



Britam General Insurance Co Ltd v Agnes & Kiriko (Suing as the administrators of the Estate of Margaret W. Karanja - Deceased) & another (Civil Appeal E223 of 2023) [2025] KEHC 14809 (KLR) (3 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E223 OF 2023
JRA WANANDA, J
OCTOBER 3, 2025**

BETWEEN

BRITAM GENERAL INSURANCE CO LTD APPELLANT

AND

CHRISTINE AGNES & PETER KIRIKO (SUING AS THE ADMINISTRATORS OF THE ESTATE OF MARGARET W. KARANJA - DECEASED) 1ST RESPONDENT

JOHN MUIA 2ND RESPONDENT

(Appeal from the Judgment dated 17/10/2023 delivered in Eldoret Chief Magistrate's Court Civil Case No. 327 of 2019 by Hon. P.N. Areri – Senior Principal Magistrate)

JUDGMENT

1. This Appeal arises from the Judgment entered in an insurance declaratory suit filed in the lower Court by way of the suit referred to above. In the suit, the Appellant was the Defendant, while the 1st Respondent was the Plaintiff, and the 2nd Respondent was the 3rd Party joined to the suit by the Defendant. The Court entered Judgment reflected in the Decree as follows:
 - i. That a declaration is hereby issued that the Defendant is bound to satisfy the decree and costs in Molo PMCC No. 125 of 2015 with interest thereon at Court rates from the date of Judgment.
 - ii. That a declaration be and is hereby issued that the 3rd Party is bound to indemnify the Defendant in full all the damages payable to the Plaintiff occasioned by the 3rd Party's fraudulent use of the cancelled certificate of insurance.
2. The background of the matter is that by the Plaint dated 16/04/2019 filed through Messrs Mwinamo Lugonzo & Co. Advocates, the Appellant pleaded that on 3/06/2014, the deceased was travelling as



a passenger in the motor vehicle registration number KBG 164L when the Defendant's insured or his driver negligently drove the said motor vehicle that he caused it to be involved in an accident pursuant whereof the deceased sustained fatal injuries from which she succumbed. It was pleaded further that the vehicle was insured by Real Insurance Company Limited under the Insurance Policy E.L.D.MP 4110 covering such persons or class of persons as specified in the insurance Policy in respect of injury or damage caused or arising out of use of the vehicle, and the accident is a liability covered by the Policy within the meaning of Section 5(b) of Cap. 405 of the Laws of Kenya. It was contended that Real Insurance Company later merged with the Britam General Insurance Company Limited, (the Appellant) and which then took up the liabilities of Real Insurance Co. Ltd.

3. It was also pleaded that on 13/05/2015, the 1st Respondent sued the 2nd Respondent (Joseph Muia) being the Appellant's insured in Molo CMCC No. 135 of 2015, upon which Judgment was entered in favour of the 1st Respondent, for general damages at Kshs 5,330,700/-, and costs assessed at Kshs 334,192/-. It was contended that the Judgment was in respect to liability covered by the Policy under Section 5(b) of the said Act, which the Appellant is bound to satisfy at the aggregate sum of Kshs 6,982,417/- plus interest. The 1st Respondent thus prayed for a declaration to that effect.
4. The Appellant, through Messrs Murimi, Ndumia, Mbago & Muchela Advocates, filed the Statement of Defence dated 3/05/2019 wherein the Appellant's claim was denied and any knowledge thereof denied. It was however also pleaded, in the alternative, that the vehicle was insured by the Appellant during the period 6/06/2013 to 5/06/2014 but was involved in an accident on 25/01/2014, and due to damage incurred as a result of the accident, was declared a total loss and the insured was paid the full value thereof, upon which the insurance cover was thus cancelled. It was further pleaded that the insured retained the salvage of the vehicle but thereafter still used the same insurance certificate, which was unlawful. It was therefore contended that by the date of the accident referred to in the Complaint, the vehicle was not under the Appellant's cover and that the suit is therefore premised on the fraudulent actions of the insured (2nd Respondent), whom the Appellant then indicated the intention to join in the suit as 3rd Party. The Appellant thus denied that it was statutorily bound to satisfy the 1st Respondent's claim as alleged in the Complaint. Further, the Appellant averred that, in any event, no statutory notice was served upon it within the requisite time hence the declaratory suit could not be sustained.
5. From the typed proceedings, I gather that the 3rd Party filed a Statement of Defence. No copy of the Statement is however included in the Record of Appeal.
6. The matter then proceeded for hearing wherein the 1st Respondent (as the Plaintiff) called 2 witnesses, while the Appellant (as the Defendant) called 1 witness. The 2nd Respondent, as 3rd Party, also testified on his own behalf. Thereafter, as aforesaid, the trial Court delivered its decision on 17/10/2023 entering Judgment in favour of the 1st Respondent against the Appellant as already particularized above.
7. Aggrieved by the decision, the Appellant preferred this Appeal. By the Memorandum of Appeal dated 3/11/2023, 7 grounds of Appeal were preferred, quoted verbatim as follows:
 - i. That the Learned trial Magistrate erred in law and in fact in rendering a self-contradictory Judgment.
 - ii. That the Learned trial Magistrate erred in law and in fact in condemning the Appellant to bear statutory liability deriving a non-existent insurance cover, the Court having found that the use of the cover by the 3rd Party/2nd Respondent was fraudulent.
 - iii. That the Learned trial Magistrate erred in law and in fact in finding the Appellant statutorily liable on the basis of a fraudulent use of the policy cover.



