

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VOI
CIVIL APPEAL NO. E042 OF 2025

FAITH NTAHMBI MUSYOKI.....
.....APPELLANT

-VERSUS-

G. A. INSURANCE COMPANY LIMITED.....
.....RESPONDENT

***(Being an appeal from the Judgment of Hon. Obura (CM) in
Voi CMCC No. E065 of 2024 delivered on 20/6/2025)***

JUDGMENT

- 1) The appellant filed a declaratory suit seeking to enforce a judgment obtained in Voi CMCC No. E0134 of 2023 in the sum of Kshs. 879,849/= together with interest and costs.
- 2) The plaintiff's claim arose out of a road traffic accident that occurred on 3/5/2023 at show ground area along Mwatate-Voi road.
- 3) The accident involved motor cycle no. KMDC 677X on which the appellant was travelling as a pillion passenger and motor vehicle registration no. KBW 001J which was insured by the respondent, GA Insurance Company Limited.

- 4) The respondents filed a defence in which it stated that it had insured the motor vehicle registration no. KBW 001J until 1st June 2022 when it was sold to a 3rd party and the insurance was cancelled.
- 5) The respondent further pleaded that it was a stranger to the proceedings and further that upon service of the demand letter, they promptly replied to it.
- 6) The trial court found that that the subject vehicle was sold and the respondent had no insurable interest in it.
- 7) Further that the policy was cancelled and a refund made and therefore the insurance sticker was not valid.
- 8) The court further held that once the plaintiff failed to prove the fact of insurance, the provisions of Section 10(1) of the Insurance (Third Party Risks) Act could avail to the appellant.
- 9) The trial court dismissed the appellant's sit and directed that each party bears its own costs of the suit.
- 10) The appellant has appealed against the said judgment on the following grounds;

i. The learned trial magistrate erred in law and fact in applying wrong principles of law thus dismissed

the appellant's suit despite the overwhelming evidence on record which decision was unjust and unfair.

- ii. The learned trial magistrate erred in law and fact by misapprehending the correct legal principles applicable in the cancellation of a motor vehicle insurance policy thus dismissed the appellants suit which decision was improper, unfair and unjust in the circumstances.***
- iii. The Learned Trial Magistrate erred in law and fact in misapprehending the statutory obligation of a motor vehicle insurer towards compensation of accident victims such as the appellant***
- iv. The learned trial magistrate erred in law and fact in misapprehending the Appellant's submissions as well as the authorities provided therein thus made a decision that was unfair and unjust in the circumstances,***
- v. The learned trial magistrate erred in law and fact in failing to take into account of the relevant evidence adduced by the Appellant thereby made unfair decision.***
- vi. The learned trial magistrate erred in law and facts by failing to take into account and or consider the Appellant's evidence, submissions and the***

provided authorities therein thereby arrived at a wrong decision.

vii. The learned trial magistrate erred in law and fact by failing to comprehend the Appellant's suit before her on its totality and thereby made a wrong and improper decision.

- 11) The parties filed written submissions as follows; The appellant submitted that she was injured in a road traffic accident on 3rd May 2023 while riding as a pillion passenger on a motorcycle that was struck from behind by a motor vehicle.
- 12) She successfully sued the driver and owner of that vehicle in the primary suit filed at Voi Chief Magistrate's Court, being CMCC No. E134 of 2023, and was awarded a decretal sum of Kshs.879,849/=.
- 13) When the defendants in that primary suit, and their insurer the respondent herein, failed to settle the amount, the appellant filed a declaratory suit against the respondent insurance company in Voi CMCC No. E065 of 2024 seeking to enforce the judgment under the provisions of the Insurance (Motor Vehicle Third Party Risks) Act.

- 14) The learned trial magistrate delivered judgment on 20th June 2025 dismissing the appellant's suit with an order that each party bear its own costs, and being aggrieved by that decision, the appellant filed the present appeal through a memorandum of appeal dated 16th July 2025 raising seven grounds of appeal.
- 15) Being a first appeal, the appellant submits that this court has the power to re-evaluate and analyze the evidence on record and reach its own conclusions while bearing in mind that it did not have the opportunity to see the witnesses testify, and that this court should only interfere with the trial court's findings of fact if it is demonstrated that the learned trial magistrate misapprehended the evidence, took into account irrelevant factors, left out relevant factors, based the decision on no evidence, or proceeded on wrong principles.
- 16) The appellant's case in the lower court was anchored on Section 10(1) of the Insurance (Motor Vehicle Risks) Act which obligates an insurer to pay to persons entitled to the benefit of a judgment any sums payable thereunder in respect of

liability covered by the policy, notwithstanding that the insurer may be entitled to avoid or cancel the policy.

