

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)**

**CIVIL SUIT NO.898 OF 2021**

**SSEBADDUKA FESTO ::: PLAINTIFF**

**VERSUS**

**EFC UGANDA LIMITED (MDI) ::: DEFENDANT**

**Before Hon. Lady Justice Patricia Kahigi Asimwe**

**Judgement**

Introduction

1. The Plaintiff sued the Defendant for negligently dealing with his motor vehicle. The Plaintiff also claimed for breach of fiduciary duty and orders for compensation for the value of the motor vehicle, general damages, interest and costs. In the alternative, the Plaintiff prayed that the Defendant be held liable for contributory negligence.
2. The facts according to the Plaintiff are that the Defendant offered him a loan facility of UGX 34,000,000 on 31<sup>st</sup> January 2019 which was to be repaid monthly in 24 months up to 31<sup>st</sup> January 2021 at an interest rate of 36% per annum. The purpose of the loan was to purchase of motor vehicle registration No. UAY 968N, hereinafter called the suit vehicle. The same suit vehicle was to act as security for the loan. It was a condition precedent that the suit vehicle be comprehensively insured with the insurance company earmarked by the Defendant with the Defendant as a co-loss payee.
3. The Defendant earmarked NIC General Insurance Company with which the Plaintiff insured the suit vehicle vide policy No.010/080/10005/2019 running from 4<sup>th</sup> February 2019 to 3<sup>rd</sup> February 2020. The suit vehicle caught fire on 24<sup>th</sup> May 2020 along Masaka Road at Kibukata. The Plaintiff reported

the fire accident but was informed by the Defendant that the insurance policy had expired on 3<sup>rd</sup> February 2020. The Plaintiff is aggrieved that the Defendant never informed him about the expiry of the insurance policy of the suit vehicle despite always reminding him to pay the monthly loan instalments.

4. The facts according to the Defendant are that under the loan offer letter and loan agreement, the Plaintiff agreed to comprehensively insure the suit vehicle with a reputable insurance company as a condition precedent to obtaining the loan. The Plaintiff of his own free will chose to take out a comprehensive insurance policy with NIC General Insurance Company vide policy No.010/080/10005/2019. The parties to that policy are NIC General Insurance Company as the insurer and the Plaintiff as the insured with obligations including maintaining and the policy by paying the relevant fees. Save for the Defendant's interest as a co-loss payee by virtue of the loan agreement between it and the Plaintiff, the Defendant was not a party to that policy. The Defendant did not have any contractual obligations under that insurance policy. As the insured, the Plaintiff was given a copy of the insurance policy reflecting the expiry date of the same as 3<sup>rd</sup> February 2020.

Representation:

5. The Plaintiff was represented by M/s Denis Kakeeto Advocates and of M/s Crimson Associated Advocates represented the Defendant.

Issues:

6. Under the Joint Scheduling Memorandum, the parties agreed on the following issues:
  - i) Whether the Defendant was bound by the insurance contract executed between the Plaintiff and the NIC General Insurance Company Ltd
  - ii) Whether the Defendant was in breach of its fiduciary duty