



**Ndumia (Suing as the Administrator of the Estate of William Ndumia  
Wanjohi (Deceased)) v Invesco Assurance Company Limited (Civil Case  
E003 of 2023) [2025] KEHC 16028 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16028 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CIVIL CASE E003 OF 2023  
AK NDUNG'U, J  
NOVEMBER 5, 2025**

**BETWEEN**

**PETER NDERITU NDUMIA ..... PLAINTIFF  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF WILLIAM NDUMIA  
WANJOHI (DECEASED)**

**AND**

**INVESCO ASSURANCE COMPANY LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted this suit vide a plaint dated 05 05 2023. He averred that on 06 12 2014, the deceased was a fare paying passenger on board motor vehicle registration number KBX 075J registered in the name of Panji automobiles and insured by the Defendant herein when the driver of the said vehicle carelessly and recklessly controlled the said vehicle causing an accident and as a result, the deceased sustained serious injuries and succumbed to the injuries.
2. That a suit was filed in the lower court vide Nanyuki CMCC 67 of 2019 claiming general damages, special damages, interest and costs of the suit on behalf of the deceased. A judgment was delivered on 26 01 2022 in favour of the Plaintiff where the Plaintiff was awarded Kshs.5,000,000 - in general damages, Kshs.2,246,811 - in special damages and costs of Kshs.402,693 - plus interest. That the Defendant is liable to satisfy the said judgment, decree, costs and interest pursuant to section 10 of the *akn ke act 1945 12 Insurance (Motor Vehicles Third Party Risks) Act*. That on 24 03 2023, the Plaintiff served the Defendant with a copy of the said judgment, decree and certificate of costs and demanded satisfaction of the same. That the amount now due is Kshs.9,530,349 - which amount continues to accrue interest. He therefore prayed for a declaration that the Defendant is liable to pay the amount due pursuant to section 10 of the Act and costs of the suit.



3. The Defendant did not enter appearance and so the matter proceeded for formal proof hearing. PW1, Peter Ndiritu Ndumia adopted his statement as evidence. He produced documents attached to his plaint as Pexhibit 1 to 6.
4. The Plaintiff also filed written submissions and he submitted that the Defendant was the insurer of motor vehicle KBX 075J registered in the name of Panij automobiles. The accident occurred on 06 12 2014 when the motor vehicle was insured by the Defendant and it was served with the statutory notice which it duly acknowledged. The Defendant is liable to satisfy the judgment, decree and certificate of costs issued in Nanyuki CMCC Case No. 67 of 2019. There is no pending appeal or application to set aside the said judgment. As to who should bear the costs, he submitted that the Plaintiff has demonstrated that he deserves costs as he served the Defendant with all documents relevant to this suit and it acknowledged receipt but did not enter appearance nor filed a defence.
5. From the record, it appears that the Defendant was served with a Statutory Demand Notice demanding payment of the decretal amount together with interest amounting to Ksh.9,127,656 - and costs of kshs.402,693 - on 24 03 2023 and it acknowledged receipt. The Defendant was also served with summons to enter appearance, plaint and other documents but failed to file a defence. The Defendant has failed to pay the debt or any part of the debt or comply with the statutory demand.
6. Section 10 of the *akn ke act 1945 12 Insurance (Motor Vehicles Third Party Risks) Act* provides for the duty of an insurer to settle a decretal amount in all situations where the insurer has effected a policy upon which a risk has arisen even where the insurer may be entitled to avoid the policy or even where the same has been avoided, for the full decretal sum including interests and costs, only subject to the sum capped under section 5. In its own words the Act stipulates:-“

SUBPARA 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.

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.”

7. This suit is in the category of what in our ordinary legal parlance are referred to as declaratory suits and the suit is one that relates to the duty of insurer to satisfy a judgment against a person that it had insured and not one in which the court considers ordering compensation for personal injuries, which issue would be expected to have been determined in the primary suit. In the instant suit that determination was made in Nanyuki CMCC Case No. 67 of 2019.
8. For liability to accrue under section 10 of the Insurance (Motor Vehicle Third Party Risks) Act CAP 405, there is a 4-fold test to be met. Firstly, that the motor vehicle in question must have been insured by the appellant; Secondly, that the Applicant has a judgement in his favour against the insured; Thirdly, that statutory notice was issued to the insurer either at least 14 days before the filing of the suit wherein



judgement has been obtained or within 30 days of filing the suit where judgement has been obtained and finally the respondent was a person covered by the insurance policy. (See Roseline Violet Akinyi v Celestine Opiyo Wangwau (2020) eKLR and Stephen Kiarie Chege v Insurance Regulatory Authority & Another (2009) eKLR.)

9. In the instant suit, there is evidence that the Defendant was served with the statutory notice which it duly acknowledged. The Defendant was served with a Statutory Demand Notice demanding payment of the decretal amount together with interest amounting to Ksh.9,127,656 - and costs of kshs.402,693 - on 24 03 2023 and it acknowledged receipt. The Defendant was also served with summons to enter appearance, plaint and other documents but failed to file a defence. The Defendant has failed to pay the debt or any part of the debt or comply with the statutory demand. There is no pending appeal, application to set aside the said judgment or a stay of the judgment.
10. The Defendant is liable to satisfy the judgment, decree and certificate of costs issued in Nanyuki CMCC Case No. 67 of 2019.
11. Guided by the case of Philip Kimani Gikonyo v Gateway Insurance Co Ltd (2007) eKLR, am satisfied that the Plaintiff has achieved the legal threshold for the grant of the orders sought. Judgement is entered in favour of the Plaintiff and I make the following orders;
  1. A declaration be and is hereby made that the Defendant is liable to pay the amount due pursuant to Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act
  2. Costs to the plaintiff.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF NOVEMBER 2025.**

**A.K. NDUNG’U**

**JUDGE**

