



**Upperhil Transporters Limited v Trident Insurance Company Limited; Kigen (Interested Party) (Civil Suit 8 of 2023) [2025] KEHC 19099 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19099 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT 8 OF 2023  
E OMINDE, J  
DECEMBER 19, 2025**

**BETWEEN**

**UPPERHIL TRANSPORTERS LIMITED ..... PLAINTIFF**

**AND**

**TRIDENT INSURANCE COMPANY LIMITED ..... DEFENDANT**

**AND**

**PATRICK KIPROTICH KIGEN ..... INTERESTED PARTY**

**JUDGMENT**

1. By a Plaint dated 25/05/2023, the Plaintiff filed a suit against the Defendant. The Plaintiff sought for the following reliefs:
  - a. A declaration that the Defendant should satisfy the Judgment and decree issued on 22nd February, 2022 in Eldoret CMCC No. 206 of 2020 Patrick Kiprotich Kigen -vs- Upper Hill Transporters Ltd against the Plaintiff arising from the accident that occurred on 11/01/2020, involving the Plaintiff's Motor Vehicle Registration Number KBP 488C.
  - b. Costs of the suit.
  - c. Any other relief this Honorable Court may deem fit and just to grant.
2. In the Plaint, the Plaintiff pleaded that it had lawfully insured motor vehicle registration number KBP 488C under Policy Number 001/08711/1/002740209 with the Defendant covering such persons as are specified in the policy in respect of any accident or death by the use of the said motor vehicle, thereby any accident was a liability covered under the said policy within the meaning of Section 5(a) Cap 405 Laws of Kenya. The Plaintiff alleges that it was a term of the said insurance policy cover that the Defendant would indemnify the Plaintiff in the event of loss/damage/claims arising from a road



traffic accident caused or arising from the use of the subject Motor Vehicle registration number KBP 488C within the contractual use of the motor vehicle.

3. The Plaintiff further pleaded that it was sued by the interested party in, Eldoret CMCC No.206 of 2020 Patrick Kiprotich Kigen -vs-Upper Hill Transporters Ltd for a road traffic accident involving the Plaintiff's motor vehicle Registration Number KBP 488C, that occurred on 11/01/2020 wherein Judgment was duly entered in favor of the Interested party and against the Plaintiff.
4. The Plaintiff also pleaded that upon receipt of pleadings and summons to enter appearance, the Plaintiff duly relayed the same upon its insurers the Defendant herein who consequently appointed the firm of Joe Ngigi & Company Advocates LLP, Bungoma to diligently represent the Plaintiff's interest in the said suit. The Plaintiff maintained that the said suit was defended by the said firm of Advocates after having been dully served with a statutory Notice pursuant to Section 10(2) (a) of Cap 405 of Laws of Kenya and as such, the Plaintiff has all along been under the impression that its interests were well protected.
5. The Plaintiff pleaded that after considering the pleadings, the honorable Court duly entered judgment against the Plaintiff in the said matter and a decree and certificate of cost was extracted thereafter on 2/12/2022 for a total sum of Kshs.710,901/= and added that the said judgment is in respect to liability covered by the said policy under Section 5 of Cap 405 Laws of Kenya which liability was wholly covered by the terms of the policy aforesaid and lawful judgment has been entered against the Plaintiff; being the insured, and the Defendant is and should in the circumstances be bound to pay the decretal sum in terms of Section 10(1) of Cap 105 Laws of Kenya.
6. The Plaintiff pointed out that notwithstanding the fact that it was the insured of the Defendant herein, the Defendant has acted in a manner likely to illegally repudiate the said insurance policy thusly the Plaintiff risks execution which has already been commenced through ICON AUCTIONEERS, in total disregard to the mandatory provisions of Cap 405, Laws of Kenya and all other enabling provisions of the Civil Procedure Rules.
7. Defendant entered appearance upon service of summons but did not file any Statement of Defense.
8. On 15/7/2024, when the matter came up for Mention before Hon. Justice Wananda. Parties agreed to canvass the suit by way of written submission. Pursuant thereto the Court directed that suit shall be determined by way of documents only, without the need to take viva voce evidence.

