

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CIVIL SUIT NO. 162 OF 2017**

**MOI TEACHING & REFERRAL HOSPITAL.....**

**PLAINTIFF**

**VERSUS**

**PIONEER ASSURANCE LIMITED.....**

**DEFENDANT**

**JUDGMENT**

1. The Plaintiff, Moi Teaching and Referral Hospital (hereinafter “MTRH”), moved this Court by a plaint dated 26<sup>th</sup> January 2017 and amended on 5<sup>th</sup> February 2019, seeking judgment against the Defendant, Pioneer Insurance Company Limited, for Kshs. 72,321,540.75, interest on Kshs. 7,000,000 from the date of filing the suit until payment in full, and costs on a full indemnity basis.
2. The dispute arises from a comprehensive medical insurance contract, Tender No. MTRH/46/2011-2012, awarded to the Defendant for provision of cover to 3,130 staff members of the Plaintiff at an annual premium of Kshs. 85,400,208.00, under Contract No. 182/2011-2012 for two years.
3. The Defendant filed a statement of defence and counterclaim dated 27<sup>th</sup> September 2017, denying indebtedness and contending that certain claims were

fraudulent or irregular, and further alleging that by a Debt Settlement Agreement (DSA) dated 21<sup>st</sup> May 2013, the Plaintiff agreed to forebear payment of Kshs. 34,616,178.28 as part of settlement of its claims.

### **Plaintiff's Case**

4. The Plaintiff's case, as presented through the testimony of Thomas Kibiwott Ng'etich (PW1), the Deputy Director, Finance and Administration, was that the Defendant was contracted to provide medical insurance services for its staff under the said tender. During the period of cover, the Plaintiff rendered medical services to insured beneficiaries amounting to Kshs. 148,937,718.75. Out of this amount, the Defendant paid Kshs. 69,616,178.00 prior to the suit and a further Kshs. 7,000,000.00 after institution of the suit, leaving an outstanding balance of Kshs. 72,321,540.75.
5. The Plaintiff contended that the Debt Settlement Agreement dated 21<sup>st</sup> May 2013, which the Defendant relies upon, was invalid, null, and void for want of statutory approvals as required under the Public Finance Management Act, No. 18 of 2012 (PFMA). It was argued that under Section 68(1) and (2) of the PFMA, any agreement involving the compromise or waiver of public funds must be approved by the National Treasury and sanctioned by the accounting officer of the respective entity.
6. PW1 testified that no such approvals were obtained from either the Hospital's Board or the Cabinet Secretary for the

National Treasury. He further stated that the alleged DSA was not executed with the Hospital's common seal nor ratified by the Board, rendering it unenforceable against a public institution.

7. The Plaintiff further argued that the Defendant had participated in a joint verification exercise where the claims totaling Kshs. 72,321,540.75 were confirmed to be legitimate. It was contended that the Defendant's subsequent refusal to honor the verified amounts amounted to breach of contract and bad faith.
8. On the issue of rejection of invoices, the Plaintiff asserted that the Defendant unilaterally and without contractual authority rejected certain claims on account of missing hospital stamps, mismatched diagnosis, and alleged irregularities. These grounds, it was argued, were not supported by any clause in the insurance contract.
9. The Plaintiff therefore urged the Court to find that the Defendant was in breach of its contractual obligations and that the DSA was an illegal attempt to compromise public debt in contravention of the PFMA and the Public Procurement and Asset Disposal Act (PPADA). It prayed that the Court orders payment of the outstanding amount together with interest and costs.

### **Defence Case**

10. The Defendant, through its witness Benard Apput Osure (DW1), denied the Plaintiff's claim in its entirety. It

maintained that all valid and verified claims had been settled in accordance with the contract and that the only outstanding balance was Kshs. 859,829.38.

11. The Defendant's position was that during the execution of the contract, numerous claims presented by the Plaintiff were fraudulent, duplicated, or lacked supporting documentation. It was on this basis that both parties, by mutual consent, entered into a Debt Settlement Agreement (DSA) on 21<sup>st</sup> May 2013, intended to amicably resolve the outstanding claims and bring the contract to a close.
12. According to the Defendant, the DSA was a valid and binding agreement that constituted a compromise between the parties, and that the Plaintiff, having benefited from its implementation, was estopped from disowning it.
13. It was further argued that the Plaintiff's assertion that the DSA required Treasury approval was misconceived, since the DSA did not constitute a waiver of public funds but merely a reconciliation of accounts based on disputed medical invoices.
14. The Defendant maintained that it acted in good faith and in strict adherence to the contract, and that any delays or disputes were occasioned by the Plaintiff's failure to provide complete documentation.
15. Finally, the Defendant submitted that the suit was vexatious and an abuse of process, as it sought to reopen matters that had been conclusively settled through the DSA,

and urged the Court to dismiss it with costs while allowing the counterclaim

### **Submissions**

16. The Plaintiff's submissions dated 21<sup>st</sup> January 2025 identified four issues which the court will consider exhaustively, and maintaining that the Defendants breached the contract.

17. The Defendant's submissions dated 25<sup>th</sup> March 2025 maintained that the DSA was part of the contractual work plan, and that the Plaintiff could not disown it. It asserted that it paid all verified claims and only Kshs. 859,829.38 remained outstanding which the Defendant was willing to settle. It urged the Court to dismiss the Plaintiff's claim.

