



Lusasi (Suing as the legal Representative of the Estate of Samuel Lusasi-Deceased) v APA Insurance Limited (Civil Appeal 18 of 2018) [2022] KECA 601 (KLR) (27 May 2022) (Judgment)

Neutral citation: [2022] KECA 601 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL 18 OF 2018
PO KIAGE, M NGUGI & F TUIYOTT, JJA
MAY 27, 2022**

BETWEEN

ESTHER M. LUSASI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SAMUEL LUSASI-DECEASED) APPELLANT

AND

APA INSURANCE LIMITED RESPONDENT

(An Appeal from the Judgement of the High Court of Kenya at Kisumu (T.W. Cherere, J.) Dated 23rd November, 2017 in Ksm Civil Appeal No. 48 of 2011)

JUDGMENT

1. When this matter came up for plenary hearing, the Court, at the instance of counsel for the parties, made the following order:

“Learned Counsel appearing in this matter, namely, Mr. P.D. Onyango for the Appellant and Mr. Oduor for the Respondent, are agreed that the facts and issues in contention herein are essentially the same as those in contention in Civil Appeal No. 17 of 2018 that was canvassed yesterday. They agreed further and it is ordered by consent that the Judgement to be rendered in Civil Appeal No. 17 of 2018 to apply mutatis mutandis to this Appeal. Order accordingly.”

2. Kisumu Civil Appeal No. 17 of 2018 *Yunes Moraa Inchwara vs APA Insurance Ltd.*) has just been determined and applying the outcome of the judgment therein to this appeal, we order as follows: -

(2.1) This appeal is allowed.



(2.2) The judgment of the High Court dated 23rd November, 2017 is hereby set aside and the judgment of the trial court dated 14th April, 2011 in Winam SRMCC NO. 518 of 2006 is hereby affirmed.

(2.3) Costs of this appeal and that in the High Court to the Appellant.

DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF MAY, 2022.

P. O. KIAGE

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JUDGE OF APPEAL

MUMBI NGUGI

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR

