



**Sanlam Life Insurance Limited v Nyanje (Civil Appeal E338 of 2024)
[2026] KEHC 4341 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4341 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E338 OF 2024
F WANGARI, J
MARCH 5, 2026**

BETWEEN

SANLAM LIFE INSURANCE LIMITED APPELLANT

AND

RICHARD TABU NYANJE RESPONDENT

*(Being an appeal against the Judgment of Hon. Gathogo Sogomo (PM) delivered
on 6th September 2024 in Mombasa Chief Magistrate's Court Civil Suit
No. 1292 of 2022, Richard Tabu Nyanje v Sanlam Life Insurance Limited)*

JUDGMENT

1. The background of the appeal is a claim filed by the Plaintiff through a Complaint dated 25th July 2022. The Plaintiff averred that by an insurance contract (Life Insurance Policy) entered into on 1st November 2011, the Plaintiff entered into an agreement with the Defendant, under which the Plaintiff was to pay monthly premiums of Kshs. 5,255 which upon maturity he would receive a total sum of Kshs. 1,038,604. That the Plaintiff performed his part of the contract and paid the monthly premiums without fail for ten years but upon maturity, he received a payment voucher of Kshs. 630,854. That the Defendant failed to pay the deficit of Kshs. 407,750.
2. The Plaintiff prayed that judgment be entered against the Defendant for the principal sum of Kshs. 470,750, damages for breach of contract, costs of the suit together with interest thereon at such rate and for such period as the court deemed fit, and any other just and equitable relief.
3. The suit was heard in the trial court and judgment delivered on 6th September 2024 where the court found in favour of the Plaintiff as prayed in the Complaint.
4. Being dissatisfied, the Appellant appealed the judgment through the Memorandum of Appeal dated 6th October 2024 on the following grounds: -



1. That the Honourable Magistrate erred in fact and in law by failing to hold that the Respondent had not complied with the terms of the Flexisaver Policy by not paying the Appellant the correct and requisite premiums.
 2. That the Honourable Magistrate erred in fact and in law in failing to hold that the investment account of the policy only comprised of the savings premium being Kshs. 4,758.00 and not the total monthly premiums as paid by the Respondent being Kshs. 5,255
 3. That the Honourable Magistrate erred in fact and in law in holding that the Plaintiff was entitled to a benefit of Kshs. 407,750.00 without providing a basis for the calculation.
 4. That the Honourable Magistrate erred in fact and in law in holding that the 5% annual premium update rate did not apply to the Respondent.
 5. That the Honourable Magistrate erred in fact and in law in wrongly considering and evaluating the evidence before them and by so doing arriving at a wrong decision.
 6. That the Honourable Magistrate erred in law and in fact by failing to consider the Appellant's case including its evidence and written submissions.
 7. That the Honourable Magistrate misdirected himself in failing to appreciate the authorities submitted to them by counsel for the Appellant.
 8. That the judgment delivered by the Honourable Magistrate is bad in law and contrary to public policy.
5. The Appellant prayed for orders that the appeal be allowed, judgment of the trial court be set aside in its entirety, and the Appellant be awarded costs of this appeal.

Submissions

6. The appeal was canvassed by way of written submissions. The Appellant in their submissions dated 30th November 2025 argued that parties are bound by the terms of their contract and that courts cannot rewrite agreements, relying on *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd* (2002) 2 E.A. 503, (2011) eKLR. It maintained that the Flexisaver policy document governed the insurance relationship, and that payment of maturity benefits after the 10-year term was conditional upon the policyholder paying correct and timely premiums, including annual inflation adjustments. Since the Respondent failed to pay the correct premiums, he was not entitled to the minimum guaranteed maturity benefit.
7. The Appellant further contended that the trial court erred in awarding the Respondent Kshs. 407,750 without justification, as this contradicted insurance principle and unjustly enriched him. It stated that had the Respondent complied with the 5% annual premium increase, he would have contributed Kshs. 793,162 over 10 years. The Appellant also clarified that monthly premiums were allocated between savings/investment and risk covers, and that amounts allocated to risk covers did not carry any investment guarantee.
8. The Respondent in their submissions dated 3rd July 2025 argued that a valid insurance contract existed and that they had an insurable interest, relying on *Kenya Orient Insurance Company Limited v Mutua & another* (Civil Appeal E102 OF 2020) [2024] KEHC 9259 (KLR) (25 July 2024) (Judgment). They maintained that the risk materialized, causing a quantifiable loss of Kshs. 407,750, and that although the Appellant received all payments, it paid less than the promised maturity amount.



