THE REPUBLIC OF UGANDA
INSURANCE APPEALS TRIBUNAL
APPEAL NO.3 OF 2022

PLACID BYABAGAMBI BAKUUTA ::APPELLANT
VERSUS
NIC GENERAL INSURANCE COMPANY LTD :::RESPONDENT
(CORAM: RITA NAMAKIIKA NANGONO - CHAIRPERSON; DR. JOHN BBALE MAYANJA, GEORGE STEVEN OKOTHA, SOLOME MAYINJA LUWAGA - MEMBERS)

RULING

1. This appeal arises from a decision of the Insurance Regulatory Authority (IRA) where the Authority, having found that the Appellant was entitled to compensation for the accident involving motor vehicle No. UAE 307N ordered that the Respondent compensates the respondent a sum of UGX 6,778,000 within 7 days from 17th November 2022 the date on which IRA's decision was made.

2. The Appellant being dissatisfied with the Authority's order brought this appeal before the Tribunal disputing the compensation amount awarded by IRA. The application appealing the decision by IRA was filed in the Tribunal on 22nd December 2022.

BACKGROUND.

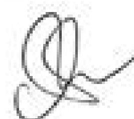
3. The appellant obtained a motor comprehensive policy from the respondent. On 8th September 2009, the insured vehicle was involved in an accident. The Appellant lodged a claim for indemnity under his policy.

The respondent computed the loss to a sum of UGX 6,778,000/- however, the respondent sought to set off from the computed compensation, outstanding premiums, a proposal which the appellant rejected. The respondent opted to file a suit in court to recover its outstanding premium. The suit was lost on appeal but up to this moment, the insurance claim had not yet been settled.

4. On 6th July 2022, the Appellant lodged a complaint against the respondent at the Complaints Bureau of IRA to enforce the policy and recover from the respondent the compensation due to the Appellant for the loss suffered during the accident.

5. Having heard the parties on both oral and written submissions, IRA gave its decision on 17th November 2022.

6. Being dissatisfied with the decision made by IRA, on 22nd December 2022, the Appellant filed this appeal in the Tribunal.



THE APPEAL

7. The appeal was heard by the Tribunal on 17th February 2023. At the hearing, the Appellant was represented by Counsel Christine Atukwase of M/s R Mackey Advocates while the Respondent was represented by Counsel Fabian Omara of M/s Kyagaba Otatiina Advocates.

8. The appeal was premised on three grounds namely;
   i. The Insurance Complaints Bureau failed to properly evaluate the evidence of the appellant and misconstrued the Appellant's prayer for an appropriate remedy for restitution hence occasioning a miscarriage of justice.
   ii. The complaints bureau misunderstood or ignored the prayer for adequate indemnification and in its resolution of the complaint, the Bureau only took into account the Respondent's claim for unpaid premium, leaving unresolved the complaint against the negligible settlement offer of UGX 6,778,000/=.
   iii. The Bureau did not consider or evaluate the evidence provided by the Appellant including receipts and other documents.

9. The Appellant prayed that the Tribunal varies the decision of IRA to award him an adequate and appropriate indemnification for the loss of his motor vehicle. In the estimation of the Appellant, the adequate compensation was UGX 235,110,557/= which represents the lost business opportunities calculated with a compound interest of 25% per annum for 13 years.

10. In its response, the respondent objected to the appeal and prayed that the same be dismissed with costs and that the Tribunal upholds the decision of IRA.

11. The Respondent contended that the Bureau evaluated the evidence before it its decision. That the demand for compensation to the tune of UGX 235,110,557/= was never pleaded before the Bureau and that it is brought up in the appeal as an attempt to extort the Respondent.

12. The Respondent further objected to the Application for being contrary to public policy as the same was brought after 13 years.

13. The Respondent prayed that the decision of the Bureau is upheld, the appeal be dismissed, and that the Respondent be awarded costs of suit.

14. The parties framed the following issues for resolution by the Tribunal;
    i. Whether the response to the Application was out of time.
    ii. Whether the claim is time-barred.

iii. Whether the Bureau correctly decided to award the Appellant UGX 6,778,000.

iv. What remedies are available to the parties?

It was agreed for the parties to file written submissions.

SUBMISSIONS

15. **Issue 1: Whether the response to the appeal was filed out of time?**

16. The Appellant submitted that the Respondent did not have an audience before the Tribunal and that their response to the appeal ought to be struck off the record given that it was filed out of time.

17. The Appellant averred that regulation 12 (1) of the Insurance Appeals Tribunal Regulations of 2019 stated that the respondent **shall** not later than fifteen days of being served with an application under regulation 11, cause to be lodged with the Tribunal, Form IAT 2 in Schedule 2 to these regulations.

18. The Appellant filed his appeal on the 22nd of December 2022 and served the Respondent with the same on the 22nd of December 2022. **See a copy of the affidavit of service on record dated 23rd December 2022.** The Respondent filed its response on the 9th of January 2023 instead of the 6th of January 2023.

19. The Appellant submitted that Regulation 12 was couched in mandatory terms and if the Respondent is to depart from it, he can only do so by a formal application.

20. The Appellant prayed that the Tribunal strikes the response off the record.

21. The Respondent argued that the response was filed within time however, there was an issue of whether the reply was liable to pay filing fees which was not resolved until 9th January 2023. The respondent argued that the process of filing the response began on Friday 6th January 2023 when the Respondent submitted its Response, and the process was finalized the following day Monday 9th January 2023 (excluding the weekend) when the Tribunal resolved the outstanding issue of fees and received/endorsed the reply.

