

THE ASSESMENT OF LEGAL FRAMEWORK ON THE IMPLEMENTATION OF THIRD-PARTY INSURANCE POLICY ON CENTRAL GOVERNMENT OWNED MOTOR VEHICLES IN TANZANIA

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ABSTRACT

Insurance is a means whereby the losses of the few are distributed among the many. It is a pool to which a large number of persons contribute and out of which those who suffer misfortune are compensated. Apart from insurance laws, the process of compensation is regulated by insurance policies, which hold a lot of terms and conditions as well as exclusions. In the terms of insurance policies, there might be confusions and misunderstandings regarding the application of conditions and exclusions among the insurer and the insured as well as third party victims, which finally lead to complications in the insurance compensation process.ⁱ Mainly, the validity and effect of exclusions and conditions towards the insured and third-party victims seems to be confusing practically. In addition, the rule of interpretation of policy conditions and exclusions is not clearly noted in the Tanzanian insurance laws, which hinders the uniform application of insurance policies and laws in the judicial system. The article examines the law relating to motor vehicle insurance in Tanzania. The article discusses the concept of motor vehicle insurance, types of motor vehicle insurance, rights and obligations of parties and the legal framework of motor vehicle insurance.

Keywords: Insurance, Motor Vehicle, Government, Third-Party

INTRODUCTION

Insurance companies in Africa, including Tanzania country are faced by several challenges that make their operation in the African market not so easy. These challenges are dependent on the nature of the insurance policies, people, the status of the market, laws governing insurance in the specific country and the lack of proper information about insurance among many Africans.ⁱⁱ However, insurance claims and claims settlement may pose some challenges in terms of non-payments, undue delay, long litigations and negligence in the settlement of insurance claims. Many claims have not been paid due to prolonged investigations to the point that rather than other insured recommend insurance to their friends they always end up discouraging them and most of those who seek insurance always do so in order to gain the benefit of tax reduction that comes with the package.ⁱⁱⁱ

THIRD PARTY INSURANCE

Third party insurance is essentially a form of liability insurance purchased by an insured first party from an insurer second party from protection against the claims of another third party. The first party is responsible for their damages or loss regardless the causes of the damages. Third party insurance covers insured from liability emanating out of damage to the third persons caused by insured vehicle^{iv}, it involves death or injury to pedestrians or public, death or injury to passengers. The prime objective of third- party policy, it is policy under which the insurance company agrees to indemnify the insurer person if he is sued or legal liable for injuries or damages done to a third party, aim at protecting insurer against the consequences of exposure to the direct action of claimant^v. It is therefore insurance contract is between insurer and insured^{vi}. In Tanzania it is mandatory for any vehicle to have a third-party insurance cover as per section 4 of the Act^{vii}, it goes therefore the said provision imposes mandatory obligation for motor vehicle insurance to insure their vehicle against third- party risks.^{viii}

Vehicle Insurance:

Vehicle insurance (also known as car insurance, motor insurance, or auto insurance) is insurance for cars, trucks, motorcycles, and other road vehicles. Its primary use is to provide financial protection against physical damage or bodily injury resulting from traffic collisions and against liability that could also arise from incidents in a vehicle.^{ix} Vehicle insurance may

additionally offer financial protection against theft of the vehicle, and against damage to the vehicle sustained from events other than traffic collisions, such as keying, weather or natural disasters, and damage sustained by colliding with stationary objects. The specific terms of vehicle insurance vary with legal regulations in each region.

Government owned motor vehicle:

Government-owned motor vehicle means any motor vehicle that the Government has obtained through purchase, excess, forfeiture, or otherwise and for which the Government holds title. The provisions relating to compulsory third-party insurance do not apply to any vehicle owned by the Central Government or a State Government and used for Government of a State Government and used for Government purposes unconnected with any commercial enterprise. Exemption may also be granted by the appropriate Government for any vehicle owned by.^x The Central Government or a State Government if the vehicle issued for Government purpose connected with any commercial enterprise, Any local authority and any State Transport undertaking. However, the exemption is made only if a fund is established and maintained by that authority for meeting any liability arising out of the use of any vehicle.

INSURANCE FRAUD

Insurance fraud has been defined to refer to an intentional dis-honesty by a person so that he can unfairly and unlawfully benefit from an insurance transaction.^{xi} A fraudulent claim is one where the insured person lies to the insurer about certain information so that he or she can be unlawfully compensated. The ultimate goal of insurance fraud as indicated in the Motor Vehicle Insurance Act.^{xii} The result has been payment of huge amounts of claims by the insurer leading to collapse of some companies. Huge losses, statutory receivership and at times denial of awards to genuine claimants are some of the effects of insurance fraud. Insurance fraud can be steered by individuals within the insurance companies, intermediaries such as insurance brokers, assessors and investigators, police officers, doctors, advocates among others. The remaining insurers have opted to increase the premiums to cushion themselves against risks of fraudulent claims which then affect the insured and reduce the uptake of insurance thereby affecting the industry and the economy. It is therefore important for insurers to embrace thorough scrutiny of claims to ensure they are legitimate.^{xiii}

LOSS NOTIFICATION AND ACKNOWLEDGEMENT

Insurance policies require that the insured should notify their insurer of a loss immediately, after which the insured is required to give further information by completion of a claims form. Upon receipt of claim notification, the insurer shall take action immediately but not later than seven (7) working days to acknowledge the notification, to avail all appropriate claim forms and provide a list of documents to be provided by the claimant or any further information. For liability claims, the insured is required to forward all correspondences from the claimant or their advocates. It is the insured's responsibility to prove that they suffered a loss and the loss was caused by a peril which was covered by the policy. The claim must be accompanied by proof in the form of receipt for repairs and assessment and valuation reports.^{xiv} Delays in reporting of the loss is detrimental as the insurer misses out the opportunity to investigate facts when the matter is still fresh making it difficult to distinguish genuine claims from false claims.

CLAIMS HANDLING

At this stage the claims department will review a claim before submitting a report to the claimant. Claims review includes the process of analyzing the report to assess the information concerning the claims. Claims that are genuine and admissible are paid without the need for additional evaluation immediately for expeditious purposes.^{xv} In instances where the claim is admissible but the insurer requires additional assessment to quantify the payment, the company will hire a service provider to assess the damage or loss and give quantifiable figures. Meanwhile, the insured person is told to wait for the assessment report feedback. There are also cases where the insurance company deems it fit to conduct further investigation to determine the admissibility of the damage by the insured person. The policyholder will be told about this requirement and its necessity during the investigation process.^{xvi} The insurance company will eventually offer settlement to the policyholder immediately the report is back after the investigation. The insurer is required to also give an explanation to the insured for offering different amounts from the amounts claimed. Where the insurance company believes it is not liable for the damages or loss, it is mandated to immediately inform the insured person about the issue and reasons for the assertions.^{xvii} An insurer will settle a claim when the liability is admitted and upon being satisfied that the claim is legitimate and as per the insurance contract covered.^{xviii} The claims should be paid by the insurer within a period of 90 days. If on reporting

of the claim in the event where liability is disputed the claim delays as the matter will proceed to court for determination. Similarly, upon court's determination the insurer is still required to settle the claim within 90 days of that determination.

REACTION OF VEHICLE OWNERS AT THE OCCURRENCE OF AN ACCIDENT

Insurance companies in Tanzania require that in case of an accident resulting in death of or injury/bodily harm of a third party, a vehicle owner/policy holder must;

- i. Have a valid policy
- ii. The policy holder must immediately report to the police
- iii. He or she must contact his or her relatives
- iv. Notify the insurer about the claim via different means of communication like messages, email, walking to the treasurer's office.
- v. Present a police report to his or her insurers
- vi. Present a medical report of the third party to the insurer.
- vii. In case of death of the third party present a post mortem report to his or her insurance company.

