

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
HIGH COURT CIVIL CASE NO. E021 OF 2024

INTRA AFRICA ASSURANCE COMPANY LIMITED.....

PLAINTIFF

VERSUS

SABRE LEASING AND RENTALS LIMITED.....

DEFENDANT

JUDGMENT

1. By a plaint dated 4th December, 2024, the plaintiff sued the defendant seeking for judgment against the defendant for;

a) A declaration that the plaintiff is and has at all material times entitled to avoid the aforesaid policy of insurance No. 23/02/IMA/070/PC/8641 and any provision contained therein on the ground that the terms of the policy have been breached by the defendant.

b) A declaration that the plaintiff is not liable to make any payment under the aforesaid policy of insurance No. 23/02/IMA/070/PC/8641 in respect of any claims; Naivasha E728 210 of 2015 and 633 of 2024; arising out of the personal injury incurred in the accident on 4th April 2024 involving the motor vehicle registration number KCR 340H and/or from any accident involving the motor vehicle during the pendency of the said insurance policy.

c) Any other or further relief that this Honourable court may deem fit to grant.

d) Costs of this suit.

e) Interest thereon.

2. The plaintiff's case is that at all material times to this suit, the plaintiff provided the defendant with an insurance cover for motor vehicle registration number KCR 340H under policy number 23/02/IMA/070/PC/8641

commencing from 20th July 2023 and expiring on 19th July 2024.

3. That it was an express term of the insurance policy that the plaintiff would indemnify the defendant for any loss or damage to the motor vehicle and/or death, bodily injuries to any third party or damage to property of third parties arising from use of the subject motor vehicle.
4. That the defendant was required to report such accident as soon as was reasonably possible.
5. That on or about the 4th of April 2024, the subject motor vehicle was involved in an accident as a result of which one Solomon Kimani Karanja sustained injuries. Consequently, the injured party filed a suit; Naivasha E728 of 2024 seeking compensation.
6. However, the plaintiff only became aware of the accident on 21st November 2024 when it was served with a statutory notice dated 16th November 2024.

7. The plaintiff avers that the failure of the defendant to report the accident amounts to breach of the express terms of clause 4 of the policy. The particulars of breach of the insurance policy are tabulated at paragraph 10 of the plaint as: -

a) Deliberately failing to inform the plaintiff that an accident occurred on the 5th April 2024 involving motor vehicle registration number KCR 340H;

b) Deliberately violating the terms of the said policy.

c) Breach of the insurance principle of utmost good faith

8. The plaintiff avers that the defendant having breached the terms of the insurance cover, it is not entitled to honour and/or pay any sums arising by way of a claim against the defendant in the present suit or any other suit.

9. The defendant was served with summons to enter appearance and a notice of appointment dated 27th

January 2025 filed by the firm or Binyenya Thurania & Company Advocates for the defendant. However, the defendant did not file any defence.

10. Consequently, the plaintiff by a notice dated 27th February 2025 requested for judgment in default of defence which was granted on 14th March 2025. On 19th March, 2025, the court directed the matter proceed to formal proof.

11. The plaintiff's case was heard on 13th October 2025, supported by the evidence of Mary Odera, an Advocate of the High Court of Kenya and Plaintiff's Legal officer. She adopted her witness statement filed alongside the plaint as her evidence in chief, which reiterates the averments in the plaint.

12. The witness also produced the documents filed alongside the plaint and maintained that the defendant breached the contract of insurance as pleaded and on inquiry by the court, she stated that the insurance

contract does not provide a period within which an accident should have been reported.

13. At the close of the plaintiff's case, the plaintiff filed submissions dated 4th November 2025, and reiterated that the defendant being the insured, failed to inform it of the accident that occurred on 4th April 2024,
14. The plaintiff submitted that it is a fundamental principle of insurance law that an insured must act in good faith (*Uberrimae fidei*) and as such the defendant had a contractual duty to promptly inform the plaintiff of the accident to enable it conduct timely investigations and protect itself from prejudice including fraud and/or an exaggerated claim.
15. However, that in the instant case, the plaintiff only became aware of the accident on 21st November 2024 after being served with a statutory notice being eight (8) months after the accident.

16. That the inaction by the defendant has exposed the plaintiff to liability in case the suit Naivasha E728 of 2024 is successful against the defendant herein.

17. The plaintiff referred to section 10(2) of the Motor Vehicle (Third Party Risks) Act (Cap 405) Laws of Kenya which empowers an insurer to avoid liability where an insured is in breach of specific policy conditions. The plaintiff relied on the case of; Co-operative Insurance Co. Ltd vs David Wachira Wambugu [2010] eKLR where the Court held that failure to disclose material facts within the stipulated period prejudices an insurer and amounts to breach and may justify repudiation. Consequently, it is entitled the plaintiff to repudiate the insurance contract herein.

18. At the conclusion of the trial I have considered the evidence in light of the material placed before the Court and I note that plaintiff exhibit (1) the policy of

insurance No. 23/02/IMA/070/PC/8641, proves a contract of insurance between the parties herein.

19. Furthermore, clause 4(a) of the said policy states as follows: -

“You must report to us any accident, injury, loss or damage involving your vehicle(s) as soon as is reasonably possible.”

20. The evidence herein is that the accident the defendant never reported to the plaintiff and that the plaintiff only got to know of it when they were served with a notice of institution of suit dated 16th November 2016 being a period of seven (7) months after the occurrence of the accident. It is therefore clear that the defendant breached the aforesaid provisions of clause 4(a) of the policy of insurance.

21. It also suffices to note that, a contract of insurance is a contract of uberrimae fidei (utmost good faith) and a

breach therefore will entitle the aggrieved party to repudiate it.

22. In the instant matter the defendant did not defend the suit and therefore the plaintiff's claim and the supporting evidence is not rebutted. Consequently, I enter judgment in favour of the plaintiff as prayed for in prayers (a), (b) and (d) of the plaint.

23. It is so ordered.

Dated, delivered and signed this 8th day of April, 2026.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Tibwa for the plaintiff

N/A for the defendant

Ms. Hannah: Court Assistant