THE REPUBLIC OF UGANDA

IN THE INSURANCE APPEALS TRIBUNAL OF UGANDA AT KAMPALA

MISCELLEANOUS APPLICATION NO.1 OF 2025

(ARISING OUT OF APPLICATION NO.11 OF 2024)

UAP OLD MUTUAL INSURANCE Co.(U) Ltd ========== APPLICANT

-VERSUS-

AFRICA REINSURANCE CORPORATION ==========RESPONDENT

RULING

1.0. BACKGROUND OF THE APPLICATION

This application arises as a result of an order issued by this Tribunal vide; Application No. 11 of 2024 to the effect that the said application was dismissed under Order 17 Rule 4 of the Civil Procedure Rules on grounds of non-service of the Application on the Respondent.

In the present application, the Applicant, UAP Old Mutual Insurance Co. (U) Ltd, filed Application No. 11 of 2024 on 20th November 2024 before the Insurance Appeals Tribunal, challenging the decision of the Insurance Regulatory Authority (IRAB/COM/06/01/2024). On the other hand, it is purported that the Respondent, Africa Reinsurance Corporation, was duly served with the Application on the same day, and an Affidavit of Service was filed on 29th November 2024.

The Applicant alleges not to have received a response from the Respondent despite attempts to follow up. Whereas this Tribunal issued directions on 09th December 2024, requiring parties to file trial documents by 3rd January 2025 and appear for a hearing on 09th January 2025. It is argued that the Respondent only provided its response on the evening of 08th January 2025, making it impossible for the Applicant to comply with the Tribunal's directions.

Accordingly, on 09th January 2025, this Tribunal dismissed Application No. 11 of 2024 under Order 17 Rule 4 of the Civil Procedure Rules for failure to file the required documents as per its directions, despite requests for an adjournment by Counsel.

The Applicant brings this application on the contention that the dismissal was an error apparent on the face of the record and seeks a review under Rule 29 of the Insurance Appeals Tribunal Regulations of 2019, Sections 82 and 98 of the Civil Procedure Act, Cap. 282, and Order 46 Rules 1 and 8 of the Civil Procedure Rules on the basis that there is sufficient reason warranting a review and reinstatement of Application No. 11 of 2024 for determination on its merits.

2.0. REPRESENTATION AND APPEARANCE

At the hearing, the Applicant was represented by Counsel Batanda Gerald and Ntamugabumwe Victor from Signum Advocates while the Respondent was represented by Counsel Edwin Mugumya from Katende Sempebwa &Co. Advocates.

3.0. ISSUE FOR DETERMINATION

Whether the Application warrant the grant of orders of review of the ruling and orders of this Court in Application No. 11 of 2024?

4.0. THE PRELIMINARY OBJECTIONS

The Respondent raised two preliminary objections to the effect that the Applicant did not attach the formal order on which the application for review would be founded and secondly that the Applicant did not prefer an appeal to the filing of the applications. Before delving into the merits of the Application we shall resolve the said objections herein below;

5.0. THE SUBMISSIONS BY THE PARTIES ON THE PRELIMINARY OBJECTIONS

There was no order extracted or attached to the Applicant from which the Applicant is aggrieved.

5.1. In light of the first objection, to wit that there was no order extracted or attached to the Applicant from which the Applicant is aggrieved. Counsel for the Applicant contended that the Respondent's preliminary objection regarding the absence of an extracted order was unfounded. He pointed out that, contrary to the Respondent's assertion in paragraph 9 of their Affidavit in Reply, the existence of the order was acknowledged within the same affidavit in paragraph 6, where the Respondent admitted that the Applicant had written to the Tribunal requesting a written ruling and a record of proceedings. He further emphasized that the Tribunal had indeed issued a ruling and an order on January 10, 2025, which were part of the Tribunal's official record, as confirmed in the Affidavit in Rejoinder by the Applicant's Senior Legal Officer. Additionally, Counsel clarified that the contested order was attached to the Affidavit in Rejoinder as Annexure ***'A'***.