WHEN IS THE VEHICLE OWNER NOT INDEMNIFIED OF THIRD-PARTY LIABILITIES

These circumstances include;

- i. No police report
- ii. When there is no claim made
- iii. When there is no valid contract of insurance
- iv. When there is no medical report / bill in case of bodily injury of third party
- v. When there is no post mortem report in case of third party's death.

LEGAL FRAMEWORK RELATING TO MOTOR VEHICLE THIRD PARTY INSURANCE

The Civil Procedure Code

The Act provide that Parties in third party insurance claim Plaintiff/claimant usually is a person who has been affected injured by an act of defendant or administrator or administratrix of the estate of the person who has been injured and ultimate died. A simply put, claimant may either be a victim himself or representative of the deceased died accessioned the defendant's act.^{xix} Defendants/Defendant would always the owner of the vehicle and the driver respectively, the Owner of the vehicle must be joined as a necessary party together with driver as it was said In the case of *Watende Omary v. Parasternal Sector Reform & 3 Others*^{xx}, it was said that, in my considered opinion, it is very proper for a party to join the owner of the accidented vehicle, the established insurer of the accidented vehicle and who would eventually be liable to pay in the event of established liability and the driver also important to be joined because he is a nexus between the vehicle and the owner. The owner of the vehicle is involved under the rule of vicarious liability^{xxi}, to *wit quit facit per alium facit per se*, he who acts through another does the act himself and respondent superior i.e. responsibility of the superior for the acts of their subordinates. The only exception is found under the rule of frolic and detour. The plaintiff can sue driver and the owner of the motor vehicle and apply to the Court pursuant to order 1 rule 14(a) (b) of the Code to join insurer.^{xxii}

The Motor Vehicle Insurance Act

In Tanzania it is mandatory for any vehicle to have a third-party insurance cover as per section 4 of the Act^{xxiii}, it goes therefore the said provision imposes mandatory obligation for motor vehicle insurance to insure their vehicle against third- party risks. Like other kinds of covers insurance should focus on all risks policy, the casualty must be fortuitous (that is an accident) and not damage that would be expected to occur in normal circumstances. This is because the purpose of such policy is to secure an indemnity against accidents which may happen and not against events which certainly must happen.

TYPES OF MOTOR INSURANCE

Third-Party Insurance

This is the minimum amount of insurance cover that you must have by law for your vehicle. Third party insurance only covers you for damage to someone else's vehicle or property, or injury to someone else in an accident which involves your car. This includes accidents caused by your passenger. If your vehicle is damaged in the accident you will have to pay for the repairs yourself.

Third-party, fire and theft insurance

This includes third party cover and, additionally, damage to or loss of your car by fire or theft.

Comprehensive Insurance

This includes third party, fire and theft insurance. In addition, it will also pay for repairs to your car. There is a range of extra cover that some policies provide, including:

- i. cover for your own death or injury, or that of your partner or other members of your
- ii. family, up to a limited amount.
- iii. cover for your personal belongings if they are stolen from your vehicle or damaged
- iv. cover for your medical and legal expenses
- v. hiring a replacement vehicle.

SUGGESTION

For the government

- i. There should be a period (time limit) in which the insurance company should indemnify the policy holder of third-party liabilities and a penalty if the period lapses.
- ii. This will be to ensure policy holders are indemnified of third-party liabilities after notice of claim has been made known to the insurance company (insurer).
- iii. The procedure for applying for indemnity should be simplified.
- iv. The Act should put a specific premium for the respective car owners e.g. one for truck drivers, taxi operators)
- v. There should be in the Act a penalty for forgery of a certificate of insurance.

- vi. There should be in the Act a provision for no claims bonuses where careful drivers are given a gift say for not causing accidents and driving carefully some of the premium, be returned.

For the Tanzania insurance regulatory body (TIRA)

- i. There should be days where the vehicle owners are given an education about motor third party insurance since most of them had little knowledge of motor third party insurance.
- ii. The insurance regulatory body should make itself be known to the public in case any of the two-insurance company and insured needs to report any difficulty or problem.

