**Kafuma v Kimbowa Builders and Contractors**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 19 October 1973

**Case Number:** 1366/1972 (35/74)

**Before:** Nyamuchoncho J

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*[1] Civil Practice and Procedure – Judgment – Consent – Entered by advocate not on record and*

*without authority – Judgment set aside.*

*[2] Advocate – Authority – To consent to judgment – Not on record or authorised – No authority.*

*[3] Insurance – Motor insurance – Court action – Circumstances under which insurance company may*

*take over action – Traffic and Road Safety Act* 1970, *ss.* 34, 35 (*U.*)*.*

**Editor’s Summary**

The plaintiff filed action against the defendant for damages suffered by reason of the death of her husband in a motor accident. An advocate purporting to act on behalf of the National Insurance Corporation and who was not the advocate on record for the defendant entered a consent judgment. On the defendant’s application to set aside the consent judgment it was proved that the Corporation had received no notification of the filing of the action. For the plaintiff it was contended that the Traffic and Road Safety Act 1970 gave power for a consent judgment to be recorded in such circumstances.

**Held –**

(i) the advocate who entered the judgment had no authority to do so from the defendant;

( ii) the Corporation could not have taken over the conduct of the case without the consent of the

defendant;

(iii) the advocate had no authority from the Corporation;

(iv) the consent judgment was accordingly a nullity and would be set aside.

Judgment set aside.

**Cases referred to Judgment:**

(1) *Strauss v. Francis* (1886), L.R. 1 Q.B. 379.

(2) *Holt v. Jesse* (1876), 3 Ch. D. 177.

(3) *Mathews v. Munster* (1888), 20 Q.B.D. 141.

(4) *Welsh v. Roe*, [1918-19] All E.R. Rep. 620; (1918) 87 L.J.K.B. 520.

(5) *Neale v. Gordon-Lennox*, [1902] A.C. 465; [1900 – 3] All E.R. Rep. 622.

(6) *Craig v. Kanssen*, [1943] 1 K.B. 256; [1943] 1 All E.R. 108.

(7) *Elkan v. Narshibhai Patel*, MB 37/60 (unreported).

(8) *Pirbhai Lalji v. Hassanali Devji*, [1962] E.A. 306.

(9) *Re Pritchard*, [1963] 1 All E.R. 873.

(10) *Shah v. Westlands General Stores Properties*, [1965] E.A. 642.

(11) *Magon v. Ottoman Bank*, [1968] E.A. 156.

(12) *Najjuka Namwandu v. Musoke*, M.B. 409/71 (unreported).

(13) *Marsden v. Marsden*, [1972] Fam. 280; [1972] 2 All E.R. 1162.