



**Kilonzo v Africa Merchant Assurance Company Limited (Civil Suit
E083 of 2022) [2025] KEHC 19127 (KLR) (Civ) (15 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL SUIT E083 OF 2022**

JM OMIDO, J

DECEMBER 15, 2025

BETWEEN

NDAMBUKI NGYEMA KILONZO PLAINTIFF

AND

AFRICA MERCHANT ASSURANCE COMPANY LIMITED DEFENDANT

JUDGMENT

A. The Pleadings

1. The Plaintiff herein, Ndambuki Ngyema Kilonzo, suing as the Administrator ad colligenda bona of the Estate of Franciscah Mbithe Kilonzo (Deceased), commenced this suit by filing a plaint dated 17th May, 2022 in which he sought the following reliefs against the Defendant, Africa Merchant Assurance Company Limited:
 1. A declaration that the Defendant has liability to honour the judgement of Honourable Justice J.K. Sergon in High Court Civil Suit No. 299 of 2015 delivered on 13th December, 2019 under Section 10(1) of Cap 405, Laws of Kenya and particularly for:
 - a. Principal amount in the sum of Ksh.26,140,968/-.
 - b. Costs of Ksh.1,536,547.18/-.
 2. Interest on the principal sum of Ksh.26,140,968/- at court rates of 14% from 13th December, 2019, the date of judgement, until payment in full.
 3. Interest on costs of Ksh.1,536,547.18/- at court rates of 14% from 3rd March, 2022, the date of the certificate of taxation, until payment in full.
 4. Costs of this suit and interest thereon.



5. Any other relief that this court may deem fit and just to grant.
2. The Plaintiff pleaded that at all times material to the instant suit, the Defendant, who was a licensed insurer under the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya, was the insurer of motor vehicle registration number KAY 204R (“the vehicle”), owned by one Patrick Kiamba, who was the Defendant’s insured.
3. The Plaintiff further pleaded that on or about the 31st of August, 2012 at about 1400hrs, the deceased was travelling aboard the said vehicle as a fare paying passenger along Kajiado – Nairobi Road and that the same was involved in a road traffic accident resulting from the negligence of its driver. The deceased met her demise in the said accident.
4. The Plaintiff further pleaded that he instituted on behalf of the deceased’s estate High Court Civil Suit No. 299 of 2015 jointly against the registered owner and driver of the said vehicle seeking to recover damages and that on 13th December, 2019, the court (Serگون J.) entered judgement in his favour for Ksh.26,140,986/-. No appeal or review was preferred from the said judgement.
5. The Plaintiff pleaded that under Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya the Defendant has a statutory duty to satisfy the said judgement, which the Defendant has failed to do despite demand and the requisite statutory notice having been issued, necessitating the instant proceedings.
6. The Defendant resisted the Plaintiff’s claim by filing a statement of defence dated 15th June, 2022.
7. In its defence, the Defendant denied the allegations that it was the insurer of the vehicle. In the alternative, the Defendant pleaded that if a policy of insurance for the vehicle existed, the same did not extend to cover the vehicle as claimed by the Plaintiff.
8. The Defendant denied knowledge and/or the occurrence of the accident and the existence of High Court Civil Suit No. 299 of 2015. The Defendant thus denied any such liability to the Plaintiff as pleaded in the plaint.
9. In the alternative, the Defendant pleaded that if there is any such liability, the extent to which the same can be paid by the Defendant is Ksh.3,000,000/- as per the provisions of Section 10(5)(b) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya.
10. The Defendant further stated that the requisite statutory notice was not served upon it and that the claim is therefore not tenable.
11. The Defendant prayed that the suit be dismissed with costs.

B. The Plaintiff’s Case.

12. The Plaintiff called Moureen Wausi Ndambuki as his witness. The witness testified and adopted the contents of her witness statement dated 5th September, 2024 as her evidence in chief.
13. In her statement, the Plaintiff’s witness stated that the Defendant was the insurer of the motor vehicle registration number KAY 204R that was owned by Patrick Kiamba, who was the insured, under policy number AN2/085/11/0011/2011 and that the policy of insurance was in force as at 31st August, 2012.
14. The witness stated that the vehicle was involved in a road traffic accident in which the deceased met her demise. That following the demise of the accident, the Plaintiff filed before the High Court Civil Suit No. 299 of 2015 on 31st August, 2015 jointly against the owner of the vehicle and the driver seeking to



recover damages resulting from the death of the deceased and that on 13th December, 2019, the court rendered its judgement in the matter.

15. The Plaintiff explained that before filing High Court Civil Suit No. 299 of 2015, he issued to the Defendant a notice under Section 10(2) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya, which was served upon the Defendant on 7th October, 2015 and a demand letter dated 14th April, 2022.
16. The Plaintiff stated that under Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya the Defendant has a statutory duty to satisfy the judgement and decree issued in High Court Civil Suit No. 299 of 2015, which the Defendant has failed to do despite demand and the above requisite statutory notice having been issued.
17. The Plaintiff's witness produced the following documents: Police abstract dated 11th September, 2012. Demand letter dated 27th July, 2015 from the Plaintiff's Advocates to Patrick Kiamba and Joseph Oswaga. Copy of plaint in High Court Civil Suit No. 299 of 2015 dated 31st August, 2015 and filed in court on even date. Copy of statutory notice under Section 10(2) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya dated 6th October, 2015 addressed to the Defendant and received by the Defendant on 7th October, 2015. Copy of the judgement delivered on 13th December, 2019 in High Court Civil Suit No. 299 of 2015 in which judgement was entered jointly and severally against Patrick Kiamba and Joseph Oswaga, the registered owner and driver, respectively, of motor vehicle registration number KAY 204R, in favour of the Plaintiff in the following terms: Copy of the decree issued on 5th April, 2022 in High Court Civil Suit No. 299 of 2015. Copy of certificate of costs dated 3rd March, 2022 indicating the taxed costs to be Ksh.1,536,547.18/- in favour of the Plaintiff. Copy of a demand letter dated 14th April, 2022 addressed to the Defendant and received by the Defendant on 20th April, 2022 seeking that the Defendant satisfies the judgement and decree in High Court Civil Suit No. 299 of 2015.
18. Upon being cross examined by learned Counsel for the Defendant Mr. Maiyah, the witness stated that while paragraph 7 of the witness's statement gave the policy number as AN2/085/11/0011/2011, paragraph 10 of the plaint provided the policy number as AM2/085/1/001153/2011.
19. On being re-examined by Ms. Kilonzo, learned Counsel for the Plaintiff, the witness stated that the police abstract produced had the details of the policy number as AM2/085/1/001153/2011, the registered owner as Patrick Kiamba and the registration number of the vehicle as KAY 204R. She further stated that the demand letter dated 6th October, 2015 had the same policy number as that in the police abstract.

C. The Defendant's Case.

20. The Defendant did not call any witness.

D. Issues For Determination.

21. This court has carefully considered the pleadings filed by the parties, the oral and documentary evidence tendered by the Plaintiff, the parties' submissions and the applicable provisions of the law.
22. From the outset, it is important to note that the Defendant, despite filing a statement of defence containing several denials and alternative pleadings, elected not to call any witness or to produce any documentary evidence in support of its case. The Plaintiff's evidence therefore stands substantially uncontroverted, save for the responses in cross-examination.



23. The court must nonetheless evaluate that evidence and determine whether the Plaintiff has discharged the burden of proof placed upon him on a balance of probabilities.
24. The issues for determination are as follows:
 - a. Whether the Defendant was, at the material time, the insurer of motor vehicle registration number KAY 204R.
 - b. Whether there existed a valid judgement against the Defendant's insured arising from the said road traffic accident.
 - c. Whether the Plaintiff complied with the statutory requirements set out under Section 10(2) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya.
 - d. Whether the Plaintiff has established that there is statutory liability against the Defendant.

