



Kenya Marine & Fisheries Research Institute v Corporate Insurance Company Ltd (Civil Suit 539 of 2001) [2025] KEHC 15022 (KLR) (Commercial and Tax) (24 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15022 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 539 OF 2001
H NAMISI, J
OCTOBER 24, 2025**

BETWEEN

KENYA MARINE & FISHERIES RESEARCH INSTITUTE PLAINTIFF

AND

CORPORATE INSURANCE COMPANY LTD DEFENDANT

JUDGMENT

1. By Amended Plaint dated 19 December 2001, the Plaintiff instituted these proceedings seeking the following reliefs:
 - i. A declaration there is a valid and enforceable staff Group life Cover in favor of the Plaintiff by the Defendant and that the Defendant is liable to satisfy the Plaintiff's claim as and when they arise under the aforesaid insurance scheme;
 - ii. The sum of Kshs 4,152,664/= being the amount due to the Plaintiff;
 - iii. The interest on (ii) above and costs of this suit;
 - iv. Any other relief that this Honourable Court may deem fit to grant
2. The dispute herein arises from a staff Group Life Insurance Scheme offered by the Defendant to the Plaintiff. Following negotiations between the parties sometime between 1998 and 1999, the Defendant agreed to undertake the staff Group Life cover for the Plaintiff's employees for a period of 4 years, commencing on 1 May 1997. The premium payable by the Plaintiff was Kshs 734,126/=. According to the Plaintiff, it was a term of the contract that the Defendant would give the employees a free cover limit, that is, a cover of up to Kshs 1,000,000/- without requirement for medical examination. It was also a term of the contract that any variation of terms in the Policy would require the Defendant to give 3 months written notice to the Plaintiff before the same is effected.



3. The Plaintiff pleaded that between May 1997 and 1999, a total of 17 employees of the Plaintiff passed away and their gratuity calculated as indicated at paragraph 9 of the Plaint. As envisaged, the Plaintiff submitted the claims totalling Kshs 4,152,664/- to the Defendant on behalf of the 17 deceased employees, but the Defendant did not honour the claims. The Defendant's purported disclaimer was based on an amendment to the original policy, which excluded AIDS related deaths. It was the Plaintiff's contention that the amendment and/or endorsement was unprocedural, oppressive null and void.
4. The Defendant repudiated liability and declined to settle the Plaintiff's claims on the basis of a specific provision within the policy documents, an endorsement titled "AIDS Exclusion – Endorsement CL 1/A" (the "AIDS Exclusion Clause"). The Clause purports to exclude from cover any death caused by AIDS or related opportunistic infections.

The Plaintiff's Case

5. The Plaintiff called one witness, PW1, Henry Nyabuto Akuma, the HR Manager, who adopted his witness statement and produced documents in support of the claim.
6. The Plaintiff's claim is built on 3 principal pillars. First, it is contended that the AIDS Exclusion Clause was not part of the original insurance contract agreed upon by the parties. In its submissions, the Plaintiff argued that the very wording of the endorsement, stating that the policy shall be amended, implies that it was a subsequent and unilateral variation of an already existing agreement. The Plaintiff submitted that this purported amendment was unprocedural, null and void.
7. Secondly, and in the alternative, the Plaintiff argued that even if the Exclusion Clause were deemed to be part of the policy, it would not apply to the claims in question. This is based on the Defendant's pre-contractual quotation letter dated 17 October 1996, which formed the basis of the agreement. The said letter explicitly offered a free cover limit of Kshs 1 million. It was the Plaintiff's position that this term created a legitimate expectation that for any claim below this threshold, no inquiry into the medical cause of death would be necessary to trigger payment. As each of the 17 deceased employees' claims fall below the sum of Kshs 1 million, then the Exclusion clause was not applicable.
8. Thirdly, the Plaintiff challenged the evidence adduced by the Defendant regarding the cause of the death of the deceased employees. The Plaintiff submitted that the cause of death was a medical and scientific fact that could only be determined by qualified medical professionals, preferably a pathologist. The Plaintiff contended that Unified Investigators are not medical experts and that their reports are, therefore, incompetent to establish medical causes of death. The Plaintiff maintained that the only proper documents to prove cause of death are post-mortem reports, or at the very least, the Certificates of Death. The Plaintiff pointed out that only two Certificates of Death mentioned immunosuppression, and none of them definitively stated AIDS to be the cause of death.

