



Blantyre Steel Limited v Intra Africa Assurance Company Ltd (Commercial Case E445 of 2022) [2026] KEHC 4856 (KLR) (Commercial and Tax) (10 April 2026) (Judgment)

Neutral citation: [2026] KEHC 4856 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E445 OF 2022**

MN MWANGI, J

APRIL 10, 2026

BETWEEN

BLANTYRE STEEL LIMITED PLAINTIFF

AND

INTRA AFRICA ASSURANCE COMPANY LTD DEFENDANT

JUDGMENT

1. The plaintiff filed this suit vide a plaint dated 1st November 2022 seeking judgment against the defendant for the sum of Kshs.13,933,666.50 under Policy Number 18/CP/IANB/04/F/R0339 (renewed as Policy Number 19/CP/IANB/04/F/R0393), and a further sum of Kshs.7,500,000/= under Policy Number 19/CP/IANB/04/FCL/0024. The plaintiff also claims damages for lost business and profits and costs of the suit.
2. The plaintiff's case is that it was a lessee of Godowns No. 6 & 9 situated on LR No. 209/8827 within Industrial Area, Nairobi. The plaintiff stated that the defendant had insured it under a Fire Industrial and Perils Policy No. 18/CP/IANB/04/F/R0339 (renewed as Policy No. 19/CP/IANB/04/F/R0393) for the period 16th June 2019 to 16th June 2020, and that it further provided a business interruption cover under Policy No. 19/CP/IANB/04/FCL/0024 valued at Kshs. 7,500,000/=. The plaintiff claimed that on or about 30th September 2019 through early December 2019, its premises were flooded, resulting in extensive destruction of goods and substantial loss. That subsequently, it lodged a claim initially valued at Kshs.16,058,666.50, which was later adjusted to Kshs.13,933,666.50 after excluding certain items.
3. The plaintiff averred that following the claim, the defendant appointed multiple loss adjusters whose assessments varied significantly, with recommendations ranging from Kshs.12,172,297.00 to Kshs.5,852,691.50 and later Kshs.9,354,15.00, the latter being after a disputed stock adjustment. It



contended that it rejected the reduced offers and escalated the matter to the Insurance Regulatory Authority, but no resolution was achieved. The plaintiff claimed that the defendant acted in bad faith by appointing multiple adjusters, disputing stock records without basis, and ultimately repudiating the claim on untenable grounds, despite having settled a similar claim in the previous year. It further claimed that as a result of the defendant's breach of the insurance contract, it suffered loss of business, profits, and financial hardship.

4. In opposition to this suit, the defendant filed a statement of defence and counterclaim dated 9th December 2022. In its defence, the defendant denied all the averments in the plaintiff's pleadings. While disputing the extent and particulars of the alleged loss suffered by the plaintiff, the defendant admitted receipt of a self-assessed claim for Kshs.16,058,666.50 following the alleged flooding and confirmed that it appointed licensed loss adjusters to assess the claim. The defendant acknowledged having appointed Accident & General Investigations, whose report recommended payment, but stated that both parties, particularly, the plaintiff, were dissatisfied with the report, leading to the appointment of a second adjuster, Safety Surveyors Company Limited.
5. The defendant asserted that the second adjuster identified material inconsistencies in the plaintiff's documentation, including alleged tampering with stock records, incomplete and altered entries, discrepancies between documents, unsupported claims, and lack of audited financial records to substantiate business interruption. That consequently, the adjuster recommended repudiation of the claim, though the loss was nonetheless adjusted to Kshs.5,852,691.50, which the defendant offered in good faith on a without prejudice basis, but was declined by the plaintiff.
6. The defendant admitted that the dispute was referred to the Insurance Regulatory Authority, which led to the appointment of a third adjuster, Maritime Loss Adjusters, who also identified discrepancies, including outdated stock records, reliance on estimates, and disposal of damaged goods before verification, and adjusted the claim to Kshs.9,354,150.00. The defendant denied allegations of breach and asserted that the claim was lawfully repudiated due to the plaintiff's breach of policy conditions, including failure to provide accurate and complete records, misrepresentation of material facts, lack of utmost good faith, and failure to exercise due care.
7. In the counterclaim, the 1st defendant averred that it issued a Fire Industrial - Fire and Perils Insurance Policy to the plaintiff, covering goods stored in Godowns No. 6 & 9 at Enterprise Road, Nairobi, for the period 16th June 2019 to 16th June 2020, with a total insured sum of Kshs.51,000,000/= . It stated that the policy covered various items including hardware, chemicals, MDF boards, gypsum, plywood and office equipment, and that it was subject to strict terms and conditions requiring the plaintiff to maintain accurate stock records, act in utmost good faith, and comply with all policy provisions.
8. It was stated by the defendant that following alleged flood damage reported in December 2019, the plaintiff submitted a claim for Kshs.16,058,666.00, prompting the defendant to appoint multiple loss adjusters whose assessments varied and revealed alleged discrepancies, including failure to properly store goods, inconsistencies in records, and suspected tampering with stock documentation.
9. He contended that while the first adjuster recommended Kshs.12,172,297.00, subsequent assessments reduced the claim and raised concerns about the legitimacy of the plaintiff's documentation, with the second adjuster recommending repudiation and the third adjuster noting further irregularities, including disposal of damaged goods without authorization. The defendant stated that it lawfully repudiated the claim on grounds of fundamental breach of policy terms, including violation of the duty of utmost good faith, failure to maintain accurate records, and misrepresentation of material facts. The defendant maintained that due to the plaintiff's alleged fraud and inaccuracies in the claim process,