E. Analysis And Findings.

25. The first substantive question that arises for determination is whether the Defendant was, at the material time, the insurer of motor vehicle registration number KAY 204R. On this issue, the Plaintiff's witness testified that the said motor vehicle was insured by the Defendant under a policy of insurance that was valid and subsisting as at 31st August, 2012, the date of the accident.
26. In support of this assertion, the Plaintiff produced a police abstract which clearly indicated the Defendant as the insurer of the vehicle, the registration number of the vehicle, the name of the registered owner and the policy number. The police abstract is an official document prepared by the police in the ordinary course of duty and is generally relied upon as prima facie evidence of the particulars contained therein unless rebutted.
27. The court is aware that during cross-examination, the Defendant's counsel raised an issue regarding an apparent discrepancy in the policy numbers as pleaded in the plaint and as stated in the witness statement. However, the witness adequately clarified this issue during re-examination by explaining that the police abstract and the statutory notice bore the same policy number and that the discrepancy was merely a clerical inconsistency in the pleadings.
28. Importantly, the Defendant did not produce any underwriting records, policy documents or testimony from its officers to deny the existence of the policy or to show that the vehicle was not insured by it at the material time. In civil proceedings, such silence in the face of cogent documentary evidence entitles the court to draw an adverse inference against the party who fails to rebut the evidence.
29. On the totality of the evidence before me and applying the standard of proof on a balance of probabilities, I am satisfied that the Plaintiff has proved that the Defendant was indeed the insurer of motor vehicle registration number KAY 204R at the time of the accident, on 31st August, 2012.
30. The second issue concerns whether there existed a valid judgement against the Defendant's insured arising from the said road traffic accident. The Plaintiff produced in evidence a copy of the judgement delivered on 13th December, 2019 in High Court Civil Suit No. 299 of 2015, a decree issued pursuant thereto and a certificate of taxation confirming the taxed costs.
31. The judgement clearly shows that liability was entered jointly and severally against the registered owner and the driver of the insured motor vehicle for the death of the deceased. There was no evidence placed before this court to suggest that the judgement was appealed against, reviewed, set aside or stayed. As such, the judgement remains valid, final and enforceable.



32. The Defendant's denial of knowledge of the accident and of the existence of the primary suit cannot avail it in the face of a valid judgement of a court of competent jurisdiction. It is trite law that a judgement, unless set aside or overturned on appeal, is conclusive as to the matters determined therein.
33. This court cannot sit on appeal over the decision of the High Court in Civil Suit No. 299 of 2015, nor can it reopen the question of liability or quantum determined therein.
34. The court must then determine the third issue, which is whether the Plaintiff complied with the statutory requirements set out under Section 10(2) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya.
35. Section 10(2) provides a pre-condition to an insurer's liability under the Act. It states that no sum shall be payable by an insurer under the provisions of Section 10(1) (which imposes the duty to satisfy judgments against insured third-party risks) in respect of any judgment, unless, before or within 14 days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of those proceedings.
36. In other words, the insurer must be given a statutory notice of the suit either before the suit is filed or at the latest within 14 days after the suit is commenced for the insurer to become liable to satisfy a subsequent judgment under Section 10.
37. Notably, the law does not provide any particular format that the notice under the said provision should take.
38. The Plaintiff produced a demand letter dated 27th July, 2015, addressed to the Patrick Kiamba and Joseph Oswaga and which was copied to Africa Motors Assurance Company Limited. The Plaintiff's witness stated that the reference to "Motors" rather than "Merchant" was a clerical error or slip. The demand letter served to notify the addressees of the letter that the Plaintiff had the intention of commencing proceedings, which were ultimately filed on 31st August, 2015 as Milimani HCCC No. 299 of 2015. It is important to note that the said letter made reference (at the bottom) to policy number AM2/085/1/01153/2011.
39. It is further to be noted that the Plaintiff produced a letter or notice dated 6th October, 2015 addressed to the Defendant, which was served upon the Defendant on 7th October, 2015. That was well over 14 days after Milimani HCCC No. 299 of 2015 had been filed, meaning that the same was not in compliance with Section 10(2) of the Act, which then means that on the application of the said letter or notice, no sum is payable by the Defendant under the provisions of Section 10(1), as that notice was issued out of the period provided for under the law.
40. But then, we have seen that Section 10(2) does not provide for the exact format or wording that the notice should bear. All that the provision requires is that the insurer be notified before or within 14 days after the commencement of the proceedings in which the judgment is given in the primary suit. Noting that the demand letter dated 27th July, 2015, that was addressed to the Patrick Kiamba and Joseph Oswaga was also copied to the Defendant, with the policy number indicated, I am satisfied that the Defendant was notified of the intended proceedings in the primary suit, before it was filed, vide that demand letter.
41. The Defendant merely pleaded that no statutory notice was served but did not tender any evidence to controvert the Plaintiff's proof of service of the letter dated 27th July, 2015. In the absence of such evidence the court I find that the Plaintiff fully complied with the mandatory statutory notice requirements under Section 10(2) of Cap 405 vide the letter of 27th July, 2015. The explanation by the



