



Munyoki v Kenya Orient Insurance Company Limited (Civil Appeal E1190 of 2024) [2026] KEHC 2671 (KLR) (Civ) (20 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2671 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E1190 OF 2024
WA OKWANY, J
FEBRUARY 20, 2026**

BETWEEN

SAMSON KAVILI MUNYOKI APPELLANT

AND

KENYA ORIENT INSURANCE COMPANY LIMITED RESPONDENT

*(Being an appeal from the Judgment of Hon. S.G. Gitonga (SRM)
delivered on 9th October 2024 in Milimani CMCC No. E5868 of 2022)*

JUDGMENT

Introduction and Background

1. The Appellant had previously instituted Kitui CMCC No. 142 of 2019, wherein judgment was entered in his favour against the insured of motor vehicle registration number KBQ 181D following a road traffic accident that occurred on 25th July 2018. The trial court in the primary suit found the insured 100% liable.
2. Upon failure by the insured to satisfy the decree, the Appellant filed the declaratory suit under Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405, seeking to compel the Respondent insurer to satisfy the decretal sum.
3. The trial court dismissed the declaratory suit on the basis that the Appellant had failed to prove that motor vehicle KBQ 181D was insured by the Respondent at the material time.

The Appeal

4. Aggrieved by the trial court's decision, the Appellant lodged this appeal in which he contends, in summary, that the learned trial magistrate:



- a. Erred in law and fact in holding that the Appellant had not proved his case on a balance of probabilities;
 - b. Misapplied the law on burden of proof;
 - c. Failed to properly appreciate the evidential value of the police abstract;
 - d. Misapprehended the nature of a declaratory suit under Cap 405.
5. The Appellant urges this Court to set aside the judgment and substitute it with one allowing the declaratory claim.
 6. The appeal was canvassed by way of written submissions which I have considered.
 7. From the Memorandum of Appeal and submissions, I find that the main issues for determination are:
 - a. Whether the Appellant sufficiently proved that motor vehicle registration number KBQ 181D was insured by the Respondent at the material time.
 - b. Whether the trial court erred in dismissing the declaratory suit.

Analysis and Determination

8. As a first appellate court, this Court is obligated to re-evaluate the evidence and draw its own independent conclusions, while bearing in mind that it neither saw nor heard the witnesses.

Burden and Standard of Proof

9. Section 107(1) of the *Evidence Act* provides that:

“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.”
10. The Supreme Court in *Raila Odinga & another vs. IEBC & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae)* [2017] eKLR stated that:

“The common law concept of burden of proof (onus probandi) is a question of law which can be described as the duty which lies on one or the other of the parties either to establish a case or to establish the facts upon a particular issue.”
11. Similarly, in *William Kabogo Gitau vs. George Thuo & 2 Others* [2010] 1 KLR 526, the Court held:

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place... a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities.”
12. Further, in *Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another* [2015] eKLR, citing *Miller vs. Minister of Pensions* (1947) 2 ALL ER 372, the Court stated:

“That degree is well settled. It must carry a reasonable degree of probability... If the probabilities are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow.”



13. The legal burden therefore rested squarely upon the Appellant to prove that the Respondent insured the subject motor vehicle.

Whether the Appellant Proved Insurance

14. The Appellant relied primarily on the police abstract which indicated that motor vehicle KBQ 181D was insured by the Respondent under policy number MSA/0800/046388/2014/COMP.
15. The Appellant noted that the Respondent did not call any witness and argued that since a police abstract is a public document whose contents were not rebutted, the burden shifted to the insurer to disprove coverage.
16. The Appellant relied on *APA Insurance Co. Ltd vs. George Masele* [2014] eKLR, where the Court observed:

“The Certificate of Insurance is usually issued to the insured and not the road accident victim. It is a document in the special knowledge and possession of both the insured and the insurer. The road traffic accident victim cannot access it.”
17. He further relied on *Motex Knitwear Limited vs. Gopitex Knitwear Mills Limited* HCCC No. 834 of 2002, where the Court held:

“Although the Defendant has denied liability... no witness was called to give evidence on his behalf... the defence rendered... stand unchallenged but also that the claims made by the Defendant... are unsubstantiated.”
18. The Appellant argued that in the absence of rebuttal evidence, the police abstract was sufficient proof on a balance of probabilities.
19. The trial court held that the Appellant failed to discharge the burden of proof as no policy document or certificate of insurance was produced. The court observed that police abstract alone was insufficient proof of insurance.
20. The court found that mere mention of the insurer in the police abstract did not amount to proof of a valid policy.
21. The question before this Court is whether the police abstract, in the absence of rebuttal evidence, was sufficient to discharge the burden of proof.
22. The law is settled that a police abstract is prima facie evidence of the occurrence of an accident and particulars recorded therein. However, it is not conclusive proof of the existence of an insurance contract.
23. That said, the context of declaratory suits under Section 10 of Cap 405 is unique. The accident victim is not privy to the insurance contract. The certificate of insurance is ordinarily in the possession of the insured and insurer.
24. In *APA Insurance Co. Ltd vs. George Masele* [2014] eKLR, the Court recognized this practical reality, holding that the certificate of insurance is in the special knowledge and possession of the insured and insurer.
25. Section 112 of the *Evidence Act* further provides that when a fact is especially within the knowledge of a party, the burden of proving that fact lies upon that party.



26. The Respondent denied issuance of a policy but did not call any witness nor produce any documentary evidence to rebut the particulars contained in the police abstract. No evidence was tendered to show that the policy number cited did not exist or that the vehicle was insured elsewhere or that the policy had lapsed or had been avoided.
27. It is trite that in civil proceedings, the standard is not proof beyond reasonable doubt but proof on a balance of probabilities.
28. In the present case, the Appellant produced a police abstract indicating the insurer and policy number. evidence of the primary judgment and evidence of service of statutory notice.
29. The Respondent, on the other hand, offered only bare denials.
30. Where evidence stands uncontroverted and plausible, a court is entitled to accept it.
31. On a re-evaluation of the evidence, this Court finds that the Appellant discharged the evidential burden by producing the police abstract. The burden then shifted to the Respondent, in whose special knowledge the existence or non-existence of the policy lay, to rebut the claim.
32. The Respondent failed to do so and in the circumstances of this case, I find that the probabilities tilt in favour of the Appellant.
33. Accordingly, I find that the instant appeal is merited and I therefore allow it in the following terms: -
 - a. The Judgment delivered on 9th October 2024 in Milimani CMCC No. E5868 of 2022 is set aside.
 - b. Judgment is hereby entered for the Appellant in the declaratory suit.
 - c. The Respondent shall satisfy the decretal sum arising from Kitui CMCC No. 142 of 2019 together with interest and costs pursuant to Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act.
 - d. The Respondent shall bear the costs of the declaratory suit and this appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2026.

HON. W. A. OKWANY

JUDGE

20/02/2026

For Appellant No Appearance

For The Respondent No Appearance

Court Assistant Abdirizak

File close

