



REPUBLIC OF KENYA



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**Madison General Insurance Kenya Limited v Mwangi (Civil Appeal
E113 of 2023) [2026] KEHC 2944 (KLR) (18 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E113 OF 2023
NIO ADAGI, J
FEBRUARY 18, 2026**

BETWEEN

MADISON GENERAL INSURANCE KENYA LIMITED APPELLANT

AND

LYDIA KIRIGO MWANGI RESPONDENT

*(Being an Appeal from the Judgement of Honourable E. H. Keago Chief Magistrate
delivered on 17th March, 2022 in Machakos Chief Magistrate Civil Suit No. 337 of 2019)*

JUDGMENT

1. By way of a Plaintiff dated 17/06/2019, the Respondent then Plaintiff commenced proceedings against the Appellant then Defendant seeking to enforce judgment and decree obtained in Machakos CMCC No. 352 of 2012 (hereinafter referred to as “the primary suit”) pursuant to the provisions of the *Insurance (Motor Vehicles Third Party Risks) Act*, Cap 405 of the Laws of Kenya.
2. The Appellant’s case was pleaded in its Statement of Defence dated 30/07/2019 in which it averred that it discharged its statutory liability by remitting Kshs.3,000,000 which is the maximum limit for insurance to pay as provided by the Motor Vehicle Third Party Risks Act, Cap 405 Laws of Kenya.
3. The suit was heard on 18/08/2021 before Hon. E. H. Keago who, vide a judgment dated 17/03/2022 found the Plaintiff to have proved her case and ordered the Defendant to settle the balance of the decretal sum plus all accrued interest from the date of the decree until payment in full.
4. Being aggrieved by the court’s decision, the Appellant preferred this appeal. The Memorandum of Appeal sets out 5 grounds of appeal as follows:
 1. That the learned Honourable Magistrate erred and misdirected herself in law upon finding the Appellant is obligated to satisfy and/or honour the balance of the decretal sum plus all the accrued interest from the date of the decree until payment in full in a judgment entered



In Machakos CMCC NO. 352 of 2012 Lydia Kirigo _Mwangi And Ezekiel Kamau Mwangi} (legal Representative Of The Estate Of John Mwangi Kamau) -vs. Peter Muli Mutuku And Mary Nzeki

2. That the learned Honourable Magistrate erred and misdirected himself in law in failing to consider or sufficiently consider and appreciate that the Appellant herein bears no statutory obligation to satisfy and/or settle the balance of the decretal sum plus all the accrued interest from the date of the decree until payment in full in excess of the provisions of Section 5(b) (iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 which limits the Defendant/Appellant's liability to pay a third party Kshs.3,000,000/= arising out of a claim by one person.
3. That the learned Honourable Magistrate failed to appreciate or properly appreciate the Appellant's case properly pleaded before him and/or consider or sufficiently consider the submissions made on the Appellant's behalf.
4. That the learned Honourable Magistrate misinterpreted and misunderstood the superior Court's finding when he held that Section 5(b) (iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 was declared unconstitutional in Nairobi High Court Petition No. 148 Of 2014 Law Society Of Kenya -vs- Attorney General & Others [2016] eKLR.
5. That the learned Honourable Magistrate misinterpreted and misunderstood the superior Court's finding when he held that Section 5(b) (iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 was declared unconstitutional in National Court Of Appeal Civil Appeal No. 141 Of 2016 Justus Mutiga Asok Ghosh & Another -vs- Law Society Of Kenya & Another.
5. The Appellant prays that:
 1. That this Appeal be allowed.
 2. That the judgement of the subordinate court dated on 17th March, 2022 be set aside.
 3. That the Respondent's suit before the subordinate court be struck out and/or dismissed with costs to the Appellant.
 4. That the costs of the Appeal be awarded to the Appellant.
6. The appeal was canvassed through written submissions.
7. This being the first appellate court, it is my duty under Section 78 of the *Civil Procedure Act* to subject the whole evidence to a fresh and exhaustive scrutiny and make my own conclusions about it bearing in mind that I did not have the opportunity of seeing and hearing the witness first hand. (See *Seascapes Ltd v. Development Finance Company of Kenya Ltd* [2009] KLR, 384)
8. I have carefully considered the record of appeal, the rival submissions by parties' counsel, the authorities cited by each counsel and the applicable law. The grounds of appeal can be collapsed into two major issues for determination by this court:-
 - i. Whether the Learned Magistrate erred in law by holding that the Appellant is obligated to settle the full decretal sum and accrued interest despite the statutory limitation under Section 5(b)(iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405.
 - ii. Whether the Learned Magistrate misinterpreted and misunderstood or misapplied judicial precedents in holding that Section 5(b)(iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 had been declared unconstitutional.



