

said motor vehicle. The Appellant also denied that Statutory Notice pursuant to Section 10(2)(a) of the Insurance (Motor Vehicles Third Party Risks) Act Cap 405 Laws of Kenya and Notice of intention to sue were served upon it. In other words, the Appellant denied liability in toto and all other averments against it in the Plaint.

3. The Appellant contended that the Respondent was not a person insured under any Insurance Policy issued by it and therefore the Respondent had no legal right to seek declaratory orders against the Appellant compelling it to satisfy any judgement obtained against the Appellant in the primary suit.
4. The suit was set down for hearing and both parties adduced viva voce evidence while adopting their respective witness statements and documents filed in the suit.
5. Upon considering the evidence presented on record and parties' advocates submissions, the trial court found that the Respondent had discharged the burden of proving her case on ownership, the insured and insurer of the accident motor vehicle on a balance of probabilities. She was in the circumstances not expected to prove his case beyond reasonable doubt by going to look for policy documents in possession of the owner and insured or insurer, when, in her possession, was evidence in the form of a police abstract showing who the insured of the accident motor vehicle was. The trial court further found that the Appellant's case was not proved. The defence that there was fraud or that the information given to the police or by the police in the police abstract was incorrect and unauthentic were not proved since no such evidence was called to displace the *prima facie* evidence by the Respondent. A mere denial that the 'policy document' produced by its witness was not sufficient to dislodge the Respondent's case. The defence was found to be devoid of merit and same was dismissed.

6. In the end the trial court found the Plaint to be merited and upheld the same with the orders as prayed in prayer a), b) and c) on the face of it.
7. Being dissatisfied with the judgement above, the Appellant lodged this appeal through the Memorandum of Appeal dated 11th May 2025 raising five (5) grounds of appeal as follows:-
 - a. THAT the learned trial Magistrate erred in law and in fact by misdirecting herself and relying on improper principles in failing to consider that the Respondent was not the insurer of the Defendant's motor vehicle registration No. KUS 530 in the Primary suit.
 - b. THAT the learned trial Magistrate erred in law and fact by failing to weigh all the evidence placed before her before delivering the judgment.
 - c. THAT the Learned trial Magistrate erred in law and fact by relying on insufficient evidence to rule in favour of the Respondent.
 - d. THAT the learned trial Magistrate failed to consider the submissions and precedents filed on behalf of the Appellants.
 - e. THAT learned trial Magistrate failed to consider the relevant factors and based her judgment on irrelevant factors.
8. The appeal was canvassed through written submissions. The Appellant's submissions are dated 1st August 2025 whilst the Respondent's submissions are dated 22nd August 2025.

Appellant's Submissions

9. The Appellant submitted that it is the Respondent's case in this matter that since the Appellant had insured Motor Vehicle registration number KUS 530 which caused the accident

wherein he sustained injuries, the Appellant must satisfy the judgment he obtained in Machakos CMCC No. 350 of 2019 regardless of whether he sued the Appellant's insured or not. That the Appellant on the other side maintains that for it to be held liable to satisfy the said judgment, the conditions stipulated in section 10 (1) of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405 must be satisfied by the Respondent. This is the major issue in this case.

10. Reference is made to Section 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405 provides as follows:-

"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 there under 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."

11. That the above provision is what both the Respondent and the Appellant are basing their distinct arguments. That it therefore calls upon this court to properly interpret and apply the above provision to the facts of this case. The Appellant submitted that the Judgment debtors in the primary suit are strangers to it. The Respondent did not produce any policy document or certificate of insurance issued by the Appellant to the judgment debtors to prove that the said person was the Appellant's insured.

12. Reference was also made to Section 10(1) of Cap 405 which has been elaborated in a plethora of authorities but the Appellant relied one of them which is the case **Juma Ali Mbwana & Another v Umi Omar Musa [2014] eKLR**, the High Court while dismissing an application to strike out a defense elaborated Section 10 (1) clearly at page 2 of its ruling that the insurer is only mandated to settle a judgment entered against the insured owner of a motor vehicle.
13. The Appellant invited this court to refer to the attached a copy of the cited ruling to this submission for ease of reference. The Appellant submits that the Respondent failed to establish a basis for this suit and failed to demonstrate the nexus between the Appellant herein and the judgment debtor in the primary suit.
14. Th Appellant further submits that he statutory notice in the primary suit doesn't not bear the signature of the person alleged to have received the same from the Respondent and/or his advocate and that the receipt stamp is fictitious and aimed at hoodwinking this court in finding that service was properly effected.
15. This Court was urged to allow the appeal and dismiss the declaratory suit with costs.

