



Neutral Citation Number [2026] CIGC (Civ) 4

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
**CIVIL DIVISION**

**Cause No: G 2024-0159**

**BETWEEN**

**MICAH JENSEN**

**Plaintiff**

**AND**

**THE INSURANCE COMPANY OF THE WEST INDIES (CAYMAN) LIMITED**

**Defendant**

**OPEN COURT**

**Before: Hon. Justice Marlene Carter**

**Appearances: Mr. Nicholas Dixey of Nelsons Law for the Plaintiff**  
**Ms. Farrah Sbaiti and Ms. Dunzelle Daker of Ogier for the Defendant**

**Date of Hearing: 30 June 2025**

**Draft circulated: 19 January 2026**

**Judgment Delivered: 23 January 2026**

*Civil Division – Personal Injury – Indemnity –  
Vehicle Insurance (Third Party Risks) Act (2012 Revision)*

**JUDGMENT**

**Introduction**

1. By originating summons the Plaintiff seeks the following relief:

- “1. A declaration that the Defendant shall pay to the Plaintiff, being entitled to the benefit of a Consent Judgment dated 21 September 2022 in cause G 110 of 2018 – *Micah Jensen v Willie Cruz-Hurlston*, the sum of \$220,000, being payable under the said judgment, plus interest thereon, pursuant to section 15(1) of the *Vehicle Insurance (Third Party Risks) Act (2012 Revision)* (“the Act”).

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2. *The Defendant shall pay the Plaintiff's costs in these proceedings to be taxed if not agreed."*

2. The Plaintiff is a Canadian citizen who, on 30 April 2017, the date of the accident, was resident and working in the Cayman Islands. The circumstances surrounding the accident that are relevant to the filing of the instant claim are set out in the affidavit in support of the Originating Summons filed by the Plaintiff<sup>1</sup>:

"5. *The circumstances of the accident are that I was riding a bicycle north along West Bay Road in the vicinity of Dolphin Point Club at about 1 am. Suddenly, and without warning, I was struck from behind by the Rav 4 vehicle driven by a Caymanian man named Willie Hurlston-Cruz.*

6. *I was knocked off the bicycle onto the front windshield and bonnet of the Rav 4 and then dropped off onto the road shoulder. The Rav 4 dragged my bicycle underneath the front end tearing the back wheel off, then came to a stop 381 feet from the point of impact.*

7. *The registered owner of the Rav 4 was a third man, Troy Otis Claxton, who held an insurance certificate issued in respect of the Rav 4 with the Defendant insurance company pursuant to section 4(3) of the Vehicle Insurance (Third Party Risks) Law (2012 Revision). ... "[hereinafter "the Policy"]*

8. *...Mr Claxton had entered into an agreement to sell the vehicle to Mr Hurlston-Cruz, and indeed had been paid the money for the vehicle in full by Mr Hurlston-Cruz by the end of March 2017, but Mr Claxton had agreed to help Mr Hurlston-Cruz by remaining the registered owner and not cancelling the insurance to drive the Rav 4 until Mr Hurlston -Cruz could afford to get his own insurance.*

9. *...on 4 December 2017, Mr Hurlston-Cruz entered guilty pleas to the charges in the summary court of Careless Driving and DUI in respect of the accident. It is my understanding that he was disqualified and received a fine. Notably, as far as I am aware, he was not charged with driving without insurance.*

10. *As a result of the accident, I suffered a loss of consciousness and was taken by ambulance to George Town Hospital. I was hospitalized for a number of days in the George Town Intensive Care Unit.*

11. *I sustained a number of significant injuries....*

16. *My attorneys wrote to the Defendant Insurance Company (“ICWI”) on 24 August 2017 inviting them to accept liability and to indemnify Mr Hurlston-Cruz on the basis that he had been given permission to drive the vehicle. From the subsequent exchanges of correspondence, it can be seen that ICWI declined to indemnify on the basis that their insured already had sold the vehicle before the accident took place. ....*
  17. *The negligence proceedings were issued against Mr Hurlston-Cruz on 13 June 2018.*
  18. *The writ of summons was served on ICWI by Court Bailiff on 19 June 2018.*
  19. *No intention to defend the claim was given by either Mr Hurlston-Cruz or ICWI by way of subrogation. Default Interlocutory judgment for damages to be assessed was entered on 26 July 2018 and filed 31 July 2018. ....*
  22. *A schedule of loss was prepared and the parties finally reached agreement by consent. ....The consent judgment was in the sum of CI\$200,000 with costs in the sum of CI\$20,000. The consent judgment was served upon ICWI’s attorneys under covering correspondence dated 28 November 2022.*
  24. *Mr Hurlston-Cruz has made no payments to date against the judgment debt.*
  25. *Given that it was clear that ICWI had no intention of paying me the sum due under the consent judgment, I then instructed my attorneys to take enforcement action against Mr Hurlston-Cruz.*
  27. *I obtained a charging order absolute against the property on 30 January 2024. According to a valuation dated 11 April 2022, provided to me by Mr Hurlston-Cruz, the Property was worth CI\$408,000 at the time with a forced sale value of CI\$347,000. According to the land registry, Scotiabank has a charge with priority over mine in the sum of CI\$359,100.*
  28. *While the Property may have gone up in value in the last couple of years, it would appear that there is little prospect of the judgment debt being satisfied in full by a sale anytime in the short to medium term. In the meantime, I have incurred liability to pay significant legal fees in pursuing the claim.”*
3. Apart from the supporting affidavit of the Plaintiff, the witness statements of Claxton and Hurlston-Cruz are relevant to the parties’ arguments. The contents of the Claxton witness statement are brief and are set out in their entirety here. The witness statement of Claxton of 17 May 2017 is as follows:

*"I am the above-mentioned name. I am a previous owner of a grey Toyota Rav4 registration 146957 that I sold to Willie Scott Hurlston-Cruz about two months ago.*

*I know Mr Cruz and his mother because she is my co-worker for over eight years. Mr Cruz asked me if he can pay the vehicle in a month time, because he just starting working full time. At the end of March Mr Cruz paid the vehicle in full however he told me that he could not afford to get his own insurance at that time. So he asked me for an extension for the vehicle to be transferred to his name. At 7.30 am on the date of the accident I received a call from his mother about the accident and later Willie told me that he was about to get insurance and the registration transfer to him as the coupon expired on the 30<sup>th</sup> April 2017.*

*I was trying to help Willie because I know him and his family very well and he recently graduated from the University College of the Cayman Islands and started work full-time. For that I didn't cancel the insurance."*

4. The salient aspects of the affidavit of Hurlston-Cruz of 16 October 2024 are as follows:

- "2. At the date and time of the accident giving rise of Cause GC110 of 2018 there was an agreement between the then registered owner of the vehicle, Mr Troy Otis Claxton that I would purchase the vehicle from him for a One Thousand Cayman Islands Dollars (CI\$1,000.00). It was a very old vehicle.*
- 3. It was a further term of the Agreement that the title of the vehicle would not pass to me until I paid the purchase price for the same, although I was put in physical possession of the vehicle prior to paying the agreed sales price.*
- 4. In accordance with the Agreement, I was given the vehicle to drive some two weeks prior to the accident.*
- 5. At the time of the accident title to the vehicle had not passed to me and I was driving on and with the authority of the insured owner of the vehicle Mr Troy Otis Claxton.*
- 6. It was because I was driving with the permission of the said Troy Otis Claxton that the vehicle's insurance policy extended to me, being I was licensed driver covered under the said Insurance Policy, which led to my not being charged with driving without insurance contrary to the Law and instead was only Charged with Careless Driving and Driving Under of Influence, which latter charge led to my being disqualified from driving for the mandatory period of one year.*
- 7. The vehicle was never transferred to me at any point in time and I believe it was subsequently sold for scrap."*

5. Adena Miller, an assistant manager with the Defendant, provided an affidavit dated 13 December 2024 on the Defendant's behalf in response to the matters raised in the Claxton and Hurlston-Cruz statements.
6. At paragraph 15, Miller reiterated the reasons first advanced on behalf of the Defendant on 10 July 2018 as follows<sup>2</sup>:

*“As you are aware, ICWI's insured, Mr Troy Claxton, sold the subject vehicle to the Defendant some two months prior to the accident involving your client. As a result of the sale of the vehicle, Mr Claxton could not give the Defendant permission to drive the vehicle because the vehicle was not his property, and he had no insurable interest in it. In this regard we refer you to Peters v General Accident Fire & Life Assurance Corporation Ltd (1938) 2 All ER 267 and Smith v Ralph [1963] 2 Lloyds Rep 439. We also refer you to Boss v Kingston [1963] 1 WLR 99 which inter alia confirms that where possession of a vehicle is parted with and no rights of user are retained, the indemnity lapses in regard to the vehicle.*

*Our client will not therefore be obliged to satisfy any judgment your client may obtain against the Defendant, as any such judgment will not be a judgment obtained against any person insured by the policy and will not fall within the ambit of section 15(1) of the Vehicle Insurance (Third Party Risks) Law (2012 Revision).”*

7. Miller contends that the contents of the Claxton statement, referred to above, support the following:

*“It is accordingly ICWI's position that it is evident from the RCIPS file, in particular Mr Claxton's statement, that Mr Claxton sold the vehicle to Hurlston-Cruz on or around February 2017, almost two months prior to the MVA.”*

8. The Miller affidavit also referred to a conversation between herself, Claxton and Hurlston-Cruz on or around 03 July 2018, the contents of which are relied on by the Defendant to contradict submissions of the Plaintiff. Miller notes as follows:

*“Having refreshed my memory of the meeting with assistance of this email, I can confirm that we were told by Mr Claxton to which Hurlston -Cruz agreed, that:*

- 25:1 *there was no receipt provided of the sale of the vehicle*
- 25.2 *the monies (\$1,000) was paid to Mr Claxton prior to the MVA.*
- 25.3 *Hurlston -Cruz had the keys of the vehicle, and*
- 25.4 *It was a casual transaction as Hurlston-Cruz's mother worked with Mr Claxton.*

*Further as recorded in the e-mail, I told Hurlston-Cruz that he was not covered by the Policy.”*

9. The Miller affidavit makes clear the Defendant's position:

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“27. It appears that in order to seek to transfer the liability for the Consent Order to ICWI, Hurlston-Cruz now seeks to imply that he did not in fact pay for the vehicle. ICWI relies on the evidence in the RCIPS file and of our meeting of or around 3 July 2018.”

“29. It is ICWI’s position that the point of sale is when consideration was received and possession of the vehicle transferred to Hurlston-Cruz (ie February 2017 or at the very latest in March 2017 on Mr Claxton’s evidence). Accordingly, at that point Mr Claxton’s ownership of the vehicle ceased and the policy lapsed. Further, Mr Claxton could no longer give the Defendant permission to drive the vehicle because the vehicle was not his property, and he had no insurable interest in it.

30. As far as ICWI is aware, Hurlston-Cruz did not take out his own policy of insurance and/or take steps to register his ownership of the vehicle as is required pursuant to section 6(1), (3), (4) and (6) and section 9 of the Traffic Act (2023 Revision). ICWI has no obligation as an insurer of last resort to indemnify Hurlston-Cruz, who did not have a policy with it.

