



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL L NO. 65 OF 2006**

**INSURANCE EXPERTS (K) LIMITED..... APPELLANT**

**- V E R S U S -**

**NATIONAL BANK OF KENYA LIMITED .....RESPONDENT**

***(Being an appeal from the whole of judgement and order of Hon. Mrs. Ongeri given at Nairobi on 27<sup>th</sup> January 2006 in Milimani CMCC No. 10457 of 2002 .)***

**JUDGEMENT**

1. The appellant herein, Insurance Experts (K) Ltd filed an action against national Bank of Kenya Ltd, the respondent herein, before the chief magistrate's court Milimani seeking to be paid ksh.530,000/- The basis of the appellant's claim was that sometimes in the year 1992, it was approached by an organisation known as the **Kenya Taxi Cab Association** to be an insurance broker of their taxi business. It is said the association's taxis had been financed by the respondent which had a financier's interest in the taxis hence its consent as to which insurance broker was to handle the insurance brokerage was necessary. The appellant stated that the respondent consented to it being the insurance broker. The appellant alleged that because of the respondent's interest in the 60 taxis, the respondent would directly request the appellant to insure the said taxis and would pay the premiums of the insurance for the taxi operators and debit the premiums in various taxi operators' with the respondent. Those payments were said to be the appellant as a broker who would in turn pay to the insurance companies involved. In the event of an accident, the respondent would pay the excess and debit the various taxi operators accounts. The appellant claimed that this arrangement went on very well from 1992 to 1997 when the respondent informed the appellant that the respondent would no longer be involved in the insurance of taxis financed by the bank and that the issue of payment for the insurance moneys and excess on the vehicles in the event of an accident had been left to the individual taxi operators. By this time, the appellant averred that there was n outstanding sum of kshs.530,000/= due to M/s United Insurance Co. Ltd in respect of excess, which the appellant requested the respondent to settle but it declined to do so prompting United Insurance Co. Ltd to recover the amount directly from the appellant by debiting the appellant's account with the Insurance company. The appellant was therefore forced to file the action before the chief magistrate's court to recover the amount.
2. The respondent on its part filed a defence to deny the appellant's claim. It denied having any dealings with the appellant to procure any insurance services for members of Kenya Taxi Cab Association. The respondent further denied that its conduct led to the appellant to believe that it would be the one responsible to pay for premiums or excess and that if at all it paid the appellant money for premiums, this was at the specific request of individual taxi operators.
3. The trial principal magistrate considered the evidence tendered by both sides and in the end

agreed. The suit was in the end dismissed. Being aggrieved, the appellant preferred this appeal.

4. On appeal, the appellant put forward the following grounds:

1. *The learned magistrate erred in holding that there was no privity of contract between the appellant and the respondent and that therefore the respondent was not entitled to be paid the sum of kshs.530,000/= it claimed from the respondent.*
2. *The learned magistrate erred in overlooking or disregarding the fact that the obligation to pay the appellant for services and/or loss incurred by the appellant was a several and joint liability between the respondent and the Kenya Taxi Cab Association and the respondent was a principal party to that relationship and was bound a principal to pay the appellant for services and/or losses incurred by the appellant in arranging for the insurance of taxis belonging to the Kenya Taxi Cab Association.*
3. *The learned magistrate erred in disregarding and ignoring that dealings between the appellant and the respondent were such that it was the respondent who paid the appellant for the premiums and excess of the taxis of Kenya taxi Cab Association and that the appellant had relied on this conduct to arrange for the insurance of and pay for excess of those taxis in the event of an accident and the appellant had relied on this conduct or representation by the respondent to incur a loss and was therefore stopped from denying that it was bound to pay for that loss that the appellant had incurred on account of the respondent's representation and therefore the respondent was bound to pay to the appellant that loss of kshs.530,000/=*

5. When the appeal came up for hearing, learned counsels appearing in this matter recorded a consent order to have the appeal disposed of by written submissions. I have re-evaluated the case that was before the trial court. I have further considered the rival written submissions. It is the submission of the appellant that the learned trial magistrate erred when she held that there was no privity of contract between the appellant and the respondent. The appellant argued that it produced several correspondences exchanged by the parties as exhibits in evidence to show that the respondent had a privity of contract with the appellant. It is the submission of the appellant that the learned principal magistrate failed to consider those correspondences. The respondent has argued that the appellant was an insurance broker and not a premiums financier hence it has no obligation in law to pay insurance premiums on behalf of any party. It also argued that its business practice is limited to broker collecting premiums and remitting for payment to the underwriter. The respondent denied that the appellants incurred the sum of ksh.530,000/= on the respondent's behalf nor at its request or for its benefit. The respondent submitted that the trial magistrate correctly found and held that there was no privity of contract between the parties to the dispute. The respondent also pointed out that the letters it exchanged with the appellant did not constitute a contractual agreement between them. I have on my part re-examined the contents of the letters exchanged between the appellant and the respondent. In the first letter dated 29.1.1992, the respondent wrote to the chairman of the Taxi Cab Association indicating that the bank had no objection to the recommendation to change the insurance brokers from **M/s Mutune Insurance Agencies Ltd to Insurance Experts (K) Ltd (Appellant)**.

6. On 12.8.92, the respondent wrote directly to the appellant informing it to go ahead and arrange for renewal of insurance covers as proposed. By the letter dated 20.2.1997 the respondent wrote to the chairman of Kenya Taxi Association informing him that the appellant had been the respondent's appointed insurance brokers for both Nairobi and Mombasa and will continue to act on behalf of the respondent until all the debts of Kenya Taxi Cab Association in the respondent's books are settled in full. What provoked the filing of this suit is the letter dated 14.10.1997 from the respondent to appellant in which the respondent advised the appellant that it has been decided that the insurance premiums on vehicles financed by the respondent will be settled directly by the concerned vehicle owners since the bank (respondent) no longer plays any part in the insurance matters regarding the said vehicles. In response to the appellant's demand notice, the respondent vide its letter dated 7.7.1999 admitted that the bank might have made a mistake in making some payments which made the appellant to rely and construe to mean acceptance by the respondent to pay excess premium on behalf of the insured.

7. Having considered the arguments from both sides, I think it is easier now to determine the issue as to whether or not the trial magistrate was right in finding that there was no privity of contract between the parties. In my humble view, the learned trial magistrate erred when she concluded that there was no privity of contract between the appellant and the respondent. The correspondences exchanged between the parties entitled the court to infer that a contract had been created by conduct which was acted upon by the appellant and there was no way the respondent would avoid to meet its contractual obligation to settle the appellants claim of kshs.530,000/=
8. In the end, I find the appeal to be meritorious. Consequently the appeal is allowed. The order dismissing the suit is set aside and is substituted with an order entering judgment in favour of the plaintiff (appellant) and against the defendant (respondent) in the sum of kshs.530,000/= plus interest at court rates from the date of judgment until full payment. The appellant to have costs of appeal and that of the suit.

**Dated, Signed and Delivered in open court this 27<sup>th</sup> day of May, 2016**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent