



**Kimundo v CIC General Insurance Ltd (Civil Suit 3255 of 2018)
[2023] KEMC 71 (KLR) (15 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 71 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 3255 OF 2018
JP ADUKE, SRM
MARCH 15, 2023**

BETWEEN

BENSON MBUGUA KIMUNDO PLAINTIFF

AND

CIC GENERAL INSURANCE LTD DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendant seeking recovery of Kshs 442,440 repair costs on the ground of breach of contract of a policy of insurance. In the plaint on record, the plaintiff avers it entered into an agreement in the nature of a comprehensive insurance policy cover for motor vehicle registration number KBU 154V Toyota Corolla Nze.
2. Further, that following the said agreement, the defendant was to absorb any liability arising out of any road accidents. The Plaintiff's car got involved in a road accident on 4th April 2015 and the Defendant declined the claim on account of limitation of use of the vehicle.
3. The Plaintiff blames the Defendant for breach of contract. The Plaintiff further avers that the said loss of Kshs 442,440/- was solely caused by the breach of contract by the Defendant and seeks to recover the said amounts.
4. The particulars of breach are captured in para 11 and 12 of the Plaint. The Plaintiff prays for Kshs 442,440/-, costs of the suit and interest at court rates.
5. Return of Service on Record shows that the defendant was served with the suit papers. The Defendant entered appearance and filed a defence within the stipulated period. At the hearing thereof, each party called witnesses who testified on oath. Thereafter, parties exchanged written submissions.
6. The issue for determination before this court is one:
 1. Whether or not a contract existed and if the same was breached and therefore enforceable.



7. Section 3 of the Law of Contract Act, Cap 23 Laws of Kenya provides that:
1. No suit shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person unless the agreement upon which such suit is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.
 2. No suit shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods, unless such representation or assurance is made in writing, signed by the party to be charged therewith.....
8. I have perused the documents annexed to the plaint on record and the Defence on record, and note the following: the policy document before me limits the use of the insured motor vehicle to social, personal or business engagements. The investigation report exhibit relied on by the defence outlines at paragraph 6 that at the time of the accident, the driver of the plaintiff's car was at a social function (at the in-laws home during his dowry paying ceremony). This is an open and shut case. A dowry payment ceremony is a social function. The driver at the moment of the accident was driving the car with the authority of the plaintiff. In the circumstances, it is my considered view that a claim for breach of contract founded on the policy document 17th April 2014 before me has merit in light of section 3(1) and (2) of the Law of Contract Act.
9. I have considered the Plaintiff's submissions in entirety, and all the pleadings on record. In view of the above reasons, I find the suit merited and the policy document in question/ contract enforceable.
10. For the avoidance of doubt, I allow the Plaint on the following terms:
1. Prayers a and b on the face of the plaint allowed as worded subject to production of original receipts of amounts spent by the Plaintiff on account of repair.
 2. Prayer c on the face of Plaint allowed subject to production of original receipts by the Plaintiff.
 3. I see no justifiable reason to award any damages for breach of contract in this instance. Nonetheless, and for good order, I award Kshs 10,000/- as nominal damages under this head.
 4. The Plaintiff shall have the costs of this suit and interest on costs from the date of judgement until settlement in full. File closed.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DATED THIS 15TH MARCH 2023 IN THE ABSENCE OF THE PARTIES AT 15.03PM.

In the presence of :

1. Court Assistant: Benjamin Kombe.

2 Counsel for the Plaintiff-

(Name, Signature, Date)



3. For the Defence:

(Name, Signature, Date)

