



REPUBLIC OF KENYA



KENYA LAW
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**Gemina Insurance Company Limited v Miga Trading Limited (Civil Suit
1 of 2023) [2025] KEHC 18301 (KLR) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 1 OF 2023
DO CHEPKWONY, J
DECEMBER 5, 2025**

BETWEEN

GEMINIA INSURANCE COMPANY LIMITED PLAINTIFF

AND

MIGA TRADING LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff initiated this suit against the Defendant by way of an undated Plaint received in court on 29th May, 2020. The Plaintiff had sought the following prayers:-
 - a. A declaration do issue that the Defendant no longer had insurable interest in Motor Vehicle Registration Number KBY 670L once it sold and transferred the same to Mary Wamwere Waruingi.
 - b. A declaration do issue that the aforesaid policy of insurance MPC/NBI/2016/066445 was not transferable and thus terminated once ownership over Motor Vehicle Registration Number KBY 670L changed from the Defendant to Mary Wamwere Waruingi.
 - c. A declaration do issue that the Plaintiff had no privity of contract with the said Mary Wamwere Waruingi as at the date of the accident of 14th January, 2019.
 - d. A declaration that the Plaintiff is not liable to make any payment under the aforesaid policy of Insurance No. MPC/NBI/2016/ 066445 in respect of any claim against the Defendant arising out of damage to any motor vehicle, property, fatal or bodily injuries, loss or damage sustained by any party in the accident of 14th January, 2019 involving Motor Vehicle Registration Numbers KBY 670L and Jackson Waweru Mbugua (deceased).
 - e. Costs of this suit.



2. In its Complaint, the Plaintiff had pleaded that the Defendant requested the Plaintiff to issue it with a Comprehensive Motor Vehicle policy of insurance against Third Party Risks for Motor Vehicle Registration Number KBY 670L (hereinafter referred to as the motor vehicle) belonging to it.
3. In consideration of the payment of a premium, the Plaintiff issued to the Defendant comprehensive vehicle Policy of Insurance No. MPC/NBI/2016/ 066445 thereby agreeing to indemnify the Defendant for a period of 12 months from 24th April, 2018 to 23rd April, 2019 against inter alia sums which the Defendant would become legally liable to pay in the event of an accident caused by or out of the use of the vehicle in respect of death and/or bodily injury to any third party being a liability required to be covered by a policy of insurance under Section 5(b) of the Insurance (Motor Vehicle Third Party Risks) Act.
4. The Plaintiff issued the said policy of insurance to the Defendant on the premise that the Defendant was the owner of Motor Vehicle Registration Number KBY 670L and therefore had an insurable interest. The said policy of insurance was non-transferable. Later, the Defendant sold the said motor vehicle to Mary Wamwere Waruingi and did not disclose to the Plaintiff the sale of the motor vehicle and the subsequent transfer of its interest.
5. The Plaintiff has stated that on 14th January, 2019 the motor vehicle was being driven by its new owner's authorized driver, Peter Githuka Ndungu along Tinganga Mbui Kamiti road when an accident allegedly occurred a result of which Jackson Waweru Mbugua, a pedestrian reportedly sustained fatal injuries. At the time of the said accident, the Defendant was not the owner of Motor Vehicle Registration Number KBY 670L.
6. That the Defendant ceased to have an insurable interest in Motor Vehicle Registration Number KBY 670L when it sold and transferred the same to Mary Wamwere Waruingi. The Plaintiff has stated that by reason of the matters set out above, the Policy Insurance Number MPC/NBI/2016/ 066445 terminated from the moment ownership in the said motor vehicle changed from its insured to Mary Wamwere Waruingi.
7. In response to the Complaint, the Defendant entered appearance and filed a statement of defence dated 14th April, 2023. In its defence, the Defendant has stated that he was the registered owner of Motor Vehicle Registration Number KBY 670L during the indemnity period from 24th April, 2018 to 23rd April, 2019.

