



**Mulwa v Kenya Orient Insurance Company Limited & another;  
Catherine Nzilani Kimondolo & 2 others (Interested Parties) (Civil  
Suit 26 of 2019) [2025] KEHC 14402 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 14402 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL SUIT 26 OF 2019  
NIO ADAGI, J  
JULY 29, 2025**

**BETWEEN**

**FELIX VUNGA MULWA ..... PLAINTIFF**

**AND**

**KENYA ORIENT INSURANCE COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**INSURANCE REGULATORY AUTHORITY ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**CATHERINE NZILANI KIMONDOLO ..... INTERESTED PARTY**

**MM ALIAS DM (MINOR SUIING THROUGH HIS FATHER AND NEXT OF  
FRIEND ..... INTERESTED PARTY**

**MM ALIAS DM (MINOR SUIING THROUGH HIS FATHER AND NEXT OF  
FRIEND MOSES MUTUA TOM ..... INTERESTED PARTY**

**JUDGMENT**

**Brief Facts**

1. The Plaintiff vide an amended plaint dated 16<sup>th</sup> January, 2020 sought the following reliefs jointly and severally against the Defendants;
  - (a) General damages;
  - (aa) Kshs.400, 000/-;
  - a. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are liable to settle the Judgment in Machakos CMCC No.300 of 2018, 492 of 2018 and 493 of 2018;



- b. Costs of the suit and interest;
  - c. Any other relief that this Honourable Court may deem fit and just.
2. The 2<sup>nd</sup> Defendant opposed the suit by the Plaintiff and filed its defence dated 13<sup>th</sup> February, 2020, list of documents dated 20<sup>th</sup> September, 2023 and witness statement dated the even date.
  3. The 1<sup>st</sup> Defendant equally opposed the Plaintiffs suit vide its defence dated 30<sup>th</sup> September, 2024 but opted not to call any witnesses or file any list of documents.
  4. The suit was set down for hearing on the 20<sup>th</sup> March, 2025.

#### **Plaintiff's Case**

5. The Plaintiff testified that on or about the 26<sup>th</sup> December, 2017 he had a motor vehicle registration KTWB 654H (Tukutuk) operating within Machakos town. That on this day, he was called by his driver who informed him it had been involved in an accident. As a result of the accident, the three persons named as Interested Parties herein were injured and they sued him in Machakos CMCC Cases Nos. 300, 492 and 493 of 2018. The Plaintiff contended that his said Tuktuk was at the time insured by the 1<sup>st</sup> Defendant, Kenya Orient Insurance Company Limited. The Plaintiff adopted his witness statement dated 15/10/2019 and a further witness statement dated 8/2/2022 as his evidence in chief. He also produced in evidence as exhibits documents listed on his list of documents and further list of documents dated 15/10/2019 as PExbt.1 to PExbt.7. The Plaintiff stated that he paid for the insurance policy and was issued with a certificate of insurance. He served summons in the three cases to the 1<sup>st</sup> Defendant and when the Auctioneers came to proclaim, he again took the proclamation to the 1<sup>st</sup> Defendant but he did not receive any communication from the 1<sup>st</sup> Defendant on why they were not paying the claim. The Plaintiff prayed that the 1<sup>st</sup> Defendant be compelled to settle the three claims, pay his damages, for his Tuktuk that was auctioned and costs of the suit.

#### **Cross-examination of the Plaintiff by the 1<sup>st</sup> Defendant's counsel**

6. On cross-examination by the 1<sup>st</sup> Defendant's counsel, the Plaintiff stated that the insurance cover policy was No. MCH/0806/003640/2017. It was valid for one year commencing from August 2017 to August 2018. It was a third-party cover. That the Tuktuk was auctioned and he referred to his list of documents at page 39 to 42. He stated that he prayed for a declaration for settlement of the decretal amount. The sale of the Tuktuk amount did not clear the entire decretal amount. He did not have the valuation report of the Tuktuk as the Auctioneers abruptly picked the Tuktuk. He confirmed that he personally delivered the proclamation to the 1<sup>st</sup> Defendant although he did not have the received copy. He confirmed that three passengers were in the Tuktuk who are the Interested Parties herein. The Plaintiff stated that he owned two Tuktuks registration numbers KTWB 654H and KTWB 807G for which he had Log books. He denied being involved in any settlement of the cases before the Magistrate's Court. The driver informed him of the accident immediately and he did not appoint an advocate. He learnt of the cases during execution. He served the summons upon the 1<sup>st</sup> Defendant who did not respond until the Auctioneers came.

