



REPUBLIC OF KENYA



KENYA LAW
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Madison General Insurance (Kenya) Limited v Outdoor Response Limited (Civil Suit E004 of 2025) [2026] KEHC 1624 (KLR) (16 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL SUIT E004 OF 2025
DKN MAGARE, J
FEBRUARY 16, 2026**

BETWEEN

MADISON GENERAL INSURANCE (KENYA) LIMITED PLAINTIFF

AND

OUTDOOR RESPONSE LIMITED DEFENDANT

JUDGMENT

1. The plaintiff filed this suit by way of the Plaint dated 27.2.2025 seeking the following reliefs against the defendant:
 - i. A declaration that the Plaintiff is not obligated to settle the claim arising from Karatina CMCC No. E039 of 2024 and that any judgment obtained against the defendants therein or the defendant herein is not enforceable against the plaintiff.
 - ii. A declaration that the Plaintiff is not obligated to settle any other claim arising from the self-involved accident which occurred on 20.3.2021 along Karatina–Nyeri Road at Mahigaini Springs involving motor vehicle registration number KBD 831 TATA lorry which accident was booked as OB/05/20/03/2021 at Karatina Police Station.
 - iii. Costs of the suit and interest thereon at court rates.
2. The Plaintiff averred that from 14.10.2020 to 13.20.2021, the Plaintiff and the Defendant had in force a policy dated 14.10.2020 in relation to the use of the motor vehicle.
3. The Plaintiff also averred that on 21.5.2021, the defendant reported a self-involved accident alleged to have occurred on 20.3.2021 as a consequence of which one Jackson Kanyarati Muhindi, a passenger, sustained fatal injuries.
4. The estate of the said Jackson Kanyarati Muhindi lodged Karatina PMCC No. E039 of 2024 claiming damages under the *Law Reform Act* and *Fatal Accidents Act*.



5. It was stated that the cause of death of the deceased arose out and in the course of his contract of employment with the defendant.
6. Under policy, the Plaintiff could not be liable to pay for death or bodily injury of an employee in the course of employment.
7. The defendant entered appearance and filed defence dated 16.4.2025 denying the averments in the plaint and more specifically that the deceased was not an employee of the defendant.

Evidence

8. PW1 was Jared Wigina, the investigator. He relied on his report dated 21.6.2021. According to him, an accident occurred involving motor vehicle registration number KBD 831W.
9. PW2 was Sharon Laboso. She relied on her witness statement dated 27.2.2025 and produced the documents filed as exhibits.

Submissions

10. The Plaintiff filed submissions dated 22.10.2025. It was submitted that the deceased died in the course of employment and so the Plaintiff was not liable as the defendant was not covered under policy.
11. The Plaintiff relied on section 5 of the Insurance (Motor vehicle Third Party Risks) Act based on which it was submitted that the policy between the parties did not cover death or injury arising in the course of employment. Reliance was also placed on Kenya Orient Insurance Limited v Okuku [2023] KEHC 27235 (KLR) as follows:

In this case, it was not in dispute that the Respondent was injured in the course of his duty as employee and the accident motor vehicle registration number KAL 732X Canter was insured under a commercial cover to carry goods. The proviso to Section 5 of the Insurance Third Party Risks Act provided as follows: Provided that a policy in terms of this section shall not be required to cover –i) Liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or ii) Except in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arose

50. Clearly therefore, the Appellant was not covered. It was entitled to avoid liability. I therefore find reason to interfere with the finding of the Trial Court

Analysis

12. The issue before me is whether the Plaintiff is entitled to avoid the policy No. RNG/702/183312/2020 COMP. The Plaintiff, on the facts presented, had to prove its case. This is set out in Section 107-109 of the *Evidence Act* as follows: -

