure to take into account relevant materials when deciding on the Application herein which entitles this honourable court to interfere with its ruling as a matter of right as was held in the above cited case of Hellen Gathoni Mbutia & another v Nelson Wachira Murage [2016] KLR.
12. The Appellants submit that, the mere fact that the compensation suit herein was stayed pending the hearing and determination of the avoidance suit (which prompted the Appellants to institute joinder application subject of this Appeal) is evidence enough to prove that the decision in the avoidance suit would have an impact on the outcome and parties' rights in the compensation suit and hence the application for joinder herein ought to have been allowed by the trial court as matter of course.
13. The court is invited to consider the Appellants submission in the lower court where all these matters were raised and which submissions they adopt as part of these submissions and incorporate them by way of cross-reference and hence should be treated as part this submission.
14. The Appellants thus pray that, the Appeal be allowed with costs as is provided for in Section 27 of The *Civil Procedure Act*

Respondents Case

15. The 1st Respondent opposed the Appeal while the 2nd Respondent was non-committal and has not participate on Appeal.
16. The 1st Respondent submits on a solo refined issue as to whether or not the Appeal is merited? By contending the same to be unmerited for the following reasons ;



17. The grant or refusal of an application for joinder involves the exercise of discretion. However, such discretion must be exercised judicially and upon reason, rather than arbitrarily or capriciously. The term "interested party" is defined in Black's Law Dictionary, 9th Edition, at pg. 1232 as:-

“a party who has a recognizable stake (and therefore standing) in a matter the form of an altogether new issue to be introduced before the Court”.... (Emphasis added)”.
18. This position was reiterated with approval in the famous case of Kenya Medical Laboratory Technicians and Technologists Board & 6 Others v Attorney General & 4 others [2017] eKLR.
19. Drawing from the foregoing legal authorities, it is patently clear that for a party to be enjoined in a suit as an interested party, they must have an identifiable or recognizable stake in the suit and proximate enough. His admission to the suit should and must not introduce new issues apart from those stemming from the pleadings by the primary parties. They must also not seek to be admitted only to replicate what primary parties have pleaded and/or submitted.
20. In the instant appeal, the Appellants have sought to be enjoined as interested parties in a declaratory suit between the Respondents herein. The learned magistrate after careful analysis of the matter found out that the Appellants were not mandatory, necessary and/or proper parties in the suit and consequently declined to enjoin them as third parties. Being dissatisfied of the decision by the learned magistrate, the third parties have now proffered this appeal which in our humble view, we respectfully maintain the position that it is unmerited and fit for dismissal.
21. That the Appellants were and/or are not necessary parties in the proceedings. The declaratory suit was instituted by the 1st Respondent against the 2nd Respondent to be exempted from liability of any suit arising from accident that occurred on the 27th day of April 2022.
22. On the hand, the Appellants were the Plaintiff in a road traffic accident matter against the 2nd Respondent and against whom the disclaimer suit had been filed by the 1st Respondent. Literally, the Appellants have no interest/stake whether direct or otherwise on the suit between the Respondents herein.
23. The only issue for determination in the disclaimer suit is only between the insurer and the insured and to determine whether or not the insured breached fundamental terms of the insurance contract warranting repudiation by the former.
24. The Appellants are not parties and therefore not privy to the insurance contract between the Respondents herein and nothing of necessity they will be coming to present to help the Honorable Court determine the issue in controversy. There is no interest whatsoever between judgment creditor and the insurer.
25. The decree is against the insured and not the insurer and the judgment creditor can execute the same as against the former in the unlikely event the latter does not settle it. As a matter of law, courts have times without number held that suits of such nature only belong to the insured and its insurer and nothing more as they only exist to determine the sanctity of the insurance contract and as it is trite, no third party is privy to the terms of such contract and to what extent the obligation have been performed or otherwise. It would be unnecessary and a waste of judicious precious time to drag and/or allow third parties to proceedings of such nature.



26. Reliance is placed in the case of *Musyoki v Amaco Insurance Limited & another* (Civil Suit E012 of 2023) [2024] KEHC 360 (KLR) (24 January 2024) (Ruling) eKLR where the superior Court clarified this matter in the following manner,

“The primary duty of settling the decree falls squarely on the Applicant (insured). In the event the 1st Respondent as his insurer fails to satisfy the decree, the Applicant will still be called upon to satisfy the same. Nothing prevents the Applicant from settling the decretal sum and then suing the Respondent for compensation or reimbursement”

27. That, the suit against the 2nd Respondent was ill conceived. He is not privy to the contract between the applicant and the 1st Respondent, who has conveniently failed to file any response. The matter is between the applicant and its insurer. Period.”

