



**REPUBLIC OF KENYA**

**IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU**

**CIVIL CASE NO. E465 OF 2025**

**WAMBUA MUINDI.....PLAINTIFF**

**VERSUS**

**TRIDENT INSURANCE COMPANY  
LIMITED.....DEFENDANT**

**JUDGMENT**

**THE CLAIM**

Wambua Muindi (hereinafter referred to as the plaintiff) has been in the corridors of justice since 2020 in a bid to touch its pure fountain. This suit is premised on a road traffic accident that is said to have occurred on 7/7/2019 at Kisingo area along Makindu-Wote road. The accident involved motor vehicle registration number KAR 992Q and motor cycle registration number KMCX 861Q. The plaintiff averred that the defendant was the Insurer of motor vehicle registration number KAR 922Q under policy number 110/070/1/073879/2019 at the time of the accident. The plaintiff further averred that in order to be compensated, he instituted a suit against the defendant's insured vide Makindi SPMCC No. E051 of 2020 (hereinafter referred to as the primary suit).

That the suit was heard and final judgment was entered for the plaintiff on 25/9/2023 in the sum of Ksh. 3,514,650/= plus costs and interest, all in the total sum of Ksh. 4,610,373 as at 10/6/2025. The plaintiff averred that by virtue of the provisions of the Insurance (Motor

Vehicle Third Party Risks) Act, upon entry of the said judgment, the defendant became and is liable to pay to the plaintiff the sum of Ksh. 4,610,373/= together with interest thereon at court rates from 10/6/2025 and costs of this suit. Despite having obtained judgement in the primary suit, the plaintiff herein is yet to enjoy the fruits of successful litigation. In his quest for justice, the plaintiff filed the instant declaratory suit on 31/10/2025 against the defendant in which he seeks the court to declare the defendant liable and compel it to satisfy the decree in the primary suit. Consequently, the plaintiff prayed for judgment against the defendant for:

- a) A declaration that the defendant is liable to satisfy judgment in Makindu SPMCC No. E051 of 2020 and hence judgment be entered against the defendant for the aforesaid judgment plus interest thereon at court rates from 10/6/2025 until payment in full;
- b) Costs of the suit;
- c) Any other or further relief that this Honourable court may deem just and fit to grant.

### **JUDGMENT IN DEFAULT**

The defendant was duly served with summons to enter appearance and the plaintiff failed to enter appearance nor file a defence. The plaintiff requested for interlocutory judgment and on 19/12/2025, the court entered judgment against the defendant in the sum of Ksh. 4,610,373/= plus interest at court rates from the date of filing suit to the date of judgment. The court further directed that the award of costs would await determination on the prayer for a declaration. The judgment in default was entered pursuant to the provisions of Order 10 rule 4(2) of the Civil Procedure Rules.

### **THE EVIDENCE**

#### ***The Plaintiff's Case***

At the hearing of the suit, the only the plaintiff testified in support of his case. The plaintiff adopted his statement filed in court as part of his testimony. The plaintiff also produced in evidence documents in support of his case.

### **MAIN ISSUES FOR DETERMINATION**

In my view, the main issues for determination are:

- 1) Whether the defendant was the insurer of motor vehicle registration number KAR 922Q vide policy number 110/070/1/073879/2019 at the time of accident;
- 2) Whether the defendant is bound to satisfy the decree in Makindu SPMCC No. E051 of 2020;
- 3) Who should bear the costs of this suit?

### **ANALYSIS AND DETERMINATION**

I have carefully considered the evidence on record and also directed my mind to the applicable law. Section 10(1) of the Insurance (Motor vehicle Third Party Risks) Act Cap. 405 Laws of Kenya provides that:

***"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 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.***

***Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in section 5(b) prescribed in respect thereof in the Schedule."***

Ordinarily, under section 10 (2) of the same Act, the Insurer can only be exempted from liability arising out of a policy if:

- a) in respect of any judgment, the insurer had no notice of the proceedings in which the judgment was given. Such notice ought to be given either before or within 30 days after the commencement of the proceedings giving rise to the judgment;
- b) in respect of any judgment, execution therein is stayed pending an appeal; or

- c) in connection with any liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
- (i) before the happening of the event the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or
  - (ii) after the happening of the event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or
  - (iii) either before or after the happening of the event, but within a period of twenty-eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police (now Inspector General of Police) in writing of the failure to surrender the certificate.