5.2. Counsel further argued that the ruling had been delivered orally on January 9, 2025, in the presence of both parties' legal representatives, which prompted the Applicant to formally request a written version the following day. This request, which was duly served on the Respondent, demonstrated that the ruling was already known to both parties. He criticized the Respondent's assertion that the application lacked

foundation due to the absence of an attached order, describing it as a

deliberate attempt to mislead this Honourable Tribunal. Counsel asserted that the Respondent's argument was not only baseless but also a calculated effort to obstruct

justice by exploiting procedural technicalities. Further, Counsel observed that the Tribunal's established practice was to issue written rulings and orders simultaneously, which had occurred in this case on January 10th , 2025.

5.3. Counsel for the Applicant in their submissions also highlighted that when the parties appeared before the Tribunal on February 3th , 2025, it was once again confirmed that the ruling and order had been requested and that the Applicant had persistently followed up on obtaining them. Counsel contended that the Respondent was fully aware of this and yet was attempting to shift blame onto the Applicant. Counsel described this as a bad-faith maneuver aimed at frustrating the proceedings, similar to previous attempts made by the Respondent when the appeal first arose on January 9th, 2025.

5.4. Based on these arguments in conclusion, Counsel for the Applicant urged the Tribunal to dismiss the Respondent's preliminary objection, emphasizing that the order in question had been duly attached to the Affidavit in Rejoinder and that any delays in obtaining it were beyond the Applicant's control.

That the Applicant did not prefer an appeal prior to filing this Application.

5.5. Regarding the second preliminary objection, Counsel for the Applicant refuted the Respondent's claim that the Applicant had already instituted an appeal prior to filing the application. He noted that the Respondent, in paragraph 6 of their Affidavit in Reply, relied on the Applicant's letter dated January 10th, 2025, which merely requested a written ruling and a certified record of proceedings. He contended that this argument was legally unsound, as the Tribunal's regulations clearly outlined the procedure for lodging appeals, which required the filing of a Notice of Appeal at the High Court Registry, specifying the grounds of appeal. Counsel argued that a mere administrative request for documents could not be construed as an appeal and described the Respondent's interpretation as both legally flawed and misleading.

5.6. Furthermore, the Applicant's Counsel emphasized that no jurisprudence existed in the jurisdiction to support the notion that an appeal could be initiated through a letter requesting certified proceedings. Counsel asserted that requesting such documents did not preclude a party from seeking alternative post-judgment remedies. Counsel thus dismissed the Respondent's argument as an opportunistic attempt to distort procedural norms to serve its interests. For the Applicant, it was concluded that the

Respondent's preliminary objection would only hold weight if the Applicant had actually filed a Notice of Appeal at the High Court Registry, which had

not happened. On that basis, Counsel for the Applicant urged this Honorable Tribunal to reject the objection outright, as it lacked any legal or factual merit.

6.0. RULING ON THE PRELIMINARY OBJECTIONS

This Tribunal is tasked with determining the preliminary objection raised by the Respondent, which challenges the competence of the Applicant's review application on the grounds that no order was extracted from the ruling in question. The Respondent argues that the absence of an extracted order renders the application for review untenable and an abuse of court process.

It is a well-established principle of law that an application for review under Order 46 of the Civil Procedure Rules (CPR) can only be entertained where there exists a decree or order capable of being reviewed. In ***Bagumirabingi John & Ors v Hoima Town Council* [2001 – 2005] HCB 116,** the Court held that there can be no review where there is no decree. Similarly, in **Jivanji & Another *[1930] KLR 41***, the duty to extract a decree or order was placed upon the party seeking to appeal or apply for review.

In the instant case, this Tribunal issued a ruling of 10th January 2025 which was a substantive ruling containing an enforceable order. The court record demonstrates that this directive was indeed meant to be a final determination to dismiss the Applicant's application. It is trite law that such ruling once pronounced by the Tribunal, constituted an order capable of being reviewed.

Whereas**,** Counsel for the Respondent submitted that the application for review is incompetent due to the absence of an extracted order. In the case of **Godfrey Kitto v Robinah Namutebi Miiro *Civil Appeal No. 24 of 2007,*** it was noted that a formal decree or order must be drawn up before an application for review can be entertained. Be that as it may, on the other hand, Counsel for the Applicant rightly contended and pointed out that the Respondent, in paragraph 6 of their Affidavit in Reply, acknowledged the existence of an order issued by the Tribunal on 10th January 2025. Further that the ruling was delivered orally on 9th January 2025, prompting the Applicant to request a written version, which was subsequently issued. Additionally, the contested order was attached as ***Annexure 'A'*** to the Affidavit in Rejoinder. Counsel maintained that any delay in obtaining the order was beyond the Applicant's control and should not be used as a basis to dismiss the application.

Upon careful consideration of the arguments and the authorities cited, this Tribunal finds that the established principle is that a party seeking review must first extract a decree or order. Where no such order exists, the application is procedurally defective. However, in the present case, the Applicant has demonstrated that the Tribunal issued a ruling and order on 10th January 2025, which was part of the official record and attached to the Affidavit in Rejoinder. Further, that the Tribunal acknowledges that the ruling was

delivered orally in the presence of both parties, and the Applicant duly requested a

written copy the following day, which aligns with the established practice of issuing

written rulings and orders simultaneously. In light of the foregoing, the Tribunal finds that the Respondent's preliminary objection lacks merit. The existence of an order has been sufficiently demonstrated by the Applicant. Consequently, the preliminary objection is hereby dismissed.

Preliminary objection two

Subject to ***Section 82 of the Civil Procedure Act*** it is provided that; Any person considering himself or herself aggrieved a) By a decree or order from which an appeal is allowed by this Act, ***but from which no appeal has been preferred***, or b) By a decree or order from which no appeal is allowed by this Act, may apply for a review of 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.

In the same spirit, ***Order 46 r.1(1) of the CPR*** provides that; Any person considering himself or herself aggrieved a) By a decree or order from which an appeal is allowed by this Act, ***but from which no appeal has been preferred***; or b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of the 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 was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desire to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order.

In the instant application, it is apparent that the Applicant is seeking for review of Application No. 11 of 2024 which is purported to have been appealed. Our understanding of ***Section 82 CPA and O.46 r. 1 CPR***, this is not permissible. A party cannot opt for appeal and then later at the same time opt for review. ***See; Birungi and 3 Others v Kusemererwa and 2 Others (Revision Application No.1 of 2021***

Pursuant to Regulation 27 of the Insurance Appeal Tribunal Regulations a ***party to the proceedings before the Tribunal who is aggrieved by the decisions of the Tribunal may, within thirty days after being notified of the decision of the Tribunal or within such further time as the High Court may allow, lodge a notice of appeal with the High Court. (2) The party that intends to appeal against a decision of the Tribunal shall serve a copy of the notice of appeal on the other party to the proceedings before the Tribunal.***

It is true that the Applicant sought a record of proceedings in which the letter clearly stated the Applicant's intention to prefer an appeal to the High Court. However, there is no evidence that a notice of appeal was filed by the Applicant to the High Court, none was served on the Respondent and as such no evidence has been led by the Respondent to show that there is an existing or pending appeal before the High Court based on the documents requested by the Applicant. In absence of such evidence, it becomes a question of speculation and conjecture yet Courts of law do not act on

fanciful reasoning but on evidence and facts. ***See; Advocates Coalition for Development and Environment (ACODE) v. Attorney General***

On the above premises, we therefore are disinclined to uphold the preliminary objection by the Respondent to the effect that it would be presumptuous to conclude that there was a pending appeal and a review at the same cost.

