



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL APPEAL NO E086 OF 2022.

DIRECTLINE ASSURANCE COMPANY LIMITED.....
.....APPELLANT

VERSUS

PETER MWANIKI
KARIITHI.....RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. E. Soita -
Resident Magistrate delivered on 23rd May, 2022 in Molo CMCC No.
E115 of 2021)*

JUDGEMENT

1. The Respondent herein filed the above stated **Molo CMCC No. E115 of 2021** (hereinafter referred to as the “declaratory suit”) *vide* Complaint dated 9th March 2021 seeking a declaration that the Appellant is liable to settle the decretal sum of Kshs. 1,861,989/= together with interest thereon and the costs of the suit, arising from Judgement delivered on 25th October, 2016 in another suit being **Molo**

CMCC No. 13 of 2008 (“the primary suit”). Judgement for the stated decretal sum was also craved in the declaratory suit. The Appellant’s liability arises from an insurance policy executed by the Appellant and its insured client, the 2nd Defendant in the primary suit, by which the former undertook to indemnify its client against third party risks that may result from use of his motor vehicle registration number KAS 506 R (Toyota Hiace).

2. The Appellant on its part denied liability for the claim *vide* its written Statement of Defence dated 10th June, 2021 contending *inter alia* that Judgement in the primary suit was entered against its insured client in the sums of Kshs. 2,000,000/= in general damages and Kshs. 72,570/= in special damages , and not Kshs. 2,670,080/= as claimed by the Respondent in the suit. It subsequently released a sum of Kshs. 1,113, 246/= to the Respondent to satisfy its liability under the insurance contract between it and its insured client. According to the Appellant it is not in law liable for the balance of the decree in the primary suit and

the same ought to be settled directly by the other Defendants/ Judgement debtors.

3. In his judgement the learned trial magistrate found in favour of the Respondent while agreeing with him that the Appellant's insured was under legal duty to satisfy the entire decree in the primary under the principle of "joint and several liability" of joint tort-feasors. The trial court rightly stated that the Appellant's liability was, however, to a maximum of Kshs. 3,000,000/= as limited by **section 5(b) (iv) of the Insurance (Motor Vehicle Third Party Risks) Act.**

4. The Appellant being dissatisfied with the judgement and Decree of the Trial Court preferred the instant appeal *vide* Memorandum of Appeal dated 5th May, 2023 on various grounds that may be condensed into two as hereunder :-

- i) That the Learned Trial Magistrate misdirected himself and erred in both law and fact by directing the Appellant to satisfy the whole decree issued in the primary suit.**

ii) That the learned trial magistrate erred in law and fact by misdirecting himself regarding the import of the provisions of section 5 (b) (iv) of the Insurance (Motor Vehicles Third Party Risks)Act;

iii) That the learned trial magistrate erred in law and fact by failing to appreciate or consider the Appellant's submissions.

And;

iv) That the Learned Trial Magistrate erred in both law and in fact by otherwise finding and holding that the Appellant was liable in the declaratory suit against the weight of evidence.

5. The Appellant therefore wants the Appeal to be allowed with costs of the Appeal and in the trial court, and that the lower court's Judgement dated 23rd May 2022 be set aside and substituted with an order dismissing the declaratory suit.

6. I shall consider all the stated Grounds of Appeal together. Submissions of learned Counsel for the parties are set out hereafter.

The Appellant's Submissions.

7. In brief submissions, the Appellant's Advocates bring to the court's attention that the Appellant had joined a Third Party (Samwel Kiriithi Waweru) in the primary suit as the 1st defendant arguing that his vehicle caused the accident in issue and so the Appellant sought to be indemnified by him against any damages its insured was exposed to.
8. The Appellant further argues that its payment of Kshs. 1,131,246/= to the Respondent was its full discharge of liability to settle the judgement against its insured under the law. According to the Appellant, the Third Party ought to pay any balance of the decretal sum as he was also found liable in the primary suit.
9. Besides, Counsel for the Appellant contend that Respondent's claim of Kshs. 1,861,989/= plus costs and interest is likely to overshoot the Kshs. 3,000,000/= cap insurers are obligated to pay pursuant to **Section 5(b) (iv) of the Insurance (Motor Vehicles Third Part Risks) Act.**

The Respondent's Submissions

10. Vide equally brief submissions, the Respondent's Advocates retort that the Appellant was obligated to satisfy the entire decree in the primary suit. In a nutshell, the Respondent's Advocates argue that the insured client of the Appellant was a joint tort-feasor with his co-Defendants in the primary suit and , therefore, he was jointly and severally liable to settle the decretal sum.. As its insurer, the Appellant is duty bound to liquidate the entire decree in the circumstances, submit Counsel.

