



**Arcon Works Limited v CIC General Insurance Limited; Waitiki (Interested Party)
(Cause E042 of 2024) [2025] KEELRC 1885 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1885 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E042 OF 2024
ON MAKAU, J
JUNE 26, 2025**

BETWEEN

ARCON WORKS LIMITED CLAIMANT

AND

CIC GENERAL INSURANCE LIMITED RESPONDENT

AND

MARTHA WANGUI WAITIKI INTERESTED PARTY

JUDGMENT

1. This suit was filed in the High Court vide a plaint dated 9th August 2023 seeking the following reliefs against the respondent.
 - a. A declaration that the Defendant, the Plaintiff's insured is bound by law to settle the Judgment dated 23rd May 2023 and Warrants of Attachment and Decree dated 3rd August 2023 obtained against the plaintiff's in Nyeri Employment and Labour Relations Court Misc. Application No.E001 of 2023.
 - b. Auctioneer fees.
 - c. General damages.
 - d. Cost of the suit.
 - e. Interest on (c) above at court rates till date of full payment.
 - f. Any other relief that this Honourable court may deem just and fit to grant.
2. The respondent filed defence dated 28th August 2023 denying liability to settle the decree dated 3rd August 2023 in Nyeri ELRC Misc.Appl. No.E001 of 2023 and pay the other claims sought in the said



plaint. It averred that the claimant breached the material terms and conditions of the insurance contract contained in policy number 017/113/1/004352/2018/03 by failing to notify it that the interested party had been involved in an accident on 17th October 2018 while in the course of employment.

Facts of the case

3. The claimant took a WIBA insurance policy from the respondent covering the contractors all risks under the Work Injury Benefit Act (WIBA) 2007 under Policy Number 017/113/1/004352/2018/03 and paid all the premium in full. Under the said policy, the respondent agreed to indemnify the claimant against all claims which it is legally liable to pay as damages to any person injured during working hours at the claimant's NHC site in Nyeri. The policy provided for a maximum cover of Kshs.10,000,000 for permanent disablement and Kshs.100,000 for temporary disablement.
4. The Interested Party was employed by the respondent as a casual Laborer in the NHC site at Nyeri in March 2018. On 17th October 2018, the interested party was in the course of her employment at NHC site Nyeri when she was hit by a concrete carrying tube causing three fractures to her left leg. The injuries were sustained during the pendency of the said insurance policy cover.
5. Subsequent to the accident, the interested party lodged a claim with the Director of Occupational Safety and Health Services and her compensation was assessed at Kshs.269,126.92. The claimant requested the respondent to settle the said award but it adamantly refused to do so despite the same being covered by the said insurance policy.
6. The interested party then filed Nyeri ELRC Misc.Application No.E001 of 2023 for adoption and enforcement as Judgment of the court. The court entered judgment and issued a decree against the claimant on 3rd August 2023. The decretal sum plus interest stood at Kshs.472,356.84 as at the time of filing the suit.
7. During the hearing, both sides called one witness who adopted their respective written statement and produced supporting documents as exhibits. Claimant's General Manager Mr.James Mburu (CW1) testified that he took a WIBA insurance cover from the respondent and paid the required premium. He further stated that when the interested party was injured, he notified the respondent via a phone call and he was given forms to fill, and he did so. After judgment was entered in Nyeri ELRC No.E001 of 2023, he notified the respondent but it declined to settle the decree. Therefore, he urged the court to compel the respondent to settle the decree and award the orders sought in the plaint.
8. On cross-examination, he contended that he notified the respondent via phone call three days after the accident. He admitted that under the policy, he was required to notify the respondent within 7 days after the accident. He further admitted that he had no evidence to prove the said telephone conversation. On further cross-examination he admitted that it is another officer, victor who called the respondent to notify it of the accident. He maintained that the claimant never breached clause 5 of insurance policy because the respondent was notified via a phone call within 7 days after the accident. However, he admitted that written notification was done via email after the lapse of 7 days from the date of the accident.
9. Respondent's Legal Officer, Ms.Beatrice Musyimi (RWI) testified that the respondent learned about the interested party's accident when he was served with court papers in Nyeri HCCC No.E010 of 2023. She maintained that the respondent was never notified of the accident and urged the court not hold it liable to settle the decree as prayed.
10. On cross examination, she admitted that there was a valid insurance cover fully paid for by the claimant but maintained that the claimant breached it by failing to notify the respondent about the occurrence



of the accident within 7 days from the date of the accident. She contended that the claimant notified the respondent vide email 2 years after the accident.

11. After the hearing, both parties filed written submissions. Having considered the pleadings, evidence and submissions, the following issues fell for determination: -
 - a. Whether the claimant breached the contract of insurance.
 - b. Whether the reliefs sought are merited.

Analysis

Breach of contract

12. The respondent's case is that the claimant breached clause 5 of the Insurance Policy by failing to notify it of the accident within 7 days after the occurrence of the accident. Clause 5 provides that: -

“In the event of any occurrence which may give rise to a claim under this policy the insured shall immediately give notice thereof to the Company with full particulars as specified in the Act and in any case not later than seven days. Every letter, claim, writ, summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given to the Company immediately the insured shall have knowledge of any impending prosecution inquest or fatal inquiry in connection with any such occurrence.”

13. In addition to the above, clause 3 of the Policy is copied below: -

“

“3. Notification and communications
Every notice or communication to be given under this policy shall be delivered in writing to the Company.”

14. The above two clauses of the WIBA policy, clearly stipulates that the claimant had a contractual obligation to notify the respondent in writing of any accident that may result in liability, immediately and not later than 7 days of the occurrence of the accident. The claimant was also required to observe the said notice period whenever it was served with court summons among other demands.

15. CW1 admitted in evidence that a written notice was made to the respondent after the lapse of 7 days from the date when the accident occurred. He produced copies of emails correspondences done in October 2020, which was two years after the accident. He admitted in evidence that:

“I know that failure to notify the respondent amounts to breach of the Insurance Policy.”

16. I need not belabor the point as clause 2 of the WIBA Policy states as follows:

“2. Conditions precedent to Companies Liability
The due observance and fulfilment of the Terms of this Policy in so far as they relate to anything to be done or not to be done by the insured and the truth of the statements and answers in the proposal shall be a condition precedent to any liability of the Company to make any payment under this policy.”

17. The claimant failed to observe and fulfil the terms of the insurance contract that required it to immediately notify the respondent and not later than 7 days, of any accident that may give rise to



liability. Consequently, I find and hold that the claimant breached the contract of insurance contained in the WIBA policy No. 017/113/1/004352/2018/03.

Reliefs sought

18. In view of the foregoing conclusion, I further find and hold that the claimant has failed to prove on a balance of probability that the respondent is liable, under the said insurance contract to settle the decree of the court in Nyeri ELRC Misc Appl.No.E001 of 2023 and to pay the other reliefs sought in the plaint dated 9th August 2023. In the end, I find no merits in the suit and dismiss it. However, I do not condemn the claimant to pay costs of the suit considering that it paid premium to the respondent and it will still now settle the claim by the Interested Party.

DATED, SIGNED AND DELIVERED AT NYERI THIS 26TH DAY OF JUNE, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