32 For the reasons set out at paragraphs 27 to 29 above and 32- to 37 below, ICWI denies that it has any liability to meet the judgment obtained by the Plaintiff and the damages that Hurlston-Cruz has agreed to pay to the Plaintiff pursuant to the Consent Order because the Policy ceased to provide coverage upon the ownership of the vehicle transferring to Hurlston-Cruz.”

### **The Issues for Determination.**

10. The following issues were identified for determination:
- (i) Was Claxton the owner of the vehicle on the date of the accident?
  - (ii) Did Claxton retain an insurable interest in the vehicle on the date of the accident?
  - (iii) If Claxton retained an insurable interest in the vehicle at the date of the accident and permitted Cruz to drive, was Cruz an “*authorized driver*” under the policy?

### **Issue (i): Was Claxton the owner of the vehicle on the date of the accident?**

#### *Plaintiff’s submissions*

11. Paragraph 5 of the Plaintiff’s written submissions provides a succinct statement of the Plaintiff’s position on this issue:

“P in turn maintained that while Claxton and Cruz had entered into a sales agreement, that it was a condition of that agreement that the sale would not be completed and legal title transferred until Cruz had obtained his policy. It follows that in the meantime, Claxton remained the owner and was extending to Cruz a

*licence to drive his car pending transfer. This is because it was the express intention of both parties that Cruz would remain covered by the insured's policy as a permitted driver. This was clear from the endorsement on the policy certificate. It was a term of the sales agreement that only upon Cruz obtaining his own policy (or Claxton policy lapsing through the effluxion of time) would Cruz acquire a right in contract for the title to be transferred and so was agreed that only then would the parties attend at the vehicle licensing department to transfer ownership on the register."*

12. The Plaintiff relies on what counsel submits was an express agreement between Claxton and Cruz not to transfer legal title to Cruz's name because Cruz could not afford to get insurance of his own, an agreement made in response to a specific request from Cruz. Counsel for the Plaintiff argues that Claxton and Cruz appreciated that Claxton would have needed to retain an insurable interest in the vehicle as the owner thereby enabling him to give Cruz permission to drive the vehicle and so ensuring that he was covered under the Policy. Counsel for the Plaintiff argued that it is evident that they both applied their minds to this issue in reaching an agreement, and it was the very reason they did not attend the licencing department to transfer the vehicle. Counsel submits that the fact of non-registration is evidence, in itself, of the intention of the parties at this point.
13. Counsel submitted that the effect of the agreement between Claxton and Cruz was that property in the vehicle would only pass upon Cruz obtaining his own policy, or upon the Policy expiring by effluxion of time, whichever was sooner. In his oral arguments at the hearing, counsel noted that Cruz was never prosecuted for driving without insurance. He also pointed to a witness statement of the officer who investigated the incident, dated 07 July 2017, in which the officer records Claxton as relating the circumstances of the agreement: *"The reason why the vehicle was not transferred [was] because Mr. Hurlston-Cruz had just started to work full time and could not afford to get his own insurance at the time."*
14. Counsel stated that when one considers the Policy there is nothing in that document that excludes such an arrangement. Counsel referred to Section II of the Policy which lists exceptions in respect of which the Defendant shall not be liable. He contends that entering a contract for the transfer of legal title of the vehicle at some future point in time is not a listed exception and neither is there any such exception under the General Exceptions heading of the Contract. It was submitted that merely entering into an agreement to transfer legal title at some future point did not cause the Policy to lapse or amount to an exception so as to allow the Defendant to escape liability.

15. Counsel for the Plaintiff contended that the issue of who was the owner of the vehicle and the insurable interest in this case could not be suitably addressed by reference to arguments based upon access, control and financial interest. Counsel submitted that the expressed intention of the parties as to when property in the vehicle would pass was of primary relevance. Counsel stated: “*Cruz’s possession and control of the vehicle until expiry of the policy or until Cruz obtained his own policy, was pursuant to a licence granted by Claxton until that point.*”
16. Counsel referred to the provisions of Section 18 and 19 of the *Sale of Goods Act (1997 Revision)* to support his argument regarding the paramountcy of the intention of the parties. Counsel submitted: “*The intention of the parties as to when title passes is what is key under the statute.*” Counsel further argued: “*In the absence of any subsequent mutual amendment of the agreement between them, it was agreed that Cruz would only obtain title and be in a position to seek registration of the transfer at the DVDL when he had obtained his own policy.*”

*Defendant’s submissions*

17. The Defendant’s position on this first issue is as follows:
- a. *By the end of March 2017 at the latest, Claxton no longer had possession of, nor any interests in or rights to (including right of access) or control over, the vehicle. There is no evidence which suggests otherwise.*
  - a. *Claxton had received full payment for the vehicle at least one month prior to the accident and no longer retained any proprietary interest in it. Accordingly, he had relinquished any insurable interest in the vehicle, and his insurance policy was no longer valid and enforceable as a matter of law.*
  - b. *In these circumstances it was not within Claxton’s power to permit Hurlston-Cruz to drive the vehicle or extend the benefit of his insurance policy (which had lapsed upon his insurable interest in it being relinquished) to Hurston-Cruz.”*
18. Counsel for the Defendant argued that the Sections 18 and 19 of the *Sale of Goods Act (1997 Revision)* referred to by the Plaintiff in support of his arguments should be interpreted differently than argued for by counsel for the Plaintiff, so that Section 19 applies the criteria at sub-paragraphs (a) to (f) in ascertaining the intention of the parties as to the time at which the property in the goods, here the vehicle, is to pass. This counsel argued, was based on a distinction between a sale and an agreement to sell. Counsel submits that the agreement to transfer the property in the vehicle at a later date is immaterial because the property in the vehicle passed when the contract was made. Counsel submits that there was “*an unconditional sale*”.

