

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E331 OF 2024

G. A. INSURANCE CO. LTD.....
APPELLANT

-VERSUS-

CASSIUS JUDE DE SOUZA.....RESPONDENT
*(Being an appeal from the judgment of Hon. G. SIMATWO
(ADJUDICATOR/RM) in Nairobi SCCC No. E3775 of 2023 delivered on
26/1/2024)*

JUDGMENT

- 1) The appellant in this appeal G. A. INSURANCE CO. LTD was sued by the respondent CASSIUS JUDE DE SOUZA in Nairobi SCCC No. E3775 of 2023 seeking judgment in the sum of kshs.277,479.00 being in respect of hospital bill and post hospitalization treatment expenses incurred by the respondent.
- 2) The appellant filed a response to the respondent's claim denying the same.
- 3) The respondent said he took an insurance cover with the appellant termed the Hindu Council of Kenya cover in 2016.

- 4) In October 2022, the respondent started experiencing pains on his left arm which prompted him to visit Dr. Shabbir Hussain who referred him to Aga Khan hospital.
- 5) Dr. Wanyoike was consulted and the respondent was admitted at Aga Khan Hospital and the procedure was undertaken which cost kshs.1,244,679 but the appellant only settled kshs.1,000,000/=.
- 6) The appellant stated that the respondent had a pre-existing condition which their policy covered only upto that amount.
- 7) The respondent stated he had taken out a policy cover for an amount of ksh.10,000,000.
- 8) The appellant's case was that the respondent's cover fell under category E which included pre-existing or chronic conditions and such a category covered only upto an amount of kshs.1,000,000.
- 9) The trial court found that it was not in dispute that the appellant had a valid cover with the respondent that covered up to 10 million.

- 10) Further that the respondent had a legitimate expectation while paying the premium that his expenses would be covered to the amount of kshs.10,000,000.
- 11) The trial court held that the appellant was under a duty to settle the claim.
- 12) The trial court entered judgment in favour of the respondent against the appellant in the sum of kshs.277,479.00 together with costs and interest from the date of the judgment.
- 13) The appellant has filed this appeal on the following grounds;
 - i. THAT the learned Adjudicator erred in law and in fact in the manner that she assessed the evidence that was led and in arriving at a finding that the respondent did not suffer from a pre-existing medical condition a finding that was not supported by the evidence led and the applicable law.*
 - ii. THAT the learned Adjudicator misdirected herself in law and in fact in relying on the doctrine of legitimate expectation, a doctrine that does not exist in a contract of medical insurance*
 - iii. THAT the learned Adjudicator misdirected herself in law and in fact in misapprehending the evidence by the appellant's doctor which in fact proved that the respondent suffered from a pre-existing medical condition.*
 - iv. THAT the learned Adjudicator erred in law and in fact in failing to consider the appellant's submission and the authorities that had been tendered and in*

so doing she arrived at an erroneous decision that is now liable for setting aside.

- 14) The parties filed written submissions as follows; the appellant submitted that the trial court finding that the respondent did not suffer from pre-existing condition was not supported by evidence and the applicable law.
- 15) The trial court failed to give proper weight to the medical evidence presented by the appellant's medical experts which heavily demonstrated that the respondent had a pre-existing condition and instead relied on speculations and assumptions.
- 16) The appellant further submitted that the 10 million cover was in place for a group under the Hindu Council and the limits for the whole group. the joint report by Dr. Wanyoike was clear that the respondent had pre accident conditions.
- 17) She had irritable bowel syndrome and was known hypertensive. Dr. Shabbit in his report dated 21st November 2021 noted the same.
- 18) The appellant argued that the trial court erred by relying on the doctrine of legitimate expectation a doctrine that does

not exist in a contract of medical insurance as insurance contracts are governed by the principles as established in contract law which stipulate that parties are bound by the terms of their contracts.

