



REPUBLIC OF KENYA



KENYA LAW
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**Keicho West Teachers College & another v Fidelity Shield Insurance; Chepkiri (Interested Party)
(Civil Appeal E018 of 2024) [2025] KEHC 17583 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E018 OF 2024
JR KARANJA, J
NOVEMBER 28, 2025**

BETWEEN

KEICHO WEST TEACHERS COLLEGE 1ST APPELLANT

SAMMY KIPKEMOI KULEY 2ND APPELLANT

AND

FIDELITY SHIELD INSURANCE RESPONDENT

AND

JUDITH CHEPKIRI INTERESTED PARTY

JUDGMENT

1. This appeal arises from the judgement of the Resident Magistrate at Kericho in Civil Suit No. E0176 of 2022 in which the Appellants were the plaintiff and the respondent, the defendant Judith Chepkurui was enjoined in the suit as the interested party.
2. The claim against the respondent/defendant was anchored on a policy of insurance issued to the appellant/plaintiffs by the defendant respecting Motor Vehicle Registration No. KCD 869N belonging to the appellants. It was pleaded that on or about the 13th December, 2019, the said motor vehicle was involved in a road accident in which the interested party suffered bodily injuries and instituted legal proceedings against the defendant in Kericho CMCC No E078 of 2021.
3. That, judgment in the said case was given against the plaintiff and a decree in the sum of Ksh. 249,913 was extracted. That, subsequently the interested party caused the issuance of a notice of intention to execute against the defendant/respondent.
4. It was further pleaded that at the material time of the accident the insurance policy was in force and therefore the defendant/respondent was and is under a legal obligation to discharge the decree of the court having been served with a statutory notices dated 29th March, 2021.



5. The plaintiff/appellant therefore prayed for judgement against the respondent for a declaratory order that the defendant/respondent is under legal obligation to discharge the decree issued in Civil Suit No. E078 of 2021 between the interested party and the plaintiff/appellant . also an order compelling the defendant/respondent to pay to the interested party all sums due to the interested party as decreed in the aforementioned suit and further, an order restraining the interested party from executing the said decree against the plaintiff/appellant and direct the interested party to first execute the decree against the defendant/respondent.
6. The defendant/respondent denied the claim on the basis of the pleadings and grounds contained in its statement of defence dated 15th September, 2022. The interested party as per the record appears not to have participated in this matter howsoever. The hearing of the appeal was by written submissions which were filed on behalf of the appellants by Tengekyon & Koske Advocates and on behalf of the respondent by Kihwiwa & Partners Advocates.
7. The appeal was given due consideration by this court on the basis of the supporting grounds and in the light of the rival submissions by the parties. The duty of this court was to revisit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.
8. In that regard, the appellant case as stated by the principal of the first plaintiff/appellant institution Julius Kiplangat Kirui (PW1) was that the material institution bus was comprehensively covered by a policy of insurance issued by the defendant/respondent through its agent, Kenya Commercial Bank-Kericho branch, but on the 13th December, 2019 the bus was involved in a road accident along the Sigowet –Sobokum road while carrying passengers among them students some of whom were injured.
9. The primary suit in this matter was then filed against-the plaintiff institution. Several other suits were filed against the plaintiff and dealt with on their behalf by the respondent/defendant as the insurers. The present suit was however not dealt with by the respondent which led to auctioneers attaching the first plaintiffs/appellant property and the filing of this suit against the respondent with the interested party being a party therein.
10. The defendant/respondent case as stated by its claims manager, Sammy Kamau Wanjiku (DW1) was that they did not receive any statutory notice, hence declining to deal with this matter even though in the other related matters a firm of advocates was appointed to handle them.
11. The entire evidence was considered by the trial court which thereafter arrived at the conclusion that the plaintiff/appellant had failed to prove their case on a balance of probabilities. The plaintiff's case was therefore dismissed with each party bearing their own costs.
12. In arriving at that conclusion, the trial court took into consideration the provisions of Section 10 (1) and 10(2) of the motor vehicle Third Party Risk Act (Cap 405 LOK) and noted as follows'-