it bears no liability. It asserted that the plaintiff is in breach of contract and that it is not entitled to any of the reliefs sought.

10. The defendant in the counterclaim prays for a declaration that the plaintiff breached the fundamental warranties, terms, and conditions of the relevant insurance policies, a declaration that as a result of such breach, the plaintiff is not entitled to any compensation under the said policies, including both the primary fire and perils policy and the business interruption policy, a declaration that it is entitled to avoid liability and that it is discharged from any obligation in respect of claims arising from the flooding reported on 1st December 2019 and a declaration that the plaintiff is not entitled to damages for alleged loss of business and profits. The defendant also seeks orders for general damages and costs of the suit with interest.
11. Thereafter, the plaintiff filed a reply to the defence and a defence to the counterclaim dated 20th December 2022. In its reply, the plaintiff maintained that its claim is genuine and ought not to be partially settled if repudiated. The plaintiff denied liability of the claims raised against it by the defendant in the counterclaim and asserted that the insured premises had been inspected and approved by the defendant prior to issuance of the policy, thereby disputing the accuracy and motive of the loss adjusters' reports. The plaintiff further contended that it provided all necessary documentation to the first loss adjuster and that any discrepancies, including reconstructed bin cards, were not indicative of fraud but arose from the adjusters' handling of the documents. The plaintiff accused the defendant of deliberately complicating the claim to avoid full payment. It prayed for the defendant's defence and counterclaim to be dismissed with costs and for judgment to be entered as sought in the plaint.
12. This matter proceeded to hearing where the plaintiff called one witness in support of its case, and the defendant also called one witness to ventilate its case.

Plaintiff's Case.

13. Mr. Shaista Kausar Sidi, the plaintiff's Principal Officer testified as PW1. He adopted his witness statement dated 28th February 2024 as his evidence in chief, and produced the documents in the plaintiff's lists of documents dated 1st November 2022 as the plaintiff's exhibits.
14. The photographs on pages 114, 126, 142, 143, 144, 145, 162, 163, 172, 185 & 119 appearing on the plaintiff's bundle of documents and the email dated 1st December 2019 at 1310 hrs from Mwangi of the defendant company addressed to Priti Patel and copied to Kalsi of the defendant company, were expunged from the record.
15. Mr. Sidi testified that the plaintiff had been consistently insured by the defendant over several years, including the 2017-2018, 2018-2019, and 2019-2020 policy periods, with the latter being a renewal cover. He recalled that in 2018, the plaintiff suffered flood damage for which a claim was assessed by Accident & General Investigations and subsequently settled by the defendant in the sum of approximately Kshs.18-20 Million.
16. He stated that in late November to early December 2019, the plaintiff's premises were again affected by floods, with water levels reaching approximately four to five feet, submerging a significant portion of the plaintiff's goods. PW1 asserted that the plaintiff promptly notified the defendant, completed a claim form for Kshs.16,058,666.50, and provided all original supporting documents, including stock/bin cards, to the loss adjuster for verification. He maintained that the godowns were left untouched pending assessment and that the documents provided to the defendants, accurately reflected the stock position at the time of loss. PW1 testified that following the assessment, Accident & General Investigations recommended payment of approximately Kshs.12.9 Million, although the plaintiff