22. Counsel alternatively argued that Regulation 29 of the regulations of the Tribunal allows for the application of the rules of procedure applicable in the High Court to proceedings before it." Under Order 51 Rule 4 of the Civil Procedure Rules S.I 71-1, the High Court excludes the time expiring between 24th December and 15th January. The Respondent contends that the deadline for filing its reply was 26th January 2023 and, assuming the

Respondent was to concede that the Response was filed on 9th January 2023, the filing would still have been way ahead of the deadline. The respondent prayed that the Tribunal finds issue 1 in its favour.

23. In rejoinder, the Appellant submitted that the Respondent did not have an audience before this Honorable Tribunal and that its response to the appeal ought to be struck off the record given that it was filed out of time.

24. **Regulation 12 (1)** of the **Insurance Appeals Tribunal Regulations of 2019**, provides that a respondent shall not, later than fifteen days of being served with an application under Regulation 11, cause to be lodged with the Tribunal, Form IAT 2 in Schedule 2 to these Regulations.

25. In the case of **Stop and See (U) Ltd v. Tropical Africa Bank Ltd (Miscellaneous Application 333 of 2010) [2010] UGCommC 41**, Court held that:

    "*Failure to file within 15 days would put a defence or affidavit in reply out of the time prescribed by the rules.Once the party is out of time, he or she needs to seek the leave of court to file the defence or affidavit in reply out of the prescribed time.*"

26. Regulation 12 is couched in mandatory terms and a strict interpretation would result in a similar conclusion to that of Order 8 Rule 1 (2) in **Stop and See (U) Ltd (Supra)**. The Respondent seeks to hide behind the provisions of Order 51 Rule 4 of the Civil Procedure Rules S. I 71-1. If the Respondent did file a formal application seeking leave for an extension of time, the Appellant herein ought to have been party and allowed an opportunity to be heard therein. The allegation that there was a submission of the response on the 6th at 4:00 PM is not backed by any evidence and the impugned letter written to the Learned Registrar that sought the extension of time without affording the Appellant a fair and just opportunity to respond to the same is improper and ought not to stand.

27. **Issue 2 : Whether the claim is time-barred?**

28. The Appellant contended that his claim before the Insurance Regulatory Authority was not time-barred as Guideline 8 of the **Insurance Complaints Bureau Guidelines 2022** provides for types of complaints that can be brought before the Bureau including disagreements concerning liability under policies issued, amount offered for settlement, breach of conduct by the licensee or any other insurance matter related to the actions of a licensee.

29. The Guidelines do not provide for a limitation on when claims may be lodged and allow for all claims as envisaged under Guideline 8 to be lodged. It was the Applicant's submission that the claim falls squarely therein.

30. Counsel for the Appellant faulted the Respondent for seeking to introduce a new issue of contention on appeal as the same was never raised before the Bureau. Counsel cited the cases of **Tanganyika Farmers Association Ltd Vs. Unyamwezi Development Corporation [1960] 1 EA 620 (CAD) and North Staffordshire Railway Co. v. Edge (3), [1920] A.C.254.** According to the Applicant, the Respondent only raised this issue intending to deprive the Appellant of adequate and due indemnification, contrary to Guideline 4 of the Insurance Complaints Bureau Guidelines.

31. Whereas during the hearing of this appeal counsel for the Respondent had opined that the statute of limitation did not apply to insurance disputes and that his objection was only founded on public policy, by the time of filing the written submission, his position on the subject had changed and he believed that both the spirit and the letter of the Limitation Act apply to this Tribunal. Counsel for the respondent stated in his submissions that he reviewed **Reg. 29 of the IAT Regulations and Order 7 Rule 11 (d) of the Civil Procedure Rules** and concluded that the High Court (and by extension this Tribunal) was mandated to reject a Plaint (claim) where the suit appeared from the statement in the Plaint (claim) to be barred by any law. He concluded that the Limitation Act, a procedural law applicable to the High Court, is also applicable to the Tribunal under Regulation 29.

32. Counsel for the Respondent submitted that the Limitation of time was a serious matter of public policy. Counsel cited the case of **Odyek Alex &OcenConstantino V GenaYokani& 4 Others, Civil Appeal No. 09 of 2017** where the High Court discussed the rationale for limitation of time. Justice Stephen Mubiru observed as follows:

    "Two major purposes underlie statutes of limitations; protecting defendants from having to defend stale claims by providing notice in time to prepare a fair defence on the merits and requiring plaintiffs to diligently pursue their claims. Statutes of limitation are designed to protect defendants from plaintiffs who fail to diligently pursue their claims. Once the time limited by The Limitation Act expires, the plaintiff's right of action will be extinguished and becomes unenforceable against a defendant. It will be referred to as having become statute-barred."

33. For a more detailed expository reading about limitation, Counsel for the Respondent referred us to a 1997 article "The Puzzling Purposes of Statutes of Limitation" by Tyler T. Ochoa & Andrew Wistrich published by Santa Clara the University of Law. The article can be accessed through the following link https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1107&context=facpubs. In brief, the article details the purposes of limitation as to-

i. Promote repose i.e., allow peace of mind; avoid disrupting settled expectations; reduce uncertainty, and avoid protective measures and associated costs.
ii. Minimize deterioration of evidence.
iii. Place Defendants and Plaintiffs on an equal footing.
iv. Promote Cultural values of diligence.
v. Encourage the prompt enforcement of substantive law.
vi. Avoid retrospective application of contemporary standards. And-
vii. Reduce the volume of litigation.

