

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 132 OF 2010**

GOLDSTAR INSURANCE COMPANY LTD}.....PLAINTIFF

VERSUS

- 1. THE ATTORNEY GENERAL}**
- 2. SOUTHERN UNION INSURANCE BROKERS U LTD}.....DEFENDANTS**
- 3. MULOWOOZA AND BROTHERS LTD}.....THIRD PARTY**

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff Company filed this action against the Attorney General of Uganda in his representative capacity pursuant to the provisions of the Government Proceedings Act Cap 77 laws of Uganda and the second Defendant Southern Union Insurance Brokers (U) Ltd jointly and severally for special damages in the sum of **Uganda shillings 1,640,000/=** and **€22,409**, general damages for breach of contract and costs of the suit. Subsequently the second Defendant joined the third-party Mulowooza and Brothers Ltd for indemnity.

The facts in support of the claim as alleged in the plaint are admitted by the third-party and are that at all material times the Ministry of Works and Transport of the Government of Uganda owned the vessel MV Kalangala operated by Messieurs Mulowooza and Brothers Ltd on its behalf. On 18 August 2009 the Plaintiff was approached by the Ministry of Works and Transport through its agent the second Defendant to issue an insurance cover in respect of its vessel MV Kalangala for the period 12th of August 2009 to 25th of August 2009. The perils to be insured were duly spelt out in the second Defendant's letter of instructions. The Plaintiff duly undertook the risk and in turn took out a policy of reinsurance with its insurers in respect of the vessels belonging to the Ministry of Works and Transport, an agency of the first Defendant. The Plaintiff issued a cover note by which the first Defendant was obliged to pay a sum of **€22,409** and **Uganda shillings 1,640,000/=** as premium inclusive of stamp duty. The insurance policy covered third-party passengers in the aggregate, cargo aggregate, protection and indemnity, personal accident for 12 crew members up to a sum of €5,432,659. The Plaintiff agreed to insure the said vessel based on the assurance of the Ministry Works and Transport for which the first Defendant is vicariously liable and on the strength of the second Defendant. As a result of the omission the Plaintiff suffered loss and damage of **Uganda shillings 1,640,000/=** and **€22,409**. The Plaintiff also suffered general damages by way of loss of earnings and inconvenience.

Decision of Hon. Mr. Justice Christopher Madrama

Overtime the Plaintiff made demands to the Ministry of Works and Transport and the second Defendant to pay the said monies and an acknowledgement was made with a promise to pay. However the Defendant failed to pay the amount.

The second Defendant filed a defence in which it merely denied all the Plaintiff's claims and prays that the Plaintiff's suit is dismissed with costs. Similarly the Attorney General's defence denies knowledge of the contents of the plaint and therefore denies that the Plaintiff is entitled to the reliefs claimed in the plaint.

The matter went for mediation and the mediator's report is that the first Defendant insists that there is no cause of action so there was nothing to agree upon by way of settlement whereupon the time for mediation ran out and the file was returned for holding a scheduling conference and for trial.

The written statement of defence of the third party denies the claim of indemnity or contribution by the second Defendant and denies the claims in the plaint. However the third-party admits some facts in the plaint particularly the insurance of the vessel. Paragraphs 6, 7 and 8 of the plaint deal with the facts in support of the claim which are admitted by the third-party. Specifically the third-party avers that at the material time it was the operator of MV Kalangala owned by the Government of Uganda through the Ministry of Works and Transport. As a mere operator the third-party was not supposed to operate the vessel without a valid insurance policy for which reason it contacted the second Defendant as an insurance broker for a policy cover on behalf of the Ministry of Works and Transport but not in its individual capacity and the third party acted within the mandate of the operation agreement it had executed with the Ministry of Works and Transport. It is the second Defendant which contacted the Plaintiff for an insurance cover as an insurance broker acting on behalf of the owner of the vessel namely the first Defendant and not on behalf of the operator and the second Defendant first satisfied itself with the ownership of the vessel before engaging the Plaintiff and the third-party therefore denies any personal liability or indemnity to the second Defendant. Furthermore the third-party avers that it is a mere operator and not the owner of MV Kalangala with no insurable interest in MV Kalangala and the insurance policy cover as negotiated by the second Defendant in respect thereof was negotiated by the second Defendant as an insurance broker and therefore an agent of the first Defendant and the sale was for the benefit of the first Defendant for whom the third-party was also representing as an agent and who is vicariously liable for the third parties dealing in respect of MV Kalangala at the material time.

The Plaintiff is represented by Messieurs Nangwala, Rezida and Company Advocates while the second Defendant was represented by Messieurs F Mukasa and Company Advocates. The third-party is represented by Messieurs Ambrose Tibyasa and Company Advocates.