- 19) On 4th February 2022 an email was sent to the respondent after she had paid the premiums and that the cover was shared and her limit was Kshs. 1 million utmost upon hospital admission.
- 20) It is clear from the statement of claim that the appellant paid the one million as per the insurance contract and in compliance with the fact that the respondent had pre-existing conditions whose limit was one million.
- 21) The respondent alternatively submitted that the appellant's memorandum of appeal falls short of meeting the threshold established under section 38 of the Small Claims Act that states;

“A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.”

- 22) The respondent argued that appeals under Section 38 are strictly limited to questions of law.
- 23) They are not intended to serve as a second opportunity to contest the evidentiary findings or factual determinations of the trial court.
- 24) The Appellant appears to misconceive the appellate function, erroneously inviting this Court to re-evaluate witness credibility, reassess documentary evidence, and effectively step into the shoes of the trial adjudicator, an exercise expressly prohibited under the governing statute.
- 25) The respondent argued that the question of whether the respondent had a pre-existing medical condition is a purely factual matter devoid of any legal complexity or nuance.
- 26) The appellant does not allege any misapplication of legal principles or procedural irregularity rather the grievance lies solely in the trial court's assessment of the facts.
- 27) The respondent argued further that the respondent did not suffer from pre-existing medical condition.

- 28) This finding was grounded in the medical evidence on records and supported by expert testimony from doctors who personally examined the respondent.
- 29) The report dated 22nd October 2022 was authored by Dr. Wanyoike, a doctor on the Appellant's panel, acting on the Appellant's instructions.
- 30) In the first paragraph of his report, he makes a passing reference to the Respondent having previously been diagnosed with irritable bowel syndrome and having been on some medication.
- 31) However, courts have repeatedly cautioned against uncritical reliance on expert reports prepared by medical professionals retained by a party to the proceedings.
- 32) In **Thuge Caroline & 2 others v Kimani Nganga Kago [2022] eKLR**, the court adopted with approval the principle laid down in **Sentongo & Another v Uganda Railways Corp. Kampala HCCS No. 263 of 1987**, where it was held:
- “The evidence of an expert is to be received with caution because they often come with such a bias in their minds to support the party who calls***

them that their judgement becomes warped and they become incapable of expressing correct opinion.”

- 33) In contrast, the Respondent was personally examined, treated, and followed up by Dr. Mohsen Gaballa and Dr. Shabir Hussein.
- 34) These two independent expert reports dated 3rd November 2023 and 21st November 2023 respectively, clearly state that the Respondent had no pre-existing medical condition at the time of injury.
- 35) Their conclusions are consistent and were based on physical examinations, medical history, and diagnostic assessments conducted directly on the Respondent.
- 36) On whether the doctrine of legitimate expectation exists in a contract for medical insurance the respondent argued that legitimate expectation is a well-established principle in insurance law, grounded in the notion that policyholders are entitled to coverage that they reasonably believed they had purchased especially where the terms of the policy are ambiguous or misleading.

- 37) The doctrine seeks to protect insured persons from technical or obscure policy language that defeats the insured's objectively reasonable understanding of coverage particularly in consumer facing insurance contracts such as health and medical insurance.
- 38) The respondent contended that there is no principled basis for excluding medical insurance contracts from the doctrine.
- 39) On the contrary, medical insurance, being one of the most complex and critically important forms of personal coverage, is precisely the type of contract where lay policyholders are especially vulnerable to dense, technical language and shifting definitions.
- 40) Courts have consistently recognized the need to interpret such contracts in a manner that honours the insured's reasonable expectations, especially where policy wording lacks clarity.

41) The issues for Determination in this appeal are as follows;

- (i) Whether the appellant's appeal raises pure questions of law as required under Section 38 of the Small Claims Court Act (SCCA) No. 2 of 2016.**
- (ii) Whether the trial court erred by applying the doctrine of legitimate expectation to a contract of medical insurance.**
- (iii) Whether the trial court's finding that the respondent did not have a pre-existing medical condition was supported by the evidence.**

42) The Court has carefully considered the Record of Appeal, the respective submissions of the parties, and the relevant legal framework.

43) This being a first appeal from the Small Claims Court, the jurisdiction of this court is circumscribed by statute.