Whether the Learned Magistrate erred in law by holding that the Appellant is obligated to settle the full decretal sum and accrued interest despite the statutory limitation under Section 5(b)(iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405

6. Section 4 of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405 provides that all motor vehicles are to be insured against third party risks other than those owned by government or ordinarily used for agricultural activities. Then Section 5 stipulates requirements in respect of insurance policies. The Section is reproduced here for clarity-

2. 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.

8. Section 5 (b) (iv) clearly stipulates that insurance companies shall not be required to cover liability of any sum in excess of Three Million Shillings, arising out of a claim by one person.

9. The Appellant maintains that the Respondents has already been paid Kshs.3,000,000/= and should not be paid any amount above that pursuant to the provisions of Section 5 (b) (iv) of Cap 405 and therefore the Learned magistrate erred in law and misinterpreted the above provisions by holding the Appellant liable for the full decretal sum of Kshs.3,576,576.00 plus accrued interest, despite the statutory limitation. He relied on the Respondent's submissions which only quoted and considered the first part of Section 10(1), effectively leaving out the part that states that the judgment sum to be settled by an insurance company should not exceed the sum specified in Section 5(b). Section 5(b)(iv) when read together with Section 10 stipulates that an insurance company is only required to compensate a third party up to a maximum of Kshs.3,000,000. I will refer to the following cases for guidance:-Justice



Odunga J (as he then was) in Gateway Insurance Co Ltd-vs-jamila Sulemman And Another [2018] eKLR stated that:

“My understanding of the said section is that in respect of a claim by one person the insurer’s liability ought not to exceed Kshs. Three Million. In other words, the Court may only enter judgment against the insurer up to a maximum of Kshs. Three Million. That however does not mean that a person who is entitled to file a declaratory suit against the insurer but to whom an award has been given exceeding Kshs. Three Million is thereby prevented from filing a suit against the insurer. He can do so but his entitlement as against the insurer cannot exceed Kshs.3,000,000.00.

In *Jedida Chepkoech Mutai (Suing as the Legal representative of the estate of Julius Kipkorir Mutai (Deceased) v Cheron Beatrice* [2018] eKLR, the Court held that the Appellant was in an unfortunate position where they would have to pursue the insured for any outstanding balance once the insurer pays the statutory limit of Kshs.3,000,000. Further to the above, the court in *Edward Mungai Waweru v Monarch Insurance Company Limited* [2021] eKLR, held that having paid the statutory limit, the insurer is not liable for any interest or costs in the declaratory suit. Similarly, in *Africa Merchant Assurance Co. Limited versus William Muriithi Kamaru* [2016] eKLR, the court also held that the insurer cannot pay any amount above Ksh.3,000,000 and a decree holder could not recover more than the Ksh.3,000,000 limit. Meaning that liability in relation to the insurer comes to an end once the insurance company honors its part and the insured remains liable to the extent of the balance in excess of Ksh.3,000,000. In the case of *Kenya Orient Insurance Limited v Zachary Nyambane Omagwa* [2021] eKLR the court agreed with the Appellants that the amount of Kshs.3,000,000, paid is the maximum amount payable by the insurer under the Insurance (Motor Vehicle 3rd Party Risks) Act and the Respondent cannot compel the Appellant to pay more than the prescribed amount under the Act. In *Africa Merchant Assurance Company Limited v William Muriithi Kimaru* [2016] eKLR, Justice Majanja held as follows;

“The insurer is not obliged to pay any amount above Kshs.3,000,000.00 nor can the decree-holder recover more than that”.