34. According to Counsel for the Respondent, under **S.3(1)(a) of the Limitation Act, no action** based on contract shall be brought **after the expiry of six years** from the date the cause of action arose. The Appellant's claim for indemnity arises out of a contract of insurance as evidenced by the motor comprehensive policy issued by the Respondent in the year 2008. The Appellant is challenging a settlement offer of UGX. 6,778,000 which the Respondent made to him in 2011 vide the Respondent's letter dated 23rd March 2011. The right of the Appellant to claim against the Respondent, therefore, arose on 23rd March 2011 when he was presented with an offer he rejected as inadequate and the six years expired on 23rd March 2017.

35. During the hearing held on 17 February 2023, the Appellant told the Tribunal that at the time he should have claimed against the Respondent, he was defending Civil Suit No. 1040 of 2013 filed by the Respondent (which was followed by an appeal to the High Court in Civil Appeal in No.117 of 2019). The Appellant also told the Tribunal that he was advised by the court to first conclude ongoing litigation before bringing a claim against the Respondent.

36. Counsel cited the Court of Appeal case of Uganda authority on **Jamada K Luzinda V Attorney General [Civil Appeal No. 0064/2010]** where the Justices of Appeal held that:

"It is trite that the principle that underlies the law of limitation is one that, 'once statute-barred, always statute barred' and the essence of the principle is that once a suit is statute-barred, any subsequent developments cannot revive it."

In this case, the relied on its earlier decision in **Mohammad B. Kasasa V Jaspher Buyonga Sirasi Bwogi, Civil Appeal No.42 of 2008**, quoting Lord Green M.R. in **Hilton V Satton Steam Laundry [1946] 1KB** at page 81 where the Court held that:

"Statutes of Limitation are by their nature strict and inflexible enactments. Their overriding purpose is 'interest republicaeut fins litum' which means that litigation shall automatically be stifled after a fixed length of time

irrespective of the merits of the particular case. Statutes of limitation are not concerned with merits. *Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation* ***is entitled, of course, to insist on his strict rights.***"

37. Counsel for the Respondent also submitted that Counsel moved the Tribunal under Reg. 29 of the IAT Regulations, Order 7 Rule 11 (d) of the Civil Procedure Rules, and S.3(1)(a) of the Limitation Act to:

    i. Reject the Appellant's claim irrespective of its merits (or considerations of equity/fairness) for being barred by time.

    ii. Reverse the regulator's earlier award of UGX 6,778,000. And

    iii. Dismiss the Appeal with costs.

38. In rejoinder, the Counsel for the Appellant reiterated her submission that **Guideline 8** of the **Insurance Complaints Bureau Guidelines** envisaged the nature of claims allowed to be lodged at the Bureau, and the complaint lodged by the Appellant squarely falls within the nature of claims permissible thereunder. The guidelines do not place a time constraint on the lodgment of claims. Whereas the Respondent states that memories fade, the facts of this case are clear and have documentary evidence to which the Tribunal was privy. The Appellant's claim was neither stale nor unclear as there was no dispute as to the existence of the insurance policy and the entitlement of the Appellant to compensation under the same. The only element in dispute herein was the quantum of the Appellant's properly deserved award.

39. More so, it was the Appellant's submission that the Respondent's submissions raised an issue that was never raised at first instance and cannot therefore successfully argue the same on appeal. In **Tanganyika Farmers Association Ltd v. Unyamwezi Development Corporation Ltd [1960] 1 EA 620 (CAD)**, Court cited with approval the decision of Jessel, M.R in ***Ex parte* Firth (2) (1882), 19 Ch. D. 419 at 429** wherein Court stated that "*The rule is that, if a point was not taken before the tribunal which hears the evidence, and evidence could have been adduced which by any possibility would prevent the point from succeeding, it cannot be taken afterward. You are bound to take the point in the first instance, to enable the other party to give evidence.*"

40. Further, Counsel cited **North Staffordshire Railway Co. v. Edge (3), [1920] A.C. 254**, wherein Lord Buckmaster, at p. 270, stated that "*If there be further matters of fact that could influence the judgment to be formed, and one party has omitted to take steps to place such matters before the Court because the defined issues did not render it material there, leave to raise a new issue*

independent on such facts at a late stage ought to be refused, and this is settled practice."

41. The Appellant submitted that allowing the same would amount to prejudice and injustice against the Appellant. The Respondent only raised this issue with the intent of depriving the Appellant of adequate and due indemnification contrary to Guideline 4 of the Insurance Complaints Bureau Guidelines which seeks to improve the reputation of the Authority and strengthen the public confidence in the insurance sector.

42. **<u>Issue 3:</u> Whether the Bureau correctly decided on awarding the Appellant UGX 6,778,000/=(Six Million, Seven Hundred and Seventy-Eight Thousand Uganda Shillings Only)?**

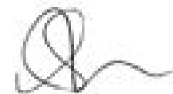
43. The parties agreed that there was indeed an insurance contract and that the insured uncertain event did occur thereby entitling the policy holder (the Appellant herein) to a payment. The contention before us is for the amount payable.

