



**HKM (Minor Suing Through His Next Friend & Guardian) v Madison Insurance Co. Ltd (Civil Appeal E072 of 2024) [2025] KEHC 11247 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11247 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E072 OF 2024  
HI ONG'UDI, J  
JULY 29, 2025**

**BETWEEN**

**HKM (MINOR SUING THROUGH HIS NEXT FRIEND & GUARDIAN) ..... APPELLANT**

**AND**

**MADISON INSURANCE CO. LTD ..... RESPONDENT**

*(Being an appeal from the ruling of the Honourable Wilson Rading (Principal Magistrate, delivered on 20th June, 2024 Naivasha CMCC No. E213 of 2022)*

**JUDGMENT**

1. The appellant herein filed a primary suit Naivasha CMCC No.615 of 2016 against one Lilian Wanjiru Kiarie for injuries suffered as a result of an accident involving motor vehicle registration No. KBG 326L on the October, 2015 along Nairobi – Naivasha road. Lilian Wanjiru Kiarie’s motor vehicle KBG 326L had been insured by the respondent. Judgment was entered in the appellant’s favour.
2. The respondent filed a disclaimer suit; Naivasha CMCC No.661 of 2017 Madison Insurance Company Ltd v Lilian Wanjiru Kiarie. The same was dismissed by the trial court on 2<sup>nd</sup> December, 2021, after which an appeal Naivasha HCCA No. E077 of 2021 was lodged by Madison Insurance Co. Ltd. [respondent]. A decision was rendered by the High Court on 16<sup>th</sup> May, 2023 absolving Madison Insurance Co. Ltd from liability.
3. The appellant had filed a declaratory suit Naivasha No. E213 OF 2022.
4. The respondent later filed before the trial court a notice of motion dated 7<sup>th</sup> September, 2023 seeking to have the declaratory suit CMCC No. E213/2021 struck out and/or dismissed, in view of the judgment in Naivasha HCCA. No. E077 of 2021. The application was heard and a ruling striking out the suit



was delivered on the 20<sup>th</sup> June, 2024. The appellant was aggrieved by the said ruling and filed this appeal dated 30<sup>th</sup> June, 2024 on the following grounds:

- i. That the learned magistrate erred in law and fact by failing to consider the appellant's submissions adequately or at all on the applicability of the provisions of Section 10 [4] of the Insurance Motor Vehicle Third Party Risks Act Cap 405 Laws of Kenya.
  - ii. That the learned magistrate erred in law and fact in failing to be bound by the principle of stare decisis on legal questions pertaining to striking out pleadings and effects of non-compliance with the Mandatory provisions of Section 10 [4] of the Insurance Motor Vehicle Third Party Risks Act Cap 405 Laws of Kenya.
    - iii. That the learned magistrate erred in law and fact in failing to hold that the declaratory orders obtained by the respondent in Naivasha HCCA NO. E077 OF 2021 could not afford it a defence nor be a basis of striking out the appellant's suit.
    - iv. That the learned magistrate erred in law and fact in that he misdirected himself on matters of both law and fact as to occasion a miscarriage of justice against the appellant.
5. The Appeal was canvassed by way of written submissions.

### **Appellant's Submissions**

6. These were filed by B. G. Wainaina & Co. Advocates and are dated 18<sup>th</sup> March, 2024. Counsel gave a brief background of the facts. He submitted that the respondent's suit having been filed pursuant to Section 10 [2] of the Insurance [Motor vehicle third party risks] Act Cap 405, there had to be compliance with Section 10 [4] of the Act, which was not done.
7. Counsel argued that the judgment in Naivasha HCCA No. E077 of 2021 being a judgment personam was not applicable in this matter. Still stressing on the provisions of Section 10 [4] of the Act counsel referred to the cases of Jubilee Insurance Co. Ltd and Matfarm Ltd [Civil Suit HCCA No.18 of 2018 and [ii] Geminia Insurance Company Ltd v EN [Minor suing through his father and next friend AAO].
8. Counsel faulted the trial court for not properly applying the relevant authorities, submitted to it. He further argued that since the appellant's suit was not among those sought to be avoided the orders in Naivasha HCCA E077 of 2021 were not applicable to it. Further that the trial court ought to have heard the appellant on the issue of "unlawful use" of the motor vehicle registration number KBG 326L. Finally, he argued that the principles of striking out a suit under Order 2 Rule 15 Civil Procedure Rules were not adhered to.

