



**Hari v Invesco Assurance Company Limited & another; Okinyi (Interested Party)
(Civil Case E003 of 2020) [2025] KEHC 11823 (KLR) (8 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL CASE E003 OF 2020
MA ODERO, J
AUGUST 8, 2025**

BETWEEN

NOOR AHMED HARI PLAINTIFF

AND

INVESCO ASSURANCE COMPANY LIMITED 1ST DEFENDANT

INSURANCE REGULATORY AUTHORITY 2ND DEFENDANT

AND

KEVIN DUKE OMBAGI OKINYI INTERESTED PARTY

RULING

1. Before this Court for determination is the Notice of Preliminary Objection dated 7th November 2023 filed by the 2nd Defendants Insurance Regulatory Authority.
2. The Plaintiff Noor Ahmed Hari opposed the Preliminary Objection. The matter was canvassed by way of written submissions. The 2nd Defendant filed the written submissions dated 26th September 2024 whilst the Plaintiffs relied upon their written submissions dated 21st August 2024.

Background

3. This suit arises from a Road Traffic Accident which occurred along the Karatina-Mukurweini Road on 12th October 2012
4. The plaintiff was the owner of one of the vehicles involved in the accident to with Isuzu Bus Registration KBY xxxH. He stated that his vehicle had been insured by Invesco Assurance Company Ltd [the 1st Defendant]. The plaintiff reported the accident to his insurer to handle.



5. Following the said accident one Kevin Duke Okinyi [the Interested Party filed a Civil Suit against the Plaintiff being Nyeri *CMCC No. 454 of 2016*. The plaintiff duly informed the insurer of this development.
6. According to the Plaintiff the Advocate appointed by the Insurer to act for him failed to enter appearance and as a result judgment was entered against the plaintiff. The Interested Party then proceeded to extract a decree for the amount of Kshs. 21,155,082.24.
7. The plaintiff contends that the failure by the 1st Defendant to settle the decree in the Civil Suit *CMCC No. 454 of 2016* amounted to a breach of their contractual obligation under the Insurance Policy.
8. The Plaintiff on 16th October 2020 filed in the High Court Civil Suit No. 003 of 2020, against the Defendants seeking the following orders;-
 - “[a] An order directing the 2nd Defendant to cancel the Insurance licence issued to the 1st Defendant by the 2nd Defendant to render good Insurance to the Public for rendering unreasonable and defective Insurance business.
 - [b] An order directing the 2nd Defendant to compensate the Plaintiff and or Third Party to the extent of costs, judgment sum and interest in Nyeri *CMCC 454 of 2016* for the loss occasioned by licensing a paper insurer who has not met asset ratio and capital adequacy requirement.
 - [c] The Interested party be enjoined as a plaintiff or Defendant herein as the case may be.
 - [d] Costs and interest.”
9. In response to this suit the 2nd Respondent Insurance Regulatory Authority filed the Notice of Preliminary Objection dated 7th November 2023.

Analysis and Determination

10. I have carefully considered the Preliminary Objection as well as the written submissions filed by both parties.
11. The definition of what constitutes a Preliminary Objection was given in the case of *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* [1969] EA in which the court stated as follows.

“ A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a Preliminary point may dispose the suit. Examples are an objection to the jurisdiction of the court, or a place of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration..... A Preliminary Objection is in the nature of what is used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all facts pleaded by the opposite side are correct. It cannot be raised if any fact is to be ascertained or if what is sought is exercise of judicial discretion.”



