

THE REPUBLIC OF UGANDA
IN THE INSURANCE APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION No. 02 of 2024

CIC GENERAL INSURANCE LIMITED.....:APPLICANT /CROSS-
RESPONDENT

VERSUS

HOWARD MUTABAZI.....:RESPONDENT/CROSS-
APPLICANT

DECISION

BRIEF FACTS GIVING RISE TO THE APPLICATION

1. The parties entered into an agency consultancy agreement where the Respondent (now cross-Applicant) was appointed an agent earning a commission of 10% which through an amendment, the percentage commission was reduced to 5%. It was further agreed under clause 7.2. of the agreement that once the Respondent generated business worth UGX 1,000,000,000/- he would be entitled to an additional 2.5% of the collected basic premium net of the commissions already paid.
2. The Respondent claimed to have generated business worth UGX 1,599,423,527/- as total premiums for the year 2022 of which UGX 1,365,882,110/- was the collected basic income net of commissions. As a result, the Cross-Applicant claimed an outstanding amount of UGX 29,937,291/- in commission payments.
3. The Applicant disputed that the Respondent had generated business worth UGX.1,599,423,527/- and contended that he had only generated business amounting to UGX 786,962,180/- which was below the threshold of UGX 1 Billion which would otherwise have entitled the Respondent to 2.5% commission. During the hearing, it was established that UGX 812,461,347/- was an amount paid to the Applicant by Platinum Credit Ltd, which the Applicant however contended was not a client brought by the Cross Applicant.
4. In a bid to recover UGX 29,937,291/- as commission from the Applicant, the Respondent complained to the Insurance Regulatory Authority (IRA). Upon hearing and determination of the complaint, the IRA made findings and orders inter alia that; the Applicant had paid commission to an unlicensed intermediary to wit; Viva 365 Insurance Brokers from Kenya through the disguise of the Respondent, and thus fined both parties to a tune of UGX 162,492,269/- and UGX 500,000/- for breach of Sections 146(7) and (5) respectively, which amounts were to be paid within 30 days. Dissatisfied with the findings and orders of the IRA, the Applicant filed this appeal before this tribunal and the Cross Applicant a cross-appeal.

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THE GROUNDS OF APPEAL

5. The IRA erred in law and fact in finding and holding that the Applicant made illegal payments of commissions to an unlicensed intermediary without according the Applicant a fair hearing.
6. The IRA erred in law and fact in finding and holding that the Applicant made illegal payments of commissions to an unlicensed intermediary without evidence of the illegal payments.
7. The IRA erred in law and fact in determining issues that were not raised and submitted by the parties.
8. The IRA erred in law and fact in holding that the Applicant received premiums of UGX 812,461,343/- from Platinum Credit Uganda Limited without any factual basis.
9. The IRA erred in law and fact in imposing a fine of UGX 162,492,269/- on the Applicant without being heard.

REPRESENTATION AND APPEARANCE

10. At the hearing, the Respondent was represented by Counsel Paul Kaweesi and Mugisha Jennifer Ruth, Nabisere Primrose from Libra Advocates while the Respondent/Cross-Applicant was represented by Counsel Lwiise Frank Nelson from ATNA Advocates.

THE AGREED ISSUES FOR DETERMINATION BY THE TRIBUNAL

11. The Parties agreed on three issues for determination by the Tribunal
 - I. Whether the parties were accorded a fair hearing on the question of illegal payments?
 - II. Whether the IRA erred in law and fact in finding that the Applicant received premiums of UGX 812,461,347/- from Platinum Credit?
 - III. Whether the Respondent/Cross-Applicant was entitled to the commission of UGX 29,937,291/-?

EVIDENCE AND SUBMISSIONS

APPLICANT'S EVIDENCE SUBMISSION IN SUPPORT OF THE APPLICATION

Whether the parties were accorded a fair hearing on the question of illegal payments?

