REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HIGH COURT CIVIL APPEAL NO. E031 OF 2025

MADISON INSURANCE.....

.....APPELLANT

VERSUS

PROCEL TRANSPORT

LIMITED.....RESPONDENT

JUDGMENT

(Being an appeal from the decision of Hon. A. Lorot H.R. (CM) rendered vide Naivasha CMCC No. E030 of 2025 on 10th March 2025)

"It is said that even "the devil knoweth not the intention of a man" but our Courts must continuously seek to ascertain the intention of the draftsmen of a statute and legal instrument".

1. By a plaint dated 23rd January 2025, the plaintiff (herein “the respondent”) sued the defendant (herein “the appellant”) seeking for judgment against appellant for the following orders: -

    a) *A declaration be and is hereby made that the defendant is bound by the motor vehicle third party insurance policy taken out by the defendant in Naivasha SCC Civil E491 of 2024 Procel Transport Ltd vs Kenneth Murua Nganga and the judgment therefrom, is liable to compensate the plaintiff herein in full the sum of Kshs. 399,410.*

    b) *Interest on (a) above be provided for at court rate from 1st August 2024 herein until the date of payment in full.*

    c) *Costs of this suit be provided for.*

2. The respondent’s case is that on or about the 26th day of March, 2024, at around 9:30am, its agent was

lawfully driving motor vehicle registration number KBX 842H/ZE 6470 Volvo 440 along the Maai Mahiu – Naivasha road.

3. That at Mogas area, a motor vehicle registration number KCQ 930Z owned by Kenneth Murua Nganga and insured by the appellant, was carelessly and negligently driven that it veered off its track and violently collided with the respondent's vehicle No. KBX 842H/ZE 6470 Volvo 440.

4. That as a result of the accident, the respondent filed suit, *Naivasha SCC Civil E491 of 2024 Procel Transport Ltd vs Kenneth Murua Nganga* (hereinafter "the primary suit"), against the Kenneth Murua Nganga.

5. The respondent avers that the appellant was served with a statutory notice as required under section 10 of the Insurance (Motor Vehicle Third Party Risks) Act (Cap 405) Laws of Kenya, (herein "the Act"), notifying it of the matter, but the appellant did not respond to

the notice neither did the appellant defend the suit, so as to indemnify its insured.

6. That as a result, judgment was entered in favour of the respondent as against the appellant's insured in an all-inclusive sum of Kshs. 399,410 plus costs and interest from the date of filing.
7. That despite knowledge of the judgement, the appellant has failed to settle the decretal amount necessitating the filing of the present suit. The respondent argues that the appellant is both statutorily and contractually obligated to satisfy the decree issued against its insured.
8. Notably, the respondent filed a notice of motion application alongside the plaint. It is based on the provisions of; Order 2 Rule 15 (1) (a) and (d) and Order 13 Rule 2 and Order 36 Rule 1 and 5 of the Civil Procedure Rules, 2010, seeking for summary

judgment against the appellant as prayed for in the plaint, plus the costs of the application.

9. However, the appellant opposed the respondent's application vide grounds of opposition dated 14th February 2025.

    a) *That the objection is outrightly baseless, devoid of the backing of law and is otherwise an abuse of the process of the Honourable Court.*

    b) *That the defendant has a valid defence premised on factual and legal issues.*

    c) *That it is not all clear from the plaintiff's application on what grounds the plaintiff seeks summary judgement.*

    d) *That the plaintiff has not sought to have the the defence raised herein struck out for the entry of the summary judgement rendering the application dated 23rd January, 2025 incapable of being granted.*

e) *That the application is baseless as it does not allude to lack of any triable issues or an admission.*

f) *That the application does not meet the prerequisites for an entry of summary judgment in light of the defence raised lay the defendant.*

g) *That the suit herein being a declaratory suit to enforce a judgment in a material damage claim does not lie in view of Section 10 as read together with Section 5(b) of Insurance (Motor Vehicle Third Party Risks), Cap 405.*

10. At the same time the appellant filed a statement of defence dated 30th January 2025, denying all the allegations in the plaint and in particular; the occurrence of the accident, the filing of the primary suit and service of the mandatory statutory.