The Defendant's Case

9. In its Defence dated 7 May 2001, the Defendant denied the allegations in toto. The Defendant averred that it entered into a Group Term Policy with the Plaintiff to cover specified employees and that the same specifically excluded certain risks. The Defendant pleaded that the Plaintiff was under a duty to provide and fill in proposal forms or present a schedule of the employees covered by the said policy, but the Plaintiff only presented four names. Therefore, the deceased employees listed at paragraph 9 of the Plaint were not covered.



10. DW1, Joseph Crispin Owino, the current Life Manager, adopted his witness statement and produced documents in support of the Defendant's case. The Defendant contended that the Exclusion Clause was physically attached to and forming part of the Policy Document when the same was issued to the Plaintiff. The Defendant argued that the exclusion was further reinforced by the wording of the policy document, which, at Clause 8 of the General Provisions states, "Any endorsements shall be deemed to be part of this Policy as from the effective date of such endorsement.". Further, Clause 9 provided that the policy was subject to any special provisions and any endorsement as from the effective date of such endorsement.
11. The Defendant invoked the doctrine of estoppel as provided under section 120 of the *Evidence Act*. It was the Defendant's submission that the Plaintiff, having received the policy document inclusive of the endorsement, having paid premiums thereunder, and having not raised any formal protest or objection to its inclusion, had by its declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief. Consequently, the Plaintiff was estopped from denying validity and applicability of the said endorsement. The Defendant relied on the case of *Serah Njeri Mwobi v John Kimani Njoroge* [2013] KECA 501 (KLR), which elucidates the principles of waiver and estoppel.
12. The Defendant relied on the principle of freedom of contract, urging this Court not to rewrite the contract between the parties. It cited the hallowed legal maxim affirmed in the Court of Appeal cases of *National Bank of Kenya Ltd -vs- Pipeplastic Samkolit (K) Ltd & Anor* eKLR and *Pius Kimaiyo Langat -vs- Co-operative Bank of Kenya Ltd* eKLR, that parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved, which has not been done in this case.
13. On the issue of the cause of death, the Defendant asserted that it was entitled under the policy to investigate the claims. DW1 testified that the Defendant procured the serviced of an investigator who inquired from various medical facilities and that the unchallenged medical documents filed established that the risks were of a nature excluded under the Exclusion Clause. The Defendant produced a bundle of documents containing the investigation reports, laboratory test results and hospital notes for several deceased employees, which it contended are sufficient to prove that the deaths were AIDS- related.

Analysis & Determination

14. I have carefully considered the pleadings, the evidence adduced, the voluminous documentary evidence and the submissions by the parties. The issues that lend themselves for determination are:
 - i. Whether the Exclusion Clause formed a valid and binding part of the Policy No. CGL/12/2021;
 - ii. Whether the said exclusion clause is enforceable in law;
 - iii. Whether the plaintiff is entitled to the reliefs sought;
 - iv. Who should bear the costs of the suit.

Validity of the Exclusion Clause

15. The Plaintiff's primary contention is that the Exclusion Clause was a unilateral and unprocedural amendment to the original policy. The Defendant counters that it was part of the policy from the onset and that the Plaintiff is estopped from denying its validity. The evidence before this Court includes the Master Policy document, number CGL/12/2021, which was produced by both parties. This document contains a page clearly titled 'AIDS Exclusion – Endorsement CL 1/A' which indicates



that it is attached to and forming part of the Policy No. CGL/12/2021. The main body of the policy document itself contains explicit provisions for the incorporation of such endorsements at Clauses 8 and 9.

16. The Plaintiff's argument that the word 'amended' in the endorsement implies a subsequent variation, is, in the view of this Court, a strained interpretation. In the context of standard form contracts, it is common practice for endorsements modifying or clarifying standard terms to be attached at the time of issuance, and the language of amendment is used to signify a variation from the base policy text.

17. More compelling is the Defendant's argument on the doctrine of estoppel. Section 120 of the Evidence Act provides:

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

18. I am further guided by the case of *Esther Akinyi Odidi & 2 Others -vs- Sagar Hardware Stores Ltd Kisumu HCCA No. 97 of 2005* and *Mini Bakeries (K) Ltd -vs- George Ondieki Nyamanga Kisii HCCA NO. 18 of 2013* and the principle of estoppel elaborated by Denning LJ in *Kombe -vs- Kombe (1951) 2 KB 215*, thus

"The principle as I understand it is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, one the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him but he must accept that legal relations subject to the qualifications which he himself has introduced, even though it is not supported in a point of law by any consideration, but only by his word."

19. The evidence shows that the policy document, including the endorsement, was issued to the Plaintiff in 1997. The Plaintiff paid premiums for several years and submitted claims under this very policy. At no point before the repudiation of these claims did the Plaintiff formally protest the inclusion of the Exclusion Clause. PW1, during cross examination, confirmed that no letter or protest or objection was ever sent to the Defendant regarding this clause. By its conduct, the Plaintiff permitted the Defendant to believe that the terms of the policy as issued were accepted. The Defendant acted on this belief by continuing to provide cover and accept premiums. To allow the Plaintiff to now deny the existence of a term it had in its possession for years would be inequitable and precisely what the doctrine of estoppel is designed to prevent.

20. In the *Serah Njeri Mwobi* case (*supra*), the Court of Appeal stated thus:

"The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person."

21. Therefore, it is my finding that, on a balance of probabilities, the AIDS Exclusion Clause was delivered as part of the policy document. By operation of Clauses 8 and 9 of the policy and the doctrine of estoppel, the said endorsement was incorporated into and formed a valid part of the contract of insurance between the parties.



22. Having so found, this Court must now interpret its effect. The Plaintiff argued, in the alternative, that the endorsement was subject to a free cover limit of Kshs 1 million, below which no medical evidence as to the cause of death was required. This argument brings into play the cardinal rule of contractual interpretation, the *contra proferentem* rule, which is of particular importance in the law of insurance. It dictates that where there is an ambiguity in the wording of a contract, that ambiguity will be construed against the party who drafted the document. Insurance policies are typically contracts that leave very little room for negotiation. This rule of interpretation serves to mitigate the inherent inequality between the insurer and the insured by ensuring that the drafter bears the risks of any ambiguity they create.
23. In the case herein, two documents were produced by the parties, both authored by the Defendant. The quotation letter dated 17 October 1996 was the offer that was accepted by the Plaintiff. The letter indicated quite clearly that the term of the policy was free cover limit (amount of cover accepted automatically without medical requirement) Kshs 1 million. The second document, the Policy document, contained the AIDS Exclusion Clause, stating that no benefits would be paid under the policy if the insured's death was caused by an opportunistic infection, a malignant neoplasm or suicide if, at the time of death or permanent disability, the insured had AIDS.
24. These two documents contradict each other. The promise of free cover limit without medical requirement creates a reasonable expectation in the mind of the insured that for the claims below Kshs 1 million, the insurer has waived its right to inquire into the cause of death. The AIDS Exclusion Clause, however, mandates a specific and intrusive inquiry into the cause of death for any claim, irrespective of its value.
25. This creates a classic ambiguity. A reasonable person in the position of the insured, having been presented with the quotation, would be entitled to believe that the free cover intended to create a threshold below which the general exclusion clause does not apply. Where an exclusion clause is capable of more than one reasonable interpretation, such as is the case herein, then the courts will adopt the interpretation that is most favourable to the insured. Since the Defendant failed to use clear and unequivocal language to limit the scope of the cover provided, then the ambiguity must be resolved against the Defendant. The interpretation, therefore, would be that the AIDS Exclusion Endorsement is subject to the free cover limit of Kshs 1 million. Consequently, the exclusion clause did not apply to any claim where the sum assured was less than Kshs 1 million. The evidence adduced by the Plaintiff shows that each of the 17 claims was for less than Kshs 1 million. The Defendant's repudiation of the claims was, therefore, unjustified.
26. In *Charles Momanyi Mageto v Co-operative Insurance Company of Kenya Limited* [2016] KEHC 1310 (KLR), the Court stated:

“Under the provisions of sections 107, 108 and 109 of the *Evidence Act* (Chapter 80 of the Laws of Kenya), the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. Since the policy and the accident was not disputed, it fell upon the defendant to prove the reasons for avoiding or repudiating the policy.”
27. The burden of proving that a loss falls within the scope of an exclusion clause rests squarely upon the insurer. This means that the Defendant in this instance must demonstrate that it is more probable than not that the cause of death was an excluded peril. To discharge this burden, the Defendant was required to adduce relevant and admissible evidence to prove the medical cause of death for each of the 17 deceased employees. Cause of death is a matter of medical science. Any opinion must be given by a



person who is specially skilled in that science. Such an expert would typically be a medical practitioner who can interpret medical records, lab results and post mortem findings to form a professional opinion on the cause of death.

28. The Defendant did not call a single medical expert to testify. Instead, its entire case on the cause of death rests on a bundle of documents comprising reports from a firm of private investigators, copies of hospital notes, lab test results and Certificates of Death. This evidence is fraught with fatal legal defects.
29. First, the investigator's reports, which contain conclusions on the medical cause of death, are inadmissible. The investigator is not a medical expert, and his reports, in so far as they narrate what he was told by other or concluded from other documents, are classic hearsay under section 63 of the [Evidence Act](#) and amount to inadmissible lay opinion on a matter requiring expertise.
30. That notwithstanding, the underlying primary source documents – the hospital notes, patient files, laboratory results and official Certificates of Death – fall into a different category. While they are prima facie hearsay, their admissibility must be assessed against the statutory exception to the hearsay rule. The Plaintiff's submission that this entire category of evidence is inadmissible is incorrect in law. The [Evidence Act](#) provides several gateways for the admissions of such documentary evidence in civil proceedings.
31. Section 35 provides for the admissibility of a statement made by a person in a document in the performance of a duty to record information. Medical records, created by healthcare professionals in the course of their duties, fall squarely within this provision. The proviso to section 35(1) allows the court to dispense with calling the maker of the statement if their attendance would cause great unreasonable delay or expense, a condition which is met in this case, given that the deaths occurred between 1997 and 1999.
32. Section 37 provides for the admissibility of entries in books of account regularly kept in the course of business. This is the class business records exception, and it is well established that hospital and clinical records are business records for the purposes of this rule. Section 38 allows for the admission of entries in public or official records made by a public servant in the discharge of their duty. This would apply to the Certificates of Death issued by public medical officers or registrars.
33. For these reasons, I find that the medical records, including the hospital notes, lab test results and Certificates of Death, tendered by the Defendant are admissible in evidence under the exceptions to the hearsay rule.
34. I now turn to the question of the weight attached to this admissible evidence. The burden remains on the Defendant to persuade the Court that these documents, on a balance of probabilities, prove that the cause of death was an excluded peril. The records contain technical medical data, such as CD4 counts and references to opportunistic infections. The interpretation of such data and its conclusive linkage to a specific cause of death is a matter of expert medical opinion. The Defendant, however, failed to call a single medical expert to testify. It did not call a doctor to explain the significance of the entries in the patient files, to interpret the lab results or to provide professional opinion, based on the available records, as to the cause of death for each of the 17 individuals.
35. In the absence of such expert evidence to connect the evidentiary dots, the Court is left with raw medical data. While the documents are admissible, their contents are not self-explanatory to a layperson on the ultimate issue of causation. This Court cannot and will not engage in speculation or draw medical inferences that it is not qualified to make.
36. Therefore, while the Defendant is entitled to rely on the AIDS Exclusion Clause and has succeeded in having its documentary evidence admitted, it has failed to discharge the final and crucial step of its