Several efforts were made to have this suit progress to the level of adducing evidence. The record shows that it was fixed for pre-trial conferencing on 16 August 2012 after it had come for

mention on 21 June 2012. On 16 August 2012 the Attorney General's representative was not in court neither was there anybody from the second Defendant. There was no affidavit of service on record and the matter was adjourned. On 6 September 2012 there is evidence that the Attorney General was served however the second Defendant issued third-party notice and the third-party's Counsel appeared. They had no objection to being joined and had been served on 3 September 2013 and needed time to study the matter. The matter was also sent back for mediation to take into account the claims against the third-party. Subsequently the court issued a notice to show cause why the suit should not be dismissed. In another development on 9 April 2014 the second Defendant's Counsel Faisal Mukasa and Company Advocates informed the court that they no longer had the instructions. Pursuant to the provisions of rule 7 of the Constitution (Commercial Court) Practice Directions the suit was fixed for hearing with the Attorney General to be served in the ordinary way as well as the third-party while the second Defendant was served by way of substituted service in the Monitor Newspaper. The suit was fixed for hearing on the 2nd of May 2014 at 9:30 AM. On the 2nd of May 2014 the court directed that testimonies of witnesses were to be in writing and to be filed and shared with the opposite Counsel's by the 15th of May 2014 when the hearing was fixed for the 22nd of May 2014 in a backlog disposal session which had been fixed for that time.

On June 2 of May 2014 this suit was heard and proceeded ex parte against the Attorney General who had been served as well as the second Defendant. Only the Plaintiff and the third-party appeared for the hearing. Subsequently the court heard oral submissions from the Plaintiff's Counsel and the third party's Counsel. Counsel James Nangwala addressed the court on behalf of the Plaintiff while Counsel Ambrose Tibyasa addressed the court on behalf of the 3rd party.

Address by the Plaintiff's Counsel

The Plaintiff is entitled to payment of the suit amount from the Defendants being an unpaid premium for insurance cover in respect of a vessel owned by the government of Uganda under the Ministry of Works and transport and operated by the 3rd party. The second Defendant was the insurance broker which secured the cover on behalf of the first Defendant. The Defendants filed defences but snubbed the hearing of the case. They were served but did not attend court at all times. There are three issues which may be curbed out of the pleadings. From the scheduling memo the main issue is whether the Plaintiff is entitled to the amount claimed in the plaint? Though the case proceeded ex parte, the Plaintiff is obliged to prove its case.

The pleadings of the Attorney General clearly offend provisions of order 6 rules 8 and 10 of the Civil Procedure Rules. The defence comprises of mere denials. Yet under order 6 rules rule 10 the Defendant is required to answer the pleadings of the Plaintiff in substance. There are no contrary facts in the defence which would burden the court in evaluating the unchallenged evidence of the Plaintiff. The evidence of the Plaintiff on liability of the Defendants was supported by the evidence of the 3rd party's sole witness. Counsel invited the court to evaluate

this evidence and come to the conclusion that there was a contract of insurance between the first Defendant and the Plaintiff through the second Defendant.

On the authority of an agent to bind the principal the Plaintiff's Counsel referred to sections 122, 123, and 126 of the Contracts Act No. 7 of 2010. Particularly on insurance contracts Counsel made reference to **"Law and Life Insurance Contracts" By Muriel Crawford 7th edition** and relevant principles highlighted. The Plaintiff's Counsel submitted that the Attorney General is liable to pay the premium for which its vessel was insured at the material time. Once court is satisfied that premiums are due, the Defendant had the burden of proving that they paid. There is no such proof and there is evidence of non payment and the court would find it in the collective exhibits P 5. It follows that the Plaintiff is entitled to remedies sought of **Euros 22,409 and Uganda shillings 1,640,000/=**.

The Plaintiff's Counsel further submitted that suit was filed in the Commercial Court Division and it was a commercial transaction and the amount has remained unpaid since 20th August 2009. Interest ought to be paid on the Euro at the rate of 11% per annum and Uganda shillings at commercial rate of 25% from 20th August 2009 when the cover was issued. Counsel submitted that in a contract of this nature, where services were rendered and no payment is made the court ought to award general damages and possibly aggravated damages. General damages are at the discretion of court. There is evidence that the insurance cover was crucial and an award of **Uganda shillings 100,000,000/=** would be a fair. Furthermore costs follow the event and should bear interest since government often delays in settling its dues. Lastly the Plaintiff's Counsel submitted that the insurance cover has an issue in respect of third parties and personnel of the Operator. The evidence suggests that the vessel could not be operated for travel without an insurance cover.

In reply Counsel Ambrose Tibyasa addressed the court on behalf of the third party.

