

**THE REPUBLIC OF UGANDA
IN THE INSURANCE APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPEAL No. 4 of 2023**

TROPICAL BANK LIMITED ===== APPLICANT

VERSUS

GOLDSTAR INSURANCE COMPANY LIMITED ===== RESPONDENT

JUDGEMENT

1. This appeal was filed by the Applicant on the 29th day of June, 2023 challenging the decision of the Insurance Regulatory Authority (IRA) continued in its letter dated 2nd June, 2023 vide; Reference No. IRAB/COMP 76/9/2021. The impugned decision is to the effect that the Applicant pays the Respondent premium of UGX 25,973,924 within 20(Twenty) working days from the date of the receipt of the said decision. The Authority also directed that the Respondent issue a new invoice to the Applicant to facilitate payment within 7(seven) days from the date of receipt of this decision and that the proof of payment within 30(thirty) working days from the date of receipt of the Authority's decision.

THE BRIEF BACKGROUND

2. On the 31st day of December 2020, the Applicant sent an email and a written letter to the Respondent informing the Respondent that it had awarded it a contract for the provision of a Group Personal Accident Policy for the year 2021. Thereafter, the Respondent sent an email wherein it followed up with the Appellant on the list of positions and salaries of Bank staff to enable the computation of premiums and issuance of invoices as agreed. In response to the said email, the Applicant sent a list of all staff and total basic pay wage bills to the bank and further requested the Respondent to send them the policy and debit notes to enable the Applicant to process payment. Indeed, the Respondent issued a Group Personal Accident Policy effective 1st January 2021 to 31st December 2021 and a debit note as requested.
3. The Applicant also contended that it had undergone a restructuring as well as Branch Mergers due to the impact of the COVID-19 pandemic and as such was supposed to update the list of its staff members. As such the Applicant sent an email to the Respondent wherein it indicated that there were staff, that were exiting the Bank by 8th February 2021 and therefore requested to the Respondent to prorate the premium and accordingly invoice and invoice them again. The Respondent accordingly issued the debit note with a prorated premium to allow the Applicant to process it and pay the premiums whereof the Applicant assured the Respondent that it would clear the same not than 3(three) weeks. Further upon

being sent a demand notice of the outstanding premiums, the Applicant wrote a letter to the Respondent, informing it that the Applicant would not contract the Respondent for its services. The Applicant lodged a complaint with the IRA which found in favour of the Respondent and the Applicant being dissatisfied with the decision of the IRA preferred the instant appeal before this Tribunal to review the decision of the IRA.

REPRESENTATION AND APPEARANCE

4. At the hearing, the Applicant was represented by its legal and compliance Department. The Respondent was represented by Semambo & Semambo Advocates.
This appeal was dismissed for non-appearance but was later on reinstated through the application by the applicant for its reinstatement.

DETERMINATION BY THE TRIBUNAL

5. To place this appeal in proper context, from the pleadings and submissions of the parties to this application, the points of contention as cited by counsel for the applicant are;
 - a. *Whether there existed a valid insurance policy between the Applicant and Respondent.*
 - b. *Whether the Applicant is liable to pay the Respondent the premium claimed by the Respondent.*

EVIDENCE AND SUBMISSION IN SUPPORT OF THE APPLICATION

6. On this issue, the Applicant argued that in an insurance contract, the consideration is the premium and that this must be paid at the time and in a way and manner specified in the policy, and if not so paid, the policy will lapse and be forfeited by its terms. Counsel relied on the case of ***SPS ANTONIO A TIRAY and VIOLETA R. TIBAY and OFELIAM RORALDO, VICTORINA M. RORALDO, VIRGILIO M. RORALDO, MYRNA M. HORALDO ROSABELLA M. RONALDO VERSUS COURT OF APPEALS and FORTUNE LIFE AND GENERAL INSURANCE CO., INC (G.R. No. 119655 May 24, 1996) Supreme Court of the Republic of Philippines.***
7. Counsel further argued that in light of ***Section 63 of the Insurance Act, 2017*** full premiums must be paid on or before the date of inception or renewal of the policy. This is because the insurer must maintain a legal reserve fund to meet its contingent obligations to the public, hence the imperative need for prompt payment and satisfaction. Counsel also emphasised, that any partial payment itself even when accepted cannot keep the policy alive even for such a fractional part of the year as the part payment bears to the whole payment. Counsel relied

on **Henry J.Klein, Administrator of Natalie Lisiewicz Klein v Avemco Insurance Company 220 S.E 2d 595(1975) 289 N.C 63**