44. According to the Appellant, the Bureau erred in law and fact by issuing a compensatory order of only UGX 6,778.000/=, and yet the Appellant had previously disputed this amount. The Bureau arrived at this figure by rationalizing that the Respondent could not purport to offset the said figure from the premium it so claimed. Given that judgment on an appeal by the High Court was in favour of Mr. Byabagambi, the Bureau sought to ensure that NIC pay the sum it (NIC) had deemed appropriate, that is, the UGX 6,778,000/=.

45. Counsel for the Appellant stated that the modus the Bureau adopted to arrive at the award of damages was manifestly erroneous and the award itself extremely low in the circumstances of the case and was against the principle of indemnification whose objective was putting the Appellant in a position similar to where he would have been before the loss. She submitted that it was most relevant, if not altogether necessary to determine the time value for money at the time of the award of damages, vis-à-vis that of the assessment and award under the insurance policy.

46. Further, Counsel for the Appellant faulted the Bureau for not investigating the procedure followed by the Respondent on how it arrived at the sum of UGX 6,778,9000/= which in her view was inadequate.

47. In addition, Counsel for the Appellant argued that the Respondent did not make use of a loss assessor's report in arriving at the said sum and which was yet another indication of the insufficiency of the payment offer.



48. The Respondent argued this issue in the alternative and without prejudice to its arguments in issue 2 as below;

Burden of proof

49. The Respondent's counsel submitted that the Appellant's appeal is based on hope, not evidence. The burden of proof was the obligation to furnish evidence to prove an allegation that the Appellant lacked.

Duty of an appellate tribunal

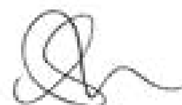
50. The primary duty of this Tribunal sitting as an appellate tribunal was to subject all evidence that was before the Bureau to fresh and exhaustive scrutiny and to come to its conclusion. The role of the Appellant as the appellant is to guide the Tribunal through specific areas of the record of proceedings and/or materials that were before the Bureau and to justify (from the record) why he is faulting the Bureau.

Record of proceedings

51. Counsel observed that the Appellant had not done what is required of an appellant. The Bureau evaluated all evidence that was before it in coming to its decision. There is no proof anywhere that the Appellant unequivocally rejected the offer of UGX 6,778,000.

52. Counsel argues that the Appellant in his Complaint letter to the Bureau dated 5th July 2022, wrote in paragraph 3 that he received an offer of UGX. 6,778,000/=and a "fictitious debt of UGX 22,712,677 unpaid premium. It was Counsel's view that the Appellant's real complaint was against the alleged fictitious debt of UGX 22,712,677 which had eroded the adequacy of the offer of UGX. 6,778,000. In his opinion, The Bureau correctly understood that to be the case of the Appellant and ruled in favor of the Appellant by nullifying the alleged fictitious debt.

    i. Furthermore, in paragraph 2 of the Complaint letter, the Appellant alleged that he asked the company (NIC) to explain to him "*the basis of the claim and computation of the proposed settlement*" to no avail. Counsel argued the Appellant was 'feigning' ignorance because he was aware of the considerations that led to the offer of UGX 6,778,000 and the Respondent's letter of 23rd March 2011 gave a detailed breakdown of arithmetical computation.



ii. Without proof of a formal reply to the letter of offer, the Appellant's spirited rejection of the offer and its credibility were doubtful. The particulars and scope of his alleged rejection, if any, were not known.

53. Counsel submitted that there was no record of proceedings from the Bureau and without a record of proceedings and or/minutes from the Bureau, the Tribunal could only guess what the thrust of the Appellant's Complaint was.

Loss Assessment Report

54. On this matter, Counsel argued that the Appellant was shifting the blame for the unavailability of the loss assessor's report from himself to the Respondent. The Respondent's A/C Head Legal told the Tribunal during the hearing that the Respondent could not trace the loss assessor's report as the accident happened more than ten years ago. It was not unusual for documents to get misplaced or disposed of with time. And all this was compounded by the Appellant not being vigilant in prosecuting his claims when the matter was still fresh and records intact.

55. Further to the above, the Respondent is not to blame for the loss assessor's non-appearance when called upon to present the loss assessor's report. The loss assessor is neither an employee nor an acolyte of the Respondent.

56. The Appellant in rejoinder maintained that he fully furnished evidence to prove his claim for indemnification and thus expended the burden of proof. The Bureau in its decision under paragraph 51 on page 8 stated that the Complainant presented a statement of account prepared by the insurer which indicated that he had paid a premium for the policy in issue (010/080/1/002239/2008). This was upon the Bureau finding the insurer's argument that the Complainant had not paid a premium for that particular policy an afterthought and devoid of merit.

57. Counsel for the Appellant also submitted that from the record of proceedings of the Bureau, on the 26th of July 2022, *the Appellant categorically stated, "I waited for compensation until 2011 when NIC offered me 6.8 million. It wasn't fair to give me that. I had not understood certain elements in the breakdown of the compensation. They had not included the money I had spent on breakdown."*

58. Counsel for the Appellant further stated that based on the evidence adduced, and the undeniable passage of time, it warranted consideration of the principle of time value for money and the application of interest on the amount due under the policy in the issue. It is the Appellant's submission that the Bureau erred in fact and law by issuing a compensatory order of only UGX

6,778,000/= and yet the Appellant has previously disputed the same amount. The Bureau interpreted the Appellant's claim to be for the UGX 6,778,000/= purportedly set off, whereas his claim was in fact that the claim for unpaid premium and the purported set off as well as the offer of UGX 6,778,000/= were unfair and unfounded.

