



**Goldfield Insurance Brokers Limited v Insurance Regulatory Authority; First Assurance Company Limited (Interested Party) (Insurance Appeal E325 of 2023) [2025] KEHC 1041 (KLR) (Commercial and Tax) (4 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 1041 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSURANCE APPEAL E325 OF 2023**

**A MABEYA, J  
MARCH 4, 2025**

**BETWEEN**

**GOLDFIELD INSURANCE BROKERS LIMITED ..... APPELLANT**

**AND**

**INSURANCE REGULATORY AUTHORITY ..... RESPONDENT**

**AND**

**FIRST ASSURANCE COMPANY LIMITED ..... INTERESTED PARTY**

**JUDGMENT**

1. The Kenya Forest Service advertised a tender for the provision of a Group Medical Insurance Cover in a national newspaper. The appellant expressed interest in the tender process and eventually, the interested party won the bid. The appellant contended that, as a broker, it was entitled to a 10% commission from the transaction. However, before the payment could be made, the respondent issued a notice to show cause dated 30/3/2022, instructing the interested party not to process the payment.
2. Aggrieved by this decision, the appellant lodged an appeal before the Insurance Appeals Tribunal (“the Tribunal”). After considering the dispute, the Tribunal dismissed the appeal in its ruling delivered on 8/11/2023. Dissatisfied with the outcome, the appellant filed a memorandum of appeal dated 5/12/2023 in this Court, seeking redress.
3. The appeal is premised on 21 grounds of appeal which can be summarize as follows: -
  - a. Whether the Tribunal erred in interpretation of section 2 and 192(2) of the *Insurance Act*.



- b. Whether the Tribunal erred in law by failing to exercise its jurisdiction to order the Interested Party to pay Kshs. 27,644,221/-, as required under the *Insurance Act, Public Procurement and Asset Disposal Act*, 2005 and the contract.
  - c. Whether the Tribunal erred in law and misdirected itself by failing to find that the Commissioner of Insurance lacked the legal authority to interfere with lawful contracts between the appellant and the Interested Party.
  - d. Whether the Tribunal erred in law by failing to find that the appellant was entitled to its Commission, especially since neither First Assurance Ltd nor Kenya Forest Service raised any complaint or challenged the tender under the *Public Procurement and Asset Disposal Act*.
4. The appeal was canvassed by way of written submissions which I have considered. The appellant submitted that the respondent's decision was ultra vires, as it lacked the authority to object to the payment of a legitimate Commission. That the interested party had no objection to the payment and since the respondent was neither an agent nor an employee of the interested party, it had no basis to interfere. The appellant maintained that, in the absence of any objection from the interested party, it was entitled to receive its rightful Commission.
  5. The appellant further submitted that the tender was publicly advertised by the Kenya Forest Service as an open tender, in which no other party participated. Consequently, the appellant was awarded the tender. It was emphasized that the tender in question had already been fully serviced, with the required insurance services provided to the procuring entity and that the only pending issue was the release of the Commission by the Interested Party.
  6. Additionally, the appellant pointed out that the respondent, being dissatisfied with the Tribunal's orders of 14/4/2022, had appealed to the High Court. However, in HCCA E062 of 2022, a judgment was delivered on 20/12/2022 dismissing the appeal. Despite as such, the appellant's request for payment remained unfulfilled, as the interested party cited an objection from the respondent as the reason for withholding the Commission.
  7. The respondent submitted that the Tribunal was correct in finding that the appellant had acted beyond its mandate under section 2 of the *Insurance Act*. It was argued that the law clearly defined the role of a broker and did not allow for direct collaboration with an insurer in preparing tender bid documents.
  8. The respondent submitted that a broker's role was limited to inviting offers and acting on received offers based on the client's instructions. That a broker serves as an intermediary, placing insurance business with an insurer or reinsurer on behalf of an insurer, policyholder or proposer.
  9. That the appellant failed to demonstrate, either before the respondent or the Tribunal, how the services provided constituted insurance brokerage. According to the respondent, the appellant was involved in assisting with the preparation and submission of the bid to the interested party, which went beyond the legally defined scope of a broker's services. It was argued that any illegality arising from the appellant's actions rendered any resulting contract unenforceable.
  10. That furthermore, the contract between the appellant and the interested party was unlawful due to the nature of the services provided. As a result, no brokerage Commission was payable to the appellant.
  11. I have considered the record, the submissions by Learned Counsel as well as the authorities cited. The first ground of appeal as summarized above is whether the Tribunal erred in the interpretation of section 2 and 191(2) of the *Insurance Act*.



12. Section 2 of the *Insurance Act* (“the Act”) defines the role and scope of a broker as follows: -

“broker” means an intermediary involved with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage commission for or on behalf of an insurer, policyholder or proposer for insurance or reinsurance and includes a medical insurance provider;

13. Section 191 of the Act provides that: -

- “1) No person shall be licensed under this Act as an insurer, reinsurer or broker if he carries on or intends to carry on in Kenya any business other than the business in respect of which he applies for licensing
- 2) No person Licensed under this Act as an insurer, reinsurer or broker shall carry on in Kenya any business other than business in respect of which he is licensed.”