Address of the Third Party

He submitted that the third party disputes any liability or obligation to indemnify the second Defendant. Court will note that in a very unserious manner the second Defendant dragged the third party to court claiming for indemnification but the second Defendant subsequently abandoned further appearances in court. It is for that reason that order 1 rule 18 requires directions to be given where the third party appears. The rules were not invoked or applied. Nevertheless, the only question as between the second Defendant and third party is whether or not the second Defendant is entitled to indemnity. Counsel submitted that the second Defendant had the duty to prove that the 3rd party is responsible in order to qualify for indemnity by the third party. No such evidence was adduced.

The third party does not dispute the fact that there existed a contract between the Plaintiff and the first Defendant. It is evident that the second Defendant was an insurance broker and therefore an

agent of the insured who is the first Defendant. The third party was merely an operator of the vessel on behalf of the first Defendant. Mr. Lubondo, the Plaintiff's witness testified that discussions and negotiations of the contract of insurance were attended and conducted by officials of the first Defendant, the Plaintiff and the second Defendant. The third party does not feature anywhere. That can be gathered from exhibit P2. Mr. Zake Peter third party witness testified that all negotiations for the insurance cover were between the Plaintiff on the one hand and the first and second Defendants. According to the operation agreement for MV Kalangala and particularly clause 8 (c) the 1st Defendants was responsible for the insurance of the ship. The first Defendant is the owner of the vessel. It is third party's submission that the second Defendant was expected to adduce evidence detailing the relationship leading to the claimed indemnity. There is no agreement between the 2nd Defendant and 3rd party. There is no law being alluded to by the second Defendant. Consequently Counsel submits that there is no evidence from the second Defendant who has failed to prove that it is entitled to any indemnity from the third party. He prayed that the third party is discharged and the claim against it dismissed with costs. Furthermore Order 1 rule 19 seems to give court discretion on award of costs. In the present case, the third party is in court solely on account of 2nd Defendant and the 2nd Defendant should pay its costs.

Judgment

I have carefully considered the Plaintiff's pleadings together with the evidence adduced as well as the pleadings of the third-party and admissions of fact contained therein. I have duly considered the law applicable to the Plaintiff's case and submissions of Counsel.

This suit proceeded ex parte against the Attorney General and the second Defendant who is an insurance broker after satisfaction that they were duly served. I have also considered the status of the third-party who was added for purposes indemnification of the second Defendant in case the second Defendant is found to be liable. It is apparent that the third-party who operated the vehicle or the vessel MV Kalangala operated the same on behalf of the Ministry of Works and Transport. The foundation of their relationship with the Ministry of works and transport was adduced in evidence by Peter Zake who had worked with Messieurs Mulwooza and Brothers Ltd as its managing director and was particularly in charge of MV Kalangala from the 2007 – 2010.

Admitted in evidence is an agreement dated 13th of June 2007 between the Government of Uganda represented by the Ministry Works and Transport and the third party Messieurs Mulwooza and Brothers Ltd. It is clearly provided that the contractor (the third party) had a duty to provide annual insurance and be reimbursed accordingly. This is contained in the "Contracts Committee Decision on a Submission" that is attached to the main contract. It was a decision of the contracts committee granting approval of the tender for provision of management services of MV Kalangala by Messieurs Mulwooza and Bros Ltd. In the terms of reference it is provided that the ship is fully classified under the Lloyds register of shipping in all aspects of

safety including manning levels and maintenance requirements and insured comprehensively. The ship was supposed to be operated as a self-sustaining and profitable venture and transport services where to be paid for. The Ministry required services of a private operator to manage the ship for one year. The scope of the management services of the third-party is specifically provided for. The client's obligations in clause 8.0 included provision of insurance for the ship.

However management services of the third-party were provided for MV Kalangala on behalf of the Government of Uganda. The question to be considered is whether the admissions of the third-party can be used against the Attorney General in his vicarious capacity. Because all the facts in support of the Plaintiff's case are admitted by the third-party who carried out the work which was being insured, the admissions of fact are relevant and may be sufficient to establish the facts in this case. Facts which are admitted need not be proved. According to section 57 of the Evidence Act cap 6 Laws of Uganda; facts which are admitted by a party need not be proved. Factual controversies arise according to Order 15 rule 1 of the Civil Procedure Rules when a material proposition of fact or law is affirmed by one party and denied by the other. Section 57 of the Evidence Act provides as follows:

"57. Facts admitted need not be proved.

No fact need be proved in any proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings; except that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

Having considered the fact that the third-party is an agent of the Ministry of Works and Transport for purposes of management of MV Kalangala, the admissions are relevant to the actual facts. This is because it was the duty under the contract to manage the ship as well as obtain insurance. On the other hand the written statements of defence of the Attorney General and the second Defendant have bare denials without any facts asserted. The Plaintiff's Counsel submitted that the written statement of defence offends the provisions of Order 8 of the Civil Procedure Rules. Order 8 rule 3 of the Civil Procedure Rules provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleadings of the opposite party, shall be taken to be admitted, except as against a person under disability. The court may require at its discretion any facts so admitted to be proved otherwise than by such admission. On the other hand Order 8 rule 6 of the Civil Procedure Rules:

"Where the court is of the opinion that any allegations of fact are denied or not admitted by the defence ought to have been admitted, it may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted."

