

~~CI.2 GA~~

10, 1963

IN THE PRIVY COUNCIL

No.11 of 1961

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N

THE UNITED MARKETING COMPANY (Defendants) Appellants

- and -

HASHAM KARA (Plaintiff) Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

19 JUN 1964

25 RUSSELL SQUARE
LONDON, W.C.1.

RECORD OF PROCEEDINGS

74040

GOODMAN DERRICK & CO.,
30, Bouverie Street,
London, E.C.4.

Solicitors for the Appellants.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Respondent.

IN THE PRIVY COUNCILNo.11 of 1961

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N

THE UNITED MARKETING COMPANY (Defendants) Appellants
 - and -
 HASHAM KARA (Plaintiff) Respondent

RECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF KENYA</u> <u>AT NAIROBI</u>		
1	Plaint	19th December 1957	1
2	Defence	14th February 1958	4
3	Judge's Notes of trial		6
	<u>Plaintiff's Evidence</u>		
4	(1) Hasham Kara	26th/27th January 1959	9
5	(2) Amirali Hasham Kara	27th January 1959	22
6	(3) Rehmtulla Hussein Suleman Verjee	28th January 1959	30
7	(4) Gulamhussein Valji	28th January 1959	34
8	(5) Sadrudin Salemohamed Alibhai	28th January 1959	35
9	(6) Gordhanbhai Chatterbhai Patel	28th January 1959	37
	<u>Defendant's Evidence</u>		
10	(1) Labh Shanker Chhaganlal Dave	28th January 1959 2nd February 1959	38 41
11	(2) Gulamali Dewji Murji	2nd February 1959	45
12	(3) Shahbudin Hasham Amarshi	2nd February 1959	50

No.	Description of Document	Date	Page
13	(4) Haiderali Gulamhussein Thanawalla	3rd February 1959	51
14	Address of Counsel for (a) Defendants	3rd February 1959	61
14	Address of Counsel for (b) Plaintiff	3rd February 1959	65
15	Judgment	27th April 1959	68
16	Decree	27th April 1959 (Issued on 8th July 1959)	81
<u>IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA</u>			
17	Memorandum of Appeal	8th July 1959	82
18	Amended Memorandum of Appeal	8th July 1959	84
19	Notes of Arguments by Sir Kenneth O'Connor - President	12th, 13th and 14th September 1960	87
20	Notes of Arguments of The Acting Vice President - Mr. Justice Gould	12th, 13th and 14th September 1960	116
21	Notes of Arguments of Crawshaw, J.A.	12th, 13th and 14th September 1960	148
22	Judgment of Court	15th September 1960	166
23	Order on Appeal	15th September 1960	167
24	Order granting final leave to Appeal	2nd March 1961	168

E X H I B I T S

Exhibit Mark or No.	Description of Document	Date	Page
1	Credit Note	6th December 1955	170
3	Trading Account - Hasham Kara, 1.1.1956 to 9.4.1956	17th August 1957	171
4	Letter, Hasham Kara to United Marketing Co.	10th May 1956	172

Exhibit Mark or No.	Description of Document	Date	Page
5	Statement, United Marketing Co., to Hasham Kara	25th April 1956	173
6	Invoice, United Marketing Co., to Hasham Kara	13th January 1954	174
7	Provisional Receipt, United Marketing Co., to Hasham Kara	28th January 1954	174
8	Credit Note, United Marketing Co., to Hasham Kara	28th January 1954	175
10	Statement, United Marketing Co., to Hasham Kara	31st January 1954	175
15	Bank Pay in Slip	24th December 1954	176
	Do.	29th June 1955	177
	Do.	14th September, 1955	177
	Do.	6th October 1955	178
	Do.	16th February, 1956	179
	Do.	10th April 1956	180
17	Do.	29th January 1954	181
18	Letter, Hasham Kara to United Marketing Co.	24th April 1956	182
A	Letter, S.R.Kapila & Kapila to Jubilee Insurance Co., Ltd.	21st April 1956	183
B	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	5th October 1953	184
C	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	5th October 1953	185
D	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	11th October 1951	186
E	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	5th October 1953	187
F	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	5th January 1953	188

Exhibit Mark or No.	Description of Document	Date	Page
G	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	7th December 1951	188
H	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	15th October 1954	190
I	Letter, Jubilee Insurance Co., Ltd., to Head Office for renewal of Policies	1st November 1954	191
R	Renewal Notice	15th October 1954	191
S	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	17th November 1953	192
T	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	10th December 1952	193
	Proposal Form		194
	Letter, Jubilee Insurance Co., Ltd., to Head Office for renewal	5th February 1953	196
U/1	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	11th October 1951	197
U/2	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	5th October 1953	198
V/1	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	13th February 1954	199
V/2	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	4th February 1955	199
V/3	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	20th December 1954	200
V/4	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	10th January 1953	201
V/5	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	12th November 1953	201
W/1	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	24th April 1956	202
W/2	Letter, Jubilee Insurance Co., Ltd., to Hasham Kara	27th April 1956	203

