



REPUBLIC OF KENYA



**Wachiye v Jubilee Insurance Company (Civil Appeal E981 of 2022)  
[2025] KEHC 2250 (KLR) (Civ) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2250 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E981 OF 2022**

**TW OUYA, J**

**FEBRUARY 27, 2025**

**BETWEEN**

**BENJAMIN WANGILA WACHIYE ..... APPELLANT**

**AND**

**JUBILEE INSURANCE COMPANY ..... RESPONDENT**

*(Being an appeal from the Judgement and award of the Small Claims Court at Nairobi in SCCCOM E 4641 of 2022 by Hon V. Mochache (RM) delivered on 18th day of November 2022)*

**JUDGMENT**

**Background**

1. This is an appeal from the judgement and award of the Small Claims Court at Nairobi in SCCCOM E 4641 of 2022 by Hon V. Mochache dated the 18<sup>th</sup> day of November 2022. The suit was initiated by Benjamin Wangila Wachiye (the Applicant herein) against Jubilee Insurance Company (respondent herein) arising out of a contract for life insurance cover of the applicant by the respondent company. The applicant alleged that the respondent failed to honor the sum assured at the time of maturity despite the applicant having paid the premiums fully. The matter went for full trial and the trial court found that the claim was not merited hence dismissed it.
2. The appellant being dissatisfied with the above-cited judgement and award appeals to the high Court on the following grounds:-
  - a. That the Honourable Court erred in law and in fact in dismissing the Appellant's claim.
  - b. That the Honourable Court erred in law and in fact in failing to consider other factors as raised by the Appellant in his pleadings.



- c. That the Honourable Court erred in law and in fact in regarding and basing judgement on one issue and not to consider other issues as raised in the Appellant's documents.
  - d. That the Honourable Court erred in law and in fact by failing to state the valid and enforceable contract between the Appellant and the Respondent, which was the basis of the suit.
  - e. That the Honourable Court erred in law and in fact in admitting undocumented (oral) evidence from the grievant and dismissing that of the Appellant.
  - f. That the Honourable Court erred in law and in fact by awarding costs of the suit to the Respondent.
  - g. That the Honourable Court erred in law and in fact by failing to tackle the issue of whether there was a breach of insurance cover policy and the issue of sum assured.
  - h. That the Honourable Court erred in law and in fact by failing to address the issue of two different application forms presented with varied contract period.
  - i. That the Honourable Court erred in law and in fact by failing to address the issue excess of premium paid by the Appellant.
  - j. That the Honourable Court erred in law and in fact by failing to address the issue of bonuses entitled to the Appellant.
  - k. The whole decision is contrary to law and procedure.
3. The Appellant prays for orders that:
- i. The appeal be allowed
  - ii. The judgement and Order of Hon. V.M Mochache aforesaid be set aside.
  - iii. For the Honourable court do reinstate the Claim by the appellate.
  - iv. For the cost of this Appeal and of the subordinate court be granted to the Appellant.
  - v. For any other relief that this Honourable court deems fit to grant.

#### Submissions

4. This matter was canvassed by way of written submissions by counsel for both parties. Counsel for the appellant raises several issues for consideration. Whether there was a valid insurance cover before 4<sup>th</sup> June 2010. Whether the said insurance cover was in place before the policy document was altered on 4<sup>th</sup> June 2010.
- Which is the right application form that was completed by the appellant? Whether the appellant met the sum assured of kshs. 370,000. Whether the respondent breached the insurance contract policy.
5. The appellant argues that he became a policy holder by virtue of the payment of the first premium and that he is entitled to the sum assured having paid premiums faithfully. He disputes the application form relied upon by the respondent and imputes forgery on the part of the respondent pointing out some errors and urges the court to rely on his application form stipulating a policy for 10 years as opposed to the respondent's which runs for 14 years. The Appellant alludes to discrepancy between his cumulative premium payments and that indicated by the respondent and additionally claims for bonuses earned over the years. He cites the authority of *Lucena v Craufu* 127 Eng. RP.630 in which



court cited insurance cover as contract as persuasive approach and; Civil 14 of 2020 Doa Doa Tented Camp & Lodge v Jubilee Insurance Company and urges the court to grant his prayers.

