REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E093 OF 2024

NICHOLAS NAHASHON NGARE alias

NICHOLAS NGARE

RUKENYA.....APPELLANT

VERSUS

CIC GENERAL INSURANCE CO. LTD..... RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. Eunice Kelly Aomo (PM) in Naivasha MCCC No. E449 of 2023 delivered on 9th September, 2025)

JUDGMENT

Background Of The Appeal

1. By a Plaint dated 6th September 2023, the Appellant instituted a suit against the Respondent seeking a declaration that the Respondent is liable to satisfy the Decree and Certificate of Costs dated 22nd September 2022, issued pursuant to the judgment in Naivasha Civil Suit No. 405 of 2020, in the sum of Kshs. 214,970/=. The Appellant also sought costs of the suit and interest thereon.
2. The Appellant's case was that on or about 30th July 2019 at about 3:00 p.m., he was lawfully driving motor vehicle registration number KAH 916Y along the Nakuru-Naivasha Highway when the said motor vehicle was involved in an

accident with motor vehicle registration number KCQ 491X, which at the material time was being driven by Mr. Twalib Bakari. As a result of the accident, the Appellant sustained injuries and his motor vehicle was extensively damaged and subsequently declared a write-off.

3. It was further his case that at the time of the accident, motor vehicle registration number KCQ 491X was insured by the Respondent under Policy No. 020/070/207701/2018/09, which policy covered third party risks pursuant to the provisions of the Insurance (Motor Vehicles Third Party Risks) Act (hereinafter "the Act"). He averred that on 14th July 2020, he served the Respondent with a statutory notice of his intended suit against its insured, namely Qasim and Yahya Limited and Twalib Bakari, in compliance with section 10 of the Act, which notice the Respondent acknowledged.
4. Subsequently, on 7th September 2020, the Appellant filed suit against the Respondent's insured in Naivasha CMCC No. 4065 of 2020 seeking compensation for damage to his motor vehicle. He obtained judgment in the sum of Kshs. 125,550/- and costs of Kshs. 89,420/-, bringing the total decretal sum to Kshs. 214,970/=.
5. The Appellant further averred that the High Court at Naivasha in HCCA No. E065 of 2022 made a finding that the Respondent

was liable to satisfy the decretal sum and that despite demand, the Respondent had neglected and/or refused to settle the decretal amount.

6. In its Statement of Defence dated 22nd September 2023, the Respondent denied insuring motor vehicle registration number KCQ 491X. It further contended that the Appellant had failed to comply with the mandatory provisions of section 10 of the Act so as to sustain the present suit. Additionally, it denied knowledge of the alleged judgment in Naivasha CMCC No. 405 of 2020 and averred that it had not been served with any demand notice.
7. In a judgment delivered on 9th September 2025, the trial court found that although the Respondent had been served with a statutory notice, the same was defective. The court further held that no nexus had been established between Twalib Bakari and the Respondent. On those grounds, the Appellant's claim was dismissed with costs.
8. Aggrieved by the said decision, the Appellant lodged the present appeal vide a Memorandum of Appeal dated 17th September 2025, seeking orders that the Judgment and Decree of the trial court be set aside and substituted with an order allowing the suit, together with costs of the appeal and the proceedings before the trial court.

9. The appeal is premised on the following grounds:

a) **The learned trial magistrate erred in law and fact by holding that no connection was proved between Mr. Twalib Bakari and Ms. Elisa Atieno Otieno.**

b) **The learned trial magistrate erred in law and fact by failing to make a finding that Mr. Twalib Bakari was the authorized driver of motor vehicle registration number KCQ 491X and hence covered under the policy insurance issued by the Respondent.**

c) **The learned trial magistrate erred in law and fact by failing to make a finding that the driver of motor vehicle registration number KCQ 491X was covered under the provisions of the Insurance (Motor Vehicle Third Party Claims) Act (CAP 405).**

d) **The learned trial magistrate erred in law and fact by failing to make a finding that only Ms. Elisa Atieno Otieno would have disproved any relationship between herself and Mr. Twalib Bakari.**

e) **The learned trial magistrate erred in law and fact by failing to make a finding that the Defendant ought to have sought a declaration that it was not bound to satisfy any judgment arising out of the primary suit being MCCC No. 405 of 2020.**

f) **The learned trial magistrate erred in law and fact by holding that there was need for the issue of vicarious liability to be determined in the primary suit as between the 1st Defendant therein and Ms. Elisa Atieno Otieno.**

g) **The learned trial magistrate erred in law and fact by making a finding that the Respondent was served with a statutory notice that was improper.**

h) **The learned trial magistrate erred in law by failing to follow the binding judgment of the High Court in HCCA No. E065 of 2022 as well as the other authorities cited by the Appellant in his submissions.**

10. Parties have canvassed the appeal by way of written submissions. Their respective submissions may be summarized as hereinunder;

Appellant's Submissions

11. The Appellant contends that it was incumbent upon the Respondent to prove that the judgment in the primary suit was obtained against a stranger to the policy or against a person not covered under its terms. He argues that since an authorized driver is covered under the terms of the subject policy, the Respondent bore the burden of adducing evidence to

demonstrate that its insured had not authorized Twalib Bakari to drive the motor vehicle at the material time.

12. The Appellant further submits that if the Respondent intended to avoid liability, it was obligated to seek a declaratory order to the effect that it was not bound to satisfy any decree arising from the subject cause of action. He argues that the Respondent did not seek such a declaration and therefore cannot maintain that although it insured the subject motor vehicle, it was not bound to satisfy the decree on the basis that its insured was not the driver at the time of the accident.

13. On the trial court's finding that the issue of vicarious liability ought to have been determined between Mr. Twalib Bakari and Ms. Elisa Atieno Otieno, the Appellant submits that questions of vicarious liability properly fall for determination in the primary suit and not in a subsequent declaratory suit. He further contends that he lacked the necessary information to institute proceedings against Ms. Elisa Atieno Otieno, as the registered owner of motor vehicle registration number KCQ 491X at the time of the accident was Qasim and Yahya Limited. He adds that the Respondent did not disclose the identity of its insured prior to the filing of the primary suit.

14. With respect to the dismissal of the suit on the ground that the statutory notice was defective on account of the demand letter not expressly bearing the words “statutory notice” and not indicating the policy number, the Appellant submits that section 10(2)(a) of the Insurance (Motor Vehicles Third Party Risks) Act merely requires that the insurer be given notice of the proceedings. He argues that the Act does not prescribe the form or specific contents of such notice, but only that the insurer be notified of the institution of the primary suit.

15. He further submits that, as reflected in the police abstract, the policy number was not visible and therefore could not reasonably be provided. In support of this position, he relies on **Blue Shield Insurance Company Ltd v Mboya Oguttu [2009] KECA 221 (KLR),** where the Court held that where it is impossible to ascertain the policy number, it suffices to correctly state the motor vehicle registration number.

16. The Appellant also cites the decision of the Court of Appeal in Philip Kimani Gikonyo for the proposition that the form of notice is immaterial so long as the insurer is made aware of the intended proceedings. That a notice, regardless of form, remains a notice for purposes of the statute.

17. He therefore submits that the only issue for determination was whether the Respondent was notified of the

proceedings prior to the commencement of the suit or within thirty days of its institution, which requirement he maintains was duly satisfied.

18. Lastly, the Appellant contends that the trial court was bound by the decision in Naivasha HCCA No. E065 of 2022 (consolidated with Civil Appeals Nos. E066, E067 and E068 of 2022), Qasim and Yahya Limited v Nicholas Nahashon Ngare & others, wherein the High Court observed that the setting aside of liability against the 2nd Defendant did not disturb the finding of liability against the 1st Defendant, and that it is the function of the insurer to assume the risk on behalf of its insured.

Respondent's Submissions

19. The Respondent submits that in the primary suit, the Appellant did not sue the Respondent herein and/or its insured, namely Mrs. Eliza Atieno Otieno. Consequently, those parties were unaware of the proceedings in Naivasha CMCC No. 405 of 2020 and did not participate therein.

20. The Respondent relies on **Madison Insurance Company Limited v Augustine Kamanda Gitau [2020] KEHC 9671 (KLR),** where the Court held:

"29. In this case, the appellant contended that the insured was Joyinc Solutions Limited and not the Defendants in the original suit who were Philip Maina

and Auto Industries Limited. The Learned Trial Magistrate seemed not to have addressed this pertinent issue. She seems to have been persuaded by the fact that the Appellant was aware of the proceedings in the original suit and took no action to repudiate liability within the prescribed time. In my view, when the Appellant denied that it insured the said person against whom judgement was obtained, it became incumbent upon the Respondent to adduce evidence proving that the said vehicle was not only insured by the Appellant but that judgement was in fact obtained against a person insured by the policy. In this case there was no evidence that the Defendants were the Appellant's insureds."

21. On the strength of the foregoing, the Respondent argues that the burden lay upon the Appellant to demonstrate that judgment in the primary suit was obtained against a person insured under its policy.

22. The Respondent further contends that, as demonstrated in the primary suit and the subsequent consolidated appeal, Naivasha HCCA No. E065 of 2022 (as consolidated with Civil Appeals Nos. E066, E067 and E068 of 2022), the Appellant

relied on a police abstract alleging that the 1st Defendant, Twalib Bakari, was the insured of the subject motor vehicle.

23. It further submits that the 1st Defendant in the primary suit, whom the Appellant alleges was the driver of the insured motor vehicle, did not enter appearance in the primary proceedings. The Respondent asserts that in the consolidated appeal, the High Court found that there was no evidence demonstrating that the 1st Defendant was a servant or agent of the 2nd Defendant, or that he was driving the motor vehicle with the authority of the 2nd Defendant, and that there was no proof that he was not on a frolic of his own.

24. Finally, the Respondent urges the Court to scrutinize the demand letter dated 13th July 2020 and to find that it does not constitute a proper statutory notice to an insurer and therefore cannot be construed as sufficient notice of the intended suit.

Issues, Analysis and Determination

25. In the decision giving rise to the present appeal, the trial court dismissed the Appellant's declaratory suit on two principal grounds: first, that the notice served upon the Respondent did not constitute a proper statutory notice within the meaning of the law; and second, that no nexus had been established between the 1st Defendant in the primary suit and the Respondent herein.

26. Those findings crystallize the issues falling for determination before this court, namely:

a) **Whether the Respondent was duly served with a statutory notice as contemplated under the law; and**

b) **Whether an insurer is liable to satisfy a decree where judgment is obtained against a person alleged not to be its insured.**

Whether the Respondent was duly served with a statutory notice as contemplated under the law

27. The Appellant contends that prior to the institution of Naivasha CMCC No. 405 of 2020 (hereinafter "the primary suit"), the Respondent was served with notice of the intention to institute proceedings against Qasim and Yahya Limited and Twalib Bakari. The record reflects that the notice took the form of a demand letter dated 13th July 2020, in which the Respondent was copied. The document bears a receiving stamp evidencing service upon the Respondent on 14th July 2020.

28. Section 10(2)(a) of the Insurance (Motor Vehicles Third Party Risks) Act (hereinafter "the Act"), provides in mandatory terms that no sum shall be payable by an insurer in respect of any judgment unless, before or within thirty days after the commencement of the proceedings in which the judgment was

given, the insurer had notice of the bringing of those proceedings.

29. The central question, therefore, is whether the demand letter served upon the Respondent constituted sufficient notice within the meaning of the Act.

30. The learned trial magistrate found that although the Respondent had been served, the notice was defective in form. In reaching that conclusion, the trial court relied on **Blue Shield Insurance Company Ltd v Mboya Oguttu [2009] KECA 221 (KLR)**. Having carefully examined that decision, this court is of the respectful view that the trial court misapprehended its ratio. In Blue Shield, the issue concerned uncertainty arising from failure to correctly cite the applicable policy number, thereby creating ambiguity as to the policy under which liability was alleged. The Court of Appeal did not prescribe any rigid format for statutory notice; rather, it addressed evidentiary insufficiency in the circumstances of that case.

31. Guidance on the form and substance of a statutory notice is more directly found in **Philip Kimani Gikonyo v Gateway Insurance Company Limited [2007] eKLR**, where the court emphatically stated:

“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… The notice need not be in any particular format… 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.”

32. The purpose of section 10(2)(a) is therefore functional rather than technical; it is to afford the insurer an opportunity to investigate, defend, repudiate, or otherwise protect its interests before judgment is entered.

33. In the present case, the demand letter dated 13th July 2020 described the accident, identified the motor vehicles involved, and named the parties against whom proceedings were intended. It was received by the Respondent prior to the institution of the primary suit. The fact that the letter did not expressly bear the words “statutory notice” does not detract from its legal effect. The statute does not prescribe any formal template, nor does it mandate specific terminology.

34. This court is satisfied that the Respondent was sufficiently apprised of the impending proceedings and the nature of the claim. Accordingly, the demand letter constituted proper notice within the meaning of section 10(2)(a) of the Act.