“ there are a lot of “if” in the plaintiffs witness correspondences as well as that of the defendant witness. The defence witness did state that they did receive the other documents from their agent KCB Kericho Branch but did not receive from the primary suit CMCC E078 of 2021. The “if’s” and could “be’s” that the witness were using in answering their questions are mere conjectures that this court will not consider. They are not sureties”



13. Further, the trial court noted that:-

“it is worth to note that the legal surety of prove is always on the plaintiff but the evidentiary burden keeps on shifting from time to time. It is thus not enough for the plaintiff to allege without supplying the court with any material evidence. He who alleges must prove”

In this court’s opinion, the evidence in its totality coupled with the parties submissions at the trial clearly brought into the fore the actual bone of contention between the plaintiff/appellant and the respondent. This was service of the prerequisite statutory notice upon the respondent/defendant by the plaintiff/appellant pursuant to the provisions of the Third Party Risks Act (Cap 405 LOK).

14. The whole dispute turned on the services or otherwise of the statutory notice upon the respondent insurance company under section 10 (2) of the Act which provides that

“no sum shall be payable by an insurer under the foregoing provisions of this section” (a) in respect of any judgement unless before or within Fourteen days after the commencement of the proceedings in which the judgement was given the insurer had notice of the bringing of the proceedings.”

15. The respondent/defendant was the insurer in this case and according to its evidence it was never served with the mandatory statutory notice by its insured i.e the appellant/plaintiff. The purpose of such a notice is to alert or create awareness Upon the insurer of the potential claim and liability relating to a policy of insurance issued by itself (see Philip Kimani Gikonyo Vs Gateway Insurance Col Ltd (2007)eKLR.

16. Under the aforesaid provisions of the insurance Third Party Act (cap 405 LOK) at insurer would be absolved from liability if the mandatory notice was not served upon itself as required by law. As to whether or not the respondent was served with the statutory notice, was a matter of evidence. It was therefore incumbent upon the appellants/plaintiff to establish and prove by necessary evidence that indeed the respondent was served with the notice.

17. The trial court found that there was no proof of service and dismissed the appellants’ case against the respondent. As noted by the trial court indeed the legal burden of prove lay with the appellant and one who alleges must prove. In that regard, the trial court relied on the decision in the case of Evans Nyakwana Vs Cleophas Bwana Ongaro (2015) eKLR, where it was held that;- “As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially assert’ the affirmation of the issues. That is the purpose of Section 107(1) of the [Evidence Act](#), Chapter 80 Laws of Kenya.

18. Section 107(1) of the [Evidence Act](#) provides that

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

And Section 108 of the Act provides that the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. Having reconsidered the entire evidence in this matter this court is satisfied just like the trial court that the plaintiff/appellants did not provide credible and cogent evidence to prove service of the mandatory notice upon the respondent.

19. It did not matter that the respondent was aware and acted upon related cases each case had to be considered independent of the other and if in those other cases there was proof of service, in this case



there as no such proof. Being aware of the existence of other similar suits could not and did not amount to service of the notice upon the respondent in this case.

20. Its is intriguing that the appellants failed to call as their witness a person from KCB Kericho Branch if they really wanted to prove service of the notice upon the respondent. This omission rendered the evidence presented in court by themselves was insufficient for purpose of establishing and proving service of the mandatory notice.
21. The factors foregoing clearly show that this appeal is devoid of merit for grant of the prayers sought in the memorandum of appeal dated 14th May, 2024. It is therefore disallowed and dismissed with costs to the respondent.
22. Ordered accordingly.

J.R. KARANJAH

JUDGE.

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER, 2025.

Presence of;-

Mr. Koske for the Appellant

Mr. Rono holding brief for respondent

Interested party – Absent

Symon/Peter – Court Assistants.

