TANZANIA INSURANCE OMBUDSMAN

INSURANCE CLAIM No. TIO/MIL/VOL.10/7/2017

COMPLAINANT: JANE CLAUDE MIHANJI

Versus

INSURANCE REGISTRANT: MILEMBE INSURANCE CO. LTD

DETERMINATION ORDER
[Made under Reg. 6(2)(c) G.N. 411 of 2013

Reasons for Order

The facts in support of this Order can briefly be stated as follows: -
The Complainant is the legal owner of a motor vehicle T723 DGK Toyota Harrier which she bought from M/s Be Forward Co. Ltd from TRA bonded custom warehouse. At the time of buying the said vehicle, the Complainant met with one of the Registrant's employees at the warehouse whom she identified by one name – Ms. Annet. It is said that the Registrant operates a small office at the said warehouse. Annet proposed to the Complainant to take out comprehensive insurance cover before putting the vehicle on the public road. In that regard, the Complainant was required to pay TAS 566,400/= as premium for comprehensive cover at sum insured of TZS 16,000,000/- for the period 11th May 2016 to 10th May 2017. As the Complainant did not have the whole amount she offered to pay TAS 300,000/= and the balance of TAS 266,400/= to be paid on another date. She paid cash TAS 300,000/= and she was issued with cash receipt - vide Milembe Receipt No. 50973 – Cover Note MIC No. 246827 of same date for the period 11th May 2016 to 10th May 20017. The complainant did not show up to pay the outstanding balance until early March 2017 after the vehicle was involved in a hit and run road accident.

According to the Complainant, her vehicle was involved in a road accident on 3rd March 2017 at around 22:45hrs along Boko Magengeni, Bagamoyo Road. She reported the accident to the Police, who visited the scene of the accident and according to the Police

Report – PF 90, the other motor vehicle causing the accident was a Scania lorry which disappeared immediately after the accident and its registration numbers could not be established. After the police investigations, the Complainant reported to insurer.

The Complainant has asserted that when she went to report the accident to the insurer, she again met Ms. Annet who required her to clear the outstanding balance of TAS 266,4000/= first before her claim could be processed. In addition, she was told to hand over the original documents in relation to the insurance cover, a matter with which she fully complied.

Records submitted by both parties show that on 6th March 2017 the complainant paid cash TAS 266,000/= and was issued with Receipt No. 56370 and Cover Note MIC No. 306488 with Sticker No. 8821787 dated 6th March 2017 respectively. These two documents clearly show that the Complainant paid for comprehensive cover for the period from 6th March 2017 to 10th May 2017. The Complainant stated that after she had effected payments as shown herein, the Registrant's employees namely Annet and one Marynice who were handling this claim advised her to send the ill-feted vehicle to Spring Garage for repairs. She sent the vehicle to the said garage and remained confident that the Registrant was processing the claim. To her surprise, on 28th March 2017 the complainant received a letter from the Registrant disclaiming liability to pay for the damaged vehicle allegedly because at the time of the accident, *there was no valid insurance in force*. It is this letter which prompted the complainant to file her grievances with the Commissioner of Insurance - the Regulator who subsequently referred the Complaint to the Ombudsman for determination.

Following the reference by the Regulator, the Ombudsman admitted this Complaint and scheduled for Reconciliation Meeting between the parties. The Meeting was fixed to be held on 28th September 2017 and Notice of the said Meeting required the CEO of the Registrant to attend in person or by an Officer duly authorized to make binding decisions.

Three days prior to the hearing date, the Registrant wrote to the Ombudsman indicating that it would not attend the Meeting unless it was served with information exchanged between the Regulator and the Ombudsman. In response to that letter, the Ombudsman informed the Registrant that what it had sought could not be complied with as it was not the law nor procedure to do so. The Ombudsman rescheduled the Meeting and required the parties to attend a reconciliation meeting to be held on 6th October 2017 to resolve the dispute.

It is not the intention of the Ombudsman to narrate in great detail what was transacted at the reconciliation meetings held between the complainant and the registrant. It will suffice to make reference to the outcome of the two reconciliation meetings held on 6th October and 25th October 2017 respectively, which now forms the subject matter of this Determination Order.

At the Reconciliation meeting held on 6th October 2017, the Registrant was well represented by one Lenox Makundi who is the Registrant's Principal Insurance Officer. At the said meeting discussions centered on whether the Complainant had valid insurance cover at the time of the accident since the Registrant was disclaiming liability. The meeting took into consideration the relevant documents necessary for the inception of cover – the official cash receipt and the Cover note itself. The Meeting took into account a) the Registration particulars of the ill feted vehicle, b) the amount of premium paid at the inception date as evidenced by the respective receipt and particulars of the Cover note, (c) the conduct of the Registrant when it required the Complainant to pay for the outstanding balance of premium after the accident/loss had been intimated. There was not much difficulty based on the documents, to establish that there was valid cover. There was in addition the issue of conduct on the part of employees of the Registrant.

The documents we have referred to were all issued at the Head office of the Registrant. Prior to the latest amendments to the Insurance Act 2009 insurers had the option to

demand for payment of outstanding premium after loss has occurred. Meaning that an insurer had the first right of refusal so to say, of disclaiming liability depending on the circumstance of the risks involved. If on the other hand, the insurer calls for payment of the outstanding premium as was in this case, the insurer will be required to pay the claim. The Complainant having reported the accident at the time she owed the outstanding balance, the insurer had the opportunity to disclaim liability. By accepting the respective payment and issuing receipts for the same, Registrant accepted liability to pay the claim. Consequently, there was agreement that as at the date of the accident, there was valid cover. Following that agreement, the parties signed the Settlement Agreement dated 6th October, 2017 and the Registrant was advised to process the claim in line with the existing market practice. That should have been the end of the matter.

Nearly two weeks after the signing of the Settlement Agreement, the Registrant by its letter dated 17th October 2017, wrote to the Ombudsman, informing that the officer well conversant with the facts of this complaint and who did not participate at the proceedings of the Meeting held on 6th October 2017 was available and that they were ready to present the facts afresh and more appropriately. The Registrant made detailed reference to what had been discussed at the earlier reconciliation Meeting and anchored its arguments on what it termed altered cover notes and with reference to the actual period of cover. Essentially, the Registrant had not raised any fresh evidence or material facts that might militate against the settlement agreement. In response to the Registrant's letter the Ombudsman convened yet another meeting on 25th October 2017, which was well attended by the Registrant represented by the same Lenox Makundi (Principal Insurance Officer), Marynice Urassa (Claims Manager) and the Complainant. This time, the Meeting took concerted efforts to ensure that issues raised by the Registrant were fully addressed and put to rest.

First, was the Registrant's argument that the premium of TZS 300,000/= paid at the inception of cover was for three months. Incidentally, the Registrant wanted to rely on

Commissioner Sticker No. 8637493 for the period 11th May 2016 to 10th August 2016 arguing as it were, that the policy issued had expired before the actual date of the accident. The particulars of this Commissioner Sticker do not rhyme with those in the cover note and receipt already referred to above. The cover note in question MIC No. 246827 has two shortfalls – the Commissioner Sticker is recorded to read as No. 863 only with remaining numerals erased or missing. The expiry date originally written to read 10/5/2017 had been overwritten to read 10/8/2016. There was admission that the alterations seen from the said documents were effected by someone at the Registrant's office. That was revealed by Registrant's own employees after admitting that the book copies of the Cover notes at the office had been altered.

The second limb of the Registrant's argument was that cash payment of *TZS 300,000/- was cover for three months only.* That argument could not hold water for the simple reason that if the total premium payable was TZS 526,000/= for the whole year, even at pro rata basis, the calculations were erroneous. The same logic applies to the payment in respect to premium of TZS 266,000/= which the Registrant intended to indicate was premium for the same vehicle for the period 6th March 2017 to 10th May 2017. At best, the Registrant and his representatives were informed that the documents were a reflection of poor underwriting practices which were likely to prejudice policy holders.

After considering all the issues which were raised by the Registrant, it was agreed that the Cover Note issued at the inception of the policy was for a whole year for the period running from 11th May 2016 to 10th May 2017. The parties signed the respective Settlement Agreement dated 25th October 2017 and following that event, the Registrant issued a Discharge Voucher to the Complainant, dated 1st November 2017.

In an unprecedented move, the Registrant wrote to the Ombudsman, informing that the Board had reviewed the matter and came up with a different opinion that Complainant had no valid cover. To cap it, the Registrant wrote in part and we quote:

"…….The Board has instituted a zero-tolerance policy for all suspect claims until they are either cleared to its full satisfaction by your Office or in the worst-case scenario by the Court. I am afraid Ms. Jane Muhanji's claim has been placed in the latter category….".

Upon receipt of the Registrant's letter quoted above, the Ombudsman deemed it inappropriate to respond to the Registrant. It will be noted that after the signing of the Discharge Voucher on 1st November 2017, the Registrant was by law required to pay the above claim within forty-five days. In the event it could not do so, it was required to seek extension of the said period from the Commissioner of Insurance. That has not been the case. On the basis of the extract shown above, the Registrant's Board has clearly shown its unwillingness to pay this claim and has ignored the law and practice on how insurance should be conducted. See Section 131 of the Insurance Act No. 10 of 2009.

Principally, a determination made by the Ombudsman, especially after a negotiated agreement is executed, becomes binding on the Registrant. On the record, there are two settlement agreements dated 6th October and 25th October 2017 respectively. As shown above, the Ombudsman in the best interests of justice accommodated Registrant in an honest belief that the Registrant would have noted and realized the gross misconduct displayed by its staff in altering the cover notes which are central to the dispute under consideration. The Registrant by its letter quoted above has unwittingly required the Ombudsman to call upon the Complainant and to advise her to take any legal action she may deem fit. To do so is to bring the whole insurance industry into disrepute and to allow both incompetence and unprofessionalism to thrive at the expense of unsuspecting clients. Under the circumstances, the Ombudsman in terms of the Insurance Ombudsman Regulation GN 411 of 2013, Regulation 15-(2) (h) thereof makes the following Declaratory Orders, that -

i. the Complainant is entitled to compensation in terms of the Discharge Voucher signed and dated 1st November 2017; and

ii. The Registrant is ordered to pay without further ado, interest on the outstanding amount of TZS 4,000,000/= at the rate of 5% from the date of the signing of the Discharge Voucher until final payment.

The Orders are binding on the Registrant and failure to comply will entitle the Regulator to take further appropriate administrative action as he may deem fit.

Order accordingly.

Vincent K.D. Lyimo J (rtd)
INSURANCE OMBUDSMAN
Dated 25th April 2018