8. It was the Applicant's submission that although it is not in dispute that the Bank intimated to the insurer that it would be contracting it to provide a Group Personal Accident Policy cover for the year 2021 none of this culminated into an insurance policy for lack of payment of premium by the Bank and that therefore there was no consideration furnished capable of establishing a contract between the parties. Therefore the decision by the Insurance Regulatory Authority that the promises made by Tropical Bank Limited to pay the insurer constituted a valid policy without payment of premium was flawed and therefore contrary to Section 63 of the Insurance Act, 2017. Counsel enjoined this honourable Tribunal to uphold the position in Section 63 of the Insurance Act, 2017 by not sanctioning an illegality. Counsel relied on the case of **Makula International Limited V His Eminence Cardinal Nsubuga & Rev. Dr. Father Kyeyune; Civil Appeal No. 4 of 1981**
9. On the other hand, the crux of the Respondent's argument was based on three concepts: 'A promise to pay premium by the insured does not affect the validity of an existing insurance contract between the insurer and insured, estoppel by conduct and the benefit enjoyed by the Applicant as a result of the mandatory provisions of the Workers Compensation Act Cap 225.
10. Counsel for the Respondent argued that the existence of a policy can be deduced from proposals, cover notes and insurance policies. Having entered into a contract with the Applicant on the 11th day of January 2021 by 29th March 2021 when the Applicant decided to terminate the policy it had been on cover for 3(three) months. He relied on the case of **Suffish International Food Processors(U) Ltd and Another v Egypt Air Corporation T/A Egypt Uganda Ltd; SCCA No. 15 of 2001**
11. The second argument by the Respondent is that even in the absence of a premium an insurance policy is still operative if its payment is not a condition precedent. That since on the 31st day of December 2021 the Applicant had unequivocally accepted the terms of the Respondent to provide insurance services for Group Personal Accident (AX2). Further, on the 8th January 2021, the Applicant requested for the policy, debit notes and invoices as exhibited AX6 and on the 12th day of February 2021 the Applicant assured the Respondent that it would be paid in no later than a week. Counsel relied on **Chartis Philippines Insurance Inc. (Now AIG Philippines Insurance Inc.) Vs Cyber City Teleservices Ltd (G.R No.234299 of 2021**
12. In response to the Applicant's submissions that Section 63 of the Insurance Act, 2017 provides that premiums must be paid in full at the inception of the contract, counsel for the Respondent argued that the said Section is meant to protect an insurer from being cheated by unscrupulous insured persons by ensuring that premium under the insurance contract is paid on or before the date of inception

or renewal of the policy. Counsel argued that this provision cannot be interpreted against the insurer since the legislature does not intend that the insurer should suffer at the expense of an insured that has not paid as a result of the insurance contract but rather to ensure that in all circumstances an insurer is protected for the services rendered. The Respondent relied on **Abdul Azeez & Co. v National Insurance Co. Ltd AIR 1954 Madras**

13. It was the submission of the Respondent that the Group Personal Accident Policy contained a 'premium payment warranty clause' which is a warranty and not a condition and that it is intended to protect an insurer by ensuring that an insured pays a premium upfront so that if a legitimate claim arises, the insurer can indemnify the policyholder. Further, although the premium was a condition precedent the parties thereto had the ultimate say as to how the contract would be performed and the conduct of the parties is always paramount in the determination of how the contract should be enforced. Counsel implored this Tribunal to be persuaded by the case of **Parsons Transport Ltd v Global Insurance Company Ltd 345/04** and not set a bad precedent where insured companies are deprived of a premium payment after offering a policy to the insured
14. It was also the Respondent's submission that Estoppel by conduct implies that a party whom it is set up from denying the truth of the matter where a party has by his declaration, act or omissions intentionally caused the other to believe a thing to be true and to act upon such belief he cannot be allowed to deny the truthfulness of that thing. On the 5th of February 2021, the Applicant sent staff lists and requested for computation of a prorated premium as seen in AX6 and on the 12th day of February 2021 the Applicant requested an invoice therefore they made a promise to pay premiums for the policy. That the Applicant made the Respondent act on these promises and should not be seen to go back on their words and actions. Counsel relied on **Charles Lubowa v Makerere University SCCA No. 2/2011 and Pan African Insurance Company (U) Ltd v International Air Transport Association HCCS No. 667 of 2003**
15. Lastly, the benefit enjoyed by the Applicant as a result of the mandatory provisions of **Section 18(1) of the Workers Compensation Act Cap 225** and the Motor Vehicle Act required the Applicant to take on an insurance cover for its employees. It is only the existing insurance policy that satisfied the legal mandate of the Applicant to take on an insurance policy for the Applicant's employees. Counsel invoked the decision of the Court in **New India Assurance Co Ltd v Rula & Ors** wherein it was stated that 'the subsequent cancellation of an insurance policy on the ground of non-payment would not affect the rights already accrued in favour of the third party. Further, even if there was no claim by the Applicant during the pendency of the insurance cover there was a legitimate claim by an employee in the event of an accident.

DECISION OF THE TRIBUNAL

RESOLUTION OF ISSUE ONE

Whether there existed a valid insurance policy between the Applicant and Respondent?

