



REPUBLIC OF KENYA



KENYA LAW
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**Mua Insurance (Kenya) Limited v Kibira (Civil Case E003 of 2022)
[2025] KEHC 5284 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL CASE E003 OF 2022
KW KIARIE, J
APRIL 30, 2025**

BETWEEN

MUA INSURANCE (KENYA) LIMITED PLAINTIFF

AND

EUNICE ANYIKO KIBIRA DEFENDANT

JUDGMENT

1. By a plaint dated the 29th day of July 2022, the plaintiff sued the defendant for the following orders:
 - a. A declaration that it is not bound to pay and /or satisfy judgments in Mbita SRMCC NOS. E025, E026 and E027 of 2022 and /or indemnify the defendant against any claim in respect of bodily injury to any person, damage to property or satisfy any claim whatsoever arising out of the accident which allegedly occurred on the 28th day of January 2022 along Homa Bay- Mbita Road at Kirindo area, involving the defendant's motor vehicle registration number KCY 865X.
 - b. Costs of this suit.
 - c. Interest on (b) above at court rates.
 - d. Any other or further relief the court may deem just, expedient and fit to grant
2. The plaintiff asserts that they provided a comprehensive insurance policy to the defendant for the vehicle registered as KCY 865X under policy number 4632/21/07/MM (COMP). This policy was effective from July 13, 2021, to July 12, 2022.
3. It was argued that it was an express term of the insurance policy, or a condition precedent, that the cover and/or indemnity provided by the policy would only apply to private use and not to the carriage of passengers for hire or reward.



4. On or around January 28, 2022, the subject motor vehicle was reportedly involved in a road traffic accident along the Homabay-Mbita road in the Kirindo area when the driver lost control of the vehicle, striking three pedestrians who sustained injuries, one of whom suffered a fatal injury.
5. The plaintiff alleges that the defendant's insurance policy covered the motor vehicle for private use only and not for transporting passengers for hire and reward. The plaintiff contends that the defendant's use of the motor vehicle at the time of the accident, which occurred on January 28, 2022, for transporting passengers for hire and reward constituted a material breach of the insurance policy. Therefore, the plaintiff seeks from this honorable court a declaration that it is not bound to pay and/or satisfy any judgment in Mbita SRMCCC NO. E025, E026, and E027, all of 2022, or any other claim arising out of the aforementioned accident.
6. The plaintiff has conducted investigations and established that at the time of the accident, the insured's use of the vehicle for carrying passengers for hire and reward was contrary to the policy's terms and conditions.
7. The plaintiff asserts that the defendant violated the explicit terms of the insurance policy and/or the contractual agreement between her and the plaintiff and that the defendant should assume any liability for claims from any individual arising from the use of the subject motor vehicle.
8. In defence, the defendant asserts that the claims in Mbita SRMCCC Nos. 25, 26, and 27, all from 2022, originate from third parties who were pedestrians on the road and have no connection to the insured motor vehicle. The defendant additionally argues that the plaintiff is required to satisfy the judgments in Mbita SRMCCC Nos. 25, 26, and 27, which were issued in 2022, since no term in the insurance policy exempts the plaintiff from this obligation.
9. The defendant further states that the plaintiff, in their letter dated 27/06/2022, indicated an inability to pursue the claim regarding the repair of the damaged insured motor vehicle, as opposed to the claims for third-party bodily injuries.
10. The defendant further states that the plaintiff has no legal or other basis to disclaim liability in Mbita SRMCCC Nos. 25, 26, and 27 of 2022. The accident occurred while the insured motor vehicle was being used for the purpose for which it was insured.
11. Furthermore, the defendant asserts that Rapid Tech Insurance Loss Investigators, in their recommendation, advised the plaintiff to adequately reserve for the anticipated third-party bodily injury claims -now referenced in Mbita SRMCCC Nos. 25, 26, and 27 of 2022. This advice was grounded in the principle that the plaintiff must satisfy judgments in Mbita SRMCCC Nos. 25, 26, and 27 of 2022 and that the plaintiff has no grounds for denying liability regarding Mbita SRMCCC Nos. 25, 26, and 27 of 2022.
12. Several courts have defined an Insurance contract. The definition was captured in the case of *AIG Insurance Company Limited v Benard Kiprotich Kirui* [2022] eKLR the learned Judge R. Korir cited the definition of the insurance contract as rendered by the Supreme Court of India defined this concept as the basis of an insurance contract in the case of *United India Insurance Company v Kantika Colour Lab and others* Civil Appeal No. 6337 of 2001 as follows:

Contracts of Insurance are generally like contracts of indemnity. Except in the case of contracts of Life Insurance, personal accident and sickness or contracts of contingency insurance, all other contracts of insurance entitle the assured for the reimbursement of actual loss that is proved to have been suffered by him. The happening of the event against which insurance cover has been taken does not by itself entitle the assured to claim the amount stipulated in the policy. It is only upon proof of the actual



loss, that the assured can claim reimbursement of the loss to the extent it is established, not exceeding the amount stipulated in the contract of Insurance which signifies the outer limit of the insurance company's liability. The amount mentioned in the policy does not signify that the insurance company guarantees payment of the said amount regardless of the actual loss suffered by the insured. The law on the subject in this country is no different from that prevalent in England, which has been summed up in Halsbury's Laws of England – 4th Edition.

