THE REPUBLIC OF UGANDA
THE INSURANCE APPEALS TRIBUNAL AT KAMPALA
APPLICATION No. 07 of 2024

FIREWORKS ADVERTISING UGANDA LIMITED::APPLICANT

-VERSUS-

CIC GENERAL INSURANCE UGANDA LIMITED:::RESPONDENT

(Appeal arising from the decision of the Insurance Regulatory Authority dated and delivered on 30th April 2024)

CORAM; MRS. RITA NAMAKIIKA NANGONO - CHAIRPERSON
MR. GEORGE STEVEN OKOTHA- MEMBER
MRS. SOLOME MAYINJA LUWAGA – MEMBER
DR. JOHN BBALE MAYANJA – MEMBER
MS. HARRIETTE NABASIRYE PAMINDA KASIRYE –MEMBER

DECISION

1.0. BRIEF BACKGROUND OF THE COMPLAINT AND APPEAL

1. Fireworks Advertising Uganda Limited, the "Applicant" held an "All Risks" insurance policy with CIC General Insurance Company Ltd, the "Respondent" herein the policy covered computers and other equipment for the period 7 September 2021 to 6 September 2022, with coverage for theft and other risks. The Applicant initially operated from Nyonyi Gardens, Wampewo Avenue, Kololo. In late December 2021, the company began relocating its premises to Ntinda II Road, Naguru, completing the move by 7th January 2022. The Applicant informed the Respondent about the change of premises on 7th January 2022, after the relocation.

2. On 3rd January 2022, during the relocation period, unknown individuals broke into the new premises at Ntinda II Road, Naguru, and stole equipment, including 7 iMac computers and 3 laptops, valued at UGX 76,510,897. The Applicant reported the burglary to the Uganda Police, which confirmed the break-in through visible and forcible entry.

3. The Applicant submitted a claim for indemnification to the Respondent on 6th January 2022. However, the Respondent denied the claim on the following grounds that; there was no theft within the meaning of the insurance policy, the Applicant breached the geographical area clause of the policy by relocating the premises, and the Applicant's notification of the change of location was late, amounting to material non-disclosure. The Applicant lodged a complaint with the Insurance Regulatory Authority Complaints Bureau (IRA) on the grounds that the Respondent wrongfully refused to indemnify the loss.

4. In its ruling delivered on 30th April 2024, the IRA ruled that: the burglary constituted a theft under the terms of the policy, the Applicant breached the insurance contract by failing to notify the Respondent about the premises change in a timely manner, justifying the Respondent's denial of the claim.

5. Dissatisfied with the IRA's decision, both parties appealed whereof the Applicant seeks to overturn the IRA's ruling that non-disclosure of the premises shift justified the denial of their claim. On the other hand, the Respondent cross-appealed, contesting the IRA's finding that there was a theft under the insurance policy.

6. On 18th July 2024, both parties agreed on the facts that, the Applicant had an "All Risks" insurance policy, the burglary occurred on 3rd January 2022 and that the Applicant notified the Respondent of the change in premises on 7th January 2022, and the Respondent issued an endorsement policy on 10th January 2022.

2.0. GROUNDS OF APPEAL and CROSS APPEAL/ISSUES FOR DETERMINATION

i. The Applicant filed the instant appeal on grounds that; the Complaints Bureau erred in law and fact when it misinterpreted Clause 10 of the policy, thereby erroneously concluding that the Applicant did not notify the Respondent of the change in premises.

ii. The Complaints Bureau erred in law and fact when it found that the shift in premises from Kololo to Naguru was a material fact.

iii. The Complaints Bureau erred in fact when it failed to consider the specific circumstances of the period during which the Applicant undertook the change in premises, thereby arriving at an erroneous conclusion and;

iv. The Complaints Bureau erred in law and fact when it found that the Applicant is not entitled to claim indemnity under the policy.

7. Having been dissatisfied by part of the decision of the IRA, the Respondent equally filed a Cross Appeal before this Tribunal on the ground that;

8. The IRA erred in law and fact when it found that there was a theft within the meaning of the 'All Risks' Insurance Policy.

9. At the scheduling of the matter before us, the agreed issues for resolution as constituted in the grounds of appeal are;

i. Whether the Applicant's claim is payable and;

ii. What remedies are available to the parties?

3.0. REPRESENTATION AND APPEARANCE

10. At the hearing of the Appeal before us, Counsel Okoka Jeremiah Emmanuel, and Mary Adikin of OS Kagere Advocates jointly appeared for the Applicant and Counsel Paul Kaweesi, Primrose Nabisere and Rose Nangendo from Libra Advocates appeared for the Respondent.

4.0. APPLICANT'S SUBMISSIONS

11. In the Applicant's submissions in support of the Appeal, the Applicant raised an issue pertaining to the allegation that it failed to notify the Respondent of the relocation of premises and that such omission constituted a material non-disclosure.

12. Counsel submitted that the Applicant notified the Respondent of the change of premises within a reasonable time, and as such, there was no material non-disclosure. The claim remains valid under the policy's geographical area and transit & away clauses.

13. On whether there was theft within the meaning of Clause 10 of the policy, counsel submitted that Clause 10 of the policy defines theft as theft following office/housebreaking causing actual, forcible, visible damage to the premises. That the elements required to prove theft, including deprivation of property, office breaking, and visible damage to premises, are met in this case.

14. Further that in relation to the deprivation of property that there was uncontroverted evidence showing that a break-in occurred at the Applicant's premises on the night of 3rd January, 2022, with several computers stolen, as corroborated by police reports dated 12th January, 2022, and 15th June, 2023 counsel referred us to ***Exhibit AX6 at pages 21, 23, 24 of the Applicant's Trial Bundle.***

15. That while the Respondent denies the theft, they failed to provide evidence to support this denial. Counsel therefore submitted that uncontroverted facts are deemed admitted counsel relied on the case of ***Vambeco Enterprises Ltd v. Attorney General (Miscellaneous Application No. 265 of 2014)***.
16. It was submitted that there was visible damage to the premises since the thieves accessed the Applicant's premises by breaking a window latch, as stated in the police report dated 15th June, 2023 which appeared as Exhibit AX6, page 24 of the Applicant's Trial Bundle. In addition that the testimony of AW1 (Frank Muthusi) confirmed the damage, which was not controverted by the Respondent, making it admissible evidence, to support this argument counsel referred to the case of ***Vambeco Enterprises Ltd v. Attorney General.***

17. On the question of minimal damage and in line with the case of ***Dino Services Ltd v. Prudential Assurance Co. Ltd (1989) 1 All ER 422,*** counsel submitted that even minimal damage, such as a broken latch, qualifies as forcible entry under the policy.

18. Whereas the Respondent argued that the Applicant was negligent having failed to secure the windows, the Applicant averred that such fact was unsubstantiated based on the evidence led by AW2 (Francis Kasura) and AW3 (Adonia Ayebale) who confirmed that the windows were checked and locked before the incident. Additionally, that the Applicant had hired KK Security Services to ensure the premises' safety.

19. The Applicant also identified flaws in the Respondent's evidence particularly pointing to the testimony of RW1, it was submitted that the Respondent's expert witness, admitted he lacked qualifications to conduct a criminal investigation, making his testimony unreliable. Secondly, that RW1's contradictory statements and lack of evidence further undermine the Respondent's defense. That the Respondent's photographic evidence presented by RW3 constitutes hearsay, as the witness did not visit the premises nor verify the authenticity of the photographs counsel referred to Exhibit REX2 at pages 25-26. The Applicant urges the Tribunal to rely on the police reports and disregard the Respondent's unreliable and unverified evidence.

20. The Applicant avers that the notification of relocation was made within a reasonable period. The relocation was not a material fact that would void the policy, as it did not affect the risk assessment or the validity of the claim. In conclusion, the Applicant prays that the Tribunal finds in favor of the Applicant on all issues raised, acknowledging the occurrence of the theft, the forcible damage, and the adequacy of the notification regarding the relocation of the premises. The Respondent's reliance on unsupported and contradictory evidence should be dismissed.