- noted inconsistencies in the report, including instances where some items were undervalued or omitted altogether, such as SLES 70%, which he insisted was fully submerged (in water) but assigned a nil value.
17. Mr. Sidi stated that despite this recommendation, the defendant failed to settle the claim and instead appointed a second loss adjuster, Safety Surveyors Company Limited, who according to him, conducted minimal independent investigation and recommended a reduced figure of Kshs.5,852,691.50, alongside allegations of tampering with stock/bin cards. He stated that the plaintiff rejected the said offer as inadequate.
 18. PW1 claimed that upon escalation of the dispute to the Insurance Regulatory Authority, a third loss adjuster, Maritime Loss Adjusters, was appointed and recommended a payment of Kshs.9,354,150.00, but this too was declined by the plaintiff as it fell short of the actual loss suffered. Mr. Sidi maintained that the plaintiff acted in utmost good faith throughout the claims process, having provided original documentation at the outset and only reconstructing certain bin cards after temporary misplacement during relocation from Godown No. 9 to No. 6 following the floods.
 19. He explained that the reconstructed records were consistent with the originals and supported by invoices, and that continued entries in the bin cards after the floods were due to ongoing sales of undamaged stock in the ordinary course of business. He denied any tampering with documents and asserted that the defendant's allegations are unfounded. Mr. Sidi contended that the repeated appointment of multiple loss adjusters and the shifting assessments demonstrate a deliberate effort by the defendant to reduce or avoid liability, allegedly influenced by the fact that a similar claim had been paid in the preceding year.
 20. PW1 emphasized that the defendant's failure to settle the claim, even at the level recommended by its own adjusters, caused the plaintiff severe financial distress, impairing its ability to sustain operations, pay staff, and meet its obligations. He testified that the plaintiff is entitled to compensation under the business interruption cover, in the sum of Kshs.7,500,000/=, as the floods significantly disrupted its operations. Mr. Sidi asserted that the plaintiff's claim was valid, properly documented, and consistent with past practice, and that the defendant's ultimate repudiation after initially offering partial settlement was unjustified.
 21. During cross-examination, PW1 testified that the original stock/bin cards were handed over to Accident & General Investigators, as confirmed on page 4 of their report, but the plaintiff's staff member who received them was not present to testify. He stated that the investigators reported that the insured goods were submerged in rainwater up to about four feet and were extensively damaged. Mr. Sidi stated that after the plaintiff disagreed with the valuation of Kshs.5,852,691.50 by Safety Surveyors Company Limited, the matter was escalated to the Insurance Regulatory Authority, which appointed Maritime Loss Adjusters. He explained that the stock/bin cards were recreated during the relocation from Godown 9 to No. 6, and that he could not recall specific provisions in Clause 49 of the policy.
 22. Although PW1 claimed that there was disruption of business due to the floods, he had no documentation to show salary impacts or a separate claim form for business interruption, though communication in emails indicated financial strain, including unpaid rent and pending clearance of containers. Mr. Sidi acknowledged that Kshs.18,557,779.00 had been paid for the 2018 floods. He confirmed familiarity with loss adjustment procedures, noting that loss assessors rely on visibility and documentation and highlighted that the defendant repeatedly alleged tampering with the bin cards despite the originals having been provided. He asserted that after the original bin cards were temporarily lost and later found, the claim was reassessed by a third adjuster, but significant discrepancies remained between the valuations of different loss adjusters.



23. In re-examination, PW1 stated that the plaintiff had included a claim for loss of business in the 2019 claim form, prepared in the same manner as the 2018 claim. He confirmed that the defendant's agent, Accident & General Investigations, was provided with original documents at the time of assessment, and noted that the report does not indicate that photocopies were supplied instead. Mr. Sidi maintained that the stock/bin cards were not tampered with and explained that any reconstruction of the bin cards occurred only after the original documents had been returned by the first loss adjuster. He emphasized that the recreated bin cards faithfully mirrored the originals. While acknowledging that there were discussions regarding business interruption, he stated that he was not aware whether compensation for the disruption of business had been made in the 2018 claim.
24. Upon being examined by the Court, PW1 clarified that before handing over the original stock/bin cards to Accident & General Investigations, the plaintiff had made photocopies of the same, and that the said photocopies were later used to recreate new bin cards after the plaintiff relocated its operations. He however testified that after settling into the new premises, the original bin cards were traced and the defendant was duly informed of their recovery.

Defendant's Case.

25. Mr. Solomon Mwangi, a claims analyst at the defendant company, testified as DWI. He adopted his witness statement dated 21st June 2023 as his evidence in chief and produced the documents listed in the defendant's list of documents dated 22nd June 2023 as defence exhibit Nos. 1 to 8. Mr. Mwangi testified that while it is not in dispute that the plaintiff suffered loss following heavy flooding at its premises, the claim was properly and lawfully repudiated due to fundamental breaches of the insurance policy. He claimed that upon notification of the loss, the defendant appointed Accident & General Investigations as the first loss adjuster, whose report adjusted the claim but was found by the defendant to be incomplete and containing anomalies in both methodology and figures. It was his evidence that the defendant prudently appointed a second loss adjuster, Safety Surveyors Limited, with instructions to independently verify all supporting documentation provided by the plaintiff.
26. DW1 stated that the second report significantly differed from the first, both in terms of quantum and liability, and the defendant concluded that there was evidence of tampering with stock records, thereby rendering the claim voidable. He further stated that despite the said findings, and in an effort to maintain goodwill with a longstanding client, the defendant offered an ex gratia settlement of Kshs.5,852,691.50 on a without prejudice basis, which the plaintiff declined, leading to the withdrawal of the offer. Mr. Mwangi testified that following escalation of the dispute to the Insurance Regulatory Authority, a third loss adjuster, Maritime Loss Adjusters, was appointed, who similarly observed that the plaintiff lacked proper and verifiable records, with much of the claim being based on estimates, memory, and reconstructed documentation. He asserted that across all assessments, a consistent concern emerged regarding the integrity of the plaintiff's stock/bin cards.
27. Mr. Mwangi emphasized that under Clause 49 of the policy (the Safe and Books Clause), the plaintiff was obligated to maintain complete, accurate, and contemporaneous records of stock and business transactions as a warranty of the contract, but when the defendant requested for the original bin cards, the plaintiff initially claimed that they were in the possession of the first adjuster. He contended that upon inquiry, Accident & General Investigations confirmed that they had only taken copies and that they had returned the original documents to the plaintiff, thereby exposing inconsistencies in the plaintiff's account. The defendant further contended that the plaintiff later produced purported "original" bin cards which materially differed from those submitted earlier, reinforcing the conclusion that the records had been altered or reconstructed.



