THE REPUBLIC OF UGANDA
IN THE INSURANCE APPEALS TRIBUNAL OF UGANDA
INSURANCE APPEALS TRIBUNAL APPLICATION No. 001 of 2023
(ARISING FROM COMPLAINT No. IRAB/COMP.141/08/22)

ROSETTE ASIIMWE:: APPELLANT

VERSUS

UAP OLD MUTUAL LIFE ASSURANCE:: RESPONDENT

CORAM: MRS. RITA NAMAKIIKA NANGONO - CHAIRPERSON
MR. GEORGE STEVEN OKOTHA- MEMBER
MRS. SOLOME MAYINJA LUWAGA – MEMBER
DR. JOHN BBALE MAYANJA - MEMBER

JUDGMENT

1. **BACKGROUND**

This application seeks to challenge the decision of the Insurance Regulatory Authority (IRA) made on the 13th day of December 2022, which altered the earlier decision made on the 6th of October 2022. The Appellant is disputing the directive of the IRA to the Respondent to make payment to the Appellant based on a surrender computation of 71 months, and refund premiums paid after policy lapsation amounting to ***UGX 1,830,000 (Uganda Shillings One Million Eight Hundred Thirty Thousand Only)***.

The application was filed before the Tribunal on 10th January 2023.

2. **BRIEF FACTS**

On 17th October 2014, the Appellant and the Respondent entered into a ten-year life assurance policy contract (No SOM503382) with a monthly premium of UGX 150,000. The Appellant claims to have consistently paid her premiums from October 2014 until September 2021, when she stopped making payments due to the Respondent's failure to issue premium receipts and statements and charging interest on her premiums. Despite making several complaints and visits to the Respondent's premises, she received no assistance, forcing her to stop payment on the policy.

On 6th July 2022, the Appellant wrote indicating her desire to surrender the policy as she was not seeing any value.

3. When the Appellant asked to surrender her policy, she received a statement from the Respondent indicating that what was payable to her was only UGX 1,830,000, not the UGX 12,480,000 that she had deposited as premiums. The Appellant demanded a refund of all premiums paid, which the Respondent ignored, leading her to file a complaint with the IRA Complaints Bureau (Complaint IRAB/COMP/141/08/22), which directed the Respondent to provide the actuarial

pricing report and policy document for computation of the surrender value. The Respondent did not comply.

4. On 6th October 2022, the IRA found that the Respondent failed to communicate with the Appellant about the alleged policy lapse, received premiums without informing her, and should compute the surrender value based on the actuarial pricing report. The Respondent did not comply with the directive to provide final computations within five days. On October 31, 2022, the Respondent issued a notice of policy lapse, and on 12th December 2022, the IRA directed the Respondent to provide a surrender value computation using paid-up premiums of 83 months and accrued bonuses from year three (3) to six (6). However, on 13th December 2022, the IRA directed the Respondent to make payments based on a computation of 71 months and refund only UGX 1,830,000. Dissatisfied with the decision, the Appellant applied to the Insurance Appeals Tribunal, seeking a review of the conflicting directive and alternative computations using the correct formula.

5. **REPRESENTATION AND APPEARANCE**
At the hearing, the Appellant was represented by Counsel Innocent Kyeyune of M/s Kodili & Co Advocates.

6. Respondent neither filed a response nor were they represented by legal counsel despite sufficient service of a copy of appeal and hearing notices.

7. Before the commencement of the hearing of this appeal, the Tribunal ordered fresh service of this appeal on the principal persons of the respondents and according to the affidavit of service filed with the Tribunal Registry on 22nd February 2023, by Mr. Innocent Kyeyune, service was effected on Mr. Patrick Kimathi Kinoti, the Managing Director of the 1st Respondent on 20th February 2023. The Affidavit further states that service had been effected on Ms. Franchesca Kakooza the 2nd Respondent's Director of Legal Affairs.

8. Given the above, an application was made by the Appellant for the matter to be heard *ex parte*, and the same was granted. The Appellant was the only witness that adduced evidence in support of her application before this Tribunal.

ISSUES FOR DETERMINATION BY THE TRIBUNAL

9. The instant application was premised on 3 grounds as cited by the Appellant in its appeal as follows;

1. That the IRA erred in law and in fact when it failed to properly evaluate the evidence on the record thereby giving an erroneous direction which occasioned a miscarriage of justice against the Appellant.

2. That the IRA erred in law and in fact when it directed the Respondent to compute the surrender value based on seventy-one (71) months and refund the premium paid after lapsation of the policy thereby occasioning a miscarriage of justice against the Appellant.

3. That the IRA erred in law and in fact when it made an illegal and irregular decision thus occasioning a miscarriage of justice against the Appellant.

10. We find it appropriate to rephrase the issues for proper resolution of the case before us as hereunder;

1. ***Whether the IRA decision of 13th December 2022 after its decision of 6th October 2022 was 'functus officio'?***
2. ***Whether the decision of 13th December 2022 was illegal and irregular occasioning a miscarriage of justice against the Appellant?***
3. ***Whether the claim amount payable was adequately computed?***
4. ***What remedies are available to the parties?***

11. **EVIDENCE AND SUBMISSION IN SUPPORT OF THE APPLICATION**

On the first issue, the Appellant argued that the IRA had exceeded its authority by altering its decision to the detriment of the Appellant after having already issued a decision on 6th October 2022. According to the Appellant's counsel, once a court or arbitrator has made a decision, it is '*functus officio*' and it is considered to have fulfilled its obligations and cannot change its decision. To support this argument, counsel cited ***Chandler v Alberta Association of Architects (1989) 2 S.C.R 848 and Goodman Agencies Limited v Attorney General & Anor Constitutional Petition No. 003 of 2008.***

12. The Appellant's counsel further contended that the IRA's initial decision had effectively settled the matter between the Appellant and the Respondent, and therefore the IRA had fulfilled its role as an adjudicator and was no longer authorized to alter its decision. As a result, the subsequent decision made by the IRA to change its earlier decision, which the Appellant's counsel had considered final, was invalid.

13. The Appellant contended that the meeting held on 15th November 2022, which resulted in the impugned decision now challenged, was merely intended to comply with ***Guideline 16(5) of the Insurance Complaints Bureau Guidelines, 2022*** and not to alter the IRA's earlier decision as it did. This guideline requires the Authority to ensure that all remedies and proposed improvements to practices are followed and implemented by the licensee complained against to improve their practices. Consequently, the Appellant requested this Honourable Tribunal to set aside the decision made while the IRA had already discharged their jurisdiction.

14. To support the second issue, the Appellant's counsel submitted that the IRA's subsequent decision of 13th December 2022 did not amount to a decision in law for failure to refer to any

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evidence adduced in support thereof, was devoid of key contents that a judgment/decision ought to have and that it did not constitute reasons for departing from the earlier decision rendered on 6th October 2022. ***Counsel relied on Order 21 of the Civil Procedure Rules to support his proposition.***

15. While citing Article 126(2) (e) of the Constitution of the Republic of Uganda, Counsel emphasized the need to adhere to procedural requirements in the administration of justice and noted that the IRA failed to observe the proper procedural requirements through its omission to render the decision of 13th December 2022 well within the timelines prescribed and instead irregularly altered its earlier decision rendered on 6th October 2022 which was within time, contrary to the duty of public authorities to ensure compliance with the rules of procedure and natural justice. He relied on the ***Emily Mbabazi v Rural Electrification Agency & Ors; Misc Cause No. 165 of 2019 and cited Orient Bank Limited v Avi Enterprises Limited H.C Civil Appeal No. 002 of 2013, as well as Section 12(1) (j) of the Insurance Act No. 6 of 2017 and Guideline 15(3) Item 5 the Insurance Complaints Bureau Guidelines, 2022*** to support this proposition.

16. In respect of issue three, the Appellant led evidence and argued that having signed up for a life insurance policy of 10 years running from October 2014 to October 2024 at a premium rate of UGX 150,000 per month, dutifully paid all her premiums until September 2021. She attributed her failure/refusal to continue paying to the Respondent's neglect to issue receipts and statements yet the Respondent would at times charge interest on her premiums even when she had paid on time. To account for the deposits made and interest charged thereon, the Appellant exhibited policy statements marked as ***annexure 'D' to her witness statement***

17. The Appellant claimed that despite making numerous complaints via email, she did not receive any assistance from the Respondent's staff. Even when she physically visited their offices, she was told that there were system or network problems and was not given any help. However, she continued to pay her premiums until September 2021. Despite this, she did not receive any response from the Respondent regarding the policy or its lapsation, which she had expected.

18. According to her witness statement, she was only informed that she would receive ***UGX 1,830,000 (Uganda Shillings One Million Eight Hundred Thirty Thousand Only) according to a statement,*** even though she had paid over ***UGX 12,480,000 (Uganda Shillings Twelve Million Four Hundred Eighty Thousand Only)*** as premiums. This prompted her to file a complaint with the IRA, from which this application arose. She sought a refund of ***UGX 12,480,000 (Uganda Shillings Twelve Million Four Hundred Eighty Thousand Only)***, all accrued bonuses, damages, and the costs of the complaint against the Respondent.

DECISION OF THE TRIBUNAL

19. **RESOLUTION OF ISSUE ONE**

Whether the IRA acted in contravention of the 'functus officio' rule by rendering a ruling after its decision of 6th October 2022?

20. Before we delve into the merits of the issues of this application, we are inclined to mention that the Insurance Regulatory Authority was added as a Respondent in this matter. We draw attention to the establishment and powers of the Insurance Regulatory Authority of Uganda (Authority) as established under ***Section 10 of the Insurance Act No. 6 of 2017***. The primary objective of the IRA is to ensure effective administration, supervision, regulation, and control of the business of insurance in Uganda. This is through both administrative and legal mechanisms of handling complaints brought to its attention with the scope specified under ***Section 12 (1) (b), (e), (f), (h), and (j) of the Insurance Act No.6 of 2017 as well as Guidelines 5, 8 and 9 of the Insurance Complaints Bureau Guidelines, 2022.***

21. From the foregoing, the IRA was only performing its statutory duty conferred upon it by the enabling law cited hereinabove. Whereas quasi-judicial processes and decisions made by administrative bodies in the exercise of their statutory duties are not immune to review and scrutiny by Courts of law, we should be careful not to condemn them based on a rightful exercise of their statutory roles, let alone award costs against them. ***See; Miscellaneous Application No. 293 of 2017; In Respect Of The Report Of The Committee On Commissions, Statutory Authorities And State Enterprises (COSASE) On The Investigations into the Reward Of UGX 6 Billion To Forty-Two Public Officers Who Participated In The Heritage Oil And Gas Arbitration Case And In The Matter Of An Application For Prerogative Orders Of Certiorari And Prohibition; Ali Ssekatawa Vs The Attorney General & 2 Others.***

22. On this basis, we shall decide this matter on its merits as between the insured (Appellant) and the Insurer (Respondent). We shall therefore review the decisions of the IRA in its capacity as a public body and we have removed it as a party to this appeal.