- 17) The appellant called a police officer who testified that the accident occurred on 3rd May 2023 involving motor vehicle registration number KBW 001J and motorcycle KMDC 677X, and that the motor vehicle was insured by the respondent under certificate number C25135816 and policy number TBA (COMP) with a commencement date of 21st May 2022 and expiry date 20th May 2023, producing the police abstract as evidence.
- 18) The respondent on the other hand called its Assistant Claims Manager who admitted that the respondent indeed insured the motor vehicle for the period stated but alleged that the policy was cancelled on 21st June 2022 upon request from the insurance broker, producing certificates of insurance and a credit note as evidence.
- 19) While the certificate of insurance showed the same details as those given by the police officer, the credit note produced for the alleged refund showed a completely different policy

number, being P-2022-200-9001-90-28234, and did not indicate the registration number of the motor vehicle.

20) Under cross-examination, the respondent's witness admitted that there was no evidence of communication with the insured regarding the request for cancellation, that no notification of cancellation was made to the Registrar of Motor Vehicles and the Commissioner of Police as required by law, and that no notice to surrender the insurance certificate was issued to the insured.

21) The appellant submits that Section 10(2)(c) of the Act provides that no sum shall be payable by an insurer if before the happening of the event giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either before the happening of the event the certificate was surrendered or a statutory declaration of loss or destruction was made, or within fourteen days after the happening of the event the certificate was surrendered or such statutory declaration was made, or within twenty-eight days of the cancellation the insurer

notified the Registrar of Motor Vehicles and the Commissioner of Police in writing of the failure to surrender the certificate.

22) From the evidence on record, the respondent failed to comply with these statutory requirements and therefore there was no proper legal cancellation of the policy, meaning the policy remained valid and in force at the time of the accident.

23) The learned trial magistrate therefore erred in failing to take into account this relevant statutory provision and the evidence on record. Furthermore, the evidence showed that the motor vehicle was insured under policy number TBA (Comp), which was the policy number given by the police officer and contained in the certificates of insurance produced by the respondent, while the alleged refund was in respect of a completely different policy number, and the learned trial magistrate therefore misapprehended the evidence in holding that the policy had been cancelled and a refund made.

24) The appellant further relies on the Court of Appeal decision in *Blueshield Insurance Co. Ltd vs. Raymond Buuri M'Rimberia* which held that once statutory liability under section 5(b) is covered by the terms of the policy, the insurer is obliged

under section 10(1) of the Act to satisfy the judgment obtained against the insured and pay to the person entitled to the benefit of that judgment all sums payable thereunder with costs and interest, notwithstanding that the insurer may be entitled to avoid or cancel the policy vis a vis the insured or may have avoided or cancelled it.

25) Flowing from the foregoing, the appellant submits that the learned trial magistrate erred in law and fact in dismissing her suit and that the appeal should be allowed with costs, the judgment dismissing the suit should be set aside and replaced with an order allowing the suit as prayed in the plaint.

26) The respondent's written submissions in this appeal begin by providing a brief background to the dispute, explaining that the appeal arises from a decision in Voi CMCC No. E065 of 2024, where the appellant sought to enforce a decree from a previous primary suit, Voi CMCC No. E0134 of 2023, together with interest.

27) The trial court dismissed that suit, finding that the appellant had failed to prove her case on a balance of probabilities.

- 28) The trial court relied on evidence showing that before the suit was filed, the appellant had been informed that the alleged insured was not covered by the respondent and that the policy in question had been cancelled.
- 29) A certificate of insurance was produced showing cancellation on 21st June 2022, and the court concluded that no valid policy existed at the time of the accident on 3rd May 2023.
- 30) Aggrieved by that dismissal, the appellant lodged the present appeal on several grounds, including allegations of factual and legal misdirection.
- 31) The respondent submitted that this being a first appeal, the High Court is called upon to re-evaluate and re-analyze the evidence afresh while making allowances for the fact that it did not see or hear the witnesses, citing the principles in *Selle v Associated Motor Boat Co. Ltd.*
- 32) The respondent contends that upon careful consideration, the sole issue for determination is whether the trial magistrate erred in dismissing the suit against the insurer.

- 33) It is argued that the evidence before the trial court was clear and uncontroverted: the insurance policy for motor vehicle registration number KBW 001J was cancelled by mutual consent on 21st June 2022 following the sale of the vehicle.
- 34) The respondent's witness produced the cancellation endorsement, a refund credit note, and proof that the certificate of insurance was returned. Relying on Section 10(2)(c) of the Insurance (Motor Vehicles Third Party Risks) Act, Cap 405, the respondent argues that an insurer is exempt from liability where a policy is cancelled by mutual consent before the accident and the certificate is surrendered.
- 35) The appellant, on the other hand, tendered no policy, certificate, or any evidence to show that cover existed at the time of the accident. The trial court was therefore correct to find that there was no insurable relationship between the respondent and the tortfeasor.
- 36) The respondent further emphasizes that Section 10(1) of Cap 405 imposes a duty on insurers to satisfy judgments only if the policy was in force at the time of the accident, and

Section 10(2)(c) explicitly removes that obligation where cancellation occurred before the event and the certificate was returned.

- 37) Additionally, the respondent argues that liability under Section 10 cannot attach where the judgment debtor is not the insured person under the policy. In this case, the judgment in the primary suit was entered against individuals who were not insured under the cancelled policy.
- 38) The respondent also invokes Sections 107 to 109 of the Evidence Act, Cap 80, submitting that the burden of proof rested on the appellant to establish the existence of a valid policy and the applicability of statutory liability, a burden she failed to discharge. Conversely, the respondent provided cogent documentary evidence to the contrary.
- 39) In conclusion, the respondent submits that the trial court's decision was sound and lawful.
- 40) The evidence demonstrated that the policy was mutually cancelled long before the accident, the certificate was returned, the premium refunded, and statutory notifications issued.

- 41) The appellant adduced no evidence to show that a valid policy existed or that the respondent insured the tortfeasor.
- 42) The respondent urges the High Court to uphold the trial court's judgment, find that no statutory liability attaches to the respondent under Section 10 of Cap 405, and dismiss the appeal with costs.
- 43) This is a first appeal to the High Court, and as such, this court has the duty to re-evaluate and re-analyze the evidence on record in order to reach its own independent conclusions, while bearing in mind that it did not have the benefit of seeing the witnesses testify and observing their demeanor.
- 44) This principle is well settled in the locus classicus case of *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123, and it has been consistently followed by our courts. An appellate court will not ordinarily interfere with a trial court's findings of fact unless it is demonstrated that the trial court misapprehended the evidence, took into account irrelevant factors, failed to take into account relevant factors, or

applied the wrong legal principles, thereby arriving at an unjust decision.

45) This Court has carefully considered the record of appeal, the written submissions filed by both parties, and the relevant provisions of the law.

46) The sole issue for determination in this appeal is whether the respondent insurance company is liable to satisfy the judgment obtained by the appellant in the primary suit, Voi CMCC No. E0134 of 2023, pursuant to the provisions of the Insurance (Motor Vehicles Third Party Risks) Act (Cap 405, Laws of Kenya).

47) The appellant's claim against the respondent is anchored on Section 10(1) of the Act, which creates a statutory obligation for an insurer to pay to a third-party judgment-creditor sums due under a judgment obtained against the insured.

48) The respondent's defence, which was upheld by the trial court, was that the insurance policy for motor vehicle registration number KBW 001J had been cancelled on 21st June 2022, following the sale of the vehicle, and therefore, it was not in force at the time of the accident on 3rd May 2023.

