



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CIVIL APPEAL NO. E067 OF 2024

BETWEEN

TAKAFUL INSURANCE OF AFRICA.....APPELLANT

AND

GEOFFREY WAGATU NDIRITU..... RESPONDENT

(Being an appeal from the judgment and decree in the Kilungu Principal Magistrate's Court, PMCC No. E001 of 2022 by Hon. F. Makoyo (Principal Magistrate)).

JUDGMENT

1. Takaful Insurance of Africa, the appellant herein, was the defendant in Kilungu Principal Magistrate's PMCC No. E001 of 2022. This was a suit seeking a declaration that the appellant was bound to pay the decretal amount and costs in Kilungu PMCC No. 191 of 2020, which was in favour of the respondent. The judgment was delivered in favour of the respondent.
2. The appellant was aggrieved by the said judgment and filed this appeal through the firm of Macharia Burugu & Company Advocates. The following grounds of appeal were raised:
 - a) The learned magistrate erred in law and fact by failing to hold that the respondent had not served on the appellant the requisite statutory notice before or within 30 days of filing the 30-day period expired (as required by law) despite the respondent not producing any iota of evidence that the said notice was served on the appellant.
 - b) The learned magistrate erred in law and fact by making a speculation on service of the statutory notice instead of deciding the case based on the evidence, which demonstrated that the said notice was not served on the appellant.
 - c) The learned magistrate erred in law and fact by failing to consider and be guided by the appellant's submissions and authorities.

3. The appeal was opposed by the respondent through Isika & Associates Advocates. It was contended that it lacked merit.
4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanour. I will be guided by the pronouncements in the case of **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123**, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
5. The appellant contended that the statutory notice was not served upon them. Section 10 (2) (a) of the Insurance (Motor Vehicles Third Party Risks) Act states:
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
6. The trial magistrate observed as follows:
... in this case, the defendant's main contention is that it was not served with notice of the primary suit as required by law. The Plaintiff has produced a notice dated 7th January 2020, and I have no reason to disbelieve that the same was issued to the defendant.
7. A court should not base its decision on a belief. The copy of the notice that was produced did not bear the appellant's stamp, nor was there anything presented to verify the sending and receipt of the notice.
8. There was therefore no evidence of the statutory notice having been served. The appeal is allowed with costs.

Delivered and signed at Makueni, this 18th day of December 2025

KIARIE WAWERU KIARIE

JUDGE