The '*Functus Officio*' Rule

23. Turning to the merits of this application, we observe that, the authorities cited by the Appellant to wit; ***Chandler v Alberta Association of Architects (1989) 2 S.C.R 848 at pages 861-62*** *examines the rule 'viz-a-viz' the power of the tribunal to review its decision and on the other hand, the authority of* ***Goodman Agencies Limited v Attorney General & Anor Constitutional Petition No. 003 of 2008*** applies the rule in respect to proceedings before a Court of law.

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24. We recognize that the principle does not operate strictly in the context of a tribunal or a court of law but rather extends to administrative authorities too, and another decision-maker of an administrative body which may include the IRA. It is also true that where there are indications in the enabling statute that a decision can be reopened to enable the tribunal/administrative authority to discharge the function committed to it by the enabling legislation then the '*functus officio*' rule does not apply. ***See; Thompson, trading as Maharaj and Sons v. Chief Constable, Durban 1965 (4) SA 662 (D) at 667C-D) as invoked by the Hon. Stephen Mubiru J in Miscellaneous Civil Application No. 013 of 2018; In the matter between the Registered Trustees of Ker Bwobo (Land Development Trust) Versus Nwoya District Land Board***

25. In that context, the pertinent question to be answered is whether the IRA letter dated 13th December 2022 was *'functus officio'* when it altered its earlier decision made on the 6th day of October 2022 which directed that the surrender value payable to the Appellant should be computed according to the actuarial pricing report and that the premium paid to be conserved had to be at a rate of Eighty-Three (83) months and not 71(Seventy-One) months as indicated by the Respondent and on the contrary directing the Respondent to share a final computation within 5 (five days) from the date of the decision.

26. From the evidence on our record and the record of proceedings before the IRA, it is not known whether any additional computations were submitted by the Respondent which could have not been availed to the Appellant for her scrutiny, no wonder the Appellant alleges that the second computation and supporting documents were not submitted by the Respondent in defiance of the IRA's directive. ***See; IRA's secretary/legal officer's (Olivia Kabatabazi) directive to Mr. Richard Mugarura (Counsel for the Respondent) at the 2nd Meeting held on 5th September 2022 specifically Page 21 of the Record of Proceedings.***

27. Hence, there is no account of the aftermath and result of the IRA's directive to the Respondent to submit and share a second computation with the IRA as well as the Appellant to enable the Appellant to make an informed decision of surrender or otherwise reinstatement of the policy and ultimately allow the IRA make its final decision. On record are two (2) letters dated 12th December 2022 and 13th December 2022.

28. Nevertheless, our observation is that from the wording of the IRA's decision of 13th December 2022, it appears the IRA received and compared two sets of computations submitted to it, which formed the basis of its impugned decision. That notwithstanding, it is imperative to ascertain whether, at the time of making the impugned decision, the IRA had come to the close of the hearing and submission of the parties. On which basis it could have rendered its subsequent decision/ruling in light of ***Guidelines 16(1) read together with 20(1) of the Insurance Complaints Bureau Guidelines, 2022.***

29. What is clear from **Guideline 15(2) of the Insurance Complaints Bureau Guidelines** is that '***the Authority may make a decision based on the available information where information on***

a particular matter is requested for and not received within a stipulated time. It was not only erroneous for the IRA to have rendered a verdict that the Appellant had to be paid based on a scale of 83(Eighty-Three) months as opposed to 71 (Seventy-One) months and then turn around change its decision by merely stating that '*it had compared both computations'* which computations do not appear to have been known or availed to the Appellant nor form part of its record of proceedings.

30. The IRA's Complaints Bureau is mandated to allow the parties to present their position, avail additional evidence through reports and rebut any allegation during the hearing of the complaint which power to do so it invoked when it directed the Respondent to clarify the computations. ***See; Guidelines 14(3) and (6) Insurance Complaints Bureau Guidelines, 2022.***

31. Cognizant of the possibility of inordinate delays in conducting inquiries and reports, the enactors of the Guidelines made provision for the appropriate step to take in the event of delay in adducing additional evidence or making clarity. ***Guideline 15(2) Insurance Complaints Bureau Guidelines, 2022*** provides as follows;
'The Authority may make a decision based on the available information where information on a particular matter is requested for and not received within a stipulated time'.

32. Notably, at the close of the 2nd meeting, the IRA's Complaints Bureau Chairperson stated that '*let the client submit all the documents we shall have a final meeting after reviewing all the documents, a new date shall be communicated. This meeting is closed.* In our opinion, this implied that the hearing was still open. ***See; IRA's Complaints Bureau Chairperson's concluding remarks at the 2nd Meeting held on 5th September 2022 specifically Page 22 of the Record of Proceedings.***

33. Following this meeting and with no further proceedings, the IRA issued its decision of 6th October 2022 which by implication showed that the hearing had been closed as of the date of the 2nd meeting held on 5th September 2022. We opine that since the Respondent did not submit the computation as had been directed by the IRA in its 2nd meeting/hearing of 5th September 2022 the IRA was at liberty to make a decision after the lapse of a reasonable time or explain the reason of delay to the parties. ***See; Guideline 15(2) Insurance Complaints Bureau Guidelines, 2022.***

34. It is apparent that after the decision on 6th October, the insurer did not comply with the decision and IRA wrote to them a letter on 12th December 2022 directing the insurer to provide the actuarial pricing report as directed in the letter dated 6th October 2022. In this same letter, the IRA alluded to the fact that the insurer had failed to respond to its emails dated 29th August and 16th September 2022. There was a subsequent meeting held on 15th November 2022 and it was the Appellant's submission that the meeting on 15th November 2022 was a follow-up meeting

under ***Guideline 16(5) of the Insurance Complaints Bureau Guidelines, 2022 which requires the Authority to follow up on compliance with directives.*** There was nothing left to adjudicate at this point as the matter had been decided on 6th October 2022.