11. The appellant avers that the mandatory statutory notice was not served and that it is not bound to settle the decretal sum herein.
12. That if the primary suit exists, then the respondent prosecuted it ex parte and obtained an irregular ex parte judgment against the defendant therein; Kenneth Murua Nganga.
13. Furthermore, no insurance policy was issued to the judgment debtor and that if judgment was obtained based on the same, then it was on account of fraud or forgery of the policy documents, material representation and/or concealment of facts, as itemized under paragraph 13 (a) to (g) of the statement of defence.
14. The appellant termed the respondent's suit as bad in law, incurably defective, misconceived, frivolous, vexatious, scandalous and/or an abuse of the court

process and indicated that it would seek to raise a preliminary objection at the earliest opportunity.

15. Subsequently, the appellant filed a preliminary objection dated 7th February 2025 based on the following grounds: -

    a) *That the suit herein is fatally defective and incapable of redemption and ought to be struck out.*

    b) *That the suit herein being a declaratory suit to enforce a judgment in a material damage claim does not lie in view of section 10 as read with section 5(b) of Insurance (Motor Vehicle Third Party Risks), Cap 405.*

16. The preliminary objection was heard contemporaneously with the respondent's notice of motion application and by a ruling delivered on 10th March 2025, the trial court dismissed both the application and preliminary objection.

17. However, the appellant is aggrieved by that decision and has appealed against it based on the following grounds: -

a) *That the Trial Learned Magistrate erred in law and in fact in failing to allow the preliminary objection which contested the declaratory suit which was premised on a material damage claim.*

b) *That the Trial Magistrate Court erred in law in failing to consider and correctly apply the provision of Section 5 (b) of the Insurance (Motor Vehicles Third Party Risks) Act as read together with Section 10 thereof on the scope of matters where an insurer can be compelled to assume a judgment/liability secured against its insured.*

c) *That the Learned Trial Magistrate erred in Law in misinterpreting the decisions of the Superior*

courts cited in its ruling and thus reached the erroneous finding on the preliminary objection.

d) *That the trial Court erred in failing to critically consider and analyze the appellant's written submissions.*

18. The appeal was disposed of vide filing of submissions. The appellant in submissions dated; 12th June 2025, cited section 5 and 10 of Act and argued that, a declaratory suit can only lie from a primary suit where the claim arises in respect to death or bodily injury and does not extend to material damage.

19. The appellant also relied on several cases of; *David Kinyajui & 2 others vs Meshack Omari Monyori [1998] eKLR, Laban Macharia vs Commissioner of Insurance & Another [2005] eKLR, Geminia Insurance Company Limited vs Kennedy Otieno Onyango [201] eKLR, Blue Shield Insurance Company Ltd vs Joseph Mboya Oguttu [2009] KECA 221 (KLR); Lelei vs Direct Line*

Assurance Company Ltd [2004] KEHC 12795 (KLR) and *Masinde vs GA Insurance Limited [2025] KEHC 3728 (KLR)* to argue that material damage claims are not covered under section 5 and section 10 of the Act.

20. The appellant distinguished the cases of; *APA Insurance Limited vs Njenga (Civil Appeal E084 of 2023);* and *Musyoki vs Amaco Insurance Limited & Anothers [2024] KEHC 360 KLR* relied on by the respondent by submitting that, in those cases, the declaratory suits were instituted by the insured against the insurer for breach of contract for failing to take up the primary suits.

21. Further, that in the cases of; *Nyamari vs Cannon Assurance Limited [2024] KEHC 9857 (KLR)* and *UAP Insurance C. Limited vs Peter Charo Chiro (2021) eKLR* the issue in question was whether an insurer could be compelled to satisfy a decree in a primary suit obtained by strangers.

