



Madison Insurance Company Limited v Maina & another (Civil Appeal E087 of 2024) [2025] KEHC 11211 (KLR) (29 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E087 OF 2024
HI ONG'UDI, J
JULY 29, 2025**

BETWEEN

MADISON INSURANCE COMPANY LIMITED APPELLANT

AND

RACHAEL MWIHAKI MAINA 1ST RESPONDENT

ROBERT NJIRU 2ND RESPONDENT

*(Being an appeal from the ruling of the Hon. Y. M. Barasa (P.M.)
delivered on 11th July 2024 in Naivasha CMCC No. E709 of 2019)*

JUDGMENT

1. The appellant filed an application dated 4th April 2024 in the Magistrate's Court Naivasha CMCC No. 709 of 2019. In the said application it sought orders for review of the judgment delivered on 27th October 2022, striking out of the suit and order for the respondent's counsel to refund the decretal amount plus interest. The application was based on the ground that there was new evidence. The application was opposed through a replying affidavit.
2. Both counsel filed written submissions which the trial court considered and found no merit in the said application which he dismissed with costs on 11th July 2024.
3. The appellant being dissatisfied with the ruling filed this appeal dated 5th August 2024 on the following grounds:-
 - i. That the Learned Trial Magistrate erred in law and in fact by finding the applicant's application dated 04/04/2024 unmerited and dismissing it with costs.



- ii. That the Learned Trial Magistrate erred in law and in fact by failing to consider the substantive prayers in the application and the evidence adduced by the appellant in support of the application.
 - iii. That the Learned Trial Magistrate erred in law and in fact by failing to appreciate the facts of the case leading to erroneous determination and dismissal of the application dated 04/04/2024.
 - iv. That the Learned Trial Magistrate erred in law and in failing to properly appreciate all the evidence before him and to make proper findings on the application by the appellant.
 - v. That the Learned Trial Magistrate erred in law and in fact by considering irrelevant factors in dismissing the appellant's application dated 04/04/2024.
 - vi. That the Learned Trial Magistrate erred in law and in fact in failing to appreciate the relevant principles of law, case law and the written submissions filed by the counsel for the defendant/appellant on record and/or misapprehending the evidence thereby dismissing the application.
 - vii. That the Learned Trial Magistrate erred in law and in fact in venturing into procedural technicalities in dismissing the appellant's application dated 04/04/2024.
4. The appeal was canvassed by way of written submissions. The appellants submissions are dated, 28th January 2025 while those of the respondent are dated 11th February 2025.
 5. I have carefully considered the record of appeal, both parties submissions and the Law, I find the issue for determination to be whether the appeal herein is merited.
 6. Upon perusal of the record of appeal I note the following:-The claim herein arose from a road traffic accident involving motor vehicle registration number KBG 326 L. The respondents filed Naivasha CMCC No. 864/2016 against the appellant. There were other suits filed against the appellant two of them being Naivasha CMCC No. 661/2017 & No. 862/2016. Two declaratory suits namely Naivasha CMCC No. 709/2019 and No. 2477/2020 were also filed. An appeal Naivasha HCCA No. E077/2021:-Madison Insurance Company Limited Appellant v Lilian Wanjiru Kiarie 1st Respondent Robert Njiru & Rachel Wanjiku (being administrators of the estate of 2nd Respondent Purity Mwiwaki Maina; Dorothy Muthoni & Joel Maina (deceased) which arose from CMCC 661/2017 was filed. The same was heard and determined and a Judgment delivered on 11th May 2023 by Rayola Francis J. The appeal was allowed with the Judgment by Hon. Barasa SRM being set aside and the following declarations issued:-
 - a. A declaration is hereby issued that the plaintiff is entitled to repudiate the policy No. CTY/701/08453/2015 for breach of the insurance contract.
 - b. A declaration is hereby issued that the Plaintiff is not liable to make any payment under Insurance Policy No. CTY/701/08453/2015 in respect to any claim against the defendant in the unlawful use of the motor vehicle Registration No. KBG 326 L.
 - c. Each party shall bear their own costs.
 7. According to the appellant the above Judgment was the new evidence which the Trial Magistrate was to consider and thereafter review his Judgment and strike out the suit. The Trial Magistrate declined to grant the orders sought and dismissed the application dated 4th April 2024.
 8. From what I have already stated above there was a series of suits arising from the accident that involved motor vehicle KBG 326 L. The Plaintiffs in those suits relied on Policy No. CTY/701/08453/2015, as the basis of their claim against the appellant. In the Judgment by Rayola Francis J in Naivasha HCCA



No. E077/2021 the said policy was repudiated and the Judgment in Naivasha CMCC No. 661 of 2017 set aside. This Judgment by High Court which is a superior court to the Magistrate's Court is binding on the said court and affected all the other cases arising from the said accident.

9. It follows that the trial Magistrate's court no longer had jurisdiction to deal. It was functus officio. What was he supposed to review or set aside? Review or set aside a Judgment when the High Court had already made a determination on it? Infact what the appellant should have done was to use the Judgment by the High Court in HCCA No. E077 OF 2021 to file a claim against whoever it paid money to, for a refund of the same.
10. I do not find any issue for this court to deal with at this point. The Learned Trial Magistrate was right in dismissing the application since he had heard it. This court too is funcus officio since the issues the appellant wishes to canvass were clearly dealt with in HCCA No. E077 of 2021.
11. The upshot is that the appeal lacks merit and is dismissed. Each party to bear it own costs.
12. Orders accordingly.

DELIVERED, VIRTUALLY, DATED AND AND SIGNED THIS 29TH DAY OF JULY 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