#### **Cross-examination of the Plaintiff by the Interested Parties' Counsel**

7. On cross-examination by counsel for the Interested Parties, the Plaintiff confirmed that he was the owner of KWTB 654H and that he was aware some passengers were injured. The 1<sup>st</sup> Interested Party, Catherine Nzilani Kimondolo filed a suit against him and he was aware there was judgement in her favour. He again confirmed to have insured the Tuktuk with the 1<sup>st</sup> Defendant who failed to honour



the judgement. The 1<sup>st</sup> Interested Party was not paid by the 1<sup>st</sup> Defendant. She was partly paid after the Tuktuk was auctioned. The 1<sup>st</sup> Defendant ought to pay her the balance of the decretal amount.

#### **Cross-examination of the Plaintiff by the 2<sup>nd</sup> Defendant's counsel**

8. On cross-examination by counsel for the 2<sup>nd</sup> Defendant, the Plaintiff further maintained that the 1<sup>st</sup> Defendant was the insurer of the accident Tuktuk and that he had an insurance policy with them. He denied having a contract with the 2<sup>nd</sup> Defendant who was not a party to any of the cases. The Plaintiff stated that the 2<sup>nd</sup> Defendant had the mandate to act when the cases were reported to them. He affirmed that judgment in CMCC No.300 was entered on the 29<sup>th</sup> January, 2019 and he only informed the 2<sup>nd</sup> Defendant that the 1<sup>st</sup> Defendant had not settled the Judgment on the 23<sup>rd</sup> September, 2019.
9. He further admitted that the 2<sup>nd</sup> Defendant acted on his complaint as per page 50 of his list of documents by requiring the 1<sup>st</sup> Defendant to look into his complaint. He also testified that he did not wait for the 2<sup>nd</sup> Defendant to finalize on his complaint as he chose to file a suit before the 1<sup>st</sup> Defendant could finalize on his complaint but this did not stop the 2<sup>nd</sup> Defendant from conducting the investigations. He admitted not having served the 2<sup>nd</sup> Defendant with the judgment and decree but averred that the 2<sup>nd</sup> Defendant could have asked for any document they needed. The Plaintiff referred to the decree at page 35 of his list of documents but the same was not signed. There was no judgment. He still holds that the 2<sup>nd</sup> Defendant continues to condone and encourage the fraudulent acts of the 1<sup>st</sup> Defendant.

#### **Re-examination of the Plaintiff**

10. In re-examination by his counsel, the Plaintiff confirmed that his Tuktuk that was auctioned was registration No. KTWB 807G. His driver was not charged for failure to have a driving licence. He further confirmed that the advocates on record for him in cases before the Magistrate's court are J. MALUKI & CO. ADVOCATES who are appearing in this matter for the 1<sup>st</sup> Defendant. That since his letter of complaint to the 2<sup>nd</sup> Defendant, no action had been taken.
11. The 1<sup>st</sup> Defendant closed its defence case without calling any witness.