Evidence

8. This matter proceeded for hearing on 21st November, 2023 whereby PW1-David Nyaindi testified that he works with the Plaintiff as the Assessment Claims Manager. He indicated that he had executed a witness statement dated 9th November, 2023 which he sought to be adopted as his evidence in chief. He had also filed a list of documents dated 29th May, 2020 and sought to have the same save the investigations report marked as No. 3 (MFI-P3) produced as PExhibit 1, 2, 4 and 5.
9. On cross-examination, PW1 stated that its case was about Motor Vehicle Registration No. KBY 670L, which had been involved in an accident and was registered in the name of Mary Wamwere Waruingi. He stated that it was true that on 23rd March, 2020 Geminia Insurance wrote a letter to the Defendant requesting for documents in regard to the said accident. He also said that it was true that the Plaintiff was not aware of the owner. It was PW1's evidence that they did engage an investigator to try and establish who the real owner of the motor vehicle in question was which investigations revealed that the vehicle had already been sold at the time of the accident, which was in 2018. The investigation confirmed the evidence that the vehicle had been sold at the time of the accident.



10. PW2-Brian Sumayo Wafula testified that he works at Counterstrike Ltd as a Private investigator and produced the Investigation Report as PExhibit 3 in respect of the Investigations which were conducted by his colleague who is no longer working with them but he was seized with knowledge of the facts of the findings. According to the report, the accident occurred on 14th January, 2019 and at the time Mary Wamwere Waruingi, who was an employee of Miga Trading Limited confirmed in her statement that she had purchased the vehicle from the Defendant as from April, 2014 to November, 2018. It is shown that the vehicle was transferred in December, 2018 and accident occurred on 14th January, 2019. The report also reveals that indeed the vehicle was sold to Mary Wamwere Waruingi but she did not file her motor vehicle insurance cover, thus was using the cover of the seller being Miga Trading Limited. As at the time of the accident, it is shown that the vehicle had changed hands but the insurance cover was still under Miga Trading Limited. It was then concluded that the vehicle had no insurance cover at the time.
11. During cross examination, PW2 admitted that the report is not dated. He confirmed that he had a written statement of Mary Wamwere Waruingi attached to the report. He also confirmed that he took a statement of the driver but had no evidence to show that the vehicle had changed hands. He had no evidence to show the vehicle was sold to Mary Wamwere Waruingi. According to the photo in the report, PW2 agreed that it is evident that the windscreen was shattered. He can't confirm that the Insurance Company paid for the windscreen. According to PW2, he could not confirm that they deliberately failed to attach the receipt. On further cross examination, he stated that he is not the one who prepared the report and cannot confirm why the Insurance Company paid for the windscreen. On re-examination, he stated that the windscreen was replaced by the Insurance Company.
12. At the close of the Plaintiff case on 21st November, 2023, the defence called a single witness who testified on 28th May, 2024. DW1-Pamela Mwai testified that she works with the Defendant as an Administrator and she recorded a statement dated 14th April, 2023 which she adopted as her evidence in chief. She stated that what is in the Defendant's witness statement is what she is seeking before the court.
13. On cross examination, DW1 stated that she would not know who was driving the motor vehicle, but confirmed that the motor vehicle was registered in the name of the Defendant Company and was being used by an employee. She gave the name of the employee as Mary Wamwere Waruingi, who had worked with the company since 2013. She also confirmed that Peter Githuku Ndungu was not an employee of the Defendant Company but is a husband to Mary Wamwere Waruingi, who at the time had been a Product Specialist and had become the Sales Manager, thus the motor vehicle was under her care. DW1 stated that there was an agreement that Mary Wamwere Waruingi would pay Kshs.10,000/= per month towards the purchase of the motor vehicle but could not remember the date of the sale agreement.
14. Further. DW1 stated that she was not sure if at the time of the accident the motor vehicle was still registered in the name of the Defendant company but the insurance was in the company name and was to expire around April, 2019. At the time of accident the insured owner of the vehicle was Miya Trading Limited. It stated the motor vehicle was transferred to Mary Wamwere Waruingi after she completed payment of the same sometimes later in the year.
15. On re-examination DW1 stated that by 11th May, 2020 the motor vehicle had been transferred to Mary Wamwere Waruingi. It was her evidence that at the time the accident happened, the motor vehicle was still registered in the Defendant Company's name.
16. At the close of the defence case, parties were directed to file written submissions in support of their respective cases whereby the Plaintiff's submissions are dated 28th June, 2024 while the Defendant's submissions are dated 11th December, 2024.



