



**Cannon General Insurance Company Limited v Gituro (Civil Suit E023 of 2024) [2025] KEHC 9078 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9078 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL SUIT E023 OF 2024  
EN MAINA, J  
JUNE 26, 2025**

**BETWEEN**

**CANNON GENERAL INSURANCE COMPANY LIMITED ..... PLAINTIFF**

**AND**

**DAVID GITURO ..... DEFENDANT**

**JUDGMENT**

1. By Plaintiff dated 28<sup>th</sup> September, 2019 the Plaintiff herein avers that it entered into a private insurance policy in respect of motor vehicle registration number KCM 849T under policy number 0101/07/60610/22 that was subject to payment of premiums and policy excess by the Defendant in default of which the cover would be repudiated. That the terms were that the motor vehicle was limited to social, domestic and pleasure purposes and by the insured in connection with his business or profession or by use by his authorized licensed and competent driver.
2. It was averred that the Defendant authorized an unlicensed driver to drive his motor vehicle on 11<sup>th</sup> July 2024 and it got into an accident with a minor pedestrian, one Esther Zola Wambui occasioning her to bodily injuries. Further, that one Joyce Katululu Mbaluto has through her advocates Messers Mwangangi and Associates Advocates threatened to sue the Plaintiff yet he is not liable under the terms of the insurance policy. The Plaintiff thus prays for judgment against the Defendant in the following terms;
  - a. A declaration that the Plaintiff is and has at all material times been entitled to avoid the aforesaid policy of insurance 0101/07/60610/22 and any provision contained therein on the ground that the terms of the policy had been breached by the Defendant.
  - b. declaration that the Plaintiff is not liable to make any payment under the aforesaid policy of insurance NO 0101/07/60610/22 in respect of any claims against the Defendant herein arising out of the injuries sustained as a result of the accident on 11<sup>th</sup> July 2024 involving the Motor



vehicle registration number KCM 849T and /or from any accident involving the motor vehicle during the pendency of the said insurance policy.

- c. Any other or further relief that this Honourable Court may deem fit to grant.
  - d. Costs of the suit
3. Despite service of the summons and the Plaint upon the Defendant as evidenced by the affidavits of service dated 9<sup>th</sup> December 2024 and a mention notice served upon him on 29<sup>th</sup> January 2025, he did not enter appearance.
  4. The Plaintiff filed a request for judgment dated 30<sup>th</sup> January 2025 requesting for interlocutory judgment and that the matter proceed for formal proof.
  5. Vide via voce evidence on 2<sup>nd</sup> February 2025, PW1 ,Leonora Shingoli, the legal officer of the Plaintiff adopted her witness statement, produced the bundle of documents dated 29<sup>th</sup> September 2024 and testified that they were the Defendant’s insurers from 22/12/2023 to 21/12/2024. That they are seeking to avoid the accident because the insured reported the accident after which the company instructed fortified investigators to investigate the accident and they found out that at the time of the accident, the motor vehicle was being driven by an unqualified driver. This information was concealed by the Defendant as he stated that he was the one driving therefore breaching the clause of utmost good faith by giving false information. They served the Defendant with notice of intention to avoid liability.
  6. The Plaintiff filed submissions dated 20.05.2025 in which it was submitted that they were served with a statutory notice under section 10(2) of the Insurance (Motor Vehicle Third Party) Risks Act and are apprehensive that there are possible claims arising from the accident. The court was urged to find in their favour.

### **Analysis and determination**

7. Having considered the Plaint, the record and the evidence before this court, it is not in dispute that the Plaintiff had insured the Defendant vide policy number 0101/07/60610/22 which is alleged to have gotten to an accident on 11.04.2014 and that the Plaintiff wants to avoid the claim for breach of utmost good faith and material non-disclosure that the person driving the motor vehicle at the time was not qualified to drive.
8. The Defendant herein did not enter appearance nor file a defence. Consequently, the evidence of the Plaintiff remain uncontroverted. This was discussed by in the case of Kenya Power and Lighting Company Limited v Nathan Karanja Gachoka & another [2016] eKLR where the court rendered itself as follows;

“I am of the considered view that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its c too upon a balance of probability whether the evidence in unchallenged or not.