19. As to the intention of the parties, counsel submitted that there was no evidence of this intention and that counsel for the Plaintiff was overstating the extent of this agreement especially where the evidence of Claxton and Cruz offered different versions of the nature of the agreement. Counsel for the Defendant invited the court to consider whether Cruz's evidence on this point was now being advanced for a specific purpose, to artificially construct the evidence after the event. It was argued that the court should look instead into the matter of whether Claxton continued to use the vehicle or exert any rights over the vehicle following its sale.

**Issue (ii): Did Claxton retain an insurable interest in the vehicle on the date of the accident?**

*Plaintiff's submissions*

20. Counsel for the Plaintiff made the following submission in the alternative: that even if property in the vehicle passed to Cruz before the accident, the Defendant was still liable to the Plaintiff's judgment pursuant to the provisions of the *Vehicle Insurance (Third Party Risks) Act* [hereinafter "the Act"]. Counsel pointed to Section 15 (1) of the *Act* which provides:

*"If, after a certificate of insurance has been issued...in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a 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 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 law relating to interest on judgments."*

21. Counsel submitted that none of the exemptions to that section applied on the facts of the instant case. Counsel argues further that within the exemptions; the provision of subsection (2)(d) should be noted:

*"2. No sum payable shall be payable by an insurer under subsection (1)-*

- a. –*
- b. –*
- c. –*
- d. In connection with any liability, if before the happening of the event which was the cause of death, bodily injury or damage to property giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein and*

- i. *Before the happening of the said event, the certificate was surrendered to the insurer or the person, in whose favour the certificate was issued, made a statutory declaration stating that the certificate had been lost or destroyed;*
- ii. *After the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer or the person whose favour the certificate was issued made such a statutory declaration as aforesaid: or*
- iii. *Either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Law in respect of the failure to surrender the certificate.”*

22. It is submitted that the whole purpose of section 15(2)(d) is to require that where a policy has been cancelled or lapsed if the certificate has not been surrendered, the insurer must commence proceedings in respect of that failure within 14 days to avoid being fixed with the duty to pay on the judgment. Section 15(3) further requires an action for a declaration that the insurer is entitled to avoid the judgment for non-disclosure, to be commenced within three months of the proceedings (in this case G 110/2018) having been filed.
23. Counsel for the Plaintiff submitted that these provisions require that insurers act promptly to seek declaratory relief if they wish to contend that a person against whom a judgment was obtained was not insured. If the insurer is aware of the proceedings he cannot wait until after the third party obtains the benefit of a judgment before seeking that relief. Were it otherwise, the time limits set out in subsection (2) and (3) would be otiose.
24. Counsel submitted further that a blameless third-party seeking compensation should be informed, before he incurs the significant costs of continuing proceedings against a defendant, whether that defendant is insured, and that the successful claim will be paid. If the insurer does not obtain declaratory relief, and an unexpired certificate is in place that was not cancelled or surrendered, the Act, counsel submits, compels the insurer to pay on the judgment obtained rather than sit and watch and then simply avoid the judgment after the negligence action has concluded in the third party's favour. It was submitted that this is the clear policy imperative behind the legislation.

*Defendant's submissions*

25. The Defendant submits that the provisions of Section 15 (1) of the Act apply only if there is a judgment obtained against a party insured. In this case the obligation placed upon the insurer by

that section to satisfy the judgment obtained against Hurlston-Cruz was not enforceable since he was not a person insured under the Act.

26. Counsel for the Defendant argued that an insurable interest represents the assured's pecuniary interest in the subject matter of an insurance policy. To retain a right of indemnity, an interest in the property insured must also be retained: "*The insured must retain some lawful and substantial economic interest in the safety or preservation of the subject of the insurance, free from loss, destruction, or pecuniary damage*" In other words, the person with an insurable interest must suffer a disadvantage if the insured property of the policy is lost.
27. Counsel for the Defendant referred to *Advantage General Insurance Company Ltd v Shawn Myrie*<sup>1</sup> In that case McIntosh J. stated the following as the consequence of this lack of retention of an insurable interest:

*"...If the insured person has no interest at the time when the event insured against occurred, he cannot recover anything under an indemnity policy. The policy of insurance is not void but merely unenforceable by the insured."*

28. Counsel submitted that if an assured voluntarily parts with all his interest in the subject matter of the insurance policy, as happens upon a sale of a vehicle, the policy lapses since the assured no longer has any insurable interest and can have suffered no loss. Consequently, if the purchaser wished to be covered by an existing indemnity policy, then because it is a contract of "*personal indemnity between the insurer and the assured.... there must, in effect, be a novation of the contract.*" Counsel also referred to other authorities including *Peters v General Accident Fire and Assurance Corporation Ltd*<sup>2</sup> and *Bicar v Monroe and Noel*<sup>3</sup> in aid of this aspect of the submission.
29. Regarding section 15(2)(d) the Defendant's attorney submits that the circumstances of this case are entirely different to what is contemplated by that section; there is no question of Claxton attempting to avoid or cancel the insurance policy. Instead, on the facts of this case, the policy lapsed when the vehicle was sold to Cruz. Counsel for the Defendant submits there is therefore no requirement to take the steps as envisaged in section 15(3) in the event of a lapse.