Plaintiff's Submissions

17. The Plaintiff submitted that it is a conventional principle that full disclosure of all material facts should be made to the insurer before an Insurance Cover is issued. An insurer relies on good faith of the insured to disclose all information that is likely to affect its decision in fixing a premium or determine whether to incur the risk. The Plaintiff has cited the case of Co-operative Insurance Company Ltd vs David Wachira Wambugu NYR CA Civil Appeal No. 66 of 2008 [2010] eKLR where the court quoted Bullen and Leake, Precedents of Pleading, 14th Edition, Vol. 2, which states as follows:-
- “Contracts of insurance are contracts of the utmost good faith. This gives rise to a legal obligation upon the insured, prior to the contract being made, to disclose to the insurer all material facts and circumstances known to the insured which affect the risk being run.”
18. On whether the Policy of Insurance No. MPC/NBI/2016/066445 was transferrable, the Plaintiff submitted that the policy of insurance was not transferrable. The policy document reads;
- “Transfer of ownership/cancellation of policy
- This being a personal contract it is not transferrable to other parties. Thus in the event of the sale of vehicle(s) or cancellation of the policy, certificate of insurance in duplicate MUST be returned to us immediately to facilitate cancellation.”
19. The Plaintiff submitted that the Defendant was aware that the insurance policy was not transferrable as per the policy document. DW1 testimony admitted that there was an arrangement that Mary Wamwere would pay Kshs. 10,000/= per month in purchase of the motor vehicle. It is clear that the Defendant agreed with Mary, who is their employee to use the insurance sticker on the motor vehicle even after it had transferred the same to her. However, since the Defendant was no longer the owner, the insurance was not transferrable. The Plaintiff cited the case of Peter v general Accident Fire & Life Assurance (1982) 2 All ER to reiterate the position that there can be no transfer on an insurance policy where the subject insured is transferred.
20. As to whether there was privity of contract between the Plaintiff and Mary Wamwere, the Plaintiff submitted that the doctrine of privity of contract cannot confer rights or impose obligations on any person other than the parties to the contract. There was no insurance contract between the Plaintiff and Mary Wamwere, and on this, the Plaintiff relied on the case of Kenya Women Finance Trust v Benard Oyugi Jaoko & 2 Others (2018) eKLR. According to the Plaintiff, Mary Wamwere was a stranger to the Plaintiff. There was no privity of contract between them as at the time of the accident on 14th January, 2019.
21. Lastly on whether the Plaintiff should indemnify the Defendant, the Plaintiff urged that the Defendant took out a motor vehicle private comprehensive policy with the Plaintiff and sold the motor vehicle to Mary Wamwere but failed to notify the Plaintiff. Therefore, the Plaintiff should not be compelled to indemnify the Defendant in respect to claims arising following the accident of 14th January, 2019 involving Motor Vehicle KBY 670L and Jackson Waweru Mbugua (deceased). The Plaintiff cited the case of Charles Momanyi Mageto vs Co-operative Insurance Company of Kenya Ltd (2016); Paul Mutsya vs Jubilee Insurance Company of Kenya Ltd (2018)eKLR, where the courts held that a breach of the terms and conditions of a policy by an insured entitles the insurer to repudiate any liability incurred by the insured.