12. The Applicant argued that the decision of the IRA was erroneous because the Applicant was not accorded a fair hearing regarding the question of illegal payments to an unlicensed intermediary as there was no evidence adduced to the illegal payments.
13. It was the Applicant's contention that had IRA found any slight information, proof, or evidence pointing to illegal payments to an unlicensed intermediary, then it ought to have invited both parties to address the issue of the illegal payment through a hearing.

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14. The Applicant argued that the record of proceedings from IRA does not show that the Applicant was allowed to defend itself on the question of illegality before it was found liable and fined the sum of UGX162,492,269/- for making illegal payments to an unlicensed intermediary.
15. Citing Article 28(1) of the Constitution and the case of **Mohammed Mohammed Hamid Vs. Roko Construction Ltd S.C.C.A No.1 of 2023**, the Applicant argued that it was not enough for IRA to simply state that once an illegality is brought to its attention, it overrides everything.
16. The Applicant further argued that document A EX3 which was a premium schedule contained premiums paid by Platinum of UGX 59,838,348 and a commission was also paid out.
17. Counsel submitted that the business from Platinum Credit was directly sourced and preliminary investigations revealed that the Respondent in connivance with other staff members received commissions for business which he did not bring on board, and therefore any commission payments made to the Respondent were irregularly made but that did not constitute an illegal payment.
18. On the issue of illegal payments to the unlicensed broker Viva 365 Limited, it was the Applicant's submission that the receipts provided did not have a direct link to them as these were payments from the Respondent's bank account and it was not proved that any of the payments to Viva originated from the Applicant and the payment could have been as a result of a personal business between the Respondent and others.
19. It was further argued that the email correspondences in the IRA decision did not form part of the evidence both at IRA and at the Tribunal and therefore could not be relied on.
20. Relying on the case of **Kibalama Vs. Alfasan Belgie CVBA (2004) 2 E.A 146**, the Applicant also argued that the admission of illegal payments by the Cross-Applicant to an unlicensed intermediary only relates to and binds him as the maker and does not extend to the Applicant. The applicant invited the Tribunal to hold that the Cross-Applicant made illegal payments to an unlicensed intermediary.

Whether the IRA erred law in and fact in finding that the Applicant received premiums of UGX.812,461,347 from Platinum Credit?

21. Counsel submitted that the order by IRA for the Applicant to pay UGX.162,492,269 equivalent to 20% of UGX. 812,461,347 was erroneous as the Applicant didn't know where this amount was derived from.
22. Relying on A EX3, it was submitted that the only premium received and commissions paid from Platinum Credit for the year 2022 was UGX.59,838,348. There was no evidence at the IRA or the Tribunal to show where UGX 812,461,347/- was obtained.

Whether the Respondent/Cross-Applicant was entitled to the commission of UGX.29,937,291/-?

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23. It was argued that the Cross-Applicant was not entitled to the commission for two reasons; first, he failed to adduce evidence to prove that he had generated business worth a basic premium of UGX.1,599,423,527/- and that the Applicant had confirmed that the Respondent had generated business worth UGX 786,962,180/- between January 2022 and December 2022.

SUBMISSIONS BY THE RESPONDENT/CROSS-APPLICANT

Whether the parties were accorded a fair hearing on the question of illegal payments?

24. The Respondent agreed with the Applicant on the submissions on the issue of a fair hearing as far as IRA not allowing the parties to address this issue.
25. Relying on AEx3 and REX6, the Respondent submitted that there was evidence that he was an agent of the Applicant and therefore his actions as an agent bound the Applicant as the principle.
26. Counsel for the Respondent argued that since the email trail captured in the decision by IRA was never disputed or objected to by the Respondent at the hearing, the emails were admissible.

Whether the IRA erred in law and fact in finding that the Applicant received premiums of UGX.812,461,347 from Platinum Credit?