Upon the third-party, which third-party is an agent of the Attorney General, filing its defence; it admitted all facts in the plaint. The third party was directly involved in the management of the asset alleged to be insured in the plaint by the Plaintiff. In those circumstances the facts are taken to be proved as against the Attorney General and the second Defendant the suit having proceeded ex parte against the Attorney General and the second Defendant.

The first issue for consideration obviously is whether the Defendants are liable as claimed in the plaint and on the basis of the facts. The Plaintiff's Counsel submitted that the Plaintiff had to prove its case though this suit proceeded ex parte against the first and second Defendants. The evidence in support of the Plaintiff's case is that in the testimony of Mr Solomon Rubondo who was employed by Goldstar Insurance Company Limited as its General Manager/Chief Operations Officer since 2002. He testified that he knows the company Messieurs Southern Union Insurance Brokers (U) Limited. He remembers that in August 2009 they acted on behalf of the government of Uganda represented by Ministry of Works and Transport to solicit for Marine Hull cover for the MV Kalangala. PW1 contacted reinsurance brokers in London and finally prepared a formal quotation and forwarded it for consideration by the Defendants. A meeting was arranged on 17 August 2009 with a director of transport to the Ministry of Works and Transport which he attended. The Ministry of works required cover for the MV Kalangala to be secured since the vessel was required for a visit of Parliamentarians on a tour of the Sese islands of Lake Victoria. On 19 August 2009 the Plaintiff's General Manager received instructions to provide insurance cover along the lines in the Plaintiff's quotation according to the document exhibit P3.

Exhibit P3 is dated 18th of August 2009 and is received by the Plaintiff on 19 August 2009. It is addressed to the General Manager Goldstar Insurance Company on the subject of: "**Marine Hull Insurance Cover Confirmation Ministry of Works and Transport/Messieurs Mulwooza and Brothers Ltd.**" The insured is the Ministry of Works and Transport/Mulwooza and Brothers Ltd. Specifically the part dealing with the premium indicates that the premium chargeable on section A was **€22,409** or **Uganda shillings 67,227,000/=**. Secondly on section B liabilities premium of **Uganda shillings 1,635,000/=**. Payment was supposed to have been made immediately upon presentation of the cover note document of the Plaintiff dated 20th of August 2009 exhibit P4. The cover note letter gives the Plaintiff's quotation for fees of the insurance cover.

Exhibit P5 is a letter from the Plaintiff company addressed to the insurance brokers namely the second Defendant indicating that the insurance cover of MV Kalangala expired on 25 August 2009 but the requested premium amounting to **€22,409** and **Uganda shillings 1,640,000/=** had not been settled. There are further correspondences on the issue that I do not need to refer to. I particularly refer to a letter dated 2nd of November 2009 addressed to the Managing Director of the Plaintiff from the Permanent Secretary Ministry of Works and Transport. The letter refers to

MARINE INSURANCE COVER POLICY NUMBER MI/GSI/0074/2009 MINISTRY OF WORKS AND TRANSPORT/M/S MULOWOOZA AND BROTHERS LTD.

The Permanent Secretary makes reference to an earlier letter of the Plaintiff dated 10th of September 2009 and addressed to the Acting Commissioner, Uganda Insurance Commission (Commission) and copied to his ministry. Part of the letter reads as follows:

"This is to confirm that on receipt of your letter of 21st of August 2009 which enclosed your INSURANCE COVER NOTE of 20th of August 2009, my Ministry sought advice and guidance from the Commission concerning the adequacy and appropriateness of the insurance cover and the premium quoted, respectively, so as to enable as consider the matter further. The commission consequently contacted you seeking confirmation on pertinent issues related to the insurance policy. As a requirement my Ministry and other arms of government have to get a certificate from the Uganda Insurance Commission, as the regulator that the insurance cover payment and other aspects are appropriate before payment.

The purpose of writing, this letter, therefore, is to guide you and your broker to appropriately respond to the issues raised so that the Commission can advise and guide my Ministry of the matters concerning the insurance policy soonest possible."

The letter is signed by G.J Itazi for Permanent Secretary. An inference of fact to be drawn from the letter is that the insurance cover had been taken out and the issue was whether the arrangement was appropriate for payment.

Subsequently on 1 October 2009 the second Defendant wrote a letter advising the lawyers of the Plaintiff that the Ministry of Works and Transport was preparing the payment which would be wired to the bank account of their client and enclosed correspondence to the client. The correspondence attached is an e-mail giving the particulars of the Plaintiff's account with Crane Bank Ltd to the Ministry Works and Transport.

