



Mwita v Trident Insurance Company Limited; Koech (Interested Party) (Civil Suit E020 of 2025) [2025] KEHC 12376 (KLR) (Civ) (5 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL SUIT E020 OF 2025**

SN MUTUKU, J

AUGUST 5, 2025

BETWEEN

DANIEL MWITA MWITA PLAINTIFF

AND

TRIDENT INSURANCE COMPANY LIMITED DEFENDANT

AND

NICHOLAS KIPLAGAT KOECH INTERESTED PARTY

RULING

1. Nicholas Kiplagat Koech (hereafter the Interested Party) instituted Milimani SCCC No. E4437 of 2024 (*Nicholas Kiplagat Koech v Daniel Mwita Mwita*) (the primary suit) seeking various reliefs against Daniel Mwita Mwita (hereafter the Plaintiff) arising out of a road traffic accident and involving the motor vehicle registration number KCW 987L (the subject motor vehicle), alleged to belong to the Plaintiff at all material times. The said vehicle is said to have been insured by Trident Insurance Company Limited (hereafter the Defendant) vide Policy No. 020/070/1/787396/2023 (the Policy) running from 4th December 2023 to 1st October 2024.
2. Court records show that a default judgment was entered in favour of the Interested Party and against the Plaintiff on 8th October 2024. Consequently, a decree was issued. Consequently, the Plaintiff instituted the present declaratory suit primarily seeking an order that the Defendant be held liable to satisfy the decree in the primary suit by dint of the Insurance Policy.
3. The Plaintiff filed a Notice of Motion dated 3rd February 2025 seeking various orders, including an order for a stay of execution of the decree emanating from the primary suit and an order directing the Defendant to deposit the decretal sum of Kshs. 603,189.72 in court, pending hearing and



determination of the declaratory suit. Upon consideration thereof, this court dismissed the aforesaid Motion for want of merit and awarded costs to the Interested Party.

4. Court record shows that the Plaintiff separately filed a Request for Judgment dated 27th February 2025 seeking entry of a default judgment against the Defendant as sought in the Plaintiff, owing to its failure to enter appearance and file a defence within the stipulated timelines. The Plaintiff is further seeking to have the matter slated for formal proof hearing.
5. The Request for Judgment is the subject of this ruling.

Determination

6. I have considered the Request for Judgment on record. From a perusal of the record, it is clear to me that the Plaintiff by way of the Plaintiff dated 3rd February 2025 filed in the present declaratory suit, seeks the following reliefs as against the Defendant herein:
 - a. Conservatory order staying execution of decree and warrants of attachments issued against the Plaintiff in Milimani Small Claims Court (SCCC/E4437/2024 -*Nicholas Kiplagat Koech v Daniel Mwita Mwita*).
 - b. A Declaration that it is the Defendant who is statutorily obligated to settle the decretal sum and any other costs arising from Judgment and Decree arising from Milimani Small Claims Court (SCCC/E4437/2024 -*Nicholas Kiplagat Koech v Daniel Mwita Mwita*).
 - c) The Plaintiff to be awarded punitive damages.
 - d) Costs of this suit.
7. It is also apparent from the record that the Defendant never entered appearance or filed any pleadings or documents in the present matter, despite there being evidence of service by way of an Affidavit of Service sworn by court process server Joseph Sunguti on 4th March 2025. There is no dispute that the Plaintiff had taken out the Policy with the Defendant, as pertains to the subject motor vehicle which was involved in the accident giving rise to the primary suit.
8. I have noted that from the Plaintiff's pleadings, relief a) of the Plaintiff was addressed by this court during the determination of the Notice of Motion dated 3rd February 2025, which application sought various orders, including an order for a stay of execution of the decree emanating from the primary suit and therefore cannot issue. The said prayer was declined by this court vide the ruling delivered on 30th April 2025.
9. As concerns relief b) above, the same seeks satisfaction of the decretal sum of Kshs. 603,189.72 by the Defendant, emanating from the primary suit. Relief c) seeks punitive damages which would require the assessment of the court by way of a formal proof hearing. The applicable provisions would therefore be Order 10, Rule 4(2) as read with Order 10, Rules 6 and 10 of the [Civil Procedure Rules](#) (CPR). Order 10, Rule 4(2) [CPR](#) provides thus:

“Where the plaintiff makes a liquidated demand together with some other claim, and the defendant fails, or all the defendants fail, to appear as aforesaid, the Court shall, on request in Form No. 13 of Appendix A, enter judgment for the liquidated demand and interest thereon as provided by sub-rule (1) but the award of costs shall await judgment upon such other claim.”



10. Pursuant to Order 10, Rule 6 CPR, where a claim for pecuniary damages is made and a defendant fails to enter appearance, the court shall upon the request of a plaintiff, enter an interlocutory judgment and enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment of the damages, by the court. Order 10, Rule 10 stipulates that the above Rules shall similarly apply in instances where a defendant has failed to file a statement of defence.
11. Upon a consideration of the above-cited provisions, the foregoing circumstances and in the absence of any contrary material or averments, I am persuaded to enter default/interlocutory judgment for the Plaintiff in the following terms:
 - a. Default/interlocutory judgment be and is hereby entered in favour of the Plaintiff and against the Defendant.
 - b. Pursuant to a) above, the Defendant be and is hereby deemed liable to settle the decretal sum of Kshs. 603,189.72 arising from Milimani Small Claims Court (SCCC/E4437/2024-*Nicholas Kiplagat Koech v Daniel Mwita Mwita*).
 - c. The Plaintiff shall set the matter down for formal proof for purposes of assessment of the punitive damages sought.
 - d. An award of costs shall abide the final outcome of the suit.
12. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 5TH AUGUST 2025.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Ateko for the Plaintiff

N/A for the Defendant

N/A for the 3rd Party

