

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CIVIL APPEAL CASE NO. E027 OF 2025

U.A.P INSURANCE CO. LTD.....APPELLANT

VERSUS

JACKSON WACHIRA WANGAI.....RESPONDENT

JUDGEMENT

1. Before this Court is the Memorandum of Appeal dated **5th May 2025** by which the Appellant **UAP INSURANCE CO. LTD** seeks the following orders:-

“(a) THAT the Appeal herein be allowed and the judgment of the Lower Court be set aside.

(b) THAT the costs of the Appeal and the trial suit be granted to the Appellant.”

2. The Respondent **JACKSON WACHIRA WANGAI** opposed the appeal. The appeal was canvassed by way of written submissions. The Appellant filed the written submissions dated **29th August 2025** whilst the Respondents relied upon his written submissions dated **17th November 2025**.

BACKGROUND

3. This appeal arises from a judgment delivered in **Nyeri Civil Suit No. 137 of 2017**. Vide a Complaint dated **6th April 2017**, the Respondent (plaintiff) sought the following orders as against the Appellant (Defendant)

“(a) A declaration that the defendant is duty-bound to pay such compensation of the sum insured of Kenya shillings one Hundred and Fifty Thousand only (Kshs. 150,000/=)

(b) Costs of this suit.

(c) Interest in (a) and (b) above at court rates.

(d) Any other relief that this Honourable Court may deem necessary to grant.”

4. The Respondent states in his evidence that he had in the year 2015 taken out an insurance cover for a Friesian Cow with the Appellant through their agent **Green Clover Insurance Agency** in Nyeri. The annual Premium payable for that insurance cover was **Kshs. 6,750/=**. As things transpired the cow died from toxemia of the liver lesions on

27th November 2016. The Respondent complained that the Appellant declined to honour the Insurance contract and failed to compensate him for the loss of the cow.

5. The Appellants filed a defence dated **20th February 2018.** They denied any existence of an insurance contract between the parties. They deny that the premiums were paid as required and sought for dismissal of the suit.
6. On **23rd August 2022 Hon. MACHARIA, Senior Principal Magistrate** delivered his judgment in which he found in favour of the Respondent. The court ordered the Appellant to compensate the plaintiff in the amount of **Kshs. 150,000** being the sum insured. The court also awarded costs of the suit to the Respondent.
7. Being aggrieved by this decision the Appellants filed this memorandum of Appeal which was premised upon the following grounds:-

“1. THAT the Learned Magistrate erred in both law and fact in declaring that the Appellant herein was duty bound to pay such compensation in the sum of Kshs. 150,000/=

considering there was no valid cover existing obligating the appellant to settle the claim.

2. **THAT** the learned trial magistrate erred in law and fact by failing to analyze the substantive legal issues raised by the appellant herein during the trial and instead engaged in making a determination without considering the evidential weight of the appellant's witness testimony and documents produced.
3. **THAT** the learned trial magistrate erred in law and fact by totally disregarding the evidence by the appellant adduced during trial.
4. **THAT** the learned trial magistrate erred in law and fact by failing to consider the written submissions of the appellant herein.
5. **THAT** the judgment of the learned trial magistrate is against the law and weight of

the evidence on record and against the doctrine of stare decisis.

ANALYSIS AND DETERMINATION

8. I have considered the appeal before this court, the record of the proceedings before the Lower Court as well as the written submissions filed by both parties.
9. This is a first appeal and in this regard I take cognizance of the holding in **Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR)** in which the **Court of Appeal** stated as follows:-

This being a first appeal it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal is are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard

the witnesses and should make due allowances in this respect. See Selle and Another v Associated Motor Boat Company Limited and others [1968] EA 123 and Williamson Diamonds Ltd. V. Brown [1970] E.A.L

As we discharge our mandate of evaluating the evidence placed before the High Court, we keep in mind what the predecessor of this Court said in Peters -vs- Sunday Post Ltd [1958] EA 424. In its own words:-

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide.....”