10. An insurance cover is a contract between two parties. Under the freedom to contract, Insurance Companies can cover any extent of liability subject to the maximum liability as above, as long as the insured is willing to pay the premium. There is no evidence on record that the Insured in this case paid premiums that would cover liability beyond the maximum statutory limit of Kshs.3M.
11. It is undisputed that the Appellant has already paid the maximum statutory limit of Kshs.3,000,000 to the Respondent.

Accordingly, this court finds that the Appellant is not liable to settle any amount in excess of the statutory limit of Kshs.3,000,000.

Whether the Learned Magistrate misinterpreted and misunderstood or misapplied judicial precedents in holding that Section 5(b)(iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 had been declared unconstitutional

12. In his judgment, the Learned Magistrate relied on the High Court and Court of Appeal ruling in the case of *Justus Mutiga and Another –vs- Law Society of Kenya and Another* as well as the case of *Monarch Insurance Company Limited –vs- Moses Caleb Ochango & Another* (2019) in finding that the provision of Section 5 of the Act was declared unconstitutional.



13. This court is aware that the cases cited did not declare Section 5 of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 unconstitutional. This position was adopted by the High Court in the recently decided case of APA Insurance Limited v Waitiki & another (Suing as the Administrator of the Estate of Michael Thuo Waitiki) [2024] where the Court held as follows in so far as it is pertinent:

“The above case was an appeal from High Court case in Law Society of Kenya v Attorney General & 3 others [2016] eKLR where, Onguto J, allowed the petition in part. The learned Judge deemed Sections 3(a), 3(b) and 6 of the Amendment Act unconstitutional. But on the other hand, he found nothing unconstitutional with regards to Section 5 (b) of the Principal Act and Sections 3(e) and 3(f) of the Amendment Act.

14. On appeal, the court of Appeal in Justus Mutiga Case (supra) inter alia held that;

“We do not understand the schedule to curtail the court’s duty and mandate to assess the evidence before it and award whatever amount of damages which in the court’s view suffices to compensate the victim of the accident. What in our considered view is anticipated by the amendment is to put a ceiling or cap to the amount recoverable from the insurance company, but it does not fetter the court from awarding more than Ksh.3 million. What this would mean is that any compensation awarded by the court in excess of Ksh.3 million would be recoverable from the insured and not from the insurance company. To that extent, this would not amount to usurpation of the court’s judicial independence, authority and discretion. We consequently agree with the learned Judge on that point and uphold his finding that Section 5(b) of the Act is not unconstitutional. Nevertheless, the question then arises as to what should happen post judgment. Does the court become functus officio? Who computes the percentages and how; will the costs awarded by the court and the interest be calculated on the basis of the amount awarded by the Court, on the maximum limit of 3 million or on the amount to be based on the schedule? Would it be left to the Registrar of the court to compute?

...Though the appellant contends that the limitation is justified, no evidence was adduced to prove that justification. If anything, limiting the compensation payable by the underwriter who has received premiums; particularly in the face of an innocent third party who is armed with a court judgment, is unjustifiable. It offends the very essence of insurance; which is to ensure mitigation against risks that result in loss. In particular, it defeats the very objective of compulsory third-party insurance cover, if an innocent victim is left to recover the bulk of his claim against the insured personally.

On the whole therefore, we find no reason to interfere with the reasoned judgment of the High Court. Our conclusion is that this appeal is devoid of merit, and the same is hereby dismissed with no order as to costs.”