*"The Plaintiff mischaracterises Section 15(2)(d) as nowhere in this section is there any reference to a policy lapsing. It is concerned only with cancellation, which is*

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<sup>1</sup> [2012] JMSC Civ. No. 18

<sup>2</sup> [1937] 4 All ER 628

<sup>3</sup> SLUHCV2004/0396; SLUHCV2004/0117

*either a consensual standalone act or an event which occurs on a specific term in the policy being triggered. The Defendant does not allege that the Policy was cancelled by any means, either by mutual consent or by a specific provision in the Policy, therefore it is unnecessary to consider the examples...*"

30. Regarding the insurable interest that must be retained by the insured and expanding on her argument<sup>4</sup> that Claxton did not retain an insurable interest, counsel for the Defendant stated that there were express terms in every policy which impose obligations and duties on the assured during the currency of the risk. One such condition which is common to a motor insurance policy requires the assured to take all reasonable steps to safeguard the insured vehicle from loss or damage and to maintain it in efficient condition.

31. To highlight the consequence of non-compliance with this term, counsel referred to ***Dodson v Peter H Dodson Insurance Services (a firm)*** which cites ***Boss v Kingston***<sup>5</sup>, at para 12 on page 308 and states as follows:

*“Condition [11] (5), which is a condition precedent to liability, not only cannot be complied with if possession of the named vehicle is wholly parted with but is really only apt in regard to a named vehicle. I conceive that it might be possible for the vehicle to be parted with in circumstances in which rights of user are retained, in which case it could be said that the indemnity in respect of it remains in operation. Where, however, as here, possession of the vehicle is parted with and no rights of user are retained, the indemnity must, I think lapse in regard to that vehicle. That being so, for the reasons given above, the whole policy will lapse.”*

32. Counsel submitted that *“a breach by the assured of a term of the kind described above provides the insurer with a complete defence to a claim for indemnity.”*<sup>6</sup>

33. It was submitted on behalf of the Defendant that Claxton was neither prejudiced nor disadvantaged as a result of the accident because he had no interest in, or possession or enjoyment of, the vehicle by this stage. It was further submitted that the issue of the lack of registration of the transfer of ownership of the vehicle was irrelevant to the insurable interest since that interest in the subject matter was not tied to the formalities of registration. Counsel submitted that the continued registration of Claxton after the sale did not equate to ownership and neither did the non-cancellation of the insurance policy.

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<sup>4</sup> [2001] 1 All ER (Comm) 300

<sup>5</sup> [1963] 1 All ER 177

<sup>6</sup> MacGillivray Notes at para 10-010-11

**Issue (iii): If Claxton retained an insurable interest in the vehicle and permitted Cruz to drive was Cruz an “authorised driver” under the policy?**

*Plaintiff’s submissions*

34. Counsel for the Plaintiff submitted that given that the premiums for the policy had been paid and the policy had not expired on the date of the accident, the policyholder, Claxton, was entitled to permit Cruz to drive the vehicle. Counsel argued that such permission granted by a policyholder will operate to allow the licensee to continue to drive the vehicle and to be insured while doing so. Counsel contends that the price of the premium contemplates that unknown drivers separate and apart from the policyholder could be permitted to drive during the period in which the vehicle remained insured. The provisions of the policy naming an “*authorised driver*” as being covered by the policy must be taken to mean a person who is driving with the policy holder’s permission and consent. Counsel referred to *Kelly v Cornhill Insurance Company Ltd*<sup>4</sup> in support of this aspect of his argument.

*Defendant’s submissions*

35. The Defendant’s submissions on the previous point are also relevant here. The Defendant submits that Claxton did not retain an insurable interest in the vehicle. When Claxton sold the vehicle, it was no longer within his gift to extend the benefits of the insurance policy so as to cause the Defendant to be liable to the Plaintiff at the time of the incident. The Defendant had no relationship with the driver Cruz at the time of the accident.

**Court’s reasoning and Conclusions**

36. There is no issue that a certificate of insurance was issued by the Defendant to Claxton for the period 26 May 2016 to 25 May 2017 (the Policy in respect of the vehicle 1999 Toyota Rav4 Registration 146957).
37. The Policy detailed “*the persons or classes of persons entitled to drive*” thereunder as follows:

**“5. *Persons or classes of persons entitled to drive***

- a. *TROY OTIS CLAXTON.*  
*The Policyholder may also drive a Motor Car not belonging to and not hired to the Policyholder under a hire purchase agreement.*
- b. *Any other person who is driving on the Policyholder’s orders or with the Policyholder’s permission who is over 23 and under 70 years of age and has had a full driver’s licence for a minimum of one year.*

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*Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the Motor Vehicle or has been so permitted and is not disqualified by order of Court of Law or by reason of any enactment or regulation in that behalf from driving the Motor Vehicle.”*

38. The private car policy of the Defendant by which the certificate is governed states at Section II regarding Indemnity to the Insured.

*“Indemnity to the Insured*

1. *The Company will subject to the Limits of Liability indemnify the Insured against all sums including claimant’s costs and expenses which the Insured shall become legally liable to pay in respect of*
  - a. *Death of or bodily injury to any person or damage to property in the event of an accident caused by or arising out of the use of the Insured Vehicle.*
  - b. *The driving of a private motor car (but not a motor cycle) not belonging to him and not hired to him under a hire purchase agreement or under a car rental agreement and not belonging to or hired to his employer or his partner.*

*Indemnity to other Drivers, Passengers and Legal Personal Representatives*

2. *The Company will subject to the Limits of Liability also indemnify*
  - c. *Any Authorised Driver who is driving the Insured Vehicle*
  - b. *At the request of the Insured any passenger travelling in or mounting into or dismounting from the Insured Vehicle*
  - c. *The legal personal representative of any person entitled to indemnity under this Section in respect of liability incurred by that person provided that such person shall as though he were the Insured observe fulfil and be subject to the Terms of his Policy insofar as they can be applied.”*

