

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. APPLICATION NO. 182 OF 2015

5 **LEADS INSURANCE LIMITED :::::::::::::::::::: APPLICANT**

VERSUS

1. **INSURANCE REGULATORY AUTHORITY**

2. **KISULE ASITACIO & SONS LTD ::::::: RESPONDENTS**

10 **BEFORE: HON. JUSTICE STEPHEN MUSOTA**

RULING

The applicant Leads Insurance Limited through M/s Mugenyi & Co. Advocates brought this application by Notice of Motion under Sections 82 and 98 of the Civil Procedure Act and Order 46 rules 2, 4 and 8 of the Civil Procedure Rules for orders that:

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1. The ruling passed by this court on the 4th May 2015 be reviewed.
 2. Costs of the application be provided for.

The grounds of the application as enumerated in the Motion are that:

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- (i) There is an error on court record that the applicant appeals to the Insurance Appeal Tribunal which does not exist and it has never been constituted.
 - (ii) That the respondent raised a preliminary objection that the matter ought to be heard by the appeal tribunal that was nonexistent which actually misled court to believe that the tribunal existed and there was a mistake on record.
 - (iii) That the applicant was aggrieved by the decision and has sufficient cause to bring
- 25 the judgment for review as the matter was never heard on merit.

(iv) It is just and equitable that the said ruling be reviewed.

The application is supported by the affidavit of Sam Phiri, the Executive Officer of the applicant, wherein he deponed that:-

- 30 i) On the 4th day of May 2015 I gave judgment stating that Misc. Cause No.171 of 2014 was devoid of merit as the matter ought to have been heard by the Insurance Appeal Tribunal and ought to have been lodged the notice of appeal in that tribunal.
- 35 ii) He was informed by his lawyers that the said tribunal does not exist and it has never been constituted.
- iii) The notice of appeal cannot be lodged in a nonexistent tribunal that does not have a physical registry and the said appeal's tribunal has no registry where documents can be lodged.
- 40 iv) The presumption that the appeal's tribunal is in existence is an error on court record, a mistake and therefore sufficient reason to cause a review of the said ruling.
- v) Counsel for the respondent deliberately raised a preliminary objection well knowing that the Insurance Appeal Tribunal does not exist as prescribed under the law.
- 45 vi) He made inquiries with Insurance Regulatory Authority who actually confirmed that the said entity does not exist as per the law.

The first and second respondents opposed the application and filed affidavits in reply. In an affidavit sworn by Rachael Kabala the Manager Legal and Compliance of the first respondent, she deponed that it is wrong for the applicant to imagine that the Insurance Appeal Tribunal does not exist when it has not taken any proactive steps to file an appeal such that the tribunal can be constituted for the purpose.

55 Mr. Mugenyi learned counsel for the applicants submitted that there is no evidence by affidavit
or oral examination showing that the Insurance Appeal Tribunal existed. And the omission was
glaring. He referred to the case of *Edson Kanyabwera Vs Pastori Tumwebaze SCCA No. 06 of*
2004 where it was held that the error for review must be apparent on the face of the record. He
contended that there is no evidence to show that the tribunal exists. That it was crucial for the
60 respondent to put on record the evidence of the existence of the Appeals Tribunal. He referred to
Sections 101 and 103 of the Evidence Act.

In reply Mr. Atwine Senior State Attorney for the respondent submitted that what court considers
is whether the applicant has made out a case for review of its own ruling. He referred to Section
65 82 of the Civil Procedure Act and Order 46 rules (1)(b) of the Civil Procedure Rules.

Learned counsel for the respondent referred to the case of *Nile ways (U) Ltd Vs KCCA &*
another Misc. Application No.1077 of 2013 where court stated that the above provisions clearly
set out conditions to be met before review. These include discovery of new and important
70 evidence or matters previously over looked by excusable misfortune, some mistake or error
apparent on the face of the record. Learned counsel further submitted that there is no such error
and that court clearly applied its mind to the law and the judge clearly looked at the law
establishing the Appeals Tribunal and rightly interpreted the law as providing for the tribunal on
an adhoc basis.

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I have considered the application and the affidavits in support and reply, I have also considered
the submissions by respective counsel.

Section 82 of the Civil Procedure Act provides:

“Any person considering himself or herself aggrieved-

- 80 (a) *by a decree or order from which an appeal is allowed by this court but from which no appeal has been referred; or*
- (b) *by a decree or order from which no appeal is allowed by this Act may apply for review of the judgment to the court which passed the decree or made the order and the court may make such order on the decree or order as it thinks fit”*

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Order 46 rule 1 of the Civil Procedure Rules reiterates the provisions of Section 82 of the Civil Procedure Act but adds a condition to the effect that the applicant’s desire to apply for review is:-

90 *“from discovery of new and important matter or evidence which after the exercise of due diligence was not within his or her knowledge or could not be produced by him or her at the time when the decree or order was made or on account of some mistake apparent on the face of the record or for any other sufficient reason.....”*

Section 92(A) of the Insurance (Amendment) Act 2011 provides for the Insurance Appeals Tribunal and under sub-section 5 thereof, the tribunal conducts its business on an adhoc basis as I observed in the ruling sought to be reviewed. The applicant’s major grounds for review is that there is an error apparent on the face of the record that the applicant appeals to the Insurance Appeals Tribunal which does not exist. This argument is untenable because the Insurance (Amendment) Act clearly provides that the said tribunal operates on an adhoc basis. It is formed and constituted when need arises as rightly submitted by counsel for the respondent following my holding.

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Order 46 of the Civil Procedure Rules under which this application is brought requires the applicant to show that there is a discovery of new facts and evidence and an error on the face of the record or any other sufficient reason to warrant a review. Unfortunately none of these preconditions has been proved rendering this case not proper for review as contemplated under the law. None of the reasons advanced by learned counsel for the applicant falls within the

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Ambit of Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules. To my mind, the applicant should have filed an appeal instead.

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In the result this application will be dismissed with costs.

Stephen Musota

115 **J U D G E**

24.08.2015