15. As submitted by the Appellant, though the Court of Appeal did not see any justification in limiting the compensation payable by the insurer, it did not declare Section 5 (b)(iv) of Cap 405 unconstitutional. The appellate court in fact upheld the high court decision.
16. The Court of Appeal in CIC General Insurance Group Ltd v Gerald Ochoki [2020] eKLR also affirmed the above when it stated that;

“Section 5(b)(iv) sets the maximum liability of the insurer at Kshs.3,000,000. We are therefore of the considered view that the judge was correct in coming to that conclusion. Further, in



this court's decision of *Justus Mutiga & Others vs. Law Society of Kenya & another* CA No. 141 of 2016, it was held:

We do not understand the schedule to curtail the court's duty and mandate to assess the evidence before it and award whatever amount of damages which in the court's view suffices to compensate the victim of the accident. What in our considered view is anticipated by the amendment is to put a ceiling or cap to the amount recoverable from the insurance company, but it does not fetter the court from awarding more than Ksh.3 million. What this would mean is that any compensation awarded by the court in excess of Ksh.3 million would be recoverable from the insured and not from the insurance company. To that extent, this would not amount to usurpation of the court's judicial independence, authority and discretion. We consequently agree with the learned Judge on that point and uphold his finding that section 5(b) of the Act is not unconstitutional.

We too are of the same considered position. A court is not estopped from awarding a litigant a sum in excess of what is provided in the Act. As stated, any sum in excess of Kshs. 3,000,000.00 is recoverable from an insured. It is on account of this conclusion that we find no merit in the appeal and the cross-appeal."

17. Muriithi J in *Billow Hussein v Attorney General & 3 others* [2021] eKLR and in a short paragraph puts it clearly that;

"The petitioner urges this phenomenon as a breach of the right to protection of his consumer rights under Article 46 of *the Constitution*. The petitioner seeks to rely on the powerful dicta of the Court of Appeal in *Justus Mutiga* appeal in which the court faulted the Respondent's submission of justification for the amendment capping the amount recoverable. To be sure, however, although the petitioner's counsel passes off the statement of the court of appeal as ratio decidendi, it was in fact obiter as the court had already upheld the High Court's finding on the constitutionality of section 5 (b) of the Act."

18. Section 5(b)(iv) is clear and bereft of any ambiguity. The courts as seen above have had occasion to interpret the same including interpretation of the constitutionality of the provision. My re-evaluation of the material before the trial court leads me to the inevitable conclusion that the trial magistrate misapprehended the import of the decision in *Justus Mutiga & 2 others vs Law Society of Kenya & another* (*supra*) and reached an erroneous finding. "

19. In *Kithuku v APA Insurance Limited* [2024], the High Court in upholding the statutory limit stated;

"A similar position was taken in *The Monarch Insurance Company vs Catherine Earnest Ochango* Civil Appeal 12 of 2018. The trial court in this matter was therefore correct in holding that the respondent was not liable to pay anything more than Ksh.3 million and that what was above that figure ought to have been claimed from the insured. I find that the respondent was not liable for the accruing interest after the delivery of the judgment as it did not refuse to pay its statutory obligation of Ksh.3 million."

20. In line with the foregoing, this court thus finds and holds that the Learned Magistrate misinterpreted and misunderstood or misapplied judicial precedents in holding that Section 5(b)(iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 had been declared unconstitutional.

21. It is abundantly clear that the maximum amount that an insurer can pay in respect of a claim by one person is capped at Kshs.3,000,000.00 and therefore, the Appellant cannot be ordered to pay more



that that amount. By ordering that the Appellant was liable to settle the entire decretal sum therefore, the same rendered the trial magistrate's decision patently unlawful.

22. Having found that the Appellant discharged its statutory obligation by paying the Respondent Kshs.3,000,000, this court makes the following orders:

- a. The Appeal is allowed.
- b. The judgement of the subordinate court dated on 17th March, 2022 is hereby set aside.
- c. The Appellant will have the costs of the Appeal.

It is so ordered.

JUDGMENT WRITTEN, DATED & SIGNED AT MACHAKOS THIS 18TH FEBRUARY 2026

NOEL I. ADAGI

JUDGE