Section 10(3A) of the Act provides that no judgment or claim shall be payable by an insurer unless the claimant had, before determination of liability at the request of the insurer, subjected themselves to medical examination by a certified medical practitioner.

Section 10 (4) of the same Cap 405 provides as follows:

***" No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:***

***Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom***

**notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto".**

The legal burden of proof is consciously or unconsciously the acid test applied when coming to a decision in any particular case. This fact was succinctly put forth by Rajah JA of the Court of Appeal of Singapore in the case of *Britestone Pte Ltd v Smith & Associates Far East Ltd [2007] 4 SLR (R) 855 at 59* when he observed as follows:

**"The court's decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed upon him ".**

With respect, I agree. Section 107 (1) of the Evidence Act provides as follows:

**"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist ".**

Sub-section (2) thereof provides that:

**"When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person ".**

Section 108 of the Evidence Act provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Sections 107, 108 and 109 of the Evidence Act which place the burden of proving a fact on the party who asserts the existence of any fact in issue or relevant fact as the case may be, concern the legal rather than the evidential burden of proof. The evidential burden, whilst not expressly provided for in the Evidence Act, exists in the form of a tactical onus to contradict, weaken or explain away the evidence that has been led by the adverse party. The evidential burden may shift from one party to the other. In ordinary civil cases, the standard of proof is usually on a balance of probabilities. That is the standard upon which the plaintiff herein is required to prove her case against the defendant. In the case of *Kirugi & Another v Kabiya & 3 Others [1987] KLR 347*, the Court of Appeal held as thus:

**"The burden was always on the plaintiff to prove his case on the balance of probabilities even if the case was heard on formal proof."**

The plaintiff alleges that the accident motor vehicle was insured by the defendant. He relies on the information contained in the police abstract and well as the certificate of insurance which indicates that the defendant was the insurer of motor vehicle registration number KAR 922Q vide policy number 110/070/1/073879/2019. The evidence remained unchallenged. It is thus my finding that the plaintiff has proven on a balance of probabilities that the defendant was the insurer of motor vehicle registration number KAR 922Q at the time of the accident

Is the defendant duty bound to settle the claim in the primary suit? To resolve this issue, the following questions are germane:

- a) Was the judgment in the primary suit obtained against the defendant's insured?
- b) Do the facts of the case entitle the defendant to the exemptions stipulated under the Act?

The wording of section 10(1) of Cap. 405 is that the judgment must have been "**obtained against any person insured by the policy.**" This would imply that judgment ought to have been obtained against the insured. The plaintiff produced in evidence a copy of the plaint in the primary suit. The plaintiff further produced a copy of the decree in the primary suit. The decree is sufficient evidence of existence of the primary suit and the judgment therein. There is no contrary evidence to show that the persons sued in the primary suit were not the defendant's insured in light of the fact that there is evidence to show that the defendant insured the accident motor vehicle. I am satisfied that the plaintiff obtained judgment against the defendant's insured. The defendant has not shown that it is entitled to any exemptions under the law.

The evidence on record indicates that the defendant was given notice of intention to sue before the primary suit was instituted. The plaintiff also produced evidence to show that the defendant was served with a notice of entry of judgment on 12/10/2023. The defendant cannot therefore claim that it had no notice of the proceedings in the primary suit.

## **DISPOSITION**

In view of the foregoing, I find that the plaintiff has proven his case against the defendant on a balance of probabilities. Consequently, the orders which commend themselves to me and which I hereby make are as follows:

- a) Final Judgment is hereby entered in favour of the plaintiff as against the defendant;
- b) A declaration is hereby issued that the defendant is bound to satisfy the judgment or the decretal sum in Makindu SPMCC No. E051 of 2020;
- c) The defendant had been adjudged to pay the plaintiff the entire decretal sum of Ksh. 4,610,373/=. However, pursuant to section 5(b) (iv) of the Insurance (Motor Vehicle Third Party Risks) Act, the defendant shall pay the maximum sum of Ksh. 3,000,000/= to the plaintiff;
- d) The defendant shall also pay accrued interest on the decretal sum at court rates from 31/10/2025 to the date of this judgment;
- e) The plaintiff is awarded costs of this suit.

**DATED, SIGNED AND DELIVERED VIA CTS THIS 17<sup>TH</sup> DAY OF MARCH, 2026.**

**Y.A SHIKANDA**

**SENIOR PRINCIPAL MAGISTRATE.**