28. DW1 highlighted that the plaintiff disposed of some of the damaged goods before the loss could be properly verified, further undermining the ability to accurately assess the extent of damage and prejudicing the defendant's rights. In addition, he asserted that no proper claim for business interruption was lodged or substantiated. Mr. Mwangi contended that in light of these factors, including the failure to maintain proper records, submission of inconsistent and unverifiable documentation, and breach of the principle of utmost good faith, the defendant concluded that the plaintiff was in breach of the Safe and Books Clause, which breach went to the root of the policy and rendered it impossible for the defendant to ascertain the true extent of the loss. He also contended that the defendant was entitled to repudiate the claim and maintained that no liability arose under the policy.
29. During cross-examination DW1 confirmed that the plaintiff duly filed a claim form following the 2019 floods, which included a component for disruption of business under item No. 13, although it is unclear whether a separate claim form was required or submitted for that head of claim. He acknowledged that a similar flood claim in 2018 had been assessed by Accident and General Investigations and fully paid, though he could not confirm the completeness of that earlier report. In respect of the 2019 floods, he stated that Accident and General Investigations again assessed the loss and recommended payment of approximately Kshs.12 Million in a report issued in February 2020, about three (3) months after the incident, but the defendant declined to adopt this recommendation, noting that acceptance of a loss adjuster's report is an internal decision of the insurer.
30. DW1 further stated that Accident and General Investigations did not raise issues regarding the plaintiff's stock bin cards, and that concerns regarding those records arose from the defendant itself upon internal review. He testified that thereafter, the defendant appointed a second loss adjuster, Safety Surveyors Limited, whose report dated 20th May 2020 identified discrepancies and tampering in the stock records, leading to a significantly reduced assessment of approximately Kshs.5,000,000/=. DW1 further testified that although the defendant initially offered to settle at that figure, the plaintiff declined the offer, prompting its withdrawal, and the matter was subsequently escalated to the Insurance Regulatory Authority, which recommended the appointment of a third independent loss adjuster, Maritime Loss Adjusters. He stated that their report issued in December 2020, assessed the loss at approximately Kshs.9,354,150.00 but noted that the claim was largely based on estimates and memory due to inadequate record-keeping, and accordingly applied a reduction to the claimed amount.
31. It was stated by Mr. Mwangi that while the third adjuster made a recommendation for settlement, the defendant maintained that such recommendations were not binding and declined to pay on the basis that the plaintiff had failed to maintain proper records as required under the policy. It was DW1's testimony that during the pendency of investigations, the plaintiff was not expected to dispose of the subject matter of the claim, although undamaged goods could be sold, albeit with proper documentation. He further stated that the defendant later requested for the plaintiff's stock bin cards for verification and upon analysis, concluded that the documents presented as originals differed from those previously submitted to the first loss adjuster, thereby raising serious concerns about their authenticity. That consequently, the defendant formed the view that the plaintiff had not maintained proper and consistent records, and that Accident and General Investigations may have hastily made its recommendations without sufficient scrutiny.
32. In re-examination, DW1 testified that the plaintiff took the position that the report prepared by Accident and General Investigations was shoddy and unreliable, as reflected in its pleadings and conduct following its issuance. He acknowledged that an insurer is not strictly bound by the findings or recommendations of a loss adjuster and retains the discretion to accept or reject such reports.



- He testified that the subsequent report by Maritime Loss Adjusters further underscored concerns regarding the plaintiff's claim, as it repeatedly indicated that the assessment of loss was largely based on estimates and memory recollection rather than on verifiable and contemporaneous records.
33. At the close of the defendant's case, the Court directed parties to file written submissions. The plaintiff's submissions were filed on 9th December 2025 by the law firm of C.B. Keya & Company Advocates, while the defendant's submissions were filed by Danlex Partners LLP on 15th December 2025.
 34. Mr. Keya, learned Counsel for the plaintiff submitted that the plaintiff's claim ought to have been settled upon the first assessment by Accident & General Investigations (AGI), who had access to the premises, and to the original untampered bin cards, and recommended payment of approximately Kshs.12 Million. He contended that any subsequent discrepancies arose after the defendant unnecessarily demanded the documents again, despite the plaintiff having shifted warehouses following the floods, leading to temporary misplacement and later reconstruction of some bin cards. Counsel asserted that the replicated bin cards did not materially differ from the originals, which were eventually traced and availed, and that the defendant failed to demonstrate any substantive inconsistency. He claimed that the defendant acted in bad faith and with malice, motivated by reluctance to compensate the plaintiff twice within two consecutive years.
 35. Mr. Keya argued that the appointment of multiple loss adjusters was a deliberate attempt to reduce or defeat the claim, noting that while the first and third adjusters recommended substantial payments, the defendant selectively relied on the lowest assessment. On the issue of utmost good faith, Counsel stated that the plaintiff acted transparently by providing original documentation and granting full access to the premises, and that there was no intention to misrepresent or suppress material facts. He relied on the book by J. V. N. Jaiswal, Law of Insurance, Eastern Book Company (2008) at page 495 and the case of *Stebbing v Liverpool and London Globe Insurance Company Ltd* [1916-17] ALL ER 248, and emphasized that the burden of proving alleged non-disclosure or misrepresentation lies with the defendant. He asserted that no such proof has been provided and that the alleged discrepancies are immaterial.
 36. Regarding business interruption, Mr. Keya submitted that the loss was genuine and covered under the policy, as a similar claim had been honoured in 2018 under comparable circumstances. He questioned the defendant's refusal to compensate this head of claim despite it being included in the claim form and not expressly rejected as improperly lodged. Counsel cited the case of *McIlkenny v Chief Constable of West Midlands*, [1980] ALL ER 227, emphasizing on the principles of estoppel and consistency in conduct. In conclusion, Mr. Keya argued that the defendant unjustifiably repudiated the claim despite clear evidence of loss, proper documentation, and independent recommendations supporting payment. He contended that the continued filling of bin cards after the floods was a normal business practice to maintain operations and does not amount to fraud or tampering.
 37. Mr. Ochieng, learned Counsel for the defendant submitted that while the occurrence of floods and resulting damage to the plaintiff's goods is not disputed, the plaintiff's entitlement to indemnity is conditional upon compliance with the terms of the insurance policy, particularly, the Safe and Books Clause. He contended that the said Clause, which is standard in the defendant's policies, required the plaintiff to maintain accurate and complete records of stock and business transactions. He argued that although the plaintiff initially claimed to have provided original bin cards to the first loss adjuster, subsequent investigations revealed that the documents later submitted were reconstructed and were materially inconsistent with earlier records. He relied on the case of *Silverstar Automobiles Limited v Fidelity Shield Insurance Co. Ltd* [2014] KEHC 7510 (KLR), and the principles set out in the text by MacGillivray on Insurance Law 11th Edition at page 235 of Chapter 10, and maintained that the



failure to produce original and reliable stock records amounted to a breach of a fundamental warranty, thereby entitling the defendant to repudiate the claim.

38. Mr. Ochieng further submitted that the plaintiff's conduct also breached the doctrine of utmost good faith, as the plaintiff failed to provide accurate and truthful information necessary for the proper assessment of the claim. He relied on the Court of Appeal cases of *Kinyanjui v Kenya Orient Insurance Company & another* [2022] KECA 1333 (KLR) and *Co-operative Insurance Company Ltd v David Wachira Wambugu* [2010] KECA 481 (KLR), and argued that discrepancies in the bin cards, delays in producing records, and admissions by the plaintiff regarding reconstruction of documents demonstrate lack of candour and reliability. Counsel also cited foreign authorities such as *Miller v Home Ins. Co. of N.Y.*, 96 A. 267 (Md. 1915) and *Joffe v Niagara Fire Ins. Company* 116 Md. 155, to emphasize that failure to maintain or produce required records constitutes a complete bar to recovery under such clauses.
39. Counsel referred to the Court of Appeal case of *Mumina v Public Service Commission of Kenya & 2 others* [2022] KECA 949 (KLR), and stated that the plaintiff is bound by the terms of the policy, whether read or not, and that Courts cannot rewrite contracts. Mr. Ochieng invoked the burden of proof principles espoused under Sections 107, 109 & 112 of the *Evidence Act*, as explained by the Court of Appeal in the case of *Mbuthia Macharia v Annah Mutua Ndwiga & another* [2017] KECA 290 (KLR). He asserted that the defendant had sufficiently demonstrated the plaintiff's breach, while the plaintiff had failed to discharge its evidential burden. He maintained that the defendant lawfully repudiated the claim due to the plaintiff's breach of the Safe and Books Clause and the principle of utmost good faith, and that it had fully discharged its obligations under the policy.

Analysis And Determination.

40. I have considered and analyzed the evidence above in line with the pleadings filed, together with the written submissions by Counsel for the parties. The issues that arise for determination are –
- i. Whether the plaintiff suffered a loss covered under the insurance policy;
 - ii. Whether the plaintiff complied with the terms and conditions of the policy, including whether there was tampering, alteration, or inconsistency in the bin cards and whether there was a breach of the duty of utmost good faith;
 - iii. What is the evidential value of the loss adjusters' reports and did the defendant lawfully repudiated the claim?
 - iv. Whether the plaintiff is entitled to the claimed sums for material damage and business interruption; and
 - v. Whether the defendant's counterclaim is merited.

Whether the plaintiff suffered a loss covered under the insurance policy.

41. It is not in contest that flooding occurred at the plaintiff's premises between late November and early December 2019 and as a result, the plaintiff suffered some degree of loss. DW1 expressly conceded that the plaintiff suffered loss following the flooding. Further, the appointment of multiple loss adjusters by the defendant to assess the loss is itself an acknowledgment that a potentially indemnifiable event had occurred under the policy.
42. The plaintiff's case was that flood waters rose to approximately four to five feet, submerging a substantial portion of the stock. This account was corroborated, at least in part, by the report of the



first loss adjuster who was appointed by the defendant, who noted extensive damage and recommended payment. It is noteworthy that the subsequent reports also did not dispute the occurrence of the flood or the fact that the plaintiff suffered some loss as a result of the floods, rather, they raised concerns regarding the extent and verifiability of that loss.

43. In the said circumstances, this Court is satisfied that the peril of flooding fell within the scope of the Fire Industrial and Perils Policy issued to the plaintiff by the defendant and that the plaintiff did suffer loss.

Whether the plaintiff complied with the terms and conditions of the policy, including whether there was tampering, alteration, or inconsistency in the bin cards and whether there was a breach of the duty of utmost good faith.

44. The central issue in this matter is whether the plaintiff breached the Safe and Books Clause in the Fire Industrial and Perils Policy, thereby justifying the defendant's repudiation of the claim. The defendant contended that the plaintiff failed to maintain accurate, complete, and contemporaneous records of stock and business transactions, as required by the policy, thereby violating the duty of utmost good faith by presenting inconsistent and reconstructed records.
45. The plaintiff on the other hand, maintained that it provided the original bin cards to the first loss adjuster appointed by the defendant, and that any reconstruction of records arose only after a temporary misplacement during relocation, and that the reconstructed records were faithfully based on existing copies and supporting invoices.
46. Upon review of the evidence adduced by the parties herein, this Court notes that the integrity of the bin cards became a central issue only after the first loss adjuster's report. Notably, Accident & General Investigations, the first loss adjuster, raised no concerns regarding the authenticity or adequacy of the bin cards and recommended settlement. DW1 testified that when the defendant requested for the original bin cards, the plaintiff initially stated they were in the possession of the first loss adjuster, but Accident & General Investigations confirmed that it had only taken copies and it had returned the originals to the plaintiff. This therefore confirms that the plaintiff did provide the original bin cards to the first loss adjuster.
47. The defendant's case is heavily anchored on the second and third loss adjusters' reports, which identified alleged tampering, inconsistencies, and incomplete entries. The third adjuster also observed that the claim was largely based on estimates and memory due to inadequate record-keeping. In order to determine this issue and whether the plaintiff breached the Safe and Books Clause provided for in the fire and perils insurance policy, this Court shall reproduce the contents of the said Clause, which states as follows –

Warranted that the insured keeps and during the currency of this policy shall keep a complete set of books, accounts and stock sheet or stock books or computer system records or punched cards showing a true and accurate record of all business transactions, and stock in hand, and that such books, computer system records or punched cards shall be locked in a fire-proof safe or removed to another building at night, and at all times when the premises are not actually open for business.

This warranty applies separately to each and every business or branch business. Transfers of goods from one premises to another shall be a business transaction within the meaning of this warranty.

It is further warranted that the said safe shall not contain explosive or other hazardous commodities.



