

Implications of the Finance Trust vs Sanlam battle

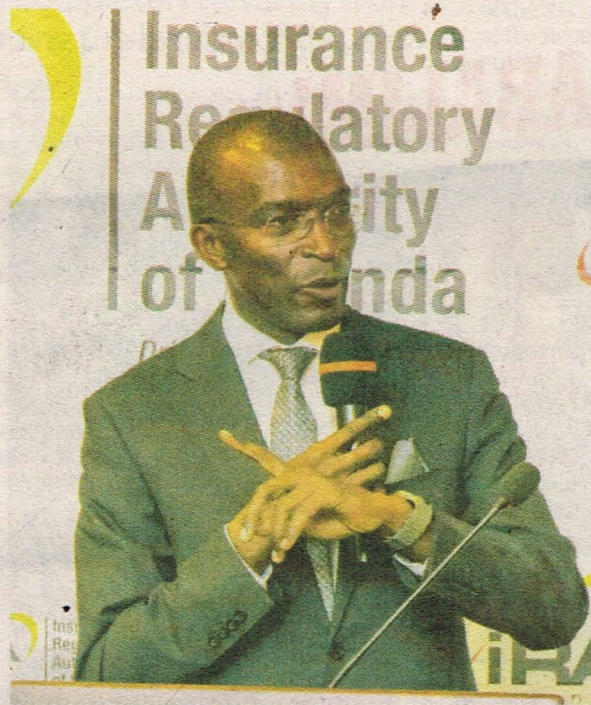
Finance Trust has taken the battle to the Court of Appeal, asserting that Justice Asiimwe's judgment has created a public crisis.

BY DERRICK KIYONGA

A case with grave ramifications for both the banking and insurance sectors is raging in the courts, with the key question being whether a bank can benefit from insurance cover given to a surveying company it has contracted. The case is particularly considering circumstances where professional negligence by the company is proven.

In the case, which has been adjudicated by the Insurance Regulatory Authority Tribunal and the High Court, Finance Trust Bank, which is represented by Muwema and Company Advocates, is pitted against AF Mpanga, representing Sanlam General Insurance, which provided insurance cover christened as professional indemnity to Katuramu and Company Consulting Surveyors.

Finance Trust first lodged its claim in 2023 at the Insurance tribunal, contending that it secured the services of Katuramu to provide professional advice through inspection, opening boundaries and valuation of various plots of land and properties before it could proceed



RULING

The Insurance Regulatory Authority Tribunal had ruled that Sanlam should pay Finance Trust Shs1.9 billion after the directors of Katuramu and Company Consulting Surveyors admitted negligence.

Insurance Regulatory Authority boss Kaddunabbi Lubega. PHOTO/COURTESY

to grant credit facilities to potential loan applicants.

What claims has the lender made?

As a prerequisite for engagement, Finance Trust says Katuramu was required to maintain professional indemnity insurance from a reputable insurance company. Thus, Katuramu secured insurance from San General Insurance. The insurance was renewed twice between 2020 and 2022.

Relying on the valuation reports provided by Katuramu, Finance Trust says

it extended credit facilities to various borrowers, who later defaulted on their loans.

"These inaccuracies included the valuation of the wrong properties, undisclosed graveyards, and some properties were vacant, but the valuation reports indicated that they were developed. Those posed challenges for the bank in recovering the loans and foreclosing the mortgaged properties," the bank, which asked in excess of Shs3 billion in compensation from Sanlam, said in documents filed both at the Insurance tribunal and the

High Court.

The bank's case hinges on the letter dated October 4, 2023, addressed to the insurance authority, wherein Katuramu acknowledged their negligence, saying they sanctioned the valuation reports without verifying the contents therein, which was a breach of their professional duty.

What is the insurer's defence?

In documents filed at the Authority, it said Katuramu's move to admit negligence was in bad faith. Sanlam also blamed Finance Trust for being imprudent in issuing loans, therefore liable for contributory negligence.

"The bank officials extended their imprudence when they failed to do the basic legal requirements to lend and secure the loans by mortgages," Sanlam's legal team argued.

What was the verdict?

The Insurance tribunal threw out Sanlam's argument. "The bank [Finance Trust] hired and relied on the advice of competent professionals to advise it regarding the security mortgage, rather than relying on its staff. The due diligence function has been outsourced to the insured [Katuramu and Company Consulting Surveyors], who had the necessary expertise."

Consequently, the tribunal ruled that Sanlam should pay Finance Trust Shs1.9 billion after the directors of Katuramu admitted negligence.

What was the response?

Sanlam wasn't pleased with the tribunal's determination to take the bat-

tle to the High Court's Commercial Division, mainly insisting that Finance Bank couldn't be a beneficiary of the insurance policy issued to Katuramu.

In overturning the adjudication by the tribunal, Commercial Court's Justice Patricia Kahigi Asiimwe ruled that the principle of privity of contract dictates that, as a general rule, a person who is not a party to a contract cannot enforce that contract. Though Justice Asiimwe said there are exceptions to the doctrine of privity of contract, which are provided under Section 64 of the Contracts Act, the case before her was different. "In the present case, I have reviewed the policy agreement, and I have not found any clause that expressly allows the respondent [Finance Trust] to enforce the contract," she said.

Basing on a clause in the agreement therein, Finance Trust lawyers had argued that Sanlam undertook to indemnify Katuramu against any claim for breach of professional duty. Asiimwe didn't agree with them, interpreting that Sanlam only undertook to protect Katuramu from financial consequences of claims made against them by its clients due to negligence, errors, or omissions in their professional service.

What next?

Finance Trust has taken the battle to the Court of Appeal, asserting that Justice Asiimwe's judgment has created a public crisis. In its appeal, the lender says the judgment has negative ramifications because professional indemnity insurance is designed to benefit third parties who suffer loss occasioned by the negligence or errors of insured professionals.