

**THE REPUBLIC OF UGANDA
IN THE INSURANCE APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION No. 04 of 2024**

SANLAM GENERAL INSURANCE (UGANDA) LTD ===== APPELLANT

VERSUS

FINANCE TRUST BANK =====RESPONDENT

DECISION

BRIEF FACTS GIVING RISE TO THE APPLICATION

This appeal was brought by Sanlam Life Insurance Uganda Ltd against Respondent challenging the decision issued by the Insurance Regulatory Authority on the 9th day of February 2024. At first instance before the Authority the Respondent herein a financial institution filed a complaint before the Regulator on grounds that it had contracted the services of a professional surveyor; M/s Katuramu & Company Consulting Surveyors Ltd to advise them through inspection, opening of boundaries, and valuation of various properties before advancing credit to its clientele.

1. It was a contractual term however that such a service provider ought to have had a professional indemnity insurance cover from a reputable insurer. Indeed the same was from the Appellant vide Policy No. O/100/5011/2019/00017 running between 23.03.2019 and 22.03.2020. The subject policy was renewed on two occasions for the period of 1.09.2020 expiring on 31.08.2021 and on another occasion from 1.09.2021 and 24.09.2022. In the due course of its business, the Respondent following consultation with the insured and relying on such professional advice rendered extended several credit facilities to various borrowers some of whom however later defaulted on payment of the subject loans. The Respondent subsequently procured the services of other professionals whereof they purport to have discovered that the insured had made errors in the various valuation reports including the valuation of wrong properties, undisclosed graveyards, some of the properties that had been valued were vacant but that the subject valuation reports were not developed, hence making it onerous and or impossible for the bank to recover the loan sums and foreclosing the mortgaged properties, which loss the bank attributed to the professional negligence of the insured in the execution of its duties.
2. Consequently, the insured notified the Appellant and sought to recover UGX 3,671,851,668 under the policies. Upon investigation of the claim, the Appellant declined to indemnify the Respondent on grounds including time restraint and imprudent actions by the Respondent.



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3. The IRA heard and determined the complaint in favour of the Respondent and thus directed the Appellant to pay the adjusted loss amount of UGX 1,905,148,996 subject to the policy limits and excess and submit proof of payment to the Authority within 30 days from the date of the decision. Being dissatisfied by the said findings and decision of the IRA, the insurer brought the instant appeal seeking inter alia; a declaration that the proceedings by the IRA contravened the principles of natural justice when they failed and or refused to hear evidence of the witnesses and to allow the Appellant to examine or cross examine the witnesses of the Respondent, a declaration that the claim of UGX 1,905,148,996 is not payable by the Appellant, an order setting aside the decision of the IRA, an order dismissing the complaint of the Respondent, a declaration that the officers of the insured were negligent and this negligence contributed to the loss that they purportedly suffered and in the alternative an order that the IRA rehears the complaint between the parties in accordance with the guidelines and principles of natural justices.

GROUND OFS OF APPEAL

4. Drawing from the pleadings and submissions of the parties to this appeal, the points of contention as cited by counsel for both parties as embedded in the Appellant's grounds as stated in its statement of facts and reasons in support of the appeal are summarized in the grounds below:
- i. The IRA complaint's Bureau erred in law when they declined to give the Respondent (now Appellant) the opportunity to examine and cross-examine the witnesses of the complainant and the insured Katuramu & Company Advocates.
 - ii. The IRA complaint's Bureau erred in law and fact when they failed to rely on evidence and rather relied on conjecture in reaching their decision that the bank had failed to recover the money from the sale of the properties without evidence to that effect.
 - iii. The IRA complaint's Bureau erred in law and fact when they failed to rely on evidence and rather relied on conjecture in reaching their decision that the bank had relied on the opinion of Katuramu & Company to lend to Ssimbwa Robert without any evidence to that effect.
 - iv. The IRA complaint's Bureau erred in law and fact when they failed to rely on evidence and rather relied on conjecture in reaching their decision that the valuation by Katuramu & Company was low without any evidence to that effect.



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- v. The IRA complaint's Bureau erred in law and fact when they found that Katuramu & Company was negligent based on the letter written by Katuramu & Company dated 4th October 2023.
- vi. The IRA complaint's Bureau erred in law and fact when they found that SANLAM was liable based on the letter written by Katuramu & Company dated 4th October 2023
- vii. The IRA complaint's Bureau erred in law and fact when they failed to find that the insurance policy between SANLAM and Katuramu & Co. excluded the employee dishonesty and fraud and as such that the actions of the employees of Katuramu & Co. were dishonest and fraudulent.
- viii. The IRA Complaint's Bureau erred in law and fact when they disregarded the negligence of the Bank and found that the same did not result in the failure of the Bank to recover its debt from Ssimbwa Robert.
- ix. The IRA Complaint's Bureau erred in law and fact when it disregarded and failed to address the issues raised by the Respondent in the submissions in response.
- x. The IRA Complaint's Bureau erred in law and fact when it misconstrued the loan to Robert Ssimbwa by the Respondent and erroneously found that the liability of the valuer included the preexisting loan of UGX 1,008,200,000 in computing the liability of the valuer and insurer.
- xi. The IRA Complaint's Bureau erred in law and fact when it failed to consider the defenses of the insurer against the insured Katuramu & Company.
- xii. The IRA Complaint's Bureau erred in law and fact when they misapplied the law of liability of a professional valuer.
- xiii. The IRA Complaint's Bureau erred in law and fact when they misapplied the law in respect to liability insurance in reaching the decision that the insurer was liable to pay under the policy.

REPRESENTATION AND APPEARANCE

5. At the hearing, the Respondent was represented by Counsel Shafir Yiga from Yiga Advocates while the Respondent/Cross-Applicant was represented by Counsel Friday Kagoro from Muwema & Co Advocates.

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THE AGREED ISSUES FOR DETERMINATION BY THE TRIBUNAL

6. The Parties agreed on five issues for determination by the Tribunal:
- i. Whether the Respondent has the locus to make a claim under the insurance policies issued to Katuramu & Company.
 - ii. Whether the hearing by the Complaints Bureau of the Insurance Regulatory Authority was fair, just, and legal?
 - iii. Whether the six claims as presented by the Respondent are payable under the insurance policies issued by the Applicant to the insured Katuramu & Company
 - iv. Whether the insurance contract between the insured and the Applicant was ambiguous and full of contradictions.
 - v. What remedies are available to the parties

EVIDENCE AND SUBMISSIONS

APPLICANT'S EVIDENCE SUBMISSION IN SUPPORT OF THE APPLICATION

7. **Issue One - Whether the Respondent has the locus to make a claim under the Insurance policies Issued to Katuramu & Company?**

Applicant's Submissions

8. The Applicant argued that the insurance policy which is the contract was between Sanlam General Insurance and its insured Katuramu & Company and as such there was no contract between the insurer and the Respondent.
9. Counsel for the Applicant argued the doctrine of privity to contract barred the claim by the Respondent since it could not enforce a contract to which it was not a party to in accordance to Section 65 of the Contracts Act, 2010 (as amended).
10. The Applicant further argued that the Respondent did not in its pleadings, complaint or evidence refer to any term in the insurance contract that expressly gives it a right to claim or enforce any term under the insurance contract and thus does not have the right to claim under the insurance contract.
11. Counsel further submitted that the benefit conferred under the policy was an indemnity to the insured and not to the third party. Relying on **Halsbury's Laws**,



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Volume 25, para 992 on page 363, Counsel argued that no obligation arose on the part of the insurer unless liability was established. He asserted that without the determination of liability of the insured Katuramu and Company, there would be no liability of the insurer/Applicant.

12. Counsel submitted the Respondent had no locus claiming under the policy or even complaining before the IRA.

Respondent's Submissions

13. Counsel for the Respondent relying on **Section 12(1)(j) of the Insurance Act, 2017** argued that IRA exercised its mandate to receive and resolve insurance-related complaints. He further contended that **Section 12(1)(k)** of the same Act allowed the Authority to receive complaints from members of the public on the conduct of a person licensed under the Act and arbitrate and grant restitution to the complainant as may be possible.
14. Counsel further cited **Guideline 6 of the Complainant's Bureau Guidelines** and argued that any affected person including a third party and beneficiary of an insurance policy can lodge a complaint.
15. Counsel contended that Section 12 of the Insurance Act intended that all disputes arising from an insurance policy could be resolved by the Authority as the competent Authority to resolve such disputes.
16. On this, The Respondent therefore based its argument on the fact that the law does not restrict locus to policyholders only but also to third parties. It was the Respondent's submission therefore that the Appellant was barred from raising the issue of jurisdiction at an Appellate stage having not been raised at the complaints bureau. Counsel relied on **Uganda National Roads Authority v Parambat Breweries Ltd & Another (Civil Appeal No. 321 of 2019)**.
17. **Issue Two - Whether the hearing by the Complaints Bureau of the Insurance Regulatory Authority was fair, just, and legal?**

Applicant's Submissions

18. Counsel argued that the decision of the IRA was not fair, just, or even legal because the Complaints Bureau the Applicant was not accorded the opportunity to cross-examine the bank officials and the said Nicholas SSali in respect to the letter he wrote to the IRA on the 4th day of October 2023. He submitted that this was contrary to

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Article 42 of the 1995 Constitution of the Republic of Uganda and cited the case of Marvin Byaruganga versus Attorney General, Miscellaneous Cause.

19. 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.
20. Further, the hearings before the IRA were five (5) in number as opposed to four (4) meetings. That during the hearing the Authority, the Respondent (Now Appellant) had raised issues that were and as such the Respondent Bank herein made submissions in Sur Rejoinder but that no chance was granted to the Appellant insurer to rejoin. Further, the IRA dispensed with the hearing of some of the Appellant's evidence but allowed that of the Respondent. Counsel cited the fact that the IRA allowed the request by the Respondent to cross-examine the Appellant's witnesses and that the adjusters appeared and were indeed cross-examined but such an opportunity was denied the Appellant who even after a request was not allowed to procure the presence of the bank's officials for purposes of cross-examination. Counsel noted that this was under the preposition that the proceedings were taking too long which he submitted contravened the rules of natural justice and that the same was indicative of bias.

Respondent's Submission

21. The Respondent contended that the record of proceedings before the IRA clearly shows that no specific questions were directed to the Respondent's officials especially Nicholas Ssali who was present at the hearings, and that the Appellant acknowledged that the said Nicholas Ssali appeared during the meeting held on October, 23, 2023 before the IRA. Further, it appears that the Appellant's concerns are that the IRA failed to cross-examine Nicholas Ssali on behalf of the Appellant, which was not its duty. Also, the Appellant failed to utilize the opportunity to cross-examine Mr. Ssali Nicholas as well as the Respondent's officials who were all present and opted to apply for the cross-examination as an afterthought after the closure of the hearing. Counsel referred us to page 137 of the proceedings before the Authority. Mr. Ssali Nicholas was cross-examined and during the said cross-examination, he duly confirmed that he did not ever physically visit all the sites stated in the report which he purported to have signed as visited which amounted to professional negligence on the insurer's part.
22. On the issue of reliance on the letter written by the insured on 4th October 2023, admitting negligence, the Respondent argued that the Appellant's submission was flawed since the insured had already communicated the negligence to the



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Appellant in September 2022 when they notified them of the claim and that no wonder the letter was addressed to the IRA since there was nothing novel to be stated to the insurer/Appellant herein.

23. Secondly, in rejoinder to the allegation that the meetings before the IRA were 4(four) in number as opposed to 5(five) that is to say that the hearing of 10th October, 2023 was rescheduled to 23rd October, 2023. Counsel referred to an email from the Authority communicating the rescheduling of the meeting. Among the Respondent's officials present was Ali Lwanga who is a staff of the Respondent Bank but no application to cross-examine was ever made.

24. Issue Three - Whether or not the claims by the Respondent are payable?

25. The Appellant argued that the policies under which the insured claimed were all 'claims-based-basis' policies and such a matter of fact all claims thereunder had to be reported within a specific period. Counsel referred us to Exhibits **Ex2, Ex3, and Ex4**. The Appellant also exhibited a report by the loss adjusters in respect of the claims by the Respondent's clients Butswa Electric and Automation Contractors Ltd, Mirembe Lydia, Nanyonjo Christine, Ssimbwa Robert, Atamba Emmy, and Ssekabira Hassan which reports were shared with the Respondent's lawyers who instead went on to file a complaint before the IRA.

26. The Appellant argued that the claims are not payable on the basis that they were not reported within the stipulated time. Only one valuation was reported within time but even if it were reported within time, it was not payable based on fraud on the part of the insured.

27. In rejoinder thereto, the Respondent argued that it was a hybrid policy rather than a claims-based policy that it included both the occurrences and claims-made policies, and that the insurer/Appellant also specified a retroactive date from which they would not be liable for claims predating that date. Referring to the decision of the Court in the case of **Reid Crowther & Partners Ltd v Simcoe & Erie General Insurance Co [1993] 1 SCR 252** counsel noted that in each case Court ought to look wording of the policy rather than pigeonhole the policy in issue and invited this Tribunal to look at the specific wording rather than generally categorize the policy. That the acts by the Appellant to create a new retroactive date for each renewal was unconscionable.

28. The Respondent further argued that the extended claim reporting clause was inapplicable as it would defeat the parties' intention and purpose of renewing a professional indemnity policy. Additionally, based on the principle of reasonable

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expectation and the need to prevent unfair or unconscionable outcomes specific policy languages may be overlooked. They relied on the case of **Dowhower v W. Bend Mut. Insurance Co Ltd 613 N.W.2d 557, 565(2000)**.

29. Issue Four - Whether the insurance contract between the insured and the Appellant was ambiguous and full of contradictions.

30. Counsel for the Respondent argued that in the subject policy, the discovery period and extended claim reporting clause were ambiguous and that the latter was only applicable in the event of non-renewal or policy cancellation. Since the policy contained different clauses that contradicted each other under the law whereof a third party is often considered innocent thus prayed that this Tribunal upholds the partial decision of the IRA on payment and the Appellant's appeal be dismissed with costs and that the Respondent's cross-appeal be allowed with damages and costs.

THE DECISION

31. Having perused the submissions put across by both counsel for the parties and the record of proceedings before the IRA, we find as follows:

Issue one - Whether the hearing by the Complaints Bureau of the Insurance Regulatory Authority was fair, just, and legal?

32. The Appellant argued that it was not accorded an opportunity to cross-examine the Respondent bank officials and Nicholas Ssali in respect of the letter of October 4th 2023. The position of the law is that failure to observe natural justice includes denial of the right to be heard, the rule against actual and apprehended bias, and the probative evidence rule.

33. In the case at hand, we have perused the record of proceedings wherein we note Mr. Ssali Nicholas, Mr. Sunday Rodgers, and Mr. Sunday Nicholas Bwanga all from Katuramu & Company were present at the hearings on 13th September 2023 and 23rd October 2023. From the record, we have failed to find that a request to cross-examine them was made by Counsel and that the same was denied.

34. We further note that the Respondent bank officials including Mr. Ali Lwanga were duly present at the different meeting but no such application was made to cross-examine him. It is not stated by the Appellant who else of the Respondent Bank officials that they wanted to cross-examine.

35. Having failed to exercise this right, the Bureau cannot be faulted for having denied the Applicant the right to cross-examine the witnesses.


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36. This issue is resolved in the affirmative.

Issue two - Whether the Respondent has locus to make a claim under the insurance policies issued to Katuramu & Company?

37. The Applicant submitted that the insurance contract was between Sanlam General Insurance and its insured Katuramu & Company and as such the doctrine of privity to contract barred the claim because there was no contract between the Applicant and the Respondent.

38. **Section 65 of the Contracts Act, 2010 provides that;** (1) Subject to this Act, a person who is not a party to a contract may in his or her own right enforce a term of the contract where—(a) the contract expressly provides that he or she may do so; or (b) subject to subsection (2), a term of the contract confers a benefit on that person.

40. The doctrine of **privity of contract** is a common law principle that provides that a contract cannot confer rights or impose obligations upon anyone who is not a party to that contract.

41. As a general rule, a contract cannot confer rights or impose obligations arising under it on any person except the parties to it (see **Dunlop Pneumatic Tyre Co Ltd v. Selfridge Ltd [1915] AC 847**). The doctrine is to the effect that (i) a person cannot enforce rights under a contract to which he is not a party; (ii) a person who is not a party to a contract cannot have contractual liabilities imposed on him or her; and that 25 (iii) contractual remedies are designed to compensate parties to the contract, not third parties. The doctrine of privity prevents a third party from suing on a contract to which he or she is not a party (see **Gulf Cross Ltd & Another v Shree Hari Tiles Ltd CS No.0753 of 2018**)

42. However, the case of **Drive Yourself Hire Co (London) Ltd v Strutt: CA 1954** created an exception with Lord Denning MR stating: '.....it was settled law that, if a promise in a simple contract was made expressly for the benefit of a third person in such circumstances that it was intended to be enforceable by him, then the common law would enforce the promise at his instance, although he was not a party to the contract.'

43. In **Marchinston v. Vernon (1787) 1 Bos. & P. 101 n. (c); 126 E.R. 801 n.** Buller J. said that, independently of the rules prevailing in mercantile transactions, if one person makes a promise to another for the benefit of a third party, the third party may maintain an action upon it.



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44. Further still, the policy in issue is a professional Indemnity insurance policy which is an agreement wherein one party guaranteeing compensation for losses or damages incurred by another. Professional indemnity insurance, by its nature, is a form of insurance that indemnifies professionals against claims arising out of actual or alleged negligence by the professional, instituted against them by third parties (the beneficiaries of the professional's services).
45. Professional indemnity therefore covers claims in tort, particularly negligence i.e. those who contract to exercise their skills are aware that third parties who suffer loss may have a cause of action in negligence. A person making a negligent misrepresentation could owe a duty of care to a third party suffering economic loss through reliance on that statement (**see Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd 1964 AC 465**)
46. The insurance policy in the instant case was obtained by the insured Katuramu & Co. for the benefit of third parties who relied on its professional skill to provide a service.
47. Mr. Nicholas K. Ssali, the Managing Director on behalf of the insured signed valuation reports confirming the values of the properties in contention to the best of his knowledge and skill. The Respondent relying on his knowledge and skill extended credit facilities based on the valuation reports. According to **RW 1 Mr. Emmanuel Semanda** – Manager Credit & Evaluation, the Respondent stated that Katuramu & Co. was one of the pre-qualified valuers given the duty and mandate to give professional advice to the bank. The reports were later found to be misleading as in some cases properties that did not belong to the mortgager and had higher values, others had no developments at all while others had squatters. The Respondent could not foreclose and suffered financial loss.
48. When someone hires a professional, they expect a higher duty of care due to the specialized skill possessed by the professional. The said Mr. Ssali admitted to signing the reports negligently without verifying the contents breached the duty of care to the Respondent.
49. The complaint to the IRA was proper as the third party is the ultimate beneficiary of the claims laid against the insured for professional negligence. The beneficiary would suffer economic loss as a result of the negligence and it would create an absurdity to lock such a party out.
50. Furthermore, there are statutory exceptions to the doctrine of privity to contract. In this case, the Respondent cited **Section 12(1) (j) and (k) of the Insurance Act, 2017** which allows the authority to receive and resolve insurance-related complaints by


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members of the public. Under **Guideline 6 of the Complaints Bureau Guidelines**, any affected person including a third party and beneficiary of an insurance policy can lodge a complaint before the IRA.

51. Unlike the Courts of law where procedures of third-party notices ought to be followed to the letter, a complaint before the Bureau is not flawed for having been filed by a third party under Section 12 of the Insurance Act, 2017 and Guideline 6. We therefore find that the Respondent has the locus to claim for the negligent acts of the insured.

52. We resolve this issue in the affirmative.

Issue Three - Whether or not the claims by the Respondent are payable? And issue four whether the insurance contract between the insured and the Appellant was ambiguous and full of contradictions? Will be handled concurrently.

53. It was Counsel of the Respondent's submission that the policy in contention was a 'hybrid' policy i.e. it contained both occurrence and claims made policies. His argument was based on the fact that the only policy in issue was the first policy obtained on 23rd March 2019 and all subsequent policies were renewals of the same policy therefore the only retroactive date was 23rd March 2019. It was his view therefore that setting a different date for each renewal was erroneous.

