



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GICHERU, LAKHA & O'KUBASU, J.J.A.)

CIVIL APPEAL NO. 37 OF 1999

BETWEEN

SIMON MUGOAPPELLANT

AND

INTRA AFRICA ASSURANCE CO. LTD. 1STRESPONDENT

ASSOCIATION OF KENYA INSURERS 2NDRESPONDENT

RISK SHIELD INSURANCE BROKERS 3RDRESPONDENT

JUDGMENT OF THE COURT

This is an unsuccessful plaintiff's appeal from a decision of the superior court (Ole Keiwua, J., as he then was) given on **December 14, 1998** whereby he dismissed the plaintiff's suit against the defendants with costs.

The plaintiff's claim arose from the involvement of his car in an accident on 17 December 1987 in which the other driver to the accident was charged and convicted. He was separately sued by a third party to the accident. Notice of such proceedings, however, was not given to the first defendant as the insurer in compliance with the Traffic Act. Pursuant thereto, K.Shs.10,000/= was paid by

the plaintiff to the first defendant on account of policy excess and thereby make it possible for the first defendant to process and deal with the claim of the third party.

Ultimately, the third party obtained judgment against the plaintiff for **K.Shs.63,975/=** in respect of which the plaintiff's motor vehicle was attached. The plaintiff claims the value of the motor vehicle, loss of earnings from the said motor vehicle and general damages.

The plaintiff concedes he had not informed the defendants about the third party suit against him. But the plaintiff applied to set aside the judgment of that case. He did not succeed because it was found that the plaintiff had been served with summons.

The defendants submit that the claim in the instant case was by the insured and not by a third party and the provisions of the **Traffic Act** do not apply as they apply in relation to claims by third parties to the policy. We agree and see Section I Loss or Damage. Under conditions 4 and 10 of the Policy, the insured is required to give notice to the insurers of an impending claim to render the defendants liable.

Accordingly, we are satisfied that this suit must fail as the matters upon which the claim is made are not matters provided in the contract between these parties and claims for loss of earnings which are specifically excluded by Exceptions to Section I of the policy. The learned judge, in our judgment, was fully justified www.kenyalawreports.or.ke 3 in dismissing the suit. The appeal also fails and it is dismissed with costs.

Dated and delivered at Nairobi this 26th day of April, 2002.

J.E. GICHERU

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

E. O'KUBASU

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR