THE REPUBLIC OF UGANDA
IN THE INSURANCE APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 17 OF 2025
[FROM IRAB/COMP.78/04/2024]

SINO TEXTILE INDUSTRY CO. LIMITED]::::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

UAP OLD MUTUAL INSURANCE UGANDA LIMITED]::::::::::::::::::::::RESPONDENT

Coram: Rita Namakiika Nangono - Chairperson
George Steven Okotha - Member
Solome Mayinja Luwaga - Member
John Bbale Mayanja – Member
Harriet Nabasirye Paminda Kasirye - Member

DECISION

1.0 **BRIEF FACTS OF THE APPEAL**

1. The Respondent issued the Applicant with an Industrial All Risk Policy covering buildings, plants, machinery, stocks in trade and machinery breakdown for the period commencing October 12, 2023, to October 12, 2024. In November 2023, as a result of heavy rainfall, the Applicant's premises were flooded, submerging several items and causing extensive damage to the stock. The Insured filed a claim for indemnity under the Policy, but the Respondent refused to pay the same.

2. The Respondent relied on Policy endorsement documents and an assessment report by Claim Care Uganda Limited (assessors) to reject the claim, stating that the conditions set by the parties were not met, including but not limited to proper storage. To the Respondent, if these had been met, the damage would not have happened and that by reason of breach on the part of the applicant, the claim is not payable.

3. The Applicant, on the other hand, states that the endorsement of January 2024 is the only endorsement applicable and doesn't have such conditions,

and that the earlier one of July 2023 was an afterthought and did not form part of the Policy/insurance contract.

4. In its decision, the Insurance Regulatory Authority relied on the endorsement to hold that it (endorsement) was binding and was not rescinded in time, and that the Applicant was in breach of the conditions, albeit some of them, disentitled it from claiming indemnity. It held that the claim was not payable.

2.0 **GROUNDS OF APPEAL**

5. The Application raises 9 grounds.
   a) The Insurance Regulatory Authority erred in law when it termed the condition precedent as a warranty, thereby arriving at a wrong decision that the applicant/complainant was in breach of warranties.

   b) The insurance Regulatory Authority erred in law and fact when it considered the endorsement as a warrant despite the same being titled "POLICY ENDORSEMENT ADVISE".

   c) The Insurance Regulatory Authority erred in law and fact when it relied on an email dated 18th day of April 2024 to conclude that the appellant/complainant did not reach out in the event of any inquiries or clarifications despite the unforeseeable event happening five months before 26th November 2023.

   d) The Insurance Regulatory Authority erred in law and fact when it considered the endorsement policy only brought to the attention of the appellant five months (5) after the unforeseeable event by way of email dated the 18th day of April 2024.

   e) The Insurance Regulatory Authority erred in law and fact when it misconstrued the contents of the policy with those of the endorsement, which were subject to the meeting, thereby wrongly finding that the complainant/appellant was taken through the policy as opposed to the endorsement.

f) Insurance Regulatory Authority erred in law and fact when it held that the appellant had 30 days to raise his complaint with the respondent since the issue was in the concealed endorsement and not in the initial policy.

g) The Insurance Regulatory Authority erred in law and fact when it construed the unclear and ambiguous terms of the respondent's policy against the complainant/appellant.

h) The Insurance Regulatory Authority's decision to deny the complainant any payment/remedy is an error in law and fact as it contradicts its earlier finding and determination, which had recommended an ex-gratia payment.

i) Having acknowledged the existence of ambiguities, it was legally and factually erroneous for the Insurance Regulatory Authority to conclude that the complainant was not entitled to any remedy.

3.0 **ISSUES FOR DETERMINATION**

At the hearing, the parties agreed to convert the grounds of appeal and reduce them to two issues, which they subsequently submitted on:

1. Whether the claim is payable

2. What remedies are available to the Parties?

4.0 **REPRESENTATION**

6. At the hearing, Counsel Silver Adowa Owaraga of Owaraga & Co. Advocates and Counsel Ibrahim Katongole and Bulondo Malik of Malik Advocates represented the applicant, while Horace Nuwasasira of Signum Advocates represented the Respondent.

