



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT NUMBER E022 OF 2023

JEREMIAH WAWERU
PLAINTIFF

VERSUS

XPLICCO INSURANCE COMPANY
DEFENDANT

AND

HENRY KIBET NGENO 1ST INTERESTED
PARTY

GILBERT KIBUNGEI RONO 2ND INTERESTED
PARTY

RAZOR SHARP AUCTIONEERS 3RD
INTERESTED PARTY

JUDGEMENT

1. By Complaint dated 14th December 2023 the Plaintiff prays
for reliefs as hereunder against the Defendant's;

**I. A declaration that the Defendant must
satisfy the judgment and decrees in Molo**

CMCC E281 of 2022, Henry Kibet Ngeno vs David Njoroge Ndungu & Jeremiah Waweru and Molo CMCC E282 of 2022, Gilbert Kibungei Rono vs David Njoroge Ndungu & Jeremiah Waweru.

II. An order directing the Defendant to pay the Plaintiff the decretal sum plus costs and interests awarded in Molo CMCC E281 of 2022, Henry Kibet Ngeno vs David Njoroge Ndungu & Jeremiah Waweru totalling Kshs. 249,952/=

III. An order directing the Defendant to pay the Plaintiff the decretal sum plus costs and interests awarded in Molo CMCC E282 of 2022, gilbert Kibungei Rono vs David Njoroge Ndungu & Jeremiah Waweru totalling to Kshs. 249,952/=.

IV. Costs of this suit.

V. Interest on II, III and IV above at court rates from 31st July 2023 until payment in full.

VI. Any other or further relief that the court may deem fit to grant in the interest of justice.

2. The Plaintiff avers that at all material times he was the registered owner of a motor vehicle registration number KBZ 783W he insured against third party risks as required in law, with the Defendant. During the period of the insurance cover, the vehicle was involved in a road traffic accident with another motor vehicle

registration number KBY 329K resulting in injuries to passengers who sued the driver of the former vehicle for compensation *vide* Molo Chief Magistrate's Court's Civil Suits Numbers E281 and E282, both of 2022. The Claimants are the Interested Parties herein.

3. Upon determination of the Claims, Judgement was entered against the said driver who was ordered to pay certain sums in compensation to the Claimants. According to the Plaintiff, the Defendant had a duty under the Insurance Police No. XP10000258417 to settle the Judgement sums then amounting to Kshs. 249,952 in each of the suits on his behalf pursuant to the provisions of **Section 10(1) of the Insurance (Motor Vehicles Third Party Risks) Act**. Despite demand to pay up, the Defendant is said to have refused and/or neglected to make good the debt, hence this suit.
4. The Defendant neither entered appearance nor filed defence. The Interested Parties have not also replied to the suit. Hearing of the suit proceeded *ex parte*.

5. The Plaintiff testified on oath reiterating the averments in the Plaint and his witness statement dated 14/12/2023 he recorded with his Advocates and filed herein. He further tendered his two bundles of documents as per lists dated 14/12/2023 and 15/12/2023 that have been filed. The documents include police abstract reports of the road accident alluded to herein above; a copy of insurance Certificate purporting to have been issued to the Plaintiff by the Defendant and the lower court's Judgement in issue delivered on 31/7/2023.
6. Even though the suit is undefended, the onus is still on the plaintiff to prove his claim on a balance of probabilities. It is trite law that where a party fails to offer evidence in rebuttal of the opposite party's evidence then the opposite party's evidence would be accepted as probative of the issues in contention **(See Case Law in Mwangi Mambo) Civil Appeal E1058 of 2023) [2025] KEHC 8438 (KLR) (Judgement)** among many other Superior Courts' decisions).

7. I am satisfied that the Plaintiff has proven his claim on a balance of probabilities. Prayers I - V in the Plaint are granted as prayed.

8. Judgement accordingly.

J. M NANG'EA, JUDGE.

Judgement dated, signed and delivered virtually this 11th day of March, 2026.

In the presence of:

Plaintiff's Advocate, Mr. Koigi

Defendant, Absent

Interested parties, Absent

Court Assistant (Jeniffer)

J. M NANG'EA, JUDGE.