



E-ISSN: 2789-8830
P-ISSN: 2789-8822
www.civillawjournal.com
IJCLLR 2024; 4(2): 18-21
Received: 05-07-2024
Accepted: 11-08-2024

Kola Amirekolade
Ph.D., LL.M, BL, LLB, B.Sc.,
ACII, AILA, ACIB, Faculty of
Law, Elizade University, Ilara-
Mokin, Ondo Stat, Nigeria

An appraisal of the jurisdictional issues and constitutional overview for the settlement of insurance claims in Nigeria

Kola Amirekolade

Abstract

Settlement of insurance claims is one of the legal functions of an insurance company. If there were no losses resulting in claims, the need for insurance would never arise. In the event of disputes between contracting parties in respect of claims and interpretation of the terms of agreement between parties to an insurance policy, the court that has jurisdiction to decide such dispute or adjudicate on such matters between the Federal and State High Courts has always been subject of controversy over time due to the language of the 1979 constitution which conferred in the High Court of a State, an unlimited jurisdiction on matters that are both civil and criminal. Judicial decisions have also oscillated in diverse directions of the laws over the years. However, to effectively dispense with the plethora of insurance claims, the Admiralty Jurisdiction was modified with the establishment of the Federal Revenue Court in 1976 which ultimately transformed into the Federal High Court. Also, with the Admiralty Decree of 1991 which created a category of insurance claims known as Maritime or Admiralty Insurance Claims under which Section 19 explicitly provided that notwithstanding of the provisions of any other enactment or laws, the Federal High Court shall as from the commencement exercise exclusive jurisdiction over insurance and admiralty matters whether civil or criminal. This paper appraises the jurisdiction of courts over insurance matters in Nigeria and whether or not the jurisdiction is exercisable by the State High Court or Federal High Court.

Keywords: Insurance contracts & claims, admiralty jurisdiction, maritime, federal & state high courts

Introduction

Litigation is the process of carrying out a law suit or legal action including all the proceedings therein. It means actions, claims and cause of matter in court of law. If a party is dissatisfied with adjustment and settlement of insurance claims, either party can approach a court of law for settlement and adjudication.

However, jurisdictional issues make litigation a challenge and hence its complexity. The settlement of insurance claims in Nigeria is subject to various jurisdictional issues that can complicate the resolution process, especially on the clarification of which courts have the authority to hear insurance disputes as a result of jurisdictional overlap and regulatory issues involving the National Insurance Commission (NAICOM) inclusive the various Insurance Acts. Preferences are thereby in most cases given to Alternative Dispute Resolution (ADR) by claimants. In Nigeria, insurance disputes can be heard by different courts, the Federal High Court (FHC), State High Courts (SHC), and specialized tribunals. The FHC typically has jurisdiction over matters involving the federal government and its agencies, including the National Insurance Commission (NAICOM). However, disputes purely between private parties may fall under the jurisdiction of SHCs.

A person who suffers loss or damage in the hands of another, whether in tort or in contract may generally rely on his/her right, in law to claim damages designed to redress the wrong or loss suffered. The law requires the loss or damage to be caused by the action of a party ^[1]. In contracts of insurance, the law draws a line short of this limited recompense by allowing parties under an insurance agreement, in appropriate circumstances, to make claims ^[2]. Understandably, when one goes before a court of law for a redress, one expects nothing short of justice. This expectation is the same in insurance law – ‘a refuge and redress in times of need’. It is to be noted that all insurance policies contain a legal condition which lays down, the procedure to be followed in the event of a loss.

Correspondence

Kola Amirekolade
Ph.D., LL.M, BL, LLB, B.Sc.,
ACII, AILA, ACIB, Faculty of
Law, Elizade University, Ilara-
Mokin, Ondo Stat, Nigeria

Jurisdictional Clauses in Insurance Policy

Jurisdictional clauses are always inserted into insurance policies to indicate geographical coverage or expression in times of litigation and settlement of insurance claims. It provided that disputes on claims settlement by parties to an insurance contract must occurred or happened within the geographical expression or jurisdictional area as contained in the policy documents. Also, that litigation on adjudication on settlement must be carried out within the jurisdiction stated except otherwise provided.

Insurance contracts and jurisdictional issues under the constitution of Nigeria

An insurance contract involves, in the main, two parties i.e. the insurer and the insured. The insurer is the person who provides the benefits under an insurance contract and it must be a registered insurer, in this case, a corporate body. The insured is any person who is capable of entering into a contract of insurance. It includes a minor if the contract is for its benefit. But insane persons and drunkards may lack such capacity, contracts of insurance made by such persons are voidable.

In *Irukwu v T.M.I.B.*,^[3] the court of appeal explained the nature of a contract of insurance and whether a court can foist a contract on a party. An insurance contract should be one of utmost good faith 'uberimae fidei'. The insurer and the insured must be ready, and willing to engage in such a transaction. The court cannot, in any insurance contract compel a party to enter or fulfil the terms of the contract. This principle is also generally applicable as a feature of an ordinary contract. It is important to differentiate what insurance deals with from what the contract of insurance relates to. For instance, in the case of *Rayner v Preston*,^[4] Lord Brett L. made this distinction when he said:

The subject matter of the contract of insurance is money and money only. The subject matter of insurance is a different thing from the subject matter of the contract of insurance. The only result in the policy on accident, which is within the insurance happening, is a payment of money. It is true that under certain circumstances in a fire policy, there may be an option to spend the money in rebuilding the premises, but does not alter the fact that the only liability of Insurance Company is to pay money.

Also, Lord Alexander J. made it clear in the case of *Prudential Insurance Company v Inland Revenue Commission*,^[5] that, it is not sufficient to call a document an insurance policy if the happening of the event insured against does not contain an element of uncertainty. He further asserted that the purpose of insuring a ship or a house is not to ensure that the ship shall not be lost or the house shall not be burnt but rather the insured should have a right to call on the insurer to indemnify or compensate him on the happening of the event to lessen or cushion the effect of the loss.

As to the nature of the insurance contract, judicial exposition makes it more instructive. As far back as 1766, Lord Mansfield^[6], insurance contracts are speculative contracts. It is speculative in that the insurer consents to provide a monetary payout or other benefits in exchange for an ill-defined specified event. The insurer is unsure of the exact date. A portion of Lord Mansfield's remark explains how insurance contracts depend on or involve unpredictable dependent events. Insurance contracts are therefore aleatory. It is important to distinguish between wagering contracts

and aleatory contracts at this point. Wagering contracts are legally null and void and cannot be enforced through the courts. Even though an aleatory contract is typically not void, it lacks the qualities of an insurance contract, which is dependent on an uncertain occurrence

As decided in the case of the *University of Nigeria Nsukka v Edwards W. Turner & Sons (W.A) Ltd.*,^[7] "here, the plaintiff agreed to pay a premium of £51,660 a year, net over 50 years in return for a lump sum payment of up to £ 46 million at the end of the period. It is apparent from the agreement that the principle of indemnity is violated in this case. The court found no difficulty in deciding that there is no insurance contract but in substance, a mere scheme of investment."

The jurisdiction over insurance and admiralty matters conferred on the FHC has always been a subject of controversy due to the language of the 1979 Constitution which conferred an unlimited jurisdiction in any cause or matter whether civil or criminal on the SHC. This confusion was manifested in the Supreme Court cases of *Jammal Steel Structures Ltd. v ACB*,^[8] and *Savannah Bank Ltd, v Pan Atlantic Shipping & Transport Agencies Ltd.*^[9] In both cases, the Supreme Court held that the SHCs have, concurrent jurisdiction with the FHC over Insurance and admiralty matters.

However, this confusion has been resolved with the coming into force of the Admiralty Jurisdiction Decree 1991, Section 19 which explicitly provides that notwithstanding the provisions of any other enactment or law, the FHC shall as from the commencement exercise exclusive jurisdiction over insurance and admiralty matters whether civil or criminal. Again, under the Insurance Act, it appears that the Court that has jurisdiction in respect of crime in insurance matters is the FHC. Section 230(1) of the 1979 Constitution and Section 250(1) of the 1999 Constitution confer exclusive jurisdiction on the FHC. The Act provides inter alia that:

1. Offences under this Act will be tried in the FHC, subject to the court's rules. The term "court" will be interpreted appropriately.
2. The Attorney General of Nigeria or an authorized officer in the Federal Ministry of Justice will prosecute an offence under this Act in the name of the Federal Republic of Nigeria. Additionally, the Attorney General may consult with the Attorney General of any state in the Federation and authorize the Attorney General or an officer in the Ministry of Justice of that state, or if a court orders it.
3. Notwithstanding the provision of this section or any other law or Enactment contrary, any legal practitioner employed by the Commission shall be entitled to represent the Commission before any Court or Tribunal. Legal practitioners engaged by the Commission have the right to represent the Commission in any court or tribunal, regardless of any other law or enactment.
4. Only the Attorney General of the Federation may inquire about the authority granted under subsection (2) of this provision.
5. Those accused of an offence under this Act have the right to defend themselves or a legal practitioner of their choice who is a Nigerian resident.

However, the Supreme Court in *Sun Insurance Nigeria Plc v. UECC Ltd*^[10] and *Hydro-tech Nigeria Ltd & Anor v*

Leadway Co. Ltd & Ors ^[11] appear to perpetuate the controversy between the state and FHC further in determining which court had jurisdiction over the claim, considered the provisions of section 251(1) (s) of the 1999 Constitution and sections 73(1), 80 and 97 of the Insurance Act 1997 held that section 251(1) (s) of the 1999 Constitution does not vest jurisdiction to entertain a claim based on civil or a simple contract of insurance on the FHC.

Jurisdictional issues in civil cases

Whereas, under Section 69(1) of the Insurance Act 2003 provides:

Where (a) civil proceedings are taken in court in respect of any claim relating to any risk required to be insured against under this Act or any other law; and (b) a judgment is obtained against the person insured then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to this Section pay to the person entitled to the benefit of such judgment the sum payable (including costs and interest sum) not later than thirty days from the date of delivery of the judgment. Section 102 on the other hand, provides that "In this Act- "Court" means FHC;

The SHC has exclusive jurisdiction over claims arising from simple contracts. Consequently, one can reasonably argue that the SHC has exclusive jurisdiction over claims against an insurer arising out of an insurance policy since a contract between an insurer and the insured in respect of the insured property is, by its very nature, a simple contract of insurance. There appears to be no reasonable basis for arguing otherwise. In reality, however, this conclusion is not that simplistic. The question of whether it is the FHC or the SHC that has jurisdiction regarding insurance claims appears somewhat polarizing and indeed has been the subject of debate. This is essentially because of the definition of "Court" to mean the FHC in the Insurance Act 2003, which due to lack of contextual consideration in interpretation, has led the courts to conclude that jurisdiction in respect of insurance claims resides exclusively in the FHC.

Under Section 236 of the 1979 Constitution, if the claim is civil, the SHC has Jurisdiction on insurance cases where such insurance claim involves a party the insurance company was registered in Nigeria and the policy was also executed in Nigeria as decided in *Alhaji Issa Kano v Safety Insurance Co. Ltd.* ^[12] Furthermore, the issue of jurisdiction also depends on extra-territorial enforcement of the foreign judgment ^[13]. The position in the United Kingdom is that, from practice, English Courts have also claimed jurisdiction on any policy contract signed in the United Kingdom even if the insurer is not registered there. See *New York v Insurance Public Trustee* ^[14]. Also, in *Bronik Motors Ltd. v Wema Bank and National Bank v Soyeye* ^[15] Supreme Court of Nigeria held that the FHC has limited jurisdiction, in the sense that it has only so much of the jurisdiction expressly conferred on it by existing Law. The Supreme Court further held that the SHCs have unlimited jurisdiction under the Constitution in all matters whether civil or criminal. The above legal positions made Yerokun submit that: the dual nature of our general court system at the State and Federal levels leads to conflict regarding the jurisdiction of the Court concerning insurance matters. Furthermore, in *Pacific Insurance Co Ltd v Safiu Ajadi & others* ^[16], it was held that jurisdiction was invariably and positively conferred on the

SHCs. Also, Section 236 vested unlimited jurisdiction over the SHCs.