### **The Submissions**

9. The Defendant filed submissions dated 28/08/2024 whereas the Plaintiff did not file any.

### **The Defendant's Submissions**

10. On liability, Counsel for the Defendant submitted that Plaintiff as filed alleged several facts against the Defendant. Counsel added that the Plaintiff was duty bound to prove the said allegations for this suit to be sustainable.
11. In regard to whether the alleged insured Upper Hill Transporters Limited was the Defendant's insured at the time of the accident and whether motor vehicle registration number KBP 488C was insured by the Defendant at the time of the accident. Counsel submitted that the Plaintiff states in their Plaintiff that the Defendant was the insurer of motor vehicle registration number KBP 48C covered under an insurance policy number 001/08711/1/002740209 and that the Defendant's insured was Upperhill Transporters Limited, however, the Plaintiff did not produce a copy of the policy document to verify the veracity that the alleged insurance policy number was indeed issued to the motor vehicle registration



- number KBP 488C by the Defendant. Counsel urged that the policy document would have aptly proved that the said motor vehicle was insured by the Defendant as alleged in the Plaintiff.
12. Counsel contended that the Plaintiff also did not produce the certificate of insurance for motor vehicle registration number KBP 488C. Counsel maintained that the Certificate of insurance is usually proof of a valid insurance cover with a particular insurance company. Counsel pointed out that the certificate also provides verification of the insurance and usually contains information on types and limits of coverage, insurance company, policy number, named insured, and the policies' effective periods. Counsel observed that thus document if produced would also have been able to verify that Upper Hill Transporters Limited was the insured of motor vehicle registration number KBP 488C and also that the Defendant was the insurer of the same motor vehicle. Counsel relied on the case of *Richard Makau Ngumbi & another v Cannon Assurance Company Limited* [2016] eKLR.
  13. Counsel further submitted that the failure and/or omission by the Plaintiff to produce copies of the Policy document and certificate of insurance means they have failed to prove that Upper Hill Transporters Limited were the insured of the said motor vehicle registration number KBP 488C and also that the Defendant was the insurer of Upper Hill Transporters Limited. Counsel urged that the Plaintiff has thus failed to prove that Upper Hill Transporters Limited were the insured of the Defendant herein. Counsel maintained that the Defendant was not the insurer of Upper Hill Transporters Limited and of motor vehicle registration number KBP 488C and is thus not liable to satisfy a judgment against a company that was not insured by it.
  14. On whether the Statutory Notice was served on the Defendant, Counsel disputed that the statutory notice for the primary suit was served on the Defendant as it did not bear the stamp of the Defendant or a signature of either the Directors or the secretary of the Defendant, being the alleged insurer of motor vehicle registration number KBP 488C.
  15. Counsel cited Section 10(2) of the *Insurance (Motor Vehicles Third Party Risks) Act* and submitted that from the foregoing provisions of the *Insurance (Motor Vehicles Third Party Risks) Act*, the Defendant is not liable to pay an insurer if the insurer did not have notice of the commencement of the proceedings in which judgment was given against its insured. Counsel maintained that the fact that the statutory notice did not bear any proof of service on the Defendant by way of either stamp or signature, only proves that the same was indeed not served as mandated by section 10(2) of the *Insurance (Motor Vehicles Third Party Risks) Act*. Counsel added that the Plaintiff did not provide any decree in evidence to conclusively determine their right.
  16. Counsel further submitted that since the Defendant was not served he was definitely not a party to this suit since commencement to the tail end of the lower Court proceedings. According to Counsel, it therefore follows that since the Defendant was not involved in the proceedings as the Plaintiff's alleged insurer, then the Defendant is not liable to pay the decretal sum.
  17. In conclusion, Counsel submitted that Plaintiff did not prove their case on a balance of probability as they failed to prove that the Defendant was the insured of motor vehicle registration number KBP 488C as at the time of the accident and as such is not liable to settle any claim by the Plaintiff.