21. That under clause 10 of the insurance policy, the Applicant was required to notify the Respondent of any material alterations in the circumstances. However, the policy did not specify a time frame for such notification. The Applicant avers that evidence was led through witnesses (AW1 Frank Muthusi and AW2 Francis Kasura) that notification of the office relocation was sent via email on 7th January, 2022, 6(six) days after the move began.

22. That in light of the Respondent's evidence, the Respondent's witness RW2-Joselyn Arinaitwe contradicted herself by first denying and later admitting that the Applicant notified them of the move after relocation. That this inconsistency undermines the Respondent's credibility. Further that the Applicant argues that the notice was served within a reasonable time as required by law, citing ***Nowak v. United Serv. Auto. Association,*** where a four-week delay was deemed reasonable. The Respondent's issuance of an endorsement policy after the notification supports the Applicant's claim of timely notice.

23. On the aspect of materiality of the change of location, the Applicant contends that the office relocation was not a material fact affecting the risk insured. According to ***National Insurance Corporation Ltd v. Kakugu Sylvan,*** material facts are those that significantly influence the underwriting process. The Respondent issued the endorsement policy without altering any terms or premiums, indicating that they did not consider the relocation a material change.

24. That the policy's "geographical area clause" and "transit and away from premises clause" provided coverage for portable items, including computers, which had worldwide coverage. Therefore, the relocation was anticipated and did not alter the nature of the risk. In its submissions the Applicant also argued that the Complaints Bureau wrongly focused on clause 10 of the policy (material alteration) without considering other provisions, particularly the "Transit and Away from Premises" clause, which provides coverage for loss of insured property even if it occurs at premises not stated in the schedule. The Applicant further contends that any ambiguity in the policy should be interpreted in favor of the insured, citing ***National Insurance Corporation Ltd v. Kakugu.***

25. In light of the geographical area Clause the Applicant claims that their loss is also valid under the "geographical area" clause, which provides worldwide cover for portable items. During cross-examination, RW2's testimony regarding the non-portability of the equipment was not credible, and no concrete evidence was presented to contradict the Applicant's claims. The Applicant prayed that the Tribunal confirms that there was theft within the meaning of the policy, and that the claim is valid under the "geographical area" and "transit and away from premises" clauses and that this Tribunal sets aside the Complaints Bureau's finding of material non-disclosure, find that the Applicant notified the Respondent in a reasonable time, and direct the Respondent to indemnify the Applicant for its losses.

5.0. RESPONDENT'S SUBMISSION

26. On the contention as to whether theft occurred within the meaning of the insurance policy, the Respondent asserts that the Applicant failed to prove theft as defined in the policy, which requires "actual forcible visible damage" to the premises. They argue that none of the Applicant's witnesses or evidence (including police reports and assessor findings) sufficiently demonstrated that force was used to break into the premises or that any visible damage occurred.

27. Further that there are several contradictions pointed out in the police reports. The preliminary police report mentioned no damage to the back window, while a later report referred to a broken latch, leading to doubts about the consistency and accuracy of the evidence. That the Assessors' reports revealed no signs of forcible entry or property damage, further undermining the Applicant's claim.

28. That there was non-disclosure of material alterations to the insurance contract and therefore, the Respondent contends that the Applicant failed to disclose its relocation from Kololo to Naguru, a material fact that should have been communicated to the insurer. This failure to disclose, according to the Respondent, allowed them to avoid the contract under the insurance policy. It is argued that the Applicant's notification of the relocation by email on 7th January 2022 was delayed and that it should have occurred before or during the move, not after the purported theft.

29. Finally, the submission questions the authenticity of the Applicant's evidence regarding the stolen items, particularly the computer invoices. Various discrepancies in the invoices raise doubts about their reliability, leading to the conclusion that the Applicant failed to prove the value of the alleged stolen equipment. Consequently, the Respondent prayed that the Tribunal dismisses the Applicant's appeal with costs.

6.0. APPLICANT'S SUBMISSIONS IN REJOINDER

30. The Applicant disagrees with the Respondent's claim that theft was not proven under the policy. Reaffirming their earlier submissions responded that there are two types of burdens of proof: the legal burden, which remains on the plaintiff, and the evidential burden, which shifts based on the facts presented by both sides counsel made reference to the case of ***Kabaco (U) Ltd v. Turyahikayo Bonny*** **(Civil Suit No. 14 of 20213.**

31. Counsel argued that the Applicant fulfilled both burdens. Specifically, that the Applicant's witnesses, Frank Muthusi (AW1) and Francis Kasura (AW2), testified that the window latch was broken by thieves to gain entry, corroborating their witness statements. Secondly, that the preliminary and final police reports, dated 12th January 2022 and 15th June 2023 respectively, confirm forceful entry, where thieves scaled the perimeter wall, broke the window latch, and stole the Applicant's property. The final police report provides more detailed conclusions.

32. That contrary to the Respondent's claim, the police considered forceful entry early on. The Respondent's loss assessor, Multiple Consult Network, interviewed the investigating officer, Mr. Mwangu David, in 2022. Mwangu confirmed that the window's locking system was tampered with to gain entry. It was the Applicant's contention that the Respondent had an opportunity to interrogate the police through their loss assessors but chose not to do so. That it was therefore inappropriate for the Respondent to attempt further investigation via submissions.

33. The Respondent's witnesses did not meet the evidential burden to prove the absence of damage to the premises, and their submissions overlooked the unique design of the Applicant's sliding windows, which the Complaints Bureau acknowledged in their ruling. The investigation by Claim Care commenced 4(four) days after the theft, which occurred on 3rd January 2022. Between 3rd January and 7th January, the Applicant had to secure the premises by repairing the broken window latch to avoid further incidents. It was unrealistic to expect the premises to remain in the same condition until the Respondent's investigators arrived. The Applicant submits that theft was proven under the policy and prayed that the Tribunal to uphold this finding.

34. In rejoinder to the Respondent's submission on the claim of non-disclosure of the change in location, the Applicant urges the Tribunal to handle the Respondent's submission on this issue with caution. That the Respondent has admitted and denied receipt of the Applicant's notice of change in location at different points in its pleadings and submissions, attempting to distort the facts. The Applicant further reiterated that there was no specific time requirement within the policy for notifying the insurer of the change of premises and that during cross-examination, RW2 (Joselyn Arinaitwe) acknowledged this.

35. Counsel for the Applicant also pointed out the fact that he Respondent's denial of any relationship with their agent, Timothy Enock, contradicts its own cross-examination admissions. The fact that an endorsement policy was issued to the Applicant shows that the Respondent received the change of location notice. That the Respondent misinterpreted the Applicant's use of the word "mandated" to mean "material." Furthermore, had the change of premises truly been a material fact, the policy would have stipulated a timeframe for notification, which it did not.

36. The Applicant emphasized that the clause regarding notification only applies to significant changes that increase the risk of loss. The fact that no premium adjustment was made following the change in location indicates that the risk remained unchanged. The policy's provisions for portable items under the geographical area and transit clauses demonstrate that the change in location was immaterial.

37. On the evidence of purchase of stolen items, the Respondent challenges the validity of the Applicant's invoices that are exhibited as Exh. AX7 due to inconsistencies in the supplier's details. However, the Applicant contends that the invoices are reliable for determining the value of the lost items for reasons that; the same invoices were presented to the Respondent at the time the policy was obtained and were accepted as sufficient proof for providing coverage.

38. That the Respondent's investigators, Claim Care, verified the authenticity of the invoices. The supplier explained the mismatch in invoice numbers as a printing error, further confirming their legitimacy. Further that the authenticity of the invoices was not disputed before the Complaints Bureau, making the Respondent's current objections an afterthought. That therefore the Respondent is now estopped from questioning the invoices' validity, having previously investigated and confirmed their authenticity.

39. In rejoinder to the contention as to the incompleteness of the claim form whereas the Respondent argued that the claim form should be disregarded because it was neither signed nor dated. The Applicant asserts this is an afterthought, as the Respondent never raised this issue in earlier proceedings or during the hearing.