39. The following statutory provisions are also referenced and relevant to the submissions of counsel:

*“Section 9 of the Traffic Act (2023 Revision) states:*

1. *Where there is a change of ownership or alternation in the particulars of a registered vehicle, the owner shall, within fourteen days of the change or alteration – (a) inform the Director, on the prescribed form, of the change or alteration; (b) pay the prescribed fee; and (c) submit to the Director the certificate of registration, and the Director shall record in the register the change or alternation and issue a new certificate of registration to the new owner of the vehicle.*
2. *A registered owner of a vehicle referred to in subsection (1) who fails to inform the Director of a change of ownership or alteration in the prescribed particulars of a registered vehicle commits an offence and is*

*liable on summary conviction to a fine of four hundred dollars or to imprisonment for a term of three months, or to both.*

3. *The Director may call upon an owner of a vehicle to furnish information for the verification of the entries in the register relating to that vehicle.*
4. *A registered owner of a vehicle who fails to furnish information requested under subsection (3) commits an offence.”*

40. Section 18 of the *Sale of Goods Act (1997 Revision)* provides:

*“Property passes when intended to pass:*

*18 (1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*

*(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.”*

41. Section 19 of the *Sale of Goods Act (1997 Revision)* states:

*“Unless a different intention appears, the following criteria apply for ascertaining the intention of the parties as to the time at which the property in the goods is passed to the buyer-*

*(a) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed;*

*(b) Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing has been done and the buyer has notice thereof;*

*(c) When there is a contract for sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof;*

*(d) When goods are delivered to the buyer on approval, on sale or return or other similar terms the property therein passes to the buyer;*

*1. When he signifies his approval or acceptance to the seller or does any other act adopting the transaction; or*

*2. If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time, and what is reasonable time is a question of fact;*

*.....”*

**Issue (i) - The ownership of the vehicle at the time of the accident.**

42. In *Bicar v Montose and Noel*<sup>7</sup> the court stated: “...property in the goods is transferred to the buyer at such time as the parties intend it to be transferred and in ascertaining that intention regard much be had to the terms of the contract, the conduct of the parties and the circumstances of the case.”
43. The terms of the contract/agreement between Claxton and Cruz can be gleaned from the parties’ statements. The Claxton statement must be taken as written. Claxton referred to himself as “a previous owner” of the vehicle. He “sold” it to Hurlston-Cruz two months before the accident. Cruz paid for the vehicle in full, full consideration of \$1000.00 had been received by Claxton in March 2017.
44. The conversation below, as described in the Miller affidavit, gives further detail regarding the contract and the parties’ intention and lends force to a finding that the vehicle was sold to Cruz at the date of the accident. Miller states:
- “Having refreshed my memory of the meeting with assistance of this email, I can confirm that we were told by Mr Claxton to which Hurlston -Cruz agreed, that:*
- 25.1 *there was no receipt provided of the sale of the vehicle*
- 25.2 *the monies (\$1,000) was paid to Mr Claxton prior to the MVA.*
- 25.3 *Hurlston -Cruz had the keys of the vehicle, and*
- 25.4 *It was a casual transaction as Hurlston-Cruz’s mother worked with Mr Claxton.*
- Further as recorded in the e-mail, I told Hurlston-Cruz that he was not covered by the Policy.”*
45. I prefer this evidence to that from the statement of Cruz which was taken some 7 years after the accident. Cruz’s assertion that he was put in physical possession of the vehicle, but he had not paid the full purchase price at the date of the incident is directly contradictory to what the seller asserts. One would not imagine that the seller Claxton would state that he had received full payment for the vehicle when he had not.
46. When one considers the evidence surrounding the sale of the vehicle, it is clear that the intention of the parties was that ownership of the vehicle would pass when payment in full had been received

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<sup>7</sup> SLUHCV2004/0396; SLUHCV2004/0117

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and the vehicle given over to Cruz. Based on this evidence, by his own admission, Claxton no longer considered himself the owner of the vehicle although he was prepared to hold off surrendering his insurance policy for the vehicle to assist Cruz.

47. Section 18 of the *Sale of Goods Act* speaks to consideration of the intention of the parties regarding when ownership is passed. In the instant case, there is no written contract for the court's consideration. The agreement for sale of the vehicle was an oral agreement between the parties. The conduct of the parties supports the transfer of ownership at least two months before the accident as do the circumstances of the case. Counsel for the Defendant described the Plaintiff's submission on this point as seeking to stretch the interpretation of the available evidence. This evidence supports the passing of ownership and possession with an intention to delay the registration of the change of ownership of the vehicle together with agreement not to inform the defendant of same.
48. In *Presidential Insurance Company Limited v Twitz and Ramphal*<sup>8</sup> the appellant insurance company denied liability to indemnify the second respondent, its insured, for injuries caused to the son of the first respondent in a motor vehicle accident. It was alleged that the second respondent was the owner of the vehicle which had caused the injuries. The appellant insurance company argued that the second respondent had sold the vehicle to another three months before the date of the accident. The trial judge's findings regarding Section 19 of the Sale of Goods Act, (chapter 82:30) [TT], the equivalent to our Section 18 above, were considered. The trial judge found, after consideration of the agreement for sale, the conduct of the parties to the agreement and the circumstances of the case that the purported sale of the vehicle was incomplete. The CA held that it was not the intention of the parties that the property in the vehicle would pass to the buyer until the entire purchase price had been paid by her to the second respondent. There was in that case a clear intention for ownership not to pass.
49. As noted on appeal to the Privy Council, the full purchase price had not been paid by the buyer, while the buyer had possession of the vehicle after the first instalment of the purchase price was paid, the second respondent used it occasionally. The renewal of the insurance policy by the second respondent took place before the second instalment of the purchase price was paid, and the final instalment of the purchase price was to be paid before the change of ownership took place. As such it was held that "*there was evidence ...which established that [the second respondent] had an*

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<sup>8</sup> Civil Appeal no. S127 of 2013

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*insurable interest in the car at the date of the accident.*”<sup>9</sup> In the instant case, ownership passed to Cruz. There is no evidence to support a contrary view that this was not the parties’ intention. The findings in *Peters* are distinguishable on the facts. What is clear is their intention not to surrender the insurance policy on the mistaken belief that to do so would give cover to Cruz.

