



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 251 of 2003**

**MERCANTILE LIFE AND GENERAL ASSURANCE COMPANY LIMITED .....  
PLAINTIFF**

**VERSUS**

**CRESTED SEA AGENCIES LIMITED .....DEFENDANT**

**JUDGEMENT**

By its amended Complaint, the Plaintiff claims from the Defendant a sum of Kshs.2,683,910.00 as being money due and owing from the Defendant to it. Particulars were asked for and were given in the following terms:-

**1) of paragraph 3.**

**(a) Balance outstanding as at 31<sup>st</sup> March 1997**

**(b) Insurance brokerage by the Defendant on behalf of the Plaintiff.**

**(c) For particulars of policies require (a-I). See attached schedule of Policy listing for 010/00167 in respect of the Defendant's account with the Plaintiff.**

The Defence filed stated that the Defendant acted as an agent of the Plaintiff. It denied owing the amount claimed and in the alternative pleaded that it had informed the Plaintiff within a reasonable time that the insured had not paid the amount claimed and the Plaintiff should have cancelled the policies with its insured.

The Plaintiff called evidence in support of its claim and a statement of account was produced showing the sums due. This statement was not challenged by the Defendant but in her evidence Mrs. Munene the proprietor of the Defendant firm claimed that as an agent it was the duty of the Plaintiff to collect premiums where she had effected an insurance on behalf of an insured in any case where the insured had failed to pay her. She produced two letters written to a Mr. James Macharia Runo in respect of two policies by the Plaintiff where they cancelled the policies due to non payment. The Plaintiff case was that on being informed that an insured had not paid the Defendant they had cancelled the policy but that in respect of the policies for which payment was being demanded these related to bonds, which had been

issued which, could not be cancelled.

The issue is, is the Defendant liable for insurance premiums arising from business placed by it with the Plaintiff when the premium has not been paid by the customer.

The Defendant submits that as an agent it cannot be liable to its principal for money due to the principal from third parties. The Defendant relied on the case of Friendship container Manufacturers **Ltd v Mitchel Cotts (K) Ltd KLR (2001) page 338** where it was held that an agent is not liable to a third party for acts done on behalf of his principal.

In this case the Defendant was an agent of the Plaintiff appointed under the provision of the Insurance Act.

In Section 2 Agent means:-

“a person, not being a salaried employee of an insurer who, in consideration of a commission, solicits or procures insurance business for an insurer or broker”

Section 156(3) of the Act states:-

“No agent shall collect the premium or a policy of insurance canvassed or solicited by him, and no agent shall signify acceptance of the risk on a policy of insurance canvassed or solicited by him, except in so far and to the extent that he has been authorized by an insurer to collect the premium or to issue cover notes, as the case may be; but nothing in this subsection shall prohibit an agent from collecting and transmitting to an insurer a cheque drawn in favour of an insurer”.

Clearly however, if the agent has been authorized to collect premiums on behalf of the insurer he must account to the insurer for any premiums so collected.

The evidence in this case is that the Defendant introduced insurance business to the Plaintiff in respect of which the Plaintiff issued insurance policies.

The amounts of the premium charged in respect of the insurer introduced by the Defendant is shown in the statements of account put in as exhibit 3. In Exhibit 2 the amount of commission earned by the Defendant is shown.

It was the Defendant's evidence that in respect of certain transactions it did not receive payments. No evidence was brought by the Plaintiff to contradict this statement of the Defendant.

In order to succeed the Plaintiff can only recover premia actually received by the Defendant, it cannot recover any sums which the Defendant did not receive and its remedy was, as the Defendant stated, to bring action to recover outstanding premia by court action or such other means as may have been necessary to recover the premia. The Defendant as an agent had no right to sue for money due to the Plaintiff.

In the result the Plaintiff has not proved that the Defendant had received money due to it and its claim fails.

I therefore, dismiss this suit with costs to the Defendant.

Dated and delivered at Nairobi this 30<sup>th</sup> day of May, 2006.

**P. J. RANSLEY**

JUDGE