On those premises, the second preliminary objection is also dismissed and the matter shall proceed to be heard on its merits.

7.0. Issues for Determination by the Tribunal

1. ***Whether the application satisfies the grounds for review***
2. ***Whether the Applicant is entitled to the reliefs sought, including reinstatement of the dismissed Application and costs of this Application.***

8.0. Applicant's Submissions

In the present application, the Tribunal is required to determine whether there is an error apparent on the record that justifies a review of its previous order. To address this, the Tribunal must consider two key issues: whether the application satisfies the grounds for review and whether the applicant is entitled to the remedies sought.

Regarding the first issue, counsel for the applicant argued that the application meets the grounds for review for several reasons. First, they contended that the Tribunal's decision to dismiss the application due to the applicant's failure to file trial documents before the completion of effective filing and service of pleadings was an error evident on the record. They maintained that the applicant's non-compliance with the Tribunal's directions was not due to any fault on their part but rather resulted from the respondent's failure to properly serve its response. Additionally, counsel submitted that the Tribunal failed to consider the court vacation period provided for under the Civil Procedure Rules, which constituted a sufficient reason for review.

To support their position, counsel cited Section 82 of the Civil Procedure Act and Order 46 Rule 1 of the Civil Procedure Rules, which set out the grounds for review. They referred to the High Court decision in ***F.X. Mubuuke v. Uganda Electricity Board***, which established that a review may be granted if there is an error apparent on the record, the discovery of new and important evidence, or any other sufficient cause.

Counsel elaborated that the applicant had received the hearing notice on December 9th, 2024, and, upon reviewing it, realized that the respondent had already filed a response to the appeal, which the applicant had not yet received. The applicant, acting in good faith, reached out to the respondent for service of the response. However, the respondent only served the response on January 8th , 2025, the eve of the hearing despite acknowledging that the applicant's lawyers had requested service earlier.

In support of their argument that an error apparent on the record existed, counsel

referred to the Supreme Court decision in ***Edison Kanyabwera v. Pastori Tumwebaze***, where the Court held that an error apparent on the record is one that is self-evident

and does not require external evidence to prove its incorrectness. They argued that the

Tribunal's dismissal of the application under ***Order 17 Rule 4 of the Civil Procedure Rules*** was based on a misinterpretation of procedural requirements. Specifically, they pointed out that Order 17 Rule 4 presupposed that parties had completed the filing and service of pleadings before moving on to the process of filing evidence. However, in the present case, pleadings had not yet been fully served.

Furthermore, counsel asserted that the Tribunal, in exercising its judicial authority under ***Regulation 29 of the Tribunal Regulations 2019***, was required to apply procedural rules judiciously. They argued that the Tribunal should have considered Order 9 Rule 1, which mandates that a defendant who files a defense must also serve it on the plaintiff. They cited the Supreme Court case of ***Simon Tendo Kabenge v. DFCU Bank***, which emphasized that the party filing a pleading bears the responsibility of serving it. In light of this, they argued that the Tribunal's expectation that the applicant should have filed trial documents before being served with the response was erroneous.

Counsel also argued that the Tribunal had disregarded the annual court vacation, as provided under ***Order 51 Rule 4 of the Civil Procedure Rules***, which excludes the period between December 24th and January 15th from the computation of time for filing documents. They referred to ***Herman Ssemakula v. Ivan Asiimwe***, where the Supreme Court recognized the importance of accounting for the Christmas vacation period in procedural timelines. They contended that the Tribunal should have granted a short adjournment to allow for the completion of the scheduling process and the subsequent filing of evidence.

In conclusion, counsel submitted that the applicant had demonstrated sufficient grounds for review of the Tribunal's order issued on January 9, 2025. They prayed that the Tribunal set aside its ruling, reinstate the application, and allow it to be heard on its merits. Additionally, they requested that the costs of the application be awarded to the applicant.