28. That the appeal herein is unmerited and as such invite the Honorable Court to consider dismissing the same with costs to the 1st Respondent.

Analysis and Determination

29. Being a first appeal this Court lays emphasis on the principles as set out in *Selle and Another vs Associated Motor Boat Company Ltd & others* [1968] 1EA 123:

“...this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

30. I have carefully reviewed the Appellant’s memorandum of appeal filed herein, the pleadings and proceedings from the lower court as well as the submissions by the parties in support of their respective positions. I note that, the only issue for determination in this appeal is whether the trial court was in err to disallow the motion to enjoin the Appellant as an interested Party.

31. In the case of *Francis Kariuki Muruatetu & another v Republic & 5 others* Petition No. 15 as consolidated with No 16 of 2013 [2016] eKLR, the Supreme Court set out guidance on the requirements for successful application for joinder as an Interested Party. In it the Court gave three principles to be followed. At paragraph 37 the Court stated that the Applicant(s) must show:(

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the Intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.



32. This court has keenly scrutinized the Appellants argument of sufficiency of legal interest as a construct emanating from that;
- “ that the Appellants (interested parties) are the Plaintiffs in the Running-Down action which arose as a result of the accident subject of this case, that the said suit has since been stayed pending the hearing and determination of primary suit on Appeal since the decision in the primary suit will have a direct impact/consequence/effect on the Appellants suit. As such the fact that the primary suit has been stayed awaiting outcome of this suit on Appeal is the clearest indication that the Appellants have a sufficient legal interest to warrant them being enjoined in declaratory suit as they will be affected by the Decision of the court in that matter.
33. The test and standard for admissibility of a party as an interested party includes that the stake or interest must be clearly identifiable and not for conjecture. What I hear from the Appellants is that they sued the 2nd Respondent for an accident of which the 1st Respondent has sued the 2nd respondent for a declaration that it was not the insurer when the accident involving the Appellants occurred. To this court it matters no whether the 2nd Respondent was insured or not. The Appellants can prosecute their case and if successful pursue the execution directly from the 2nd Respondent if at the material time his company was uninsured.
34. The joinder of an interested party seeks to ensure that a matter is completely settled in this instance the contestations between the 1st and 2nd Respondent shall revolve around the contract for policy provision and whether at the time of the accident the motor vehicle in question was uninsured? The role of the Appellants in this suit is limited in that they were not privy to the contract, the fact that the motor vehicle involved in an accident might have not been insured does not take away the rights of the Appellant.
35. I do conform to the school of thought that, no adverse orders should be issued affecting non-parties to the proceedings. In this instance the 1st Respondent insurer sued its insured the 2nd Respondent after which an application seeking to stay other matters would be made either upon consent or without contest as has been happening herein.
36. The Blanket Stay of proceedings Orders dated 15th February 2023 issued by Hon Orege in the Chief Magistrate's Court Nakuru Misc. Application No. 311 Of 2022 was unfair prejudicial to the Appellants and many other similar litigants.
37. The Suit filed pursuant to the Orders dated 15th February 2023 has now given rise to this Appeal in that the Parties (Appellants) affected by the stay of proceedings Orders are effectively locked-out of the declaratory suit filed a contradiction in that when leave to institute the proceedings was sought the court proceeded to stay the proceedings without hearing all parties concerned thereby stalling all cases pending before other magistrates.
38. I find no fault on the part of the Trial Magistrate as the basis to disturb the ruling from the trial court and the Appeal is found to be without merit and accordingly dismissed with costs.
39. Having found in favor of the Respondent and in furtherance of rendering substantive justice, this court hereby reviews and sets -aside and vacates the Orders made by Hon Orange on the 15th February 2023.
40. For avoidance of doubt the Stay of Proceedings Orders issued in in Civil Suit Nakuru CMCC No. E811 of 2022, Nakuru CMCC No. E812 of 2022 and/or any other suit arising from the road traffic



accident that occurred on 27th April, 2022 Involving motor vehicle registration number KBZ 709 Z/ZE 7851 is hereby vacated and set-aside.

41. The 1st and 2nd Respondent may continue with their litigation revolving on their contractual relationship, the Appellants may as well proceed with their case that has no role for the 1st Respondents.

It is So Ordered

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 1ST DAY OF OCTOBER 2025.

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MOHOCHI S. M.

JUDGE