Respondent's Submissions

16. The Respondent submitted that she testified and gave a clear account as to how the accident occurred. As she was being taken for treatment, she was able to see an insurance sticker placed on the motor vehicle at a visible spot. She notified the investigating officer of the same, who then went ahead to record it on the Police Abstract as Policy No. KTD/101/00182/2009. The record from the Police Abstract was produced by PC. Gideon Cheptinde, who ascertained that the Policy number was obtained from the insured motor vehicle.

17. She submitted that Section 4 and 5 of the Insurance (Motor Vehicle Third Party Risks) Act Cap 405 Laws of Kenya impose a duty on any person using a motor vehicle on the road to take out what is popularly known as Third Party Insurance cover that covers risks under Section 5 (6). Once such a Policy exists the insurer has a statutory duty under Section 10 of the Act to pay both, the principal sum, interests and costs awarded by the court in the primary suit. Such is the case in this suit, as the insurer is bound to pay sums notwithstanding the fact the insurer was entitled to cancel/avoid the policy.

18. That under Section 10(2), the Respondent needs to demonstrate and satisfy that:-

(a) The liability is covered under Section 5 (b) of the Act.

(b) Judgment was obtained against the insured of the Defendant and it matters not that the insurer (Defendant) was entitled to avoid, cancel or may have avoided or cancelled the Policy.

(c) No stay pending appeal had been obtained.

(d) The Policy had not been cancelled by consent before the accident and the certificate of insurance returned and the commissioner of insurance notified of such cancellation within the stipulated period.

(e) No declaratory orders were obtained declaring that the insurer should not pay and/or entitled to cancel/avoid the policy and such orders obtained in proceedings

commenced before or within three (3) months of the primary suit.

19. Even where such declaration exists the insurer must give a fourteen (14) days notice to the Plaintiff in the primary suit specifying the grounds upon which it wishes to get the declaration.
20. The grounds upon which such a declaration can be obtained are specific and restricted by the provisions of Section 10 (4) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya. It was submitted that strict compliance with the Provisions of the Insurance (Motor Vehicle Third Risks) Act, Cap 405 Laws of Kenya was buttressed by the Court of Appeal in **Blueshield Insurance Company Ltd vs Raymond Buuri M'Rimberia (1998) eKLR** where the Honourable Judges held that the duty to pay still obtained as long as no declaratory order had been obtained and the pending of such a suit filed do not construe a triable issue especially when the Insurer had not issued the notice to the claimant specifying the grounds for the intention to cancel or avoid the policy and/or the provision in Section 10 (4) of the Act. Such notice is mandatory.
21. The highlighted part in case law is as follows:-

"Although the Appellant did not plead in its defence in the enforcement suit, that it had already sued the insured in HCCC NO. 2976 OF 1986 for a declaration that it was entitled to avoid the policy and that the said suit was still pending. Mrs. Kiarie did say that in her Replying Affidavit hereinabove mentioned "can that allegation be a triable issue" we think not Under Section 10 (4) the liability of the insurer to satisfy the judgment under Section 10 (1) is excluded only if not only that the insurer had commenced an action within time scale prescribed thereunder, but also that it has

obtained a declaration that it is entitled to avoid its liability under the insurance policy."

22. The Respondent submitted that no declaration has been so far obtained although the declaratory suit was filed some 12 years ago by the Appellant. Mrs. Kiarie gave vague explanation for this delay that although the suit has been fixed for a hearing a few times it has never taken off. This smacks of gross lack of diligence on the part of the Appellant in prosecuting the declaratory suit.
23. Moreover, there is no evidence that a mandatory notice as envisaged by the provisions to Section 10 (4) had been ever given. The effect of that conclusion is that even if the Appellant has obtained the said declaration which it has not so far, it may still not be entitled to the benefit of that declaration as against the Respondent.
24. The court having observed compliance by the Respondent with the requirement of Section 10 (2) on statutory notice, existence of judgment and decree by the Plaintiff held:-

"There is ample evidence on record to verify that fact. There is also no denying that there was judgment and decree in favour of the Respondent arising from the accident. The Respondent complied with the requirement of Section 10 (1) of Cap 405, that is to say that the Appellant had been duly served with a copy of the Statutory Notice before the commencement of the court action and a copy of the decree showing that the Respondent had a valid decree against the Appellant after the suit was heard and determined. The Appellant out therefore to have satisfied the decree".