27. The Respondent submitted and maintained that he was entitled to the commission since he was an agent of the Applicant for the year 2022 and he generated business worth UGX.1,599,423,527/-
28. Counsel argued that the Applicant through its witness Mr. Nathan Ainembabazi initially denied that the Applicant was ever paid commission in respect to the Platinum Credit account. However, when tasked to show how commission on Platinum credit was paid in 2022, he produced AEX3 which was a schedule of premiums received and commissions paid, and the schedule clearly showed Howard as the agent.
29. Citing Section 114 of the Evidence Act and the case of **Joel Kateregga & Anor Vs. Uganda Post Limited HCS 0020/2010**, Counsel submitted that the Applicant by their actions and conduct of paying commissions to the Respondent was estopped from denying the truth of the fact that Platinum Credit was the Respondent's agent.

SUBMISSIONS IN REJOINDER

30. In rejoinder, the Applicant's counsel submitted that the Respondent was not entitled to receive commissions the Platinum Credit business as he connived with some members to receive commissions.
31. The Applicant maintained that the receipts of payment to Viva do not link the Applicant to any illegal payments and that the bank statements and e-receipts were personal business between the Respondent and others.

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32. Counsel also reiterated his earlier submissions on the emails not forming part of the evidence both at IRA and the Tribunal.

DECISION OF THE TRIBUNAL

Issue one: Whether the parties were accorded a fair hearing on the question of illegal payments?

33. The right to a fair hearing connotes a hearing by an impartial and interested tribunal; a proceeding that hears before it condemns, which proceeds upon inquiry, and renders judgment only upon consideration of evidence and facts as a whole. ***Election Petition Appeal No. 04/2009; Bakaluba Peter Mukasa versus Nambooze Betty Bakireke.***
34. **As submitted by Counsel for the Applicant, the right to a fair hearing is enshrined in Article 28(1) which provides that** " In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.
35. Article 42 of the Constitution, further provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and a right to apply to a court of law in respect of any administrative decision taken against him. The law requires that a fair hearing must be afforded in all cases and very clear and unambiguous terms: ***HCCS No. 212/2009 Twinomugisha Moses versus Riff Valley Railways (U) Limited at page 22***
36. The right to a fair hearing as discussed in the case of *Marvin Baryaraha v Attorney General (MISCELLANEOUS CAUSE NO.149 OF 2016)* connotes the fact that;
- A person must be given prior notice of allegations against him. The principles of a fair hearing include prior notice, adjournments, cross-examination, legal representation, disclosure of information ***High Court Misc. Cause No. 042 OF 2016 Amuron Dorothy V LDC***
 - The fair and reasonable opportunity to meet a prejudicial demand must be afforded in clear terms without it having to be gleaned from or read into correspondence, which itself is silent on the subject. ***Civil Appeal No. 56/1981 Charles Oloo versus Kenya Posts and Telecommunications at page 4***
37. Our perusal of the record of proceedings from the IRA specifically the hearings held on 1st August 2023 reveals that the issue of illegal payments was discussed and both parties submitted extensively on it. The legality of the Applicant and Respondent's dealings was something that came up during the hearing of the matter before the IRA. Such transaction of payment of commissions to agents not licensed under the Insurance Act, of 2017, was an illegality that goes to the root of the functions of the IRA itself as a Regulatory body, and once drawn to its attention it could not be ignored simply because it was not specifically raised before the Authority or not pleaded as a ground in the complaint before it. **See; SCCA No. 14/ 2016 Asuman Mugenyi versus Muhammad Buwule**
38. For instance, on page 9 of this record, Counsel for the Applicant stated that "...I wish to point out that in the complaint by Howard, the issue of illegal payments never came

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out" and the Chairperson responded "that does not hinder the regulator from pointing this out if we see it"

39. The record also shows that the emails that the Applicant's counsel says were not submitted in evidence at IRA were discussed. These emails were a subject of discussion in a hearing held on 14th June 2023. This hearing was adjourned to allow the Applicant give the Respondent email log-on credentials to enable get all the information he wanted. The Applicant's CEO a one Richard Ssevume was allowed to give his evidence on the emails which he had been copied in **(pages 10,11,13 of the record of proceedings of the hearing of 1st August 2023)**
40. Both parties were in attendance by their legal counsel and respective representatives, they were impliedly put on notice at the hearing of the matter before the IRA and the subsequent decision of the IRA and should have been able to clarify and respond to the legality of the money remittances accordingly. Indeed, in the meeting of 11th July 2023, the IRA Chairperson closed by requiring the Applicant to update the Authority on their investigations regarding the Cross-Applicant's account and directed that the emails to be sent to it before that Friday of that week. The Applicant and Respondent had an opportunity to not only avail the said documents but also clarify the transactions and the purpose thereof as embedded in the emails which they did not. At that point, they waived the right to do so and were estopped from claiming otherwise.
41. We agree with IRA that once an illegality is brought to the court's attention, it can not be ignored. See **Makula International Ltd vs. His Eminence Cardinal Nsubuga & Another (1982) HCB 11.**
42. In our opinion, it is evident that the parties took fault for the fact that since illegality was not the subject of the complaint made by the Respondent at IRA, then the issue shouldn't have been discussed but the fact is that it was considerably discussed at the hearing of 1st August 2023.
43. A correct decision in civil litigation largely depends upon the correct framing of issues. The court is not only competent but also under an obligation to frame the issues, as per its understanding of the controversy between the parties. See; **Mundua v Central Nile Transporters Association (Miscellaneous Civil Revision No. 0003 OF 2017**
44. Order 15 rule 5 (1) empowers the court at any time, before passing a decree, to amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties. See; **Kahwa Z. and Bikorwenda v. Uganda Transport Company Ltd [1978] HCB 318**). This is necessary because in some cases the court in this case the IRA may notice some defect or inadequacy in the issues already framed or certain matters in controversy between the parties are left unnoticed while framing issues in the earlier occasion.
45. Since the primary duty of framing proper issues rests with the deciding body/Court, and the parties and are only required to assist the Court in the process of framing issues, situations may arise in the process of writing a judgment, when new issues may emerge which hitherto may have escaped the attention of the Court. See; **Mundua v Central Nile Transporters Association (Miscellaneous Civil Revision No. 0003 OF 2017**

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46. The issue of an illegality is a demurrer in nature. The adjudicatory process is decisional in itself. In making its decision, the Court can identify the crux areas of controversy and focus on them. It is in the interest of all the parties that appropriate issues encompassing the entire controversy and focusing on the material aspects thereof are framed and determined. Thus, since the settlement of issues is the discretion of the trial Court, it cannot be interfered with by this Tribunal, merely because the parties are displeased with the procedure adopted by the IRA and its ultimate findings. **See; Mundua v Central Nile Transporters Association (Miscellaneous Civil Revision No. 0003 of 2017)**
47. The threshold in determining whether to entertain un-pleaded point of evidence was settled by the Supreme Court in **Civil Appeal No. 4 of 2000 Christine Bitarabeho versus Edward Kakonge Civil Appeal** where it was held that a new plea upon which the court is being asked to decide the point of law must be that which establishes beyond doubt that the facts, if fully investigated support the new plea. The court must be assured that full justice can be done to the parties by permitting new points of controversy to be discussed. If there are further matters of fact that could possibly and properly 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, the new point ought not to be considered. **Civil Appeal No. 4 of 2000 Christine Bitarabeho versus Edward Kakonge Civil Appeal**
48. Be that as it may, it is now a renowned principle of law that the Court has a duty to ensure that the law is not flouted. Courts are the eyes of justice and are therefore under a duty at all material times to uphold the law. The duty extends to determining whether any of the parties is in breach of the law or policy. **See SCCA No. 14/ 2016 Asuman Mugenyi versus Muhammad Buwule**
49. We wish to note that the Insurance Regulatory Authority of Uganda' is to ensure effective administration, supervision, regulation, and control of the business of insurance in Uganda. From the foregoing, the IRA in determining the issue of illegality brought to its attention was only performing its statutory duty conferred upon it by the enabling law cited hereinabove for which we find no fault.
50. At the hearing before the Tribunal, evidence led by the parties on this issuesheds light on the transactions on which the IRA based its decisions, findings, and orders. Having heard from both the Applicant and Respondent's witnesses we can make our own independent findings as hereunder;
51. When asked whether the Applicant has never paid any commission to a Kenyan firm, Mr. Nathan Ainembabazi the Applicant's witness stated that 'I suspect there could have been payments made but if they were made, they were made fraudulently'. On the other hand, the Respondent in his testimony when asked whether he transmitted money via visa and whether he was admitting to an illegality he stated that 'I did not know but now I know'. Further, it was his testimony that he was receiving money from the Applicant sending it to Kenya paid via Equity Bank and that on one occasion the recipient thereof was Visa Insurance Ltd which he would afterwards share with the Applicant as evidence of remittance.
52. He also testified that he was given a number by Lady Lydia in 2021 to which he would send money. To support this, the Cross Applicant exhibited **REx6** which was an E-Receipt dated 8th June 2022 in the sum of 4,106,900/= which he purported to have sent to Twinomugisha Ronald Mwigizi that he identified as an MPESA Agent based in Kenya

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and that the agent would then transfer the said amount to a one Amos Njuguna. This was coupled with a message that Amos Njuguna had received KES128200 to Safaricom PAYBILL 913210-VIVA365LIMITED and the reference was CICUGCOMMISSION via MPESA at 03:48 PM. In corroboration thereof, several receipts shown to be paid in the Applicant's name and received by Mugizi T/A Wire & Wireless Oasis Mall 1st Floor dated 11/04/2022 receipt No. 939, 28/July/2022 receipt No. 1026 and 25/03/2022 vide receipt No. 653 were presented as additional evidence.

53. When asked why he did not make a direct transfer on the number handed to him by Lady Lydia, he stated that he did not know how to directly transfer the amounts from his account so he would withdraw and pay the number via the MPESA agent.
54. Having examined **REx5**, the Bank Statement of the Cross Applicant at page 31 of 64 of the said statement period of 01/01/2022 to 31/12/2022 the transaction between himself and Twinomugisha Ronald Mugizi is reflected. Further, according to the email trail exchanged between Andrew Murua, George Kaura, Lydia Matuli Mnawe, and the Respondent, it appears more probable than not that there were ongoing commission transfers made to Viva 356 Insurance Limited and when corroborated with the transactions above, it appears more probable than not that the Applicant was making remittances to Kenyan brokers as Commission with the Respondent as a conduit.
55. When compared to the statements made by the Respondent in the proceedings of the IRA held 11th July, 2023 to the effect that the production was credited on his account as an agent through his agency's code and was not interested in any commission unlike other agents. He would therefore remit the commission to brokers in Kenya.
56. It is therefore, our considered finding that as rightly found by the IRA, the Applicant, and the Respondent were in breach of the provisions of Section 146(5) and (146(7) of the Insurance Act, 2017 since there was no evidence led to show that the recipients of the said commissions were licensed insurance agents under the Insurance Act, 2017. Having found as above, we therefore find that the submission of Counsel for the Applicant that the admission made by the Respondent is only admissible as against him does not apply.
57. In light of the above findings, the position of the law is that, in the absence of the required licence of the agents to whom the commissions were paid as rightly found by the IRA, such transactions were tainted with illegality which renders liability on both the Applicant and Respondent and as it is trite law, once an illegality is brought to the attention of Court, it cannot be allowed to stand. **See; Makula International v Cardinal Wamala 1982 HCB.**
58. An illegality has been defined to mean, an act that is forbidden by law or the state of not being legally authorized. **See; Wadia Construction and Another v Commissioner Land Registration and 3 Others (Miscellaneous Cause No. 63 of 2021) [2022] UGHCCD 234 (31 October 2022).** The law is that the Court cannot leave the party to fraud and an illegality to retain the benefit of the illegality, it is on this basis that the IRA delved into the issue of the illegal transaction by the parties hereto and found as such.
59. We are therefore inclined to agree with IRA that there were illegal payments made to Viva 365 Insurance Brokers

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Issue Two: Whether the IRA erred in and fact in finding that the Applicant received premiums of UGX.812,461,347/- from Platinum Credit?

60. We have carefully considered the evidence on record and the ruling of the IRA and having heard the parties' evidence on this ground too during the hearing of the appeal we find the following;

In the proceedings of the IRA of 14th June 2023, the Cross Appeal alluded to an Excel spreadsheet showing several premiums and commissions purported to be paid to him by the Applicant. On the other hand, the Applicant exhibited A EX1 a letter from Platinum Credit Limited dated 22nd May, 2023 showing that the Cross Applicant was not their agent. During the hearing at the tribunal when asked how the client (Platinum Credit Ltd) was on-boarded, the Applicant's representative testified that Platinum was a direct business to the Applicant. On further probe the said representative alleged that Platinum Credit Ltd had its own appointed agent other than the Respondent and that agents were appointed by the client as opposed to the Applicant Company, later alone the client making its own choice of the agent.

61. However, in contradiction thereto, when questioned whether there was any agency agreement between the Applicant and Respondent, it was obvious that there was such a relationship save that the Applicant maintained the Respondent was not an agent in respect of Platinum Credit Ltd and was thus not entitled to commissions therefrom.

62. Whilst the Respondent led evidence to show that he had been paid commission since December 2022, when the Applicant's representative was questioned why that was so, he noted that Commission was being paid until the disputes on who should be paid which commission was settled and so the Applicant had to block that from continuing. It is our considered opinion that having failed to mention who else was in the alleged battle to be paid commission it lent credence to the Respondent's assertion that he was indeed an agent of the Applicant. What remained imprecise is whether he was matched to Platinum Credit Ltd. When asked whether any commission had been paid to the Respondent in respect of Platinum, Kaweesi noted that 'I may not have been in full view of the payment at the time, I only need some time to be sure what went out for what. He was uncertain and did not render any clarity thereafter of his findings if any.

63. Although in proof of this, the Applicant exhibited and relied on the letter of 22nd May 2023 by the client, the same is unreliable on the basis that it was likely written as an afterthought and premeditated to fail the Respondent's complaint which had been filed before the IRA at a time preceding the writing of the said letter. Although the Respondent had requested to access his emails during the proceedings of the IRA, such access to enable him to prove his claim and relationship with Platinum Credit Ltd was never availed. The emails that were retrieved did not confirm this relationship.

64. The Applicant, however further exhibited a schedule for its premiums received and commissions paid in respect of Platinum Credit (U) Ltd as AEX3 on page 3 of the Applicant's Supplementary Trial Bundle. In the said schedule, it was clear that there were remittances made to Howard for the year 2022 as an agent of Platinum Credit (U) Ltd. This therefore overturned the allegations by the Applicant denying the Respondent's agency.

