



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**Civil Suit 90 of 2003**

**PETER N. CHEGE.....PLAINTIFF**

**VS**

**UNITED INSURANCE COMPANY LIMITED.....DEFENDANT**

**J U D G M E N T**

In a plaint dated 1st December 2003, Peter N. Chege, the plaintiff sued United Insurance Co. Ltd the defendant herein and prayed for the following:

- (i) An order for declaration directing the defendant to settle the decrees in Bungoma S.P.M.C.C. Nos 405, 406, 407 and 408 of 2002 and Busia S.R.M.C.C. Nos. 50, 109 and 127 of 2001.*
- (ii) An order of injunction to restrain the defendant from further breaching the contract of insurance*
- (iii) An alternative prayer for payment of the decretal sums*
- (iv) Costs of the suit plus interest.*

The plaintiff testified alone in this matter without calling an independent witness. This suit was fixed for hearing as a formal proof because ex parte Judgment had been entered when the defendant failed to enter appearance. The plaintiff informed this court that he was the registered proprietor of motor vehicle registration number KAH 932 G in the year 2000 which he used as a matatu. He was able to show in evidence that the motor vehicle was insured by the defendant on 24th September 2000 for a period of two months with effect from 24th September 2000 to 23rd November 2000. He produced as an exhibit in evidence the certificate of insurance No. A 1333672.

This witness was also able to show that the aforesaid motor vehicle was involved in a road traffic accident on 18th November 2000 resulting to the injuries sustained by Topistar Nakus, Rose Wanjiru Muraya, Afuwa Ali Yusuf, Caroline Oimo Onyango, Peter N. Wakoba, Ali Hussein and Alexina Kwamboka Ogwaro. These people each sued the plaintiff for damages for the injuries they sustained as a result of the accident in Bungoma S.P.M.C.C. No. 405, 406, 407, 408 of 2002 and Busia S.R.M.C.C. no. 50, 109 and 127 of 2001 respectively.

The plaintiff averred that when accident occurred i.e. when the risk attached his motor vehicle was under cover via policy No. 96/9/N.W.C.P/ 24354 T.P.O. He told this court that he paid the policy excess in the sum of Ksh.30,000/- when he lodged a duly filled claim form with the defendant. He produced in evidence a copy of the acknowledgment receipt issued to him by the insurance Brokers after which the defendant took over the plaintiff's defence in the suits which were preferred against him by the victims of

the accident. It is averred that the defendant did not repudiate the contract of insurance but instead it fully pledged to settle all the claims facing the plaintiff.

The plaintiff further told this court that the defendant failed to fully settle those claims thus forcing the claimants in civil cases Bungoma S.P.M.C.C. nos. 405, 406 and 408 of 2002 to execute the decrees. This forced him to seek for accommodation from the claimant to allow him liquidate the decretal sum in monthly instalments. He produced acknowledgment receipts issued to him by Kitiwa & Co. Advocates the claimants' Advocates. By the time of filing this suit the plaintiff had already paid the outstanding amount leaving a balance of Ksh.180,200/=.

The plaintiff now seeks for Judgment against the defendant as prayed in the plaint.

From the evidence presented to this court by the plaintiff the following issues arise for my decision. First, whether there existed a contract of insurance between the plaintiff and the defendant as of 18.11.2000.

Secondly, whether the risk attached and

Thirdly, whether the defendant is liable to settle the consequent claims.

These questions can be answered together. The testimony of the plaintiff in this matter is short and straightforward. The plaintiff has produced the original and a copy of the cover note issued to him by the defendant. The certificate of insurance shows motor vehicle registration No. KAH 932 G was on cover between the 24th day of September 2000 and 23rd day of November 2000. This fact is acknowledged by the defendant in their letter dated 16.1.2001 which was produced in evidence. In that letter the defendant demanded payment of policy excess in the sum of Ksh.30,000 from the plaintiff which amount was promptly settled by the plaintiff. It is therefore crystal clear that a contract of insurance existence between the plaintiff and the defendant to cover motor vehicle registration number KAH 932 G for the period between 24.9.2000 and 23.11.2000. I am therefore convinced that the plaintiff has proved the existence of the contract of insurance.

On the second question as to whether the risk attached, I am satisfied that evidence given established the fact that the risk insured attached on 18.11.2000. I am also satisfied that the plaintiff has established that the defendant is liable to settle all the claims arising out of the accident in view of the fact that the plaintiff was on cover and the fact that the defendant did not repudiate the contract. In fact the evidence given shows that the plaintiff acknowledged and accepted its responsibility to shoulder the claim arising out of the accident.

In the final analysis I find that the plaintiff has proved his case on a balance of probabilities. I hereby declare that the defendant is liable to settle all claims arising out of the road traffic accident involving motor vehicle registration No. KAH 932 G. To clear any doubt I direct the defendant to settle the claims arising out of Bungoma S.P.M.C.C. nos. 405, 406, 407 and 408 of 2002 and Busia S.R.M.C.C. nos. 50, 109 and 127 of 2001.

The prayer for injunction does not make any sense in view of the fact that the plaintiff can still claim damages for breach of contract. The plaintiff shall have costs of the suit plus interest at court rates.

**DATED AND DELIVERED THIS 28th DAY OF January 2005**

**J.K. SERGON**

## JUDGE



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