



**Mtemi Nasaba Limited v Gwada (Civil Case E004 of 2025)
[2025] SCC 5 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] SCC 5 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
CIVIL CASE E004 OF 2025
FM MULAMA, RM
MAY 16, 2025**

BETWEEN

MTEMI NASABA LIMITED CLAIMANT

AND

PATRICK OMONDI GWADA RESPONDENT

RULING

A. Background.

1. The application dated 3/4/2025 prays for the following orders;
 - a. That this honourable court be pleased to order referral of this matter for settlement as per the knock for knock agreement entered into by the respective insurance companies for the parties herein as the matter has been brought under the doctrine of subrogation.
 - b. That costs of the application be provided for.
2. The application is brought under the provisions on the face of the application and based on the 12 grounds on the face of the application and supported with the affidavit of Samson Kibugi Muiruri sworn on 3rd April 2025 and the 1 annexure thereto.
3. The application is opposed vide a replying affidavit of Charity Njuguna sworn on 16th April 2025.
4. The summary of the grounds in support of the application is that the cause of action arose from an accident that occurred on 1/12/2024 along the Nairobi-Mombasa highway and involved motor vehicle registration numbers KBH 852U and KCA 289N all insured by Mayfair insurance and CIC General Insurance Co.Ltd respectively and in a bid to cut down on expenses that ordinarily arise out of such accidents, the 2 insurance companies entered into an agreement known as Knock For Knock agreement.



5. It was averred that the said agreement took effect on 1/5/2007 (herein after referred to as 2007 agreement) and as such both insurance companies are bound by the provisions of the said agreement and the relevant provisions of the said agreement were enumerated under ground (f) to the application and that the claim should be referred to out of court pursuant to the terms of the said agreement.
6. The application is vehemently opposed by the replying affidavit of Charity Njuguna a legal officer of Mayfair Insurance Company sworn on 16th April 2025.
7. It is her averment that the applicant is misleading the court by attaching a knock for knock agreement entered into in 2007 that has since been superseded by an amended Knock for Knock agreement made in 2023(hereinafter referred to as 2023 agreement) and which now is in force and governs the relationship between the participating parties. She annexed the said agreement as CN-1.
8. She further averred that crucially Mayfair insurance Company Limited is not a signatory to the 2023 agreement and as such not bound by any of the terms contained therein including but not limited to the provision that each insurer shall bear the costs of loss or damage to its own policy holder's vehicle irrespective of fault.
9. Parties have filed submissions and authorities which I have duly considered in this ruling.

B. Issues for Determination.

10. The following issues commend themselves for determination by this court.
 - a. Whether the parties are bound by the agreement made in the year 2007 and 2023
 - b. Whether costs should be awarded and to who.

C. Analysis and Determination.

a. Whether the parties are bound by the agreement made in the year 2007 and 2023.

11. I have had occasion to peruse the 2 agreements filed by the respective party and each party seeks to wholly rely on the one it has filed while discrediting the other filed by the opposing party.
12. The agreements as filed largely contain the same clauses and the only point of departure is the schedule of participating member companies. To this end, the 2023 agreement does not have the schedule whereas the 2007 one has the schedule.
13. It is the claimant's submission that the 2023 agreement in its possession does not have the schedule because any insurance intending to be bound by the agreement obtains a copy of the schedule and appends its signature and the mere fact that Mayfair does not have the schedule speaks to its unwillingness to be bound by it. This court has been referred to several authorities that speak to the doctrine of privity of contract.
14. What is however clear to my mind is that none of the parties deny existence of both agreements the only point of departure is the schedule of participating insurance companies. This therefore means that indeed the 2023 one is the latest one and the one that is in operation and I thus agree with the claimant that the 2007 has been superseded by the 2023 and that the 2023 one is the one in operation.
15. A perusal of both SKM-OO1 and CN-1 would suggest to me that the said agreements are revised after a period of time. I say so because CN-1 has a circular dated 6/12/2023 communicating to members of the review of the agreement whereas on the other hand SKM-1 has a circular dated 27/9/2021 which talks of yet another revised agreement. It is therefore dishonesty on the part of the applicant to misled the



court that the 2007 agreement is in operation when the circular annexed by himself dated 27/9/2021 indicates that the agreement is revised. It is not clear which one particular one has been revised but by necessary implication it means any agreement made prior to the date of the circular.

16. It is therefore my finding and I so hold that based on the foregoing, there is material to suggest that the 2007 agreement was revised and as such the agreement in operation in so far as those filed are concerned, it is the 2023 agreement that is in operation.
17. It therefore follows that neither of the parties hitherto is bound by the agreement of 2007 having been superseded by the 2023 one.
18. Having found that the 2023 is the one in operation, it is also common ground that the 2023 one as filed has no schedule of participating insurance company and as such it is difficult for this court to ascertain which parties or companies bound themselves with the terms of the agreement.
19. The applicant has rubbished the 2023 agreement for the same reason that it doesn't have the schedule and finds this as mischievous. On the other hand, the claimant submits that only those who intend to be bound by the said agreements are to pick the schedule and append their signatures and by virtue of them not intending to be bound by the agreement they opted not to pick and sign the schedule.
20. The submission by the claimant seems to suggest that the document is usually shared with the respective Chief Executive Officers of each companies with a request that the schedule be signed, stamped and returned to the secretariat for safe custody. This therefore implies that if a CEO of company X does not sign and stamp the schedule and therefore retains it, cannot be bound by the terms of the agreement as he is not a party to it as one becomes a party to it by signing the schedule.
21. With all that I have said it is clear that the claim by the applicant lies or is to be supported by the 2023 agreement but since the said agreement has no indication as to who are the parties signing it then it cannot be said or imagined that the 2 insurance companies are bound by it. In the circumstances there is no basis upon which this court can grant the orders as sought in the application and the same is destined for dismissal which I hereby dismiss.

b. Whether costs should be awarded and to who.

22. The basic rule on attribution of costs is that costs follow the event. It is also well recognized that the principle costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case(application).
23. The claimant opposed the application and being the successful party in the circumstances, he is awarded costs of the application. The same to be in the cause in any event.

D. Conclusion and Disposition.

24. The application dated 3/4 /25 is not merited and it is hereby dismissed with costs to the claimant.
25. The costs shall be in the cause.
26. Orders accordingly.

DATED, DELIVERED AND SIGNED AT VOI LAW COURTS THIS 16TH DAY OF MAY 2025.

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:



Court Assistant:- Shariffa Abdalla.

Ms. Muyuka H/B for Mutegi for /Respondent/Applicant.

Ms Wangui for the Claimant/Respondent.