#### **2<sup>nd</sup> Defendant's case**

12. DW1, Mr. Galgallo Badake Quche, the 2<sup>nd</sup> Defendant witness testified and stated that he was the senior consumer protection officer with the 2<sup>nd</sup> Defendant. He adopted his witness statement dated 20/09/2023 as his evidence in chief. He also produced as exhibits DExt.1-4 documents on the list of documents dated 20/09/2023. He testified that the Plaintiff lodged a complaint which was received by the 2<sup>nd</sup> Defendant on 23/09/2019 to the effect that the 1<sup>st</sup> Defendant had declined to settle judgments against him at the magistrate's court. The 2<sup>nd</sup> Defendant wrote a letter which was copied to the Plaintiff's advocate asking the 1<sup>st</sup> Defendant to respond. On 17/10/2019, the 2<sup>nd</sup> Defendant was served with summons in this case. The complaint was about the 1<sup>st</sup> Defendant refusing to settle judgments. He asserted that the 2<sup>nd</sup> Defendant did not receive the copies of the judgements. That upon receiving the 2<sup>nd</sup> Defendant acted on it but before a response was received from the 1<sup>st</sup> Defendant, the Plaintiff filed this suit and the 2<sup>nd</sup> Defendant had to wait for its determination.

#### **Cross examination of DW1 by Plaintiff's counsel**

13. On cross examination, DW1 confirmed that the Plaintiff did not withdraw the complaint from them. That the 2<sup>nd</sup> Defendant's internal procedures stop them from pursuing investigations on a claim once a suit is filed. Between 1/10/2019 to date the 2<sup>nd</sup> Defendant wrote only one letter more than 5 years.



The 2<sup>nd</sup> Defendant also wrote only one letter to the 1<sup>st</sup> Defendant. DW1 confirmed that they did not request for a copy of the decree and judgement. He agreed that any member of the public can check existence of a case and know where it reached.

#### **Cross examination of DW1 by 1st Defendant's counsel**

14. On cross examination by counsel for the 1<sup>st</sup> Defendant, DW1 stated that he had been employed by the 2<sup>nd</sup> Defendant for more than 5 years. The repudiation of an insurance cover after judgment depends on each case. He confirmed that the 2<sup>nd</sup> Defendant received a complaint and wrote to the 1<sup>st</sup> Defendant but they got no response.
15. The 2<sup>nd</sup> Defendant's counsel did not cross-examine DW1.

#### **Analysis and determination**

16. This is a declaratory suit filed by the plaintiff against the 1<sup>st</sup> defendant who at all material times was the Insurer of the Plaintiff's motor vehicle Registration No. KAY 868V vide policy No. 012/070/103219/2013/12 under which the insurer was obligated under CAP 405 of the Laws of Kenya to indemnify it against losses, liability and damages arising from use of the said vehicle.
17. The said motor vehicle was involved in a road traffic accident on 26/12/ 2017 and three passengers who were on board sustained personal injuries and sued the owner thereof being the plaintiff in this suit and the defendant in the primary suits in Machakos CMCC No.300 of 2018, 492 of 2018 and 493 of 2018;
18. The trial court in the primary suits found in favour of the plaintiffs which judgments the 1<sup>st</sup> defendant failed to settle prompting the plaintiff to file this suit seeking declaratory orders that the defendant is statutorily obligated to settle the decretal sums, interest and costs in Machakos CMCC No.300 of 2018, 492 of 2018 and 493 of 2018; plus costs.
19. Section 10 (1) of the said Act provides as follows:

“Duty of insurer to satisfy judgments against persons insured(1)If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.”
19. Section 5(b) of the same Act provides;

“In order to comply with the requirements of section 4, the policy of insurance must be a policy which insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road.



20. In the case of Joseph Mwangi Gitundu vs Gateway Insurance Co. Ltd [2015] eKLR, Gikonyo J. considered the duty of indemnity placed on the insurer under Section 10 (1) of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#), Cap 405 Laws of Kenya and observed as follows:

“Therefore, under section 10(1) of Cap 405 Laws of Kenya, the insurer has a statutory obligation to pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. The obligation is statutory and a strict one; it cannot be shifted or abrogated by a term in the contract of insurance or in the manner proposed by the Defendant, lest the noble intention of the Act to guarantee compensation of third parties who suffer injuries arising from by use of the insured motor vehicle on the road should be lost. Similarly, if the statutory obligation placed by law on the insurer was to be shifted to the insured as proposed by the Defendant, the purpose for taking out an insurance policy and the compulsion by the Act for such insurance cover to be taken out on vehicles to be used on the roads to cover third party risks under Cap 405 Laws of Kenya will also be defeated.”