5.0 **EVIDENCE OF THE PARTIES**

5.1 APPLICANT'S EVIDENCE

7. Shem Kyangabo testified for the Applicant and stated that the Policy in question was comprised in **J. Exh 1,** which took the form of an agreement, but says he was not part of the negotiations and only got to know about the insurance arrangement in August 2023. She stated that on the 26th

November 2023, the Applicant experienced floods, and on the next day, the Respondent was notified of this occurrence, inclusive of reminders on the issue.

8. He stated that the Respondent then wrote an email on February 28, 2024 and for the first time shared an 'endorsement policy' stating that the claim was not payable because the conditions in this endorsement were breached by the applicant. He stated that the endorsement is dated 3rd January 2024 and only came into force after the notice of the occurrence. He further stated that the same endorsement was relied on by the Assessors, but that it was prepared belatedly and was an afterthought.

5.2 RESPONDENT'S EVIDENCE

9. The respondent testified through Ivan Festus Matovu [RW 1], the respondent's claims manager. His evidence is that there indeed was an Insurance Agreement and that the Policy documents included the schedules and endorsements as exhibited in J.Ex 6 and Rex 1. According to him, the insured refused to adhere to the conditions in the Endorsement and, as such, was in breach of the Policy, disentitling it from claiming indemnity.

10. The Witness testified that they contacted the services of Claim Care Loss adjusters, who found that the claim was not payable because the Applicant was in breach of the conditions set in the Endorsement and which conditions were pre-existing as per the risk survey report. The Assessors found that the conditions were incorporated and formed part of the contract and that the claim was not payable by reason of breach.

6.0 **DECISION**

11. Issue 1: Whether the Claim is Payable?

12. It is not in dispute that there is an insurance contract as defined by **Section 2 of the Insurance Act** between the parties. The period of coverage is also not in dispute, being 12th October 2023 to 12th October 2024. It is further agreed that flooding was a peril that was covered by the policy. The dispute is only on the actual terms of the policy.

13. It appears to us that the Endorsement referred to by both parties is different, but the terms of any of them are not disputed. It is not disputed that there

were warranties in place requiring the Applicant to install fire detection and sprinkler equipment to match the fire load of the warehouse, stock the stock properly and use good storage arrangements, and regularly clear drainage channels. We shall not reproduce the same, but this was exhibited by the applicant as **A. Exh 1**, with the same Policy number referred to by the Assessors on page 74, Respondent's trial bundle No. 010/042/4/000802/2024. The Respondent insists that, though the terms are the same, the Endorsement was issued on 13th October and is No. 010/042/4/000793/2023 on page 47 of the Respondent's trial bundle.

14. The report of the Assessors starts at page 73 of the Respondent's trial bundle, exhibited as J. Exh 10. It refers to an Endorsement No 010/042/4/000802/2024, and the report is dated January 31, 2024. The same Assessors wrote in February 2024 (See page 87 of the Respondent's Trial Bundle), this time quoting a different Endorsement number and stated:

    "We have noted that the recommendations in the Risk Survey Report dated 18th July 2023 were incorporated in the Endorsement No. 101/042/4/000793/2023 covering the period from 12th October 2023 to 12th October 2024."

15. The said letter goes ahead to cite the same conditions. We have also seen the survey report and the recommendations. Before the insurance contract in question, the Respondent conducted a Risk Survey and made specific recommendations, explaining the risk exposures and advising on how to avert the same. The recommendations in this report are similar to the conditions in the endorsements.

16. What, therefore, is in dispute regards what forms the terms of the Insurance contract. The Applicant insists that it is the agreement in **J. Exh 1** and nothing else. The said agreement does not bear a legible date. It states in its definition clause that the 'commencement date' is as per clause 2. In clause 2, it states the purpose, and in clause 3, it does not state the period of the cover. Neither does it state that the cover shall be deemed to commence on the date the premiums are paid.

17. The agreement also lacks material particulars like the Policy cover number. When the Applicant was making a claim, they included the **Policy number**

010/042/1/000539/2023, but it is not in the contract that they insist is the only policy document. Again, while the contract states the "Total" premiums payable, the same lacks details of how the same was arrived at, nor does it state the sum assured. **Section 2 of the Insurance Act 2017** makes the payment of premiums in exchange for a payment or benefit (sum assured) a key component of every insurance contract. These must be clear in every contract.