40. The Applicant further submitted that the claim form (AX4) was completed with the assistance of the Respondent's agent, Claim Care, at the time of lodging the claim. It was the responsibility of the Respondent to ensure the form was properly filled out. Further that the Respondent had ample opportunity to request that the form be signed and dated but chose not to do so, thus waiving its right to challenge it on this basis.

41. In conclusion, the Applicant reiterated its previous submissions and prayed that the Tribunal finds that the Respondent erred in repudiating the claim and prayed that the Tribunal rules in the Applicant's favour.

7.0. DETERMINATION BY THE TRIBUNAL

42. This Tribunal is tasked with determining whether the Applicant's claim for indemnity under the insurance policy is valid, specifically addressing two primary issues: the occurrence of theft within the meaning of the policy, and the allegation of non-disclosure of material facts, particularly the Applicant's relocation of premises. The submissions by both the Applicant and the Respondent have been considered, alongside the relevant case law and evidence presented.

ISSUE ONE - Whether the Applicant's claim is payable?

43. We shall break this issue into two sub issues as below;

a) The first question is whether the Applicant's claim falls under the definition of theft as stipulated by Clause 10 of the insurance policy, which requires "theft following office/housebreaking causing actual forcible visible damage" to the premises.

44. The Applicant's position is that a theft occurred on the night of 3rd January, 2022, when multiple computers were stolen following a break-in, as evidenced by police reports and witness testimonies. The Respondent, however, disputes that the theft occurred, arguing that there was insufficient evidence of "actual forcible visible damage" as required by the policy.

45. This Tribunal has carefully analyzed the evidence, particularly the police reports dated 12th January 2022 and 15th June 2023 ***(Exhibit AX6)***, which detail a break-in through a broken latch. Witness testimonies, such as that of AW1 (Frank Muthusi), confirmed visible damage to the premises. The law on witness disqualification allows for preclusion of witness evidence where the witness does not bear the relevant qualifications. Such preclusion may be justified where the witness is found to be incompetent or where their evidence is found to be irrelevant. ***See; Sections 119 to 128 of the Evidence Act Cap 8.***

46. The Respondent's expert witness, RW1, admitted lacking qualifications to conduct a criminal investigation, undermining the credibility of the Respondent's position. No one may be allowed to give evidence as an expert unless his or her profession or course of study gives him or her more opportunity of judging than other people. ***See; R v. Silverlock [1894] 2 Q.B. 766).***

47. Unless his or her attendance is waived by the opposing party, the expert witness must be subjected to cross-examination in Court. Mere submission of opinion by an expert through any certificate or any other document is not sufficient. Although expertise could be gained from either a field of study or as a result of practical experience, before a Court admits evidence of an expert it must be satisfied that the witness has the appropriate expertise. The Court is expected to rule on the qualifications of an expert witness, relying mainly on what the expert himself or herself explains. In the instant case that expertise was not established by evidence.

48. Moreover, the Respondent's photographic evidence, as argued by the Applicant, constitutes hearsay since RW3 did not visit the premises to verify the authenticity of the photographs. RW3's photographic evidence constitutes hearsay since they did not visit the premises to verify the authenticity of the photographs. Hearsay evidence has been addressed to the extent that its admissibility into evidence as enunciated in the case of ***Des Raj Sharma v. R [1953] EA 512***: This case underscores that hearsay evidence, which is not subject to cross-examination, cannot be relied upon to prove the truth of the matter asserted. In the present context, since RW3 did not personally visit the premises, they could not verify or authenticate the photographs, making their testimony regarding the photographs hearsay and inadmissible by this Tribunal.