22. However, in response submissions dated 22nd April 2025, the respondent argued that the appellant had insured the accident vehicle comprehensively and therefore cannot disclaim liability without evidence that the material damage was not an insurable interest. That, the evasive defence herein cannot repudiate the insurance policy under statute.
23. The respondent relied on the case of; *Escoigne Properties Ltd vs I.R Commissioners (15 [1958] AC* where Lord Denning stated that to arrive at the true meaning of a statute one should know the circumstances with reference to which the words were used and what was the object appearing from those circumstances which parliament considered.
24. The respondent submitted that the purpose of the Act is to ensure a third party who suffers injury or loss due to the acts or omissions on the part of the insured will be assured compensation for their injury, loss or

inconvenience where the insured has no means to settle the claim as held in the case of; *APA Insurance Limited vs Njenga [2024] KEHC 7002 (KLR).*

25. The respondent further argued that section(s) 5 and 10 of the Act do not exclude a claim for material damages as stated by the High Court in the case of; *Musyoki vs Amaco Insurance Limited & another [2024] KEHC 360 (KLR).*

26. That further in the cases of *Geminia Insurance Company Limited vs Sabulei [2025] KEHC 21112 (KLR)* and *Nyamari vs Cannon Assurance Limited KEHC 9857 (KLR)* the courts set out a four-fold test to determine whether liability can accrue against an insurer under section 10 of the Act.

27. That the tests are: whether the motor vehicle was insured by insurer, whether there is judgment in favour of the claimant against the insured; whether the statutory notice was issued to the insurer within

thirty (30) days and fourthly that the claimant was a person covered by the insurance policy. The respondent submitted that it has satisfied the four-fold test and had established its case on a balance of probability.

28. Furthermore, that section 5(b)(iv) of the Act caps the amount payable by the insurer at Kshs. 3,000,000, while its claim is of a sum of Kshs 399,410 only. Further its submissions are in tandem with the Act and case law and prayed that the appeal be dismissed with costs.

29. In consideration the appeal this court notes that the role of the 1st appellate court as stated by the Court of Appeal in the case of; *Selle & Another v Associated Motor Boat Co. Ltd. & Others (1968) EA 123*, is to re-evaluate the evidence afresh and arrive at its own conclusion.

30. The court stated as follows: -

“I accept counsel for the respondent’s proposition that this court is not bound necessarily to accept the findings of fact by the court below. 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 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 allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a

witness is inconsistent with the evidence in the case generally."

31. To revert back to this matter and in considering the arguments advanced by the parties and the material before the court, it is clear that the main issue herein is; whether a material damage claim is covered under section 5 and 10 of the Act.

32. In that regard section 5 of the Act states as follows: -

"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.

33. In the same vein, section 10 of the Act states as follows: -

(1) If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs

and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in section 5(b) prescribed in respect thereof in the Schedule.

(2) No sum shall be payable by an insurer under the foregoing provisions of this section—

(a) in respect of any judgment, unless before or within thirty days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or

(c) in connection with any liability if, before the happening of the event which was the cause of the death or bodily injury 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 was surrendered to the insurer, or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or

(ii) after the happening of the event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or

(iii) either before or after the happening of the event, but within a period of twenty-eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police in writing of the failure to surrender the certificate.

34. Be that as it may, the issue of whether material damage claims is covered under section 5 of the Act has been a subject of various court decision as indicated in the submissions of the parties and observed by the trial court that there are myriads of decision on the subject matter with no clarity as to whether a material damage claim in a primary suit can give rise to a declaratory suit.

35. However, it suffices to note that these decisions as demonstrated here below reveal that, there two schools of thought. The proponents of the first school of thought argue that the subject provision should be

interpreted strictly and argue that material damage claim is not covered under section 5 while the proponents of the second school of thought holds the view that, although material damages claim is not explicitly provided for under section 5 of the Act, the provision should be interpreted broadly to give effect to the intent and purpose of the Act, namely compensation envisaged under the Act.

