



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
CIVIL APPEAL 189 OF 2002**

**BRITISH AMERICAN INSURANCE CO. LTD. ....APPELLANT**

**VERSUS**

**GRACE M. MUEMA**

**LAWRENCE KISILU .....RESPONDENTS**

**J U D G M E N T**

The facts in the suit out of which this appeal arises are that the two Respondents in this appeal were entitled to reimbursement of medical expenses under a contract of insurance entered into between the appellant and Respondents.

The contract of insurance and the entitlement are not denied. The appellant contended that the policy had lapsed and that the Respondents had failed to reinstate the policy by payment of arrears in premiums and at the time the first Respondent entered the hospital for treatment was in arrears of premiums and grace period had lapsed and therefore the plaint does not show any reasonable cause of action against the Appellant. At the hearing the policy document “Mediflex” was exhibited.

It was dated 1.6.2000 and monthly premium was Shs.1515/- per month receipts were exhibited. Premium payment for June 2001 was made on 26.7.2001. On 14.6.2001 the first plaintiff entered into hospital to deliver a baby, was admitted for 4 days and the husband 2nd Respondent paid the bill for the services being Shs.101905/-. This payment was in respect of risk covered by the policy. The Appellant failed to pay the reimbursement according to the policy.

Grace period was provided under Clause 5 of the policy as 1 month after payment. The respondent's said at the time she went into hospital the policy was valid. The issue the trial magistrate was to determine whether the Appellant was bound to pay the respondents claim under the policy. The breach of the policy was that there was arrears of premiums unpaid when the Respondent incurred the risk. When the wife entered hospital. There was evidence before the trial magistrate that since the month of July 2000 the premiums were paid on 2/8/00 July

4/12/00 August

13/2/01 Sept. & October

4.4.01 November & December

7.5.01 January and February

11.6.01 March, May and April

26.7.01 June 2001

All the receipts were issued by Appellant.

There was also evidence that the grace period was 31 days. Therefore by the time of entering hospital on 14/6/05 the policy was still in force. The acceptance of insurance premium on 26/7/01 indicates that as far as the Appellant was concerned, the policy was still in force. The important clause here is No. 5. Regarding exception (2) (7) The effective date of insurance is 1/6/2000 the policy continued in effect so long as the Appellant continued to accept premiums. This is over a period of over 12 months duration contained in the policy As stated above the Appellant continued to accept payments of premiums from the beginning. The appellants could not have been collecting premium paid late when the policy was void. The appellant led the respondent to believe that premiums could be paid any time and so long the premium was paid and accepted the Appellant was estopped from saying that the policy was void or for what were they accepting the payments?

On the issue of privity of contract the law is clear the beneficiary named in the policy as beneficiary has a beneficial interest. In any case I do not see this as an issue at this stage. It was not taken up at the trial and it was argued in this appeal.

The provisions of grace period clause is clear after the first premium there is a grace of 31 days allowed for the payment of any premium due. The policy continues in force for the 31 days grace period. However, this case turns on the fact that the Appellant had led the Respondents to believe and act as they did in making payments. It was agreed both in the lower court and in this court that the dispute hinged on validity of the policy.

On the whole I find the trial magistrate was correct in finding that the policy was valid and the Appellant's were liable to pay. In the policy there was no prohibition or limitation of the amount to be paid. Nevertheless the contributors of NSSF are assisted to a certain extent by the fund towards hospital expenses. This is not a loss by the contributor and should not be reimbursed.

I therefore find no fault in the judgment made by the Trial Magistrate except in awarding reimbursement of funds paid by NSSF. The Amount of judgement in lower court shall be paid less Shs.5,000/-. Otherwise the appeal is dismissed with costs in this court and in lower court.

**Delivered and dated at Mombasa this 12th Day of October 2005.**

**J. KHAMINWA**

**J U D G E**

**12/10/05:**

Khaminwa, J

Jason – Court Clerk

Mr. Jengo

Mr. Munyao present in court

**KHAMINWA, J**

**MR. MUNYAO:**

I apply that the money held in joint account be released to the Respondent.

**KHAMINWA, J**