

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 431 OF 2002

AQUA PLUMBING (U) LTD.....PLAINTIFF
VERSUS
UNITED ASSURANCE CO. LTD..... DEFENDANT

Before: The Hon. Mr. Justice F. S. Lugayizi

JUDGMENT

The plaintiff sued the defendant for breach of insurance contract relating to motor-vehicle registration No. UAA 779Q that got an accident on 10th November 2001 and prayed Court for the following remedies:

1. A sum of shillings 9,800,000/ as compensation for loss.
2. General damages.
3. Interest on 1 and 2 above at the rate of 24% p.a.
4. Costs of the suit.
5. Any other further or alternative remedy Court may deem fit to grant.

In its WSD the defendant denied the plaintiff's claim and averred that it did not breach any contract because at the time of the accident there was no insurance policy in place to cover the accident. The defendant, therefore, prayed Court to dismiss the plaintiff's suit.

At the time of the scheduling conference and at the hearing of the suit Messrs. Mugisha and Tumusingizi, respectively, represented the plaintiff and the defendant.

The agreed facts constituted the following:

1. An insurance policy No. 010/080/1/000098/2000 existed between the plaintiff and the defendant in respect of a pick-up motor vehicle registration No. UAA 779Q for the period running from 14th March 2000 to 13th March 2001.
2. On the expiry of the above policy the defendant requested, in writing, the plaintiff to renew the policy.
3. On 10th November 2001 the above motor vehicle had a serious accident and was subsequently written off.
4. The plaintiff lodged a claim for compensation, but the defendant rejected it on the basis that the plaintiff had not paid any premium to cover the period of the accident.
5. On 9th May 2002 the plaintiff paid the defendant some money that was receipted.
6. At the time the plaintiff made the said payment the risk initially insured had already taken place.

The following were the agreed documents, which did not need to be formally proved:

1. The motor vehicle logbook- Exh. P1.
2. Insurance policy document running from 14th March 2001 to 13th March 2002- Exh. P2.

3. Motor vehicle inspection report dated 14th November 2001- Exh P3.
4. The plaintiff's claim dated 12th November 2001- Exh. P4.
5. Demand letter dated 20th May 2002- Exh. P5.
6. Defendant's reply to the above letter dated 10th June 2002- Exh. P6.
7. Motor vehicle Third Party Insurance general certificate dated 16th March 2001- Exh P7.
8. Payment voucher dated 9th May 2002- Exh. P8.
9. Receipt dated 9th May 2002- Exh. P9.
10. Renewal notice dated 1st February 2001- D 1.
11. Motor renewal endorsement for the period running from 9th May 2002 to 8th May 2003 whose date of issue is 13th March 2002- Exh. D2.
12. Debit Note No. 00800337 dated 13th May 2003- Exh D3.

For the sake of clarity, Court has rephrased one of the two issues the parties agreed upon. Court is satisfied that this will not prejudice the parties. In fact, it is for the good of the parties. The issues now read as follows:

1. Whether at the time of the accident the plaintiff's motor vehicle had comprehensive motor vehicle insurance policy covering it.
2. The remedies available.

During the hearing of the suit the plaintiff called one witness, namely Fred Muyende (PW1). The plaintiff's case was briefly as follows:

In the early part of 2000 the plaintiff took from the defendant a comprehensive insurance policy to cover a commercial motor vehicle registration Number UAA 779Q. The life span of the policy was one year. It ran from 14th March 2000 to 13th March 2001. The plaintiff paid a sum of shillings 658,000/= as premium for the policy. On 13th March 2001 when the policy expired the defendant sent the plaintiff a renewal notice. The plaintiff responded; and in the negotiations that ensued an officer of the defendant called Musoke sent the plaintiff a Third Party Insurance receipt (Exh. P7). The receipt showed, among other things, that the said policy could be used to cover the motor vehicle in question comprehensively because it cited the plaintiff's initial comprehensive insurance policy number and showed, too, that the same old premium was payable. However, the plaintiff did not pay the premium for the renewal of the policy for its motor vehicle until 9th May 2002. In the mean time, the motor vehicle in question had a serious accident in Masaka; and it was written off. The plaintiff, therefore, referred the matter to the defendant with a view to recovering the pre-accident value of the said motor vehicle. The plaintiff was surprised when the defendant refused to compensate it in respect of the loss of the motor vehicle. For that reason, the plaintiff prayed Court to give it the remedies earlier on referred to in this judgment. That was the plaintiff's case.

In its defence the defendant called two witnesses, namely Ismail Bakowa (DW1) and Ronald Semanda (DW2). Basically, the defendant's witnesses agreed with the plaintiff's version referred to above. However, they insisted that the plaintiff could not recover any money from the defendant in respect of the comprehensive insurance policy because at the time of the accident the plaintiff had no such cover from the defendant. That insurance policy had, long before, expired and the plaintiff had not renewed it. Therefore, the defendant's witnesses

called upon Court to dismiss the plaintiff's suit with costs.

Be that as it may, it is now Court's duty to resolve the above two issues in the light of the evidence on record and the law. Court will do so below in the order in which the issues occur.

