



REPUBLIC OF KENYA



**Madison Insurance Company Limited v Njiru & another (Suing as the Administrators of the Estate of John Maina Gitahi - Deceased) (Civil Appeal E088 of 2024) [2025] KEHC 11210 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11210 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E088 OF 2024  
HI ONG'UDI, J  
JULY 29, 2025**

**BETWEEN**

**MADISON INSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**ROBERT NJIRU ..... 1<sup>ST</sup> RESPONDENT**

**RACHEL MWIHAKI MAINA ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF JOHN MAINA  
GITAHI - DECEASED**

*(Being an appeal from the ruling of the Hon. Y. M. Barasa (P.M.)  
delivered on 11/07/2024 in Naivasha CMCC No. E247/2020)*

**JUDGMENT**

1. The appellant who was the defendant in the Magistrate's court filed an application dated 4<sup>th</sup> April 2024 in Naivasha CMCC No. E247 of 2020. In the said application it sought orders for review of the judgment delivered on 27<sup>th</sup> October 2022, striking out or dismissal of the suit and refund of the decretal sum 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 therein and so dismissed it.
3. The appellant was dissatisfied with the ruling and filed this appeal dated 5<sup>th</sup> August 2024 on the following grounds:-
  - a. That the Learned Trial Magistrate erred in law and in fact by finding the applicant's application dated 04/04/2024 unmerited dismissing it with costs.



- b. 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.
  - c. 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.
  - d. That the Learned Trial Magistrate erred in law and in fact in failing to properly appreciate all the evidence before him and to make proper findings on the application by the appellant.
  - e. 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.
  - f. That the Learned Trial Magistrate erred in law and in fact by 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.
  - g. 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 appellant's submissions are dated 28<sup>th</sup> January 2025 while those of the Respondent are dated 11<sup>th</sup> February 2025.
  5. Upon carefully considering the record of appeal, both parties submissions and the Law, I find only one issue falling for determination. The issue is whether the appeal herein is merited.
  6. I have perused the record herein and find the history and facts of this case to have been well covered by counsel for the appellant. I have also confirmed the same from the lower court record, and immensely covered them in Naivasha HCCA No. E087 of 2024 which is a sister file to this one.
  7. An appeal Naivasha HCCA No. E077 of 2021 arising from a sister lower court file namely Naivasha CMCC No. 661 of 2017 was heard by Rayola Francis J and a Judgment delivered 11<sup>th</sup> May 2023. The parties in Naivasha HCCA No. E077/2021 were:-  
 Madison Insurance Company Limited.....Appellant  
 vs  
 Lilian Wanjiru Kiarie.....1<sup>st</sup> Respondent  
 Robert Njiru & Rachel Wanjiku (being Administrators of the Estate of Purity Mwihaki Maina; Dorothy Muthoni & Joel Maina - Deceased).....2<sup>nd</sup> Respondent
  8. The said appeal was found to be merited and was allowed with the lower court Judgment by Hon. Barasa 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.



9. In the application dated 4<sup>th</sup> April 2024 the appellant in the supporting affidavit averred that there was new evidence. The new evidence was the above Judgment by the High Court. The Learned Trial Magistrate declined to grant the orders sought and dismissed the application dated 4<sup>th</sup> April 2024 which resulted in this appeal being filed.
10. From the material before this court it is clear that 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 for their claim against the Appellant. In the Judgment by the High Court in Naivasha HCCA No. E077/2021 the said policy was repudiated and the Judgment in Naivasha CMCC No. 661 of 2017 set aside. The said Judgment by the 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.
11. It follows that the trial Magistrate no longer had jurisdiction to deal and should not even have dealt with it since it was *functus officio*. What was he expected 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. E077/2021 to file a claim against whoever it paid money to, for a refund of the same.
12. I do not find any issue for this court to deal with at this point. The Learned Trial Magistrate should have struck out the application from the on set since he had no jurisdiction to deal with it. Dismissal of the same was the best way forward since he had heard the parties.
13. The issues the appellant wishes this court to deal with were clearly dealt with in Naivasha HCCA No. E077/2021. The court is thus *functus officio*. The upshot is that the appeal lacks merit and is dismissed. Each party to bear it own costs.
14. Orders accordingly.

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

**H. I. ONG'UDI**

**JUDGE**