Vehicle owners

- i. There should be avoidance of policy lapses
- ii. Vehicle owners should carefully read the terms of the policy and ask *for* interpretation where it's needed.
- iii. Notice of claim should be given to the insurer in case of bodily injury or death of third party in case of an accident.
- iv. Faulty claims and declarations should not be given to the insurer.

Insurance companies

- i. Importance of third-party insurance should be explained to the vehicle owner i.e. its benefits.
- ii. An explanation of the meaning of motor third party insurance should be given to the motor vehicle owner while he or she is purchasing the policy to avoid future misunderstandings.

UTMOST GOOD FAITH (UBERRIMA FIDES) AS A REQUIREMENT IN THE CONTRACT OF INSURANCE

Utmost good faith (**uberrima fides**) sometimes seen in its genitive form *uberrima fides* (literally means, "most abundant faith") it is the name of a legal doctrine which governs insurance contracts. This means that all parties to an insurance contract must deal in good faith, making a full declaration of all material facts in the insurance proposal. This contrasts with the

legal doctrine caveat emptor (let the buyer be aware). Thus, the insured must reveal the exact nature and potential of the risks that he transfers to the insurer, while at the same time the insurer must make sure that the potential contract fits the needs of and benefits, the assured.^{xxiv}

RELEVANCE OF MOTOR THIRD PARTY INSURANCE TO THE VEHICLE OWNERS

Motor vehicle third party insurance provides compensation to third parties for bodily injury or death caused by a motor vehicle. Motor vehicle or death caused by a motor vehicle. Motor vehicle insurance is of great importance because it relieves a vehicle owner of any liability to third party. On the side of third parties, then when they incur any body injuries.^{xxv} An accident can happen to anyone even if the drive of the car is not at fault. This may result into a lot of damages caused in person as well as to the car. Motor vehicle third insurance turns to be beneficial under such circumstances. If the driver is liable for an accident which results in bodily injuries to a third party, then the expenses have to be done by the owner of the car. In such cases motor vehicle third party insurance saves from a devastating financial blow.

LITERATURE REVIEW ON MOTOR VEHICLE THIRD-PARTY INSURANCE

There are various literatures on third party insurance policy on the central government owned motor vehicles which are not insured be reviewed to look for the theoretical grounds relating to the challenges relating to the implementation and protection of rights of third party risks arising out of the use of the said motor vehicles as shown below.

Muhile,^{xxvi} The said Article elaborated on third party Insurance in Tanzania to mean insurance policy purchased for protections of against the claims of another. It includes coverage against claims of damages and losses by a driver who is not the insured, the principal and therefore not covered under the insurance policy. The said Article is very useful with the research at hand, as explained on aspect of third-party insurance in Tanzania is purchased for protection against the claims of another.

Mwakisiki .M.E,^{xxvii} his work evaluated on issue of liability insurance, the insurer is liable to pay for the damage of the property or to compensate the loss of personal injury or death. It is further provided that; type of liability insurance includes third party insurance. The said work is very relevant to this research as it covers on aspect of liability of insurance including third party insurance policy to wit attracts protection of rights of third parties.

Bulla X.P,^{xxviii} in his work examined an aspect of third party Insurance in Tanzania, An Examination of Section 4 of the Motor Vehicle Insurance Act.^{xxix} The motor vehicle to be insured against third party risks that there is no one is allowed to use a motor vehicle on a road on unless there is a force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risk. The said dissertation is useful to this research as it emphasized on the requirement of insuring motor vehicles against third party's risks.

John F.D, and Christopher C. F,^{xxx} In their book emphasized on an aspect of third party claims, it appears that there is always a conflict of interest between a policyholders and insurers on third party claims where are initiated in courts to extent of creating bad faith cause of action for the protection of the side of a policyholder. In case there is a conflict of interest between policyholder and insurers in handling third-party claims then if settling claims exceed the available policy limits requires to be pronounced. The said work is very important to the study at hand as pointed out on how to handle third party claims in order to protect rights of third parties.

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