### **Analysis and determination**

18. Having considered the pleadings, evidence, and submissions, the following issues arise for determination:

- i. Whether the alleged Debt Settlement Agreement of 21st May 2013 was valid and binding.*
- ii. Whether the Defendant was justified in rejecting part of the Plaintiff's claims.*
- iii. Whether the Defendant breached the contract.*
- iv. Whether the Plaintiff is entitled to the sums claimed and the reliefs sought*

### **Legality of the Debt Settlement Agreement**

19. The Plaintiff contends that the DSA of May 2013 is illegal and void for contravening Sections 69(1) & (2) of the

Public Finance Management Act (PFMA) and the Public Procurement and Asset Disposal Act (PPADA), due to lack of approval from the Cabinet Secretary for Treasury and the requisite procurement authorities.

20. Section 68(1) of the PFMA mandates that accounting officers of national government entities shall ensure that all commitments involving public funds are lawfully authorized. Section 68(2) prohibits any agreement that purports to vary public debt obligations without such approval.

21. Public entities cannot compromise or write off public debts without statutory authorization. In **Kenya Airways Ltd v Satwant Singh Flora [2014] eKLR**, the Court of Appeal underscored that:

***“Courts will not enforce an agreement that is tainted with illegality or that contravenes statutory provisions.”***

22. Applying those principles, this Court finds that the alleged DSA, having been executed without the required statutory approvals, is illegal and void ab initio, and cannot form a valid basis to deny the Plaintiff’s lawful claim for unpaid sums.

#### Rejection of Claims and Contractual Obligations

23. The contract of April 3, 2012, governs the relationship. The Defendant’s rejection grounds, alleged irregularities, missing signatures, mismatched diagnosis, lack of hospital stamp were not substantiated with contractual provisions

authorizing such rejection. The Plaintiff's re-submitted invoices totaling Kshs. 37,705,540.75 were acknowledged by the defendant, yet the Defendant claims they are invalid due to procedural issues.

24. The burden of proof lies heavily on the Defendant to demonstrate that the reasons for rejection are justified and grounded in the terms of the contract. The evidence shows that the Defendant failed to provide a contractual basis for rejection or any valid reasons supported by the clause. Under Section 109 of the Evidence Act, the burden of proof lies on the party asserting a fact. Having alleged fraud and irregularity, the Defendant bore the burden to prove those assertions. No such proof was offered. The insurer bears the onus of demonstrating valid grounds for repudiation once the insured proves a prima facie claim - See **Resolution Insurance Co. Ltd v Omondi [2023] KEHC 2454**.

25. In the instant suit the Defendant failed to demonstrate that the alleged irregularities rendered the claims fraudulent or outside policy coverage.

26. Furthermore, the doctrine of utmost good faith, essential to insurance contracts, obligates full disclosure. The Defendant's failure to disclose valid grounds for rejection undermines its repudiation. The Court therefore finds that the Defendant's rejection of verified claims was unjustified and contrary to contract.

*Breach of Contract*

27. It is undisputed that the Plaintiff paid premiums, and medical services valued at Kshs. 148,937,718.75 were rendered to scheme members. The Defendant paid Kshs. 69,616,178.00 before suit and Kshs 7,000,000.00 after mediation, leaving an outstanding balance of approximately Kshs. 72 million. The Defendant admits owing an outstanding balance is Kshs 859,828.38 which amount the defendant undertakes to pay the plaintiff.
28. The Defendant's partial payment, coupled with unjustified rejection of legitimate claims, constitutes a breach. Insurers, or entities obliged to pay claims, cannot unilaterally or unjustifiably withhold payment once obligations are established.

*Damages and Reliefs*

29. The Plaintiff has established on a balance of probabilities that it is entitled to the unpaid sum of Kshs. 72,321,540.75. This sum was particularized and supported by documentary evidence, satisfying the requirement for special damages as set out in **Hahn v Singh [1985] KLR 716.**
30. Damages for breach of contract aim to return the injured party to the position they would have been in if the contract was fulfilled. The Defendant's actions in withholding payment despite verification constituted unjust enrichment, which violated equitable principles under Section 3A of the Civil Procedure Act.

31. As per **Section 27(1)** of the **Civil Procedure Act**, the Plaintiff is entitled to expenses if their case is successful.
32. Accordingly, the Court enters judgment for the Plaintiff against the Defendant as follows:
- i. Kshs. 72,321,540.75 being the outstanding amount due under the medical insurance contract.***
  - ii. Interest on Kshs. 7,000,000 from the date of filing suit until payment in full.***
  - iii. Interest on Kshs. 72,321,540.75 from the date of judgment until payment in full at court rates.***
  - iv. Costs of the suit will be to the Plaintiff.***
  - v. The Defendant's counterclaim is dismissed for want of proof.***

Orders accordingly.

**JUDGMENT** delivered virtually, dated and signed at **NAIROBI**

This **16<sup>th</sup>** day of **October** 2025.

**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Ms. Ngei* for Plaintiff

*Mr. Ogonji* for Defendant

Court Assistant: *Carlos*