36. At this point the court will refer to some of the afore. In the case of; *David Kinyanjui & 2 Others vs Meshack Omari Monyori [1998] KECA 104 (KLR)* the Court of Appeal stated as follows: -

> *"It must be borne in mind that in respect of a material damage claim the party suffering damage cannot eventually proceed against the tortfeasor's insurer as there is no provision in our law for such eventuality. The Insurance (Motor Vehicles Third Party Risks) Act, Cap 405, Laws of Kenya gives*

right to such a person to file a declaratory suit against the tortfeasor's insurer if the claim is for physical injuries or death."

31. In the case of; *Directline Assurance Company Ltd v Kabai [2025] KEHC 7045 (KLR*) the High Court relied on the afore decision in *David Kinyanjui & 2 Others vs Meshack Omari Monyori (supra)* and held that: -

"13. The import of the section is that an insurer can be held statutorily liable for a claim relating to personal injury or death. ...

15. The Respondent's decree having arisen from a material damage claim falls outside the purview of the Insurance (Motor Vehicles Third Party Risks) Act. The Appellant is, therefore, not required to settle the same.

32. Similarly, in the case of *Masinde v GA Insurance Limited [2025] KEHC 3728 (KLR)* the High Court stated that: -

> *9. There is no ambiguity in section 5. Simply put, the compulsory insurance that section 4 of the Act demands of is only that which cover people who suffer bodily injury or death as a result of a vehicle being used on the road as set out under section 5. These are passengers, pedestrians, bystanders who get injured.*
>
> *10. It follows that before one invokes section 10 of the Act to compel an insurance company like the respondent herein to satisfy a judgment, he/she needs to go back to section 5 to ascertain whether their claim is covered under section 5. In other words, compulsory insurance is only available for classes of people referred to in section 5.*

11. Put differently. A literal reading of section 5(b) shows that damage to other vehicles on the road or things are not covered by the Act, for the simple reason that the section talks of "persons" , "death" "injuries". The " third party" in cap 405 are persons, and again, only persons not excluded by section 5(b) (i)(ii) (iii). Consequently, I entirely associate myself with the decision of David Kinyanjui & 2 others vs meshack Omari Monyori (1998) e KLR, cited by the Appellant , which decision is binding on this court in any event as it is a court of Appeal decision.

12. The Appellant has faulted the trial court for basing its decision solely on the Act and ignoring the contract of insurance between the respondent and the owner of the vehicle. However the contract of insurance, like any other contract only

binds the two parties. Third parties, including those covered by cap 405 , are not privy to it.

13. Further it should be pointed out that declaratory suits are not based on any contractual relationship. They are based on law, namely cap 405. One can not use a contract of insurance to enforce the rights conferred by cap 405. There was no error therefore on the part of the trial court by relying solely on the provisions of the Act.

14. Related to the above is the respondent's argument that the respondent is required to produce the policy document every time it disputes its liability to a third party. While I agree that the policy document may become necessary, the policy document only comes into play once the claimant jumped over the hurdle that is section 5 (b) of cap 405.

15. In a nutshell, material damage claims do not fall under the purview of Insurance (Motor vehicle third party) Risks Act. The Appellant's claim herein was for material loss, therefore a declaratory suit against the Appellant in that respect could not, and is not sustainable. The Appeal has no merit. It is hereby dismissed with costs to the respondent.

32. However, in the case of *Britam General Insurance Co (K) Limited v Mwaniki [2025] KEHC 6171 (KLR*) the High Court held that: -

"18. According, to the Appellant it holds that its policy did not cover material damages. However, it did not provide any evidence to this effect and relies on the holding in the case of Jubilee Insurance Co Ltd v Walter Tondo Soita (2021) eKLR, where the court faced with similar circumstances, held as follows:"If the Appellant

wanted the Court to believe that material damage is not covered by the policy, it was duty bound to adduce evidence for the court to find in its favour."

19.Therefore, since no sufficient evidence or proof that the subject, that is, its policy did not cover material damages as alleged, this Court finds that the trial court was justified in concluding that the defence filed had not raised triable issues. Consequently, the Court finds that there is sufficient ground advanced to warrant the interference with the trial Court's decision."

33. Similarly, in the case of; *Geminia Insurance Company Limited v Sabulei [2025] KEHC 2112 (KLR)* the court held that: -

"28. Sections 5 and 10 of the Insurance (Motor Vehicles Third Party Risks) Act cushion a party that has suffered loss or injury as a result of the acts or

omissions of the insured. If Section 5 of the Insurance (Motor Vehicles Third Party Risks) Act was to be read in isolation it would mean that in every material damage claim that an insured fails to satisfy, the injured party would simply have no recourse for the damage, loss or inconvenience.

29.This Court in Directline Assurance Company Limited vs Mwangi [2024] KEHC 9887 (KLR) while answering the question of whether the lower Court erred in allowing the Respondent's suit when material damage was not covered under the Insurance (Motor vehicle Third Party Risks) Act had the following to say:-

"24.I understand the import of the above provision of the law to be that for liability to accrue under Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405, there is a 4-fold test to be met. Firstly, that the motor vehicle in question

was insured by the Appellant; Secondly, that the Respondent has a judgment in his favour against the insured; Thirdly, that statutory notice was issued to the insurer within 30 days of filing the suit where judgment has been obtained and finally the Respondent was a person covered by the insurance policy.25. In my view, the purpose of the above provisions and the Insurance (Motor Vehicle Third Party Risks) Act Cap. 405 was to ensure that a third party who suffered injury or loss due to acts or omission on the part of an insured motor vehicle would be assured of compensation for their injury, loss or inconvenience in circumstances where the owner or driver of the insured motor vehicle has no means to settle the claim."

30.The Appellant insisted that the requisite statutory notice of institution of the primary suit

was not served upon it. This contention has, however, been disproved as the notice was exhibited. The relevant police abstract tendered also purports to indicate that the Appellant insured the subject vehicle against third party risks as per the requirement of the law. The Appellant did not tender evidence to show that their policy only covered personal injuries or death and not material damage."

34. Furthermore, in the case of; *Directline Assurance Company Limited v Mwangi [2024] KEHC 9887 (KLR)* the High Court concurred with the afore holding that, there is a 4-fold test to be met and stated that: -

25.In my view, the purpose of the above provisions and the Insurance (Motor Vehicle Third Party Risks) Act Cap. 405 was to ensure that a third party who suffered injury or loss due to acts or omission on the part of an insured motor vehicle would be

assured of compensation for their injury, loss or inconvenience in circumstances where the owner or driver of the insured motor vehicle has no means to settle the claim.

26.This view is supported by Sir Clement De Lestang, J.A. in New Great Insurance Co. of India Ltd – Vs - Lilian Everlyne Cross & Another (1966) EA, 90 at page 104 as doth:

“Generally speaking the Act seeks to achieve that object (of making provision against third party risks arising out of the use of motor vehicle on the roads) not by placing the whole burden of compensating third parties injured in accidents on the insurers but by combination of two means namely: 1. by making it obligatory, on pain of punishment, for any person who uses or causes or permits any other person to use a motor vehicle on the road, to have in relation to the user of the

vehicle a policy of insurance which satisfies the requirements of the Act, and 2. restricting the right of insurers to avoid liability to third parties."

27.It is not in dispute that the policy was an insurance cover. The Appellant however did not prove the fact of how Respondent's claim could be excluded from the application of the Insurance (Motor Vehicle Third Party Risks) Act CAP 405. The Appellant, having issued the accident motor vehicle policy cannot thus turn out to disclaim liability without evidence, on the basis that material damage was not an insurable interest. It is an evasive defence that cannot repudiate the policy under statute.