50. Claxton and Cruz were seemingly aware that if the change in ownership was to be registered Cruz would have to submit proof of an insurance policy under which he was covered in respect of the vehicle. The following from *Bicar v Monroe and Noel*<sup>10</sup> is relevant to this point where Shanks J. noted:

*“I do not accept his submission that legal ownership is not transferred until the new owner is registered. The registration of ownership of a vehicle is not like the registration of ownership of land. A vehicle is just like any other chattel in relation to acquisition and transfer of title: the fact that the owners are obliged by law to register their ownership does not make registration a pre-condition of ownership.”*

51. I agree with the submission of counsel for the Defendant that this issue of registration is a ‘red herring’. Whether or not the parties intended the vehicle to be registered in Cruz’s name once he secured insurance does not bear upon the question of ownership or possession, both of which are relevant to the primary issues in this case.
52. As to the first issue identified for determination, Claxton was not the owner of the vehicle at the time of the accident. Ownership and possession of the vehicle had passed to Cruz.

**Issue (ii): Did Claxton retain an insurable interest in the vehicle on the date of the accident?**

53. The following authorities bear upon the question of whether Claxton could be found to have an insurable interest at the time of the accident. As one would expect, the subject matter underlying this issue has received much judicial attention.
54. In *Advantage General Insurance Co Limited v Shawn Myrie*<sup>11</sup> the claimant's insurance company sought a declaration that the defendant had breached a policy of insurance which covered the defendant’s vehicle. The allegations of breach centered on the fact that the defendant had sold the vehicle and had failed to inform the claimant that he had done so. The court found, on a balance

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<sup>9</sup> [2020] UKPC 20 at paragraph 6

<sup>10</sup> Supra, note 7

<sup>11</sup> [2012] JMISC Civ. No. 18

of probabilities, that the defendant did not have an insurable interest and the insurance company was not obliged to offer an indemnity under the policy of insurance.

55. In *Bicar v Eastern Caribbean Insurance Limited* the injured claimant sought to recover against the defendant's insurance company where it had been determined that the insured owner of the vehicle involved in an accident was not liable for the actions of the driver at the time of the accident. The issue before the court was whether “*the insurers must pay not because the driver is the servant or agent of the insured who then himself becomes vicariously liable, but because they contracted with the insured to indemnify him and any authorised driver.*” The court held that the defendant's insurance company was liable to indemnify the authorised driver.
56. On appeal in *Eastern Caribbean Insurance Ltd v Bicar*, the Court of Appeal upheld the finding that the driver was an authorised driver and that the terms of the insurance contract compelled the defendant to indemnify the driver. The court held that:

“2. *The policy of insurance between the Insurer and Mr Noel extended to the policyholder, to any other person driving on the policyholder’s order (in essence, his servant or agent) and to any person driving with the policyholder’s permission (although not his servant or agent). Notably, the policy contained no qualifying provisions to restrict the extension of cover to persons driving on the policyholder’s order or with his permission.*

3. *An “insured person” or “person insured by the policy” under Mr Noel’s policy of insurance would accordingly include persons driving his motor vehicle with his permission as this was so specified in the policy, as evidence by the certificate. There is no distinction in principle between a driver who is “permitted” and one who is “authorised”.*

4. ....

5. ....

6. *The grounding of liability of the Insurer to pay a judgment debt in respect of which the authorized driver has become legally liable to pay is not dependant on a finding of vicarious liability on the part of the policyholder. The obligations may arise, though connected, quite separately and independently of the other once it can be shown that the driver falls within the category of persons specified under the particular policy as being covered thereunder.*

7. ....

1. *Section 9(1) of the Act gives fullest effect to the statutory exception to the rules of privity. Under S. 9(1) of the Act, it is the right of the third party to recover from the Insurer in respect of a legal liability covered under the policy arising whether from the acts of the policyholder or from the policyholder’s authorized or permitted driver. Accordingly, Mr Bicar (third party) is entitled to invoke section 9(1) of the Act to recover from the Insurer the judgment in his favour against Mr*

*Monrose, who as a “permitted” or “authorised” driver, was a “person insured by the policy of insurance.””*

57. In ***Boss v Kingston*** the appellant was covered by a policy of insurance which indemnified him against damage caused by driving a specific vehicle and against damage by his driving any other motorcycle not belonging to him and not hired to him under a hire-purchase agreement. After he sold the vehicle specifically referred to in the policy, the question arose as to whether he remained indemnified under the policy. Upon consideration of whether the policy of insurance provided two wholly independent indemnities the court held that

*“..no right of user of the named Triumph motorcycle having been retained by the appellant when he sold the motorcycle, the first indemnity had lapsed and thereupon the second indemnity not being a wholly independent indemnity lapsed also with the result that B was not insured against third-party risks when driving H’s motorcycle.”*