Plaintiff's witness that the reference to Africa Motors Assurance Company Limited rather than Africa Merchant Assurance Company Limited is an excusable error.

42. The last issue for determination is whether the Plaintiff has established that there is statutory liability against the Defendant.
43. Having found that the Defendant was the insurer of the subject motor vehicle, that a valid judgement was obtained against its insured and that the requisite statutory notice was duly served, the court now turns to the question of statutory liability.
44. Section 10(1) of the Act imposes a statutory obligation upon an insurer to satisfy a judgement obtained against its insured in respect of third-party risks. This liability arises by operation of law.
45. The Defendant pleaded, in the alternative, that its liability was limited to Ksh.3,000,000/- pursuant to Section 10(5)(b) of Cap 405. The law indeed provides for statutory limits, but the proper provision is Section 5(b)(iv) of Cap 405.
46. Under Section 5(b)(iv) of the Act, an insurer's liability for third-party death or bodily injury arising from a motor vehicle accident is limited to Ksh.3,000,000/- for a claim by one person.
47. This means that an insurer is not legally obliged to pay any amount in excess of Ksh.3,000,000/- in respect of a single third-party claim under the Act.
48. Consequently, the Plaintiffs' claim against the Defendant insurer to settle the full decretal amount is not supported by law and cannot be sustained. A court can award compensation in excess of the amount of Ksh.3,000,000/-, but the insurer's responsibility is capped. Insurers are only required to pay up to this amount for each claim and any amount awarded above Ksh.3,000,000/- in the underlying judgment is recoverable from the insured, not the insurer.

F. Disposition.

49. In light of the foregoing findings, the court is satisfied that the Plaintiff has partially proved his case against the Defendant on a balance of probabilities. Consequently, judgement is entered for the Plaintiff against the Defendant in the following terms:
 - a. A declaration is hereby issued that the Defendant is liable and/or under statutory obligation to satisfy the judgement and decree in High Court Civil Suit No. 299 of 2015 delivered on 13th December, 2019 under Section 10(1) of Cap 405, subject to the cap limit of Ksh.3,000,000/- under Section 5(b)(iv) of Cap 405 Laws of Kenya.
 - b. The sum of sum of Ksh.3,000,000/-.
50. With regard to costs and interest of the primary suit, I take the same view as did Odunga J. (as he then was) in *Kiamuko & another (Suing as Administrators of the Estate of the Late Evans Kyalo Maundu - Deceased) v ICEA Lion General Insurance Co. Limited (Civil Suit 26 of 2018) [2022] KEHC 11682 (KLR) (1 July 2022) (Judgment)* that that the statutory limit of Ksh.3,000,000/- is in respect only of liability of the principal award and that the same does not contemplate interest or costs which follow the event.
51. Accordingly, as the Defendant, knowing well that it was liable to pay the said sum but opted not to do so, it cannot escape liability on costs and interest.
52. Therefore, the further awards/reliefs are as follows:



- c. Interest on the principal sum in Milimani HCCC No. 299 of 2015 of Ksh.26,140,968/- at 14% per annum from 13th December, 2019, the date of judgement, until payment in full.
- d. Costs of Ksh.1,536,547.18/- as per the certificate of costs issued in Milimani HCCC No. 299 of 2015 on 3rd March, 2022 and interest thereon at 14% per annum from 3rd March, 2022, until payment in full.
- e. Costs of this suit and interest.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 15TH DAY OF DECEMBER, 2025.

JOE M. OMIDO.

JUDGE

For Plaintiff: Ms. Githinji For Ms. Kilonzo.

For Defendant: No Appearance.

Court Assistants: Mr. Ngoge & Mr. Juma.