25. The Honourable judge went further to note:-

"The Appellant contents that it is unwilling to settle the Respondent's claim on the basis that have been an

employee of the insured and was insured in the course of his employment as such he was excluded by the provision to Section 5(6) of Cap 405. However, I note that and as correctly submitted by Mrs. Waweru learned counsel for the Respondent, the Appellant did not raise the issue of the Respondent having been an employee of the Appellant's insured and therefore not covered by the policy of insurance during trial clearly the issue is being raised in this appeal and is an afterthought. it ought to have been raised and canvassed before the trial court The Appellant has already stated that it did not tender any evidence during the hearing of the declaratory suit. The policy was not tendered as in evidence. It is therefore we do not have the benefits of its contents".

26. The Court authoritatively concluded: -

"It does not appear to me therefore that Section 5 of Cap 405 does not in any way advance the Appellants case at all. If that were the case, one would have expected that the Appellant would have moved with alacrity and sued the Respondent under Section 10 of Cap 405 that the Respondent was not covered under policy of insurance it did not. Finally, Section 5 (b) (ii) of Cap 405 does not make express provisions for the protection of employees pursuant to a contract of service and I do not think that the provisions of the Act of parliament can be ousted by a policy cover".

27. That the decision in the aforementioned case is buttressed by **Real Insurance Company Limited vs Wanyeki (2023) eKLR**. In this case it was held that:-

"As this is the first Appeal, this court is called upon to analyse and re-assess the evidence on record and reach its own conclusions bearing in mind that it neither saw nor heard the witnesses testify (See

Selle vs Associated Motor Boat Co. (1968) EA 123). In Kiruga vs Kiragu & Another (1988) KLR 398, the Court of Appeal observed that :-

"An Appeal court cannot properly establish its own factual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An Appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand but this is a jurisdiction which should be exercised with caution"

28. Basing on the above background, application of statutory provision and case law taken into account, the Respondent urges this court to consider the fact that a connection between the Appellant and Respondent/Judgment debtor has been demonstrated. In addition, the Respondent has gone further to prove that the Appellant has a duty to pay the decretal sum.
29. The Respondent prays that the appeal be dismissed with costs

Determination

30. This being a first appeal, I am reminded of the primary role as a first appellate court namely, to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was stated in **Selle & another v Associated Motor Boat Co. Ltd.& others and in Peters v Sunday Post Limited [1968] E.A 123. (1958) E.A page 424.**

31. I have carefully perused and considered the record, the grounds of appeal, the submissions by the learned counsel for the parties, the judgement by the learned trial magistrate and the law. The major issue for my determination is whether the court ought to allow the appeal and dismiss the declaratory suit with costs.
32. The Respondent's claim against the Appellant in the declaratory suit is anchored on Section 10(1) of the Act, which creates a statutory obligation for an insurer to pay to a third-party judgement creditor sums due under a judgement obtained against the insured.
33. Section 10(2) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 provides:

“No sum shall be payable by an insurer under the foregoing provisions of the section. (a) in respect of any judgment, unless before or within 14 days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings.....”

34. In **Stephen Kiarie Chege v Insurance Regulatory Authority & Another (2009) eKLR**, the import of the above provision of the law is that for liability to accrue under section 10 of the Insurance(Motor Vehicle Third Party Risks) Act, Cap 405, there are four conditions to be met as follows:-

- Firstly, that the motor vehicle in question was insured by the Appellant;
- Secondly, that the Respondent has a judgement in his favour against the insured;
- Thirdly, that the statutory notice was issued to the insurer within 30 days of filing the suit where judgement has been obtained;

- Lastly, the Respondent was a person covered by the insurance policy

35. The purpose of the above provisions is 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 the injury, loss or inconvenience.