58. In ***Dodson*** the court sought to distinguish their findings from the judgment in ***Boss***. They did this on the basis of differences in the clauses in the insurance policies considered in ***Boss*** and what they had before them. Ultimately the court determined that upon the claimant’s sale of his car, even without replacing it, the claimant was still covered under clause 1 of his policy of insurance during the remainder of the policy period in the event of his driving with the owner’s permission any motor car not belonging to and not held under a hire purchase agreement by him.
59. The findings in ***Dodson*** are not particularly persuasive in this case. The facts are entirely different. They relate to the owner or seller of the insured vehicle and whether he retains coverage for his own actions. In this case, it is not whether Claxton remained covered by the policy when he sold it to Cruz. Instead, the question is whether Claxton could authorise Cruz to drive after selling him the motor vehicle. In essence it is one step further removed from both ***Boss*** and ***Dodson***. Ultimately, neither is determinative of this court’s final decision on the issues in this case.
60. In ***Peters***, the issue before the court was the position of the buyer of a vehicle where the insured vendor had upon the sale of the vehicle handed over the insurance policy to the buyer. The buyer had not paid the full price for the vehicle. The balance was paid after the accident which gave rise to the question of liability of the insurance company. The court was concerned with whether the buyer could in those circumstances be “*thrust upon the insurance company*” although the insurance company had no say in the matter and was unaware of the sale of the vehicle.

61. It was held on appeal that where possession of a vehicle is parted with and no rights of user are retained; the buyer was not driving as a permitted or authorised driver as the indemnity lapses in regard to the vehicle. Per Goddard J:

*“At the time of the accident, the purchaser could not be said to be driving the car by the order or with the permission of the vendor, as the car was then the purchaser’s property. The insured is not entitled to assign his policy to a third party. An insurance policy is a contract of personal indemnity, and the insurer cannot be compelled to accept responsibility in respect of a third party who may be quite unknown to them.”*

*“...As to the question of what happened to the policy, I think the policy lapsed. I think that there was thereafter no policy in existence upon this car, because the only person who was insured was Mr Coomber, and Mr Coomber had parted with the car. I think that, unless I held that, I should be going behind the principle in the case in the House of Lords known as Rogerson v Scottish Automobile & General Insurance Co Ltd”*

*“Can it be said here, by any stretch of imagination, that Mr Pope was driving by the order or with the permission of Mr Coomber? It seems to me that it is quite impossible to say that. He bought the car, it was his car, and he was driving his own car, not by Mr Coomber’s permission, and certainly not under his order....”*

*“...I am bound to hold that when Mr Coomber parted with his car, his insurance qua that car lapsed, and that there was no insurance. Therefore I decide, first of all, that there was no insurance at all in force on the car at this time. It is quite impossible to say that a person who is driving his own car, which he has bought and the property in which is in him, is driving it by permission or on the order of the person who sells the car.....”*

*“..... You cannot thrust a new assured upon a company against its will. If you do that, you must have a novation. You must have the release of the assured and the acceptance of the new assured. It is not a question of assigning a chose in action, such as a debt, a right to recover money....”*

*“If you sell your car, you cannot, merely by handing over your car and saying: ‘Take this policy and do what you can with it; I assign it to you.’ put the underwriters under an obligation to indemnify the purchaser, when they have agreed only to indemnify the vendor. Consequently, on all grounds here the action, in my opinion, fails.”*

62. This decision was affirmed in the Court of Appeal. The consequence of the lapse in the policy is what was referred to in *Smith v Ralph* where it was held that “*any permission given by a policy holder cannot extend beyond the time he ceased to be a policy holder.*”
63. In the present case, the Policy of Insurance lapsed upon the sale of the vehicle and the handover of possession to Cruz. Claxton did not retain any rights as owner of the vehicle. Claxton did not retain an insurable interest in the vehicle. The lack of registration of Cruz as the new owner is not a matter going to ownership and no other perceived indicator of ownership was retained in this case.

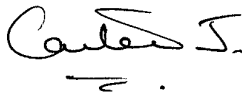
**Issue (iii): If Claxton retained an insurable interest in the vehicle and permitted Cruz to drive was Cruz an “authorised driver” under the policy?**

64. The Court’s findings at Issues (i) and (ii) above lead to a clear answer to the Issue (iii). Claxton was not the owner of the vehicle on the date of the accident. He did not retain an insurable interest in the vehicle upon parting with possession and ownership. Claxton could not give his permission and consent to Cruz and thereby “authorise” Cruz to drive the vehicle so as to afford Cruz the comfort of insurance cover under Section 5(b) of the Policy.
65. Regarding the submissions of counsel for the Plaintiff on Sections 15 (1) and (2) of the Act, liability is premised upon a finding that “*judgment.... is obtained against any person insured by the policy,*”. This court’s finding is that the judgment against Cruz is not a judgment against a person insured by the policy.

**Conclusion**

66. In *Peters*, Goddard J rejected the submission that an insurance company could be made liable where a vehicle had been driven and had caused damage “*after a sale to a person of whom they had never heard..*” as if to say “*this new assured would be put upon the insurance company although they have never heard of him and never heard of the transaction until some serious accident had taken place.*” This is exactly the position being put forward on behalf of the Plaintiff in this case.
67. I have reviewed the submissions both oral and written of the parties. There is nothing that has been submitted by counsel for the Plaintiff that has elevated this case beyond the scenario rejected by Goddard J in *Peters*.

68. It is unfortunate that the Plaintiff has been left in the position that he finds himself, through no fault of his own. He has a judgment against an impecunious Defendant in Cruz. However, that circumstance cannot weigh upon the issue of the legal liability of the Defendant in this case.
69. There is no legal nexus between Cruz and the Defendant.
70. The application for a declaration is dismissed.
71. The Plaintiff shall pay the Defendant's costs of these proceedings to be taxed if not agreed.



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**Hon. Justice Marlene I. Carter**  
**Judge of the Grand Court**