The situation from the evidence is quite clear. The Ministry of Works and Transport contracted Messieurs Mulowooza Brothers Ltd to manage MV Kalangala. It was a requirement to have the vessel comprehensively insured. The money for the insurance was supposed to be reimbursed by the Ministry of Works and Transport. Apparently the Ministry of Works and Transport did not meet its obligations hence this suit. What is even more crucial is the fact that the Plaintiff was given instructions on behalf of the Ministry Works and Transport by insurance brokers namely the second Defendant. The issue in controversy comes very strongly in the testimony of Mr Peter Zake the third Party's Managing Director which I will reproduce below.

In paragraph 5 of the witness statement Mr Peter Zake testified that the government of Uganda was responsible for among other things ensuring that the vessel was at all times insured and the third-party as operator was under a duty to remind government through the line Ministry of

works and transport to keep the vessel insured and was not supposed to operate the same vessel without a valid insurance cover for the hull and passengers. Sometime in August 2009 MV Kalangala was due to dock at Mwanza but there was a national event of the Commonwealth Speaker's excursion at Kalangala District and MV Kalangala was required to get Members of Parliament to the islands in Lake Victoria. At the material time the insurance cover for one year which had been taken out on MV Kalangala to cover the Hull and passengers had expired. The insurance cover was taken in the ordinary course of the management contract by Messieurs Mulwooza Brothers Ltd. Mr Peter Zake testified that Messieurs Mulwooza Brothers Ltd as the operator could not take out the vessel on any journey without a valid insurance cover. The third-party communicated to the Permanent Secretary Ministry of Works and Transport advising that they should have an immediate insurance cover for the vessel. The Permanent Secretary advised that since the matter was urgent, Messieurs Mulwooza and Brothers Ltd should identify an insurance firm to ensure that the requisite insurance cover was obtained. The third-party contacted Messieurs Southern Union Insurance (U) Ltd who were advised to get in touch with the Ministry of Works and Transport for possible insurance cover for MV Kalangala. Shortly thereafter an insurance cover was at the instance and instructions of the Ministry of works and transport issued by the Plaintiff to cover the Hull and passengers for MV Kalangala, a vessel owned by the Government of Uganda. He testified that Mulwooza and Brothers Ltd never had any proprietary interest or rights in MV Kalangala but was simply an operator and never instructed the second Defendant to insure MV Kalangala. He reasoned that the person responsible for payments was the owner of the vessel who is the Government of Uganda. As the general manager, the third party's witness reminded the government of Uganda to effect payment in a letter dated 16th of September 2009. Secondly the second Defendant received instructions from the government of Uganda to issue an insurance cover in respect of MV Kalangala. Consequently the third-party is not liable to the second Defendant. The letter dated 16th of September 2009 was admitted without objection as the third-party's exhibit "B". It is a letter written to the Permanent Secretary Ministry Works and Transport by the Managing Director of Messieurs Mulwooza and Brothers Ltd. The letter was on the subject of two weeks insurance premiums for MV Kalangala. It reminds the Permanent Secretary about the extension of insurance services by the Plaintiff Company through their insurance brokers Messieurs Southern Union Insurance Brokers (U) Ltd on 12 August 2009 for a duration of two weeks. It shows that the insurance premium was €22,409 and Uganda shillings 1,640,000/= for the Hull and passengers during the Commonwealth Speakers excursion. Messieurs Mulwooza and Bros Ltd were given seven days within which to pay up with effect from 1 September 2009. Secondly they had received a warrant of distress threatening to attach property which would embarrass them and the government in the public and media for failure to clear the debt. The suggestion of the managing director is pertinent and goes as follows:

"This therefore is to suggest that we pay the above amounts from what would be remitted to the Ministry account from the first quarter collections of the third year of MV operations since the quarter ended 14 September 2009. The above outstanding amount at

the rate of 3010 Uganda shillings is Uganda shillings 67,451,090/= to which should be added Uganda shillings 1,640,000/= totals to Uganda shillings 69,091,090/=.

We would appreciate if we received authority to make the payment as soon as possible and remit to the Ministry account the quarterly collections less the paid amount. The collection for the quarter is Uganda shillings 179,191,800/="

The letter was copied to the Director of Transport Minister Works and Transport. It was also copied to the Chief Mechanical Engineer Ministry of Works and Transport. In addition it was copied to the Project Coordinator MV Kalangala Ministry of Works and Transport.

The inference of fact to be drawn from the letter quoted above is that the Messieurs Mulwooza and Bros Ltd confirmed that an insurance policy had been taken out. However no premium had been paid. The premium was supposed to be paid to Messieurs Mulwooza and Bros Ltd by the Ministry of Works and Transport. However there was an emergency arrangement after the expiry of the one-year insurance cover. Southern Union Insurance Brokers (U) Ltd obtained the insurance cover from the Plaintiff in time for the use of MV Kalangala by members of Parliament. Subsequently correspondence reviewed above shows that the government wanted to establish whether the insurance commission approved of the Plaintiff and the premium. There is no evidence to suggest that there was ever such an approval. The only evidence is that of Southern Union Insurance Brokers (U) Ltd writing that payment had been approved and giving details of the Plaintiff's account. The relationship between the Messieurs Mulwooza Bros Ltd and the government of the Republic of Uganda through the Ministry of Works and Transport cannot be the concern of the Plaintiff who is not privy thereto. Messieurs Mulwooza Bros Ltd acted as an agent of the government and procured the services of the Plaintiff. Negotiations according to PW1 were held at the premises of the Ministry Works and Transport. Because of the emergency for insurance, so that the operators could carry on with their operation of MV Kalangala in time for a tour by Members of Parliament the services were provided. The fact that the services were provided is confirmed by Messieurs Mulwooza Bros Ltd. In ordinary circumstances failure to pay the premium would mean that the government would be unable to recover any indemnity for the insurable risk. However no insurable is alleged to have occurred. Undertakings were made by the Ministry of works and transport to get clearance from the Insurance Commission. One factor has been established beyond doubt which is that MV Kalangala could not be lawfully operated without Marine insurance cover and the insurance cover had expired by the time the insurance by the Plaintiff was procured. Secondly members of Parliament were going for a tour of the islands in Lake Victoria and the issue of insurance cover was urgent.

Instructions to insure the MV Kalangala was given by the second Defendant who acted as a broker on behalf of the Ministry of Works and Transport. The letter giving instructions is dated 18th of August 2009. It is written in part as follows:

"We refer to the above subject and have the pleasure of instructing you to effect cover on the under noted basis, and issue a policy document for onward delivery to the insured parties."

The insured is indicated as the Ministry Works and Transport/Mulwooza and Bros Ltd. The sum insured is stated to be €5,432,659. Third party liability per passenger was Uganda shillings 10,000,000/= in aggregate a total of Uganda shillings 10,000,000,000/=.

There are some conclusions that can be drawn from the above facts namely:

- The Government is the owner of MV Kalangala being a ship which provides transport services and is supposed to make profit.
- Messieurs Mulwooza and Bros Ltd is the operator of the ship MV Kalangala and had the management contract for the operation of the vessel.
- Insurance cover taken out by Messieurs Mulwooza and Bros Ltd had expired and there was an urgent need for insurance cover so that the MV Kalangala would be used to take Parliamentarians to the Ssesse islands of Lake Victoria.
- The second Defendant instructed the Plaintiff on behalf of the Ministry of works and transport to issue the insurance cover that was urgently needed.
- The Plaintiff obtained reinsurance and issued the insurance cover for a period of two weeks.
- Subsequently it became difficult to pay the Plaintiff the sums of money which it quoted.
- The second Defendant Messieurs Southern Union Insurance Brokers (U) Ltd held out to be the agents of the Ministry of works and transport and duly instructed the Plaintiff and also informed the Plaintiff that the government was going to pay and provided the details of the Plaintiffs account to the Ministry of works and transport.
- Messieurs Southern union insurance brokers (U) Ltd was apparently and initially instructed by Messieurs Mulwooza and Bros Ltd.
- Messieurs Mulwooza and Bros Ltd could only act on behalf of the owner of the vessel and its relationship with the government of Uganda cannot be of concern to the Plaintiff. The issue is whether its acts are binding on the first Defendant.
- The services of the Plaintiff were utilised for purposes of a trip by members of Parliament to the Ssesse islands in Lake Victoria.

According to **Halsbury's laws of England volume 1 (2) fourth edition** reissue at page 4 thereof paragraph 1 the nature of the relation of agency is as follows:

"the terms 'agency' and 'agency' have in popular use a number of different meanings, but in law the word "agency" is used to connote the relation which exists where one person has authority or capacity to create legal relations between the person occupying the position of principal and third parties."

The relation of agency arises whenever one person, called 'the agent', has authority to act on behalf of another, called 'the principal', and consents so to act. Whether the relationship exists in any situation depends not on the precise terminology employed by the parties to describe their relationship, but on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent."

A servant or an independent contractor, though not necessarily the employer's agent, may often have authority to act as such when relations with third parties are involved.

Paragraph 19:

The relation of agency is created by the express or implied agreement of the principal and agent or by ratification by the principal of the agent's acts done on his behalf.

The conclusion is that the Southern Union Insurance Brokers (U) Ltd acting on the instructions of Messieurs Mulwooza and Bros Ltd procured insurance cover for the MV Kalangala from the Plaintiff. The third party Messieurs Mulwooza and Bros Ltd had express instructions in a written contract between it and the Government of Uganda represented by the Ministry of Works and Transport to manage the MV Kalangala. The express instructions in the contract include the right to obtain insurance cover for MV Kalangala. MV Kalangala could not be used to carry out its business without Marine insurance cover. The principal being the Government of the Republic of Uganda represented by the Ministry of Works and Transport, the acts of Messieurs Mulwooza and Bros Ltd is binding on the government. The issue as to whether it is Messieurs Mulwooza and Bros Ltd who are responsible to pay the Plaintiff is answered by the evidence. The Plaintiff made efforts to get payment from Messieurs Mulwooza and Bros Ltd who channelled the request to the government of Uganda. Subsequently an acknowledgement was made by Southern Union Insurance Brokers (U) Ltd who had given the Plaintiff instructions acknowledging payment. Before dealing with the acknowledgement of the amount due to the Plaintiff the law is that the principal is liable for the acts of the agent even if the agent acted as an independent contractor.

In **Archer versus Moss, Applegate versus Moss [1971] 1 All ER 747 at 751** Lord Denning on the question of concealed fraud by an independently contracted builder held that the principal was liable and the builder acted as his agent.

"It is plain that the right of action here was concealed by the fraud of someone. The builder put in rubbishy foundations and then covered them up. But was it the fraud of 'the Defendant or his agent'? The Defendant says that it was not his fraud; and that the builder was not his 'agent' for the purpose. The judge found that it was both.

...But even if there had been no such conduct by the Defendant, nevertheless it is quite plain that the builder was the 'agent' of the Defendant. The Defendant employed the builder to carry out the building work. The builder did the work extremely badly. He was

guilty of gross neglect in mixing the concrete. He covered up his disgraceful work. Even if the Defendant knew nothing about it, nevertheless he must take responsibility for the conduct of the builder.”

Edmund Davies LJ at 752

First of all, they were not raft foundations at all. Secondly, they were not reinforced raft foundations. Instead, they were concrete footings, and the mix used was deplorably defective. Fraud was clearly committed by somebody. By whom?

“The learned judge saw and heard the witnesses. That the builder must have been party to the fraud is clear. Did that fact ipso facto render the Defendant liable on the basis that the builder must be regarded as his agent? Counsel for the Defendant valiantly submits that that is not so, on the ground that the word ‘agent’ in s 26(a) has to be given the narrow definition of somebody acting other than as an independent contractor. He says that such was the role of the builder, and accordingly his fraud ought not to lead to a finding prejudicial to the Defendant. I respectfully reject that submission. I think the word ‘agent’ as here used embraces an independent contractor. The Defendant contracted directly with the Plaintiffs that he would, for the consideration of £1,900, erect ‘a dwelling-house in accordance with the plans and specification hereto annexed’. In my judgment, it does not lie in his mouth to say that what was done by his builder was not done by his ‘agent’ within the meaning of s 26(b).

In the above case for purposes of the concealed fraud of the builder, the question that the builder was an independent contractor and not an agent could not avail against the principal who directly contracted the builder to carry out the works. In other words the court will only examine the true nature of the transactions and what name or description the parties called/describe themselves may not be relevant if it does not reflect the true nature of the relationship. The true nature of the relationship in this case is that the manager of MV Kalangala who is also the third-party had the power to instruct the insurance brokers to obtain the services of the Plaintiff. This is what they did and when they acted it was on behalf of the principal.

Authority of an agent can be derived from the instrument or inferred or implied from the circumstances. Generally a principal is bound by the acts of the agent executed on its behalf. The case law even establishes that a principal may be liable for the fraud of the agent in a suit brought by third parties. The extent of this principle is debatable. In the case of **Lloyd versus Grace, Smith and Company [1912] AC 716** in the judgment of Lord Macnaughten the facts are that a firm of solicitors allowed the clerk Mr Sandles to conduct the business of the firm. In the course of conduct of that business the clerk dishonestly misappropriated the property of Mrs Lloyd for his own benefit by fraudulently presenting documents for her to sign. He held that the general rule was that the master is answerable for every fraud of the servant or agent as is committed in the course of the service and for the Masters benefit though no express command

Decision of Hon. Mr. Justice Christopher Madrama

or privity of the master is proved. It was however a very different proposition to say that the master is not answerable for the fraud of the servant or agent, committed in the course of the service, if it is not committed for the Masters benefit. All deceits and frauds practised by persons who stand in the relation of agent, general or particular, do not fall upon their principals. For, unless the fraud itself falls within the actual or the implied authority of the agent, it is not necessarily the fraud of the principal. The question to be asked was whether the situation was such as to bring the representation the agent made within the scope of his authority?

To quote:

"But although the principal is thus liable for the torts and negligences of his agent, yet we are to understand the doctrine within its just limitations, that the tort of negligence occurs in the course of the agency. For the principal is not liable for the tort or negligence of his agent in any matters beyond the scope of the agency, unless he has expressly authorised them to be done, or he has subsequently adopted them for his own use and benefit."