14. The appellant argued that the Tribunal wrongly interpreted these provisions by concluding that its involvement in the tendering process exceeded the mandate of an Insurance Broker. According to the appellant, its role in facilitating the tender process was within the scope of brokerage services and the Tribunal misapplied the law by finding otherwise.

15. Conversely, the respondent maintained that the Tribunal correctly interpreted the law in holding that the appellant’s services went beyond the legally defined scope of an Insurance Broker. It was argued that section 2 of the Act does not contemplate a broker directly assisting an insurer in preparing tender bid documents. Instead, a broker’s role is limited to inviting offers, negotiating terms, and acting on offers received under a client’s instructions. The respondent contended that the appellant’s involvement in drafting and submitting the bid to the interested party was outside its legal mandate and therefore, not a brokerage service.

16. From the record, the appellant does not dispute the fact that it carried on other roles for the benefit of the Interested Party in securing the tender. The main question is whether the works carried out by the appellant fall within the purview of section 2 of the Act on the definition of a broker.

17. In *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others*, Supreme Court Petition No. 26 of 2014 [2014] eKLR, the Supreme Court of Kenya opined that a purposive interpretation should be given to statutes so as to reveal the intention of the statute. The Court observed as follows: -

“In *Pepper vs. Hart* [1992] 3 WLR, Lord Griffiths observed that the “purposive approach to legislative interpretation” has evolved to resolve ambiguities in meaning. In this regard, where the literal words used in a statute create an ambiguity, the Court is not to be held captive to such phraseology. Where the Court is not sure of what the legislature meant, it is free to look beyond the words themselves, and consider the historical context underpinning the legislation. The learned Judge thus pronounced himself:

The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give



effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.”

14. While analyzing how to determine the intention of a statute in *County Government of Nyeri & Anor. vs. Cecilia Wangechi Ndungu* [2015] eKLR, the Court of Appeal held that: -

“Interpretation of any document ultimately involves identifying the intention of Parliament, the drafter, or the parties. That intention must be determined by reference to the precise words used, their particular documentary and factual context, and, where identifiable, their aim and purpose. To that extent, almost every issue of interpretation is unique in terms of the nature of the various factors involved. However, that does not mean that the court has a completely free hand when it comes to interpreting documents; that would be inconsistent with the rule of law, and with the need for as much certainty and predictability as can be attained, bearing in mind that each case must be resolved by reference to its particular factors.”

14. Applying these principles, section 2 of the *Insurance Act* defines a broker as an intermediary whose primary role is placing insurance business with an insurer or reinsurer. Black’s Law Dictionary 2<sup>nd</sup> Ed. defines an intermediary as a broker—someone employed to negotiate between two parties and, for that reason, considered the mandatary (agent) of both. This means that a broker facilitates transactions between the insured (or proposer) and the insurer to ensure an insurance contract is successfully concluded.
15. The dispute here centers on whether placing business entails linking the two parties or whether it extends to the broader scope of activities necessary to secure an insurance arrangement. A restrictive interpretation, as adopted by the Tribunal, would suggest that a broker’s role ceases upon introducing the parties. However, the Act does not expressly limit placing of business to introductions alone.
16. In the absence of such a restriction, placing business logically includes essential activities such as advising the client, structuring the policy, negotiating terms, submitting proposals and ensuring compliance with regulatory requirements so as to clinch a business. That would also include preparation of the necessary documents for compliance in order to achieve the primary goal, clinching the cover.
17. Even if one were to adopt the Tribunal’s narrow interpretation, the appellant’s role in introducing the Interested Party to Kenya Forest Service alone entitled it to a Commission. The respondent, while tasked with regulatory oversight of the insurance industry, ought to have addressed any concerns regarding additional services through proper regulatory mechanisms rather than extending its tentacles into breaching a contract between two independent contracting parties.
18. I do not think its powers and/or regulatory obligations extended thus far, to advising an insurer to withhold a Commission earned for brokerage services. Any disciplinary action should not have interfered with the appellant’s right to Compensation for legitimate brokerage work.
19. In *Okiya Omtatah Okoiti & 3 others v. Anne Waiguru, the Cabinet Secretary, Devolution and Planning & 6 others* [2021] eKLR, the court held that a decision is ultra vires when a decision-making authority commits an error of law, acts beyond its jurisdiction or disregards statutory provisions.
20. Applying this principle, the respondent’s action in leading to the withholding of the appellant’s Commission was beyond its legal mandate and therefore unlawful. It had no business in interfering in a lawful commercial transaction between two willing entities so long as the contract between the two was not illegal as in this case.



21. Based on the foregoing, this Court finds that there is no statutory prohibition against a broker assisting a client in navigating a procurement process, provided the broker does not undertake underwriting functions or assume the role of an insurer.
22. In any event, the Interested Party did not object to the appellant's Commission as the appellant had acted in its aid for its benefit in getting the work, thereby reinforcing the legitimacy of its role. Having determined this issue the Court finds that the other grounds of appeal are moot as they are all in the affirmative.
23. Accordingly, the appeal is allowed and the decision of the Insurance Appeals Tribunal dated 8/11/2023 is hereby set aside. The appellant will have the costs of the appeal.

It is so decreed.

**SIGNED AT KISUMU THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF MARCH, 2025.**

**F. GIKONYO**

**JUDGE**