13. This definition will guide me in the instant case.
14. Parties are bound by their contract. In *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd* [2002] 2 E.A. 503, [2011] eKLR, the Court of Appeal at page 507 stated as follows:

The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.
15. In his decision in *Joseph Mwangi Gitundu v Gateway Insurance Co. Ltd* [2015] eKLR, Gikonyo J, on the duty of indemnity placed on the insurer under section 10 and observed as follows:

Therefore, under section 10(1) of Cap 405 Laws of Kenya, the insurer has a statutory obligation to pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. The obligation is statutory and a strict one; it cannot be shifted or abrogated by a term in the contract of insurance or in the manner proposed by the Defendant, lest the noble intention of the Act to guarantee compensation of third parties who suffer injuries arising from by use of the insured motor vehicle on the road should be lost. Similarly, if the statutory obligation placed by law on the insurer was to be shifted to the insured as proposed by the Defendant, the purpose for taking out an insurance policy and the compulsion by the Act for such insurance cover to be taken out on vehicles to be used on the roads to cover third party risks under Cap 405 Laws of Kenya will also be defeated.
16. There are instances when an insurer can avoid liability as prescribed under Section 10(2) of the *Insurance (Motor Vehicles Third Party Risks) Act*. They are as follows:
 - a. If the insurer was not given notice of the claim or lawsuit, they are not bound to pay the third-party claim.
 - b. If the insurance policy was obtained by fraudulent means or misrepresentation, the insurer can apply to the court for a declaration that the policy is void. If the court grants the declaration, the insurer is relieved of its obligations under the policy.
 - c. If the policy was cancelled before the accident occurred, and the insurer notified the Registrar of Motor Vehicles, the insurer is not liable. However, if the cancellation was not properly communicated to the authorities, the insurer may still be held responsible.
 - d. If the policy had an exclusion clause covering certain circumstances and the accident falls within such an exclusion, the insurer can reject liability. However, the exclusion must be valid under the law, as some exclusions may be unenforceable if they conflict with statutory obligations.
 - e. If the vehicle was being used for a purpose not covered by the insurance policy, the insurer may deny liability.



- f. If the insured refuses to cooperate with the insurer in defending a claim, the insurer may use this as grounds to avoid paying third-party damages. This could include failure to provide necessary documents, not reporting the accident, or failing to attend court proceedings.
 - g. If the driver at the time of the accident was unlicensed, underage, or explicitly excluded from coverage under the insurance policy, the insurer may refuse to pay third-party claims.
 - h. If the vehicle was involved in illegal activities, the insurer may be able to avoid its obligations.
17. There are other instances where an insurer can avoid liability. These are:
- a. If the third party makes a fraudulent claim by exaggerating damages or faking injuries, the insurer can refuse payment and challenge the claim in court.
 - b. If a third party brings a claim after the limitation period has expired, the insurer can avoid liability. The general limitation period for personal injury claims in Kenya is three years from the date of the accident.
18. For the plaintiff herein to succeed, it must be adequately demonstrated that the claim fits in at least one of the instances enumerated in paragraphs 17 and 18 of this judgment. It was argued on behalf of the plaintiff that the defendant was in breach of the Use clause; the vehicle was commercially used as a Taxi, yet it was insured for private use. Secondly, the defendant was in breach of the most fundamental principle of good faith; the insured provided falsified information stating that the driver was his business associate and that the vehicle was used privately.
19. In the policy document, under the summary of special conditions, the policy under the limitation to use provides:
- Use in connection with the insured's business.
 - Use for carriage for passengers in connection with the insured's business
 - Use for social domestic and pleasures purposes

The policy does not cover

- 1. Use for racing competitions rallies or trials (or use of practice for any of them) or use for hire or reward.
 - 2. Use while drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle.
20. The scope of insurance with respect to motor vehicle KCY 865X is indicated as comprehensive. My understanding of the term 'comprehensive' is that it encompasses third-party risks as well. This is confirmed by the policy document section II, titled Liability to Third Parties, which states:
- 1. Indemnity to you or your authorized driver or any person in or getting into or out of the vehicle.
- We will cover you or any authorized driver or any person in or getting into or out of the vehicle against legal liability for damages (including the related costs and expenses for:
- a. Death or bodily injury to any persons.
 - b. Damage to property



Arising as a result of an accident by or in connection with your vehicle, including while loading and unloading the vehicle as long as such costs will not exceed the amounts of cover provided for under this policy.

21. Parties are bound by the terms of their contract. In the case of *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another*, Civil Appeal No.95 of 1999 [2001] KLR 112 [2002] EA 503, the Court held that:

A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.

I find that there was no breach of the “Use” clause.

22. The plaintiff has not demonstrated that their case falls within the exceptions enumerated in paragraphs 17 & 18 of this judgment. The claim, therefore, fails with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 30TH DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

