



**Chan v Xplico Insurance Co Ltd (Civil Suit 4242 of 2019)**  
**[2023] KEMC 141 (KLR) (12 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 141 (KLR)

**REPUBLIC OF KENYA**  
**IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS**  
**CIVIL SUIT 4242 OF 2019**  
**JP ADUKE, SRM**  
**MAY 12, 2023**

**BETWEEN**  
**SAMSON OCHIENG CHAN ..... PLAINTIFF**  
**AND**  
**XPLICO INSURANCE CO LTD ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants following a road traffic accident on June 29, 2014 in Nairobi. In the plaint on file, the plaintiff avers that a road traffic accident happened, the plaintiff moved to court and obtained a judgment against the insured. The plaintiff avers that the defendant herein has since declined to satisfy the judgment and decree of this court. This is a declaratory suit.
2. Return of Service on Record shows that the defendants were served with the suit papers. The defendant failed to enter appearance within the stipulated period. As a result, judgment in default of appearance was entered against the Defendant. At the hearing thereof, the plaintiff called one witness who testified on oath. The plaintiff filed written submissions. The issues for determination before this court are liability and quantum.

**1. Liability**

With respect to liability, I have seen a copy of the judgment of Hon M.W. Murage -RM dated May 19, 2017. I have also seen a copy of the statutory notice issued to the Defendant herein. I have considered the above against the provisions of section 10 (1) of the *Insurance (Motor Vehicle Third Party Risks) Act* and find that the Defendant herein is liable to pay the Plaintiff the benefits of the aforementioned judgement. This in my view settles the issue of liability.

**2. Quantum**

With respect to quantum, the plaintiff prays for the costs of this suit, and interest at court rates until payment in full. The judgement before me awarded a sum of Kes 709,500/- in principal.



Having considered the submissions filed by the plaintiff and all the authorities annexed thereto, I declare as follows:

3. I enter judgement in favour of the plaintiff as follows:
  1. The Defendant is liable and is hereby ordered to pay the Plaintiff herein the sums outlined in the judgement dated May 19, 2017 issued by Hon Murage -RM.
  2. Costs of this suit.
  3. Interest on 2 above at court rates.
  4. I note that the Plaintiff has prayed for interest on the amount outstanding in (1) above. It is my considered view that the sums outlined in the judgement dated May 19, 2017 are treated as special damages in this suit. The plaintiff was awarded interest in that judgment. Awarding interest in this suit on the award will have a compounding effect on the interest and amount to unjust enrichment in my view. I decline to award interest on the outstanding award for the reasons outlined in the text of the decision.
4. The Plaintiff shall have costs in this suit and interests as outlined above from the date of this judgement until payment in full.

**JUDGEMENT SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> MAY 2023 IN THE ABSENCE/PRESENCE OF THE PARTIES AT .....(INSERT TIME).**

**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

In the presence of :

1. Court Assistant: Benjamin Kombe.
2. Counsel for the Plaintiff- .....N/A..... (Name, Signature, Date)
3. For the Defence: .....N/A.....(Name, Signature, Date)

