



**GBM (Minor Suing Through His Next Friend and Guardian RN) v Madison Insurance Company Limited (Civil Appeal E071 of 2024) [2025] KEHC 11248 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11248 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E071 OF 2024  
HI ONG'UDI, J  
JULY 29, 2025**

**BETWEEN**

**GBM (MINOR SUING THROUGH HIS NEXT FRIEND AND GUARDIAN RN) ..... APPELLANT**

**AND**

**MADISON INSURANCE COMPANY LIMITED ..... RESPONDENT**

*(Being an appeal from the ruling by Hon. Wilson Rading (P.M.) delivered on 20th June, 2024 in Naivasha CMCC No. 212 of 2022)*

**JUDGMENT**

1. The appellant herein filed a primary suit *Naivasha CMCC No. 614 of 2016* against Lilian Wanjiku Kiarie for injuries suffered as a result of an accident involving motor vehicle registration No. KBG 326L on 4<sup>th</sup> October, 205 along Nairobi – Naivasha road.
2. Lilian W. Kiarie’s motor vehicle KBG 326L had been insured by the respondent. Judgment was entered in the appellant’s favour.
3. 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 Company Ltd (respondent). A decision was rendered by the High Court on 16<sup>th</sup> May, 2023 absolving Madison Insurance Company Ltd from liability.
4. The appellant had filed a declaratory suit *Naivasha CMCC No. E212 of 2022*.
5. The respondent filed before the trial Court a notice of motion dated 7<sup>th</sup> September, 2023 seeking to have the declaratory suit *Naivasha CMCC No. E212 of 2022* 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 20<sup>th</sup> June, 2024.

6. The appellant being dissatisfied by the said ruling 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 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 *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 not be a basis of striking out the appellant suit.
  - iv. That the learned Magistrate erred in law and fact in that the misdirected himself on matters of both law and fact as to occasion a miscarriage of justice against the appellant.
7. The appeal was canvassed by way of written submissions.

#### **Appellant's submissions**

8. 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 was not filed in line with the provisions of Section 10(4) of the *Insurance (Motor Vehicles Third Party Risk) Act* Cap 405.
9. Counsel further argued that the Judgment in *Naivasha HCCA No. E077 of 2021* was a Judgment personum and so did not affect the appellant. He faulted the trial court for not applying the relevant decisions submitted by him.

The rest of the submissions are as set out in Naivasha CMCC No. E072 of 2024 and E084 of 2024 which fall in the same series.

#### **Respondent's Submissions**

10. 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 in *Naivasha HCCA No. E077 of 2021* was in favour of the respondent and it has not been set aside, varied, reviewed and/or appealed against.
11. On whether the said Judgment is binding on parties and the trial court he answered in the affirmative. He submitted that it was for that reason that they filed the application to have the declaratory suit struck out.
12. He further submitted that the trial court could not over rule the orders of the Hon. Judge in *Naivasha HCCA No. E077 of 2021*. Further that the said orders have never been set aside.
13. The rest of the submissions are the same as those filed in Naivasha HCCA No. E072 of 2024 and No. E084 of 2024.



## Analysis and Determination

14. 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 decisions. This was the holding in *Selle & another vs Associated Motor Board Company & others* [1968] EA 123.
15. 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.
16. It is not disputed that the motor vehicle registration No. KBG 326L was insured by the respondent and 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.
17. The appellant’s suit is in the said series. It is also not disputed that the disclaimer suit Naivasha No. E658 of 2021 and *Naivasha HCCA No. E077 of 2021* fell in that series.
18. The disclaimer suit was filed by the respondent herein where it sought to be dissolved from the claims by third parties in respect of motor vehicle KBG 326L. It is further not disputed that the High Court in HCCA No. E077 of 2021 in its Judgment set aside the Lower Court Judgment in Naivasha 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/xxx/xxx/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/xxx/xxx/2015 in respect to any claim against the defendant in the unlawful use of the motor vehicle registration No. KBG 326L.
  - c. Each party shall bear their own costs.
19. 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 paragraph 45 – 53 the Hon. Judge addressed the issues relating to Sections 5b & 10(4) of the *Act* in detail. This finding is captured at paragraph 53 of the said Judgment.
20. This Court cannot therefore delve into that since the Court that dealt with it is of equal status with this Court. Similarly, the trial Court would not be expected to address the issues on Section 10(4) of the *Act* since it is bound by decisions of the High Court.
21. The matter having already been dealt with by the High Court on Appeal the lower court become functus officio. The only court that would re – evaluate that decision 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.
22. 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 of the Insurance policy No. CTY/xxx/xxx/2015 in respect to motor vehicle Registration No. KBG 326L.
23. 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 ruling is upheld.



24. The upshot is that the appeal lacks merit and is hereby dismissed. Each party to bear its own costs.

25. Orders accordingly.

**DELIVERED, VIRTUALLY DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF JULY, 2025 IN OPEN COURT AT NAKURU.**

**H.I. ONG'UDI**

**JUDGE**