35. Unfortunately, we have not seen a record of what was discussed at the meeting held on 15th November 2022 as the same is missing from the record of proceedings so we cannot know what transpired at this meeting. But the outcome of this meeting is a letter dated 12th December 2022 and paragraph two of that letter specifically directed the Respondent to provide the surrender value computations using the paid-up premium of eighty-three months inclusive of the accrued bonuses from year 3 to year 6 which was in line with the decision made on 6th October 2022. We conclude that the Respondent complied with the request and after a comparison of the two computations, the letter dated 13th December 2022 was written resolving that the insurer makes payments based on the surrender value of seventy-one (71) months and refunds the premium paid after lapsation of the policy. We have reason to believe that the Authority at this point, had received the clarity it needed to make a final determination. There is no evidence that the IRA availed the new computation to the Appellant for her input.

36. The position of the law is that the '*functus officio*' rule applies where the decision maker had no further authority or legal competence expressly mandated to it under the law. The decision of the Court in ***Thompson, trading as Maharaj and Sons v. Chief Constable, Durban 1965 (4) SA 662 (D) at 667C-D)*** wherein the Court held that '***an administrator will be 'functus officio' once a final decision has been made and will not be entitled to revoke the decision in the absence of statutory authority to do so'***.

37. However, the IRA has the power to review its own decision, under ***Guideline 20 of the Insurance Complaints Bureau Guidelines, 2022*** which is to the effect that;
The Complaints Bureau may on its motion or by application of a party, only review its decision within one month from the date, the decision is communicated, on the following premise;

a) ***On account of some mistake or error in fact or law apparent on the face of the record; or***

b) ***discovery of new or material evidence which after the exercise of due diligence was not within the knowledge of, or could not be produced by a party by the time when the decision was made***

38. From the foregoing, the IRA after the decision of 6th October 2022 had the power to review its own decision as per **Guideline 20** but this had to be within ***1(One) month*** (our emphasis) from the date the decision is communicated. Given this, we are inclined to conclude and in agreement with the Appellant find that the IRA was '*functus officio*' since even if it had been presumed that it had invoked its power to review its own decision of 6th October 2022, the decision on 13th December 2022 was irregular since it was after a month beyond the time envisaged under

Guideline 20(1) of the Insurance Complaints Bureau Guidelines. Moreover, the decision was made without the involvement of the Appellant.

39. Further still, the principles of justice demand that the IRA should have accorded the Appellant an opportunity to review the computation that was submitted by the Respondent on 12th December 2022, it was the fair and just thing to do especially since this was a matter of major contention between the parties.

40. In its said decision dated 13th December 2022, the IRA stated that '*We have thoroughly reviewed both computations and have resolved that UAP Life Insurance should make payments based on the surrender computation of 71(Seventy-One) months and refund the premium paid after lapsation of the policy amounting to UGX 1,830,000'*. Being that no computation or documents were availed to the Appellant or exhibited on record, we fault the IRA for varying its decision without basis. (***See; Legal & General Assurance Society Ltd v CCA Stationery Ltd [2003] EWHC 2989 (Ch) (12 December 2003)***

41. When an administrative decision has serious consequences for a person's rights and freedoms, investigations may be conducted, but not all investigations require adherence to the full '***audi alteram partem rule'***. If the proceedings involve a quasi-judicial nature, the administrative agency must provide adequate notice, a reasonable opportunity to make representations, and notice of any right of review or appeal. If the decision-maker has prejudicial information, it must be disclosed to the person concerned, who must be allowed to refute it.

42. ***In the case of ARIHO vs The Governing Council of Uganda College of Commerce, Pakwach; Misc. Civil Cause No. 0009 of 2016*** the Court had this to say *"...the rules of natural justice are presumed to apply to bodies entrusted with judicial or quasi-judicial functions only. Although no such presumption arises with respect to bodies charged with performing administrative functions, in a purely policy-oriented traditionally administrative sphere of decision making, however, when arriving at decisions with potentially serious adverse effects on someone's rights, interest, or status in the exercise of a purely administrative authority has a duty to act fairly, which is a less onerous duty than that of observing the rules of natural justice demanded of such bodies when they act in quasi-judicial capacity, such as when they undertake disciplinary proceedings..."*

43. The essence of fairness is good conscience in a given situation. It is described as "openness or transparency in the making of administrative decisions" (***See Doody v. Secretary of State for the Home Department [1993] 3 All E.R. 92).*** It is usually unfair for an administrator to make a decision that adversely affects someone without giving reasons. Even where there is no statutory requirement, the decision maker must still give reasons where the decision appears to be

inconsistent with previous policy, or with other decisions in similar cases. In such cases, some explanation for the difference is needed. Giving reasons helps demonstrate that all relevant matters have been considered and that no irrelevant ones have been taken into account. The concepts of fairness, justice, and reason are interchangeable and one cannot be achieved without the other. Reasons are the link between the decision and the mind of the decision maker.

