



REPUBLIC OF KENYA



KENYA LAW
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**Ruto v Madison General Insurance (Civil Appeal E003 of 2025)
[2026] KEHC 1285 (KLR) (6 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CIVIL APPEAL E003 OF 2025
CM KARIUKI, J
FEBRUARY 6, 2026**

BETWEEN

**BISMACK KIPKOECH RUTO ALIAS BISMARCK KIPKOECH
RUTO APPELLANT**

AND

MADISON GENERAL INSURANCE RESPONDENT

*(Being an Appeal from the Order and Judgment by the Magistrate Court
at Kilgoris Hon. W.C. Waswa – Senior Resident Magistrate delivered
on 21st day of February, 2025 in Kilgoris CMCC NO: E033 of 2024)*

JUDGMENT

1. The appellant instituted appeal against Respondent vide Memorandum of Appeal dated 5/3/2025 in which he seeks to set aside Judgment of the lower court delivered on 21/2/2025 in Kilgoris CMCC E033/2024. He sets out 8 grounds of appeal which crystalizes to the issue to whether the Appellant proved their claim that the said motor vehicle tractor registration No. KTCC 592 B was insured by the Respondent as at the date the accident occurred thus entitled to the relief sought in the Plaintiff filed in the subordinate court Kilgoris CMCC No. E033 of 2024. The appeal was canvassed via submissions.
2. The appellant submissions
3. The appellant case is that, the Respondents DWI in his statement and testimony testified that upon undertaking a search of the policy on their records, they found out that no such cover was issued by the Respondent covering the Tractor Registration Number KTCC 592B. The persons stated to be insured, that is Alphonse Kimei and Evelyn Jepkemboi Kimeli were also not found to feature anywhere in the defendants' records.



4. However, during cross examination, the Respondents witnesses DWI testified that they have once insured the tractor KTCC 592B which was from 14/04/2023 to 13/04/2024 yet they had indicated that there has never been such policy in existence which questions the sincerity of the respondent .
5. It's clear that the Respondent was trying so hard to exonerate themselves from being held liable in compensating the plaintiff herein and therefore the trial magistrate erred in law and fact by not finding that the Respondent insured tractor registration No. KTCC 592B under Policy Number HQS/702/56906/2013 on rt September 2022.
6. The tractor registration number KTCC 592B was duly insured by the defendant under Policy number HQS/702/56906/2013.
7. Section 10(1) aforesaid compels an insurer to satisfy a judgment against the person insured, that burden is removed, under Section 10(4), from an Insurer who obtains a declaration that it can avoid the Policy of Insurance. To benefit from this exception however, the Insurer must have served a Notice of Repudiation and filed a declaratory suit seeking confirmation of such repudiation, before a personal injury suit against the insured person has been commenced by or on behalf of a third party injured or killed in an accident contemplated in the insurance policy. If, however, the personal injury suit has already been commenced, then the insurer must have served the Notice of Repudiation within 14 days after the filing of such personal suit and also filed the declaratory suit within 3 months after the filing of such personal injury suit.
8. The statutory 14 days window under Section 10(4) aforesaid within which the Respondent would have repudiated liability had passed and therefore the Respondent was obligated to settle the claim Therefore the learned magistrate erred in law in failing to correctly evaluate, both oral and documentary evidence tendered by the appellant thereby arriving into a wrong conclusion hence wrong judgment.
9. Respondents Submissions: -
10. The respondent case is centred on the issue, whether the Appellant successfully proved the claim that the suit vehicle herein, being Tractor Registration Number KTCC 592B was insured by the Respondent at the date of the accident and is therefore entitled to the reliefs sought in the Plaint filed in the primary suit.
11. He submits that, the burden of proving the existence of any facts, disputed or otherwise, is on the person who asserts the existence of the same vide Section 107 of the Evidence Act ,relies on Section 108 of the Evidence Act .What constitutes sufficient discharge of this burden has been explained by several courts in varied terms to wit: In Evans Nyakwana vs. Cleophas Bwana Ongaro (2015) eKLR
12. The question as to what amounts to proof on a balance of probabilities was discussed by Kimaru, J in William Kabogo Gitau vs. George Thuo & 2 Others [2010] 1 KLR 526 see also : Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another (2015) eKLR
13. PW1, the Appellant herein, testified on his own behalf and stated during examination in chief that the insurance details he now relied on in the suit before the subordinate court were supplied to him by the police officers. He confirmed on cross examination that at the time of the accident, he did not see the insurance sticker or particulars on the vehicle. He equally did not take any photos at the scene of the accident which could identify the vehicle or the insurance particulars relied on in the suit.
14. He equally confirmed that he did not report the accident to the police himself, and was equally unaware that his advocates had been notified severally before instituting the suit before the subordinate court that the subject vehicle was not insured by the Respondent as at the date of the accident.