9.0. Respondent's Submissions

The Respondent's counsel opposed the Applicant's application for a review and reinstatement of the dismissed application. They argued that the Applicant's claim that the dismissal of Miscellaneous Application No. 11 of 2024 due to failure to file trial documents amounted to an error apparent on the face of the record or constituted sufficient cause for review was legally unfounded.

Counsel submitted that once a court renders a decision, it generally cannot revisit, vary, or retract it, as the judge becomes **functus officio**. They cited case law, including ***Jersey Evening Post Limited vs. Ai Thani*** **and** ***Laura Nakubulwa & 2 Ors vs. Angelina Kagere Lubowa,*** which established that a decision may only be reviewed under exceptional circumstances, such as to correct drafting errors, clarify the court's express intention, or where expressly permitted by statute. In their view, none of these exceptions applied to the present case.

Respondent's counsel further contended that the Tribunal had acted in accordance with the law when it dismissed Application No. 11 of 2024 due to the Applicant's non-compliance with directions. They referred to **Order 17 Rule 4 of the Civil Procedure Rules**, which allows a court to proceed with a matter if a party fails to file evidence or comply with procedural requirements. Counsel pointed out that the Tribunal had issued multiple reminders to the Applicant, including a hearing notice on December 9th, 2024, and emails on January 3th and 7th , 2025. They emphasized that the Applicant had neither protested the directives nor responded to the emails but had instead failed to file the required trial documents. Accordingly, they maintained that the Tribunal's decision to dismiss the application was proper and could not be categorized as an error apparent on the face of the record.

To reinforce their argument, counsel cited ***Nyamogo and Nyamogo Advocates v. Kago***, which defined an error apparent on the face of the record as one that is self-evident and does not require extensive reasoning. They further referred to ***Igga Anyi Godfrey & Ors vs. The Registered Trustees of Pentecostal Assemblies of God***, which held that an incorrect interpretation of the law or a different judicial opinion does not qualify as a ground for review but rather forms a basis for an appeal. Counsel argued that, in this case, the Tribunal had exercised its discretion lawfully under **Order 17 Rule 4**, and any alleged misinterpretation of the law was a matter for appeal, not review.

Additionally, the Respondent's counsel dismissed the Applicant's argument that its failure to comply with the Tribunal's directions was due to the Respondent's delayed response. They asserted that an applicant must possess sufficient evidence before filing a case and bears the burden of proof under **Sections 101 and 102 of the Evidence Act**. Thus, the Applicant's duty to file trial documents was independent of the Respondent's response.

Counsel also rejected the Applicant's claim that the Christmas holiday affected compliance, pointing out that the directions were issued on December 9, 2024, giving the Applicant ample time until December 24th and from January 1th to January 16th to file its evidence.

Finally, the Respondent's counsel argued that the remedy of review was not available to the Applicant because it had already chosen to pursue an appeal. They referred to **Section 82 of the Civil Procedure Act**, which provides that review can only be sought if no appeal has been preferred. They cited a letter dated January 10th , 2025, in which the Applicant notified the Registrar of the Insurance Appeals Tribunal of its intention to appeal the ruling in the High Court. Counsel maintained that this amounted to a preference of appeal, thereby disqualifying the Applicant from seeking review.

In conclusion, they asserted that the Applicant had failed to meet the legal threshold for a review, setting aside, and reinstatement of the dismissed application. They urged the Tribunal to dismiss the application with costs.

10.0. CONSIDERATION BY THE TRIBUNAL

Issue 1 - Whether the application satisfies the grounds for review

The Applicant argued that the Respondent had filed a response to the Applicant's application but that the same had not been served on the Applicant. However, from the record of this Tribunal, it appears that the Respondent had filed its response before the Tribunal as of 5th December 2024. It therefore follows that the question would be whether the failure to serve the same on the Applicant justified the Applicant's non-compliance with the directions of this Tribunal to file pretrial documents**.**

The Applicant submitted that it reached out to the Respondent in order to be served with a response but that the said response was only served on 8th January 2025 a day prior to the hearing which the Applicant cites to have frustrated its filing on time and that indeed Counsel for the Applicant had informed this Tribunal of the said occurrence.