evidentiary burden. It has not provided the necessary expert interpretation to elevate the contents of those documents to the standard of proof required in a civil case.

Whether the said exclusion clause is enforceable in law

37. Although the findings above are sufficient to dispose of this matter, I find that it is necessary, given the public importance of the subject, to comment on the enforceability of such blanket exclusion in the context of the current legal and constitutional framework.
38. The *HIV and AIDS Prevention and Control Act*, 2006, was enacted to provide a legal framework for the prevention, management and control of HIV and AIDS, and to protect the rights of person living with or affected by the virus. Section 35 provides thus:

Exclusion from credit and insurance services

- (1) Subject to this Act, no person shall be compelled to undergo a HIV test or to disclose his HIV status for the purpose only of gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.
 - (2) Notwithstanding the provisions of subsection (1), an insurer, re-insurer or health maintenance organization shall, in the case of life and healthcare service insurance cover, devise a reasonable limit of cover for which a proposer shall not be required to disclose his or her HIV status.
 - (3) Where a proposer seeks a cover exceeding the no test limit prescribed under subsection (2) the insurer, reinsurer or health maintenance organization may, subject to this Act, require the proposer to undergo an HIV test.
 - (4) Where a proposer elects to undergo an HIV test pursuant to subsection (3) and the results thereof are positive—
 - (a) the proposer shall, at his own expense, enter into such agreed treatment programme with the insurer as may be prescribed by the Cabinet Secretary in consultation with Commissioner for Insurance; or
 - (b) the insurer may impose a reasonable additional premium or lien to the benefits ordinarily purchased; or
 - (c) the insurer may decline granting the cover being sought.
39. While this Act was enacted after the insurance policy in question was issued and renewed, it codified a clear public policy against discrimination on the grounds of health status, a principle that is now firmly entrenched in Article 27 of *The Constitution*. The jurisprudence emanating from the courts and the HIV & AIDS Tribunal has consistently upheld the rights of persons living with HIV against discriminatory practices by employers, hospitals and indeed, insurance companies.
40. The principle that Courts will not enforce contracts that are illegal or contrary to public policy is a long-standing one. While Courts do not generally interfere with the freedom of contract, as rightly submitted by the Defendant and affirmed in the case of *National Bank of Kenya Ltd -vs- Pipeplastic Samkolit (K) Ltd & Anor eKLR*, this freedom is not absolute. It does not extend to the enforcement of terms that are unconscionable or that offend the fundamental values of the society. A blanket, non-risk-assessed exclusion clause for death related to AIDS, as was common in the 1990s, is a relic of a



time marked by fear and lack of scientific understanding. To enforce such a clause today would be to lend judicial sanction to the very stigma and discrimination that *the Constitution* and statutes, such as the HIV & AIDS Prevention and Control Act, have been enacted to combat. It would be manifestly contrary to public policy.

41. In view of all the foregoing, the Plaintiff's suit succeeds. I make the following orders:
- i. Judgement is hereby entered in favor of the Plaintiff as against the Defendant in the sum of Kshs 4,152,664/=.
 - ii. The said sum shall attract interest at court rates from the date of filing this suit until payment in full;
 - iii. Costs of the suit are awarded to the Plaintiff.

DATED AND DELIVERED AT NAIROBI THIS 24 DAY OF OCTOBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Plaintiff: Dr. Chokaa

For the Defendant: Mr. Otieno

Court Assistant: Lucy Mwangi