- iv. That the Learned trial Magistrate erred in law and in fact in finding the Appellant liable in statute without proof of an existing decree and thus the ineffectual Judgment.
 - v. That the Learned trial Magistrate erred in law and in fact in rendering a judgment that was not self-executing premised on a non-existent Decree.
 - vi. That the Learned trial Magistrate erred in law in finding the Appellant liable in statute to an undefined existent (sic) thus the likelihood of judgment self-contradicting the same Section 10 Cap. 405 of the Laws of Kenya that the Court cited in finding the Defendant liable.
 - vii. That the Learned trial Magistrate erred in law and fact in failing to critically consider and analyze the Appellant's Submissions.
8. I shall now recount of the testimony and/or evidence of the witnesses at the trial Court.
 9. PW1 was Christine Agnes Wangari. She adopted her Witness Statement and basically reiterated the matters set out in the Plaint. She then produced a copy of the Statutory Notice, which, according to her, was sent to Real Insurance, before it merged with Britam Insurance. She also produced the Decree extracted in the case she filed as Molo PMCC No. 125 of 2015. In cross-examination, she agreed that the Certificate of Postage in support of sending of the Statutory Notice bore no date, and that she did not have a copy of the Insurance sticker to prove the cover alleged. She also denied any knowledge on whether the cover had expired or not, or was cancelled, as they were never served with any notice to that effect.
 10. PW2 was Police Constable Cheredek Kiptoo based at Salгаа Traffic Base. He produced the Police Abstract for the accident that occurred on 3/06/2014 and testified that the vehicle the subject of this Appeal was insured by Real Insurance under Certificate No. 9863721. In cross-examination, he agreed that he did not have the original Certificate of Insurance but asserted that he had the police file. He also agreed that he was not the Investigating Officer. According to him, from the sticker, the cover was valid at the time of the accident, and he had no way of knowing whether the insurance company had been discharged of liability
 11. DW1 was Peter Ngola Makau who testified that he is an Advocate employed at the Appellant. He then adopted his Witness Statement and produced the Appellant's documents, and also confirmed that Real Insurance merged with Britam Insurance. He also stated that he could not confirm whether a statutory notice was served upon the Appellant. In cross-examination, he confirmed that the subject vehicle was insured by Real Insurance, which cover commenced on 6/07/2013 and was to expire on 6/06/2014, while the accident occurred on 25/01/2014. In re-examination, he insisted that the 3rd Party was paid after the vehicle was declared a total loss and this is proved by the Discharge Voucher on record, but that the 3rd Party still kept the sticker and also retained the salvage
 12. The 2nd Respondent (as the 3rd Party), on his part, also adopted his Statement. He then confirmed that he was the owner of the subject vehicle which was insured by Real Insurance, and that he does not know whether the Policy was cancelled. He contended that if the same was cancelled, then such cancellation was done without his knowledge, as he was never informed of it. In cross-examination, he confirmed that the first accident occurred in January 2014 upon which the vehicle was written-off as a result, and that he was compensated by Real Insurance and he signed a Discharge Voucher. He also agreed that after the salvage, he never informed the insurer that he had repaired the salvage and continued to use the sticker. He agreed that the second accident, the one the subject of this Appeal occurred in June 2014 and he was sued in Molo PMCC No. 125 of 2015. He agreed that the insurer never participated in the Molo suit, and that he personally paid the Advocates acting for him therein.



He claimed that he never knew that the insurance cover had become invalid after he was compensated by the insurer. He also agreed that he never reported the second accident to the insurer.

