

**THE REPUBLIC OF UGANDA  
IN THE INSURANCE APPEALS TRIBUNAL OF UGANDA  
AT KAMPALA**

(CORAM: RITA NAMAKIIKA NANGONO, CHAIRPERSON; SOLOME LUWAGA MAYINJA, GEORGE STEVEN OKOTHA, DR. JOHN BBALE MAYANJA, MEMBERS.)

**APPEAL No. 2 OF 2022**

**BETWEEN**

**ICEA LION GENERAL INSURANCE COMPANY LIMITED::::::::::::: APPELLANT**

**VERSUS**

**SHARK MEDIA LIMITED::::::::::::: RESPONDENT**

*[Appeal from a decision of the Court of the Complaints Bureau of the Insurance Regulatory Authority]*

**DECISION OF THE TRIBUNAL.**

This appeal arises from a decision of the Complaints Bureau of the Insurance Regulatory Authority, (IRA) where the Authority upheld the claim by the respondent and ordered the Appellant to pay it.

**BACKGROUND**

The background to this appeal is that the respondent purchased an all-risk insurance policy from the Appellant. On 10<sup>th</sup> April 2019, the Respondent suffered a power surge at its business premises located at Mirembe Arcade and a double sheet sensor found in an SM 74 machine was damaged and as a result of this damage, the respondent filed a claim of US dollars 15,400 approximately Ugx 57,755,852 for the replacement of the sensors in the machine.

The Appellant commissioned General Adjusters Uganda Limited to assess the loss and advise on the claim.

On 31<sup>st</sup> May 2019 MS General Adjusters Uganda Limited issued its report in which it recommended an adjusted value of Ugx 51,980,267 as the compensation due to the respondent.

The Applicant was not satisfied by the report issued by its external loss assessor and so after almost seven months, it conducted another loss assessment exercise which was done internally by the Appellants team on 11<sup>th</sup> October 2019.



The report by the internal team concluded that there was no evidence of the salvage part during the visit that only one double sheet sensor was replaced and not two and the replaced part was at a cost of USD 6,200 inclusive of taxes.

The report observed that the net price of a double-sheet sensor was USD 4,200. Based on this report the Appellant concluded that the amount of the claim payable was USD 4,200.

The Respondent on the other hand had contacted DM Systems Limited and Anchartech Printers and Publishers limited for quotations of the parts that had been damaged and according to the Respondent's submissions, the value for the replacement of both sensors was quoted at USD 15,400.

The Respondent avers that the final invoice and payment receipts were availed totaling USD 15,400, the Respondent states that it went ahead to replace the parts so as to continue with its printing business pending settlement of claim by the Appellant. The Appellant declined to honour the claim insisting on being availed the final invoice and import documents for the parts replaced.

The Respondent sought redress from IRA to among others compel the Appellant to honour the claim submitted to it.

During the hearing of the complaint, IRA commissioned its independent investigation that was carried out by the Insurance Fraud Investigation Unit whose report was communicated to parties on 25<sup>th</sup> November 2021.

The report ruled out fraud on the part of the respondent and recommended that the claim, as presented by the respondent, be honoured.

This recommendation was adopted as the decision of IRA in the matter between the parties.

The Appellant, being dissatisfied with the decision reached by IRA, lodged this appeal.

At the hearing of this appeal, the respondent raised a preliminary point of law as to the jurisdiction of the Tribunal to hear this appeal. The parties were guided to submit on the preliminary objection and on the appeal so that the tribunal would address all the issues in the appeal as a whole.

### **The Issues**

The following issues were raised for determination by the tribunal

1. Whether the Tribunal has jurisdiction to entertain this appeal?
2. Whether the report of IRA fraud Unit should be set aside for non-compliance with the rules of Natural Justice?
3. Whether the Respondent's claim of USD 15,400 is payable?



The first issue, being a preliminary point of law that is capable of disposing of the entire appeal, shall be dealt with first.

The respondent raised this point of law founded on regulation 9(3) of the Insurance Appeals Tribunal Regulations. Counsel for the respondent contends that the appeal was filed out of time and that the Tribunal does not have jurisdiction to adjudicate it, having been brought out of the time that is stipulated in the regulations. Counsel submitted that the decision by IRA was made on 25<sup>th</sup> November 2021, and this appeal was filed on 6<sup>th</sup> October 2022 almost a year after the decision by IRA. He contends that the appeal offends Regulation 9 (3) and should be struck out with costs.

