



**UAP Insurance Company Limited v Wairimu (Civil Appeal  
E100 of 2023) [2025] KEHC 11833 (KLR) (6 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11833 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E100 OF 2023  
HI ONG'UDI, J  
AUGUST 6, 2025**

**BETWEEN**

**UAP INSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**LILIAN NYAMBURA WAIRIMU ..... RESPONDENT**

*(Being an appeal from the ruling by Hon. J. Ndeng'eri on  
24th October, 2023 in Naivasha CMCC No. 331/2019)*

**JUDGMENT**

1. The respondent sued the appellant for purposes of payment of the decretal sum in Naivasha CMCC No. 429 of 2013 where judgment had been entered against one John Wainaina Mburu who was an insured of the appellant. The appellant filed a defence denying the respondent's claims.
2. The respondent vide a Notice of Motion dated 1<sup>st</sup> February 2021 sought orders to strike out the appellant's defence and judgment being entered on her behalf. The appellant filed a response opposing the application. The application was heard by way of written submissions. The trial court delivered a ruling allowing the application on 24<sup>th</sup> October 2023.
3. The appellant being dissatisfied with the said ruling filed this appeal dated 14<sup>th</sup> November 2023 on the following grounds:-
  1. That the learned trial magistrate erred in law and fact by failing to appreciate overwhelming evidence adduced by the appellant.
  2. That the learned trial magistrate erred in law and fact by failing to consider the appellant's submissions and legal authorities relied upon in support thereof.



3. That the learned trial magistrate erred in law and in fact in disregarding the evidence of the appellant on record hence resulting in a wrong decision.
  4. That the learned trial magistrate erred in law and fact in condemning the appellant to pay costs and interests to the respondent at court rates in total disregard of the fact that the appellant had already paid the same in the primary suit serialized as Naivasha CMCC NO. 429 OF 2013 Lilian Nyambura Wairimu Vs John Wainaina Mburu.
  5. That the learned trial magistrate erred in law and fact by failing to consider the fact that on the 8<sup>th</sup> October, 2021 the appellant disbursed a sum of Kshs. 2,129,521 to the respondent as tabulated in the warrants of attachment dated 30<sup>th</sup> November, 2021 which was inclusive of the decretal amount of Kshs. 1,574,874/=, taxed costs of Kshs. 188,231/=, interests on the decretal amount of Kshs. 365,416/= and further costs of Kshs. 1,000/=.
  6. That the trial magistrate erred in law and fact in failing to appreciate the fact in addition to the applicant paying Kshs. 2,129,521/= to the respondent on the 8<sup>th</sup> of October, 2021 it also paid further costs of Kshs. 160,000/= on the 18<sup>th</sup> of October, 2021.
  7. That the trial magistrate erred in law and fact in failing to appreciate the fact all payments in respect to this matter had already been finalized and ordering the appellant to pay costs and interest to the respondent would amount to double compensation.
4. A brief of the facts is that the respondent filed the primary suit Naivasha CMCC No. 429 of 2013 - Lilian Nyambura v John Wainaina Mburu seeking damages for injuries suffered as a result of an accident involving motor vehicle KBT 923 T which was insured by the appellant. Judgment was entered in her favour.
  5. Thus the suit Naivasha CMCC No. 331 of 2019 filed by the respondent was a declaratory suit. In it the respondent sought for Kshs. 1,907,419/60 as set out at paragraph 9 of the Complaint, plus costs and interest.
  6. The Notice of Motion dated 1<sup>st</sup> February 2021 seeking the striking out of the appellant's defence was heard by way of written submissions with each party defending its position. Finally the application was allowed on 24<sup>th</sup> October 2023.
  7. This appeal was canvassed by written submissions. The appellant's submissions were filed by Mirugi Kariuki & Co. Advocates and are dated 2<sup>nd</sup> September 2024. Counsel's argument is that the appellant already paid the decretal sum in the primary suit, Naivasha CMCC No. 429 of 2013. That the amount paid was Kshs. 2,129,521/= as per the warrants of attachment dated 20<sup>th</sup> January 2021 (documents at page 34 of the Record of Appeal). Further that the respondent on 15<sup>th</sup> March 2022 confirmed payment of the sum way back in the year 2021 (page 65 – 66 of the Record of Appeal).
  8. Counsel thus argued that the declaratory had been overtaken by events and was therefore moot. He referred to the cases of;-
    - i. Julius Mutiga & 16 others v CS Ministry of Agriculture & 3 Others [2020] eKLR;
    - ii. Ernie Campbell & Co Ltd. v National Housing Corporation [2019] eKLR;
    - iii. Tanzania Roads Agency v Kondan Singh Construction Ltd. & Another [2013] eKLR; and



- iv. Environment Action Network Ltd. v Joseph Enyau Civil Application No. 98 of 2005, where the Uganda Court of Appeal stated;

“The reliefs which the respondent is seeking on appeal cannot be granted because there is no live dispute between the parties. Courts do not decide cases for academic purposes because court orders must have principal effect and must be capable of enforcement. The determination of Miscellaneous No. 39/01 by the High court drove the Respondent into a limbo of legal mootness.”

