



REPUBLIC OF KENYA

IN THE MAGISTRATE COURT OF KENYA AT MACHAKOS COUNTY

COURT NAME: MACHAKOS MAGISTRATE COURT

CASE NUMBER: MCCC/E420/2024

MARGARET MBULA NABWIRE AND PAUL WALUA MUSUI VS DIRECTLINE ASSURANCE
COMPANY LTD

JUDGMENT

Introduction

[1] This judgment arises from a declaratory suit instituted by the Plaintiffs against the Defendant, an insurance company, seeking an order that the Defendant is duty-bound under Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya, to satisfy a judgment and decree delivered on 5th September 2024 in Machakos CMCC No. 94 of 2020 (hereinafter "the primary suit"). The Plaintiffs seek the sum of Kshs. 4,261,932.11, being the total decretal amount inclusive of costs and interest, together with further interest from 11th September 2024 and the costs of this suit.

Plaintiffs' Case

[2] The 1st Plaintiff, Margaret Mbula Nabwire, testified as PW1. She adopted her witness statement dated 8th November 2024. Her evidence was that the Defendant was the insurer of motor vehicle registration number KCH 587W under policy number 100005567/000007. She stated that the deceased, Edward Mawasa Ndinda, was a passenger in the said vehicle on 1st February 2017 when it was involved in a fatal accident along the Mombasa- Nairobi Road. She testified that the Plaintiffs obtained a judgment in the primary suit (CMCC 94 of 2020) and a subsequent decree, which the Defendant has refused to satisfy despite service of a statutory notice on 13th December 2019.

[3] The 2nd Plaintiff, Paul Walua Musiu, testified as PW2 and adopted his witness statement. He corroborated PW1's evidence regarding the accident, the primary suit, and the decretal sum. He testified that before filing the primary suit, their advocate had issued a statutory notice to the Defendant. Under cross-examination, PW2 stated that they had initially sued Panij Automobiles and Trinity Sacco. He confirmed that while Directline had written to their advocate claiming they had not insured the vehicle, Joel Ndunda Kimilu was eventually joined in the primary case as a third party and found liable.

Defendant's Case



[4] The Defendant called Rayn Wendo (DW1), a Senior Claims Officer at Directline Assurance. He adopted his witness statement dated 17th June 2025. DW1 admitted that the Defendant issued an insurance policy for motor vehicle KCH 587W to Joel Ndunda Kimilu. However, he contended that the parties sued in the primary suit (Panij Automobiles and Trinity Transporters) were not their insureds and thus the Defendant had no obligation to defend or satisfy the judgment.

[5] On cross-examination, DW1 admitted that the person eventually found liable in the primary suit, Joel Ndunda Kimilu (policyholder for 100005567), was indeed their client. He stated that the Defendant did not receive any further documents after their client was joined as a third party in the primary suit. Crucially, DW1 admitted that the Defendant did not seek to avoid the claim or set aside the judgment in the primary suit. He also confirmed the policy limit was Kshs. 3,000,000.00 per incident.

Analysis and Determination

[6] Having considered the pleadings, the evidence, and the submissions, the following issues arise:

- (i) Whether the Defendant was the insurer of motor vehicle KCH 587W;
- (ii) Whether statutory notice was duly served;
- (iii) Whether the Defendant is bound to satisfy the judgment;
- (iv) The extent of liability in light of the statutory cap.

[7] Section 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 provides:

“(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... is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel... the insurer shall... pay to the persons entitled to the benefit of the judgment any sum payable thereunder...”

[8] On the sufficiency of notice, I rely on ***Philip Kimani Gikonyo v Gateway Insurance Company Limited [2007] eKLR***:

“So, what form should a notice take? It simply does not matter. A notice is a notice. The main purpose of a notice is to alert the insurer of a potential claim... so that the insurer can take steps to protect its interest... Any notice, howsoever given as long as it sufficiently outlines the happening of an event giving rise to a claim under the insurance policy, is good notice under the Act.”

[9] In ***Kenya Alliance Insurance Co. Ltd v Thomas Ochieng Apopa [2020] eKLR***, the High Court held:

“The information in the police abstract is sufficient proof of the insurer because police are charged with the responsibility of investigating accidents and gather relevant information... The Certificate of Insurance normally does not show the name of the owner... Production of a document as an exhibit is not a guarantee of that document's credibility or probative value.”

[10] The evidence shows that the Defendant was the insurer of motor vehicle KCH 587W, and Joel Ndunda Kimilu was the policyholder. While the Defendant argued that the primary suit involved "strangers," the court in CMCC 94 of 2020 found Joel Ndunda Kimilu, the Defendant's insured, 100% liable. Under cross-examination, DW1 admitted the Defendant did not seek a declaration under Section 10(4) of Cap 405 to avoid the policy, nor did they move to set aside the judgment. By failing to seek such a declaration within the statutory three-month window or intervene



in the primary suit, the Defendant is now barred from raising those defenses. I am persuaded that the Plaintiff has established that the vehicle was insured by the Defendant at the time of the accident and that there was a valid insurance cover.



[11] Regarding the limit of liability, Section 5(b)(iv) of the Act caps insurer liability at Kshs. 3,000,000.00. In **Kiruku v Kenya Orient Insurance Company Limited [2024] KECA 8 (KLR)**, the Court of Appeal held:

“It is trite that court orders are not made in a vacuum... the law is the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405. It has clearly limited an insurer's liability to the insured to Kshs. 3,000,000/= .any compensation awarded by the court in excess of Kshs. 3 million would be recoverable from the insured and not from the insurance company.”

[12] Further, in **Kenya Orient Insurance Limited v Zachary Nyambane Omagwa [2021] eKLR:**

“The amount of Kshs. 3,000,000 paid is the maximum amount payable by the insurer.the Respondent cannot compel the Appellant to pay more than the prescribed amount under the Act.”

[13] I find that the Plaintiffs have established their case to the extent of the statutory maximum. The Defendant is bound to satisfy the judgment, but only up to the cap of Kshs. 3,000,000.00.

[14] I therefore enter the following judgment:

- a) A declaration is issued that the Defendant is liable to satisfy the judgment and decree in Machakos CMCC No. 94 of 2020 up to the statutory limit of Kshs. 3,000,000.00.
- b) The Defendant is ordered to pay the Plaintiffs Kshs. 3,000,000.00 with interest at court rates from 11th September 2024 until full payment.
- c) The Plaintiffs may pursue the balance of the decretal sum from the insured, Joel Ndunda Kimilu.
- d) The Defendant shall bear the costs of this suit.

Delivered virtually, signed, and dated this 20th day of February 2026.

Hon. C.C. Oluoch

Chief Magistrate

Court: There shall be a 30-day stay of execution.

SIGNED BY:
HON. CHARITY OLUOCH



THE JUDICIARY OF KENYA.
MACHAKOS MAGISTRATE
COURT MAGISTRATE COURT
DATE: 2026-02-20 14:34:27