48. Clause 49 of the Fire Industrial and Perils Policy on Safe Books not only provided for keeping of original complete set of books, accounts and stock sheet or stock books, but also computer system records showing a true and accurate record of all business transactions. As earlier stated in this Ruling, this Court found that the evidence adduced demonstrated that the plaintiff indeed availed and/or supplied the first loss adjuster appointed by the defendant with the original bin cards. The plaintiff does not dispute that after the original bin cards were returned to them by the first loss adjuster, Accident & General Investigations, the same were misplaced. However, upon examination of the plaintiff's testimony by the Court, it is manifest that PW1 clarified that before the original bin cards were supplied to the first loss adjuster, the plaintiff made copies of them, copies which were then provided to the 2nd & 3rd loss adjusters and the defendant who requested for the bin cards much later.
49. These copies, in the Court's view, though not original records, constituted secondary documentary evidence, which in the circumstances, sufficiently preserved the integrity of the plaintiff's stock records. Moreover, the first loss adjuster, Accident & General Investigations, raised no concerns about the bin cards, and the original documents were eventually traced and supplied to the defendant. Given that these copies accurately reflected the original records and were made available to subsequent adjusters, the Court is satisfied that the plaintiff complied with the record-keeping requirement under the Safe and Books Clause.
50. Having demonstrated compliance, the burden of proof shifted to the defendant to show that the plaintiff breached the said Clause. It is however noteworthy that other than the claim that the bin cards were tampered with, there was no actual evidence of tampering with stock records or that there were inconsistencies with the plaintiffs' account, as the defendant did not adduce any evidence in support of these claims. It is trite that he who alleges must prove. This maxim is anchored on the provisions of Sections 107, 108 & 109 of the *Evidence Act*. This Court therefore finds that the defendant did not discharge its burden of demonstrating that the plaintiff breached the Safe and Books Clause provided for in the Fire Industrial and Perils Policy to warrant it to repudiate the plaintiff's claim.
51. PW1 testified that the reconstructed records were consistent with the originals and supported by invoices, and that continued entries after the floods reflected ordinary business sales of undamaged stock. The defendant on the other hand alleged that some damaged goods were disposed of before verification, but offered no documentation or explanation. This Court finds that the defendant bore the burden of demonstrating both that the plaintiff disposed of damaged goods and the basis upon which it arrived at that conclusion, a burden that was not discharged as the said claim was not accompanied by any documentation and/or explanation of how the defendant arrived at the said conclusion.
52. The duty of utmost good faith requires the insured to act with candour and accuracy, particularly, at the claims stage. Accordingly, this Court finds that the plaintiff materially complied with the Safe and Books Clause and with the duty of utmost good faith under the policy. The defendant's repudiation of the claim is therefore unjustified.

What is the evidential value of the loss adjusters' reports and did the defendant lawfully repudiated the claim?

53. The record shows that three loss adjusters were appointed, each arriving at differing conclusions. The first recommended a payment of approximately Kshs. 12 Million; the second reduced the assessment and recommended repudiation or a payment of approximately Kshs.5.8 Million on an ex-gratia basis, while the third adjusted the loss to approximately Kshs.9.3 Million, expressly noting that the claim was largely based on estimates and memory.



54. It is well settled that the reports of loss adjusters are not binding on the insurer or the Court. They constitute expert opinion evidence, the weight of which depends on the methodology employed, the material considered, and the overall credibility of the findings. While the first report supported the plaintiff's claim, it was criticized by both parties, the plaintiff for undervaluation of certain items, and the defendant for alleged incompleteness and anomalies. The second and third reports, although differing in quantum, consistently raised concerns by the defendant, regarding the reliability of the plaintiff's records.
55. Furthermore, although the defendant contended that the first assessor's report was incomplete and contained anomalies in both methodology and figures, necessitating the appointment of the second loss adjuster, it did not explain to the Court the nature of these anomalies, why it disagreed with the methodology applied, or why the first report was inadequate. Notably, in 2018 the defendant relied on the first loss adjuster's report to compensate the plaintiff. Additionally, the defendant did not call any loss adjusters as witnesses to support its claims. In these circumstances, the Court draws a negative inference against the defendant. Of particular significance is the third report by Maritime Loss Adjusters, independently appointed through the Insurance Regulatory Authority, which carries considerable probative value. Although prepared approximately a year after the floods, it expressly noted that the claim relied largely on estimates and memory, and the said loss adjuster applied reductions to account for this uncertainty.
56. In the circumstances of this case, this Court is satisfied that the first and third loss adjusters' reports corroborate the plaintiff's claimed loss, whereas the reduced assessment by the second adjuster is not sufficiently persuasive to justify repudiation. The defendant's reliance on alleged discrepancies is therefore speculative and unproved.
57. It is therefore this Court's finding that the repudiation of the plaintiff's claim was arbitrary and unjustified. The defendant's insistence on repudiation, despite independent adjusters recommending partial settlement, demonstrates a failure to act reasonably and in good faith.

Whether the plaintiff is entitled to the claimed sums for material damage and business interruption.