On the other hand, the Respondent avers that the Applicant had been reminded thrice of the need to file its documents which it omitted to file i.e. the hearing notice of 9th December 2025 and the emails of 3rd and 7th January 2025. Further, that the Applicant in fact never indicated that it had not received the reply and made no response to the reminder. That in any case filing of the Applicant's trial documents is not contingent on the Respondent's response.

We haste to also cite the Applicant's argument that it was not possible for it to file trial documents prior to the Joint Scheduling Memorandum and that this consists of an error that is apparent on the record.

We shall not delve much into the nitty-gritty of what amounts to an error apparent on the record we note that we disagree with the Respondent's assertion that this Tribunal is *'functus officio'* and cannot review its own decision. As rightly submitted by Counsel for the Applicant some of the exceptions to the *'functus officio'* rule is where there is continuing jurisdictions such as review, this Tribunal is therefore vested with the powers and jurisdiction to handle the instant application by the Applicant. ***See; Imaniraguha v Uganda Revenue Authority (Miscellaneous Application 2770 of 2023) 2023 UGComm C 220***

Turning to what amounts to an error on the face of record we shall reproduce here the authority cited by the Respondent to the effect that as authoritatively out by the Learned Justice Stephen Mubiru in the case of ***Farm Inputs Care Centre Limited Versus Klein Karoo Seeds Marketing (Pty) Ltd Miscellaneous Application No. 0861 of 2021*** that "***An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court/Tribunal to exercise its power of review under this Order and rule***". In an attempt to define it, it was noted that 'an error apparent on the face record, cannot be defined

precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the

record. ***Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out.***

An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

Secondly, a review should not seek to challenge the merits of a decision but rather irregularities in the process towards the decision. Some instances of what constitutes a mistake or error apparent on the face of record are: where the applicant was not served with a hearing notice; where the court has not considered the amended pleadings filed or attachments filed along with the pleadings; where the court has based its decision on a ground without giving the applicant an opportunity to address the same; and violation of the principles of natural justice.

In the matter before us, the Applicant based its application on two grounds, an error apparent on the face of the record and sufficient cause. In light of the above submissions and jurisprudence of what amounts to an error apparent on the record, it is important to consider two aspects. One is whether it was possible for the Applicant to gain access to the Respondent's response other than through direct service. Secondly, whether the Response by the Applicant had an effect on all the Applicant's pretrial documents other than the Joint Scheduling Memorandum as cited by the Applicant.

In considering the first aspect as aforementioned, we acknowledge that it is trite for the Respondent/Defendant to file their Defence/Response both as a matter of law and practice. Pursuant to Order 8 rule 1(1) of the Civil Procedure Rules, it is provided that the Defendant may, and if so, required by the court at the time of issuing of summons or at any time thereafter shall, at or before the first hearing or within such time as the court may prescribe, file his or her Defence. In the same vain a Respondent is required to file their Response, since it is obligatory on the part of a Defendant to serve a copy of his/her/it's Written Statement of Defence/Response on the Plaintiff in this case Applicant, particularly so where the Written Statement of Defence/Response contains a counter- claim in this case a Cross claim which legally is a claim in its own right. See; that failure to serve the process where service is no doubt required is a failure which goes to the root of any conception of proper procedure in litigation. ***See: Nicholas Roussos vs G. H. Virani & Anor HCCS No. 360 of 1982 as cited in HCT-00-CV-CA-0007-2009; Bamanye Fazil V Nankunda Rose.***