36. In **Metropolitan Cannon General Insurance & another v Hura (Civil Appeal E023 of 2025) KEHC 18670 (KLR) (16 December 2025) (Judgment)** Justice DKN Magare while considering the provision, cited Sir Clement De Lestang, JA in **New Great Insurance Co. Of India Ltd v Lilian Everlyne Croce & Another (1966) EA, 90** at page 104 thus:

“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”*

37. Similarly, Lord Denning in **Escoigne Properties Ltd v I.R. Commissioners (15) [1958] A.C at 565** stated that:

“A statute is not named in a vacuum, but in a framework of circumstances, so as to give a remedy for a known state of affairs. To arrive at its true meaning, you should know the circumstances with reference to which the words were used, and what was the object,

appearing from those circumstances, which parliament had in view”

38. There is no dispute that the Respondent obtained a decree for Kshs.241,149 inclusive of costs and interest against the insured who is said to have been insured by the Appellant in Machakos CMCC 695 of 2010 (primary suit). The Respondent then filed the declaratory suit at Machakos Chief Magistrate’s court in CMCC 350 of 2029 seeking that the Appellant does pay the decretal sum to indemnify their insured/Defendant in the primary suit. Judgement was entered in favour of the Respondent with the Appellant being ordered to settle the decree in the primary suit thus necessitating this appeal.
39. A cursory perusal at the proceedings before the trial court reveals that the Respondent produced in evidence PExt.2, a police abstract showing the policy number of the accident motor vehicle as **No. KTD/101/001882/2009 Commencing on 19-11-2009 and expiring in 19-11-2010.**
40. The Respondent also produced a copy of records showing that the owner of the motor vehicle was **STEPHEN WACHIRA** the 1st Defendant in the primary suit
41. The police abstract and the copy of records were not challenged to be fraudulently obtained as had been alleged by the Appellant in their defence.
42. Section 4 of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 requires that whenever one buys or owns a motor vehicle other than a government owned motor vehicle and a tractor used solely for agricultural purposes and puts it on a public road, whether he is the registered (legal owner) or a beneficial owner thereof, they must ensure that the motor vehicle, whether it is meant to do private business, commercial business or public service business.
43. A certificate of Insurance issued by a licenced insurance company is prima facie evidence that the subject motor

vehicle is duly insured and the law requires that such Certificate of Insurance be displayed at a place and in a manner prescribed on the subject motor vehicle so that the law enforcement officers can easily see it on inspection of the vehicle it is on the road, to ensure that it is insured. (**See the mandatory requirement under Section 9 of Cap 405 of the Laws of Kenya.**)

44. A Certificate of Insurance is a convenient and precise document which contains details of the policy number, the insurance company/ insurer, the insured and the period covered by the insurance.
45. In the event an accident occurs, as was in the instant case, once a report is made to the police, a police abstract will be issued containing the names of those who might have sustained injuries, details of motor vehicle(s) involved, date and time of the accident, details of owners of the motor vehicle(s), the drivers and Insurance policy as contained in the Insurance sticker displayed on the vehicle pursuant to the requirements under Section 9 of Cap 405.
46. From her testimony, the Respondent stated that the policy number herein was on the Certificate of Insurance sticker that was displayed on the Appellant's insured's accident motor vehicle herein. Although DW1 Antony Kariuki, the Appellant's legal officer testified that he did not know where the police got the policy number **KTD/101/001882/2009** from, the Appellant failed to demonstrate that they had taken a step to conduct any investigations on the alleged fraud and or disowned the same by avoiding the policy.
47. I have read the authority of **Juma Ali Mbwana & Another v Umi Omar Musa [2014] eKLR**, relied upon by the Appellant and I find it to be distinguishable to the instant case. In the cited case an application was filed to strike out a defence to a declaratory suit whereas this case involves settlement of a declaratory judgement.

48. Accordingly, this court finds that there is no reason to fault the trial magistrate's finding and holding that the insured at the time of the accident herein was **Stephen Wachira**, the 1st Defendant in the primary suit who was also the legal owner of motor vehicle registration No. KUS 530 which was insured by the Appellant. This court has also confirmed that the notice of entry of judgement in the primary suit dated 27th November 2017 was duly served upon the Appellant, receipt of which was duly acknowledged by the endorsement of the Appellant's stamp on 7th December 2017.

49. Clearly, it emerges that the Appellant is trying to avoid paying a claim they defended and a loss they insured. I find no merit in the appeal and the same is accordingly dismissed with costs to the Respondent assessed at Kshs.40,000/=.

50. It is so ordered.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 10TH MARCH 2026

**NOEL I. ADAGI
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 10TH MARCH 2026

In the presence of :