9. They supported the trial court's finding that the Respondent was entitled to compensation. Relying on *Kirikoni Investments Limited & another v Ngene* (Environment and Land Appeal E021 of 2024) [2025] KEELC 26 (KLR) (16 January 2025) (Judgment), the Respondent contended that the Appellant never clearly disclosed how premiums were allocated, nor produced any signed policy document or illustration showing this. They further argued that the Appellant's own insurance calculator supported the Respondent's expectations and was never challenged at trial.
10. The Respondent cited *Sita Steel Rolling Mills Ltd v Jubilee Insurance Co Ltd* [2007] eKLR and *Inwards & others v Baker* [1965] 1 All ER arguing that the Appellant's conduct misled them and the Appellant should be estopped from changing its position. The Respondent maintained, based on *Ramji & another v Dry Associates Limited* (Commercial Cause E088 of 2018) [2025] KEHC 2258 (KLR) (Commercial and Tax) (28 February 2025) (Judgment), that the trial court correctly treated it as persuasive evidence since it was used by the Appellant's agents to induce clients and was not disowned.
11. On whether the trial court failed to consider the Appellant's evidence, submissions, and legal authorities, the Respondent relied on *Kihara v Mathenge* (Civil Appeal 86 of 2019) [2025] KEHC 7914 (KLR) (5 June 2025) (Judgment), asserting that the court properly evaluated both sides' evidence and rightly rejected the Appellant's position. Finally, on the claim that the judgment offended public policy, the Respondent, citing *Squishy Drinks Limited & another v Kevian Kenya Limited & another; Njogu* (Arbitrator) (Miscellaneous Application E004 & E220 of 2023 (Consolidated)) [2025] KEHC 1079 (KLR) (Civ) (28 February 2025) (Ruling), argued that mere dissatisfaction with a judgment is insufficient to establish a public policy violation, and that the decision instead promoted transparency and fair commercial conduct.

Analysis

12. The role of the first appellate court to reexamine and to reevaluate evidence to come up with its own findings was set out in *Selle v Associated Motor Boat Co.* (1968) E.A 123 as follows: -

“ ... Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ...”
13. I have considered the Record of Appeal dated 1st April 2025 and submissions by the parties. The issues for determination are: -
 - a. Whether the trial court erred in its interpretation of the insurance contract
 - b. Whether the Respondent complied with the terms of the Flexisaver Policy
 - c. Whether the award of Kshs. 407,750 was justified
 - d. Whether the award unjustly enriched the Respondent and was contrary to public policy
 - e. Who should bear costs
14. On whether the trial court erred in its interpretation of the insurance contract, it is settled law that parties are bound by the terms of their contract and courts do not rewrite agreements for them. In



National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd [2001] KECA 362 (KLR), the Court of Appeal held: -

“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.”

15. An insurance policy constitutes the entire contract between the insurer and insured, and its terms govern the rights and obligations of the parties. In *Gianfranco Manenti & another v Africa Merchant Assurance Co. Ltd* [2018] KEHC 873 (KLR), the High Court held that: -

“An insurance contract is one of utmost good faith. The Defendant having received premium and having issued the policy cannot now disown its obligations as there was no breach of the contract by the plaintiffs.”

16. The Appellant argues that the Flexisaver Policy required annual premium increments of 5% and that the Respondent failed to comply. However, the burden lay upon the Appellant to produce and demonstrate the specific policy provisions allegedly breached.

17. Under Sections 107 and 109 of the *Evidence Act* (Cap 80), he who alleges must prove. If the Appellant relied on non-compliance with premium escalation clauses, it bore the evidentiary burden to demonstrate such default and its consequences under the policy. On whether the Respondent complied with the terms of the Flexisaver Policy, the trial court found that the Appellant continued receiving the monthly premiums without protest or rescission, despite alleging underpayment.

18. Where one party acts to their detriment in reliance on a representation, the other party is estopped from denying the validity of that representation. The court in *Titus Muiruri Doge v Kenya Cannery Ltd* [1988] KEHC 46 (KLR) placed reliance on the holding in *Inwards & others v Baker* [1965] 1 All ER and held that: -

“The ratio of all these cases simply is this – and this is what I say:

“If a party is made so to believe in a certain state of facts and that party acts on those facts, to his detriment, and the other party stands by and does not stop him from so acting, that other party is estopped from changing his stand. If one says to A ‘go ahead, this is land, but you may build on it, spend money, we will go into formalities of transfer later’ and A does all that the representor is estopped from denying the right accrued to and acquired by A”.

19. In the present case, the Appellant continued receiving premiums for 10 years, did not demonstrate written notification of breach, did not rescind the contract, and paid out maturity benefits (albeit reduced). Such conduct supports the trial court’s finding that the Appellant was estopped from alleging non-compliance at maturity.

20. On whether the award of Kshs. 407,750 was justified, the Appellant contends that the trial court provided no basis for the computation of Kshs. 407,750. The record shows that the Respondent relied on an insurance calculator allegedly used by the Appellant’s agents, which reflected a maturity projection of Kshs. 1,038,604. The Appellant did not disown or rebut this evidence at trial.

21. An appellate court will not lightly interfere with findings of fact unless they are based on no evidence or misapprehension of evidence. The trial court evaluated the documentary evidence and found the calculator persuasive, particularly since it was not controverted. This Court finds no misdirection in that assessment.



22. On whether the award unjustly enriched the Respondent and was contrary to public policy, enforcement of contractual expectations induced by an insurer's representations promotes rather than undermines public policy. Courts consistently uphold transparency and fairness in insurance dealings and ambiguities in insurance contracts are construed contra proferentem against the insurer who drafted the document. If the policy allocation between risk and savings components was unclear or insufficiently disclosed, the ambiguity cannot be visited upon the insured.
23. On costs, the Respondent shall have the costs of this appeal.

Determination

24. In the upshot, this court makes the following orders –
 - a. The appeal lacks merit and is hereby dismissed.
 - b. Costs of the appeal awarded to the Respondent

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5TH DAY OF MARCH, 2026

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HON. F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of: -

Mr. Githinji Advocate h/b for Ms. Mugo Advocate for the Appellant

Mr. Tarmohamed Advocate h/b for Mr. Oyas Advocate for the Respondent

Ms. Salwa, Court Assistant

