



PRM (Minor Suing Through His Next Friend and Guardian RN) v Madison Insurance Company Limited (Civil Appeal E070 of 2024) [2025] KEHC 11240 (KLR) (29 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11240 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E070 OF 2024
HI ONG'UDI, J
JULY 29, 2025**

BETWEEN

PRM APPELLANT

MINOR SUING THROUGH HIS NEXT FRIEND AND GUARDIAN RN

AND

MADISON INSURANCE COMPANY LIMITED RESPONDENT

(Being an Appeal from the Ruling of the Honorable Wilson Rading (PM), delivered on 20th June 2024 Naivasha CMCC No. E658 of 2021)

JUDGMENT

1. The appellant herein filed a primary suit Naivasha CMCC No 612 of 2016 against one LWK for injuries suffered as a result of an accident involving motor vehicle registration No KBG xxx on 4th October 2015 along Nairobi-Naivasha road. LWK's motor vehicle KBG xxxL had been insured by the respondent. Judgment was entered in the appellant's favour.
2. The respondent filed a disclaimer suit Naivasha CMCC No661 of 2017 *Madison Insurance Company Ltd v LWK*. The same was dismissed by the trial court on 2nd December 2021 after which an appeal Naivasha HCCA No E077 of 2021 was lodged by Madison Insurance Company Limited (respondent). A decision was rendered by the High Court on 16th May 2023 absolving Madison Insurance Company Limited from liability.
3. The appellant had filed a declaratory suit Naivasha CMCC No.658 of 2021.
4. The respondent filed before the trial court a notice of motion dated 7th September 2023 seeking to have the declaratory suit Naivasha CMCC No 658 of 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 20th June 2024.



5. The appellant being aggrieved by the said ruling filed this appeal dated 30th June 2024 on the following grounds: -
 - i. 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. 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. 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
 - (iv) 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.
6. The appeal was canvassed by way of written submissions.

Appellant's Submissions

7. These were filed by B.G Wainaina & Co. Advocates and are dated 18th 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 Risks) Act* Cap 405.
8. 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.
9. The rest of the submissions are as those in HCCA No. E072/2024 & E084 of 2024 which fall in the same series.

Respondent's Submissions

10. These were filed by Kinyanjui Nguguna & Company and are dated 5th 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 upon 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 overrule 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 in Naivasha HCCA No. E072 of 2024 and No E034 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 decision. This was the holding in *Selle & another v 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 issues for determination to be whether the trial court erred in dismissing the Notice of Motion dated 7th September 2023.
16. It is not disputed that the Motor Vehicle Registration No.KBG xxxL was insured by the respondent and it was involved in a road accident on 4th October 2015, as a result of which a series of primary and declaratory suits were filed. The appellant's suit is in the said series. It is also not disputed that the disclaimer suit Naivasha No. E658 of 2021 & Naivasha HCCA No.E077 of 2021 fell in the said series.
17. 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 KBG xxxL. 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 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 in respect to any claim against the defendant in the unlawful use of the motor vehicle Registration No. KBG xxxL
 - c. 18. Each party shall bear their own costs.
18. From the judgment in Naivasha HCCA No. E077 of 2021 its clear that the appellant herein was the 2nd 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. His finding is at paragraph 53 of the said judgment.
19. 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. The matter having been dealt with by the High Court on appeal the lower court became functus officio. The only court that would re-evaluate the decisions is the Court of Appeal. The said issues cannot again be challenged before this court through this appeal, or before the trial court as the appellant attempted to do.
20. A reading of the 2nd declaration in HCCA No. E077 of 2021 does not put it in the category of "personam," as submitted by the appellant. It applies to all claims in respect to Insurance Policy No CTY/xxx in respect of motor vehicle registration No. KBG xxxL.

This court cannot selectively make a finding that the said insurance policy applies to some parties and not others when a decision on the same has already been made.
21. 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.



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

23. Orders accordingly.

**JUDGMENT DELIVERED VIRTUALLY DATED AND SIGNED THIS 29TH DAY OF JULY 2025
IN OPEN COURT AT NAIVASHA.**

H. I. ONG'UDI

JUDGE