On its part, the appellant contends that the appeal was filed on time and in accordance with S. 136 and 137 of the **Insurance Act** and Regulation 9 (3) of the **Insurance Appeals Tribunal Regulations**. Counsel for the Appellant submitted that in 2021, the Tribunal had not yet been appointed and so the appellant wrote to IRA as the industry regulator, the intention to appeal contained in the letter dated 1<sup>st</sup> December 2021. In the opinion of the Appellant's counsel, this letter was the appeal in and of itself and the appellant expected IRA to write back to them naming the appellate body to hear the appeal.

In order to determine the issue of time within which this appeal was filed, it is important to revisit the chronology of events leading up to this appeal.

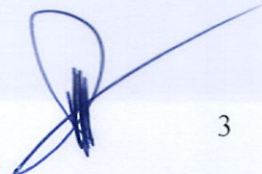
It is an agreed fact that the Respondent entered into an insurance policy with the Appellant number 047-A2-505215-17 covering all risk at the Respondent's premises.

On 10<sup>th</sup> April 2019, there was a power surge at the Respondent's premises which allegedly damaged 2 paper sensors in the Respondent's printer causing a breakdown of the printer. The Respondent submitted a claim to the Appellant for a sum of USD 15,000. A clear date for the submission of this claim is not given in the facts but it can be safely placed between 10<sup>th</sup> April 2019 when the alleged power surge occurred and before 31<sup>st</sup> May 2019 the date on which the loss adjuster's report was made.

It is also not in dispute that the Appellant appointed MS General Adjusters Limited to assess and adjust the loss and the said loss adjuster published its report on 31<sup>st</sup> May 2019.

The Appellant was not satisfied with the findings and conclusions of the loss adjuster's report and so after about 5 months sent its own internal team to reassess and adjust the loss. On 11<sup>th</sup> October 2019, the internal team issued its reassessment report.

In the meantime, the Respondent referred the matter to IRA for determination. A copy of the complaint to IRA was not availed to this Tribunal.



On 11<sup>th</sup> September 2019, the Appellant writes to IRA responding to a letter written to it on 6<sup>th</sup> September 2019 giving an explanation to a complaint filed by the Respondent.

On 15<sup>th</sup> September 2019, the Appellant writes to IRA forwarding the reassessment report.

On 25<sup>th</sup> November 2021, IRA makes its determination of the complaint by letter addressed to the Appellant and copied to the Respondent. The summary of IRA's decision is that the Appellant should pay the claim as presented by the Respondent.

On 10<sup>th</sup> March 2022, the Respondent wrote to the Appellant demanding that the respondent pays to the claim of USD 15,400. On the same day, the Appellant replied to the letter indicating that it had appealed the decision of IRA.

It was orally submitted by counsel for the Appellant at the hearing of this Appeal that the Appellant's Appeal was contained in a letter dated 1<sup>st</sup> December 2021 addressed to the Chief Executive Officer of IRA and copied to counsel for the respondent, in which they communicated their dissatisfaction with IRA's decision and the desire to Appeal from it.

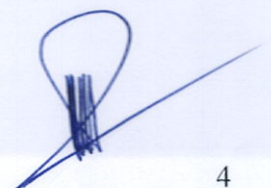
According to counsel for the Respondent, this letter constituted an Appeal and therefore it was up to IRA, based on that letter to constitute an Appeal body and issue summons to parties to prosecute the appeal.

In his submissions, Counsel for the Respondent challenged the competence of the letter to constitute an Appeal for two main reasons;

1. The letter was a response to his which he had written demanding that the Appellant complies with the decision of IRA and it was never intended as an Appeal.
2. Secondly the format of the Appeal from a decision of IRA is given in the Insurance Appeals Tribunal Regulations 2019 and it is not by letter but by prescribed format.

Based on those two reasons, the Respondent contends that there was no Appeal filed and that the present Appeal was filed out of time.

In the alternative and without prejudice to the foregoing, it was argued for the Appellant that at the time of the Appeal the Tribunal had not been appointed and not inaugurated hence the delay in filing the Appeal.



## **RESOLUTION OF THE ISSUES**

We have considered the submissions of both parties with respect to the preliminary point of law and note that by conduct, the Appellant delayed in processing the claim presented to it by the Respondent.