### **Respondent's Submissions**

9. These were filed by Kinyanjui Njuguna & Co. Advocates and are dated 5<sup>th</sup> May 2025. Counsel gave a brief background of the facts. He then submitted that the judgment rendered by the High Court in Naivasha HCCA NO. E077 of 2021 was in favour of the respondent and it has never been set aside, varied, reviewed and/or appealed against.
10. On whether the judgment in Naivasha HCCA E077 of 2021 is binding upon parties and the trial court he submitted that it is binding. Referring to the court declarations in the said judgment he contended that it is binding hence the filing of the application to have the declaratory suit struck out.
11. Counsel further submitted that the trial court would not overrule the orders of the Hon. Judge in Naivasha HCCA NO. E077 of 2021. The said orders have never been set aside.



12. The rest of the submissions are the same as those in Naivasha HCCA NO. E084 of 2024.

### **Analysis and Determination**

13. This being a first appeal this court has a duty to re-evaluate and assess the evidence before it and arrive at its own independent decision. This was the holding in *Selle & Another v Associated Motor Boat Company & Others* [1968] E.A. 123 and *Peters v Sunday Post Ltd* [1958] E.A. 424.
14. I have carefully considered the record of appeal, the submissions by both parties, the cited decisions and the law. I find the main issue for determination to be whether the trial court erred in dismissing the Notice of Motion dated 7<sup>th</sup> September 2023.
15. It is not disputed that the motor vehicle registration No. KBG 326L was insured by the respondent. It was involved in a road accident on 4<sup>th</sup> October 2015, as a result of which a series of primary and declaratory suits were filed. The appellant's suit fell in the said series. It is also not disputed that the disclaimer suit Naivasha CMCC No.661 of 2017 and Naivasha HCCA No. E077 of 2021 fell in that series.
16. The disclaimer suit was filed by the respondent herein where it sought to be absolved from the claims by third parties in respect of the motor vehicle registration number KBG 326L. It is further not disputed that the High court in Naivasha HCCA No. E077 of 2021 in its judgment set aside the lower court judgment in CMCC NO.661 OF 2017 and granted the following prayers:
- a. A declaration is hereby issued that the plaintiff is entitled to repudiate the Policy No. CTY/701/084543/2015 for breach of the insurance cover.
  - b. A declaration is hereby issued that the plaintiff is not liable to make any payment under Insurance Policy No. CTY/701/084543/2015 in respect to any claim against the defendant in the unlawful use of the motor vehicle registration number KBG 326L.
  - c. Each party shall bear their own costs.
17. From the judgment in Naivasha HCCA No. E077 of 2021 it's clear that the appellant herein was the 2<sup>nd</sup> respondent and fully participated in the said appeal. The issues in respect of Section 10 [4] of the *Insurance [Motor vehicles Third Party Risks] Act* being raised here and in the trial court were raised in the said appeal. In the judgment by Rayola Francis J at paragraphs 45 – 53 the Hon. Judge addressed the issues relating to Sections 5 [b] and 10 [4] of the Act and his finding is at paragraphs 53 of the said judgment.
18. This court cannot therefore delve into that since the court that dealt with it is of equal status with this court. Equally the trial court would not again address the issues on Section 10 [4] of the Act since it is bound by decisions of the High court. The matter having already been dealt with by the High court on appeal the only court that would re-evaluate it is the Court of Appeal. It cannot again be challenged before this court through this Appeal or before the trial court as the appellant attempted to do.
19. A reading of the 2<sup>nd</sup> declaration in HCCA No. E077 of 2021 does not put it in the category of “personum” as submitted by the appellant. It applies to all claims in respect to Insurance Policy No. CTY/701/084543/2015 in respect of motor vehicle KBG 326 L.
20. I therefore find no error in the ruling by the trial court since the judgment in Naivasha HCCA No. E077 of 2021 has not been overturned. The said ruling is upheld.
21. The upshot is that the appeal lacks merit and is hereby dismissed. Each party to bear its own costs.



22. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 29<sup>TH</sup> DAY OF JULY,  
2025**

**H. I. ONG'UDI**

**JUDGE**