44. It is therefore inevitable to conclude that the IRA failed to adhere to the rules of natural justice for the reason that the Appellant did not have an opportunity to look at what was compared or respond to the details of the subsequent computation having concluded the initial hearing of the matter. Any prejudicial information must be disclosed to the person concerned, who must be allowed to refute it. In the absence of this and for the reasons enunciated above, we find that the process through which the IRA reached its decision was tainted with procedural impropriety and was therefore irregular.

Issue one is resolved in the affirmative.

45. **RESOLUTION OF ISSUE TWO**
Whether the decision of 13th December 2022 was irregular and did not amount to a decision?

46. The Appellant argues that the decision of the IRA given on 13th December 2022 was improper and did not amount to a decision in law since it was not elaborate and did not give reasons for conclusions therein.

47. We agree with the Appellant's submission that ***Guideline 16(2) of the Insurance Complaints Bureau Guidelines, 2022 gives the structure of the decision which includes indicating the key information of witnesses and parties relayed during the hearing, relevant facts, conclusions, and findings and where necessary recommendations and actions to improve the player complained against.***

48. We observe that for some reason, the decision on 13th December was hurriedly done from the sequence of the event i.e. the IRA wrote to the Respondent on 12th December requesting for computation based on 83 months and the decision was made the very next day.

49. Needless to say, an ideal decision by the IRA ought to have the details prescribed under ***Guideline 16(1) of the Insurance Complaint Bureau Guidelines*** to wit; the key information of the witnesses and parties relayed during the hearing, relevant facts, conclusions, findings and where necessary recommendations and actions to improve the player complained within the meaning of the law. Both decisions made by the IRA in respect of the subject complaint fell short of this. We therefore recommend and propose that going forward the IRA's Complaints Bureau

takes into account the above concerns in its decision-making process for purposes of transparency and adherence to the procedural rules for better dispensation of justice

50. Before we take leave of this issue, it is vital to point out that the review (if any) made by the IRA can be said not to have met the standard procedural requirements under the law. In its practical sense, a review is made by the same adjudicating body or decision maker. From the record, the decision made by the IRA does not indicate the quorum of the Bureau under Guideline 22(2) of the Insurance Complaints Bureau. It is not signed by all the adjudicating officers who made it.

51. For instance, the decision of 6th October 2022 is solely signed by Ms. Ethel Mulondo and the subsequent decision of 13th October 2022 by a one Mrs. Barbara N. Walugembe. Even if this Tribunal were to assume that there was a review of the former decision to justify the latter, it would be legally untenable to presume so in the absence of details as to the quorum that made the earlier and subsequent decisions. Consequently, it remains imprecise as to who reviewed the decision and whether it was validly reviewed. Due to the structuring of the decision, there is no room for this Tribunal to adjudicate on such issues. Whereas we do not agree with Counsel for the Appellant that the provision of ***Order 21 of the Civil Procedure Rules*** applies to the IRA and that to say so would be in error, we are also cognizant of the fact that the IRA is not necessarily bound by strict rules of procedure in the same manner as the Courts of law. Wherefore, we observe that the structure and nature of the decisions made by the IRA often fall short of the key contents that a judgment/decision ought to be revised.

We, therefore, resolved issue two in the affirmative.

52. **RESOLUTION OF ISSUE THREE**

Whether the claim was adequately computed?

53. As is the case with a General Insurance policy, in life insurance policies payment of premium is contractual and failure to pay insurance premiums as stipulated under the contract is a breach of policy terms/warrant which leads to termination of the contract by the insurer who can sue on the same as elucidated in the case of ***Civil Appeal No. 55/95; Oriental Insurance Brokers Limited V Transocean (U) Limited and Modern Insurance Law 10th edition, by John Birds at p191.***

54. If the insured party is negligent in carrying out its obligation to pay premiums to the insurer, this will result in the insurance policy entering a grace period depending on the agreement between the insured and the insurer as embedded in the subject insurance policy. In the instant case, we referred to ***Clause 3*** of the ***Respondent's SOMESA policy conditions.*** The stipulated grace period thereunder is 15 (fifteen) days from the date of payment within which the premium installment should be paid without interest. Particularly, the clause further indicates that; ***'The***

policy shall lapse if no such premium payment is received within the days of grace and all conditions applicable under the revival of assurance shall take effect thereafter'.

55. An insurance contract may contain a premium warranty under which the insured warrants that premiums will be paid at given times. Such a provision will be given effect by the court as a warranty and default will bring the insurer's liability under the policy to an end, although the insured remains liable for the premium ***(J A Chapman & Co Limited v Kadirga Denizcilik Ve Ticaret [1998] Lloyd's rep IR 377)***. Even without an express warranty, an insurer may be able to repudiate a contract of insurance where there has been a failure to pay a premium on the due date. ***Figre Limited v Mander [1999] Lloyd's Rep IR 193 is Commercial Court*** is the authority that an insurer could repudiate if: ***(a) time was stipulated to be of the essence; (b) circumstances of the contract or the nature of the subject matter showed that time was impliedly of the essence; or (c) where time was neither expressly nor impliedly of the essence, but the insured had been guilty of unreasonable delay, and the insurer had given notice requiring the premium to be paid within a reasonable time.***

56. The said notice must state the premium amount and due date, the time within which the policy will be cancelled after the notice is given (if the premium is not paid) once this is done it will be considered that the insurer has fairly cancelled the policy. In the matter before us, we agree with the findings of the IRA as reduced into its decision of 6th October 2022 particularly paragraph 6; *that no notice was served upon or sent to the Appellant'* not until the 3rd day of October 2022, almost 1(One) year and 7(Seven) months after the purported lapsation of the policy/or exercise of the paid-up option pursuant to ***Clause 5 of the SOMESA Policy Conditions*** as was cited to have been submitted by the Respondent's counsel Mr. Richard Mugarura at the hearing before the IRA is flawed. This notice was way after the Appellant had written an email expressing her desire to cancel the policy ***(email dated 6th July 2022)*** and a complaint had been lodged with the Complaints Bureau.

57. The Appellant in Paragraphs 12-16 of her witness statement testified that she consistently paid her premiums under the policy. She alleged that rather to her detriment from or around October 2018, the Respondent neglected to issue her with receipts as proof of payment of premiums and instead charged her interest thereon despite having paid the relevant premiums due under the policy. She testified that she had made several complaints including physically visiting the Respondent's office premises, in vain and alluded to several email correspondences between her and the Respondent exhibited as annexures ***'Ci'–'Cix'***. She was thus constrained to halt payment of premiums in September 2021 having had an accumulated sum of UGX 12,480,000 paid as premiums to the Respondent. She relied on the policy statement exhibited as ***annexure 'D'*** to her witness statement.

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58. The Appellant does not deny having halted the payment of her premiums in September 2021 as reflected in the record of proceedings, which omission to pay she however attributed to the Respondent's failure to issue her receipts of payment of premiums, policy statement in that regard and instead charged her interest on paid premiums all of which in her opinion was a breach of its duties under the policy. From our perusal of ***Page 2 of the policy statement and record of proceedings of the meeting held on 5th September 2022*** it is evident that in October 2018 when the policy is said to have lapsed due to non-payment of premiums, the Appellant made good the default and paid UGX 750,000 (Uganda Shillings Seven Hundred and Fifty Thousand Only) with interest of UGX 30,000 (Uganda Shillings Thirty Thousand Only) hence the reinstatement of the policy.

59. Once the Appellant refused or resolved to stop paying premiums after September 2021 as reflected in her policy statement, the implication of such failure or refusal would be to apply the grace period after which period, the policy would lapse per ***Clause 3 of the SOMESA Policy conditions.***

60. As noted above, from our scrutiny of the record of proceedings the Appellant admitted to having received a notice of lapsation of her policy via email in 2018. Indeed, this prompted her to act upon it by clearing her premium arrears and interest thereon all in the sum of UGX 750,000 and UGX 30,000 as interest. From that point onwards, the Appellant paid premiums and alleges that she never received any other notice of lapsation in 2020, and from the record of proceedings the Respondent did not provide evidence to demonstrate that there was a lapsation notice in 2020. There was a back and forth on the issue of notice of lapsation between the parties at the hearings at IRA with the Respondent insisting that it had been communicated and the Appellant denied she had received any communication. The Respondent alleged that it had used multiple communication methods to inform a customer about the impending cancellation using text and email. The Appellant denied having received any communication. It didn't help matters that at one of the hearings, the Respondent's Customer Assurance Officer, a one Richard Mugarura informed the meeting that the agent assigned to the Appellant got into an accident and took time off work.

61. Whilst it remains also factual that where the insured defaults on paying premiums, the life insurance policy stands terminated or lapsed. There is a possibility to revive the lapsed/terminated policy resulting in a waiver of the insurer to contend that the same had lapsed. In ***McGillivray on Insurance Law, 15th edition (2022), p50***, the author notes that "***conditions of the revival of a lapsed policy may be waived by the company and prima facie would be waived by acceptance of the premiums in arrears tendered after the expiration of the days of grace***". *See; also* ***McPhee v Colina Insurance Ltd (Bahamas) [2023] UKPC 8 (02 March 2023)***

62. The Respondent therefore waived its right of termination/lapsation, if any by accepting the Appellant's deposits of premiums under the policy. We find that the Appellant's policy continued

to run even after the purported lapse of 2018 and cumulatively amassed 83 (Eighty-Three) months as opposed to 71 (Seventy-One) months. We have found no evidence that the Appellant was served with a notice of lapsation and it was out of frustration due to the Respondent's non-communication that she opted to surrender the policy through an email dated 6th July 2022.

63. It is also important to note that during the time the Appellant is alleged to have defaulted on her premium in 2020, it was Covid time and there was a directive by the Insurance Regulatory Authority to all life insurance companies to extend lapsation grace period by 90 days with effect from 31st March 2020 to enable policyholders to recover from the down effects of the lockdown. Any lapsation of policies during this time was in contravention of regulatory directives ***see Insurance Industry Guideline on The Conduct of Business during the Corona Virus Disease (Covid-19) Global Pandemic issued by the Regulator on 5th May 2020.***

64. Given the above, we find that it was erroneous for the IRA to compute the amount payable to the Appellant based on 71 (Seventy-One) months as a result of lapsation. The Appellant therefore rightly exercised her right to surrender the policy according to policy condition 4 of the Somesa Policy.

We now turn to the question of the proper computation under the option to surrender.

65. During the proceedings as is reflected in the record, Counsel for the Respondent averred that the Appellant's policy had been converted into a paid-up policy under ***Clause 5 of the SOMESA Policy Conditions***. The position of the law is that If '*a premium is not paid, then (provided at least two years' premiums have been paid) the policy is converted into a paid-up policy and units that have been allocated to the policy are applied annually in meeting the cost of life insurance until all the allocated units have been used up. Only at that point will the policy lapse.*" ***See; Lord Brown Wilkinson in the case of Foskett v. McKeown and Others [2000] UKHL 29; [2000] 3 All ER 97***

66. In the circumstances at hand, as earlier on resolved based on the finding that the policy had not lapsed due to the acceptance of premiums in arrears by the Respondent and the Appellant's compliance to pay premiums going forward, ruled out the possibility of the policy turning into a paid-up policy.