- 49) The respondent called its Assistant Claims Manager who produced certificates of insurance and a credit note to support this position.
- 50) However, a critical examination of this evidence reveals fundamental flaws that fatally undermine the respondent's defence of a valid cancellation.
- 51) The respondent's own certificate of insurance clearly showed that the vehicle was insured under a policy with a commencement date of 21st May 2022 and an expiry date of 20th May 2023, bearing a particular policy number.
- 52) Critically, the credit note produced to prove the alleged refund of the premium pertained to a completely different policy number, and this document did not even indicate the registration number of the motor vehicle in question.
- 53) This discrepancy creates a significant doubt as to whether the cancellation and refund, if any, actually related to the specific policy covering the accident motor vehicle.
- 54) More fundamentally, the respondent's evidence fell far short of demonstrating that the cancellation was legally effective as against a third-party claimant like the appellant.

55) Section 10(2)(c) of the Insurance (Motor Vehicles Third Party Risks) Act provides stringent conditions that an insurer must meet to be absolved from liability where a policy has been cancelled.

56) It stipulates that no sum shall be payable by an insurer if, before the happening of the event giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either:

- (i) Before the happening of the event, the certificate of insurance was surrendered to the insurer, or a statutory declaration of its loss or destruction was made;**
- (ii) After the happening of the event, but within fourteen days therefrom, the certificate was surrendered or such statutory declaration was made; or**
- (iii) Within twenty-eight days of the cancellation, the insurer notified the Registrar of Motor Vehicles and the Commissioner of Police in**

writing of the failure to surrender the certificate.

57) In the instant case, the respondent's own witness admitted under cross-examination that there was no evidence of communication with the insured regarding the alleged request for cancellation, that no notification of cancellation was ever made to the Registrar of Motor Vehicles and the Commissioner of Police as mandatorily required by law, and that no notice was issued to the insured to surrender the insurance certificate.

58) These admissions are fatal to the respondent's defence. The statutory requirements for a valid cancellation that can be asserted against a third party are not mere procedural technicalities; they are substantive conditions precedent designed to protect innocent third-party road users who may be unaware of private arrangements between an insurer and its insured.

59) An insurer cannot, through its own failure to comply with the law, be allowed to escape the statutory liability that the Act imposes for the benefit of the public.

- 60) The respondent's argument that the burden of proof rested on the appellant to prove the existence of a valid policy is misguided in the context of this case.
- 61) The appellant, through the police abstract and the evidence of the police officer, established a prima facie case that the accident motor vehicle was insured by the respondent at the material time.
- 62) The abstract, being a public document, carries evidential weight. The burden then shifted to the respondent, who was pleading a cancellation, to prove that the cancellation was not only factually carried out but was also legally effective in compliance with the stringent provisions of Section 10(2)(c) of the Act.
- 63) The respondent failed to discharge this burden. On the evidence on record, the respondent cannot rely on a purported cancellation that was not notified to the statutory authorities. Consequently, for the purposes of the appellant's claim under Section 10 of the Act, the policy must be deemed to have been valid and subsisting at the time of the accident.

- 64) The learned trial magistrate, with respect, misapprehended the correct legal principles applicable to the cancellation of a motor vehicle insurance policy and the statutory obligations of an insurer towards accident victims.
- 65) She failed to properly evaluate the evidence, particularly the critical admissions made by the respondent's witness regarding the lack of statutory notifications.
- 66) Her conclusion that the policy had been validly cancelled and that the respondent had no insurable interest was therefore not supported by the evidence or the law.
- 67) She failed to recognize that an insurer's obligation to a third-party judgment-creditor under Section 10(1) persists despite any cancellation or avoidance of the policy vis-à-vis the insured, unless the strict conditions of Section 10(4) (relating to avoidance for non-disclosure) or Section 10(2)(c) (relating to cancellation) are fully and properly met.
- 68) In the result, this court finds that the appeal is meritorious. The judgment of the trial court dismissing the appellant's suit is hereby set aside.

69) The appellant has established her case against the respondent on a balance of probabilities. Accordingly, judgment is entered for the appellant as prayed in the plaint in Voi CMCC No. E065 of 2024.

70) The respondent is hereby ordered to satisfy the decree obtained in Voi CMCC No. E0134 of 2023, being the sum of Kshs. 879,849/= together with interest thereon and costs as awarded in that primary suit

71) . The appellant shall also have the costs of this appeal and the costs of the suit in the lower court.

72) Orders to issue accordingly.

Dated, Signed and Delivered online via Microsoft Teams at Voi this 5th day of March, 2026.

.....
A. N. ONGERI
JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

..... for the Appellant

..... for the Respondent

ORIGINAL