12. In *Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 Others* [2015] eKLR, the Supreme Court of Kenya stated that
- “ a Preliminary Objection may only be raised on a “pure question of law”
13. To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed as they are prima facie presented in the pleadings on record.
14. Therefore in order for a Preliminary Objection to succeed, the following tests must be satisfied;-
- [i] The Preliminary Objection should raise a pure point of law.
 - [ii] The Preliminary Objection must be argued on the assumption that all the facts pleaded are correct.
 - [iii] The Preliminary Objection cannot be raised if any fact is to be ascertained or if what is being sought is the exercise of judicial discretion.
 - [iv] A valid Preliminary Objection ought if successful dispose of the entire suit.
15. Therefore a genuine and proper Preliminary Objection can only raise pure points of law and must not itself derive its foundation on facts or information which stands to be tested by normal rules of evidence.
16. The 2nd Defendant submitted that the suit filed by the Plaintiff in the Chief Magistrates Court offended the doctrine of Privity of Contract as the 2nd Defendant was neither a party to the contract between the Plaintiff and the 1st Defendant nor was it a party to the suit.
17. The 2nd Defendant further submitted that the suit filed in the magistrates court violated the doctrine of exhaustion as provided for by Section 204 A of the *Insurance Act* Cap 405, Laws of Kenya which mandates that parties first explore alternative dispute resolution.
18. That Judicial intervention was in the circumstances premature. That the suit filed by the Plaintiff ought to have been filed as an Appeal at the Insurance Appeals Tribunal.
19. The 2nd Defendant further asserted that the plaintiff’s suit was statute barred by virtue of section 168 of the *Insurance Act* which precluded the Institution of a suit without the leave of the Court. The 2nd Defendants position was that the court had no jurisdiction to entertain the suit.
20. In opposing the Preliminary Objection the Plaintiff stated that he made attempts to engage the 2nd Defendant in an attempt to resolve the matter and thereby discharged the obligation to seek ADR under Section 204 A of the Act. That due to the 2nd Defendants inaction that the plaintiff was left with no option but to file a suit in court. The Plaintiff submitted that the court had the requisite jurisdiction to hear and determine the matter.
21. It is trite law that a Preliminary Objection must raise only pure points of law where an issue requires argument, where facts are disputed or where the court is being called upon to exercise Judicial discretion then the preliminary objection would fail.
22. The 2nd Defendant submitted that the suit filed by the plaintiff offended the doctrine of exhaustion. They cited Section 204 A of the *Insurance Act* which reads as follows:-

“ 204 Power of the Authority to settle Disputes.

A



1. Any Insurance Customer may lodge a written complaint with the Commissioner against a regulated entity in relation to the provision of its services.
 2. Subject to subsection [3], where the Commissioner determines a dispute such determination should be binding on the parties to the dispute.
 3. A party that is dissatisfied with the determination of the dispute by the Commissioner may within thirty days appeal the determination to the Tribunal.”
23. It is important to note that Section 204A is not couched in mandatory terms. The use of the word ‘may’ means that the decision to pursue ADR is elective. Thus it cannot be said that a party is under an obligation to pursue ADR before approaching the courts for Judicial intervention. Therefore the claim that the courts have no jurisdiction over this matter falls by the wayside given the elective nature of Section 204A.
24. The 2nd Defendant seeks to rely on the doctrine of exhaustion but in the same breath cites privity of contract submitting that it was the regulating authority over the 1st Defendant. The doctrine of exhaustion would only apply in situations where a contract is shown to exist between the parties. If as the 2nd defendant asserts no contract existed between itself and the plaintiff then why cite the doctrine of exhaustion?
25. The question of whether or not the plaintiff had sought ADR regarding his dispute with the Insurer and the question as to whether a contract existed between the plaintiff and the 2nd Defendant are not pure points of law. These are issues which are disputed [as the plaintiff insists that he did reach out to the Defendants seeking an amicable resolution] and which would require evidence to determine.
26. Lastly the 2nd Defendant invoked Section 168 of the Insurance Act which provides as follows:-
- “ 168 Protection for officials acts
1. No legal proceedings shall be instituted in any court against the Cabinet Secretary or the Board or any person authorized by the Cabinet Secretary or the Board for anything done or intended to be done in good faith under this Act.
 2. No compensation shall be payable to any person for any loss, damage or harm directly or indirectly caused by anything done or intended to be done in good faith by the Cabinet Secretary or the Board or any person authorized by the Cabinet Secretary or the Board under this Act.”
27. The 2nd Defendant thus states that this provision gives it some sort of immunity. In my view this is a technicality and does not go to the substratum of the suit. In dismissing a preliminary objection on similar ground in Musyoka v Xplic Insurance Company limited [Under Statutory Management] & another; Kavutha & 9 others [Interested Parties] Hon. Justice Dulu in addressing Section 168 of the Insurance Act stated as follows:-

“ This objection hangs on technicalities, not the substance of the suit. Such technicalities are frowned upon by the provisions of Article 159[2] [d] of the *Constitution*. In my view, an



award of costs to the 2nd defendant can address this issue, after the suit is heard. This issue can however still be raised for determination of the court by the 2nd defendant, during its defence, as it is a mixture of legal and factual considerations. In any event my reading of Section 168 of the Insurance Act, indicates that the requirement for leave of court relates to the Cabinet Secretary or Tribunal, and not the statutory body herein, which is Insurance Regulatory Authority [2nd defendant] the regulator of the insurance industry.” [Own emphasis]

28. Based on the foregoing I find that this Preliminary objection does not meet the test in the *Mukhisa Biscuit Case*. The same is dismissed in its entirety. Costs will be met by the 2nd Defendant.

DATED IN NYERI THIS 8TH DAY OF AUGUST 2025

MAUREEN A. ODERO

JUDGE