6. The Respondent also raises several issues. Counsel argues that the appellant's claim is time barred as a point of law which he thinks is within the respondent's right to raise. That the cause of action arose on 9<sup>th</sup> October, 2010 while the claimant filed this claim on 8<sup>th</sup> July 2022 which was 12 years later. Counsel contends that the respondent was not in breach of the terms of the policy as rightly held by the trial court. Counsel points out that the appellant filled out an application form dated 1<sup>st</sup> April 2010 wherein he proposed that the policy would run for 14 years and that the acceptance letter sent to the appellant on 14<sup>th</sup> April 2010 indicates that the respondent accepted the respondent's offer on the terms set out therein. The same terms were reflected on the policy which is included at page 11 of the record of appeal. The respondent therefore relies on the parole evidence rule for the submission that extrinsic evidence, including oral evidence, cannot have the effect of varying or adding to the terms of a written contract. In support of this submission, they rely on Section 97 of the Evidence Act which states as follows;

#### Written Contracts and grants

1. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this act. (Emphasis ours)
7. The respondent relies on the case of Fidelity Commercial Bank Limited v Kenya Grange Vehicle Industries Limited[2017]eklr  

“So that where the intention of parties has in fact been reduced to writing, under the so-called parole evidence rule, it is generally not permissible to adduce extrinsic evidence, whether oral or written, either to show the intention, or to contradict, vary or add to the terms of the document, including implied terms.”
8. The respondent contends that the appellant did not adduce any evidence to prove that the application form adduced by the respondent is a forgery. They rely on the court of appeal finding in Demutilla Nanyama Pururmu v Salim Mohamed Salim (2021) eklr fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading and that the onus of proof is on the alleging party to prove that he or she did not sign any of the documents relied upon by the respondent.
9. The respondent submits that their obligation under the policy was to pay out the benefits thereunder on the maturity date of the policy on 14<sup>th</sup> March 2024 which was conditional upon the appellant fulfilling his obligation of paying the monthly premiums in full. That as at the year 2022 when the time the claim was filed, the respondent was not in breach towards the Appellant. Reference is made to the acceptance letter which was sent to the appellant on 14<sup>th</sup> April 2010 indicated that the respondent accepted the appellant's offer on the terms and set therein including 14 years period at monthly premiums of kshs. 3,043.
10. Respondent argues that the impugned application form relied upon by the appellant for his claim was marred by defects and unreliable as evidence before court. For instance, it did not bear the logo that the respondent used at the material time this is in contrast with the application form, acceptance letter,



the policy itself and schedule thereto which all bear the correct logo. That the logo of the impugned form only came into existence came in 2018. Secondly, the impugned application form did not bear the signature of the respondent's agent but the one relied upon by the respondent bears the respondent's signature, was stamped as received and bears the correct logo. The respondent submits that terms of the contract were as set out in the application form, acceptance letter and policy documents adduced by the respondent.

11. The respondent adds that the claimant did not make any claim for excess premiums and bonuses in his Statement of Claim and only mentioned it in his submissions. It was neither pleaded, proven nor raised during the hearing and the respondent did not have an opportunity to respond to it at the filing of the documents. They rely on the authority of *Magnate Ventures Limited v Alliance Media (K) Limited & Others*[2015] eKLR which held inter alia that:

“The object of pleadings is, of course, to secure that both parties know what are the points in issue between them so that each may have full information of the case he has to meet and prepare his evidence to support his own case or to meet that of his opponent. As a rule, relief not founded on the pleadings will not be given.”

12. The respondent, submits that the appellant did not establish his claim for breach of contract before the trial court.

