

UGANDA / JUDGMENT

**Sanlam General Insurance (U) Limited v
Megger
Technical Services Limited (Civil Suit 245 of
2023) [2024] UGCommC 333 (11 November 2024)
[2024] UGCommC 333**

COURT

Commercial Court of Uganda

BEFORE

Kahigi Asiimwe, J

CASE / FILE NUMBER

Civil Suit 245 of 2023

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****COMMERCIAL DIVISION****CIVIL SUIT NO. 0245 OF 2023****SANLAM GENERAL INSURANCE (U) LIMITED:::::::::PLAINTIFF VERSUS****MEGGER TECHNICAL SERVICES LIMITED:::::::::DEFENDANT****Before the Hon. Lady Justice Patricia Kahigi Asiimwe****Judgment****Introduction**

1. The Plaintiff sued the Defendant for recovery of USD 15,436.05 being unpaid premiums on insurance contracts, interest, general damages and costs of the suit.

The Plaintiff's case

- 2. It is the Plaintiff's case that between 2019-2022, the Defendant obtained two insurance policies: an all-risk Insurance policy and a motor vehicle policy from the Plaintiff.
- The all-risk policy No. P/100/4004/2020100033 was in respect \$3.\$ to a contract relating to the Government of Uganda and the Rural Electrification Agency of the Ministry of Energy and Mineral Development and the premium payable was USD 15,162.18. The Defendant did not make any premium payments towards the policy.
- The Defendant also took out a motor private insurance policy for \$\overline{4}\$ Motor Vehicle No. UBF 453K, where the premium payable was

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USD 1,685.42. The Defendant made a part payment of only USD 1,412 towards the motor vehicle policy, leaving an outstanding premium balance of USD 273.42 on the motor vehicle policy.

- The total outstanding premiums for both policies amounts to 5. USD 15,436.05. The Plaintiff issued debit notes to the Defendant showcasing the gross premium amounting to USD 15,436.05.
- The Plaintiff has been demanding the outstanding premium to 6. the tune of USD 15,436.05 since 2019. However, the Defendant has defaulted on paying the premium.

<u>Representation</u>

The Plaintiff was represented by M/s Tumusiime, Irumba & Co. \$7.\$ Advocates who filed written submissions. The Defendant did not file a written statement of Defence and the matter was set down for formal proof.

Issues:

8. The issues are as follows:

\$P\$

- Whether there is a legally enforceable contract between \$\mathbf{I}_{-}\$ the parties
- Whether remedies are available to the parties? \$\Pi\$.

Resolution

Issue 1: Whether there is a legally enforceable contract between the parties

9. The Black's Law Dictionary, 9th Edition, pg. 970 defines a contract as an agreement between two or more parties that creates obligations enforceable by law. Section 9 (1) of the Contracts Act Cap. 284 states that a contract is an agreement made with the free consent of the parties, with the capacity to contract, for a lawful consideration and with a lawful object, and with the intention to be legally bound.
- 10. Section 1 of the Insurance Act, Cap 191, defines an insurance contract 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."
- 11. In the case of Prudential Insurance Co. Vs. Inland Revenue Commissioners [1904] 2 K. B. 658 at 664, Channell J held that there are three elements which are required for a contract of insurance "It must be a contract whereby for some consideration, usually but not necessarily for periodical payments called premiums, you secure to yourself some benefit, usually but not necessarily the payment of a sum of money, upon the happening of some event."
- 12. A premium is therefore consideration in contract law. It should be noted that for a contract to be valid, there has to be consideration. (See: Green Boat Entertainment Limited versus City Council of Kampala (HCT-00-CC-CS 580 of 2003).
- 13. In the present case, the Plaintiff called one witness Mr. Robert Mazima, the credit control manager (PW) who testified that the Defendant took out an all-risk policy for a contract relating to the Government of Uganda and the Rural Electrification Agency of the Ministry of Energy and Mineral Development. The policy was meant to run from 18th December 2020 to 17th December 2021.
- 14. PW further testified that the premium payable under the all-risk policy was USD 15,162.18. He referred to the debit note marked PE 2 and the credit approval form marked PE 4. PW testified that the Defendant never paid any amount of money towards the allrisk policy.
- 15. In the case of Card Protection Plan Vs Customs and Excise Commissioners 2001 ALL ER (D) 246, it was held that:

... the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed *when the contract was concluded.* [Emphasis added]

16. Section 62 of the Insurance Act, Cap 191, provides as follows:

Payment of premium (1) 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. (2) The Authority may by regulations provide for the payment of premiums in any other manner.

17. There and no regulations on payment of premiums, therefore the law on payment of premiums is as provided under section 62(1) of the Insurance Act. My understanding of section 62 (1) of the Insurance Act is that premiums must be paid before the inception of a policy. One of the elements of an insurance contract as defined under section 1 of the Insurance Act is that there has to be an exchange of a premium. Under section 62 (1) of the Insurance Act, the premium has to be paid in full prior to the inception of the policy.

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- 18. In the present case, the Defendant did not pay the premium for the all-risk insurance policy, therefore, there was no all-risk insurance policy contract between the parties since there was no consideration paid.
- 19. PW testified that with respect to the motor insurance, the Defendant made a part payment and still owes USD 273.42. As noted under section 62 (1) of the Insurance Act cited above, the insured is required to pay the premium in full before the policy becomes effective. Since this was not done I find that there was no insurance contract between the parties. Both contracts were entered into contrary to the provisions of the Insurance Act. The Black's Law Dictionary, 9th Edition, pg 979 defines an illegal contract as a promise that is prohibited because the performance, formation, or object of the agreement is against the law. The two contracts are therefore illegal contracts.
- 20. In the case of *Re Mahmoud and Ispanhani* [1921] 2 KB 716 page 729 it was stated that "... the Court is bound, once it knows that the contract is illegal, to take the objection and to refuse to enforce the contract, whether its knowledge comes from the statement of the party who was guilty of the illegality, or whether its knowledge comes from outside sources. The Court does not sit to enforce illegal contracts. ...it is for the protection of the public that the Court refuses to enforce such a contract."
- 21. In the case of **Makula International Ltd versus His Eminence Cardinal Nsubuga and Anor**, [1982] HCB 15, it was held that "A court of law cannot sanction what is illegal and illegality once brought to the attention of the Court, overrides all questions of pleading, including any admissions made thereon."

22. In the case of Ojok Alphonse and others Vs. Gulu Municipal Council Civil Suit No. 32 of 2006 Mubiru J held as follows:

An illegal contract is one that is unenforceable as a matter of policy because enforcement would be injurious to the best interest of the public. ... As a general rule, a contract which is against the mandate of a statute may not be made the foundation of any action, either in law or equity.

- 23. It should be noted that had the Defendant placed a claim on the Plaintiff in the event that the risks purportedly covered had materialised, the Plaintiff would have declined to pay and rightly so on the ground that no premium was paid (in the case of the all-risk one) or that the premium was not fully paid (in the case of the motor insurance). In essence, therefore, the Defendant was not covered. This I believe is the mischief Parliament intended to cure in enacting section 62 of the Insurance Act. It was intended to protect the public and therefore court cannot enforce such contracts.
- 24. In conclusion, therefore, the suit is dismissed with no order to costs.

Dated this 11th of November 2024

Patricia Kahigi Asiimwe

Judge Delivered on ECCMIS

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