21. In Francis Mwobobia v Invesco Insurance Co. Limited; Mwirigi Muguna Nkoroi (Intended Interested Party/Applicant) [2021] eKLR the court held that upon entry of judgment in such accident claims where the defendant was insured, Section 10 of the [Insurance \(Motor Vehicles Third Party Risks\) Act](#) requires the insurer to settle the decretal amount as awarded and in accordance with the provisions of the Act. It is however not always the case that the insurers willingly settle the claim and this necessitates the filing of a declaratory suit to compel the insurer to settle the decree
22. In UAP Insurance Co. Ltd vs Patrick Charo Chiro [2021] eKLR the court held that for liability to accrue under section 10 of the Insurance (Motor Vehicle Third Party Risks) Act CAP 405, there is a 4-fold test to be met. Firstly, that the motor vehicle in question was insured by the appellant; Secondly, that the respondent has a judgement in his favour against the insured; Thirdly, that statutory notice was issued to the insurer either at least 14 days before the filing of the suit wherein judgement has been obtained or within 30 days of filing the suit where judgement has been obtained and finally the respondent was a person covered by the insurance policy.
23. In Martin Onyango vs Invesco Assurance Company Limited [2015] eKLR- for the proposition that the details in the Police Abstract as to the details of insurance are in the ordinary cause of events obtained by the police from the Certificate of Insurance affixed to the motor vehicle or are supplied by the insured.
24. In Philip Kimani Gikonyo vs Gateway Insurance Co. Ltd [2007] eKLR, the court stated inter alia that:
- “So, if he is deemed to be the “insured” in accordance with the terms of the Policy, and the injured third party here, the Appellant, is a person “entitled to the benefit of the Judgment”, the inevitable conclusion is that the Appellant’s Judgment against the insured’s driver is enforceable against the insurer, the Respondent”
24. In the instant case, it is uncontroverted that the plaintiff took out an insurance policy with the 1<sup>st</sup> Respondent under Policy No.012/070/103219/2013/12 or his Motor Vehicle Registration No. KTWB 654H (Tukutuk). The plaintiff produced a copy of the police abstract which shows that the 1<sup>st</sup> defendant as his insurer. It is undisputed that the plaintiff is a Judgement debtor and guided by the above persuasive precedent I am of the view that the defendant under Section 10 of the aforesaid Act has a statutory obligation to settle judgements and decretal sums in respect of the liability that arose from the use of the insured motor vehicle on the road.



25. In view of the above cited cases, it is patent the 1<sup>st</sup> defendant has a statutory obligation to pay the judgments of the third parties unless the liability thereof has been avoided in accordance with the law. There was no proof that the defendant had repudiated the policy cover in this matter.
26. Accordingly, I find that the plaintiff's suit is merited and I make the following orders:
- a. Judgement be and is hereby entered against the 1<sup>st</sup> defendant in favour of the plaintiff and a declaration is made that the 1<sup>st</sup> Defendant is liable to settle the judgments in Machakos CMCC No.300 of 2018, 492 of 2018 and 493 of 2018 and or to reimburse to the plaintiff any amount of the decretal amount that the plaintiff has so far paid.
  - b. The plaintiff is awarded general damages of Kshs.200,000/= for inconvenience and deprivation of ownership of the subject motor vehicle registration No. KTWB 807G.
  - c. The plaintiff is awarded Kshs.400,000/= for the loss of subject motor vehicle registration No. KTWB 807G through auction.
  - d. The suit against the 2<sup>nd</sup> defendant is dismissed with no order as to costs.
  - e. The plaintiff will have costs of the suit and interest.

**JUDGEMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 29TH JULY 2025.**

**NOEL ADAGI**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 29TH JULY 2025.**

In the presence of:

Mr. A. K. Mutua for the Interested Parties

Mr. Mutua Mboya for the Plaintiff

Ms. Kathike for the 1<sup>st</sup> Defendant

N/A for the 2<sup>nd</sup> Defendant

Milly-Court Asst.

