



**Mwangi v UAP Old Mutual Insurance Company Limited (Civil Case E174 of 2021) [2025] KEMC 185 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEMC 185 (KLR)

**REPUBLIC OF KENYA  
IN THE MAKINDU LAW COURTS  
CIVIL CASE E174 OF 2021  
YA SHIKANDA, SPM  
JULY 29, 2025**

**BETWEEN**

**ANTHONY WAMBUGU MWANGI ..... PLAINTIFF**

**AND**

**UAP OLD MUTUAL INSURANCE COMPANY LIMITED ..... DEFENDANT**

**JUDGMENT**

1. Justice delayed is justice denied" is a legal maxim meaning that if legal redress is available for a party that has suffered some injury, but is not forthcoming in a timely fashion, it is effectively the same as having no redress at all. This principle is the basis for the right to a speedy trial and similar rights which are meant to expedite the legal system, because it is unfair for the injured party to have to sustain the injury with little hope for resolution. The phrase has become a rallying cry for legal reformers who view courts or governments as acting too slowly in resolving legal issues either because the existing system is too complex or overburdened, or because the issue or party in question lacks political favour. The late Martin Luther King, Jr. used the phrase in the form "justice too long delayed is justice denied" in his "Letter from Birmingham Jail", smuggled out of jail in 1963. As Chief Justice of the United States, Warren E. Burger noted in an address to the American Bar Association in 1970 thus:

"A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law (in the larger sense) cannot fulfil its primary function to protect them and their families in their homes, at their work, and on the public streets."



## **The Claim**

2. Anthony Wambugu Mwangi (hereinafter referred to as the plaintiff) has been in the corridors of justice since 2018 in a bid to touch its pure fountain. This suit is premised on a road traffic accident that is said to have occurred on 17<sup>th</sup> February, 2016 at Kyulu area along Nairobi-Mombasa road. The accident involved motor vehicle registration number KCB 761T. The plaintiff averred that the defendant was the Insurer of motor vehicle registration number KCB 761T under policy number P/020/070/1/001210/2016 at the time of the accident. The plaintiff further averred that in order to be compensated, he instituted a suit against the defendant's insured vide Makindi PMCC No. 326 of 2018- Anthony Wambugu Mwangi v Sahar Spares Ltd & 5 others (hereinafter referred to as the primary suit).
3. That the suit was heard and judgment was entered for the plaintiff on 27/4/2020 in the sum of Ksh. 6,096,520/= plus costs and interest. The plaintiff averred that the defendant refused to pay Ksh. 3,550,145/= being 50% liability for the driver of motor vehicle registration number KCB 761T. Despite having obtained judgement in the primary suit, the plaintiff herein is yet to enjoy the fruits of successful litigation. In his quest for justice, the plaintiff filed the instant declaratory suit on 29/7/2021 against the defendant in which he seeks the court to declare the defendant liable and compel it to satisfy the decree in the primary suit. Consequently, the plaintiff prays for judgment against the defendant for:
  - a. A declaration that the defendant is liable and do settle 50% of the decretal amount owing in Makindu PMCC No. 326 of 2018, forthwith;
  - b. Costs of this suit;
  - c. Interest on the above at court rates from 20/5/2021 when the decree was drawn until payment in full;
  - d. Any other relief.

## **The Defence**

4. The defendant entered appearance on 21/8/201 and filed a statement of defence on 1/9/2021 in which it denied the plaintiff's claim in toto. The defendant denied that it was the insurer of motor vehicle registration number KCB 761T under the alleged policy and denied the occurrence of the accident. The defendant further denied knowledge of the primary suit and averred that it was not served with the notice of institution of the suit nor the pleadings therein. That the plaintiff did not issue the defendants in the primary suit with a notice of entry of judgment as required by law. The defendant contended that the suit was fatally defective and prayed that the same be dismissed with costs.

## **The Evidence**

### **The Plaintiff's Case**

5. At the hearing of the suit, the only the plaintiff testified in support of his case. The plaintiff adopted his statement filed in court as part of his testimony. The plaintiff testified that he was a passenger in motor vehicle registration number KCB 761T when the same was involved in a road accident on 17/2/2016 along Nairobi-Mombasa road. That he filed the primary suit seeking compensation and served the defendant herein with a statutory notice. It was the plaintiff's evidence that the primary suit was fully heard and judgment was delivered in his favour on 27/4/2020. That the plaintiff issued notice of the judgment to the defendant herein but the defendant failed to settle 50% of the decretal amount being 3,550,145/=. The plaintiff contended that the defendant was the insurer of motor



vehicle registration number KCB 761T as at the time of the accident. The plaintiff urged the court to compel the defendant to pay to him Ksh. 3,550,145/= plus interest as well as costs of the suit. The plaintiff produced documents in support of his claim.