54. We reviewed all the policies and endorsements and found the following:

55. **Original Policy** - cover period of 23rd March 2019 to 22nd March 2020. The following provisions in the policy are key to the issues at hand:

1. Page 3 **PROVIDED** that any claim in respect of such liability as may arise under this policy must arise within the period of insurance (inclusive of the Retroactive date) or within six months of the policy lapsing or cancellation of this policy.
2. Page 8 **EXTENDED CLAIM CLAUSE** "In the event of non-renewal or cancellation of the policy by either the insurer or by the insured, the insurer will allow a time limit not exceeding 6 months from the date of expiry or cancellation of the policy, for notification of claims which had occurred during the policy period...."

56. The policy therefore had a retroactive date which is a specified date the policy provided coverage if an incident occurred and an extended reporting period which covered cover for claims made during a specified time after your policy expires and in this case it was six months.

57. **Endorsement Advice one** - indicated the policy to be a renewal for a period from 1st September 2021 to 31st August 2022.



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58. **Endorsement Advice two** – indicated the endorsement type to be a renewal for a period from 1st September 2021 to 31st August 2022.
59. We are inclined to emphasize the difference between occurrence-based policies vis-à-vis claims-based policies. Occurrence-based policies cover incidents that occur during the policy period, regardless of when the claim is made. On the other hand, claims-made policies provide coverage that is triggered when a claim is made against the insured during the policy period (or during the extended reporting period if the policy has expired, and there is no successive policy), regardless of when the wrongful act that gave rise to the claim took place. These typically have a retroactive date, which is a provision that eliminates coverage for claims produced by an injury or wrongful acts that took place before a specified date, even if the claim is first made during the policy period. Professional indemnity policies as in the case at hand are normally written on a claims-made basis so that the policy will respond if the third party makes a claim against the insured during the currency of the policy even though the events giving rise to the claim arose at some earlier date. **See: Halsbury's Laws of England Vol 60 on Insurance Para. 669.**
60. Whereas, the Respondent argues that this is an occurrence-based policy or hybrid policy, we have failed to find such a provision in the contents of the policy. Each endorsement advice at renewal indicated a distinctive cover period for each policy and we can not find a basis for the argument that there was only one retroactive date of 23rd March 2019.
61. We now proceed to analyze the six claims starting with the property comprised in Block 199 Plot 105 Mabombwe Wakiso mortgaged by Nanyonjo Christine which property was valued on 27th November 2020 yet reported on 10th November 2022. This was outside the timelines for reporting the claim as its renewal period has since lapsed as of 22nd March 2022. We therefore agree with the findings of the IRA Complaints Bureau in that respect.
62. Equally, the property mortgaged to Akamba Emmy was valued on 25th May 2021 and its claim date was 10th November 2022, which claim also fell within the 1st renewal period ending 22nd March 2021. This claim was thus outside the scope of the extended discovery period as well. We therefore find no fault in the decision made by the complaint's bureau.
63. The claim made in respect of the mortgage by Mirembe Lydia vide; the property comprised in Bweya Block 537 Plot 248 and Kilinya Block 234 Plot 6297. According to the report, the valuation thereof took place on 5th April 2019 and 28th May 2020

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respectively all of which were only reported on 10th November 2022 which date was after the extended discovery period ending 31st August 2022.

64. A valuation done on 1st February 2021 in respect of the property mortgaged by Butswa Electric and Automation Contractors Ltd was only reported on the 10th of September, a date shortly after the expiration of the extended discovery period ending 31st August 2022 thus being time-barred. We do not differ from the findings of the IRA in that respect and we uphold the said findings.
65. The property mortgaged by Ssekabira Hassan does not differ from the findings of the complaint's bureau and we hasten to add that this valuation which was done on 3rd December 2019 was reported after two (2) years in November 2022 long after the expiry of the reporting period for which no claim can succeed.
66. Not different from the view taken by the Complaint's Bureau of the IRA we agree that the Bureau rightly found that the property mortgaged by Ssimbwa Robert whose valuation was 23rd August 2021 and 21st September 2021 but reported 10th November 2022 both claims totaling UGX 2,016,448,996 were brought within time.
67. In his submission Counsel for the Applicant agreed with the finding that the valuation for the property mortgaged by Ssimbwa Robert was made during the relevant reporting period, but argued that it was not covered for fraud.
68. **Justice Bart M. Katureebe** in the case of **Fredrick Zabwe & Ors v Orient Bank & 5 Ors UGSC** held that "Allegations of fraud need to be fully and carefully inquired into. Fraud is a serious matter, particularly where it is alleged that a person lost his property as a result of fraud committed upon him by others." The court in the same decision defined **Fraud** according to the **BLACK'S LAW DICTIONARY 6th Ed page 660** to mean "An intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right...."
69. Furthermore, the court defined the word **fraudulent** according to the **Black's Law Dictionary** to mean "To act with intent to defraud means to act willfully and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself.
70. The court in the **Frederick Zabwe** (supra) cited the case of **Kampala Bottlers Ltd v Damanico (U) Ltd (S.C. Civil Appeal No 22/1992)** where **Wambuzi C.J** stated that "...it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters.

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71. It was Mr. Ssali's evidence that it was his employee Kakaire who visited the properties and prepared the valuation reports. He testified that though he didn't inspect the properties, he signed on the reports believing the same to be true and only discovered later that some properties were overvalued and some mistakenly put on wrong plot numbers.

72. Counsel for the Applicant did not particularize the fraud by Mr. Ssali and we find that the allegations of fraud by Mr. Ssali are not strictly proved. From the evidence on record, it was glaringly the negligence of the insured in the execution of its duties that led to the claim on the balance of probabilities.

73. On the other hand, there was a consistent finding in all the loss assessment reports (Exhibit...) that there was fraud abinitio orchestrated by the bank clients working with Mr. Kakaire James an employee of Katuramu & Company to falsify valuation reports. Dishonesty, fraud, and malicious actions of the employee of the insured are covered under the policy in the amendment of the dishonesty exclusion clause.

74. On the issue of whether the insurance contract between the insured and the Appellant was ambiguous and full of contradictions. It is our finding the policy was clear as it distinctively had provisions that indicated that it was a claim-based policy.

75. On the argument by Counsel for the Respondent that the Claims Series Clause in the policy allows a series of losses directly or indirectly attributed to the same cause to be treated as one claim, it is our considered finding that a claim series clause applies to two or more claims arising from a single common cause. Having found that the claims in issue were substantially distinct in terms of values of the subject properties with distinct mortgagees, locations, dates, and securities, the claims series clause does not apply in the circumstances.

76. In conclusion, we therefore find that the Respondent's claim is payable and accordingly upholds the findings and directions of the Insurance Regulatory Authority.

Resolution of Issue Five: What remedies are available to the parties herein?

77. Having found that the Claim is payable, we direct the insurer to assess and pay the claim.

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CONCLUSION AND FINAL ORDERS

78. The Tribunal makes the following orders:

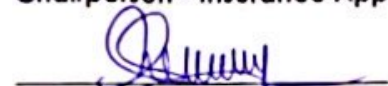
- 1) This appeal wholly fails.
- 2) The cross-appeal also fails in whole.
- 3) The decision of the Insurance Regulatory Authority is upheld.
- 4) The Applicant is directed to pay the Respondent the adjusted loss amount of Ugx.1,905,148,996 subject to policy terms and conditions within 30 days
- 5) Each party shall bear its costs in both the appeal and cross-appeal.

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

DATED and DELIVERED at KAMPALA on the 1st day of August _____ 2024.



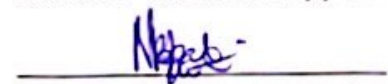
Rita Namakiika Nangono
Chairperson - Insurance Appeals Tribunal



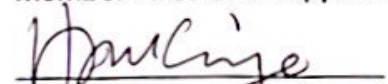
Solome Mayinja Lwaga
Member - Insurance Appeals Tribunal



George Steven Okoth
Member - Insurance Appeals Tribunal



John Bbale Mayanja (PhD)
Member - Insurance Appeals Tribunal



Harriette Nabasiye Paminda Kasirye
Member - Insurance Appeals Tribunal