34.I therefore find and hold that the Appellant did not provide evidence that could rebut the Respondent's overwhelming evidence that the policy insured material damage. There was no basis

to exclude material damage. I am also fortified by the reasoning of this court in Jubilee Insurance Co Ltd v Walter Tondo Soita (2021)e KLR faced with similar circumstances as follows: If the Appellant wanted the Court to believe that material damage is not covered by the policy, it was duty bound to adduce evidence for the court to find in its favour."

35. In dismissing the appellant's preliminary objection, the trial court relied on the case of; *Joseph Mwangi Gitundu vs Gateway Insurance Co Ltd [2015] eKLR* and held that the purpose of insurance under Cap 405 will be lost if insurance companies can avoid their obligation.

36. To revert back to the matter herein, in my considered opinion, the whole matter herein rests on statutory interpretation of section 5(b) of the Act. Statutory interpretation is the judicial process of determining the precise meaning and application of legislation,

particularly when the language is ambiguous, unclear, or broad. Courts use established rules of interpretation of statutes primarily comprising; the literal, golden, and mischief rules, along with purposive approaches to ascertain the legislative intent, balancing text with context.

37. It is noteworthy that interpretation which is distinct from construction (which clarifies ambiguity), involves analyzing statutory text to ensure justice. These rules ensure consistency and purpose in the application of law.

38. In the case of the literal rule or plain meaning rule): Words are given their ordinary, natural, and grammatical meaning, regardless of the outcome. This is the default rule unless it leads to absurdity. *(see Lobal Excellence Comm. Ltd v Donald Duke (2007) 16 NWLR (Pt. 1059) 22*

39. The golden rule: involves a modification of the literal rule, this allows courts to depart from the literal, ordinary, or grammatical meaning if it leads to an absurd result, to make the statute reasonable. (See the case of *Saraki v FRN (2016) LPELR-40013 (SC) and Brown & Co v T & J Harrison (1927) All ER 195 at 203.*

40. The Mischief rule or purposive construction rules focuses on the problem or "mischief" the statute was intended to remedy, interpreting the text to solve that issue. See; *Otimi Ameachi v INEC (2007) 5 NWLR (Pt. 1080) 227*

41. The Ejusdem Generis: "Of the same kind", where general words follow specific words, they are restricted to things of the same type.

42. In applying the afore rules, the court should appreciate the fact that the role of the court is to interpret the statute and not legislate. The Supreme

Court in the case of; *Olofu v. Itodo (2010) 18 NWLR (Pt. 1225) 545 at 585 paras. F – G* held thus:

"I must remark here that in the interpretation of any statute or instrument, the object is to ascertain the intention of the legislature that had drawn it. The cardinal principle is that parties are presumed to intend what they have in fact said or written down."

43. Consequently, the Courts in interpreting the provisions of a statute or any document are basically trying to give effect the intention of the draftsmen of the statutes or documents.

44. Be that as it were, it is a general principle of law that statutes must be read and interpreted as a whole. Thus, where a section of a statute is sought to be interpreted, the Court should consider other sections. This principle was applied in the case of *Tegwunor v. State (2008) 1 NWLR (Pt. 1069) 630 at 656* and *Rotimi*

Ameachi v INEC (supra) at page 314 paragraphs G – H.

45. But even then, it is also a trite principle of law that the court and the parties are not allowed to read into the provisions of the statute or legal document. (See the cases of *Kwara State Independent Electoral Commission v. PDP (2005) 6 NWLR (Pt. 920) 25 at 53 – 54* and *Nnabude v G.N.G (W/A) Ltd (2010) 15 NWLR (Pt. 1216) 365 at 385)*

46. In addition to the rules of statutory interpretation, the court must consider the spirit and letter of the law in interpreting the statute.