### **The Defence Case.**

6. The defendant did not call any witness in its defence.

### **Main Issues For Determination**

7. In my view, the main issues for determination are:
  1. Whether the defendant was the insurer of motor vehicle registration number KCB 761T vide policy number P/020/070/1/001210/2016 at the time of accident;
  2. Whether the defendant is bound to satisfy the decree in Makindu PMCC No. 326 of 2018;
  3. Who should bear the costs of this suit?

### **The Plaintiff's Submissions**

8. In his written submissions, the plaintiff relied on the evidence on record and submitted that the defendant did not call any evidence to controvert that of the plaintiff. That the defendant did not obtain a declaration indicating that they were entitled to avoid the policy. The plaintiff urged the court to compel the defendant to pay Ksh. 3,550,145/= or the maximum Ksh. 3,000,000/= plus costs of the suit. The plaintiff relied on the authority of *Blueshield Insurance Co. Ltd v Raymond Buuri M'Rimberia* [1998] eKLR.

### **The Defendant's Submissions**

9. The defendant relied on section 5 of the Insurance (Motor Vehicle Third Party Risks) Act and submitted that for an insurer to be liable to compensate for damages incurred by their insured there must be privity of contract between it and the alleged insured. That it was therefore prudent for the Plaintiff to show who was the Defendant's alleged insured for it to be liable to satisfy the judgment sum delivered in the primary suit MAKINDU PMCC NO. 326 OF 2018. The defendant further submitted that the Plaintiff's failure to call the police officer who recorded the details appearing in the police abstract for cross-examination meant the evidence was unsubstantiated.
10. That the copy of the police abstract before court is not certified by the police station which generated it and the number that appears therein P/020/070/1/001210/2016 cannot be corroborated by any other evidence. The defendant argued that in the circumstances, it cannot be liable to pay the decree in the primary suit. The defendant further argued that the plaintiff in the primary suit did not serve the pleadings and notice of entry of judgment to the defendant as well as the statutory notice. That the defendant has no obligation to settle the decretal sum in the said suit as they are not aware of its existence and not allowed to defend their interests. The defendant relied on the authority of *Madison Insurance Company Limited v Augustine Kamanda Gitau* [2020] eKLR and urged the court to dismiss the plaintiff's suit with costs.



## Analysis And Determination

11. I have carefully considered the evidence on record and given due regard to the parties' submissions. I have also directed my mind to the applicable law. Section 10(1) of the Insurance (Motor vehicle Third Party Risks) Act Cap. 405 Laws of Kenya provides that:

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.”

12. Ordinarily, under section 10 (2) of the same Act, the Insurer can only be exempted from liability arising out of a policy if:
- a. in respect of any judgment, the insurer had no notice of the proceedings in which the judgment was given. Such notice ought to be given either before or within 30 days after the commencement of the proceedings giving rise to the judgment;
  - b. in respect of any judgment, execution therein is stayed pending an appeal; or
  - c. in connection with any liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
    - (i) before the happening of the event the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or
    - (ii) after the happening of the event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or
    - (iii) either before or after the happening of the event, but within a period of twenty-eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police (now Inspector General of Police) in writing of the failure to surrender the certificate.
13. Section 10(3A) of the Act provides that no judgment or claim shall be payable by an insurer unless the claimant had, before determination of liability at the request of the insurer, subjected themselves to medical examination by a certified medical practitioner.
14. Section 10 (4) of the same Cap 405 provides 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:

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”.

18. The legal burden of proof is consciously or unconsciously the acid test applied when coming to a decision in any particular case. This fact was succinctly put forth by Rajah JA of the Court of Appeal of Singapore in the case of *Britestone Pte Ltd v Smith & Associates Far East Ltd* [2007] 4 SLR (R) 855 at 59 when he observed as follows:

The court’s decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed upon him ”.

19. With respect, I agree. Section 107 (1) of the *Evidence Act* provides as follows:

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist ”.

Sub-section (2) thereof provides that:

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person ”.

20. Section 108 of the *Evidence Act* provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

21. Sections 107, 108 and 109 of the *Evidence Act* which place the burden of proving a fact on the party who asserts the existence of any fact in issue or relevant fact as the case may be, concern the legal rather than the evidential burden of proof. The evidential burden, whilst not expressly provided for in the *Evidence Act*, exists in the form of a tactical onus to contradict, weaken or explain away the evidence that has been led by the adverse party. The evidential burden may shift from one party to the other. In ordinary civil cases, the standard of proof is usually on a balance of probabilities. That is the standard upon which the plaintiff herein is required to prove her case against the defendant. In the case of *Kirugi & Another v Kabiya & 3 Others* [1987] KLR 347, the Court of Appeal held as thus:

The burden was always on the plaintiff to prove his case on the balance of probabilities even if the case was heard on formal proof.”

22. The plaintiff alleges that the accident motor vehicle was insured by the defendant. He relies on the information contained in the police abstract which indicates that the defendant was the insurer of motor vehicle registration number KCB 761T vide policy number P/020/070/1/001210/2016. No certificate of Insurance or other documentary evidence was adduced to show that the defendant was the insurer of the motor vehicle in issue. A police abstract is an extract of police records in respect of



an accident. It contains information that came to the knowledge of the police in the course of their investigations into an accident. It therefore follows that according to the police records, the defendant was the insurer of motor vehicle registration number KCB 761T at the time of accident. It is expected that the police conducted investigations and found that the defendant was the insurer of the accident motor vehicle at the material time.