### **Analysis**

13. This court has considered the memorandum and record of appeal, the submissions by counsel for both parties together with the authorities cited. The court notes that the substratum of the appeal is existence of a valid insurance contract between the appellant and the respondent, whether there was breach by the respondent and whether the reliefs sought are merited. The bone of contention is the validity of the claim form relied upon by the appellant for a policy of 10 years vis-a-vis the one relied upon by the respondent for a policy of 14 years. The above are clearly matters of evidence which are not within the ambit of this court by virtue of the nature of the appeal emanating from the Small Claims Court. The statute thereof stipulates that upon appeal, the high court may only consider matters of law. Section 38 of the Small Claims Act provides for appeals as:

1. A person aggrieved by the decision or an order of the court may be appeal against that decision or order to the High Court on matters of law.
2. An appeal from any decision or order referred to in subsection (1) shall be final.

14. The High Court, as per Article 165 (6) of [the constitution](#) has the authority to review or reconsider evidence from the small claims court under specific circumstances. Appeals to the High court can also be based on alleged errors in law or fact made by the Small Claims Court and in such cases, the high court reassess the evidence to arrive at a determination. In *Mundiav Kigo (Civil Appeal 153 of 2023)*, the appellant argued that the small claims court misapplied the standard of proof in civil cases. The High court reviewed the evidence and the adjudicator's application of legal principles, providing clarity on the appropriate standards to be applied.

15. The upshot of the appellant's claim was that the application form dated 1<sup>st</sup> April 2010 reflects an erroneous policy period of 14 years and that the resulting policy document dated 14<sup>th</sup> April 2010 is incorrect as it does not reflect the period of ten years to which the appellant agreed. The appellant alluded that the application form produced by the respondent was a forgery. The issue before the trial court was to make a determination as to whether there was a valid insurance contract between the appellant and the respondent as claimed by the appellant, whether the appellant was in breach and



whether the respondent was entitled to the remedies sought. The trial court having duly considered the facts before it determined that not only did the insurance contract exist but also that the claimant did not prove any breach thereof. It also determined that the reliefs sought by the claimant were not merited.

16. With respect to the respondent point of law, that the matter was time barred, this court is of the view that the course of action arose at the end of the 10-year period upon which the appellant believed that his policy had matured and not in 2010 when the policy was taken. This issue is therefore dismissed.
17. In the instant appeal, the parties do not raise any issues of law for interpretation by this court in so far as the substratum of the appeal is concerned. It is therefore apt for this court to consider whether there was any error of fact by the trial court in arriving at the decision it made. The so of this appeal was a claim for breach of contract based on a disputed application form. The trial court deduced that none of the parties disputed the existence of a contract of insurance and that the only dispute was the period of the policy which can be reduced to the issue of the intention of the parties. This is based on the principle on contractual disputes as laid down by the court of appeal in National Bank of Kenya Ltd v Pipe Plastic Sakolit(k) Ltd[2002]EA 503 [2011]eklr that courts do not rewrite contracts for the parties and that parties are bound by the terms of their contract unless coercion, fraud or undue influence is proved.
18. In Attorney General of Kenya v Anyang' Nyong'o & 10 others [2010] RC 1 (KLR), the court enunciated on principles under which an appellate court can interfere with the exercise of a discretion by a trial court to include that the presiding judge:
  - i. Took into accounts some irrelevant factor(s)
  - ii. Failed to take into account some irrelevant factor(s)
  - iii. Did not apply a correct principle to the issue (such as misdirection on a point of law, or misappropriation of facts)
  - iv. Taking into account all the circumstances of the case, the judge's decision is plainly wrong
19. Similarly, in Mohammed Eltaff & 3 others v Dream Camp Kenya limited [2005] Eklr, the court observed that the appellate court has mandate to interfere where a trial court has left certain issues unresolved. I have not found any misdirection on a point of law, misappropriation of facts or unresolved issues by the trial court which warrants a review by this court.

#### **Determination**

20. Taking into consideration all the above, this court orders that :

This appeal is hereby dismissed and the decision of the trial court vide judgement delivered on 18th November 2022 is hereby upheld. Costs to the respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF FEBRUARY, 2025**

**HON. T. W. OUYA**

**JUDGE**

For Appellant.....Ms. Nganga HB Kalama

For Respondent...Ms Mutua

Court Assistant... Martin

