



Njiru & another (Suit as the Administrators of the Estate of Dorothy Muthoni) v Madison Insurance Company Ltd (Civil Appeal E084 of 2024) [2025] KEHC 11181 (KLR) (29 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11181 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E084 OF 2024
HI ONG'UDI, J
JULY 29, 2025**

BETWEEN

ROBERT NJIRU & RACHAEL WANJIKU (SUIT AS THE ADMINISTRATORS OF THE ESTATE OF DOROTHY MUTHONI) APPELLANT

AND

MADISON INSURANCE COMPANY LTD RESPONDENT

(Being an appeal against the ruling by Hon. Yvonne I. Khatambi (PM) delivered on 18th July 2024 in Naivasha CMCC No. 354 of 2019)

JUDGMENT

1. The appellant filed Naivasha CMCC No. 354 of 2019 as a declaratory suit to satisfy the decree in Naivasha CMCC No. 866 of 2016 where the defendant was one Lilian Wanjiru Kiarie the respondent's insured in respect of motor vehicle Registration No. XXX. The said vehicle had been involved in a road accident on 4th October 2015 along Nairobi-Naivasha. Judgment was entered in the appellant's favour.
2. Before the declaratory suit was heard the High Court in Naivasha HCCA E077 of 2021 absolved the respondent from any liability in respect of Insurance Policy Number XXX for the motor vehicle registration No. XXX. The respondent thereafter filed a notice of motion dated 18th September 2023 seeking to have the declaratory suit struck out and or dismissed with costs. The trial court vide its ruling delivered on 18th July 2024 allowed the application.
3. The appellant being dissatisfied with the ruling filed this appeal dated 18th July 2024 on the following grounds:-
 - i. That the plaintiff filed this suit seeking a declaration that the defendant was/is liable to satisfy the decree in Naivasha CMCC No. 866 if 2016 under the provisions of Section 10 of the



Insurance Act Cap 405 Laws of Kenya where judgment for Kshs.1,213,889 was awarded to the plaintiff.

- ii. That Naivasha CMCC 866 of 2016 had been instituted by the Plaintiff against Lilian Wanjiru Kiarie, the defendant's Insured with respect to motor vehicle registration number XXX which was involved in an accident on 4.10.2015 Nairobi-Naivasha road.
 - iii. That the Appellate Court in Naivasha HCCA E077 on 2021 on 11th May 2023 rendered judgment in favour of the Defendant by stating that the Defendant is not liable to make any payment under insurance policy No. XXX in respect to any claim against the Defendant in the unlawful use of motor vehicle KBG 326L that occurred on or about 4.10.2015.
 - iv. That the decision of the Appellate court in Naivasha HCCA E077 of 2021 has not been stayed, set aside, varied or reviewed and therefore it is in force to date.
 - v. That the Appellate court's judgment in Naivasha HCCA E077 of 2021 is binding on this Honourable Court.
 - vi. That the Appellate court's judgment in Naivasha HCCA E077 of 2021 automatically renders the plaintiff's instant suit to be without merit and unsustainable.
 - vii. That this application has been made without unreasonable delay.
 - viii. That it is in the interest of Justice and equity that this application be allowed as prayed.
4. The appeal was canvassed by way of written submissions.