49. In any case, the Supreme Court has highlighted the importance of personal knowledge in giving testimony. In light of Section 59 of the Evidence Act Cap 8 oral evidence must be direct, and Section 60 thereof states that "Oral evidence must, in all cases whatever, be direct; that is to say if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw it. Therefore, witnesses must give direct evidence based on what they personally observed or verified, and evidence based on information from other sources without personal verification is hearsay. ***See; Sejjaka Nalima v. Rebecca Musoke, SCCA No. 12 of 1985.***

50. Photographic evidence must be authenticated by the photographer who took them or by a person present when they were taken and who can testify to their accuracy. Equally, for documentary or electronic evidence to be admissible, it must be properly authenticated by a competent witness who can attest to its originality and accuracy. ***See; Uganda v. Sebyala & Others [1969] EA 204 and Uganda v. Kato Kajubi [2012] UGCA 36***

51. These cases highlight the importance of authentication of evidence by someone with direct knowledge. Since RW3 did not visit the premises and cannot attest to the authenticity or accuracy of the photographs, his testimony regarding the photographs amounts to hearsay.

52. The case of ***Munyindo Nsiimire v. Gordon Sentiba & Anor (Civil Appeal No. 92 of 2008)*** reaffirmed that evidence not personally witnessed by the party offering it is inadmissible unless it falls within a recognized exception to the hearsay rule. In light of these precedents, the testimony of RW3 regarding the photographs cannot be considered reliable, as they failed to personally visit the scene and confirm the accuracy of the evidence. Thus, RW3's statements are hearsay and should not be relied upon in adjudicating the case.

53. On the Applicant's claim that minimal damage qualifies as forcible entry. We agree with the submission of counsel in light of the case of ***Dino Services Ltd v. Prudential Assurance Co. Ltd (1989) 1 All ER 422***, wherein the court held that even minor damage, such as a broken latch, constitutes forcible entry. In this case, the breakage of the latch is sufficient to meet the policy's requirement of "forcible visible damage." The Tribunal also considers the uncontested police reports as reliable evidence. The Applicant has demonstrated deprivation of property, office breaking, and visible damage, which are the key elements required to prove theft under the policy. Therefore, this Tribunal finds that theft, as defined by the insurance policy, did occur. The Applicant's claim satisfies the conditions of Clause 10, and the argument that the Respondent failed to provide sufficient evidence to rebut this claim is persuasive.

54. The above grounds therefore fail to the extent that there was no error made by the Complaints Bureau in finding as it did that there was theft within the meaning of Clause 10 of the policy.

b)* The second sub issue is *Whether the Applicant failed to disclose material facts (on the relocation of premises)

55. The Respondent asserts that the Applicant's failure to notify them of the office relocation constitutes material non-disclosure, which would render the insurance contract void. The Applicant, however, maintains that the relocation was communicated within a reasonable time and that it did not affect the risk assessment or validity of the claim.

56. There is a strict requirement for utmost good faith in insurance contracts and this principle applies to and has consequences to both parties. The contract of insurance was made to ensure that the Respondent is compensated in case of theft, so therefore it did not make sense to it that the Applicant could turn around and rely on exclusion clause to avoid liability.

57. It is trite law that insurance contracts are governed by a higher standard of utmost good faith (uberrimae fidei) which does not apply to other contracts. In the leading case of ***Carter V Boehm (1966) 97 ER 1162*** Lord Mansfield stated that:

58. "***If the true facts are concealed in any way, whether fraudulent or not, then the risk taken by the insurers may be different from the risk they intended to take in which case the policy would be void. This was seen as a natural consequence of an imbalance of knowledge under which the Insured (usually) has sole knowledge of most of the key information which should form the basis for a risk assessment by the Insurer.***"

59. The general principle of good faith is affirmed in our S. 17 of the Marine Insurance Act 2002 which is also applicable to ordinary Insurance business as per the case of ***Orient Insurance Brokers Ltd V Transocean (U) Ltd SCCA 55/1995.***

60. The Act spells out that the requirement of utmost good faith must be observed by both parties. It states: ***"A contract of Marine Insurance is a contract based upon the utmost good faith, and if the utmost good faith is not observed by either party, the contract may be avoided by the other party."***

61. The general duty of good faith manifest itself in at least two important respects:

1. A positive duty to disclose material information; and
2. A duty not to make any material misrepresentation.

62. The concept of materiality of the change of premises can be resolved based on the fact that under the principles laid out in the case of ***Zurich Insurance Plc v Niramax Group Ltd, [2021] EWCA Civ 590*** the relocation of the insured's premises is likely to be considered a material fact. It could affect the insurer's assessment of risk, especially regarding the security of the new location, the nature of the building, or the surrounding environment. The key question is whether a prudent insurer would have altered the terms or increased the premium had the relocation been disclosed.

63. In ***National Insurance Corporation Ltd v. Kakugu Sylvan,*** material facts are defined as those significantly influencing the underwriting process. the test therefore is, did materially affect the defendant's willingness to accept the risk.

64. Where there has been a failure to disclose material information or where there has been a misrepresentation, the insurer can avoid the insurance contract or deny liability and reject the insured's claim. The disclosure need only have an impact on the formation of the prudent insurer's opinion and on his decision-making process or that the undisclosed fact could be one which a prudent insurer would want to know or take into account during his decision-making process. Besides showing that a material fact was not disclosed, it was also necessary to show that the actual underwriter in question was induced by the non-disclosure into entering into the contract on the said terms.***Pan Atlantic Insurance Co. v. Pine top Insurance Co. (1994)***

65. The duty to disclose is a precontractual duty, which may become an additional or continuous duty when it is incorporated into the contract (see Bruwer v Nova Risk Partners Ltd' 2011 SA Merc LJ 135) In case of **Jerrier v Outsurance Insurance Company Limited [2015] 3 All SA 701 (KZP) it was held that in** order to establish whether or not this was so, the court had to analyse and interpret the terms of the contract as set out in the policy. the court in this case followed a contextual approach with regard to the interpretation of the policy and the position of the insured in this regard.

66. A contextual approach would be particularly important in determining whether there was a duty on the insured to disclose and following upon this, whether non-disclosure was material. without a doubt, change of location of business is a material fact because it affects the risk significantly. The policy in question explicitly required the insured to inform the insurer of any material alterations, as outlined in Clause 10 of the policy.

67. Clause 10 provided that ***"Alteration – The insured shall notify the company in writing if the circumstances in which the insurance was entered into be materially altered and the risk of loss increased. Unless such alternations is declared to the company and its written consent to continue the insurance be obtained, the company shall not be liable for any losses arising due to any such alteration"***

68. Clause 13 of the policy explicitly states that compliance with the policy's terms is a condition precedent to liability.

69. The Applicant began a 'gradual' shift of its premises from Nyonyi Gardens on 31st December 2021, on 3rd January 2022 a theft occurred and computers and other equipment worth Ugx.76m was stolen. Notification of the move was sent via email on 7th January, 2022, 6(six) days after the move began.

70. The Applicant claims that notification of the relocation was sent within a reasonable time (six days after the move). An insured is expected to notify the insurer as soon as is reasonably practicable, especially if the relocation significantly impacts the risk profile. However, the Court has held in the case of ***Berkshire Assets (West London) Ltd v AXA Insurance UK Plc [2021] EWHC*** that there is need to assess whether the delay materially affected the insurer's position or ability to assess the risk in time.

71. We are persuaded by the Applicant's reliance on the case of ***Nowak v. United Serv. Auto. Association***, where a four-week delay was considered reasonable, further supports the argument that the six-day delay here was not unreasonable.

72. While the Respondent argues that this notification was delayed, Clause 10 of the policy requires notification of material alterations, but it did not specify a strict timeframe for the insurer to provide such notifications. Clear and precise wording in policy helps to ensure that both the insurer and insured have a common understanding of not only the coverage provided but also the terms and conditions of coverage.

73. There is an even greater need for an insurer, as one who would understand how risk and premiums are assessed, to make sure that this is understood by a prospective insured and the policy documents should consequently be clear and comprehensible. The policy should not only be couched in plain language but should be clear and specific (***Jerrier v Outsurance Insurance Company Limited supra at par 22).***

74. In this case, the wording of the policy was not specific on time lines of notification of the change in circumstances. The Respondent did not only fail to warn the insured to advise the insured what 'material alteration' amounted to but it doesn't attempt to explain what it means anywhere in the policy. Insurance policies are generally non-negotiable and the insured is not in a position to bargain with the insurer. Using the contra proferentem rule of interpretation, where the meaning of the policy wording is ambiguous, the wording of the policy must be interpreted against the drafter of the contract, here the insurer, and in favour of the other contracting party, the insured.

