



**UAP Insurance Company Limited v Kilonzo (Civil Suit 169 of 2019)
[2023] KEHC 3854 (KLR) (Civ) (2 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 3854 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL SUIT 169 OF 2019
JN MULWA, J
MAY 2, 2023

BETWEEN
UAP INSURANCE COMPANY LIMITED PLAINTIFF
AND
CHARLES SILA KILONZO DEFENDANT

JUDGMENT

1. This suit arises from an Insurance Contract between the Plaintiff and the Defendant. The brief facts of the case from the pleadings on record and the documents adduced in evidence are that the Plaintiff insured the Defendant's motor vehicle registration number KCJ 583K under insurance policy number 441/080/1/020341/2016. Sometimes in July 2018, the Plaintiff received summons to enter appearance in Kithimani PMMC No. 304 of 2017 - Mutisya Mbasa v Mutua John Ngumi & 2 Others on behalf of the Defendant herein. The said suit arose from a road traffic accident that had allegedly occurred on 12th May 2017 involving the Defendant's insured motor vehicle along Matuu - Thika Road.
2. In the Plaintiff dated 9th August 2019, the Plaintiff seeks the following declaratory orders against the Defendant:
 - a. A declaration that the Plaintiff was at all times entitled to avoid the policy 441/080/1/020341/2016 as the Defendant has failed to fulfill the policy requirements.
 - b. A Declaration that the Plaintiff is entitled repudiate under the provisions of CAP 405, any claims arising from the road traffic accident of 12.7.2017 and is not bound to compensate the plaintiff in Kithimani CMMC No. 304 of 2017 - Mutisya Mbasa v Mutua John Ngumi & 2 Others.



- c. Costs of the suit.
3. The Plaintiff contends that upon receipt of the summons to enter appearance in the lower court suit, it repeatedly requested the Defendant to avail the claim documents to no avail. It averred that by failing to report the accident and/or avail the requisite documents, the Defendant breached the terms of the insurance policy.
 4. The Defendant failed to enter appearance and/or file a Defence to the claim herein. As such, the Plaintiff lodged a Request for Judgment on 22nd October 2021 and an interlocutory judgment was duly entered on 9th December 2021. Thereafter, the matter proceeded to formal proof before this court on 12th July 2022.
 5. PW1, Frankline Nyaga, a Senior Legal Officer at UAP Insurance Co. Limited adopted his statement dated 9/8/2019 and produced the Plaintiff's Bundle of Documents dated 9/8/2019 as well as Supplementary bundle dated 24/6/22 in support of the Plaintiff's case. His testimony was that on or about 12th July 2018, he received summons to enter appearance in Kithimani PMMC No. 304 of 2017 which relates to a road traffic accident that allegedly occurred on the 12th May 2017 involving the Defendant's vehicle along Matuu - Thika Road. The Defendant never reported the accident and/or notified the Plaintiff of the same contrary to the provisions of the Policy. PW1 requested the Defendant for the claim documents but none was ever availed. Further, he testified that the Defendant did not pay excess as required under the Policy.
 6. The Plaintiff filed written submissions on this matter. Its main contention is that it is entitled to repudiate the claim arising from the road traffic accident of 12/7/2017 because the Defendant breached the conditions of the Insurance policy.
 7. The court has carefully studied the Policy Document adduced in evidence. Section 2 clause 2 of the Policy document provided that the Defendant was entitled to seek indemnity from the Plaintiff against all sums, costs and expenses that the Defendant would become legally liable to pay in respect of death or bodily injury to any person as well as damage to property arising out of an accident caused by the insured motor vehicle. Such liability was however not absolute. Under the exceptions to the said clause 2, it was expressly provided that the Plaintiff would not be liable to indemnify the Defendant, unless the Defendant observes and fulfils the conditions of the Policy.
 8. Condition 5 of the policy document provides as follows regarding notification of accidents: -

“In the event of the occurrence which may give rise to a claim under the Policy, the insured shall as soon as possible give notice thereof to the Company with full particulars. Every letter, claim, writ, summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given to the Company immediately the insured or any person claiming to be indemnified shall have knowledge of any impending prosecution, inquest or fatal inquiry in connection with any such occurrence. In case of theft or other criminal act which may give rise to a claim under this Policy, the Insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender.”

9. The highlighted clauses of the Insurance Policy contract to which the parties herein committed themselves are very clear and unambiguous. A court of law cannot re-write a contract between the parties and the parties thereto are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved; See National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd &



Another [2001] eKLR. In this case there was no suggestion of any employment of coercion, fraud, or undue influence in regard to the terms of the insurance policy.

10. From the evidence PW1, it is clear that the Defendant breached condition 5 above as he failed to notify the Plaintiff of the occurrence of the accident of 12th May 2017 involving his insured car as soon as possible. The Defendant seems to have vanished after the accident and neglected or ignored his obligations under the Insurance Policy as the Plaintiff only learnt about the accident through the victim of the same, almost a year after it occurred. Since the Defendant did not defend this suit, this means that the evidence of the Plaintiff is uncontroverted.
11. In the premises, the court finds that the Plaintiff has proved on a balance of probabilities that the Defendant breached the terms and conditions of the subject Insurance Policy in regard to indemnification of third parties.
12. Consequently, it is hereby declared that:
 - a. The Plaintiff is entitled to avoid the policy number 441/080/1/020341/2016.
 - b. The Plaintiff is entitled to repudiate any claims arising from the road traffic accident of 12/7/2017 and is not bound to compensate the plaintiff in Kithimani CMMC No. 304 of 2017 - Mutisya Mbasa v Mutua John Ngumi & 2 Others.
 - c. The Defendant shall bear the costs of this suit.

Orders accordingly.

DATED, DELIVERED AND SIGNED IN NAIROBI THIS 2ND MAY 2023.

JANET MULWA

JUDGE

