



**Gatutha v Directline Assurance Company Limited (Civil Case
E013 of 2024) [2025] KEHC 9398 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL CASE E013 OF 2024
GL NZIOKA, J
JUNE 30, 2025**

BETWEEN

PATRICK THEURI GATUTHA PLAINTIFF

AND

DIRECTLINE ASSURANCE COMPANY LIMITED DEFENDANT

JUDGMENT

1. By a plaint dated 4th July 2024 the plaintiff prays for judgment against the defendant for:-
 - a. A declaration that the defendant is bound to satisfy judgments in Naivasha Small Claims' Court case No. E135, E136, E137, E138, E140, E141, E142 and E143 all of 2022 and Naivasha CMCC E028 of 2023.
 - b. A declaration that if any execution was to be levied in respect of Naivasha Small Claims' Court Nos. E135, E136, E137, E138, E140, E141, E142 and E143 all of 2022 and Naivasha CMCC E028 of 2023 then such execution should be levied as against the defendant
 - c. A declaration that the defendant is obligated to provide legal representation to the plaintiff in respect of Naivasha Small Claims' Court case Nos E135, E136, E137, E138, E140, E141, E142 and E143 all of 2022 and Naivasha CMCC E028 of 2023.
 - d. The defendant to meet the costs of this suit
2. The plaintiff case is supported by his statement filed together with the plaint and the documents annexed thereto. In his oral evidence in court, the plaintiff literally reiterating the averments in the plaint.
3. He stated in a nutshell that, he took an insurance cover from the defendants being insurance policy number 00245723 commencing 20th December 2021 and expiring on 19th January 2022. That, it was a cover for his motor vehicle registration No. KCP 617F Toyota Hiace.



4. That during the pendency of the policy the motor vehicle was involved in an accident on 8th January 2022, and 1st to 8th interested parties were injured. Subsequently, the interested parties sued him vide Naivasha Small Claims Court case(s) Nos. E135, E136, E138, E140, E142 and E143 of 2022 and CMCC No. E028 of 2023 and the defendant appointed the firm of M/s Kimondo Gachoka & Co. to defend the suits.
5. That the judgment was entered against him in all the suits, and the defendant was notified accordingly. However, the defendant has failed to settle the interested parties' judgment and been playing hide and seek with him.
6. The plaintiff avers that, as a result of the failure to settle the aforesaid claims, his property including his vehicles and household goods were proclaimed by M/s Hegeons Auctioneers.
That he also faces the risk of being committed to civil jail as he's likely to be rendered bankrupt and destitute as a result of the attachment.
7. Finally, the plaintiff avers that the defendant is in breach of the contract and policy of insurance between the parties. The tabulated particulars of breach are at paragraph 21 of the plaint as follows:-
 - a. Failing to offer legal representation to the plaintiff
 - b. Failing to satisfy judgments in Naivasha Small Claims' Court case Nos E135, E136, E137, E138, E140, E141, E142 and E143 all of 2022 and Naivasha CMCC E028 of 2023.
 - c. Leaving the plaintiff to be attached and executed upon when the defendant had the obligation of satisfying the judgment sums.
 - d. Leaving the plaintiff to be incarcerated in civil jail whereas the defendant has the obligation of satisfying the judgment sum.
8. However, the defendant opposed the plaintiff's claim vide a statement of defence dated 29th January 2025. However, the defendant conceded that the plaintiff's motor vehicle in question held a valid insurance cover No. 00245725 issued by the defendant. That it was valid at the time of accident. However, the defendant denied all the other allegations in the plaint and put the plaintiff to strict proof thereof.
9. The case proceeded to full hearing and the plaintiff testified in support of his evidence mirrored the pleadings in the plaint. He adopted his statement as evidence-in-chief and produced all the documents annexed thereto. The defendant did not cross-examine him at all.
10. The defendant did not adduce any evidence at the trial nor call any witness to support its case. Similarly, the interested parties closed their case without adducing any evidence. However, the interested parties counsel cross-examined the plaintiff who maintained that, three of the claims have been settled. Further, he paid all the premiums.
11. The parties filed their submissions at the close of the hearing of the case, which are considered herein.
12. I have considered the plaintiff's case in the light of the materials placed before the court and find that, the plaintiff has availed documents to prove that, he was indeed sued by the interested parties as pleaded and judgment entered against him. He has also produced a police abstract which shows inter alia that; the vehicle in question was involved in the accident and was insured by the defendant at the material time.



13. Furthermore, the defendant has not denied the issuance of the insurance policy or its validity at the time of the accident.
14. The plaintiff has also produced, a warrant of sale of property dated 13th March 2024, issued by Hegeons Auctioneer with intent to sell his property to recover a sum of Kshs 740,510 owed to the interested parties and a proclamation of the plaintiff's property dated 10th June 2024.
15. It is noteworthy that, against the aforesaid evidence the defendant has not offered any defence to rebut the plaintiff's claim, or evidence to support its defence. In fact, as aforesaid of existence a contract of insurance between the parties is admitted. The defence is a mere denial.
16. As regards the interested parties submissions that, the plaintiff did not produce a copy of certificate of insurance, I find that, the production thereof was not necessary as the defendant conceded to the existence of the policy of Insurance. As regards the allegation that three of the claims have been settled, again the defendant did not deny the same. With due respect, the interested parties do not have any contractual relationship with the plaintiff as far as insurance contract is concerned, and the appropriate party to challenge the existence thereof and or not, is the defendant. The defendant did not even bother to file submissions or defend the matter, and by that conduct they are deemed to have admitted the plaintiff's claim.
17. In the same vein, the interested parties claim is against the plaintiff. Therefore, they have a right to enforce it against him and the plaintiff seek for indemnity from the defendant. Furthermore, all the plaintiff is seeking for herein, is a declaration that the defendant is bound to settle the interested parties decrees.
18. To revert back to the plaintiff and defendant, the purpose of an insurance cover is to provide financial protection against potential losses from unexpected events. It is a financial net. It acts as a form of risk transfer which allows individuals and businesses to manage their risks more effectively. In that regard, the insurance company assumes the risk, pays claims, decides coverage, how much premium is payable, and the terms of engagement.
19. In the instant matter, the defendant having taken the premiums from the plaintiff and issued the insurance cover, they are under a liability to settle the decretal sum. The plaintiff had a legitimate expectation to be indemnified.
20. As a result, I find that the plaintiff has proved its case on the balance of probabilities and I allow the plaint in terms of prayers (a) and (c).
21. However, the plaintiff cannot gauge the interested parties rights, as the interested parties have a right to enforce the judgment against the judgment debtor. Therefore, prayer (b) is not allowed
22. First before pursuing the defendant, the costs of this suit will be borne by the defendant and granted in favour of the plaintiff and the interested parties.
23. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 30TH DAY OF JUNE 2025

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Chelule for plaintiffs



Mr. Kairu for interested parties

N/A for defendant

Hannah –court assistant