75. Further still, the Applicant argued that when notified of the change of location, the Respondent issued an endorsement which did not alter the terms of the policy.

76. The alteration of a risk occurs whenever something is done which affects the stipulated risk, as regards its subject matter. The alteration must be real making the risk a different risk, there is no alteration of the risk if the alteration made is one which was within the contemplation of the parties when they entered into the contract of insurance. ***See; Lord Warrington in Law, Guarantee, Trust and Accident Society v Munich Re-insurance Co [1912]1 Ch 138.***

77. In the case before us, the question of whether the Applicant's claim for indemnity is payable depends on whether the non-disclosure of the relocation significantly altered the risk assessment for the insurer. The Applicant's argument could be strengthened by demonstrating that the relocation did not materially change the risk, supported by case law such as *National Insurance Corporation Ltd v Kakugu Sylvan*, which defines material facts as those that significantly influence underwriting decisions. If the relocation did not affect the insurer's assessment, the claim should remain valid.

78. During the hearing, it was established that the Respondent issued an endorsement policy (AEX.5) on 10th January 2022. and this was after receiving notification of the move on 7th January 2022. The Respondent's witness (Joseyln Arinaitwe) confirmed that an endorsement policy was issued on the same terms as the previous one of 2021 i.e. sum insured was maintained at Ugx.212,834,793.

79. This witness also confirmed in her witness statement that the Applicant made a claim on 6th January 2022. The chronology of events i.e. claim lodged on 6th January 2022, notification of change of location given on 7th January 2022 should have alerted a prudent insurer to assess the risk before issuance of an endorsement 3 days later.

80. We are therefore in agreement with the Applicant that the endorsement negates the argument that the relocation posed a material alteration to the risk since the insurer didn't alter the terms of the policy.

81. The Applicant further argued that the "geographical area clause" and "transit and away from premises clause" provide coverage for portable items, including computers, with worldwide coverage. It is our finding that this clause is in direct conflict with the geographical area clause, which limited the insurer's liability to losses occurring at the specified location, except for portable items. The contrapreferentum rule dictates that any ambiguity in policy wording should be interpreted in favor of the insured.

82. Therefore, we find that the Respondent was not justified in repudiating the claim due to the material breach of Clause 10 of the policy.

83. This issue is resolved in favour of the Applicant.

84. Before we take leave of this issue, we must state with concern the delay by the insurer in taking a decision on the claim. In the present facts of the case, we find that the claim was rejected after 8 months from the occurrence of the accident. We appreciate that an insurer has reasonable grounds to investigate the claim given the material information needed to conclusively determine the merits of the claim.

85. However, the obligation to investigate varies and finding a balance between the obligation to thoroughly investigate a claim and not unreasonably delay payment of policy benefits may, at times, be difficult. The Consequences of slow Investigation sometimes can infer bad faith on the part of the insurer **(see APA Vs. MOIL - IAT APPLICATION No. 002 of 2023)**

86. Whereas there is no statutory period within which to pay claims, the claim must be discharged within a reasonable period. What should be a reasonable period is a matter to be considered in the facts and circumstances and in this case 8 months investigation is inordinate.

Remedies

87. Considering the facts and circumstances of this case and the authorities reviewed above, we are satisfied that the Applicant's claim is payable. We would therefore allow the appeal.

8.0. CONCLUSION AND FINAL ORDERS

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

1) This appeal is allowed.

2) The Respondent is ordered to pay the claim presented by the Applicant within 30 days.

3) Costs being at the discretion of the Tribunal, the Tribunal directs that each party bears its own costs of this Appeal.

89. 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 8th day of November 2024.

Rita Namakiika Nangono
Chairperson

Solome Mayinja Luwaga
Member

George Steven Okotha
Member

Dr. John Bbale Mayanja
Members

Ms. Harriette Nabasirye Paminda Kasirye
Member

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★ 08 NOV 2024 ★
SIGN:.....
INSURANCE APPEALS TRIBUNAL