

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**TRIBUNAL APPEAL NO. E063 OF 2025**

**REINSHIELD INSURANCE AGENCY LIMITED .....**  
**APPELLANT**

**VERSUS**

**COMMISSIONER OF INSURANCE .....**  
**RESPONDENT**

**FIRST ASSURANCE COMPANY LIMITED ..... 1ST**  
**INTERESTED PARTY**

***(Being an appeal from the decision of the Insurance  
Appeals Tribunal delivered on 8<sup>th</sup> November 2022)***

**JUDGMENT**

**Background**

1. The dispute between the parties herein stemmed from the Appellant's claim that it rendered services to the Interested Party in relation to an insurance tender for Kenya Forest Services being Tender No. KFS/02/2021-2022.
2. The Respondent heard the matter and in a decision rendered on 30<sup>th</sup> and 31<sup>st</sup> March 2022, dismissed the Appellant's claim for commission from the Interested Party. The Respondent found that the Appellant's

involvement in the tender process amounted to conduct outside the scope of licensed brokerage functions and was therefore unlawful.

3. Aggrieved by the Respondent's decision, the Appellant appealed to the Insurance Appeals Tribunal, which in its decision rendered on 8th November 2022 upheld the Respondent's decision, and found that the Appellant's services exceeded its statutory mandate and that the tender was an "underwriters-only" tender, disentitling the Appellant to commission.

### **The Appeal**

4. Aggrieved by both the Respondent's and the Tribunal's decision, the Appellant lodged the present appeal contending that the Tribunal erred in law and fact in its interpretation of the Insurance Act and in denying it commission.
5. The Appellant enumerated several grounds, key among them being that the Tribunal:
  - i) Erred in law and fact in finding that no valid agency relationship existed between the Appellant and the Interested Party;***
  - ii) Misinterpreted the nature of the Appellant's role by categorizing it as consultancy rather than agency services;***
  - iii) Failed to properly consider evidence demonstrating engagement, appointment, and performance of agency functions;***

- iv) Incorrectly held that the public nature of the tender precluded involvement of intermediaries;**
- v) Relied on inapplicable case law and failed to distinguish relevant authorities;**
- vi) Failed to consider documents and affidavits filed by the Appellant;**
- vii) Addressed issues falling outside its jurisdiction, including procurement matters;**
- viii) Failed to identify any specific breach of procurement law by the Appellant;**
- ix) Ignored findings and recommendations from investigative authorities, including the Directorate of Criminal Investigations and the Office of the Director of Public Prosecutions;**
- x) Reached conclusions that were inconsistent with the facts and applicable law.**

6. The Appellant seek orders that the appeal be allowed, the judgment of the Tribunal and the Respondent's decision be set aside, payment of Kshs. 27,000,000 as commission, costs and interest.

7. The Appeal was canvassed by way of written submissions which I have considered.

### **The Appellant's Submissions**

8. The Appellant submitted that it provided services to the Interested Party in relation to the tender, which fact is not disputed. It was the Appellant's case that even though there was no formal written appointment, the conduct of

the parties established an agency relationship through the doctrine of agency by conduct and estoppel.

9. The Appellant stated that the Interested Party actively engaged it, requested market intelligence, and relied on its input in preparing and securing the tender.
10. The Appellant argued that it was the effective cause of the successful bid and is therefore entitled to commission. The Appellant observed that Section 151(1A) of the Insurance Act (the Act) does not prescribe a mandatory form of appointment and stated that the allegations of unlawful solicitation under Section 65 of the Public Procurement and Disposal Act are unfounded, as the Appellant's engagement predated the tender submission and that no improper influence was exerted.
11. It was submitted that the evidence on record, including correspondence and participation in the tender process, demonstrates continuous engagement and acknowledgment of services rendered.
12. The Appellant faulted the Tribunal for failing to properly consider evidence, including affidavits and findings by investigative authorities and for misinterpreting Sections 2 and 191(2) of the Insurance Act.
13. It was submitted that the law recognizes entitlement to commission where an agent introduces business that culminates in a transaction.
14. The Appellant contended that it provided legitimate brokerage and related services to the Interested Party in

respect of the tender and that its services fell within permissible brokerage functions or were ancillary thereto.

15. The Appellant maintained that it is entitled to commission for services rendered.

16. The Appellant relied on judicial authorities supporting the principle that contractual relationships may arise from conduct and that commission is payable where services materially contribute to a successful outcome.

### **The Respondent's Case**

17. On the scope of brokerage duties under the Insurance Act, the Respondent submitted that section 2 of the said Act clearly defines the role of an insurance broker as one who invites and acts upon offers for the placement of insurance business on behalf of a client. According to the Respondent, the Appellant's activities went beyond the scope of brokerage duties and amounted to advisory and consultancy services, which do not fall within insurance brokerage. It was argued that the Tribunal correctly held that the statutory definition is clear and does not require expansive interpretation.

18. On the nature of the Appellant's services, the Respondent contended that the evidence on record demonstrated that the Appellant was providing technical and advisory services, including market insight and bid support. According to the Respondent, such services do not constitute brokerage within the meaning of the Insurance Act.

19. The Respondent submitted that the Appellant acted as an “agent” in the transaction despite being licensed only as a broker thereby contravening the provisions of section 191(2) which prohibits a broker from engaging in the functions of an agent. The Respondent noted that the Appellant described itself as a “brokerage agent,” a category that is not recognized under the Insurance Act, thereby demonstrating a misunderstanding of statutory roles.
20. The Respondent maintained that there was no brokerage relationship in the tender since the said tender was submitted directly by the Interested Party (insurer), not through the Appellant. The Respondent argued that the Appellant neither placed insurance business nor facilitated contractual formation between insurer and insured. It was therefore submitted that no brokerage services were rendered.
21. The Respondent argued that the procurement in question was conducted by a public entity under an open tender system and that public procurement laws exclude the role of intermediaries such as brokers or agents in such processes as the tender became an “underwriters-only” tender, leaving no role for the Appellant.
22. Authorities were cited to support the position that solicitation of insurance business in public procurement contexts is unlawful and unenforceable.
23. The Respondent submits that any purported agreement or expectation of commission arising from the Appellant’s

involvement would be illegal and unenforceable, as it contravenes both the Insurance Act and public procurement law.

24. It was the Respondent's position that since the Appellant did not perform recognized brokerage functions and acted outside its licensing framework, no brokerage commission is payable.

### **The Interested Party's Submissions**

25. The Interested Party aligned itself with the Respondent's position and submitted that no agency relationship existed between it and the Appellant as the Appellant was never formally appointed as an insurance agent as required under Section 151(1A) of the Insurance Act. It added that there was no evidence to show that the Appellant participated in the tender or that it was engaged in the procurement process. Reliance was placed on the case of ***Thiong'o vs. Tuti & Another [2024] KEHC 11150 (KLR)***, where an agent was defined as a person appointed by a principal to act on its behalf.

26. The Interested Party's position is that it engaged another broker, **Goldfield Insurance Brokers Limited**, to whom commission was paid pursuant to a court judgment in **Nairobi HCCOMMA E325 of 2023**.

27. According to the Interested Party, allowing the Appellant's claim would result in unjustified double payment.

**28.** It was the Interested Party's case that the procurement in question involved a government entity, hence subject to

the Public Procurement and Asset Disposal Act which excludes intermediary participation thus rendering the Appellant's claim illegal. It maintained that engaging the Appellant in such circumstances would have been unlawful. It noted that the tender was a public process and that no exclusive role was attributable to the Appellant more so because the Appellant was not formally appointed as an agent as required under the Act. Reliance was placed on ***Muvanya vs. Jubilee Insurance Company Ltd [2022] KECA 146 (KLR)***, affirming that government procurement must adhere strictly to statutory procedures.

29. The Interested Party submitted that the Tribunal correctly found that the Appellant acted outside the scope of the Insurance Act and properly concluded that no agency relationship existed.

### **Issues for Determination**

30. From the pleadings and the rival submissions, I find that the following issues arise for my determination: -

- a) Whether the Tribunal erred in interpreting the scope of a broker's duties under Section 2 of the Insurance Act and in finding that the Appellant contravened Section 191(2) of the said Act;***
- b) Whether the Tribunal erred in finding that the Appellant did not render brokerage services and was not entitled to commission;***
- c) Whether the nature of the tender as a public procurement process excluded the role of intermediaries;***

- d) Whether any contract or expectation of commission between the Appellant and Interested Party was lawful and enforceable;***
- e) Who should bear the costs of the appeal.***

## **Analysis and Determination**

31. It was not disputed that the Appellant rendered certain services to the Interested Party. The central controversy in this appeal, however, concerns whether those services constituted a legally recognized agency relationship entitling the Appellant to commission.
32. The Appellant relied on conduct, correspondence, and participation in the tender process to establish agency and entitlement.
33. The Respondent and Interested Party, on the other hand, emphasized lack of formal appointment and statutory compliance.
34. Questions also arise regarding the nature of the tender, whether public or restricted, the role of intermediaries, and the applicability of procurement laws.
35. The record contains evidence of engagement between the parties before and during the tender process, as well as subsequent actions following the award.
36. In a nutshell, the appeal raises issues relating to formation of agency relationships in the absence of formal appointment, interpretation of the Insurance Act and procurement laws and entitlement to commission based on conduct and contribution to a successful transaction.

37. On the issue of the scope of brokerage duties and alleged contravention of Section 191(2) of the Insurance Act, I note that the starting point is the statutory framework. In this regard, section 2 of the Insurance Act defines a broker as: -

***“a person who, not being a salaried employee of an insurer, in consideration of a commission, arranges or places insurance business with an insurer on behalf of a proposer or insured.*”**

38. Section 191(2) of the Act, on the other hand, provides that: -

***“No broker shall engage in the business of an insurance agent.”***

39. In the present case, the Tribunal observed/found that the Appellant was essentially providing advisory services based on its in-depth marketing insight rather than brokerage. The Appellant, on the other hand, argued that its services fell within permissible brokerage or were ancillary thereto.

40. The distinction between brokerage and consultancy is not merely semantic but statutory. In ***Victoria Insurance Brokers Limited vs. Jubilee Insurance Company of Kenya Limited [2020] eKLR***, the Court held that consultancy services, including technical advisory and support services, do not constitute insurance broking within the meaning of the Insurance Act.

41. From the record, it is clear that the Appellant’s role primarily involved provision of market intelligence,

technical and advisory support and participation in bid preparation.

42. My finding is that these activities, while commercially valuable, do not amount to arranging or placing insurance business as contemplated under Section 2.

43. I further note that the Appellant described itself as a “brokerage agent,” a category that is not recognized under the Act. This supports the Respondent’s contention that the Appellant conflated distinct statutory roles.

44. I therefore find that the Tribunal correctly interpreted the law and did not err in concluding that the Appellant acted outside the scope of brokerage duties.

45. This Court agrees that the statutory definition of brokerage is specific and does not extend to general consultancy services.

46. On whether brokerage services were rendered and is therefore entitled to commission, the Appellant relied heavily on the doctrine of agency by conduct and estoppel, arguing that its engagement gave rise to entitlement to commission.

47. I find that while it is trite that agency may arise by conduct, such agency must however still operate within the confines of statutory law. In ***Thiong’o vs. Tuti*** case (supra) the Court defined an agent as “*a person appointed by another (the principal) to act on his behalf, often to negotiate a contract between the principal and third parties.*”

48. Section 2 of the Insurance Act defines an agent as: -

**“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 transmits proposals for insurance or performs other functions relating to insurance business on behalf of an insurer.**

49. Section 151(1A) of the Insurance Act provides that: -

**“A registered agent shall not transact business on behalf of an insurer unless duly appointed by that insurer.”**

50. In the instant case, I note that no evidence was placed before this Court to show that there was a formal appointment of the Appellant by the Interested Party as an agent. I also note that the Tribunal considered, in great detail, the issue of whether the Appellant was appointed as an agent by ploughing through the emails exchanged between the parties and rendered itself as follows: -

**“111. It is the Appellant’s contention in their Statement of facts that the email of 1st September 2021 constituted an appointment. However, having read the said email, we cannot come to the conclusion that the same was an appointment. The words used in the said email are so ambiguous to conclude that the same amounts to an appointment.**

**112. Further, on a later email of 7th September 2021, the Appellant forwarded the signed Disclaimer Form which is an expression of interest form. At that point, the Appellant appreciated that there could be other introducers and if the Interested Party had not picked him and that the Appellant would have no claim whatsoever as an agent. It is thus**

**clear that even as at 7th September 2021, the Appellant had not been appointed by the Interested Party as its agent as evidenced by the contents of its disclaimer form signed by the Appellant.**

**113. It is also undisputed fact that after 7th September 2021, there were no further emails past 7th September 2021 between the Appellant and the Interested Party.**

**114. We have perused the emails filed by the Interested Party and Goldfield Brokers in which the Interested Party alleges it appointed Goldfield as their agent. We do not wish to delve into those emails as that is an issue in another matter before us.**

**115. We have also perused the text conversations between Mr. Lawrence of the Appellant and Mr. Hillary and we note that the same were majorly requests by the Appellant for a joint meeting. Unfortunately, there is no text message from Hillary that can be picked to be said to amount to an appointment by the Interested Party.**

**116. We have perused the text messages between Lawrence and Rufus and equally and no text messages that we can pick amounting to an appointment.”**

51. While the Appellant urged the Court to infer agency from conduct, I find that such inference cannot override express statutory requirements.

52. Moreover, the evidence shows that the tender was submitted directly by the Interested Party and that another broker, Goldfield Insurance Brokers Limited, was

duly appointed and paid commission pursuant to a court judgment.

53. My take is that the principle that commission is payable where an agent is the “effective cause” of a transaction must be applied cautiously where statutory regulation exists.

54. In the present case, I find that the absence of a lawful brokerage or agency relationship is fatal to the Appellant’s claim.

55. Turning to the effect of Public Procurement legal framework, I note that it was not disputed that the tender was conducted by a public entity under the Public Procurement and Asset Disposal Act. Section 65 of the said Act emphasizes fairness, transparency, and competitiveness in procurement processes.

56. Courts have consistently held that such processes exclude informal or unregulated intermediary participation. For instance, in the case of ***Dominic Wanzila Muvanya vs. Jubilee Insurance Company Limited (Civil Suit No. 611 of 2015)***, the Court held that there is no space for any form of solicitation by an agent, as such conduct would fly in the face of constitutional and procurement provisions.

57. Similarly, in ***Priscilla Nyambura vs. Marram Corporation Ltd & 3 Others [2008] eKLR***, the Court observed that the contract was entered into following an open and transparent public procurement process that excluded the intervening role of an agent.

**58.** The above cited authorities reinforce the principle that public procurement processes are structured to eliminate informal influence. I therefore find that the Tribunal correctly held that the tender was effectively an “underwriters-only” process, excluding intermediaries such as the Appellant.

59. On legality and enforceability of the claim, the Respondent and Interested Party argued that the Appellant’s claim is founded on illegality. The doctrine of illegality is well established. Courts have taken the position that they will not enforce contracts that contravene statute or public policy. In **Dominic Wanzila Muvanya** (supra), the Court stated that any solicitation or exertion of influence in such circumstances would amount to an unenforceable illegality.

60. Further, where statutory provisions clearly regulate the manner of conducting business, parties cannot circumvent them through informal arrangements.

**61.** In the present case, it was not disputed that the Appellant was not appointed as an agent, its activities fell outside brokerage and that the procurement framework excluded intermediary participation. It is my finding that any expectation of commission arising from such circumstances is therefore unenforceable.

62. On costs, section 27(1) of the Civil Procedure Act provides that subject to conditions and limitations as may be prescribed, the costs of and incidental to all suits shall be at the discretion of the court or judge. In **Jasbir Singh Rai**

**& Others vs. Tarlochan Singh Rai & Others [2014] eKLR** the Supreme Court held that costs follow the event and are meant to compensate the successful party.

63. In the instant case, I find that there are no exceptional circumstances to warrant a departure from the above stated principle and I therefore find that costs shall follow the outcome.

64. Having regard to the findings and observations that I have made in this judgment, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondent and the Interested Party.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**HON W. A. OKWANY**  
**JUDGE**

**In the presence of**  
**Lusyolafor Appellant**  
**Ms Muhoro for the Interested Party**  
**Ms Gikonyo for Ms Mwema the Interested Party**  
**Kurauka for 2<sup>nd</sup> Interested party**  
**Ms Lagut for Respondent**  
**Abdirzak - Court Assistant**