The decision by IRA was given to the parties on 25<sup>th</sup> November 2021. At the time of this decision, the Insurance Appeals Regulations had been in place and operational by virtue of **SI NO 48 OF 2019** published in the gazette on 5<sup>th</sup> July 2019.

Regulation 9(1) requires a person who intends to appeal a decision of IRA to submit an application to the Tribunal accompanied by the decision against which the appeal is filed and pay fees specified in schedule 1.

R 9(3) stipulates the time within which an Appeal from the decision of the Authority is to be lodged and the time prescribed is **within one month**.

R 9(4) states that the Appeal should clearly state the reasons on which it is brought and should be signed by the Applicant or its representative.

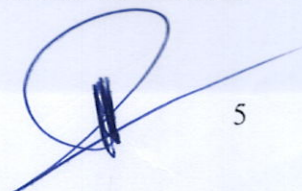
The form in which the Appeal is to be filed is set out in form IAT 1 in Schedule 2 to the Regulations.

In this instant appeal, upon receipt of the decision by IRA, counsel for the respondent wrote a demand to the appellant to honour the directives of IRA. The Appellant in its reply to the demand indicated that it was not satisfied with the decision by IRA and notified IRA of its intention to Appeal. The question for this Tribunal to determine is whether the letter of 1<sup>st</sup> December 2021 constituted an appeal within the meaning of S. 136 and 137 of the Insurance Act and whether it met the requirements of R. 9.

However, even if we were to indulge the argument that at the time of the decision of the IRA, there was no tribunal, could the letter of 1<sup>st</sup> December 2021 by the Appellant be said to constitute an appeal? The answer to this is in the negative.

The procedure, form and forum for the appeal had been prescribed in the law which had come into force at the time the purported appeal was filed. The bare minimum that was expected of the appellant, is to file its appeal with the regulator in the form, prescribed by the law. A mere letter that does not even disclose the grounds on which the appeal is brought, falls far below the standard of requirements set in the Insurance Act and the regulations.

Secondly, we did not receive any plausible explanation from the Appellant, as to why, after the letter that was purported to be an appeal, there was no follow-up on the progress of the appeal by the appellant until September when IRA wrote to the appellant demanding compliance with the ruling.



The Appellant's lawyer during his oral submissions stated that following their letter of 1<sup>st</sup> December 2021, they waited for IRA to constitute the Appeals Tribunal and advise them.

Members of the Insurance Appeals Tribunal were appointed by the Minister of Finance and Economic Planning on 8<sup>th</sup> November 2021. IRA advised the general public on the establishment of the Insurance Appeals Tribunal in a notice to the general public, including the appellant, published in all leading newspapers including the Daily Monitor Newspaper of 25<sup>th</sup> January 2022. The notice stated that the Minister responsible for Finance had, on 8<sup>th</sup> November 2021, appointed the members of the Insurance Appeals Tribunal. The notice read in part as follows;

***“THE GENERAL PUBLIC is hereby NOTIFIED that the Insurance Appeals Tribunal is now fully constituted, and a person aggrieved with the decision of the Insurance Regulatory Authority of Uganda may appeal to the Insurance Appeals Tribunal in accordance with the Insurance Appeals Tribunal Regulations 2019. ....”***

We therefore find that IRA discharged its responsibility of advising the Appellant of the constitution of the Tribunal as the appropriate forum for filing appeals against its decisions.

On 10<sup>th</sup> March 2022, counsel for the Respondent wrote another demand to the Appellant to comply with the orders given by IRA in its ruling. The Appellant responded on the same day indicating that it was not satisfied with the decision of IRA and that it had appealed the same **“.....pursuant to S. 135 and/or 137 of the Insurance Act”**.

At this time, the notice by IRA had been issued in both print media and on IRA's website and reasonably within the reach of the Appellant and yet this did not move the appellant to take the necessary steps to pursue its appeal.

It took the Respondent's letter to IRA dated 16<sup>th</sup> September 2022 complaining against the conduct of the Appellant and the ultimatum given to the Appellant by IRA, its Regulator in the letter dated 28<sup>th</sup> September 2022, that this appeal was finally filed.