18. The agreement also seems to anticipate that other policy documents were to be delivered within 1 day of the payment of the premium [**See Clause 9.1(iii) of J. Exh 1**.]

19. An email was written forwarding policy documents and quoting an endorsement number consistent with the one claimed by the Respondent of 2023. The email was sent out on October 17, 2023, before the occurrence that is the subject of this dispute. Though the address was not disputed, the Applicant insists that there is no acknowledgement of the same email and that silence is not acceptance.

20. According to **Section 16 of the Electronic Transactions Act Cap 99**, a data message such as the email in question is received when it enters a single or the first of many information Systems. At this point, the originator has no control over it. It is not necessary for the receiver to actually see or open, or get a pop-up, to complete the communication. Entry into the information system, even where such an email is outside the country, is enough.

21. We have found it necessary to consider a Letter written to us by Counsel for the Applicant dated 15th August 2025, simply to forward **some** of the receipts as proof of payment of the premiums. The receipts are dated October 16, 2023. As noted, the Applicant's agreement **J. Exh 1** showed in clause 9(1)(iii) that the Policy document would be shared the next day. It is not surprising that there is an email of October 17, 2023, attaching the policy document and specifically mentioning the Endorsement of 2023.

22. On the other hand, **J. Exh 6** and **Rex 1** seem to have material details consistent with Insurance contracts. The dates of commencement, duration and issue of the policy are well articulated. The types of policies (Fire and

Special Perils Insurance Policy – Material Damage and Machinery Breakdown Insurance Policy) are well specified, with particular perils covered disclosed as "Industrial All Risk". The premium calculations on page 40 of the Respondent's trial bundle are well explained, and the sum assured is clearly indicated. The date of commencement is indicated as October 12, 2023, and the policy number is visibly clear. The rest of the details are consistent with the Policy Endorsement on page 47 of the Respondent's trial bundle.

23. The respondent referred us to the **Supreme Court of Suffish Food, International Food Processors (U) Ltd & Anor vs Egypt Air Corporation T/A Egypt Air**, whose Uganda Legal Information Institute [Ulii] Universal citation is **[2002] UGSC 6** for the proposition that there are key components of an insurance contract that must exist. Justice Oder in that case stated;

> *"There must be a valid and operative contract of insurance as the basis of payment by the insurer upon a loss by the insured. The policy sets out the details of the event which is insured against, and also a list of exceptions specifying the circumstances in which the insurers will not be liable. In certain cases where the event insured against has been brought about by the conduct of the insured, he will not be entitled to recover under the policy.*
>
> *To establish the existence of such a contract, it is not necessary that all its terms should have been separately agreed. As the contract is usually in common form, there is, as a rule, no real negotiation of terms, the agreement being, on the part of the insurers, to issue, and on the part of the insured to take a policy in the ordinary form issued by the insurers. There must, however, be a clear agreement as to the distinctive features of the particular contract of insurance. The parties, therefore, must be ascertained; the assured must have agreed to the particular insurers. They must be ad idem as regards the subject matter of the insurance. The period of insurance must be fixed, and there must be agreement as to the sum insured and the premium to be paid. It must also be clear that there was, in fact, an offer to enter into the contract by one party followed by an acceptance of the offer*

by the other and that a complete contract resulted." Underlining supplied for emphasis.

24. It can be seen from the above that to isolate **J. Exh 1** from **J. Exh 6** and **R. Ex 1** would leave the document void of key components of an insurance contract. It is contended that the Policy documents are not signed by both parties. Going by the agreement fronted by the Applicant, the Policy documents were supposed to be from the Respondent and form part of the agreement. The Applicant has not demonstrated that it did not receive the Policy document, but simply said it did not acknowledge receipt. The applicant did not complain about the failure to deliver the policy documents to the Respondent. Being that the expectation of the same was in 1 day, we think that an inquiry or reminder in 2 to 5 days was reasonable for a person who has paid their premiums for that long. This diligence was lacking, making the applicant's denial of receipt improbable.