13. Pursuant to the directions given on 29/05/2025, the 1st Respondent filed the Submissions dated 30/10/2024 while the 2nd Respondent filed the Submissions dated 13/06/2025. On the part of the Appellant, despite being directed to file and serve his Submissions first, within 14 days, up to the date that I concluded writing this Judgment, I had not come across any Submissions filed on its behalf, either in the physical Court file or in the Judiciary Case Tracking System (CTS) online portal.

1st Respondents' Submissions

14. Counsel for the 1st Respondents submitted that it was not disputed that the 2nd Respondent was sued in Molo PMCC No. 125 of 2015 and a Decree was obtained in her favour, that there was an accident on 25/01/2014, and that the 2nd Respondent confirmed to have bought the salvage of the vehicle KBG 164L and continued to use the Certificate of Insurance for the cover until the vehicle was involved in the accident. He submitted further that the Statutory Notice served upon the Appellant was also produced, and the Police Abstract on record also proved that the vehicle was under the insurance cover and there was no evidence of cancellation thereof. He also pointed out that even after being served with the Statutory Notice, no suit to repudiate the claim was filed by the Appellant. Counsel also argued that the passengers in the vehicle were not aware of the cancellation of the insurance and did not have any other way to establish whether the vehicle was insured, and the Appellant also chose not to defend the parent suit even after being served with the Statutory Notice. He contended further that the Appellant did not inform the Registrar of Motor Vehicles or the Commissioner of Police of the cancellation as required by law.

Determination

15. As reiterated in a plethora of cases, this being a first appellate Court, it has the duty to evaluate, re-assess and re-analyze the evidence before the trial Court and draw its own conclusion. For instance, in the case of Kenya Ports Authority vs Kuston (Kenya) Ltd. [2009] 2 EA 212, the following was restated:

“On a first appeal from the High Court, the Court of Appeal should 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 that respect. Secondly, that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence”

16. The issue that arises for determination herein can be broadly summarized as follows:

Whether the trial Court's erred in declaring the Appellant (insurer) liable to satisfy the Judgment obtained by the 1st Respondent, despite the insured having been fully compensated for the written-off motor vehicle the subject of the insurance cover, before occurrence of the subject accident.

17. In determining the above issue, it is relevant to appreciate that the declaratory suit the subject of this Appeal was anchored on the provisions of Sections 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act which provides as follows:

“ 10. Duty of insurer to satisfy judgments against persons insured



1. 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.”
18. The obligation of an insurer to satisfy or settle decrees passed against its insured is therefore a statutory duty which emanates from the said Section 10(1) aforesaid.
19. However, Sections 10 (2), (3A), and (4) of the same Act provide a window within which the insurer may, in specified circumstances, avoid liability. The Section is premised as follows:
- (2) No sum shall be payable by an insurer under the foregoing provisions of this section—
 - (a) in respect of any judgment, unless before or within thirty days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
 - (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
 - (c) in connexion with any liability if, before the happening of the event which was the cause of the death or bodily injury giving rise to the 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 in writing of the failure to surrender the certificate.
 - (3A) 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.
 - (4) 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.”

20. From the foregoing, it is evident that, notwithstanding the provisions of Section 10(1) above, an insurer is exempted or can avoid liability to satisfy a decree passed against its insured where there is an order stay of execution, or where the policy has been cancelled and the certificate of insurance surrendered, or where no notice of institution of the suit giving rise to the judgment sought to be enforced was served, either before institution of the suit or within 14 days after institution thereof, or where the insurer has obtained a decree entitling it to avoid liability under the policy.
21. In this case, the trial Magistrate had no difficulty in finding that the 2nd Respondent (3rd Party, insured) fraudulently continued to use the insurance sticker as false cover for the vehicle when he was fully aware that the vehicle having been declared a write-off after the first accident, and having been fully compensated for the same by the insurer (Appellant), the insurance Policy had automatically terminated and the sticker no longer possessed any legal validity. Indeed, this portion of the Judgment is not under Appeal. What is in contention is the second portion of the Judgment whereof the trial Magistrate directed that the Appellant (insurer) first settles the decree payable to the 1st Respondent (accident victim) and then recover its outlay, by indemnity, from the 2nd Respondent (3rd Party).
22. Regarding the defence that the insurance Policy was cancelled, Sections 10 (2) (c) (iii) of the *Traffic Act*, Cap. 403 is clear that the insurer can only escape liability under Section 10 where it can demonstrate that, either before or after the happening of the accident, but within a period of 28 days from the taking effect of the cancellation of the policy, the insurer had notified the Registrar of Motor Vehicles and the Commissioner of Police, in writing, of the failure to surrender the insurance certificate. In this case, there is no evidence that the Appellant, as insurer, after settling the 2nd Respondent’s claim for compensation after the vehicle was declared a write-off after the first accident, took any steps to take possession of the certificate from the 2nd Respondent, or informed the Registrar of Motor Vehicles and the Commissioner of Police of the failure by the 2nd Respondent to surrender it. Sections 10 (2) (c) (iii) is an express statutory provision and it will, in my view, be wrong for a Court of law to interpret the same in a manner that suggests disregard of its existence and effect. It is clear that the spirit of Section 10 is to ensure that an innocent accident victim holding a lawful decree is not caught up in the fight between the insurer and the insured. For an insurer to therefore avoid liability, Sections 10 (2), (3A), and (4) have imposed strict requirements that the insurer must meet before he can be allowed to avoid liability. To therefore purport to relax the application of Sections 10 (2) (c) (iii), to save the Appellant from its statutory duty, which it failed to discharge, would be tantamount to stripping the 2nd Respondent (decree-holder) of her lawfully acquired right to compensation donated by the decree she holds.
23. Upon cancellation or termination of the Policy, it was the statutory duty of the Appellant to ensure that the insurance sticker was not retained by the 2nd Respondent since allowing such state of affairs to exist, and considering that on the face thereof the same was deceptively still valid, meant creating the real risk