67. The Appellant having exercised her right of surrendering the policy, the IRA ought to have made its decision based on the SOMESA Policy conditions and the principles of insurance law governing surrender in light of the evidence adduced by the parties before it. The law governing the cancellation of life insurance policies with a surrender value is that a notice of lapsation ought to be given to allow the insured an opportunity to maintain their policy by paying the premium before the policy is cancelled. The insurer can then subsequently cancel a policy for non-payment of a premium by giving a written notice to the policy owner.

68. If an insured requires the entire cash value or decides to surrender the insurance policy, the insured is entitled to receive a cash surrender value. The surrender value is the sum of cash that is received, net of the surrender fees. This surrender fee is often lower than the cash value due to surrender charges that have been incurred since in life insurance policies, part of that premium gets allocated to the cost of insurance, management fees, and the cash value of the policy. The Surrender value ought not to be confused with the cash value. The cash value is the amount the policy is worth as it builds over time.

69. At the hearing of the complaint, the Bureau demanded the Respondent for the surrender value computation whose representatives expressed that the actuarial pricing reports that were created before 2019 had been misplaced. Needless to say, the IRA had in its decision of 6th October 2022 under paragraph 4 directed that the surrender computation should be according to the actuarial pricing report for the SOMESA and Sure Deal policies issued before 2019 as approved by the authority, which provides for a formula on which the surrender value ought to be based. We did not have the benefit to review these as they were not availed to us by the Appellant.

70. Nevertheless, by way of analogy, we note that as elaborated in the case of ***Legal & General Assurance Society Ltd v CCA Stationery Ltd [2003] EWHC 2989 (Ch) (12 December 2003)*** the Insurer ***L&G was obliged, in performing its duties to administer the Scheme, to disclose all the workings which led to the calculation of the surrender value of the policy that failure to do that and the failure to disclose the documents on which some of the workings of the MVAFs were recorded was maladministration. The purpose of the direction is presumably to recreate the workings which led to the April MVAFs and to confirm that they were "correct"***

71. In evaluating the correcting formula for the computation of the surrender value, the Court went on to state that '***the principle must be clear that (in absence of some contractual provision to the contrary) where a contract provides for a payment to be made calculated following a formula known to one party alone, that party must disclose the formula to the other party: one party cannot require the other to accept his calculation made per a formula without such disclosure and to accept his figure in blind faith that the calculation is correct. There is no provision in the 1980 contract requiring the trustees to accept the calculation by L&G without disclosure of the formula and an opportunity to check the correctness of the calculation. If the calculation of the sum payable under the 1980 contract is an act of management by L&G, then it does seem to me open to the ombudsman to investigate the conduct of L&G as possible administration.***" Impliedly, it was incumbent on the IRA to investigate the formulae used to come to the calculation and allow the Appellant to review the same before rendering its decision as to the appropriate formula.

72. In the instant application, the Appellant exhibited a report from an independent actuary, which report provides the formula as (***Months of premium paid/Term*12)*Sum Assured*90.*** Being that we did not have the opportunity to look at the actuarial pricing reports created before 2019, we are left with no option but to apply the formula embedded in the independent actuarial report intended to inform our decision. As earlier on resolved, having found that the Appellant's policy lasted 83 months as opposed to 71 months.

Issue three is therefore resolved in the negative.

73. **RESOLUTION OF ISSUE FOUR**
What remedies are available to the parties?

74. We now turn to the remedies sought by the Appellant, which are summarized hereunder;
   i. An order reversing the decision of the IRA being challenged
   ii. An order directing the Respondent to pay to the Appellant UGX 13,364,169.9975 being the surrender value and accrued bonuses of the policy
   iii. General and punitive damages
   iv. Costs for the Application.

75. Orders reversing the decision of the IRA being challenged and directing the Respondent to pay to the Appellant UGX 13,364,169.9975 being the surrender value and accrued bonuses of the policy.

76. In the instant appeal, the Appellant has advanced a plausible case for reversal of the decision and demonstrated that the decision of the IRA in reviewing its decision and changing its earlier position without allowing the Appellant to rebut and in the absence of any reason for the alteration of its decision was tainted with procedural impropriety and violated the principles of natural justice. That makes the instant application meritorious and this Tribunal accordingly exercises its power to set aside the subsequent decision of the IRA.

77. Based on the principles enumerated earlier, having found that the Appellant's insurance policy did not lapse at 71 (Seventy-One) months as found by the IRA in its subsequent decision of 13th December 2022 but rather 83 months, for the reason that the Respondent continued to receive and accept the Appellant's payment of premiums, the policy could not have lapsed. We reiterate our position based on ***McGillivray on Insurance Law, 15th edition (2022), p50***, wherein the author rightly puts it that "***conditions of the revival of a lapsed policy may be waived by the company and prima facie would be waived by acceptance of the premiums in arrears tendered after the expiration of the days of grace***". A similar stance is taken in ***McPhee v Colina Insurance Ltd (Bahamas) [2023] UKPC 8 (02 March 2023).*** Hence the Respondent is thus directed to pay to the Appellant UGX 13,364,169.9975 being the surrender value and accrued

bonuses of the policy as at 83 months in light of the independent actuarial report exhibited by the Appellant in support of her claim before this Tribunal.

