

THE POLICY OF “NO PREMIUM, NO COVER” UNDER NIGERIAN LAW

INTRODUCTION

It is not uncommon for an insured party, after negotiating and executing an insurance policy, to defer payment of premium until a later date; or for insurance companies to accept part payment of premium, on the condition that payment would be made in full before the end of the insurance policy period. This practice brings into focus the principle of “no premium, no cover” under Nigerian law and interrogates the question of whether full payment of premium is a condition precedent to the validity of an insurance contract.

In an action for enforcement of a contract, the party who alleges breach must prove the existence and validity of a contract between him and the offending party. An essential element for the validity of a contract is the consideration; that is, for a contract to be valid, something of some value, e.g. money or services, must be exchanged for the promise under the contract. The thing of value being exchanged is the consideration. For the consideration to be valid it must be furnished before the promise under the contract. Where it is not, it is known as past consideration and it amounts to no consideration.

William R. Anson¹, commenting on the effect of past consideration, stated:

“A past consideration is, in effect, no consideration at all; that is to say, it confers no benefit on the promisor, and involves no detriment to the promisee in respect of his promise. It is some act or forbearance in time past by which a man has benefited without thereby incurring any legal liability.”

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Therefore, where the consideration is furnished after the promise under a contract, it would not be sufficient to give the contract legal efficacy.

For an insurance contract, the consideration furnished by the insured is referred to as “premium”. Where no payment of premium is made by the insured, then no consideration can be said to have been furnished. Similarly, where payment is made after the risk insured against has occurred, then the consideration would be past consideration. In both instances, what occurs between the parties cannot translate to a contract in law.

NO POLICY, NO COVER

The principal legislation regulating insurance in Nigeria is the Insurance Act². Section 50 of the Act provides that the receipt of an insurance premium shall be a condition precedent to a valid contract of insurance and there shall be no cover in respect of an insurance risk unless premium is paid in advance.

This statutory provision received judicial assent in the case of **JOMBO UNITED COMPANY LIMITED v. LEADWAY ASSURANCE COMPANY LIMITED**³. In the case, Jombo sued Leadway for alleged loss and damage suffered because Leadway breached the contract. Anterior to the alleged loss, Jombo and Leadway had entered into an insurance contract. The contract was effective from 6th March 1997 and was backed by 2 insurance policies that were issued on 10th and 12th March 1997. On 18th March 1997, Leadway received notification from Jombo that the goods insured had been lost at sea. At the time of the loss, Jombo had not paid any premium to Leadway.

In holding that the contract was void, the Supreme Court stated:

“Thus, from the contents of the provisions of Section 50(1) of the Insurance Act No.29, 1997 set out above, the premium is a condition precedent to a valid contract of insurance and there cannot be cover in respect of insurance risk ULESS or EXCEPT the premium therefore is paid in advance”.

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In another case; **ANGLIA UNDERWATER SURVEY LIMITED V. LEADWAY ASSURANCE COMPANY LIMITED**⁴. the Federal High Court of Nigeria considered whether part payment of premium is sufficient to validate an insurance contract. In this case, Anglia entered into an insurance contract with Leadway in relation to its patrol boat that was in Greece. The contract had a tenure of one year. However, Anglia paid an amount that was equivalent to half of the premium. Therefore, the cover under the contract was pro-rated to six months.

When the initial six months elapsed, it became necessary for the vessel to travel from Greece to Nigeria. Leadway issued payment advice for a “one-off voyage from Greece to Nigeria” commencing from 28th February 2015 to 31st March 2015. The patrol boat set sail on the 28th of February 2015. Unfortunately, the vessel encountered a mishap on the voyage on the 11th of March 2015 and sunk at the coast of Tunisia. Anglia thereafter proceeded to pay the premium on 12th March 2015.

Anglia sued Leadway to recover the insured sum. Leadway disputed liability for several reasons, including the failure of Anglia to pay the premium relating to the one-off voyage before the patrol boat capsized. Anglia argued that since it had initially taken out a one-year insurance policy and made payments (for six months and for the one-off voyage), its previous payments amount to part payment of premium.

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The court ruled that there was no valid insurance contract by reason of the fact that the premium had not been paid in full at the patrol boat sunk.

CONCLUSION

For a contract to be valid under the law, it must be backed by consideration. Consideration is the inducement to a contract; the reason or material cause for a contract; some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other⁵. Where no consideration is given, then the contract lacks legal efficacy.

In an insurance contract, the consideration expected from the insured is the payment of the premium. Section 50 of the Insurance Act makes it clear that where the premium is not paid there is no cover for the event insured. Therefore, it is imperative for individuals and businesses who have negotiated insurance contracts to know that the full premium must be prepaid and in advance before the contract could be valid and enforceable. Once such premium is not paid in advance, the contract becomes void and unenforceable.

REFERENCES

- ¹ *Principles of the Law of Contract* 149 (1919).
- ² *CAP I 17, Laws of the Federation of Nigeria, 2004*
- ³ (2016) LPELR-40831(SC)
- ⁴ *Unreported, Delivered on 30th September 2020*
- ⁵ *Black's Law Dictionary, Page 277*