With regard to the first issue (i.e. **whether at the time of the accident the plaintiff's motor vehicle had a comprehensive motor vehicle insurance policy covering it**) Court has this to say. In resolving this issue it will help to understand the difference between a comprehensive motor insurance policy and a Third Party motor insurance policy. **"A comprehensive motor vehicle insurance policy"** as the name suggests is a motor vehicle insurance policy that covers the insured in respect of a wide range of risks his/her motor vehicle may face as it plies the roads. For example, the motor vehicle in question may be damaged on the road. It may cause damage to other motor vehicles or property as it runs on the road. It may cause death or personal injuries to individuals, etc. A comprehensive motor insurance policy covers the insured against all such risks; and the insurer is under obligation to indemnify the insured when they occur. On the other hand, 'a **Third Party motor vehicle insurance policy**' (here in Uganda) covers the insured only in respect of death or personal injury occasioned to a third party as a result of an accident which the motor vehicle of the insured causes. It does not cover the insured in respect of damage to his/her motor vehicle sustained on the road or, damage his/her motor vehicle may cause to any other motor vehicle or property. **(See section 3(b) of The Motor Vehicle Insurance (Third Party Risks) Act (Cap. 214).** It is worth noting that although the above two motor insurance policies are different, generally when one takes out a comprehensive motor insurance policy it means that one's insurance cover includes a Third Party motor vehicle insurance policy. Under section 2(1) of the **Motor Vehicle Insurance (Third Party Risks) Act (Cap. 214)**, all motor vehicle owners are under a legal obligation to take out a Third Party motor vehicle insurance policy if they are to use their motor vehicles lawfully on the roads. However, those motor vehicle owners are under no legal obligation to take out a comprehensive motor insurance policy in respect of their motor vehicles. The effect of this, therefore, is that many motor vehicle owners fulfill their legal obligation by taking out a Third Party motor vehicle insurance policy in respect of their motor vehicles, but they deliberately avoid obtaining comprehensive cover for their motor

vehicles because it is expensive to do so.

Be that as it may, where the insurer and the insured have agreed that the insurer would cover a given risk for a specific period, there exists a contract of insurance between the two parties for the period agreed upon. When the agreed period of cover expires and the contract insurance is not renewed it is obvious that the validity of such contract ceases. (**See Brown v Graham (1963) SR (NSW) 365**). However, where the contract is renewed, the renewal becomes a fresh contract of insurance. (**See Hanley v Pacific Fire & Marine Insurance Company (1893) 14 LR (NSW) 224; Re Kerr (1943) SASR 8; and Stockell v Heywood (1897) 1. Ch. 459**). The new contract begins from the day of renewal and runs until the agreed day of expiry. It follows, therefore, that the risk occurring in the interim period, that is to say between the expiry of the policy and the renewal thereof is not covered. To purport to say that such risk was covered under the renewed policy would, in Court's opinion, go against the basic principle of insurance, which is to cover an uncertain future risk and not a past event.

In the instant case, Exh. P2 clearly shows that the plaintiff took out a comprehensive motor insurance policy in respect of its motor vehicle UAA 779Q in March 2000. That policy, among other things, covered damage to that motor vehicle. The policy was for one year. It ran from 14th March 2000 to 13th March 2001. In his testimony Mr. Fred Muyende (PW 1) confirmed that when the above policy expired the plaintiff did not renew it until 8th March 2002 but in the meantime, that is to say, on November 2001, the said motor vehicle got an accident. From the above evidence, which is consistent with the defendant's version, it is obvious that on 10th November 2001 when the accident in question happened the plaintiff's motor vehicle had no comprehensive insurance policy covering it. For that reason the plaintiff cannot lawfully make a claim based on a policy that was not in existence at the time of the accident.

In reaching the above conclusion Court has also considered Exh.P7. It thinks Exh. P7 is a red herring or a diversionary piece of evidence, for that document is not a renewal of the plaintiff's comprehensive insurance policy in respect of the motor vehicle in question. From all its appearances Exh. P7 is a Third Party motor insurance policy with the usual conditions

and terms of such policy attached to it. In the circumstances, it is misleading for Mr. Mugisha to argue that because Exh. P7 bears the word “**comp**”, which the witnesses interpreted to mean “**comprehensive**”, that per se changed the essential terms of the document and made it a renewal of the comprehensive insurance policy for the motor vehicle in question. Besides, that line of argument is not only inconsistent with the evidence on record it also runs counter to the contents of the plaint, which reveal that the plaintiff did not renew the comprehensive insurance policy in question immediately when it expired on March 2001.

All in all, Court must conclude that at the time of the accident the plaintiff’s motor vehicle had no comprehensive motor vehicle insurance policy covering it.

With regard to the second issue (i.e. the remedies available) Court has this to say. Since Court has resolved the first issue in favour of the defendant it means that the plaintiff has not succeeded in its suit against the defendant. In the circumstances, Court has no choice, but to dismiss the suit with costs; and it is hereby ordered so.

E.S. Lugayizi

15/3/2004