16. An insurance contract is defined in Section 2 of the Insurance Act 2017 as “a contract under which one party, known as the insurer, in exchange for a premium, agrees with another party, known as the policyholder, to make a payment, or provide a benefit to the policyholder or another person on the occurrence of a specified uncertain event which, if it occurs, will be adverse to the interests of the policyholder or to the interests of the person who will receive the payment or benefit”
17. Payment of premiums by an insured is generally governed by the terms and conditions of the insurance policy and relevant statutory regulations. The specifics may vary based on the type of insurance and the terms outlined in the policy.
18. The policy that was sought to be renewed under the operative clause provides that ***“Notwithstanding anything to the contrary or any section thereof, the company’s agreement to insure and indemnify the Policyholder is conditional upon the payment of premium by or on behalf of the Policyholder and the receipt by or on behalf of the Company. Premium is payable on or before the inception date and renewal date as the case may be but not later than 30 days following the inception or renewal date.....”***
19. The Policy further contains a premium warranty which provides that *“It is hereby agreed and understood that cover under this policy is granted subject to full payment of the premium within 30 days from inception/renewal. It is further declared and agreed that this Policy will be rendered null and void thus relieving the Company of any liabilities that would have otherwise arisen with effect from inception/renewal if the premium is not paid within the period stipulated above. Where this warranty conflicts with Section 34 of the Insurance Statute (1996), the Statute shall prevail”*.
20. From the foregoing provisions in the policy document premium payment was a condition precedent to the validity of the contract. The consequences of the failure to pay premiums by the insured within the stipulated time would render the policy null and void.
21. **Section 63 (1) of the Insurance Act 2017 specifically provides that** “Subject to subsection (2), the insured shall pay in full the premiums payable under the insurance contract on or before the date of inception of the policy or renewal of the policy”
22. Based on the consideration of the provisions above, there is little room for doubt that the receipt of an insurance premium is a condition precedent to a valid

contract of insurance. It is equally incontrovertible that unless a premium is paid in advance, there can be no cover for an insurance risk. As can be gleaned from Section 63 (1) of the Insurance Act, a valid insurance contract comes into existence only when a premium for the insurance is paid for in advance by the insured i.e. no premium no cover basis.

23. The intention behind the introduction of the guidelines is to protect the solvency of the Insurance industry and curtail the exposure of insurers to liability for premiums which have not been received.

24. Section 63 (2) gives the IRA power to make regulations to regulate payment. Pursuant to this power, IRA passed a circular on 5th May 2020 referenced IRA/CIR/04/20/575 deferring the termination, cancellation or lapsation of insurance policies due to nonpayment of premiums owing to the then prevailing challenges imposed by the COVID-19 pandemic and the restrictions imposed as a result.

25. In its ruling on page 6, the Complaints Bureau of IRA held that;

“This circular remained operational until publication of the notice of reinstatement of payment of premium as published in the New Vision of 13th May 2021 on page 13 and the daily monitor of 18th May 2021 which restored the operation of “cash and carry” as required by s.63(1) of the Insurance Act 2017”

26. The Bureau went further to compute the time of the policy in question and stated thus;

“Therefore, by virtue of the highlighted Circular and directive of the Authority, and owing to the fact that Goldstar confirmed cover instructions, and issued the policy to the complainant, upon the complainant confirming and undertaking severally to pay the premiums, we find that Goldstar is entitled to premiums for 3 months or 90 days when the complainant was on cover.”

27. We are unable to fault the Bureau's finding that the Applicant had been on cover even though it had not paid premiums. Once the regulator deferred payment of premiums under the circular stated above, it was no longer illegal for the insurer to place the insured on cover and defer payment of premiums.

28. We accordingly find this issue in favour of the Respondent and uphold the finding of the Complaints Bureau that the Respondent had been on cover for 3 months or 90 days and is liable to pay the prorated premium of UGX 25,000,000/=.

Remedies

29. The Applicant prayed that its appeal be allowed and the orders made by the Complaints Bureau be set aside. He argued that to enforce the orders of the

Bureau would amount to enforcing an illegality and he cited the case of **Makula International V His Eminence Emmanuel Cardinal Nsubuga**. Having found that the operation of S. 63(1) was suspended by the circular issued by the Regulator, we are unable to find that the issuance of the policy by the Respondent amounted to illegality and as such we decline to grant the orders sought by the respondent and we uphold the decision of the Complaints Bureau of IRA.

30. The Respondent on its part prayed for the dismissal of the appeal with costs. Whereas the appeal is disallowed for the reasons stated above, we have not been satisfied by the respondent to exercise our discretion to grant costs. Therefore, the prayer for costs is denied.

31. The application is therefore disallowed and the decision of the IRA is accordingly upheld.

CONCLUSION AND FINAL ORDERS

In conclusion, the Tribunal makes the following orders:

- 1) This application is disallowed.
- 2) The decision of the IRA is upheld.
- 3) Each party is to bear the costs of the appeal.

Any party dissatisfied with this decision may appeal to the High Court within 30(Thirty) days from the date of this Decision.

DATED and DELIVERED at KAMPALA on the ____ day of January _____ 2024.

Rita Namakiika Nangono
Chairperson - Insurance Appeals Tribunal

Solome Mayinja Luwaga
Member - Insurance Appeals Tribunal

George Steven Okoth
Member - Insurance Appeals Tribunal

Dr. John Bbale Mayanja (PhD)
Member - Insurance Appeals Tribunal