Whether an insurer is liable to satisfy a decree where judgment is obtained against a person alleged not to be its insured

35. The Respondent's principal contention is that its insured was one Ms. Elisa Atieno Otieno, whereas the primary suit was instituted against Qasim and Yahya Limited (the registered owner of the motor vehicle) and Twalib Bakari (the driver at the material time). It argues that judgment was therefore not obtained against its insured.

36. The scope of an insurer's obligation under section 10 of the Act was considered in **Gateway Insurance Company Limited v Sudan Mathews [2003] eKLR,** where the court held:

"As regards the ambit and scope of Section 10, it is clear to me that the insurer is under a duty to satisfy only such judgements as have been obtained against persons who are insured against such liabilities as are required to be covered by a policy under paragraph (b) of Section 5 and which are actually covered by the terms of the policy. And one of the circumstances in which the insurer may escape liability for such a judgement is where it has obtained a declaratory order that it is entitled to avoid the policy on the basis that the same

was obtained by the non-disclosure or misrepresentation of a material fact. That being so, it is not open to the plaintiff to seek such declaratory relief in the circumstances of this case as the risk of injury to a passenger in the defendant's vehicle was not a liability required to be covered by the policy under paragraph (b) of Section 5. In short the prayer for a declaration that the plaintiff is entitled to avoid the policy is misconceived."

37. The Respondent, notably, has not denied that motor vehicle registration number KCQ 491X was insured by it at the material time. Its contention is instead that the person sued was not its insured, and that there was no evidence demonstrating that the driver was acting with the authority or permission of the insured.

38. The record further reveals that before the trial court, the Respondent's primary argument was that section 5 of the Act does not extend to material damage. That issue was authoritatively addressed in **Ainu Shamsi Hauliers Ltd v Directline Assurance Co Ltd aka Directline Insurance [2025] KEHC 7274 (KLR),** where the court held that the exclusion of material damage cannot be presumed and must be expressly demonstrated by reference to the policy document

itself, which remains the primary evidence of the contractual relationship.

39. In the present appeal, the policy document was not placed before this court. However, from the trial court's own judgment, it is apparent that the policy schedule permitted the motor vehicle to be driven by Ms. Elisa Atieno Otieno "or any person driving on her orders or permission."

40. The Respondent was absolved by the trial court on the basis that it was not demonstrated that Twalib Bakari was driving with such permission.

41. However, once statutory notice was served, it was incumbent upon the Respondent to clarify its position. The police abstract indicated that the vehicle was insured by the Respondent. If indeed the Respondent's position was that the person sued was a stranger to the policy or was acting outside the scope of authority, the law afforded it clear remedies. It could repudiate liability upon notice, or institute a declaratory suit to avoid the policy.

42. This principle was reinforced in **Pacis Insurance Limited v Muthoni (Suing as Personal Representative of the Estate of Haron Mwangi Kamau-Deceased) [2025] KEHC 11798 (KLR),** where the Court observed:

“By failing to answer the notice issued under section 10 of the Act, the Appellant was non-suited… The law granted the Appellant all avenues of how to respond to issues of an uninsured person claiming to be the insured and the Appellant never applied any of those avenues.”

43. The statutory framework does not permit an insurer to remain silent upon receipt of notice, allow proceedings to run their course, and only thereafter disclaim liability on technical grounds. To do so would defeat the protective purpose of section 10 of the Act.

44. In the circumstances of this case, the Respondent neither repudiated the policy within the statutory window nor sought declaratory relief to avoid liability. Having been duly notified and having failed to act, it cannot now escape its statutory obligation.

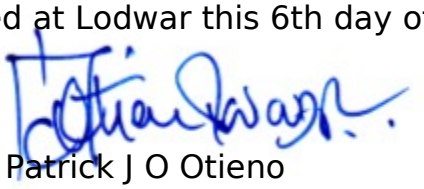
Disposition

45. In the result, this appeal succeeds.

46. A declaration is hereby issued that the Respondent is liable to satisfy the Decree and Certificate of Costs dated 22nd September 2022 issued pursuant to the judgment in Naivasha Civil Suit No. 405 of 2020 in the sum of Kshs. 214,970/-.

47. The Appellant shall have the costs of this appeal as well as the costs of the proceedings before the trial court.

Dated, signed and delivered at Lodwar this 6th day of March 2026



Patrick J O Otieno

Judge