The ultimatum, is contained in paragraphs 4 and 5 of the said letter and it reads in part as follows;

***“We hereby direct you to either submit to us evidence of the Appeal or settle the claim per the terms of the decision within 7 days from this letter ....please note that failure to comply***

**as advised above will lead to enforcement of action being taken against you in line with section 45 of the Insurance Act”**

Following the above letter on 6<sup>th</sup> October 2022, the Appellant lodged this Appeal with the Registrar of the Tribunal in the prescribed format.

The conclusion we draw from the events above is that this Appeal was filed on 6<sup>th</sup> October 2022 from a decision that had happened almost a year ago on 25<sup>th</sup> November 2021.

This appeal therefore, was filed outside the time prescribed in regulation 9 of the **Insurance Appeals Tribunal Regulations**.

We rely on The Public Procurement and Disposal of Public Assets Appeals Tribunal which while considering a similar question in **App.No 23 of 2022 Mugerwa Fred v Sembabule DLG** held that;

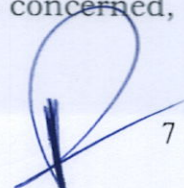
**..... The time limits set in the Procurement and disposal statute were set for a purpose, are coached in mandatory terms, are a matter of substantive law and not mere technicalities and must be strictly complied with. There is no enabling provision within the Public Procurement and Disposal of Public Assets Act 2003 as amended that accords the Tribunal power to enlarge or extend time. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned.**

This decision, whereas not binding on the Tribunal, is persuasive and instructive to the Tribunal for the following reasons;

- a) The appellate jurisdiction of the Insurance Appeals Tribunal is contained in S. 137 of the Insurance Act.
- b) S. 137 (1) provides for the time within which a party may appeal the decision of IRA to the Tribunal and the time prescribed by the subsection is **within one month** from the date of the decision.
- c) Like the PPDA Act, there is no provision in the Insurance Act that gives it the power to enlarge the time within which an appeal can be brought before it.
- d) Like the timelines in the PPDA Act, the timelines imposed in the Insurance Act and in the Insurance Appeals Tribunal Regulations were imposed for a reason and must be strictly complied with.
- e)

It is our finding therefore that the Appeal was brought outside the time prescribed by the law and as such, it falls outside the jurisdiction of the Tribunal the same having been extinguished by the delay of the appellant to bring this appeal in time.

In conclusion, having found that the appeal was filed out of time and the jurisdiction of this tribunal is extinguished as far as the matter is concerned, this appeal is incompetent.



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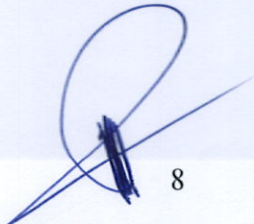
As a result, there is no need to delve further into the merits of the appeal.

### **CONCLUSION AND FINAL ORDERS**

In conclusion, the Tribunal makes the following orders:

- (a) The appeal is struck out.
- (b) The decision by the Insurance Regulatory Authority is upheld.
- (c) The Appellant is ordered to pay the claim presented by the Respondent.
- (d) The Appellant is ordered to pay interest at the rate of 6% p.a from 25<sup>th</sup> January 2022 the date on which notice of constitution of the Insurance Appeals Tribunal was published by IRA, until payment in full.
- (e) Costs of this appeal are awarded to the respondent.
- (f) The Tribunal Orders that, should there be failure by the Appellant to adhere to Orders **c, d and e** above, IRA is directed to take such action as may be appropriate under the *Insurance Act*, No. 6 of 2017 against the Appellant to ensure compliance with these orders.

Finally, the Tribunal wishes to thank Counsel for both parties, whose detailed submissions went a long way in assisting the Tribunal to arrive at this decision.



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**DATED** and **DELIVERED** at **KAMPALA** on the 19<sup>th</sup> day of **DECEMBER** 2022.



**Rita Namakiika Nangono**

*Chairperson.*



**Solome Mayinja Luwaga**

*Member.*



**George Steven Okoth**

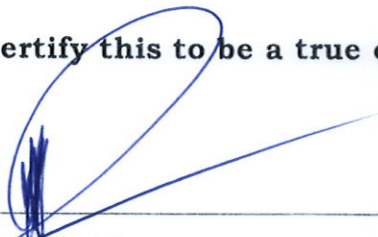
*Member.*



**Dr. John Bbale Mayanja**

*Member.*

**I certify this to be a true copy of the Original Judgment.**



Isaac N. Mpanga  
Registrar, Insurance Appeals Tribunal