Analysis and determination

11. This being a first appeal I am required to reconsider the evidence adduced, evaluate it and draw my own conclusions bearing in mind that I did not hear and see the witnesses who testified {(see **Selle & Another vs Associated Motor Boat Company Ltd & Others [1968] EA 123**}. The Court of Appeal for East Africa in **Peters vs Sunday Post Limited [1958] EA 424** underscored the same principles delivering itself thus:

“i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the

evidence on record and draw its own conclusions;

ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and

iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”

12. In the famous case of Mbogo & Another vs. Shah [1968] EA 93 it was further stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

13. I have considered the Record of Appeal as well as the arguments for and against the Appeal fronted in the rival submissions. The following two issues rise for this Court's determination:

- i) Whether the Appellant was lawfully found liable to satisfy the entire decree in the primary suit; and;**
- ii) Who bears the costs of this Appeal and those incurred in the lower court?**

14. This Court in **Directline Assurance Company Limited vs Mwangi [2024] KEHC 9887 (KLR)** appreciated the law as provided generally under **Insurance (Motor vehicle Third Party Risks) Act**, in the following terms;

“.....I understand the import of the law to be 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 within 30 days of filing the suit where judgment has been obtained and finally the

Respondent was a person covered by the insurance policy.

In my view, the purpose of the above provisions and the Insurance (Motor Vehicle Third Party Risks) Act Cap. 405 was to ensure that a third party who suffered injury or loss due to acts or omission on the part of an insured motor vehicle would be assured of compensation for their injury, loss or inconvenience in circumstances where the owner or driver of the insured motor vehicle has no means to settle the claim.”

15. The legal position is underscored in **UAP Insurance Co Ltd vs Patrick Charo Chiro [2021] eKLR** and **Jubilee Insurance Co Ltd vs Walter Tondo Soita [2021] eKLR** among many other judicial pronouncements.
16. It is common ground that the Appellant insured the subject vehicle against third party risks as per the requirement of the law. The Appellant concedes liability to indemnify its insured client but disputes the extent of that liability in the circumstances of this case as adverted to above.
17. Determination of this Appeal turns on understanding the principle of joint tort-feasors liability. In **National Land Commission & 6 Others Tunoi (Ex parte Applicant)**

(Environment & Land Judicial Review Miscellaneous Application 7 of 2019 [2024] KE ELC 6525 (KLR) this common law principle was explained thus;

“Joint and several liability makes all parties liable to pay the costs awarded thereto up to the entire amount awarded. For this reason responsibility for the total amount of costs awarded in a suit then shared by all the parties held liable for their payment. The Decree Holder is at liberty to elect to recover the full amount of the debt from anyone of the judgement debtors or recover a share from each or any of them. The liable parties are in law in a position where they are all exposed to the full amount or any share sought by the judgement creditor. This means that the Respondent is at liberty to pursue any of the Judgement Debtors to settle the full amount of costs awarded. In the event he pursues one party or any number of them for the costs, the party or parties so pursued are in turn entitled to seek reimbursement from their co-liable parties for their shares of the costs.”

18. This legal position is reiterated in many other cases including in **Hellen Njenga vs Wachira Murage & Another (2015) eKLR** as well as in a more recent decision of this court [**Kioko (suing as the Legal Representative of the Estate of the late James Mutunga) vs Mwaniki (Civil Appeal E176 of 2023) [2025] KEHC 16779 (KLR) (14 November 2025) (Judgement)**].

Determination

19. It is my considered view that the Respondent proved the Appellant's liability on a balance of probabilities and the trial court rightly entered judgement for the Respondent. The Appellant has the contractual duty to satisfy the entire judgement debt arising from the primary suit, its insured having been found both jointly and severally liable, subject to the statutory limit pursuant to **section 5 (b) (iv) of the Insurance (Motor Vehicle Third Party Risks) Act**. Of course the Appellant has the right to separately claim contribution from the third party who was brought in at its

instance as a defendant in the primary suit. It is noted that the trial court has found the third party liable for the third party claim.

20. The upshot is that the Appeal lacks in merit and is dismissed with costs to the Respondent. The Appellant shall also bear the costs of the declaratory suit as directed by the lower court.

J. M. NANG'EA - JUDGE

Judgement delivered virtually this 4th day of February 2026 in the presence of:

The Appellant's Advocate, Mr Owino

The Respondent's Advocate, Ms Kirui for Mr Mboga

The Court Assistant, Jeniffer.

J.M. NANG'EA - JUDGE.