59. Counsel further stated that the Appellant's claim was neither cryptic nor hard to understand, the particulars of the remedies sought by the Appellant were summed up in the case of **Birmingham and District Land Co. v. London and North Western Railway Co. (1887) 34 Ch. D 261 at 271** which held that; - "*A right to indemnity as such is given by the original bargain between the parties.*"

60. In Counsel's view, the Respondent's claim that it 'could not trace' the loss assessor's report was an admittance of negligence on its part given that NIC does not state that it disposed of the same according to their policy and that the same policy was subject to litigation before Court and the file ought to have been preserved. It was thus the Appellant's submission that the UGX 6,778,000/= was not properly arrived at and should thus be found insufficient

<u>Issue 4</u>: What remedies are available to the parties?

61. The Appellant prayed that this Honorable Tribunal order the Respondent to adequately indemnify the Appellant to the tune of UGX 235,110,557 (Two Hundred Thirty-Five Million One Hundred Ten Thousand Five Hundred Fifty-Seven Shillings only), which is inclusive of UGX 12,088,000 and an award of compound interest over the principal sum and takes into consideration the principle of time value for money calculated at a commercial rate of 25% per annum, over 13 years now (2009 till the date of payment in full).

62. Counsel for the respondent submitted that the Appellant was not entitled to any award above UGX 6,778,000 awarded by the Bureau. The sum of UGX 235,110,557 was presumptuous and extortionate. The Plaintiff's manifest intention was to be able to do business again and he was not looking for indemnity as per the policy of insurance.

63. Counsel for the Respondent contended that the origin of UGX 12,088,000 could not be traced from the evidence which was before the Bureau. The character of the sum was not even described. There was no recollection of the Tribunal taking any sworn evidence from the Appellant as per reg. 8(a) of the IAT Regulations to provide an evidential basis for that sum. The fictitious sum of UGX 12,088,000 has materialized out of the blue.

64. Counsel for the Respondent also argued that compound interest was an exception and was only awardable where justifiable grounds had been proved. There were two classic instances for an award of compound interest: (i) when it arises under an express contractual term (moneylending contracts excluded); (ii) when the course of dealing or usage of trade creates an implied term for payment of compound interest. The Appellant had not demonstrated that it was entitled to compound interest.

65. Counsel concluded that the Appellant was not entitled to the remedies sought and prayed for the Appeal to be dismissed with costs to the Respondent for being made to incur undue expenses in defending a frivolous, vexatious, and unfounded appeal.

THE DECISION

66. We have carefully read the pleadings and the spirited submissions of both counsel on all the issues framed to arrive at our decision as explained below.
67. The Tribunal also confirms that it requested and obtained a record of proceedings from the Complaints Bureau to ascertain the issues that were discussed at the hearings.

Issue 1. Whether the Response to the Application was filed out of time?

67. The evidence on record is that the Respondent filed its response on 6th January 2023 but acknowledgement by the Tribunal was on 9th January 2023.

68. The Tribunal takes the view of counsel for the Respondent that filing of the response was commenced on 6th January 2023 before the time specified in Regulation 12 (1) lapsed. The administrative issues that were raised in the 9th January letter are recognized by the Tribunal as having been ongoing from 6th January until 9th January when they were resolved and filing concluded.

69. Be as it may, Regulation 29 of the Insurance Appeals Tribunal Regulations allows the Tribunal where necessary to apply the rules and procedures of the High Court with necessary modification. We are in agreement with counsel for the Respondent that under Order 50 rule 4, time expiring between 24th December and 15th January shall not be reckoned in the computation of time. The last day for filing the appeal was 1st February 2023 and the filing on 9th January 2023 was ahead of the deadline.

70. We, therefore, find that the response to the appeal was filed in time and accordance with Regulation 12 (1) of the Insurance Appeals Regulations.

Issue 1 is therefore resolved in favour of the Respondent.

Issue 2: Whether the Claim is Time-Barred?

71. It has been submitted for the Appellant that the complaint from which this appeal arises falls well within the nature of claims set out under Guideline 8 of the **Complaints Bureau Guidelines, 2022** and that the said guidelines do not place a time constraint on when a complaint can be lodged.

72. The Insurance Act and Regulations thereto provide for the time of filing of complaints but the Complaints Bureau Guideline is silent on time limits for lodging a complaint.

73. Section 32 of the **Limitation ActCap 80** provides that "*This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment, or to any action or arbitration to which the Government is a party and for which, if it were between private persons, a period of limitation would be prescribed by any other enactment*"

74. It is our finding that since the Insurance Act 2017 does not have an enactment on the limitation period for instituting complaints, the limitation Act thus applies to the dispute before this Tribunal.

75. It is not correct that guideline 8 gives a leeway to resurrect all manner of claims provided they fall within its scope. To this extent, we are in agreement with Counsel for the Respondent who cited justice Stephen Mubiru in the case of ***Odyek Alex &Ocen Constantino Vs. GenaYokani& 4 Others, Civil Appeal No.09 of 2017 stated that the two major purposes of statutes of limitations; protecting defendants from having to spend stale claims by providing notice in time to prepare a fair defense on the merits and requiring the plaintiffs to diligently pursue their claims.***

76. By maintaining a fixed duration for any legal remedy, late claimants lose the right to stale claims. Any scrutinizing of these issues after the lapsing of the prescribed period will duly prejudice the opposing party. The Complaints Bureau and for this matter, the Tribunal must not be considered as a flowering pot for claims which are either expired or are entirely time-barred.