10. The main issue for determination in this case is whether there existed a valid and enforceable Insurance Contract between the parties.
11. The Respondent asserted that a valid policy was in existence as he had paid the required premium. That the policy in existence was policy No. **070/220/1/006847/2015** which the Respondent had taken out in **April 2015** through the Appellants agent **Green Clover Insurance** to cover one Friesian cow valued at **Kshs. 150,000/=**.
12. The Respondent insisted that he had made the premium payments in instalments and that by the time the cow died he had paid **Kshs. 7,361** whilst the required premium for that year was **Kshs. 6,750**. Thus the respondent claims to have overpaid by **Kshs. 611/=**.
13. From the evidence and as pointed out by the learned trial magistrate in his judgment the premium payments were made in installments some to the agent and some payments were made directly to the insurer.
14. In the said judgment the trial magistrate stated that

“The defendant (the insurer) subsequently received some premiums an indication that I accepted to sustain the policy of insurance with the plaintiff. Otherwise why should the defendant write a demand for the unpaid premiums receive the same and then refuse to honour the policy.....”

15. I am not persuaded by this reasoning. The duty of a court is to enforce the contract between the parties as written and executed. Any interpretation of a contract must remain within the four walls of the said contract.
16. The insurance policy in question appears at **Page 45** of the Record of Appeal clauses **10.4** and **10.5** of that policy provide as follows:-

10.5 PREMIUM WARRANTY CLAUSE

It is a condition of this Contract of Insurance that the premium due must be paid and received by the Company immediately on declaration. If this condition is not complied with then this Contract is automatically cancelled and the Company shall be

entitled to the pro rata premium for the period they have been on risk. Where the premium payable pursuant to this warranty is received by an authorized agent of the Company, the payment shall be deemed to be received by the Company for the purposes of this warranty and the onus of proving that the premium payable was received by a person, including an insurance agent, who was not authorized to receive such premium shall lie on the Company.
[Own emphasis]

10.4 PREMIUM CALCULATION AND PAYMENT

Premium shall be calculated by application of the agreed premium rate to the sum insured as derived from the veterinary valuation report. The premium shall be paid immediately after declaration.

17. The question then would be whether the premiums had been paid by the Respondent as required by the policy in order to

create a binding contract between the parties in the year **2016**.

18. **DW1 MARTIN KIARIE MUNGA**, a branch Manager testified for the Appellant. He confirmed that the Respondent had taken out an insurance cover on **7th April 2015**. That the said policy was renewable annually upon payment of an annual premium of **Kshs. 6,750**. **DW1** insisted that the policy would only be renewed for the subsequent year once the premium due had been paid in full.
19. At **Page 36** of the Record of Appeal is the Risk note Serial No. **6836** issued by **Green Clover Agency** seeking renewal of the Policy for the year 2016. By a letter appearing at **Page 37** of the Record the Appellant rejected the risk note on the basis that the full premium had not been paid.
20. A clear reading of **Clause 10.5** of the Policy is that the Premium due must be paid and received by the company before declaration. This clause clearly provides that **“If this condition is not complied with then this contract is automatically cancelled and the company shall be**

entitled to the prorata premium for the period they have been on risk.....”

21. The policy came up for renewal in **April 2016**. The Respondent did not pay the annual premium of **Ksh. 6,750/=** in April Rather by his own admission the last installment was paid to the Appellant on **21st November 2016** just a few days before the cow died.
22. The position in law is that the insurance policy lapsed in **April 2016** due to non payment of the required premium. This is the clear import of **Clause 10.5**. In the case of **VIKANI t/a KISUMU BEACH RESORT -VS- PHOENIX OF EAST AFRICA ASSURANCE COMPANY LIMITED** the Court of Appeal held that a policy of insurance is not invalid merely for non-payment of premiums unless the policy itself so provides.
23. In this case I find that by operation of **Clause 10.5** of the policy and due to non-payment of the premium at the time of declaration (renewal), there existed no contract between the parties.

24. **Section 156** of the **Insurance Act Cap 487** (revised 2019) provides

that

“(1) No insurer shall assume a risk in payment in Kenya in respect of insurance business unless and until the premium payable thereon is received by the insurer.”

25. The premium due for the year 2016 was not received by the Appellant in **April 2016** as required by the policy document. Thus no insurance cover was due under that policy. Accordingly I find that this appeal has merit and the same is allowed. The judgment of the lower court delivered on **23rd August 2022** is hereby set aside. Each party shall meet their own costs for the case in the lower court and for this appeal.

Dated in Nyeri this 13th day of February, 2026.

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MAUREEN A. ODERO
JUDGE