15. PW2, the PC Mwita, a police officer, was called solely for the purpose of producing a police abstract in relation to the accident giving rise to the suit.
16. He stated that he was stationed at Kilgoris Police Station and that on 01.09.2022, he received information from Abossi Police Station from one JARED MBAKA relating to an accident. That he accompanied him to the scene and upon arrival, they found the subject tractor which he stated to have joined the road without due care and hit a motor cycle. That the tractor and the motor cycle were both towed for inspection, statements recorded and both the driver and rider issued with Notices of Intended Prosecution.
17. The officer stated that the vehicle was insured by the Respondent herein vide policy number HQS/702/56906/2023 Comprehensive, and the Certificate number is B11449244. The police abstract was produced as the Plaintiff's Exhibit 1.
18. On cross examination, the said officer confirmed that he is stationed at Kilgoris Police Station, not Abossi Police Station where the abstract produced in court was issued and originated from. On the date of testifying, he was equally addressing Court from his work station, Kilgoris Police Station. He confirmed further that though he alleged to have accompanied the police officers to the scene of the accident, he was not the Investigating Officer in the matter and neither does his name feature anywhere on the Abstract produced in Court. The only name that appears therein is one James Mbaka. He therefore had nothing placing him at the scene of the accident at any particular time.
19. Additionally, though the vehicle was alleged to have been inspected, the motor vehicle Inspection report was not filed in court. The officer confirmed himself that the particulars of the Insurance were as read by himself, including details of the number of the Insurance Sticker/Certificate. This purported sticker as stated was however not produced in court, and the abstract as filed did not contain an indication of the period of insurance purported to have been covered by this said sticker.
20. It was impossible to tell when the cover alleged to have existed at the time of the accident commenced. The officer stated categorically that he could not tell the source of the information relayed to the Court and though he alleged to have had the police file at hand when testifying, he did not produce any photographs of the suit vehicle or the insurance sticker verifying any of these facts.
21. He conveniently stated that the photos were not in the file but on his phone and even then, nothing from the phone was produced in Court. Finally, the officer confirmed that the accident as stated was still pending under investigations and as the situation stands, none of the facts stated in the abstract had been conclusively confirmed as at the date of giving his testimony.
22. He could not even tell from the documents held who reported the accident or the source of the information stated therein but once thing was certain, the abstract as produced was issued on 25.01.2023, some 4 months after the accident. A copy of the initial accident report made on the date of the accident, if at all, was not filed in court. He confirmed on re-examination that the accident was reported by "members of the public". None in particular was named and the Investigating officer was not called to court to confirm any of the stated facts.
23. In Peter Kanithi Kimunya v. Aden Guyo Haro [2014] eKLR it was stated that "A police abstract is not proof of occurrence of an accident but of the fact that following an accident, the occurrence thereof was 'reported' at a particular police station."
24. In the instant case, it is not even clear who reported this purported accident. The particulars of this report, the circumstances surrounding the same and most importantly, the source of the information noted in the report is not clear and could not be clarified even by the officer testifying on the accident.



- There is nothing presented to the court as a reference point for the information supplied by a person who is otherwise a stranger to the report. He does not feature anywhere in the abstract and was even testifying from a different police station without a clear indication of how he got a hold of the subject report.
25. In the instant case, it is the Respondent's case that there was no Certificate of insurance issued to the insured that was valid as at the date of the accident. This was communicated to the Appellant's Counsel not once but thrice. The Respondent's witness clarified further that though the policy in question was issued to the insured first in the year 2013, the same has been renewed on and on and on and off basis, hence its inactivity as at the date of the accident.
 26. He stated further that if indeed there was a valid Certificate of Insurance at the date of the accident, then the police abstract would have, at the very least, captured the period covered by the same as they normally do. The information supplied by the Plaintiff as contained in the police abstract did not have an indication of the date of commencement of the purported policy.
 27. The Respondent cannot, in its defense, be called to prove what does not exist, especially where the full particulars thereof have not been pleaded or proved by the Appellant. It is true as was held by the court in the case of *APA Insurance Co Ltd v George Masele* [2014] eKLR relied on by the Appellant in their submissions that a certificate of Insurance, where one exists, is usually issued to the insured and not the road accident victim.
 28. It is however also true that the details in the police abstract as to the details of the insurance are in the ordinary course of events obtained by the police from the certificate of insurance affixed to the motor vehicle, as would have been in the instant case, or are supplied by the insured. In the instant case, the victim himself did not report the matter to the police and even the police officer himself could not state who reported the matter or obtained the details noted in the abstract.
 29. It is simply a report noted from the incident report supplied by unknown and unnamed persons and based on documents stated to have been referenced by the Investigating officer yet not filed in court or verified by the said officer in court. The Respondent's witness quite clearly pointed out that the police abstract relied on court was issued and filled some six months after the accident.
 30. As was stated in *Palace Investment* (supra), in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained. We submit on the basis of the foregoing that the Appellant was correctly determined to not have not proved his case to the required standard the court was right in dismissing the suit on that account.
 31. Finally, it has been submitted by the Appellant herein that if at all the Respondent intended to deny liability for the accident giving rise to the instant suit then they ought to have filed an appropriate suit repudiating the claim when the same was first brought to their attention. The circumstances under which such suits are filed are covered under Section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Cap 405 Laws of Kenya.
 32. It is clear from a reading of the said provision that disclaimer suits are only filed in instances where liability would otherwise be inferred on the part of the insurance company if, after a policy of insurance has been effected, judgment in respect of any such liability covered by the terms of the policy is obtained against any person insured by the policy, and is sought to be avoided for any of the reasons stipulated therein.
 33. Such suits are limited to causes of action relating to violation of material terms of the policy, or where it can be established that the policy was obtained by the non-disclosure of a material fact, or by a