From the foregoing, the Applicant does not deny having been aware that the Respondent had filed its response on the Court record. Notably, on page 5 paragraph 26 of its submissions, the Applicant acknowledges that upon reviewing the notice it was noted that, the same was addressed to the Respondent's advocates and that this made it evident that the Respondent had filed a Response to the appeal. It appears that despite this knowledge no attempts were made to gain access to the Response to

accelerate the hearing process as the date was falling due. We therefore find that it is

utterly ludicrous and luxurious for Applicant to argue that it failed to file its pretrial documents due to the absence of a response in an instance where no request was made either to this Tribunal or to Counsel for the Respondent who was known to the Applicant at the time. It is the Applicant's duty to prove their case, meaning they must present evidence to support their claims and establish the facts necessary to win their case and this cannot be solely based on a Response/Defence.

Whereas the above findings are in our wisdom true, it is vital to note that the Respondent's duty to serve their response should not be dispensed with as it is a substantive requirement under the law. Secondly, whether the Response by the Applicant had an effect on all the Applicant's pretrial documents other than the Joint Scheduling Memorandum as cited by the Applicant. Subject to Order 12 of the Civil Procedure Rules as amended, the role of the scheduling process cannot be dispensed with. Practically it is impossible to file a Joint Scheduling Memorandum without the input of the Respondent. However, no attempt either by way of correspondence letter or email was made to the Respondent's legal counsel to engage them about the possibility of generating one which amounted to laxity on the part of the Applicant.

Before we take leave of this issue, we need to note that the timelines within which this Tribunal ought to handle a matter to conclude are limited as per statute under Section 137(4) which provides that *a decision of the Tribunal shall be in writing and shall be communicated within 90 days.* It is therefore important to expedite the process of prosecution of matters before us, from filing, scheduling, hearing and determination. The filing of pleading and pretrial documents are shorter than in ordinary courts where the timelines are a little wider compared to those of this Tribunal. It should therefore be of no surprise that the Tribunal issues schedules for the parties to file pretrial documents even prior to closure of pleadings as cited by Counsel for the Applicant. Because of this, the Tribunal goes the extra mile of calling and sending emails to its users reminding them to comply with set timelines. No amount of latitude, therefore, is impermissible.

We, therefore, find the arguments that there was an error apparent on the record arising from non-service flawed and without merit to warrant a review of the ruling of the Tribunal in Application No. 11 of 2024.

The Applicant also raised a second ground, the basis of the instant application being sufficient cause that would have prevented or justified why the Applicant did not file its documents warranting a review of the decision to dismiss for failure to file pretrial documents. Counsel submitted that the delay in filing the Applicant's pretrial documents arose from the Court vacation of the month of December 2024.

We are alive the fact that in each calendar year, the Courts of Law in Uganda have a vacation from the 15th of July to the 15th of August inclusive and from the 23rd of December to the 7th of January inclusive. Equally, Order 51 Rule 4 CPR, which defines Christmas vacation as the period from 24th December to 15th January in the year following and the case of ***Herman Semakula v Ivan Asiimwe*** a decision of the Supreme

Court of

Uganda as cited by Counsel for the Applicant. We agree with and are bound by this decision.

Had this been a major point of contention, it would also be important to access if these two annual Court vacations directly apply to the Tribunal given its nature and form of existence. However without delving much into its applicability to this Tribunal, we refer to the facts of the matter before us, the hearing notice in question was issued on the 9th day of December 2024, and there is no explanation on the part of the Applicant as to whether there was a reason that could have presented counsel to have complied with the directions of this Tribunal between 9th and 24th December, 2024 ahead of the hearing of January 9th 2025. As such we find that this reasoning by Counsel neither falls within the ambit of and nor constitutes sufficient cause to warrant a review of the earlier ruling by the Tribunal.

It is perturbing to note that whereas the Respondent chooses to blame the Applicant, both Parties in this case adamantly chose to ignore the numerous reminders through phone calls and emails by the Tribunal to file their pretrial documents. No justifiable reason has been offered to explain these omissions and the Applicant wishes to belatedly seek a review in the absence of any response to the reminders.