In our view, to grant the appellants the orders sought will be futile and tantamount to an academic exercise.” (Emphasis mine)

9. Additionally counsel urged the court to allow the appeal with costs.
10. The respondent’s submissions are dated 13<sup>th</sup> September 2024 having been filed by Gekong’a & Co. Advocates. Counsel’s submission is that the appellant took too long to settle the claim hence the filing of the declaratory suit Naivasha CMCC No. 331 of 2019. That by 15<sup>th</sup> July 2019, the decretal sum had accrued to Kshs. 1,907,419/60. According to him the payment of Kshs. 2,129,521/= did not settle the claim, as there is an outstanding payment of Kshs. 749,275/68 plus costs of the declaratory suit.
11. Basically this is what the respondent wants paid. He urged the court to dismiss the appeal with costs. Further that the respondent be allowed to execute for the balance.
12. This being a first appeal, the court has duty to re-evaluate and assess the evidence before the trial court and arrive at its own independent conclusion. See;
- i. Selle & Another v Associated Motor Boat Company Ltd. & Others [1968] E.A. 123;
- ii. Peters v Sunday Post Limited [1958] EA 424.
13. I have considered the record of appeal, grounds of appeal, the submissions by both parties, the cited decisions and the Law. The main issue for determination is whether the appellant has satisfied the decree in Naivasha CMCC No. 429 of 2013. And if so, when was it satisfied?
14. The judgment in Naivasha CMCC No. 429 of 2013 was delivered on 25<sup>th</sup> January 2019 in the sum of Kshs. 1,574,874 plus costs and interest. The declaratory suit Naivasha CMCC No. 331 of 2019 was filed on 23<sup>rd</sup> May 2019. The remittance advice at page 34 of the Record of Appeal shows payments as follows:
- 8<sup>th</sup> October 2021 - Kshs. 2,129,521/=
- 18<sup>th</sup> October 2021 - Kshs. 160,000/=
- Total paid - Kshs. 2,289,521/=
15. This is over and above the sum of Kshs. 1,907,419/60 sought in the declaratory suit, by Kshs. 382,102/= . It is not lost to the court’s mind that the respondent had besides the principal sum sought costs and interest.



16. The record further shows that on 15<sup>th</sup> March 2022 Kiberenge for plaintiff/respondent in the absence of counsel for the defendant (appellant) told the court as follows:-

“The defendant have paid the principal sum. Pray mention (sic) to confirm costs and interest.”

Thereafter the matter was mentioned in vain to confirm settlement.

17. Further on 24<sup>th</sup> January 2023 the matter was mentioned in the presence of counsel for both parties. This is what the record shows:-

Ms Kiberenge for plaintiff/respondent

“We seek to take directions on the application dated 1<sup>st</sup> February 2021. The same had submissions from the respondents. I seek 14 days to file our submissions.”

Ms Mwangi

“The decretal sum has already been settled and the pending issue is on interest. The same was settled in the year 2021 & counsel seeks interest upto date.”

18. The Notice of Motion dated 1<sup>st</sup> February 2021 sought to have the appellant’s defence dated 15<sup>th</sup> July 2019 struck out and judgment entered for the respondent. A perusal of the ruling by the trial court dated 24<sup>th</sup> October 2023 shows the application was allowed. This means judgment was entered for Kshs. 1,574,874/= plus costs and interest. She further ordered that costs and interest would be at court rates.

19. This ruling did not pay attention to what the parties had been telling the court about the payment of the decretal sum, having been made. From the document at page 34 of the Record of Appeal which has not been disputed by the respondent, the appellant already received Kshs. 2,289,521/= which was paid in October 2021.

20. I therefore find that the trial magistrate erred by not specifically stating what she was allowing as judgment against the respondent.

21. In his submissions the respondent states that the appellant owes the respondent Kshs. 749,275/68. It has not been explained how this figure was arrived at especially considering that in October 2021 the respondent was overpaid by Kshs. 382,102/= which ought to have covered the costs and interest from the time of filing of the declaratory suit to the date of payment being 8<sup>th</sup> October 2021 and 18<sup>th</sup> October 2021. After such payment the declaratory suit ought to have been withdrawn or marked as settled.

22. Since counsel for both parties decided to continue appearing in court for the application dated 1<sup>st</sup> February 2021 I will exercise discretion and assess costs and interest at Kshs. 100,000/=.

23. I therefore allow the appeal and set aside the ruling of 24<sup>th</sup> October 2024. The declaratory suit is marked as settled upon payment of Kshs. 100,000/= by the appellant to the respondent within 45 days from today’s date. No order as to costs.

24. Orders accordingly.

**DELIVERED, DATED AND SIGNED THIS 6<sup>TH</sup> DAY OF AUGUST, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG’UDI**



**JUDGE**