44) Section 38(1) of the Small Claims Court Act provides that appeals to the High Court lie strictly "on matters of law."

45) It is a well-established principle that an appeal from the Small Claims Court is not intended to serve as a second opportunity to re-litigate factual findings or to reassess the credibility of witnesses.

- 46) A question of law arises where there is a misdirection on a legal principle or a misinterpretation of a statute, not a dispute over whether a medical condition existed.
- 47) The appellant's primary grievance is that the trial court failed to give weight to its medical evidence suggesting the respondent had a pre-existing condition (Irritable Bowel Syndrome and hypertension).
- 48) The trial court evaluated the evidence before it, including a joint report and the testimony of Dr. Wanyoike, in contrast to the evidence from the respondent's independent experts, Dr. Mohsen Gaballa and Dr. Shabir Hussein.
- 49) The finding that the respondent did not have a pre-existing condition that vitiated the policy was a finding of fact.
- 50) The appellant's invitation to this court to re-evaluate that evidence and "assess the evidence" falls squarely outside the narrow jurisdiction conferred by Section 38 of the SCCA.
- 51) Consequently, Grounds 1, 3, and 4 of the Memorandum of Appeal, which challenge the factual conclusions on the medical evidence, are incompetent and must be struck out.

- 52) Notwithstanding the foregoing, the court has considered the merits of the legal issue raised, specifically the applicability of the doctrine of legitimate expectation.
- 53) The appellant argues that the doctrine cannot apply to a contract of medical insurance because contracts are strictly governed by the parol evidence rule.
- 54) This argument is misguided. The doctrine of legitimate expectation is a principle of fairness rooted in equity and administrative law, but it also informs the interpretation of contracts, particularly contracts of adhesion like insurance policies.
- 55) Courts have consistently held that where an insurance policy is ambiguous or misleading, the insured is entitled to whatever coverage they reasonably expected when paying the premium.
- 56) An insurer cannot hide behind obscure sub-limits or technical definitions to defeat the legitimate expectations of a policyholder who has paid premiums for a specific cover limit.

- 57) In the instant case, the record is clear that the respondent took out a cover for Kshs. 10,000,000.
- 58) The appellant accepted premiums based on that limit. The appellant subsequently attempted to invoke a sub-limit of Kshs. 1,000,000 for "Category E" (pre-existing conditions), a distinction that was apparently not prominently disclosed to the insured at the point of purchase.
- 59) The respondent had a legitimate expectation, having paid premiums commensurate with a Kshs. 10,000,000 limit, that his hospital bill would be settled up to that amount.
- 60) The appellant cannot be heard to retrospectively introduce caps that defeat the very essence of the cover purchased.
- 61) While parties are bound by the terms of their contract as held in **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Limited [2001] eKLR**, that principle applies to clear terms.
- 62) Where the application of a "pre-existing condition" clause creates ambiguity, the doctrine of legitimate expectation operates to protect the insured.

63) Consequently, the trial court did not err in law by applying the doctrine of legitimate expectation.

64) The appeal fundamentally challenges factual findings that this court is statutorily barred from disturbing.

65) The appellant admitted liability for Kshs. 1,000,000 and paid that amount.

66) The respondent proved the total bill was Kshs. 1,244,679. The trial court was therefore correct in entering judgment for the balance of Kshs. 277,479.

67) The upshot is that the appeal lacks merit and is hereby dismissed with costs to the respondent.

68) This court gives final orders as follows;

- (i) ***That the appeal vide Nairobi High Court Civil Appeal No. E331 of 2024 is dismissed.***
- (ii) ***That the Judgment of the Small Claims Court delivered on 26th January 2024 in Nairobi SCCC No. E3775 of 2023 is hereby upheld.***

69) The appellant shall bear the costs of this appeal.

70) Orders to issue accordingly.

**Dated, Signed and Delivered online via Microsoft Teams at
Nairobi this 7th day of May, 2026.**

A. N. ONGERI

JUDGE

In the presence of:

Mr Kiplangat for the Applicant

No appearance for the Respondent

ORIGINAL