23. In the case of *Joel Muga Opija v East African Sea Food Limited* [2013] eKLR, the Court of Appeal was faced with the question of whether a police abstract is sufficient to prove ownership of a motor vehicle in the absence of a search certificate from the Registrar of motor vehicles and where there is no contrary evidence. The learned judges of Appeal held as follows:

We have anxiously considered this aspect of the appeal as it is a legal matter as to what constitutes evidence that would establish ownership of a motor vehicle involved in an accident particularly in a situation such as obtained in this appeal before us..... In any case in our view an exhibit is evidence and in this case, the appellant's evidence that the Police recorded the respondent as the owner of the vehicle and Ouma's evidence that he saw the vehicle with words to the effect that the owner was East African Sea Food were not seriously rebutted by the respondent who in the end never offered any evidence to challenge or even to counter that evidence. We think, with respect, that the learned Judge in failing to consider in depth the legal position in respect of what is required to prove ownership, erred on point of law on that aspect. We agree that the best way to prove ownership would be to produce to the court a document from the Registrar of Motor vehicles showing who the registered owner is, but when the abstract is not challenged and is produced in court without any objection, its contents cannot be later denied."

24. The above case involved proof of ownership of a motor vehicle but in my view, the same reasoning would apply by way of analogy in the circumstances of this case. When the police abstract was produced in evidence, its contents became evidence. The contents of the police abstract were prima facie evidence that the defendant was the insurer of the accident motor vehicle at the time of accident. The defendant did not adduce any evidence to controvert the contents of the police abstract. The evidence thus remained unchallenged. Whereas it would have been desirable for the plaintiff to produce a copy of the certificate of insurance, it should be borne in mind that the plaintiff was not the owner of the accident motor vehicle and is thus not expected to have in his possession the certificate of insurance or the Policy of insurance. Section 112 of the *Evidence Act* provides that:

In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him."

25. Whether or not the defendant was the insurer of motor vehicle registration number KCB 761T is a fact within the knowledge of the defendant. In the face of prima facie evidence, the defendant had the duty to disprove the plaintiff's evidence. It did not do so. The defendant cannot purport to rely on the mere denial in its statement of defence. Pleadings remain mere allegations unless and until they are supported by evidence. It is thus my finding that the plaintiff has proven on a balance of probabilities that the defendant was the insurer of motor vehicle registration number KCB 761T at the time of the accident
26. Is the defendant duty bound to settle the claim in the primary suit? To resolve this issue, the following questions are germane:
- a. Was the judgment in the primary suit obtained against the defendant's insured?
  - b. Do the facts of the case entitle the defendant to the exemptions stipulated under the Act?



27. The wording of section 10(1) of Cap. 405 is that the judgment must have been "obtained against any person insured by the policy." This would imply that judgment ought to have been obtained against the insured. The plaintiff produced in evidence a copy of the plaint in the primary suit. The plaintiff produced a copy of the decree in the primary suit. The decree is sufficient evidence of existence of the primary suit and the judgment therein. There is no contrary evidence to show that the persons sued in the primary suit were not the defendant's insured in light of the fact that there is evidence to show that the defendant insured the accident motor vehicle. I am satisfied that the plaintiff obtained judgment against the defendant's insured. The defendant has not shown that it is entitled to any exemptions under the law.
28. The evidence on record indicates that the defendant was given notice of intention to sue and served on 18/9/2018 before the primary suit was instituted. The plaintiff also produced evidence to show that the defendant was served with a notice of entry of judgment on 13/7/2020. The defendant cannot therefore claim that it had no notice of the proceedings in the primary suit.

### **Disposition**

29. In view of the foregoing, I find that the plaintiff has proven his case against the defendant on a balance of probabilities. Consequently, the orders which commend themselves to me and which I hereby make are as follows:
- a. Judgment is hereby entered in favour of the plaintiff as against the defendant;
  - b. A declaration is hereby issued that the defendant is bound to satisfy the judgment or half of the decretal sum in Makindu PMCC No. 326 of 2018;
  - c. The defendant is adjudged to pay the plaintiff the decretal sum of Ksh. 3,550,145/=. However, pursuant to section 5(b) (iv) of the Insurance (Motor Vehicle Third Party Risks) Act, the defendant shall pay the maximum sum of Ksh. 3,000,000/= to the plaintiff;
  - d. The defendant shall also pay accrued interest on the decretal sum at court rates from 20/5/2021 when interest was last awarded until payment in full;
  - e. The plaintiff is awarded costs of this suit.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 29<sup>TH</sup> DAY OF JULY, 2025.**

**Y.A SHIKANDA**

**SENIOR PRINCIPAL MAGISTRATE.**