77. Secondly, Counsel for the Respondent submitted that the issue of limitation was never raised at the hearing before the Complaints Bureau and therefore it cannot form part of the issues to be resolved on appeal. For this proposition, counsel relied on the authority of **Tanganyika Farmers Association Ltd V Unyamwezi Development Corporation Limited [1960] 1EA 620** where the court held that ...... *if a point was not taken before the tribunal which hears the evidence, and evidence could have been adduced which by any possibility*

would prevent the point from succeeding, it cannot be taken afterwards. You are bound to take the point in the first instance, to enable the other party to give evidence."

78. In the case of ***Ndaula Ronald v. Haji Nadduli Abdul, Election Petition No. 20 of 2006,*** the Court of Appeal held, *inter alia*, that:
"On points of law, it is settled by the courts that illegality of an issue is a question of law which can be raised at any time or any stage of the proceedings, with or without prior knowledge of the parties."

79. However, the position in the above-cited cases was overruled in the 2019 case of **Uganda Railways Corporation vs. Ekwaru D. O. & 5104 Ors Civil Appeal No.23 of 2007*where it was held that matters which were not brought to the attention of the court cannot be raised as a ground of appeal on appeal.***

80. We take the same view with the findings of the Justices of the Court of Appeal in the above-cited case. The issue of limitation was not raised by the Respondent at the hearings before the Complaints Bureau. The Complaints bureau neither considered this issue at its hearing nor did it pronounce itself on it in its decision as it had no opportunity to handle it. As it was held in **Twinomugisha Alex Alias Twine Patrick Kwezi& John Sanyu KaturamuVs. Uganda C.O.A Criminal Appeal No.25 of 2002** court held that "*with respect, we think that this ground is not maintainable because it was not raised before the court of appeal and considered by the justices of appeal. Therefore it is erroneous to criticize the learned Justices of Appeal as having erred when the complaint was not raised before them for consideration.*

81. It is our finding therefore that since this issue was not raised by the Respondent before the Complaints Bureau for their consideration, it cannot, therefore, be considered by the Tribunal at this point.

82. Further still, we note that in the instant case, on 23rd March 2011 a letter signed by Antony Ngugi, the Respondent's manager Non-Life, was an acknowledgment of a claim amount of UGX 6,778,000/ although it was on condition that the insured accepted the amount to be offset from outstanding premium. It is an agreed fact that the Appellant disputed this settlement but did not bring any action to enforce his right to the settlement.

83. It is our view that the acknowledged claim ought to have been paid immediately whether or not there was any outstanding premium and whether or not it was disputed. To this extent, we agree with the Complaints Bureau's findings on the *doctrine of election that nobody can accept and reject the same instrument and that a party cannot say at one time that a transaction is valid and thereby obtain some advantage from it could be entitled on the*

footing that it is valid and then turned around and said it is void for purposes of securing some advantage. Therefore, the obligation to pay the acknowledged debt accrued the moment the letter was signed on 23rd March 2011. This part of the claim is not barred by limitation as it falls within the exceptions set out in section 22 (4) of the Limitation Act.

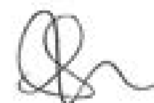
84. Section 22 (4) provides that where any right of action has occurred to recover any debt or other liquidated pecuniary claim and the person liable or accountable therefore acknowledges the claim or makes any payment in respect of the claim, the right shall be deemed to have occurred on and not before the date of acknowledgement or the last payment. The effect of the above provision is that such acknowledgement of the debt or payment rekindles the time which had otherwise expired. In the case of **Greenland Bank (In Liquidation) v Dr. Apuuli Kihumuro&AnorHCT-00-CC-CS-0790-200**, Justice Yorokamu Bamwine remarked that; "*The plaintiffs have pleaded the defendants' purported acknowledgement of a debt in para 4 (e) of their plaint. Assuming this to be the case, then S. 24 of the Limitation Act appears to be applicable. Under that law, where any right of action has accrued to recover a debt or other liquidated pecuniary claim and the person liable or accountable thereafter acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of acknowledgement or the last payment. Since the plaintiffs have pleaded the fact or the alleged act of acknowledgement of a debt by the defendants, this now makes it a triable issue*." In his holding, he observed that Generally speaking, a debt is repayable when it is due. And that date becomes the date when the cause of action arises. If a debt is acknowledged, it is immaterial that the amount of debt claimed is disputed in the acknowledgement (our emphasis)

Issue two is resolved in favour of the Appellant.

Issue 3: Whether the Bureau correctly decided to award the Appellant UGX 6,778,000/=?

85. The dispute before us pertains to the *quantum* of the plaintiff's claim in respect of the car that was involved in the accident that occurred on 29th August 2009 and the vehicle was a total loss. The appellant's contention that the offer of 6,778,000/- was not sufficient for various reasons;
    i. The Appellant disputed the claim because he did not understand how the computation was done and he was never given any explanation.
    ii. The claim offer did not include the towing charges of UGX.1,000,000/-
    iii. The time value was not considered despite the undeniable passage of time.

