



REPUBLIC OF KENYA



KENYA LAW
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**Stephen v Britam General Insurance Co. Ltd (Civil Suit E017 of 2022)
[2026] KEHC 472 (KLR) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL SUIT E017 OF 2022
SM GITHINJI, J
JANUARY 27, 2026**

BETWEEN

WILFRED MUGENDI STEPHEN PLAINTIFF

AND

BRITAM GENERAL INSURANCE CO. LTD DEFENDANT

JUDGMENT

1. Vide an amended plaint dated 2/8/2024, the Plaintiff sought the following prayers:
 - a. A declaration that the Plaintiff is entitled to the appointment as an intermediary to the Defendant in the tender to K.F.S (Kenya Forestry Service) and payment of a commission of 10% of the premium paid to the Defendant by the K.F.S and/or in the alternative the Plaintiff be paid general damages for loss of legitimate expectation to win the commission and general damages for abusive administrative justice by the Defendant.
 - b. A declaration that the Plaintiff is entitled to payment of 10% of the insured amount as commission.
 - c. Costs of the suit.
2. The Defendant denied the suit vide its statement of defence dated 10/1/2023, and prayed for its dismissal with costs.
3. The matter proceeded to full hearing where the Plaintiff testified as PW1. He adopted his statement dated 7/12/2022 as part of his evidence in chief and produced the lists of documents filed therewith as Plaintiff's exhibits. He told the court that he was a financial advisor, selling insurance for Britam, as an agent. He did a tender for K.F.S and the Defendant refused to pay him his commission. He was aware of the circular dated 24/3/2022, wherein all the agents were required to sign an agreement and have an appointment letter. He was equally aware of the provisions of paragraph 8 of the Sale



Agreement, to the effect that the agreement was subject to renewal at the end of each financial year. He did not produce a renewed agreement and the agreement produced concerned external agents. On 4/8/2022, he provided all intelligence concerning the premiums and forwarded the tender documents to the Defendant. Although he served the Defendant with the tender documents and the intelligence report, he did not have any proof of service, as he was an internal agent. On 23/9/2022, DW1 informed him via email that they had proceeded with another intermediary who had produced the necessary documents. It was clear from his response to that communication that he did not avail all documents, and he did not produce any proof to show that the tender was awarded to the Defendant by K.F.S.

4. DW1 Grace Wairimu Muratha, the Defendant's Business Development Manager, adopted her statement as her evidence in chief and produced the documents filed therewith as Defence exhibits. She told the court that the Plaintiff worked for the Defendant as an agent, and he and 5 others expressed interest in this tender as intermediaries. The Plaintiff lost because he failed to produce the tender document and other relevant information, even after they had called and emailed him to do so. Some of the documents the Plaintiff produced in court were never availed when the Defendant asked for them. The decision to proceed with someone else was communicated to the Plaintiff on 23/9/2022, which was 7 days before the closure of the tender on 30/9/2022 and the person who won the tender was duly paid. Of the 5 people indicated, only one won the tender, and the process was not new to the Plaintiff, as he had won a previous tender.

Submissions

5. The Plaintiff, through the firm of L. Kimathi Kiara & Co. Advocates filed submissions dated 1/9/2025. Counsel submitted that the Plaintiff was entitled to his commission for 2022-2023 and 2023-2024 being a renewal of the premium paid. Counsel argued that the Plaintiff was an in-house agent who did not require any stamping of the documents before presenting them to the Defendant.
6. The Defendant, through the firm of Muchemi & Co. Advocates filed submissions dated 25/8/2025. Counsel faulted the Plaintiff for failing to avail the requisite documents to enable the Defendant actively engage him in the Tender, despite multiple requests. Counsel submitted that Plaintiff's case was full of falsehoods and made-up stories, which fell short of proof on a preponderance of probabilities, and cited *William Kabogo Gitau v George Thuo & 2 Others* (2010) KEHC 4124 (KLR) and *Muvanya v Jubilee Insurance Company Limited* (Civil Appeal 225 of 2018) [2022] KECA 146 (KLR). Counsel urged the court to strike out the suit with costs, and cited *Joseph Oduor Anode v Kenya Redcross Society* (2012) eKLR and *Jasbir Singh Rai v Tarlochan Singh Rai & 4 Ors* (2014) eKLR.

Disposition

7. Having considered the pleadings herein, the evidence and the submissions by counsel, I discern the issue for determination to be whether the Plaintiff has proved his case against the Defendant to the required standard.
8. The Plaintiff admitted in his testimony that he did not submit all the requisite documentations to the Defendant, when he stated that, "I have not produced a renewed agreement. I served tender documents to the defendant. I have no evidence that I served. There is no evidence from Britam to show they received intelligence report and tender documents. I have email dated 23/9/2022 from Grace Muratha. She says they have proceeded with another intermediary who had produced the necessary documents. I received the email. There is another of 3/10/2022. I received the email. I responded on 8/10/2022. My response shows I never availed all documents. I have not produced a document to show the tender was awarded to Britam by K.F.S."



9. The reason proffered by the Defendant for its failure to consider the Plaintiff was his noncompliance with the laid down procedure, specifically his blatant omission to submit all the requisite documents, despite persistent requests. DW1 reiterated in her testimony that the Plaintiff failed to furnish the necessary documentation, even after being contacted via telephone and email. She stated that, “It is not the first time we had made a tender with him. The process was not new to Mr. Mugendi. He knew what he had to produce. I had not role to inform. At tender point he only informed us that the customer’s budget was 255,000,000/=. That is the only email he wrote. The information was not enough. The tender was even for 303,941,493/=”.
10. On 3/8/2022, the Defendant wrote an email to the Plaintiff requesting for the tender document and necessary intelligence. In his response vide the email dated 4/8/2022, the Plaintiff stated that, “Kindly note that the budget for medical of the above is ksh. 255m for coming year. About the tender document, well I have been told to check online.” Upon failing to receive the requested documents, the Defendant, vide the email dated 23/9/2022, duly notified the Plaintiff of its decision to go with another intermediary who had supplied all documents. There is no material placed before the court to demonstrate that the Plaintiff’s letter dated 4/8/2022, forwarding the tender document, was ever received by the Defendant.
11. Consequently, I find that the Plaintiff is the author of his own misfortunes, having failed to adhere to the procedural requirements for the tendering process, and the Defendant was justified in awarding it to a fully compliant agent.
12. Section 109 of the *Evidence Act* provides that; “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
13. It behooved the Plaintiff, as the party alleging to have complied with the requirements for the tendering process, to prove the same on a balance of probabilities.
14. In the circumstances therefore, I find that the Plaintiff did not discharge the burden of proof on a balance of probabilities, to warrant grant of the reliefs sought.
15. The upshot from the foregoing analysis is that the suit is dismissed for want of merit, with costs to the defendant.

DATED AND DELIVERED AT MERU THIS 27TH DAY OF JANUARY, 2026

S.M. GITHINJI

JUDGE

Appearances:

Plaintiff – Mr. Wilfred Mugendi Stephen

Mr. Bakaya for the Defendant (absent).