However, Section 270 of the 1999 constitution has eroded the direct concept of illimitability of the jurisdiction of the SHCs. This notwithstanding, in *Triumph Assurance Co Ltd v M.M. Fadallah & Sons* ^[17] where the plaintiff claimed against the defendant the sum of N1,030,800 (One Million, Thirty Thousand, Eight Hundred Naira) only being the sum of the value of some textile goods lost during the riot in Kano in 1991. The Defendant filed a notice of preliminary objection mainly on the ground that the SHC lacked jurisdiction to entertain the suit. The trial Court dismissed the preliminary objection and held that it has unlimited jurisdiction under section 236(1) of the 1979 constitution of the Federal Republic of Nigeria. The Defendant appealed to the Court of Appeal, the Court stated unequivocally that, the amended Section 230(1) of the 1979 constitution removed the issue of exclusive jurisdiction from the jurisdiction of the FHC. The Court stated further that the law as it stands then is that the FHC has no exclusive jurisdiction over insurance matters.

However, the position of the law from 1979 to 1991 was that the FHC and SHC had concurrent jurisdiction on Insurance and Admiralty matters as it was decided in *Omisade v Akande's case* ^[18]. This arises from the unlimited jurisdiction of SHC under Section 236 of the 1979 constitution of the Federal Republic of Nigeria. Finally, this position of 236 of the 1979 Constitution has been modified and amended through the provisions of the Suspension and Modification Decree No 107 of 1993, whereby the exclusive jurisdiction of the FHC over matters covered under Section 230(1) of the decree was affirmed. The amended 1999 Constitution under Section 251 further reaffirmed the exclusive jurisdiction of the FHC on Insurance and Admiralty matters.

The overall goal of insurance regulation is to safeguard the public from insolvency and unjust treatment by insurers. Governmental intervention and regulation become necessary with the recognition of insurance as a business affected by public interest to ensure that insurance services are dispensed in a fairly competitive environment and are reasonably available to members of the public. Insurance regulation is a legal control of the insurance industry statutorily through Acts of Parliament or Decrees. It regulates, and controls the conduct and practice of the insurance market to protect the policyholders and the public against incompetent and fraudulent insurers who are only in business to make a profit. It also ensures that the insurance companies operate on sound insurance principles with a strong financial base and also ensures that the image of the industry is improved upon by quick and efficient settlement of claims. Also, regulation gives an insight into court jurisdiction and the attitude of the court towards jurisdictional issues as they affect insurance matters.

Conclusion and Recommendations

The jurisdiction of the court over insurance and admiralty matters conferred on the FHC has always been a subject of controversy due to the language of the 1979 Constitution which conferred an unlimited jurisdiction in any cause or matter whether civil or criminal on the SHC. This confusion was manifested in the Supreme Court cases of *Jammal Steel Structures Ltd v ACB and Savannah Bank Ltd v Pan Atlantic Shipping & Transport Agencies Ltd.* ^[19] In both

cases, the Supreme Court held that the SHCs have concurrent jurisdiction with the FHC over Insurance and admiralty matters. However, under the Insurance Act, it appears that the court that has exclusive jurisdiction in respect of crime in insurance matters is the FHC under section 230(1) of 1979 and section 250(i) of the 1999 Constitution. Furthermore, the issue of jurisdiction also depends on extraterritorial enforcement of foreign judgment. The position is in contrast with the practice in the United Kingdom where English Courts always claim jurisdiction on any insurance policy contract signed in the United Kingdom even if the insurance company is not registered there ^[20].

The settlement of insurance claims in Nigeria is fraught with jurisdictional challenges that affect the efficiency and fairness of the process. The study provides clarification, information and guidelines on which court has jurisdiction over insurance matters in both criminal and civil cases. It also underscores challenges faced by claimants or litigants, such as delays and increased costs due to jurisdictional conflicts, the recommendation therefore, can lead to reforms aimed at streamlining the settlement process, ensuring quicker and more cost-effective resolution of disputes through constitutional provisions.

It also provides insight into the regulatory framework and legislative institution governing insurance matters in Nigeria.

Finally, inserting jurisdictional clauses in insurance policies always clarifies jurisdictional boundaries, educating the claimants on legal frameworks and constitutional provisions for prompt and efficient claims settlement mechanisms.

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