

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E432 OF 2025

G.A INSURANCE LIMITED.....CLAIMANT

VERSUS

KELVIN KURIA.....RESPONDENT

J U D G M E N T

1. The Claimant commenced these proceedings through a Statement of Claim dated 16th May 2025, asserting that it had issued an insurance cover to Bbrood Kenya Limited under the Work Injury Benefits Act (WIBA) pursuant to insurance policy number 95069449.

2. The Claimant states that the Respondent was the beneficial owner of motor vehicle registration number KAJ 699D, which fatally injured George Kibutha Kamau, an employee of Brood Kenya Limited. Following the accident, Brood Kenya Limited lodged a compensation claim under the policy and WIBA. A notification was also issued to the Directorate of Occupational Safety and Health Services, which assessed and quantified the compensation payable to the deceased's estate at Kshs 2,304,000 on 6th October 2022.

3. The Claimant avers that it settled the assessed compensation on 2nd November 2022 and now seeks reimbursement of the amount pursuant to Section 17(b) of WIBA.
4. The Claimant further avers that it engaged an investigator and settled a last expense claim under the policy, bringing the total claim amount to Kshs 2,427,985.00.
5. According to the Claimant, it is statutorily entitled to recover the said amount and associated settlement costs from the Respondent under Section 17(1)(b) of WIBA.
6. It is against this background that the Claimant seeks judgment against the Respondent for the sum of **Kshs 2,427,985.00**, together with interest and costs.
7. The Respondent neither entered appearance nor filed a Defence despite being duly served with the Notice of Summons and the Statement of Claim. Consequently, the Claimant filed an Affidavit of Service sworn by Ronnie Ochieng Onyango on 9th September 2025 confirming service upon the Respondent.
8. Upon being satisfied with the return of service, the Court directed that the matter proceed as an undefended cause. The matter was thereafter scheduled for

formal proof on 18th November 2025, during which the Claimant adduced oral evidence through **Symon Lariak**, its Assistant Legal Manager, who testified as CW1.

9. In his testimony, CW1 reiterated the averments in his witness statement, which he adopted as his evidence in chief. He also produced the documents filed alongside the Statement of Claim as exhibits before the Court.

Submissions

10. After the close of the hearing, the Claimant filed written submissions, which the Court has duly considered. The Claimant submitted that Section 17 of WIBA expressly grants an insurer a statutory right of subrogation to recover compensation paid from a third party whose actions occasioned the accident. In support of this position, the Claimant relied on the decision in ***Speedag Interfreight (K) Limited v Lacheke Lubricants Limited & another (2021) KEHC 4532 (KLR)***.

11. The Claimant contended that it had demonstrated indemnification through the Director's assessment, the Linchtech investigation report, and the corresponding payment records. It further argued that Section 17 of WIBA expressly confers upon it the right to seek indemnification from the tortfeasor.

Analysis and Determination

12. In the Court’s view, the sole issue for determination is whether the Claimant’s claim is merited.

13. It is evident that the present claim has been instituted pursuant to **Section 17(1) (b) of WIBA**, which provides as follows:

“17(1) If an occupational accident or disease in respect of which compensation is payable, was caused in circumstances resulting in another person other than the employer concerned (in this section referred to as the ‘third party’) being liable for damages in respect of such accident or disease—

(a).....

(b) the employer or insurer by whom compensation in respect of that accident or disease is payable may institute action in a court against the third party for the recovery of compensation that the employer or insurer, as the case may be, is obliged to pay under this Act.”

14. In essence, the foregoing statutory provision allows an employer or its insurer to institute legal proceedings against a “third party” for purposes of recovering compensation paid to an injured employee.

15. In the instant case, it is undisputed that the deceased, **George Kibutha Kamau**, was an employee of Bbrood Kenya Limited, which had procured an insurance

cover under WIBA. It is further uncontested that the deceased died from injuries sustained in a road traffic accident involving motor vehicle registration number KAJ 699D, which at the material time was being driven by the Respondent, **Kelvin Kuria**.

16. According to the police abstract dated 9th May 2022, the Respondent, as the driver of motor vehicle KAJ 699D, was to be charged with the offence of causing the death of George Kibutha Kamau by dangerous driving.

17. From the foregoing, it is clear that the Respondent's actions or omissions led to the death of George Kibutha Kamau, the deceased employee.

18. It is also evident that following the employee's death, the Director of Occupational Safety and Health Services (Director) assessed and awarded compensation to the deceased's dependants in the sum of **Kshs 2,304,000.00**.

19. Similarly, there is no dispute that the Claimant settled the Director's award pursuant to the insurance policy taken out by the deceased's employer, Bbrood Kenya Limited, in addition to settling a last expense claim of **Kshs 100,000.00**.

20. The Claimant has further demonstrated, through documentary evidence, that it incurred **Kshs 23,985.00** in pursuit of this claim.

21. Accordingly, applying **Section 17(1)(b) of WIBA** to the circumstances of this case, the Court finds that the Claimant, as the insurer, is entitled to recover from the Respondent the compensation it paid arising from the Director's award together with the attendant costs.

Orders

22. To this end, the Court enters judgment in favour of the Claimant as prayed, and awards the sum of **Kshs 2,427,985.00** against the Respondent. The amount shall accrue interest at court rates from the date of judgment until payment in full.

23. The Respondent shall also bear the costs of the suit.

DATED, SIGNED and DELIVERED at MERU this 13th day of March 2026.

.....

STELLA RUTTO

JUDGE

In the presence of:

| | |
|--------------------|---------------|
| For the Claimant | Mr. Kiplagat |
| For the Respondent | No appearance |
| Court Assistant | Qabale |

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO
JUDGE