86. The policy in question is for indemnity insurance with the Respondent obligated '*to indemnify or compensate the insured by payment or, at the*



option of the company, by replacement, reinstatement or repair in respect of the defined event occurring during the period of insurance... up to the sums insured, limits of indemnity, compensation and other amounts specified'.

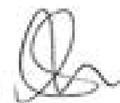
87. The principle of indemnity governs that an insurance contract compensates you for any damage, loss, or injury caused only to the extent of the loss incurred. An insurance contract ensures that the insured does not make a profit in the event of an incurred loss. <u>The objective of the insurer is to put you back in the same financial position in which the insured was before the loss</u> (our emphasis). The claim payment should not be less or more than the loss. The principle is that the insured does not profit from the insurance claim.

88. **In the case of Madison Insurance Co. Ltd V Kinara and Another (2005) 1 EA 240**, it was held that indemnity is the controlling principle in insurance law. The insurer contracts to indemnify the assured for what he has lost and in no circumstances is the insured entitled to make a profit out of his loss.

89. It was the Appellant's submission that the Complaint's Bureau erred when it did not consider the time value for money. It was Counsel for the Appellant's submission that the passage of time warrants consideration of the principle of time value for money and application of interest. It was also submitted that the UGX.6,778,000/= was not properly arrived at. In the Appellant's view his claim was. UGX.12,088,000 comprised of the UGX.6,778,000/-, towing charges UGX.1,000,000/=, excess UGX.1,800,000, over deducted premium UGX.2,510,000/=

90. It is important to note that whereas the accident occurred in August 2009, the insurer was only able to make an offer in March 2011. The offer was two years after the claim was lodged and much to the frustration of the insured, the offer was conditional on the claim amount being offset from the alleged outstanding premium. The Respondent did not address the insured's concerns on the claim computation but instead instituted a case for recovery of outstanding premiums and the same was concluded in 2022.

91. Whereas the Respondent faults the Appellant for not having a "spirited rejection of the offer" there is no evidence that there was any attempt to pay the Appellant at least the amount of UGX.6,778,000/= that was according to the insurer payable after computation. There was no further communication from the Respondent who simply refused to make any decision on the Appellant's query on claim computation, and instead pursued the matter of premium payments in courts of law. By the time the *premium* trial was concluded, nearly 13 years had elapsed since the incident.



92. This case demonstrates the quite extraordinary lengths to which the defendant's insurance company has gone to avoid payment to its insured, the Appellant in this case.

93. Because the value of money in 2009 cannot be the same as the value of money in 2022 when the decision was made, the opportunity of the money which was foregone while waiting for it should have been considered. Further still, money expected is subjected to inflation trends which eat into the value of the shilling in that with inflation rising a shilling will not buy as many goods or services tomorrow as it does today. **See Sarah Kayaga Farm Limited vs. Attorney General Civil Suit No.351 of 1991.**

94. Accordingly, it is the Tribunal's finding that the Appellant/insured is entitled to recover the "real and actual" value of what he has lost through the happening of the event insured against. In the context of indemnity insurance, the fundamental principle as explained above *is to put the insured back in the same financial position in which the insured was before the loss*. We find the Complaints Bureau disregarding this component in its compensatory order was erroneous and prejudicial to the Appellant as it would not amount to adequate indemnification of the Appellant. Due to the time value of money, UGX.6,778,000/= cannot sufficiently indemnify the Appellant in 2023.

95. The issue of whether this interest should be compounded is discussed exhaustively in issue number 4 below.

Computation of the Appellant's claim

The Tribunal reviewed the claim offer letter to the Appellant and observed that the Respondent computed the claim as below;

Pre-accident value – 12,000,000
Less 15% policy excess – 1,800,000
Our liability – 10,200,000
Add police fees – 78,000
10,278,000
Less salvage value- 3,500,000
Settlement – 6,778,000

96. The Tribunal during the hearing verified that the sum assured for this particular vehicle was at UGX.15,000,000/= And whereas the offer for settlement was based on UGX.12,000,000/= there was no explanation to the Appellant as to how UGX.12,000,000/= was arrived at.

97. The Tribunal tried to get to the bottom of the adjustment but there was no Loss Assessor's report on record by the Respondent. Although the loss assessor was

summoned to give evidence in this regard, they did not turn up on the scheduled hearing day.

98. The Tribunal notes that although there is no loss assessor's report, the logical conclusion would be that normal industry practice was applied. In this regard, from industry practice for policies of indemnity, the insurer depreciated the vehicle by 20% and we have reason to believe that explains the reduction from UGX.15,000,000/= to UGX.12,000,000/= we will not go into the details of it beyond this conclusion.

99. We also reviewed the policy document and found that there was a general excess clause that allowed the insurers to deduct an excess of 15% on the claim.

100. We shall therefore turn to the Appellant's claim that the towing charges of UGX.1,000,000/= was not included in the claim computation by the Respondent. The Appellant presented a receipt from Bunango Breakdown Services for charges from Mubende Police Station to Kampala. The Tribunal did not see the policy schedule but indeed its common industry practice that towing charges just like police fees are always included in the claim. It is the Tribunal's finding that it was erroneous to leave the towing charges out of the claim computation.

101. In view of the above, the Appellant's submission using UGX.12,088,000/= is not entirely correct because it includes the excess of UGX.1,800,000/= which is provided for in the policy and a further sum of UGX.2,510,000/= for over deducted premium which cannot be substantiated by the Tribunal.

The Tribunal finds that it was erroneous not to include the towing charges and therefore the correct computation for this claim is as below;

Pre-accident value – 12,000,000
Less 15% policy excess – 1,800,000
Our liability – 10,200,000
Add towing charges – 1,000,000
Add police fees – <u>78,000</u>
11,278,000
Less salvage value- 3,500,000
Settlement – 7,778,000

This issue is resolved in favour of the Appellant.

Issue 4. What are the remedies available to the parties?

102. The Appellant prayed to vary the decision of the Bureau to enhance the award from UGX 6,778,000/= awarded by the Bureau to UGX 12,088,000/= and apply to it a compound interest of 25% per annum from 2009.

103. Whereas we have already addressed the issue of the amount payable for the insurance claim, we would like to address the issue of interest applicable to an award.

104. Madrama J (as he then was) in **HC MA No. 10 of 2016 Diox Tibaingana v Vijay Reddy & another** thus;

The principles applied by this court in the award of damages are clear and are set out below. The enabling law is section 26 (2) of the Civil Procedure Act provides that:

"Where the decree is for the payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on the such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."

Interest may be awarded from the date the cause of action arose and the arbitral tribunal cannot be faulted on this. Secondly, the purpose for an award of interest is restitution in integrum which means that the plaintiff may be restored as nearly as possible to a position he would have been in had the injury not occurred. The principles to do this are fairly straightforward as set out in the authorities quoted in H.C.C.S. ***No 345 Of 2014 Adjumani Service Station vs. Frederick Batte.*** *In that case, the court relied on the authority of* ***Riches v Westminster Bank Ltd [1947] 1 All ER 469 HL on page 472*** *where Lord Wright explained the essence of an interest award as:*

> *"... payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not used it. The general idea is that he is entitled to compensation for the deprivation...."*

The Learned Judge went further to observe that;

This principle is also set out in ***Halsbury's laws of England fourth edition reissue volume 12*** *(1) paragraph 850 that "it is assumed that the Plaintiff would have borrowed to replace the assets of which he has been deprived...". The fact that an award of interest is meant to compensate the plaintiff is explicitly held in* ***Tate & Lyle Food and Distribution Ltd v Greater***

London Council and another [1981] 3 All ER 716 where Forbes J he held at page 722 that:

> *"I do not think the modern law is that interest is awarded against the Defendant as a punitive measure for having kept the Plaintiff out of his money. I think the principle now recognized is that it is all part of the attempt to achieve restitution in integrum... I feel satisfied that in commercial cases the interest is intended to reflect the rate at which Plaintiff would have had to borrow money to supply the place of that which was withheld."*

105. The judge concluded that an award of interest is therefore meant to compensate the plaintiff for the period he has been deprived of the use of the money which became due. The arbitrator complied with the law and the only issue left is whether an award of 24% was in the circumstances harsh and unconscionable. The court awarded interest at the rate of 11% per annum as the fair and conscionable rate to recompense the respondent in the circumstances.

107. Further still in the Supreme Court decision of **SCA No. 8 of 2002 B.M Technical Services Ltd v Crescent Transporters Co. Ltd, Kanyeihamba JSC** while considering the quantum of interest awarded held;
Taking the facts and circumstances of this case and the authorities reviewed above into account, I am satisfied that the rate of interest at 22% awarded by the learned Justices of Appeal is too high. I would therefore allow ground 4 of this appeal. I would order that the decretal amount carry interest at the rate of 10% per annum from the date of filing this suit till full payment.

108. Based on the authorities cited above, the Tribunal would award interest at the rate of 12 % per annum on the amount assessed by the respondent and payable to the Appellant amounting to UGX 7,778,000/= from 23rd March 2011 until payment in full.
Costs.

110. **CONCLUSION AND FINAL ORDERS**
In conclusion, the Tribunal makes the following orders:
    1) This appeal succeeds.
    2) The Respondent pays to the Appellant a sum of UGX 7,778,000.
    3) The Respondent is ordered to pay interest on the sum in (2) above at the rate of 12% per annum from 23rd March 2011 until payment in full.
    4) Orders **2 and 3** to be compiled with in a period of 7 days from issuance of this ruling.

5) The Tribunal Orders that, should there be a failure by the respondent to adhere to Orders **2 and3** above, IRA is directed to take such action as may be appropriate under the *Insurance Act*, No. 6 of 2017 against the Respondent to ensure compliance with the orders.
6) Costs of this appeal are awarded to the Appellant.

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

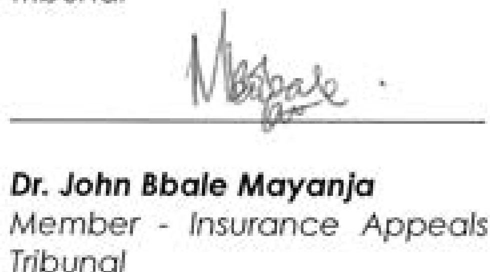
Finally, the Tribunal wishes to thank Counsel for both parties, whose detailed submissions went a long way in assisting the Tribunal to arrive at this decision.

DATED and **DELIVERED** at **KAMPALA** on the 24TH day of **MARCH 2023.**

Rita Namakiika Nangono
Chairperson - Insurance Appeals Tribunal

Solome Mayinja Luwaga
Member - Insurance Appeals Tribunal

George Steven Okotha
Member - Insurance Appeals Tribunal



Dr. John Bbale Mayanja
Member - Insurance Appeals Tribunal