9. In Kanyungu Njogu vs Daniel Kimani Maingi (2000) e KLR it was held that:

“ when a court is faced with two probabilities, it can only decide the case on a balance of probability if there is evidence to show that probability was more probable than the other”



10. Section 4(1) of the Insurance (Motor Vehicle Third Party ) Risks Act provides as follows;

“Subject to this Act, no person shall use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Act.”

11. Section 5 of the Act provides that;

Requirements in respect of insurance policies.

In order to comply with the requirements of section 4, the policy of insurance must be a policy which—

(a) is issued by a company which is required under the *Insurance Act* (Cap. 487) to carry on motor vehicle insurance business; and

(b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road:

.....”

12. See section 10(1) of the *Insurance (Motor Vehicles Third Party Risks) Act* which provides that;

“If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, 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.”

13. I am guided by the finding of the Court of Appeal in the case of Co-Operative Insurance Company Ltd v David Wachira Wambugu [2010] KECA 481 (KLR) where it was held as follows;

“The learned judge was right in saying that a contract of insurance is one of good faith. As was said in *Joel vs Law Union & Crown Insurance Company (2)* [(1908) 2 K B at page 883] by Fletcher Moulton, L.J.:

“The contract of life insurance is one of uberrimae fidei. The insurer is entitled to be put in possession of all material information possessed by the insured. This is authoritatively laid down in the clearest language by Lord Blackburn in *Brownlee vs Campbell* 5 A C 925 at page 954:

In policies of insurance, whether marine insurance or life insurance, there is an understanding that the contract is uberrimae fidei, that, if you know any circumstance at all that may influence the underwriter’s opinion as to the risk he is incurring, and consequently as to whether he will take it, you will state what you know. There is an obligation there to disclose what you know, and the



concealment of a material circumstance known to you, whether you thought it material or not, avoids the policy.”

The learned authors of Bullen & Leake, Precedent of Pleadings, 14<sup>th</sup> Edition, Vol. 2 states at page 908:

Contracts of insurance are contracts of the utmost good faith. This gives rise to a legal obligation upon the insured, prior to the contract being made, to disclose to the insurer all material facts and circumstances known to the insured which affect the risk being run. Lord Mansfield’s words in *Carter vs Boehm* (1766) Burr. 1905 have stood the test of time:

Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist and to induce him to estimate the risk as if it did not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement... The policy would be equally void against the underwriter if he concealed... The governing principle is applicable to all contracts and dealings. Good faith forbids either party, by concealing what he privately knows to draw the other into a bargain from his ignorance of the fact and his believing the contrary...”

14. From the copy of the contract that was presented, clause 10 (1) states as follows;

“ 10. Cancellation

.....

1. Young and/or inexperienced drivers excess

We will not be liable under sections I and II of this policy for the first : as shown in the schedule” or any amount otherwise payable in respect of loss or damage to the vehicle (other than fire, external explosion, self-ignition or lightning or theft) occurring while the vehicle is being driven by or is in the charge of an authorized driver who :

- a. Is under twenty one (21) years of age; and/or
- b. Has not held for a period of one (1) year a license other than a provisional license to drive a vehicle of the same class as your vehicle...”



15. From the Investigations Report prepared by Stephen Kivuva of Fortified Insurance Investigator, dated 13<sup>th</sup> August 2024 one of the findings was that;

“g. that the insured failed to avail the driver but pretended to be the one driving the vehicle at the time of the accident and recorded a statement to that effect...”

16. There being no contradictory evidence before the court, I find that the Plaintiff has proved its case on a balance of probabilities and that the defendant breached the principle of utmost good faith. I therefore enter judgment in favour of the Plaintiff against the Defendant and grant orders as follows;

a. A declaration is hereby issued that the Plaintiff is and has at all material times been entitled to avoid the aforesaid policy of insurance 0101/07/60610/22 and any provision contained therein on the ground that the terms of the policy had been breached by the Defendant.

b. A declaration is hereby issued that the Plaintiff is not liable to make any payment under the aforesaid policy of insurance NO 0101/07/60610/22 in respect of any claims against the Defendant herein arising out of the injuries sustained as a result of the accident on 11<sup>th</sup> July 2024 involving the Motor vehicle registration number KCM 849T and /or from any accident involving the motor vehicle during the pendency of the said insurance policy.

c. The costs of the suit are awarded to the Plaintiff.

Orders accordingly.

**JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF JUNE, 2025.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Mr. Kinyua advocate for the plaintiff

Geoffrey – court Assistant

No appearance for the Defendant.