25. Counsel for the applicant submitted about a waiver, stating that the assessors, having relied on an Endorsement that came after the fact, had waived their right to rely on the Endorsement of 2023. The larger part of the evidence showed that the Endorsement relied on was that of 2023, the seeming error in the independent report of the Assessors or the email of January 28, 2024, from the Respondent notwithstanding.

26. We find that the Endorsement of 2023 and the schedules formed part of the Insurance contract. Without them, Exhibit **J. Exh 1** cannot form a complete contract of insurance. We also find that the Applicant had always known about these additional policy documents and had waived the right to complain about non-delivery of the same, a day after the contract they themselves fronted.

27. It is clear to us that J. Exh 1, J. Exh 6 and R.Exh 1 combined form the Insurance contract / policy.

28. We are also fortified by the fact that there was a survey before the contract was entered into. Having conducted the survey in their premises, was the Applicant not curious as to the findings? *What does it say of a man who refuses to find out in fear that the findings might disfavor his causes?* It is

therefore logical to accept the explanation that the Applicant was aware of the Endorsement terms/warranties/conditions precedent.

29. Counsel for the Applicant submitted that there was a binding contract and that having undertaken the survey in July 2023 and accepted the premiums of the Applicant, the Respondent knew the risks of the venture and is estopped from denying the claim. This submission is acceptable to us, but is incomplete. The Respondent, having accepted the pre-existing conditions of the Applicant's warehouse, insisted on the Endorsement to have the foreseeable risks removed.

30. The Primary importance of Risk Control Clauses is to lock the risk and avoid alteration in the risk portfolio, but where the clauses are drafted as warranties or conditions precedent, the insured must take a positive step to remove the risk.

31. It was further submitted for the applicant that the email disclosing the Endorsement was sent to sinotextileuganda@gmail.com instead of AW1 Shem Kyangabo. He stated that the email sent by the Respondent required an acknowledgement. We have no basis to hold that this request to acknowledge created an obligation that was fatal to its receipt. J. Exh 1, relied on by the applicant, did not explicitly state that the contact person or contract manager would be AW1 Shem Kyangabo, nor is it stated anywhere in the documents or evidence that the exclusive contact person was AW1. At the hearing, it was disclosed that the email was actually sent to the head office / Directors of the Applicant. It is not denied that the email is for the applicant or that it bounced. We therefore cannot fault the Respondent for using this address.

32. The Insurance Regulatory Authority, citing **De Hahn v. Hartley (1786) 1 Term. Rep 343** concluded that:

> *"Therefore, warranties have to be strictly complied with, like the condition precedent to liability. Worth noting also is that breach of a warranty discharges the insurer from liability. This was emphasized in MacGillivray on Insurance Law, 11th Edition, paragraph 10 – 038. Also, if there is a breach of warranty entitling*

the insurer to repudiate liability, it matters not if the breach has no bearing or connection with the loss."

33. In the said **De Hahn v Hartley** case, when the insured vessel commenced the intended voyage without having the warranted number of crew on board, the insurer was held not to be liable although the warranted number of crew had been recruited before the vessel sailed on the leg of the voyage during which the casualty occurred. It did not matter whether the right number of crew would have prevented the occurrence or not.

34. By way of example, if we ask the insured to install fire-fighting equipment and the insured does not, and the insured's property is damaged by floods, can the insured still claim? Insurance Regulatory Authority, citing the MacGillivray, held that the insured can not because it matters not that the warranty breached is not related to the loss. Any breach of the contract makes it voidable by the insurer.

35. **Lord Goff** in ***Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd. (The Good Luck)*** **[1992] 1 A.C. 233, 262–63**: *"… if a promissory warranty is not complied with, the insurer is discharged from liability as from the date of the breach of warranty, for the simple reason that fulfilment of warranty is a condition precedent to the liability of the insurer. This, moreover, reflects the fact that the insurer only accepts the risk provided that the warranty is fulfilled*."

36. Lord Griffiths in ***Forsikringsaktielselskapet Vesta v Butcher*** **[1989] A.C. 852, 893–94,** famously said: "*It is one of the less attractive features of English insurance law that breach of a warranty in an insurance policy can be relied upon to defeat a claim under the policy even if there is no causal connection between the breach and the loss*."

