



**Martha v Xplico Insurance Co Ltd (Civil Suit E2269 of 2022)
[2023] KEMC 127 (KLR) (29 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 127 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
CIVIL SUIT E2269 OF 2022
JP ADUKE, SRM
MAY 29, 2023**

BETWEEN

BONIFACE WAMBUA MARTHA PLAINTIFF

AND

XPLICCO INSURANCE CO LTD DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants following a road traffic accident on 21st December 2020 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 entered appearance but failed to show up on the date of the hearing. 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

3. With respect to liability, I have not seen a copy of the judgment of Hon D. Kivuti -PM in CMCC 1431 of 2021. This document is neither available on the physical file nor on the judiciary e-filing CTS Portal as at the date of writing this judgment. In the absence of this critical document, I am unable to weigh the plaint herein against the provisions of section 10 (1) of the *Insurance (Motor Vehicle Third Party Risks) Act* and cannot make a finding on the issue of liability of the Defendant.



2. Quantum

4. Having found as above on the issue of liability, I cannot make any orders on quantum. I dismiss/strike out the Plaint on the following terms:

1. The plaintiff is at liberty to file a fresh suit and annex a copy of the Judgement by Hon D. Kivuti –PM in CMCC 1431 of 2021;
2. No orders on costs;
3. File Closed.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH MAY 2023 IN THE PRESENCE OF THE PLAINTIFF COUNSEL AT 10.38AM.

In the presence of:

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff-N/A.....

(Name, Signature, Date)

For the Defence:N/A.....

(Name, Signature, Date)