of the same sticker being fraudulently used by the 2nd Respondent or any other person who came by it. This, I believe, is the mischief that Sections 10 (2) (c) (iii) above was introduced to prevent. In breach of the said provision, the Appellant failed to ensure that it obtained custody of the certificate, but instead, permitted the insurer to retain it, who, having purchased back the salvage of the written-off vehicle, repaired the same and put it back on the road. The 2nd Respondent, seeing the golden opportunity, and the cover period displayed in the sticker still being far off, exploited it to the maximum by sticking the same on the windscreen of the vehicle and continued passing it off as valid. There being nothing to show that the Policy was cancelled, nobody could know that the same was invalid.

24. The Appellant having failed to ensure that it took immediate custody of the certificate after cancelling the Policy, created the opportunity for the 2nd Respondent to dupe the public. The Appellant was clearly the author of its own misfortune and cannot now turn around and blame the trial Magistrate for applying the law, as that is exactly what he is being accused of. In light of the clear circumstances of this case, any contrary interpretation of Sections 10 (2) (c) (iii), by the trial Magistrate would be akin to bending the law to accommodate the Appellant to the detriment of the 2nd Respondent, an innocent decree-holder caught between the “ping-pong” between the insurer and the insured.
25. Sections 10 (2) (a) of the *Traffic Act* requiring service of a Statutory Notice upon an insurer prior to or within 14 days of filing a personal injury suit against its insured, also operates against the Appellant in this case. I say so because the 1st Respondent produced a copy of the Statutory Notice she alleges was served upon the Appellant and also the Certificate of Postage supporting service thereof. The Appellant failed to disprove this allegation of service of the Statutory Notice before filing of the suit in Molo PMCC No. 125 of 2015. Under this state of affairs, the Appellant cannot also rely on Section 10 (4) which absolves an insurer from liability to settle the decree unless it is demonstrated that he was served with such notice “before or within thirty days after the commencement of the proceedings in which the judgment was given”. Despite service of the Statutory Notice, the Appellant never moved to file any declaratory suit as required under Section 10 (4) to seek a declaration that it was not liable to settle the decree because of the cancellation of the Policy. It was therefore too late for the Appellant to “play the policy cancellation card” as its defence in the declaratory suit the subject of this Appeal.
26. In light of the foregoing, I find no basis for interfering with the trial Magistrate’s finding that the Appellant first settles the 2nd Respondent’s lawful decree then subsequently pursues the 2nd Respondent (3rd Party) for indemnity.
27. Although I note that the Appellant had in its Statement of Defence filed at the trial Court, raised the alternative defence that in any event, the insurance Policy had a cover limit of Kshs 3,000,000/- as stipulated in law hence the Appellant could not be called to bear a liability of the amount claimed in the Plaint, this defence does not seem to have been pursued at the trial or even raised in this Appeal. I shall therefore treat it as abandoned.

Final Orders

28. The upshot of my findings above is that this Appeal fails, and I accordingly, dismiss the same with costs to the 1st Respondent.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 3RD DAY OF OCTOBER 2025

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WANANDA JOHN R. ANURO

JUDGE



Delivered in the presence of:

Mr. Ochang for the Appellant

Mr. Matekwa h/b for Mwinamo for the 1st Respondent

Ms. Akinyi for the 2nd Respondent

Court Assistant: Brian Kimathi

