

THE REPUBLIC OF UGANDA
THE INSURANCE APPEALS TRIBUNAL OF UGANDA
APPLICATION NO. 01 OF 2024

OPPORTUNITY BANK UGANDA LIMITED :.....APPLICANT

-VERSUS-

NIC GENERAL INSURANCE COMPANY LIMITED :.....RESPONDENT

(Appeal arising from the decision of the Insurance Regulatory Authority dated 21st
December, 2023 and delivered on 20th September, 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

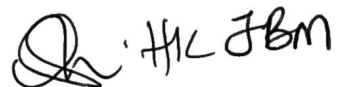
DECISION

BRIEF BACKGROUND

1. In 2018, Opportunity Bank Uganda Limited (the Applicant) and NIC General Insurance Company Limited (the respondent) entered into a Bancassurance Agency Contract, renewed after three years. Under this contract, the respondent issued policies on credit to the Applicant's customers. It was a term of the contract that the Applicant was obligated to transfer all collected premiums to the Respondent's designated bank account. However, the Applicant alleged not to have received the expected payments from its customers as anticipated. Consequently, having not received any premiums from the customers in an alleged breach of its contractual obligations, the Respondent was constrained to file a complaint with the Insurance Regulatory Authority Complaints Bureau for non-payment of insurance premiums between 2019 and 2020. In its decision, the authority directed the Applicant to pay the subject premiums plus a 9.5% interest on the amount instead of 20% interest as had been prayed for by the Respondent. While the Applicant paid the subject premiums, it contested the 9.5% interest imposed by the Complaints Bureau and requested a revision of the same. However, the Complaints Bureau upheld its decision hence this appeal.

REPRESENTATION

2. At the hearing of the appeal before us, the Applicant was represented by Doreen Esaete and the Respondents by Noah Opindeni and Lincoln Paul Kalema from Cristal Advocates.



SUBMISSIONS OF THE APPLICANT IN SUPPORT OF THE APPEAL

3. On the ground of imposition of a 9.5% interest rate Counsel for the Applicant argued that the principal amount on which the 9.5% interest rate was adjudged was unreceived premium and that it was therefore unconscionable to impose any interest thereon. Counsel referred to the Black's Law Dictionary 6th Edition, meaning and court interpretations of *the rationale for 'interest' that is to say that 'interest' is intended to compensate for the use of another's money*. That however, interest should not be harsh, morally unfair, or unconscionable.
4. To support his argument Counsel cited ***Stanbic Bank (U) Ltd vs Atyaba Agencies Ltd, H.C Misc. Application No. 235 of 2006*** to the effect that interest should be fair and not oppressive. Specifically Counsel cites His Lordship Justice Musa Ssekaana in the said case to emphasize that the interest rate in this case is excessively burdensome and unjust. This he premised on the allegation that the Applicant never received the premiums and should not be penalized with additional interest. The 9.5% interest rate is viewed as an extortionate benefit to the Respondent, violating principles of natural justice and equity, which demand fairness.
5. The Applicant cited ***Section 26(2) of the Civil Procedure Act Cap 71*** which is to the effect that where a decree is for the payment of money, the Court may order interest at such rate as it deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree. Counsel noted that the basis for awarding such interest is that one party kept another party out of its money. The awarding of interest is discretionary, and the other party, having had the use of it, ought to compensate the other.
6. However, this discretionary power is limited when the interest rate is deemed overly harsh, morally unfair, and unconscionable. Justice Fredrick's principle of unconscionability applies to instances deemed unfair or oppressive to one party. To fortify this position, Counsel relied on the decision of Justice Musa Ssekaana in ***MTN Two One Two Staff Cooperative & Credit Society Limited vs Samuel Majwega Musoke No 0082/2021*** wherein he cited a decision in ***Adams vs Samuel Majwega Musoke*** which provided that an unconscionable transaction is grossly unfair and oppressive.
7. It was argued for the Applicant that it never received the premium for 2019-2020 and yet the Complaints Bureau directed the Applicant to pay, which it did, the additional 9.5% interest rate on the unreceived premium is harsh, morally unfair, and unconscionable. Counsel relied on the holding of Justice Musa Ssekaana in ***Marvin Baryuraha vs Attorney General Misc. Cause 149/2016*** wherein it was stated that the principles of natural justice ensure fair treatment by the Authority. Counsel submitted that natural justice emphasizes fairness and justness, ensuring that equity will not suffer a wrong without a remedy. The Applicant was directed to pay unreceived premiums, which was wrong. The same award subjected the Applicant to an interest rate of 9.5% of the unreceived premium, which is unjust and wrong, leading to unjust enrichment of the Respondent.



