



Haron Athinya t/a Sanlam Insurance Agency v Britam General Insurance Co. (K) Ltd (Commercial Case E726 of 2024) [2025] KEHC 1030 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E726 OF 2024
PM MULWA, J
FEBRUARY 27, 2025**

BETWEEN

HARON ATHINYA T/A SANLAM INSURANCE AGENCY PLAINTIFF

AND

BRITAM GENERAL INSURANCE CO. (K) LTD DEFENDANT

RULING

1. Before me is the Defendant's Notice of Preliminary Objection dated 2nd December 2024 which mainly contests the jurisdiction of this court to hear and determine the matter in issue.
2. The preliminary objection was canvassed by way of written submissions. The Defendant's submissions are dated 16th December 2024, while the Plaintiff filed submissions dated 17th December 2024.
3. I have carefully reviewed the pleadings, the preliminary objection raised and the rival submissions. The central issue for determination is whether the preliminary objection is merited and whether the court has jurisdiction to hear and determine the matter.
4. A preliminary objection is a pure point of law, capable of disposing of the suit in its entirety. It does not require any evidence and is determined based solely on the law as it stands (see *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696).
5. The preliminary objection in the instant case raises the issue of jurisdiction, which is a fundamental question affecting the court's authority to hear and determine the case. Jurisdiction must be addressed at the earliest opportunity, as it is a matter that cannot be waived or overlooked. I find that the preliminary objection is merited.
6. The next issue for consideration is whether the court is clothed with the jurisdiction to determine this matter.



7. The Defendant argues that the dispute falls within the jurisdiction of the Insurance Regulatory Authority (IRA), which is responsible for receiving, hearing and determining complaints related to the insurance industry. The Defendant contends that any judicial intervention should only occur after exhausting the dispute resolution mechanisms outlined under the *Insurance Act*.
8. The Plaintiff on the other hand contends that the High Court has unlimited original jurisdiction in both civil and criminal matters. The Plaintiff refers to Sections 3, 3A and 169 of the *Insurance Act*, arguing that no provision within the that Act ousts the court's jurisdiction.
9. The Plaintiff further contends it submitted a complaint to the IRA on 6th November 2024 and no action has been taken. Thus, it was compelled to file for preservatory orders in this court on 2nd December 2024. And further that the IRA's jurisdiction is supervisory and regulatory and cannot resolve complex contractual and commercial disputes.
10. The Court of Appeal in *Owners of the Motor Vessel Lillian S v Caltex Oil (Kenya) Ltd [1989] eKLR* stated that:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
11. The Plaintiff challenges the intended cancellation of its engagement with the Defendant, arguing that it played a significant role in securing the Kenya Forest Service (KFS) Medical Insurance business in November 2022, which has since generated substantial income. In return, the Plaintiff claims entitlement to a 10% commission. It argues that the cancellation threatens to deprive it of its commission and other benefits associated with the KFS account.
12. The Plaintiff asserts that it will suffer substantial financial loss if the cancellation proceeds, as this would undermine its contractual rights and interests. That the Defendant’s actions violate principles of fairness and good faith in contractual dealings.
13. Section 3 of the *Insurance Act* establishes the IRA. Section 3A thereof stipulates that the authority is responsible for regulating and overseeing the conduct of insurance companies, intermediaries, agents and brokers.
14. And Section 173 of the Act sets forth the prescribed procedure for addressing grievances, outlining the specific channel through which grievances must be raised, processed and resolved. The section provides as follows:
 - i. A person aggrieved by a decision of the Commissioner under this Act may, within one month from the date on which the decision is intimated to him, appeal to the Tribunal which may, subject to such terms and conditions as it may consider necessary, uphold, reverse, revoke or vary that decision.
 - ii. Except as provided in this section the decision of the Tribunal on an appeal made to it under subsection (1) shall be final and conclusive
 - iii. A person aggrieved by a decision of the Tribunal made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the court.



15. The Defendant faults the Plaintiff for having failed to exhaust the alternative dispute resolution mechanisms under Sections 204A, 169 and 170 of the *Insurance Act*.
16. It is now trite that where there is a clear procedure for the redress of any particular grievance, then that procedure ought to be followed strictly (See *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR). Further Section 9(2) of the *Fair Administrative Action Act* emphasizes that courts should not entertain disputes that have established statutory resolution mechanisms.
17. Additionally, in *William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others* [2020] eKLR, the court emphasized the importance of exhausting administrative remedies before seeking judicial intervention. The exhaustion doctrine ensures that parties diligently pursue their interests within the available mechanisms before resorting to the courts.
18. Equally, in *Gladys Mwaniki (Regional Club) & 6 Others v Gordon Oluoch & 7 Others* [2015] eKLR the court reiterated the position thus:

“*The Constitution*...clearly recognizes the role of independent tribunals in dispute resolution scheme. Accordingly, where there is an alternative remedy provided under an Act of Parliament, which remedy is effective and applicable to the dispute before the Court, the Court ought to ensure that that dispute is resolved in accordance with the relevant statute...where an obligation is created by statute and a specific remedy is given by that statute, the persons seeking the remedy is deprived of any other means of enforcement.”
19. The Plaintiff has not demonstrated any exceptional circumstances that would justify bypassing the established dispute resolution mechanisms in the *Insurance Act*. As such, the doctrine of exhaustion must be upheld.
20. Jurisdiction is the cornerstone of judicial authority. Having established that the issues in the present application fall within the jurisdiction of the Insurance Regulatory Authority, I find that this court does not have jurisdiction to hear and determine the matter.
21. Consequently, I uphold the preliminary objection dated 2nd December 2024 and find the Plaintiff's application and suit herein are incompetent. The same are struck out with costs to the Defendant.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Mbaka for Plaintiff

Mr. Kigata for Defendant

Court Assistant: Carlos