Defendant's Submissions

22. The Defendant submitted that the suit is governed by Section 10(4) of the *Insurance (Motor Vehicles Third Party Risks) Act*, Cap. 405 of the Laws of Kenya.
23. The Defendant submitted that the Plaintiff did not bring the suit within the said times lines and neither has it demonstrated that it had complied with Section 10(4) before commencing the suit, hence the same is fatally defective and ought to be struck out. Reliance has been placed on the case of *Britam General Insurance Co. (Kenya) Limited v Josephat Ondiek* (2018) eKLR, where the court held that it would be contrary to the provisions of Cap. 405 to allow the Plaintiff to have his way by setting aside the contract without complying with Section 10(4) of the Act.
24. The Defendant has submitted that it is trite law that he who alleges must prove as captured under Section 107 of the *Evidence Act*, and in this case, the Plaintiff has failed to prove that the motor vehicle was registered in the name of the Defendant's employees name at the time of the accident. The Plaintiff has placed reliance on motor vehicle records dated 11th May, 2020 almost 14 months from the date of the alleged accident. The Defendant has urged the court to find that the motor vehicle was still registered in the name of the Defendant as at the time of the accident as testified by its witness. The Defendant has also urged the court to find that the Plaintiff has failed to prove its case on a balance of probabilities and prays that the same be dismissed with costs.

Analysis and Determination

25. Having considered the pleadings, evidence adduced by both parties, and the rival submissions, this Court finds the sole issue for determination being whether the suit is competent in light of Section 10 of the *Insurance (Motor Vehicle Third Party Risks) Act* Cap. 405.
26. In determining this issue the relevant provision is Section 10(4) of the *Insurance (Motor Vehicle Third Party Risks) Act* Cap. 405. It provides as follows;
 1.
 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 fourteen 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 provisions 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.

3.

4. No sum shall be payable by any 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, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on the 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.”

27. In the instant case, the Plaintiff seeks declarations that it is not liable to indemnify the Defendant or meet claims arising from the subject/suit/ accident. The Defendant has invoked the provision of Section 10 (4) of the Insurance (Motor Vehicle Third Party Risks) Act, which bars an insurer from avoiding liability unless it can demonstrate that it obtained a declaration within the statutory timelines and upon notifying third-party claimants.

28. It has not been disputed that the present suit was instituted more than one year after the suit accident and not within the three(3)month statutory window as envisaged under Section 10(4) of the Act. However, the Plaintiff has not demonstrated compliance with the statutory requirement. In the case of *Britam General Insurance Co. (Kenya) Limited v Josephat Ondiek* (2018) eKLR, the Court held that:-

“In the present claim if the Plaintiff wished to take the benefit of Section 10(4) of the Act. It was mandated to apply for a declaration after receiving notice of the claim from the Defendant and upon delivery of the notice of the suit. By filing a plaint outside the 3-month period the Plaintiff lost its right to rely on the statute.”

29. Similarly, in the case of *UAP Insurance Co. Ltd v Patrick Charo Chiro* [2021] KEHC 6557 (KLR), the Court stated that:-

“The import of the above provision of the law is that 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 was insured by the appellant; Secondly, that the Respondent has a Judgment 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 Judgment has been obtained or within 30 days of filing the suit where Judgment 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.”

30. In view of the findings in the above-cited cases, this Court is satisfied that the Plaintiff has not discharged the burden proof on a balance of probabilities and more specifically failed to meet the threshold set out under Section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Act. In the absence of statutory compliance, the Plaintiff's suit is found to be incompetent, hence ought to be struck out.
31. Based on the foregoing reasons, the suit dated 29th May 2020 is hereby found incompetent for want of compliance with Section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Act and thus the declaratory reliefs sought by the Plaintiff cannot be granted.
32. In the end, and for avoidance of doubt, this Court proceeds to issue the following orders;
 - a. The Plaintiff's suit dated 29th May 2020 is hereby struck out.
 - b. The Defendant shall have costs of this suit.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5TH DAY OF DECEMBER, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:-

M/S Waithaka counsel for Plaintiff

Court Assistant – Martin/Sakina