In the case of **Percy V Glasgow Corporation (1922) AC 299**, it was held by Viscount Haldane at page 306 that the principle of vicarious liability operates in agent/principal relationships. In this case the third party who is an agent of the government for purposes of management of MV Kalangala had express authority to contract an insurance company. Secondly MV Kalangala is owned by the principal namely the Government of Uganda. Thirdly the second Defendant was duly instructed to obtain the services of an insurance company for urgent cover of MV Kalangala. In all the circumstances, the first Defendant is bound by the acts of the second Defendant and the third-party. It is therefore my finding on the question of liability that the first Defendant and the second Defendant are jointly and severally liable for the insurance cover provided by the Plaintiff. It is up to the second Defendant to claim the money from the principal. A third party can proceed against the agent or the principal or against both especially in the circumstances of this case where instructions to provide the service were given by the agent. As the owner of the vessel the government cannot escape liability because it is to the benefit of the insurance policy. The conclusion is that the consumer of the services which is the owner of MV Kalangala benefited from the procurement made on its behalf by the "agent", and it can be directly pursued by third parties because it is the beneficiary of the services procured on its behalf.

Remedies

1. As far as remedies are concerned following the resolution of the only issue as to whether the Defendants are liable to pay the Plaintiff the premiums prayed for in paragraph 6 of the plaint, the Plaintiff is awarded the sum of Uganda shillings 1,640,000/= as well as €22,409.

2. The Plaintiff sought general damages for inconvenience. In a claim for a specified sum of money an award of interest is normally sufficient for the delay in payment. According to **Halsbury's laws of England fourth edition reissue volume 12** (1) paragraph 1063 at page 484, the common law is that in an action for breach of contract to pay money due, the amount recoverable is normally limited to the amount of the debt together with such interests from the time when it became payable under the contract or as the court may allow. Money became due and payable according to the letter of acknowledgement dated 1st of October 2009 addressed to Messieurs Nangwala, Rezida and Company Advocates in which the second Defendant Messieurs Southern Union Insurance Brokers (U) Ltd advised the said lawyers that the Ministry of Works is preparing the payment which would be wired in their clients account in due course. The insurance cover had been obtained for the period of August 2009 of 25 August 2009. Consequently interest in the said amount of money awarded from 30 October 2009 up to the date of judgment at the rate of 21% per annum.
3. Additional interest is awarded at the rate of 21% per annum on all the sums awarded from the date of judgment till payment in full.
4. Costs of the action are awarded to the Plaintiff. Interest is awarded costs from the date of taxation at 21% per annum till payment in full.
5. As far as the third party is concerned, there is sufficient evidence to show that the third party instructed the second Defendant though the second Defendant never appeared to prosecute its case for indemnity. The third party's Counsel referred the court to Order 1 rule 18 of the Civil Procedure Rules which provides as follows:

"If a third party enters an appearance pursuant to the third party notice, the Defendant giving the notice may apply to the court by summons in Chambers for directions, and the court, upon hearing of the application, may, if satisfied that there is a proper question to be tried as to liability of the third party to make the contribution or indemnity claim, in whole or in part, order that the question of such liability, as between the third-party and the Defendant giving the notice, to be tried in such manner, at or after the trial of the suit, as the court may direct; and, if not satisfied, may order such judgment as the nature of the case may require be entered in favour of the Defendant giving the notice against the third-party."

In this case the third-party filed a defence admitting the facts in the Plaintiff's plaint and seeking for an order that it is not liable to indemnify the second Defendant. The record shows that the third party did not object to being joined as a third party and that it duly filed a defence. No application was made for directions by summons in Chambers. Nonetheless the third party

produced one witness who testified on its behalf. Subsequently after closure of the Plaintiff's case the third-party produce its witness and Counsel submitted that for non-appearance of the second Defendant, the action for indemnity should be dismissed.

At the trial of the action it clearly emerged that the second Defendant was instructed by the first Defendant who acted as a manager of MV Kalangala. However the second Defendant held out to be instructed by the Ministry of Works and Transport according to the correspondence in which it instructed the Plaintiff and also acknowledged payment was due to the Plaintiff on the behalf of the Ministry of Works and Transport. Consequently any liability is a matter between the second Defendant and the first Defendant in its capacity as the representative of government namely the Ministry of Works and Transport. In the absence of any evidence in favour of the claim for indemnity and in light of the holding that the first and second Defendants are liable jointly and severally to pay the Plaintiff, the action for indemnity against the third party stands dismissed with costs. This does not prejudice the settlement of any outstanding accounts issues between the Government of Uganda and the third party based on contractual provisions and obligations on the MV Kalangala Management Contract.

Judgment delivered in open court the 22nd Day of August 2014

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Haguma Daniel holding brief for Nagwala James counsel for the plaintiff

Neither plaintiff nor defendant in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

22/08/2014