Appellant's Submissions

5. These are dated 18th March 2024 having been filed by B.G. Wainaina & Co. Advocates. Counsel gave brief facts of the case. He submitted that the declaratory suit was filed under the provisions of Section 10(2) of *Insurance (Motor Vehicle Third Party Risks) Act* Cap 405 which creates a statutory obligation on the respondent to satisfy Judgments obtained by third parties, against their insured notwithstanding that the insurer may be entitled to a void or cancel or may have avoided or cancelled the policy. Referring to Section 10(4) of the Act Counsel submitted that the respondent had failed to comply with all its terms and conditions. Further that the trial court failed to consider that the Judgment in Naivasha HCCA No. E077 of 2021 was a judgment in *personam* as it emanated from a suit brought by the respondent against its insured for breach of contract and so could not bind third parties to the suit.
6. Counsel referred to Conflict of Laws (7th Edition 1974) Page 98 by R.H. Graveson and the cases of *Jubilee Insurance Co. Ltd v Matfarm Ltd* (Civil Suit No 14 of 2017) & Kisii HCCA No. 18 of 2018 *Geminia Insurance Company Ltd v EN (Minor suing through his father & best friend AAO)* and argued that the provisions of Section 10(4) of the Act must be complied with as they are mandatory provisions. Further that the disclaimer suit Naivasha CMCC No. 661 of 2017 was filed on 15th September 2017 (11 months) from the date of filing the primary suit on 5th July 2016, instead of three (3) months as per the law. He added that the appellant was not served with notice of the commencement of the disclaimer suit.
7. Counsel additionally submitted that the trial court failed to consider and apply the relevant decisions by the High Court submitted to it. He argued that the orders obtained by the respondent were only to apply in respect of any claim against the defendant in the unlawful use of motor vehicle registration No. KBG 326L. That whether the appellant fell under the said category was a triable issue at the full trial.



8. He lastly submitted that the trial court failed to address the principles enumerated under Order 2 Rule 15 of the *Civil Procedure Rules*. He urged the court to allow the appeal.

Respondent's Submissions.

9. These were filed by Kinyanjui Njuguna & Co. Advocates dated 5th May 2025. Counsel gave a brief background to this matter. He submitted on two issues. On whether the Judgment that was entered in Naivasha HCCA E077 of 2021 is binding upon the parties thereto and upon the trial court, counsel submitted that the parties herein are aware of the Judgment delivered in the said case (annexure MM-3). He referred to the orders of the court in respect to the policy No.XXX. That it was in respect of the said orders that the application dated 18th September 2023 was filed by them. To him, proceeding with the suit would lead to unnecessary conflicts, prejudice and embarrassment etc. He pointed out that the appellant had not appealed against the Judgment of the High Court (HCCA No. E077 of 2021).
10. On whether the Judgment in Naivasha E077 of 2021 can be overruled by the lower court or this honourable court, counsel answered in the negative. He argued that the only recourse was to the Court of Appeal. Counsel further submitted that the trial court rightly struck out the suit as there was already a decision of a superior court which had pronounced itself on the same issues before it.
11. Counsel referred to the case of *Jasber Singh Rai & 3 Others V Tarlocham Singh Rai Estate & 4 Others* 2013 eKLR where the Supreme Court of Kenya held:

“It is perhaps too late in the day to pose this question which has been repeatedly addressed by scholars and jurists in the past, and the answer to which is now clear enough. The following passage in Benjamin Cardozo’s *The Nature of the Judicial Process* (New Haven: Yale University Press,1921) [p.149] illuminates today’s reality:

“In these days, there is a good deal of discussion whether the rule of adherence to precedent ought to be abandoned altogether. I would not go so far myself. I think adherence to precedent should be the rule and not the exception. I have already had occasion to dwell upon some of the considerations that sustain it. To these I may add that the labour of judges would be increased almost to breaking point if every past decision could be reopened in every case, and one could not lay one’s own course of bricks on the secure foundation of the courses laid by others who had gone before him.”

This is a clear perception of the doctrine of precedent in the functioning of the superior Courts in the common law tradition. The message is simply this. As a matter of consistent practice, the decisions of the higher Courts are to be maintained as precedent; and the foundation laid by such Courts is in principle, to be sustained.”

12. On the matter before this court being res judicata counsel referred to the cases of *David Ngugi Mbutia & Another v Fina Bank Ltd* (2007) eKLR and *Bellevue Development Company Ltd V Francis Gikonyo & 7 Others* [2018] eKLR and argued that it would be erroneous for this court to overrule a decision that had been previously made by the same court. He urged the court to dismiss the appeal.