### **Determination**

18. From the pleadings on record. The only issue that arises for determination is “whether the Defendant, an Insurance Company (and the Plaintiff's insurer), is obligated by law to settle the Judgment entered against the Plaintiff in favor of the Interested Party and arising out of a road accident.”



19. In the instant case, the Defendant did not file any Statement of Defence. In the circumstances, there is nothing to show that the Defendant disputes the allegation that the Plaintiff is the judgement debtor in the primary suit where the Interested Party is the decree holder. The Plaintiff contends that the Defendant was the insurer of the motor vehicle which caused the accident the subject of that primary suit. That contention is not challenged by the Defendant herein. The Plaintiff seeks orders that the Defendant be compelled to meet its obligations under the contract of insurance by satisfying the said Decree.
20. The subject matter of the suit herein is a declaratory suit, brought under the provisions of the *Insurance (Motor Vehicles Third Party Risks) Act*, seeking to have the Defendant, an insurance company settle the decree. The decree was for an award of damages of Kshs. 710,901/= entered against the Plaintiff who at the material time was insured by the Defendant.
21. Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* provides for the duty of an insurer to settle a decretal amount as follows: -

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.

22. The essence of Section 10(1) of the Act was aptly captured by Hon. Gikonyo, J. in the case of Joseph Mwangi Gitundu v Gateway Insurance Co Ltd [2015] eKLR, thus:

“...under section 10(1) of Cap 405 Laws of Kenya, the insurer has a statutory obligation to 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.

The obligation is statutory and a strict one; it cannot be shifted or abrogated by a term in the contract of insurance or in the manner proposed by the Defendant, lest the noble intention of the Act to guarantee compensation of third parties who suffer injuries arising from the use of the insured motor vehicle on the road should be lost. Similarly, if the statutory obligation placed by law on the insurer was to be shifted to the insured as proposed by the Defendant, the purpose for taking out an insurance policy and the compulsion by the Act for such insurance cover to be taken out on vehicles to be used on the roads to cover third party risks under Cap 405 Laws of Kenya will also be defeated.

The only legal way liability and obligation to pay third party claims may be avoided, is by strictly following the prescriptions provided for under section 10 of Cap 405.”



23. The Plaintiff herein has demonstrated that it took out a policy with the Defendant in respect of the motor vehicle, and although the Plaintiff did not avail a copy of the policy or a certificate of insurance, the police abstract exhibited bears the Policy Number 001/08711/1/002740209 issued by Trident Insurance Co. Ltd. The abstract further shows that the said policy commenced on 14/3/2019 and was to expire on 13/03/2020. This is a point of fact that Counsel for the defendant is now controverting through the submissions filed on behalf of the defendant, having not filed any defense.
24. The position however is that the defendant ought to have controverted, rebutted and/or denied the evidence of the plaintiff that the Defendant was his insurer and that at the time of the accident, he had a valid insurance cover issued to him by the defendant by way of evidence to the contrary and not by way of submissions as Counsel has purported to do here. This is because submissions are not evidence. Submissions simply put, comprise of the application of the law to the facts of a case as averred by a litigant in support of their case as contained in their pleadings which facts are then expounded upon and availed at the hearing by a party adducing evidence which can either be oral and/or documentary or both.
25. Submissions therefore must have legs comprised that are of the fact of the case to stand on. In the instant case, the Counsel for the defendant is adducing evidence to rebut and controvert the facts proffered in support of the plaintiff's case in the submissions. This is untenable. Having failed to introduce the facts that he would have sought to rely on by way of the filing of a defense wherein he could have then denied, rebutted and/or controverted the averments made by the plaintiff in their pleadings as well as the documents availed and produced in support of their case, he cannot then purport to delve into issues of facts at the submission stage.
26. For the foregoing reasons and on a balance of probabilities I am satisfied that the Plaintiff has proved his case as against the defendant. I therefore find merit in their claim and accordingly the same is allowed in its entirety with costs to be borne by the defendants.

**READ DATED AND SIGNED AT ELDORET ON 19<sup>TH</sup> DECEMBER 2025.**

**E. OMINDE**

**JUDGE**