58. The plaintiff in this suit seeks payment of Kshs.13,933,666.50 as the material damage claim under the fire and perils policy, and Kshs.7,500,000/= for business interruption. These, in the Court's view, constitute special damages.
59. Special damages must be specifically pleaded and strictly proved. In the case of *Hahn v Singh* [1985] KLR 716, quoted with authority by the Court of Appeal in *Mohammed Ali & another v Sagoo Radiators Limited* [2013] KECA 163 (KLR), the Court held that –
- ...special damages which must not only be claimed specifically but proved strictly for they are not the direct natural or probable consequences of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the act themselves.
60. On the material damage claim, the plaintiff initially presented a claim for Kshs.16,058,666.50, but claimed that Kshs.625,000/= and Kshs.1,500,000/= labelled under cleaning of the godown and business disruption respectively, were removed, leaving a balance of Kshs.13,933,666.50. In assessing how much the plaintiff is entitled to under the head for material damage, this Court is inclined to rely on the first loss adjuster's report since it was able to visit the site and assess it almost immediately after the flooding incident occurred. Additionally, it had access to the original bin cards and its report had



previously been relied on by the defendant to compensate the plaintiff for flood-related losses in the previous year.

61. Accordingly, this Court is satisfied that the plaintiff is entitled to payment of Kshs.12,172,297.00 for losses suffered under the material damage claim, as recommended by the first loss adjuster, as the same was independently verified and supported by contemporaneous inspection.
62. On the claim for business interruption, it is not in dispute that the plaintiff had taken out cover for Kshs.7,500,000/= under Policy Number 19/CP/IANB/04/FCL/0024. PW1 testified that the floods significantly disrupted the plaintiff's operations and that it was entitled to compensation under this head. However, in cross-examination, PW1 conceded that he had no documentation to demonstrate salary impacts or a separate claim form for business interruption, though email correspondence indicated financial strain, including unpaid rent and pending clearance of containers.
63. The defendant's witness on the other hand asserted during cross-examination that no proper claim for business interruption was lodged or substantiated. He however confirmed that the plaintiff filed a claim form following the 2019 floods, which included a component for disruption of business under item No. 13, although it remained unclear whether a separate claim form was required.
64. Upon perusal of the general claim form submitted by the plaintiff, it is evident that item No. 13 under the list of damaged items relates to the disruption of business, for which the plaintiff claimed Kshs.1,500,000/=. The form was duly received by the defendant. There is however no evidence of the defendant informing the plaintiff that it was required to fill a separate claim form for this purpose and/or additional documentation was needed to substantiate this head of claim. Further, email correspondence between the parties herein demonstrate that the issue of business disruption was actively under discussion. The defendant cannot therefore deny awareness of this claim.
65. In the circumstances, this Court is satisfied that the claim for business interruption was properly lodged with the defendant.
66. However, while the plaintiff now claims Kshs.7,500,000/= under this head, the initial claim was for Kshs.1,500,000/=. No explanation has been offered as to why the sum claimed has now changed and/or what circumstances have warranted escalation of that claim from Kshs.1,500,000/= to Kshs.7,500,000/=.
67. This Court finds that the plaintiff has proved entitlement to Kshs.1,500,000/= as compensation for business interruption, being the only specifically pleaded and contemporaneously claimed sum under that head.

Whether the defendant's counterclaim is merited.

68. In its counterclaim, the defendant sought several declarations, namely, that the plaintiff breached the Safe and Books Clause and other policy terms that the plaintiff is not entitled to compensation under the policies, that the defendant is discharged from liability for the 2019 flood claims, and that it is entitled to damages for loss of business and profits.
69. However, based on the analysis, I have already made, this Court finds that there was no fundamental breach of the Safe and Books Clause, the plaintiff acted in utmost good faith, and that any reconstruction of documents was justified and transparently communicated. Further, no evidence was adduced by the defendant to demonstrate that the plaintiff engaged in misrepresentation or material non-disclosure sufficient to avoid liability under the policy.



70. In the circumstances, this Court finds that the defendant's counterclaim lacks merit and it is hereby dismissed with costs to the plaintiff.
71. In the end, this Court finds that the plaintiff's suit against the defendant is merited, whereas the defendant's counterclaim is not merited. Section 27 of the Civil Procedure Act provides that costs follow the event.
72. In the circumstances, I make the following orders: -
- i. The defendant's counter-claim is hereby dismissed;
 - ii. The defendant shall pay the plaintiff Kshs.12,172,297.00 under Policy Number 18/CP/IANB/04/F/R0339 (renewed as Policy Number 19/CP/IANB/04/F/R0393) from the date of filing of the suit herein;
 - iii. The defendant shall pay the plaintiff Kshs.1,500,000/= under Policy No. 19/CP/IANB/04/FCL/0024 from the date of filing of this suit; and
 - iv. Interest in (ii) & (iii) above at Court rates from the date of judgment until payment in full is awarded to the plaintiff;
 - v. Costs of the suit and the counterclaim are hereby awarded to the plaintiff.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT KIAMBU ON THIS 10TH DAY OF APRIL 2026.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Keya for the plaintiff

Mr. Ochieng for the defendant

Ms Julia – Court Assistant.