The expression "sufficient reason" is not defined anywhere in the rules. In the cases of: Mugo v Wanjiri [1970]EA 481 on page 483. Njagi v Munyiri [19751EA 179 at page 180 and Rosette Kizito v Administrator General and others [Supreme Court Civil Application No. 9/86 reported in Kampala Law Report Volume 5 of 1993 at page 4] it was held that sufficient reason must relate to the inability or failure to take the particular step in time. What constitutes sufficient or good cause depends on the facts and circumstances of each case.

It is an established principle of the law that negligence of counsel ought not to be visited on an innocent litigant and that a litigant ought not to bear the consequences of default by an advocate unless the litigant is privy to the default or the default results from the failure on the part of the litigant to give the advocate due instructions. **(Zam Nalumansi v Sulaiman Lule, SCCA No. 2 of 1992; Mary Kyamulabi v Ahmed Zirondemu, CACA No. 4l of 1979 and Andrew Bamanya v Sham Sherali Zaver, CACA No.70 of 200l).**

In Tiberio Okeny & Another v. Attorney General & 2 Others, C. A Civil Appeal No. 51 of 2001, the considerations for the exercise of the court's discretion to grant or not an application of this nature were outlined thus:

a) The Applicant must show sufficient reason which must be related to the inability or failure to take some particular step within the prescribed time.

b) The administration of justice normally requires that the substance of all disputes should be investigated and decided on the merits and that error and lapses should not necessarily debar a litigant from pursuit of his rights.

c) Whilst mistakes of counsel sometimes may amount to sufficient reason, this is only if they amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirements of the law.

d) Unless the party was guilty of dilatory conduct in the instructions of his lawyer, errors or omissions on the part of counsel should not be visited on the litigant.

e) Where an applicant instructed a lawyer in time, his/her right should not be blocked on grounds of the lawyer's negligence or omission to comply with the requirements of the law.

Considering all the circumstances of this application, no explanation was given by the applicant as to why they failed to file the pre-trial documents. The mistake of Counsel was deliberate and negligent and counsel is guilty of inordinate delay. The delay in taking the essential step to file pre-trial documents has been appropriately attributed to the Counsel in the personal conduct of the matter, there is no evidence of negligence or dilatory conduct on the part of the Applicant personally. It cannot therefore constitute negligence or delay on the part of the Applicant personally.

It therefore would be unfair to the Applicant for the Tribunal to lock out the Applicant from hearing the application due to the negligence of its lawyers since there was no such dilatory conduct on the part of the Applicant herein.

It is our finding at our discretion that the Applicant has established sufficient cause to warrant the review of the Tribunal's decision given on mistake of counsel.

CONCLUSION AND FINAL ORDERS

In conclusion, the Tribunal makes the following orders:

1) This application succeeds.

2) The Applicant is granted 5 days from the date of this Order within which to file its pre- trial documents including the Trial Bundle and Witness Statements.

3) The Respondent is given 5 days from receipt of the Applicant's documents to file its pre-trail documents.

4) The costs of the application shall be met by the Applicant.

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

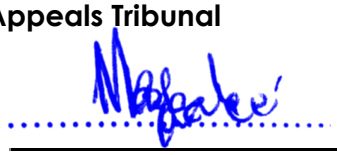
We so order.

DATED and **DELIVERED** at **KAMPALA** on the **24th** day of **FEBRUARY 2025.**

Rita Namakiika Nangono
Chairperson - Insurance Appeals Tribunal

Solome Mayinja Luwaga
Member - Insurance Appeals Tribunal

George Steven Okotha
Member - Insurance Appeals Tribunal



John Bbale Mayanja (PhD)
Member - Insurance Appeals Tribunal

Ms. Harriette Nabasirye Paminda Kasirye
Member - Insurance Appeals Tribunal