107.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
109. 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. In the case of Raila Odinga & another v Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae) (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR) (Election Petitions) (20 September, the Supreme Court stated as doth: -
- “62. On this sole important issue, the law is clear that he who alleges must proof. The term burden of proof draws from the Latin Phrase Onus Probandi and when we talk of burden we sometimes talk of onus.
63. Burden of Proof is used to mean an obligation to adduce evidence of a fact. According to Phipson on the Law of Evidence, the term ‘burden of proof’ has two distinct meanings:
1. Obligation on a party to convince the tribunal on a fact; here we are talking of the obligation of a party to persuade a tribunal to come into one’s way of thinking. The persuasion would be to get the tribunal to believe whatever proposition the party is making. That proposition of fact has to be a fact in issue. One that will be critical to the party with the obligation. The penalty that one suffers if they fail to proof their burden of proof is that they will fail, they will not get whatever judgment they require and if the plaintiff they will not sustain a conviction or claim and if defendant no relief. There will be a burden to persuade on each fact and maybe the matter that you failed to persuade on is not critical to the whole matter so you can still win.
 2. The obligation to adduce sufficient evidence of a particular fact. The reason that one seeks to adduce sufficient evidence of a fact is to justify a finding of a particular matter. This is the evidential burden of proof. The person that will have the legal burden of proof will almost always have the burden of adducing evidence.
14. The court has therefore to establish whether the matters pleaded in the plaint were proved. The Plaintiff had the duty to prove that the deceased who died in the course of employment was such a person to whom the policy did not apply. The Court of Appeal in the case Charterhouse Bank Limited (Under Statutory Management Vs. Frank N. Kamau (2016) Eklr had occasion to consider the burden of proof of the plaintiff where the defendant failed to adduce evidence. The court stated in that case:-
- “We would therefore venture to suggest that before the trial court can conclude that the plaintiff’s case is not controverted or is proved on a balance of probabilities by reason of the



defendant's failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant. Where the defendant has subjected the plaintiff or his witnesses to cross-examination and the evidence adduced by the plaintiff is thereby thoroughly discredited, judgment cannot be entered for the plaintiff merely because the defendant has not testified. The plaintiff must adduce evidence, which in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities, it proves the claim. Without such evidence, the plaintiff is not entitled to judgment merely because the defendant has not testified."

15. The plaintiff's case that the deceased was an employee and supervisor of the defendant and died in the course of employment with the defendant was not seriously opposed by the defendant. PW1, in its investigation report, revealed that a number of co-employees of the deceased issued statements to the effect that the deceased was an employee of the defendant and died in the course of duty. The defendant did not challenge this evidence.

16. The policy was a contract between the parties and this court cannot deviate from its clear terms. This was the position in *National Bank of Kenya Ltd vs. Pipe Plastic Samkolit (K) Ltd* (2002) 2 E.A. 503, (2011) eKLR where the Court of Appeal at page 507 stated as follows: -

A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.

17. Therefore, in the absence of any contrary evidence that the accident herein was not covered under the policy between the Plaintiff and the Defendant, this court is inclined to allow the suit. Therefore, the Plaintiff is entitled to a declaration to avoid the policy, and that the liability was not covered under Section 5 of the Insurance (Motor Vehicle Third Party Risks) Act CAP 405 which stipulates as follows:

5. Requirements in respect of insurance policies

In order to comply with the requirements of Section 4, the policy of insurance must be a policy which –

- (a) Is issued by a company which is required under the *Insurance Act*, 1984 (Cap 487) to carry on motor vehicle insurance business; and
- (b) Insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road:

Provided that a policy in terms of this section shall not be required to cover –

- i) Liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or
- ii) Except in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering



or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arose; or

- iii) Any contractual liability.
- iv) Liability of any sum in excess of three million shillings, arising out of a claim by one person

18. It is not in dispute that the policy was an insurance cover. The Plaintiff proved that the claims against the defendant as a consequence of the accident as filed in the lower court could be excluded from the application of the Insurance (Motor Vehicle Third Party Risks) Act CAP 405 in relation to the policy. The defendant, having not disputed the validity of the policy could not turn out to claim liability, without evidence; on the basis that the death occurred in the course of the employment of its employee. It is an evasive defence that cannot repudiate the policy under statute. Lord Denning in *Escoigne Properties Ltd – Vs - I.R. Commissioners (15) [1958] A.C at 565* stated that:

“A statute is not named in a vacuum, but in a framework of circumstances, so as to give a remedy for a known state of affairs. To arrive at its true meaning, you should know the circumstances with reference to which the words were used, and what was the object, appearing from those circumstances, which parliament had in view.”

19. The suit is consequently merited and I allow it.

20. Costs are at the discretion of the court. I am inclined to direct each party to bear own costs.

Determination

21. In the upshot, I allow the Plaintiff's suit and issue the following: -

- a. A declaration is hereby issued that the Plaintiff is not obligated to settle the claim arising from Karatina CMCC No. E039 of 2024 and that any judgment obtained against the defendants therein or the defendant herein is not enforceable against the Plaintiff.
- b. A declaration is hereby issued that the Plaintiff is not obligated to settle any other claim arising from the self-involved accident which occurred on 20.3.2021 along Karatina–Nyeri Road at Mahigaini Springs involving motor vehicle registration number KBD 831 TATA lorry which accident was booked as OB/05/20/03/2021 at Karatina Police Station.
- c. In the circumstances, each party will bear its own costs.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 16TH DAY OF FEBRUARY, 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Mwangi for the Plaintiff

No appearance for the Defendant

Court Assistant – Michael