8. Counsel therefore invited this Tribunal to overrule the 9.5% interest rate, arguing that it unfairly benefits the Respondent at the Applicant's expense. The Applicant also sought the costs of the suit, highlighting that the imposition of the interest rate is an unreasonable and unjust enrichment of the Respondent.

RESPONDENT'S SUBMISSIONS IN REPLY

9. Counsel for the Respondent contended that the Applicant was bound by explicit obligations under both statutory law and the Bancassurance Agency Agreement to promptly remit collected insurance premiums. Citing **Section 90(3) of the Insurance Act, 2017 (now Section 89(3) of the Insurance Act, Cap 191)**, they emphasized that an insurance broker or agent who receives premiums must "immediately but not later than the next working day from the date of receipt" remit these to the insurer without deductions. This duty was further reinforced under **Article 6(1)(f) and Article 7(1) of the Bancassurance Agency Agreement**, obligating the Applicant to remit all collected premiums to the Respondent's account upon collection.
10. The Respondent asserted that in 2019, the Applicant had clearly instructed the renewal of insurance covers for their customers, promising to pay the premiums on their behalf. Despite the Respondent fulfilling these renewals, the Applicant failed to remit the corresponding premiums within the agreed timeframe. This failure persisted despite multiple reminders, meetings, and reconciliation exercises aimed at resolving the matter amicably.
11. Addressing the legal ramifications, counsel highlighted **Section 90(5) of the Insurance Act, 2017 (now Section 89(5) of the Insurance Act, Cap 191)**, which stipulates that an insurance broker or agent who fails to immediately remit premiums is liable to pay both the premium and interest to the insurer, in addition to a penalty determined by the Authority. Counsel asserted that this provision underscores the principle that the award of interest serves as a penalty for the undue retention of funds and compensates the party deprived of their rightful money. For the Respondent it was concluded that this stance aligns with the dictum of **Hon. Justice G.W. Kanyeihamba JSC in Attorney General v. Virchanda Mithalal & Sons Ltd (Supreme Court Civil Appeal No. 20 of 2007)**, which elaborates on the grounds for awarding interest, including the nature of the transaction and the consequences arising from it.
12. The Respondent refuted the Applicant's claim that it did not receive any premiums from its customers, labeling this assertion as an afterthought and unsubstantiated. They pointed out that the Applicant had failed to produce any evidence, such as demand letters or communications with customers, to support this claim. Contrarily, previous communications and reconciliation meetings indicated the Applicant's acknowledgment of the owed premiums. That notably, in a correspondence (**REX 2 of the Respondent's Trial Bundle**), the Applicant stated, "We have reviewed the renewal schedule and reconciled the same accordingly. We are happy to make payment based on the reconciliation." affirming their recognition of the debt.



HK JBM

13. Furthermore, the Respondent emphasized the legal principle concerning the burden of proof, referencing Section 101 of the Evidence Act, which places the onus on the party asserting a fact to prove its existence. Citing **John Bwiso v. Patrick Yowasi Kadama (C.A.C.A. No. 35 of 2011)**, they reiterated that in civil cases, this burden is met on a balance of probabilities. Given the lack of evidence from the Applicant, the Respondent argued that the claim of non-receipt of premiums remained unproven.
14. On the matter of interest, the Respondent maintained that the rate of 9.5% per annum, as awarded by the Insurance Regulatory Authority, was both fair and in line with the prevailing Central Bank Rate (CBR). They countered the Applicant's characterization of this rate as unconscionable and extortionate, noting that while the Respondent initially sought a 20% rate, the Authority exercised discretion in awarding a lower, reasonable rate.
15. In summary, the Respondent argued that the Applicant's persistent failure to remit collected premiums constituted a clear breach of both contractual and statutory obligations, warranting the imposed interest. They deemed the Applicant's appeal to lack merit, serving merely as a tactic to evade clear legal consequences. Consequently, the Respondent prayed for the dismissal of the appeal with costs, urging the Tribunal to uphold the decision of the Insurance Regulatory Authority and affirm the enforceability of the established legal framework governing insurance transactions.

DETERMINATION BY THE TRIBUNAL

16. To place this appeal in proper context, 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 Applicant's grounds as stated in its statement of facts and reasons in support of the appeal are summarized in the issues below:
 - (i) **Whether the imposition of a 9.5% interest rate on unreceived premium was unconscionable?**
 - (ii) **What remedies are available to the parties herein?**

THE DECISION OF THE TRIBUNAL

17. The Applicant faults the complaints bureau for having awarded the Respondent interest on the allegedly unreceived premium. The IRA in its ruling made an order awarding the Respondent an interest of 9.5% of the premiums that were due to the Respondent.
18. It is not in dispute that the parties entered into a bank agency agreement "AEx....." it was a term under clause 7 of the agreement that "*All premiums and funds collected from the Bancassurance business shall be remitted by the Bancassurance agent to the Insurer's account immediately.....*"
19. The policy further provided under 7(3) that "*the Parties shall conduct reconciliations of the business booked and premiums paid not later than the last working day of each quarter of the financial year.*"

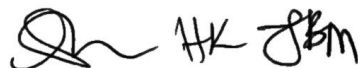
20. It was AW1 Ms. Emily Nanono's testimony that the premiums for policies issued in 2019 and 2020 were remitted in 2024 and that the Applicant Bank had never disputed the amounts during the reconciliation meetings that were held between the parties. She testified that these premiums allegedly were not collected from the clients due to the covid lockdown although when tasked to give evidence if there was any effort to collect the premiums from the customers, none was available.
21. Moreover, she admitted that through RExh.2. which is a letter from the Applicant dated March 31st 2023, the Applicant was 'happy to make payment based on the reconciliation. The reconciled amount was determined to be Ugx.85,434,251/-.
22. It is therefore our finding that from the evidence on record (RExh3, 5 and 7), the Applicant admitted to an unremitted premium of Ugx.85,434,251/- which it held for close to 5 years.
23. This then takes us to the issue of whether the award of interest of 9.5% was unconscionable.
24. Award of interest is purely based on the discretion of the Court and or terms of a contract. In the computation of the rate of interest that a Plaintiff is entitled to, one ought to consider the cost to the Plaintiff of being deprived of the money which he should have had. **See; Clessy Barya Kiiza vs Jommo Robert Kashaija & Ors; HCCS No.894/2019**
25. Additionally, **Section 90(5) of the Insurance Act, Cap 191** as cited by the Complaints Bureau in its decision and Counsel for the Respondent is indicative of interest being payable by an insurance broker on premiums that remain unremitted to the insurer.
26. The position of the law is that Interest should only be awarded in circumstances where it is equitable to do so and it's within the Court's discretion and this is the position in the case of **Attorney General v. Virchand Mithalal and Sons Supreme Court Civil Appeal No. 20 of 2007.**
27. As rightly relied on by Counsel for the Respondent, award of interest is premised upon one party keeping the other out of their money. See; **Stanbic Bank Uganda Limited v. Atabya Agencies Limited High Court Miscellaneous Application No. 235 of 2006.**
28. We find that though Court has discretion to award interest, this interest should be reasonable. An award of interest such interest must be pleaded and to award the same in the absence of such a prayer would be a mistake of law as was the case in the case of **Ecta (U) Ltd v. Geraldine Namurimu Civil Appeal No. 29 of 1994 — Supreme Court.**



29. Section 26 of the Civil Procedure Act lays down the principle which governs court in awarding interest. It provides:
2.'Where and so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of decree to the date of payment or to earlier date as the court finds fit'.
30. The general rule is that interest can only be claimed if the claim is based on an agreement for it in the document sued upon or by statute. In the instant case, the interest awarded on the premiums due to the Respondent, against the Applicant was not based on an agreement. In our view, while there was no interest stipulated under the Bancassurance contract an award of 9.5% on the premiums was not excessive. From our scrutiny and review of the proceedings of the Complaints Bureau, we find that the Respondent prayed for 20% interest. This Complaints Bureau had the discretion to award interest based on Section 90(5) of the Insurance Act or less than that which the Respondent had prayed for as long as it is not harsh, excessive and unconscionable. **See: Juma vs Habib [1975] EA 103.**
31. The principle of interest as a discretionary remedy was laid down by Lord Denning in **Harbutts Plasticide Ltd -Vs- Wyne Tank & Pump Co. Ltd [1970] 1 QB 447.** He observed:
- "An award of interest is discretionary. It seems to me that the basis of an award of interest is that the Defendant has kept the Plaintiff out of his money; and the Defendant has had the use of it himself. So he ought to compensate the Plaintiff accordingly."*
32. We agree with the above principle. In the instant case, the Applicant as an insurance broker was in the capacity of an agent whose contractual terms were clearly stipulated in the Bancassurance Agreement, and the Applicant failed to remit such a sum to the Respondent which amounted to a breach of its contractual duties.
33. As such, the Respondent was left out of the use of its money for the years 2019 and 2020. We refer to **Exhibits R2, R3, and R4** all of which reflect that the Applicant did not contest the sums due to it after reconciliation. The Applicant also agreed to pay the unremitted sums and as such after the reconciliation, the Applicant could not blow hot and cold such actions foul to the doctrine of approbation and reprobation. It is trite law that a person cannot accept benefit under an instrument and disclaim the liabilities imposed by the same. **See: Dickson Okumu & Ors v UETCL; SCCA No. 18 of 2020.**
34. To the point of the directions by the IRA, a sum of UGX 88,032,586 was disputed by the Applicant but because of the reconciliation, the amount of UGX 85,434,251 was agreed to as having been outstanding to the date of filing the complaint before the Complaints Bureau, the same was still owing.



35. As laid out in the case of Sietco -Vs- Noble Builders (U) Ltd SCCA No. 31/95 where a person is entitled to a liquidated amount or specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing the suit. Where, however, damages have to be assessed by the Court, the right to these damages does not arise until they are assessed. In such an event, interest is only given from the date of Judgment. In the case before us, no damages are being claimed but there was a claim for a liquidated sum as the outstanding premiums due to the Respondent.
36. From the evidence on record, we are satisfied that the Applicant indeed kept the Respondent out of its money. The Applicant has had use of it to warrant an order of interest on the principal on account of that to the Respondent.
37. In these circumstances, we are inclined to uphold the decision of the complaints bureau in awarding interest of 9.5% on the principal sum due to the Respondent. Since we find no merit in the same, the appeal therefore fails.



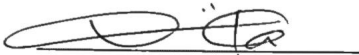
CONCLUSION AND FINAL ORDERS

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

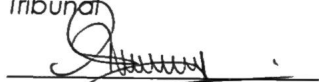
- 1) This appeal is disallowed.
- 2) Costs of this appeal are awarded to the Respondent against the Applicant.

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

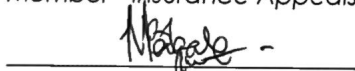
DATED and DELIVERED at KAMPALA on the 20th day of September 2024.



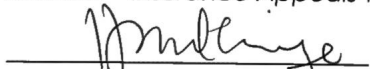
Rita Namakiika Nangono
Chairperson - Insurance Appeals
Tribunal



Solome Mayinja Luwaga
Member - Insurance Appeals Tribunal



John Bbale Mayanja (PhD)
Member - Insurance Appeals Tribunal



Harriette Nabasiye Paminda Kasirye
Member - Insurance Appeals Tribunal