    The "letter of the law" refers to strict, literal adherence to the exact words written in a rule or statute, regardless of context. Conversely, the "spirit of the law" refers to the intended purpose, goal, or moral reasoning behind the rule's creation. Following

the spirit often means applying the law based on its intent rather than just its wording.

47. The question that arise at this stage is whether there is any ambiguity in the provisions of section 5(b) of the Act. First and foremost, that section does not make reference to material damage claim. Similarly, section 2 of the Act does not define “material damage” or even “damage” per se and neither are these terms defined under the Interpretation and General Provisions Act Cap 2 Laws of Kenya.

48. To the contrary, section 5(b) refers to; “person, persons or classes of persons” and “death of, or bodily injury”. In the same vein section 10 2(c)of the Act refers to the words, “death or bodily injury”.

49. Furthermore, the Schedule to the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 of Kenya (referenced in section 10) details the Structured Compensation Liability Schedule. This schedule

provides fixed compensation amounts for “bodily injury or death” resulting from motor vehicle accidents. It sets out specific monetary compensation for “various injuries”, and is aimed at reducing fraud and streamlining compensation payments for third-party risks.

50. The schedule thus applies to claims arising under section 10, which imposes a duty on insurers to satisfy judgments against persons insured. It evident therefore that the material damage claims are not and were not intended to be covered under section 5 and 10 of the Act.

51. On comparative study, it is revealed that the Insurance (Motor Vehicle Third Party Risks) Act, (Cap 214) (often referred to as the Motor Vehicle Insurance (Third Party Risks) Act 1989 in Uganda), is the governing legislation that makes it mandatory for every motor vehicle user to have a minimum level of

insurance cover. The purpose of the Act is to protect the owner against legal liability arising from “bodily injury or death” caused to third parties (passengers, pedestrians, or other road users) in an accident.

52. Similarly, section 6 of Motor Vehicles (Third Party Insurance) Act, Cap M22 of Nigeria is worded in the same words of section 5(b) of (Cap 405) as follows:

> *“(b) insures such persons or classes of person 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 a motor vehicle covered by the policy”*

53. The afore provisions clearly indicate that none of these commonwealth countries’ legislation recognise a material damage claim as being the subject of a declaratory suit.

54. Be that as it may, several other arguments have been advanced, inter alia that, for the appellant to avoid liability, it must prove that the contract of insurance did not cover material damage claim.

55. It suffices to note that the contract of insurance is between the insured and insurer. Based on the doctrine of privity of contact, the respondent herein cannot sue or enforce any rights under the subject contract of insurance herein and neither can it rely on that contract to advance a claim. In this case the only party that advance that argument is the Judgement debtor in the primary suit who has a contractual relation with the appellant.

56. On the flip chart, the appellant alleges that the insurance policy relied on was forged, again that argument lies between the appellant and its insured and not against the respondent. In fact, it is against

the aforesaid that most declaratory suits are filed by the insured/judgment debtor against their insurers.

57. The above is well understood for the simple reason that, the decree holder has a right to execute the decree against the judgement debtor who can then seek for indemnity against the insurer, based on the contractual terms between the parties. In this case respondent can enforce the judgment against the judgment debtor who has the primary responsibility to settle it or have its insurance company (if any) pay and recover it under the doctrine of subrogation.

58. Pursuant to the afore and applying the plain and/or literal meaning rule to the provisions section 5 and 10, it is the finding of this court that those provisions are clear and have no ambiguity that call for any other interpretation and meaning. It is clear that material damage claim is not covered under those provisions.

59. Consequently, I find that the trial court erred in dismissing the appellant's preliminary objection and I set aside that order and uphold the preliminary objection.

60. Each party will bear their respective costs of the appeal. It is so ordered.

Dated, delivered and signed on this 18th day of February, 2026.

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Nganga for the appellant

Mr. Ojienda for the respondent

Ms. Hannah: court assistant