representation of fact which was false in some material particular. The basic requirement before any such suits are filed therefore is the existence of a valid policy.

34. The Respondent's case before the trial court was that the policy was not active at the time of the accident and naturally, there would be no basis for instituting a disclaimer suit. The same was being used intermittently by the policy holder and was not active as at the date of the accident.
35. Issues Analysis And Determination
36. Being the first appellate court, the duty of this Honorable Court is to subject the whole of the evidence presented by the parties at trial to a fresh and exhaustive scrutiny and make its own conclusions on it and even in doing so, this court is invited to bear in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was well stated in *Selle & Another v Associated Motor Boat Co. Ltd. & Others* (1968) EA 123
37. After going through the trial court record and parties submissions, I find the issues are; whether the Appellant has proved the claim that the suit vehicle herein, being Tractor Registration Number KTCC 592B was insured by the Respondent as at the date of the accident and is therefore entitled to the reliefs sought in the Plaint filed in the primary suit. And costs of the suit.
38. It is trite that that in civil proceedings of this nature, the burden of proving the existence of any facts, disputed or otherwise, is on the person who asserts the existence of the same. Section 107 and 108 of the *Evidence Act*. Reliance is made on *Evans Nyakwana vs. Cleophas Bwana Ongaro* (2015) eKLR.
39. The question as to what amounts to proof on a balance of probabilities was discussed by Kimaru, J in *William Kabogo Gitau vs. George Thuo & 2 Others* [2010] 1 KLR 526, *Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another* (2015) eKLR,
40. PW1, the Appellant herein, testified on his own behalf and stated during examination in chief that the insurance details he now relied on in the suit before the subordinate court were supplied to him by the police officers. He confirmed on cross examination that at the time of the accident, he did not see the insurance sticker or particulars on the vehicle. He equally did not take any photos at the scene of the accident which could identify the vehicle or the insurance particulars relied on in the suit.
41. He equally confirmed that he did not report the accident to the police himself and was equally unaware that his advocates had been notified severally before instituting the suit before the subordinate court that the subject vehicle was not insured by the Respondent as at the date of the accident.
42. PW2, the PC Mwita, a police officer, was called solely for the purpose of producing a police abstract in relation to the accident giving rise to the suit. He stated that he was stationed at Kilgoris Police Station and that on 01.09.2022, he received information from Abossi Police Station from one JARED MBAKA relating to an accident.
43. Then he accompanied him to the scene and upon arrival, they found the subject tractor which he stated to have joined the road without due care and hit a motorcycle. That the tractor and the motorcycle were both towed for inspection, statements recorded and both the driver and rider issued with Notices of Intended Prosecution.
44. The officer stated that the vehicle was insured by the Respondent herein vide policy number HQS/702/56906/2023 Comprehensive, and the Certificate number is B11449244. The police abstract was produced as the Plaintiff's Exhibit 1.
45. On cross examination, the said officer confirmed that he is stationed at Kilgoris Police Station, not Abossi Police Station where the abstract produced in court was issued and originated from. On the