General damages

78. While the Appellant besieged the Tribunal for general damages, we are mindful of the general rule that such damages should be awarded at the discretion of the Court (Tribunal in this case) and are compensatory in that they should restore some satisfaction, as far as money can do it, to the injured Plaintiff/party. ***See; Takiya Kashwahiri & A' nor vs. Kajungu Denis; CACA No. 85 of 2011.***

79. The Tribunal considers the fact that the Appellant was denied a fair trial. Further, from the general evidence led by the Appellant we have safely concluded that she suffered inconvenience through regular visits to the Respondent's offices and that even if she had continually paid her premiums on time, the Respondent neglected and or defaulted on its duty to respond to the Appellant's concerns, which constrained her to surrender the policy before its maturity; We hasten to add that this was a natural and probable consequence of the Respondent's acts or omissions and thus entitles the Appellant to general damages.

80. We find that the Appellant has discharged her duty to prove a basis for the award of general damages arising from inconvenience occasioned by the Respondent's actions. In assessing the quantum of damages, courts are namely guided by the value of the subject matter, and the economic inconvenience that a party may have been put through; ***See; Kibimba Rice Limited vs Umar Salim SCCA No. 17 of 1992***. Based on the surrender value claimed, the Appellant is awarded UGX 1,000,000 (One Million Only) as general damages. (***See; Decision of Hon. Musa Ssekaana J in Electricity Regulatory Authority v Watuwa Jimmy Cosmas (Civil Appeal 129 of 2018) [2019]***

Punitive damages

81. Counsel submitted that punitive damages are awarded to prevent and discourage revenge and is a fine to appease the victim. The Appellant stated that from October 2018, the Respondent neglected to issue premium policy statements, she exhibited several email correspondences to support her argument and testified to have made several visits to the Respondent's physical offices in vain. On record, the Appellant also exhibited a letter/demand notice written to the Respondent who made no response to the same thus constraining the Appellant to file a complaint before the IRA from which the instant application arose. The acts of the Respondent were not only extremely oppressive but also arbitrary.

82. He, therefore, prayed for UGX 25,000,000 in total as punitive damages. As cited in the case of ***Luzinda v. Ssekamatte & 3 Ors; Civil Suit No.3 of 2017*** the rationale behind the award of punitive damages should not be used to enrich the Plaintiff, but to punish the Defendant and deter

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him from repeating similar conduct. We further note that an award of Punitive damages is discretionary. The Tribunal is alive to the manner in which the 1st respondent handled the relationship it had with the Appellant, however, it is not convinced that the circumstances warrant taking punitive action in the form of punitive damages against the 1st respondent and the reliefs awarded above are sufficient to reform the conduct of the 1st respondent. The tribunal respectfully declines counsel's prayer for the award of punitive damages against the 1st Respondent.

83. **CONCLUSION AND FINAL ORDERS**

In conclusion, the Tribunal makes the following orders:

a) This application succeeds.
b) The Respondent pays the Appellant a sum of 13,364,169.9975 being the surrender value and accrued bonuses of the policy as of 83 months.
c) The Appellant is awarded general damages of UGX 2,000,000 against the Respondent.
d) Costs of this application are awarded to the Appellant.
e) The above orders should be complied with within 30 days from the date of issuance of the certificate of taxation.
f) In the event of a failure by the Respondent to adhere to Orders b)-e) above, IRA is directed to take such action as may be appropriate in its mandate against the Respondent to ensure compliance with the orders.

84. 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.

OBITER DICTUM

85. *At the center of this dispute is poor customer service from the insurer in the form of lack of issuance of timely premium policy statements, none responsiveness to email correspondences, the Appellant testified to have made several visits to the Respondent's physical offices to get help in vain.*

86. *The insurance sector in Uganda is still fragile and suffers generally from a lack of public trust and confidence. The public treats insurance with great suspicion and poor customer service by insurers only erodes the trust in the sector.*

87. *To avoid these consequences, insurance companies must provide quality customer service by acting expeditiously when handling customer grievances. Insurance companies need to reflect on their claims-handling processes and technical skills. Good customer service will have a positive effect on the industry as a whole.*

88. *To this end, we make the following recommendations to the Insurance Regulatory Authority;*

1. *Take punitive action against insurance companies with a bad customer service track record.*
2. *Enforcement of the Complaints Handling Regulations e.g. complaints handling assessment to form part of licensing requirements.*

2. *Enforcement of the Complaints Handling Regulations e.g. complaints handling assessment to form part of licensing requirements.*
3. *Consider an industry-wide customer service center to ensure that client complaints are handled expeditiously.*

89. *Notably, the decisions made by IRA as presented to us in this appeal, were formatted in a summary as opposed to an extensive manner as a regular judgment/decision. In that regard, we wish to emphasize that while the format of a judgment is not typically a matter of significant legal controversy, it is nonetheless an important aspect of legal writing. A well-crafted judgment/decision should be clear, concise, and logically organized. The structure of a judgment should enable readers to easily follow the decision maker's reasoning and analogy, to assist the readers understand the basis for the decision. While there is no one "correct" way to format a decision by an administrative body, we recommend that the IRA would consider using formatting techniques that meet the criterion in the Regulations to help guide readers through the opinion. Additionally, a well-organized decision can enhance the credibility of the decision-maker and promote confidence in the justice system as a whole. (Additional Obiter on the Format of the decision by IRA)*

DATED and **DELIVERED** at **KAMPALA** on the 26TH day of **APRIL**APRIL **2023.**

RITA NAMAKIIKA NANGONO
CHAIRPERSON

SOLOME MAYINJA LUWAGA
MEMBER

GEORGE STEVEN OKOTHA
MEMBER

DR. JOHN BBALE MAYANJA
MEMBER -