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65. The issue therefore that remained contentious is whether or not the Applicant indeed generated premiums to the tune of UGX 812 million and if so, whether it was as a result of the Respondent's efforts. From the evidence gathered by the Respondent despite efforts to exhibit entitlement to UGX 29,937,291, this Tribunal finds no basis for the award of this particular figure as commission since it is not confirmed how much money was generated in respect of Platinum Credit (U) Ltd despite confirming that he was an agent thereof.
66. The position of the law is that as a general rule, the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that Party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof that is, his/her allegation is presumed to be true unless his opponent adduces evidence to rebut the presumption. Once the Respondent raised the presumption before the IRA that the premiums generated in total were up to a tune of approximately UGX 1.5 Billion. The burden lay on the Applicant to prove otherwise. See; **Court of Appeal Civil Appeal No. 85/2011 Takiya Kaswahiri versus Kajungu Dennis on page 85**
67. When as provided by Section **92 (1) of the Evidence Act**, the terms of a contract or other disposition of property have been reduced to the form of a document no other evidence is admissible to exclude, or, vary what is contained in the document. The document speaks alone and by itself therefore the Applicant was estopped from claiming otherwise and was thus strictly bound by Clause 7.2 of the Agency Agreement to pay the Respondent his commission. See; **Kananura Melvin Consultant Engineers and others versus Conee Kabanda Civil Appeal No 31 of 1992 citing URA -Vs-Mabosi**
68. Upon a careful perusal of the record at IRA, the Respondent presented a commission code indicating that he had generated business of UGX 1,599,423,527 and included the UGX 812 million from the Platinum Credit account. This was above the UGX 1 Billion threshold entitling the Respondent to a 2.5% commission. The document presented by the Respondent was disputed by the Applicant for lack of authenticity and contained errors. Counsel also pointed out that there was nothing to show the document was from CIC and the same could not be relied on.
69. This Tribunal gave chance to the Applicant to present the relevant documents in disproof of this, and the Applicant through its witness Mr. Nathan Ainembabazi presented AEX3 which was a schedule of premiums and commissions for the Platinum Credit Account. The schedule indicated that the total premium paid for this account was UGX 59,838,348/- and the commission paid to the Respondent was UGX 7,779,794/-
70. This Tribunal is obliged to rely on the evidence properly admitted on record and evaluate it alongside other evidence on record. It cannot source for any other evidence. Both Parties seek to rely on system schedules. Whereas the Applicant seeks to disparage the Respondent's schedule for lack of authenticity, they on the other present a schedule of a significantly lower amount of UGX 59,838,348/- for the Platinum Credit account.

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71. The Tribunal finds that the commission schedules presented by the Respondent cannot be relied on for lack of authenticity and is therefore not admissible in evidence. The Tribunal on the other hand finds that the Applicant's schedule for the Platinum of UGX 59,838,348/- premium and UGX 7,779,794/- commission is more likely than not false. Based on the other evidence on record through the emails and the amount of commission paid to Viva 365 Insurance Brokers from Kenya through the disguise of the Respondent, it is more likely than not that the business generated for the Platinum Credit Account was way beyond the UGX.59m that the Applicant is fronting. The Applicant is presenting a low amount in a bid to escape the fine imposed by the IRA.

72. After weighing all the elements of the evidence, probabilities, and improbabilities on both sides, it is our finding that the quantum of the premiums generated for Platinum Credit Ltd cannot be established. There is no factual weight on the schedules presented and both parties have failed to prove their claims in the matter before us; **Court of Appeal, in Civil Appeal No. 26/2009 Brian Kaggwa Versus Peter Muramira citing the Nigerian Case of Osuana Versus the State (210) LPELR/CA/OW//150/2009**

73. **Thus we** find that the IRA was without basis in concluding that the premium of UGX 812,461,343/- was generated from which the 20% was derived.

Whether the Respondent/Cross-Applicant was entitled to the commission of UGX 29,937,291.

74. The Tribunal finds that the Respondent was the agent handling the Platinum Credit Account, however, given our resolution that the Respondent failed to prove that he generated UGX 1,599,423,527/- including the UGX 812 million from the Platinum Credit account, we are constrained to agree that he is entitled to the commission of UGX 29,937,291/-.

CONCLUSION AND FINAL ORDERS

75. In conclusion, the Tribunal makes the following orders:

- 1) This appeal partially succeeds in respect issue No.2
- 2) Having found that the Respondent paid a commission to an unlicensed intermediary in breach of section 146(7), the Applicant is fined twenty-five currency points under section 146(4)(b) of the Act.
- 3) Each party shall bear its own costs in both the appeal and cross-appeal.

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

DATED and DELIVERED at KAMPALA on the TH 14 day of MAY _____ 2024.


Rita Namakiika Nangono
Chairperson - Insurance Appeals Tribunal

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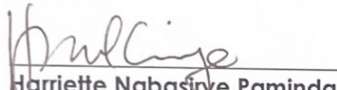
Solome Mayinja Luwaga
Member - Insurance Appeals Tribunal



George Steveh Okotha
Member - Insurance Appeals Tribunal



John Bbale Mayanja (PhD)
Member - Insurance Appeals Tribunal



Harriette Nabasiye Paminda Kasirye
Member - Insurance Appeals Tribunal