Analysis and Determination

13. This is a first appeal and 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 & 3 Others* [1968] EA 123.



14. Upon careful consideration of 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 18th September 2023. It is not disputed that the accident involving motor vehicle XXX had casualties and injured persons leading to the filing of a series of primary suits before Naivasha Chief Magistrate’s Court. Upon delivery of judgments in the said primary suits declaratory suits were also filed to enforce the said decrees against Madison Insurance Company Limited the respondent herein.
15. The respondent filed a disclaimer suit Naivasha CMCC No. 661 of 2017 – [*Madison Insurance Company Kenya Ltd v Lilian Wanjiru Kiarie & Another*](#). The same was heard and was dismissed by Hon. Y. M. Barasa (SRM) on 2nd December, 2021.

The respondent appealed against the said Judgment vide Naivasha HCCA No. E077 of 2021 which was heard and Judgment delivered on 16th May 2023 by Rayola Francis J. Vide the said Judgment the appeal was allowed and the judgment by Hon. Barasa set aside with the following prayers being granted.

- 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 cover.
 - b. A declaration is hereby issued that the Plaintiff is not liable to make any payment under Insurance Policy No. XXX in respect to any claim against the Defendant in the unlawful use of the motor vehicle Registration No. XXX.
 - c. Each party shall bear the own costs.
16. Upon perusal of the judgment I note that the 2nd respondent in that appeal is the appellant herein, and actively participated in the said appeal. The issues on Section 10(4) of the [*Insurance \(Motor Vehicles Third Party Risks\) Act*](#) being raised before this court were raised in E077 of 2021 and before the trial court in Naivasha CMCC No. 354 of 2019.
17. In the Judgment by Rayola Francis J at paragraphs 45-52 he addressed the issues raised in respect of Section 5b and 10(4) of the [*Insurance \(Motor Vehicle Third Party Risks\) Act*](#) Cap 405.

At Paragraph 53 the Hon. Judge stated thus:

“In the suit filed what the Appellant sought to decline was the claims arising from the policy and not to repudiate the policy itself, a position they were perfectly entitled to take and could not be faulted. The trial magistrate thus erred to find that the policy was being repudiated under Section 10(4) of the [*Insurance \(Motor\) Vehicle Third Party Risks\) Act*](#).”

18. It is therefore clear that the issue of Section 10(4) of the [*Act*](#) being brought up before this court was decided on by the High Court in Naivasha HCCA No. E077 of 2021 as it relates to the same Insurance Policy No. XXX in respect of motor vehicle KBG 326L.

The issue then is, can this court delve into the same issue for determination since this court is of similar jurisdiction with Rayola Francis J? The answer is NO. See [*David Ngugi Mbuttha & Another \(supra\)*](#) and [*Bellevue Development Company Ltd \(supra\)*](#).

19. From the appellant’s submissions the trial court is blamed for striking out the appellant’s case instead of hearing it. The hearing of the case was for the purpose of making a finding that the respondent was to satisfy the decree in the primary suit yet the High Court which is a Superior court to the trial court had already made a clear determination on the same. The trial Magistrate would not therefore delve into those issues again.



20. I have taken note of the decisions in *Jubilee Insurance Co. Ltd (Supra) and Geminia Insurance Company Ltd (supra)* which talk of compliance with Section 10 of the Act, and I agree with them. The reason they are not applicable in this matter is that Rayola Francis J already dealt with the said issue in Naivasha HCCA No. E077 of 2021.
21. Counsel for the appellant cannot therefore argue that the judgment was personam and not in rem. This is because the declarations issued by the Hon. Judge are very clear. The appellant through the 2nd declaration is not to make any payments in all claims in respect of the Policy No. XXX in respect of motor vehicle registration No. KBG 326L.

With all due respect the only way out for the Appellant was to challenge the High Court decision at the Court of Appeal which is yet to be done.
22. I do not find any fault in the finding by the trial court in its ruling delivered on 18th July, 2024. The same is upheld.
23. The upshot is that the appeal lacks merit and is hereby dismissed. Each party to bear its own costs.
24. Orders accordingly.

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

H. I. ONG'UDI

JUDGE