- date of testifying, he was equally addressing Court from his workstation, Kilgoris Police Station. He confirmed further that though he alleged to have accompanied the police officers to the scene of the accident, he was not the Investigating Officer in the matter and neither does his name feature anywhere on the Abstract produced in Court.
46. The only name that appears therein is one James Mbaka. He therefore had nothing placing him at the scene of the accident at any particular time. Additionally, though the vehicle was alleged to have been inspected, the motor vehicle Inspection report was not filed in court. The officer confirmed that the particulars of the Insurance were as read by himself, including details of the number of the Insurance Sticker/Certificate.
 47. This purported sticker as stated was however not produced in court, and the abstract as filed did not contain an indication of the period of insurance purported to have been covered by this said sticker. It was impossible to tell when the cover was alleged to have existed at the time of the accident commenced.
 48. The officer stated categorically that he could not tell the source of the information relayed to the Court and though he alleged to have had the police file at hand when testifying, he did not produce any photographs of the suit vehicle or the insurance sticker verifying any of these facts. He conveniently stated that the photos were not in the file but on his phone and even then, nothing from the phone was produced in Court.
 49. Finally, the officer confirmed that the accident as stated was still pending under investigation and as the situation stands, none of the facts stated in the abstract had been conclusively confirmed as at the date of giving his testimony. He could not even tell from the documents held who reported the accident or the source of the information stated therein but once thing was certain, the abstract as produced was issued on 25.01.2023, some 4 months after the accident.
 50. A copy of the initial accident report made on the date of the accident, if at all, was not filed in court. He confirmed on re-examination that the accident was reported by “members of the public”. None in particular was named and the Investigating officer was not called to court to confirm any of the stated facts. In *Peter Kanithi Kimunya v. Aden Guyo Haro* [2014] eKLR it was stated that “A police abstract is not proof of occurrence of an accident but of the fact that following an accident, the occurrence thereof was ‘reported’ at a particular police station.”
 51. In the instant case, it is not even clear who reported this purported accident. The particulars of this report, the circumstances surrounding the same and most importantly, the source of the information noted in the report is not clear and could not be clarified even by the officer testifying on the accident. There is nothing presented to the court as a reference point for the information supplied by a person who is otherwise a stranger to the report. He does not feature anywhere in the abstract and was even testifying from a different police station without a clear indication of how he got a hold of the subject report.
 52. In the instant case, it is the Respondent’s case that there was no Certificate of insurance issued to the insured that was valid as at the date of the accident. This was communicated to the Appellant’s Counsel not once but thrice. The Respondent’s witness clarified further that though the policy in question was issued to the insured first in the year 2013, the same has been renewed on and on and off basis, hence its inactivity as at the date of the accident.
 53. He stated further that if indeed there was a valid Certificate of Insurance at the date of the accident, then the police abstract would have, at the very least, captured the period covered by the same as they normally do. The information supplied by the Plaintiff as contained in the police abstract did not have an indication of the date of commencement of the purported policy.



54. The Respondent cannot, in its defense, be called to prove what does not exist, especially where the full particulars thereof have not been pleaded or proved by the Appellant. It is true as was held by the court in the case of *APA Insurance Co Ltd v George Masele* [2014] eKLR relied on by the Appellant in their submissions that a certificate of Insurance, where one exists, is usually issued to the insured and not the road accident victim.
55. It is however also true that the details in the police abstract as to the details of the insurance are in the ordinary course of events obtained by the police from the certificate of insurance affixed to the motor vehicle, as would have been in the instant case, or are supplied by the insured. In the instant case, the victim himself did not report the matter to the police and even the police officer himself could not state who reported the matter or obtained the details noted in the abstract.
56. It is simply a report noted from the incident report supplied by unknown and unnamed persons and based on documents stated to have been referenced by the Investigating officer yet not filed in court or verified by the said officer in court. The Respondent's witness quite clearly pointed out that the police abstract relied on court was issued and filled some six months after the accident.
57. As was stated in *Palace Investment* (supra), in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained. on the basis of the foregoing that the Appellant was correctly determined to not have not proved his case to the required standard the court was right in dismissing the suit on that account.
58. The Appellant herein that if at all the Respondent intended to deny liability for the accident giving rise to the instant suit then they ought to have filed an appropriate suit repudiating the claim when the same was first brought to their attention. The circumstances under which such suits are filed are covered under Section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Cap 405 Laws of Kenya .
59. It is clear from a reading of the said provision that disclaimer suits are only filed in instances where liability would otherwise be inferred on the part of the insurance company if, after a policy of insurance has been effected, judgment in respect of any such liability covered by the terms of the policy is obtained against any person insured by the policy, and is sought to be avoided for any of the reasons stipulated therein.
60. Such suits are limited to causes of action relating to violation of material terms of the policy, or where it can be established that the policy was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular. The basic requirement before any such suits are filed therefore is the existence of a valid policy.
61. The Respondent's case before the trial court was that the policy was not active at the time of the accident and naturally, there would be no basis for instituting a disclaimer suit. The same was being used intermittently by the policy holder and was not active as at the date of the accident.
62. In any event why didn't the appellant prove payments for the subject policies and or renewal evidence? Thus, the court finds no merit in appeal and thus makes the orders.
 - i. The appeal is dismissed with costs to the respondent.

DATED AND DELIVERED AT KILGORIS VIA MICROSOFT TEAMS THIS 6TH DAY OF FEBRUARY 2026

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CHARLES KARIUKI



JUDGE