37. For example, if the assured under a motor policy warrants that he will maintain the insured vehicle in an "efficient" or "roadworthy" condition, the insurer who proves that the vehicle was not in that state at the time of the loss will have a defence to a claim arising out of an accident involving the insured vehicle, without going so far as to prove that the poor condition of

the vehicle caused or contributed to the accident. See ***Conn v Westminster Insurance Co*** **[1966] 1 Lloyd's Rep. 407**.

38. In Insurance Law, it is very problematic to introduce causation as a remedy to the long-standing issue of breach of warranties. Until there is a specific law for this, breach should never be related to the loss. It is not beyond the bounds of possibility that, in such a case, the insurer could successfully argue that compliance with the burglar alarm warranty could have increased the risk of loss at the insured premises (or at least extent of loss) in the circumstances in which it occurred on the basis that, had the burglar alarm been working, it might have been activated by the movement of the fire, meaning the emergency services might have arrived sooner. This example is an illustration of the difficulties that might emerge in applying the causation principle.

39. The introduction of a causal link requirement in this context between breach and loss is deemed to be problematic. **M. Clarke, "Insurance Warranties: The Absolute End?" [2007] L.M.C.L.Q. 474, 487**, said: *"… may it be observed in passing that the history of English law on questions of causation is not encouraging*."

40. In the **United Kingdom**, the **Insurance Act of 2015** introduced clauses aimed at linking causation to loss and creating possibilities of remedying the breach without repudiating the entire contract.
41. We therefore agree with the decision of the Insurance Regulatory Authority that, in the circumstances of the case, compliance with the conditions of the Endorsement was material to the contract and that the Applicant was in breach. The claim is not payable.

42. Before we take leave of the issue, we noted a complaint against the Insurance Regulatory Authority stating that its decision to deny the complainant any payment/remedy is an error in law and fact as it contradicts its earlier finding and determination, which had recommended an ex-gratia payment. This is not right.

43. There is no remotest use of the English or Latin languages that can give 'ex-gratia' a meaning that confers any legal right to any party, but is solely a

moral consideration by the person paying or considering paying it. To protect the integrity of mediations and alternative dispute resolution (ADR) mechanisms, and to encourage openness in such forums, outcomes of these talks cannot form part of the dispute resolution mechanism at the Complaints Bureau or higher up.

44. The decision of the Complaints Bureau complained of is that communicated on May 15, 2025. IT DID NOT recommend any ex-gratia payment. There is no other decision of this Bureau that does so. We have only seen a letter from the CEO's office in respect to the same, attached to the complaint, to which the Respondent declined, and asked for a ruling. This was never a decision of the Complaints Bureau but of a different office – the structures of which are clear under the Insurance Act.

45. Issue 2: What remedies are available to the Parties

46. We call to mind the Latin Maxim "***Nullus Commodum Capere Potest De Injuria Sua Propria***" (No one can derive an advantage from his own wrong. **James Bahinguza & Others V The Attorney General Court of Appeal Miscellaneous Application No 269/2013** the Court of Appeal held that a respondent who wrongly allowed an employee to receive and acknowledge receipt of correspondence on the respondent's behalf cannot at the same time claim that the service in question does not bind them, as it would amount to a travesty of justice, or gaining out of their own wrongdoing.

47. Having found that the applicant was in breach of the Endorsement to which the Policy was subject, it is not entitled to any of the remedies sought, and the application is dismissed.

48. With regards to costs, and in consideration of the losses already suffered by the applicant, we order that each party bears its own costs.

7.0 **FINAL ORDERS**

1. The Endorsement No. 101/042/4/000793/2023 was communicated to the Applicant and formed part of the Policy / Insurance Contract.

2. The Applicant was in breach of the Policy / Insurance Contract.

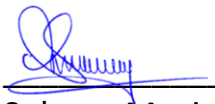
3. The Application is dismissed, and the decision of the Insurance Regulatory Authority is upheld.

4. Each Party shall bear its own costs.

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

Delivered and dated this 14th day of November 2025

Rita Namakiika Nangono
Chairperson



Solome Mayinja Luwaga
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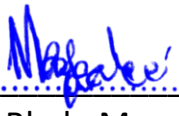

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