ORIGINAL EXHIBITS FORMING PART OF THE RECORD OF PROCEEDINGS
~~BUT NOT TRANSMITTED.~~

Exhibit Mark or No.	Description of Document	Date
2	Fire Policy No. 4762	
9	Cheque for Shs:1505/-	25th January 1954
11	Cheque for Shs:760/02	5th October 1955
12	Cheque for Shs:768/84	13th September 1955
13	Cheque for Shs:1732/-	15th February 1956
14	Paper showing figures	
16	Receipt Book	
L	Statements for October and November 1955	
M	Statements for August and September 1955	
N	Plaintiff's Ledger Sheet	
O	File relating to Policy No. MB/4762	
P	File relating to Policy No. MB/4775	
Q	File relating to Policy No. MB/4789	

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
<u>IN THE SUPREME COURT OF KENYA</u>	
Notice of Appeal	9th May 1959
Notice of Address for Service	15th May 1959
Notice of change of Advocates	18th September 1959

IN THE PRIVY COUNCIL

No.11 of 1961

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N

THE UNITED MARKETING COMPANY

(Defendants)
Appellants

- and -

HASHAM KARA

(Plaintiff) Respondent

RECORD OF PROCEEDINGS

In the
Supreme Court
of Kenya.

10

No. 1.

PLAINT

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1525 of 1957

No. 1.
Plaint.
19th December,
1957.

HASHAM KARA

Plaintiff

versus

THE UNITED MARKETING COMPANY

Defendant

PLAINT

20

1. The Plaintiff is a merchant residing and carrying on business in Nairobi, and his address for the purposes of this suit is c/o D.P. Khetani, Advocate, Nairobi.

2. The Defendant is a firm registered under the Business Names Registration Ordinance whose partners are (1) H.G. Thanawalla, (2) S.H. Thanawalla and (3) K.H. Thanawalla carrying on business as Insurance Agents, at Nairobi and its address for service is care of Shamas House, Latema Road, Nairobi.

30

3. At all material times the Plaintiff employed the Defendant as such insurance agents aforesaid, to cause to be insured and to keep insured against fire (inter alia) all the

In the
Supreme Court
of Kenya.

No. 1.
Plaint.
19th December,
1957
- continued.

moveable and immoveable properties respectively which were from time to time in the ownership or occupation of the Plaintiff.

4. It was the duty of the Defendant under the terms of such employment -
 - (i) to obtain the said insurance cover for the said properties respectively;
 - (ii) unless the Plaintiff gave the Defendant firm instructions to the contrary, to renew the said cover without reference to the Plaintiff each time the respective insurance policies become due for renewal. 10
 - (iii) to inform the Plaintiff if any of the said policies had not been renewed;
 - (iv) to render accounts from time to time to the Plaintiff for the amount of the insurance premiums payable to the Defendant firm.
 - (v) generally to superintend and advise the Plaintiff upon all his insurance business. 20
5. In pursuance of the said employment, the Defendant firm had, since the year 1950 and until the matters hereinafter mentioned, caused to be insured and kept insured against fire, the shop (inter alia) on Plot No.2646, Bazaar Road, Nairobi, of which the Plaintiff was at all material times the lessee, together with the goods and effects therein which comprised the stock-in-trade of the Plaintiff's said business, in the sum of Shs.50,000/-. 30
6. The insurance policy in respect of the said shop and contents again became due for renewal on the 17th November 1955 and it was the Defendant's duty, as aforesaid to renew the same without reference to the Plaintiff, who had given no instructions to the Defendant firm to the contrary, for the ensuing year, namely until the 17th November, 1956. 40
7. The Defendant firm, in breach of its said duty and/or negligently, failed to renew the said policy on the said date or at all, and failed to inform the Plaintiff that the same

had not been renewed whereby the Plaintiff was deprived of the said or any insurance cover in respect of the said shop and its contents.

In the Supreme Court of Kenya.

No. 1.

Plaint.

19th December, 1957

- continued.

8. On the night of the 9/10th April 1956 a fire occurred in the said shop, which destroyed or damaged the same and all the said goods lying therein, whereby the Plaintiff sustained loss and damage to the extent of Shs.46,270-75 cts.

10

9. By reason of the Defendant's said breach of duty and/or negligence the Plaintiff was unable to claim Shs.46,270-75 cts. in respect of stock-in-trade, furniture and fixtures destroyed by fire or any sum by way of indemnity from the Jubilee Insurance Company Limited. with whom the said shop and contents had previously been insured and of whom the Defendant firm was at all material times the Chief Agent, or from any insurance company, and the Plaintiff has thereby suffered loss and damage to the extent of Shs:46,270-75 cts.

20

Wherefore the Plaintiff prays for :-

1. Judgment against the Defendant for Shs:46,270-75 with interest thereon at Court rates.
2. Costs of this suit.
3. Such further and other relief as may be just.

DATED AT NAIROBI this 19th day of December, 1957.

Sgd: D.P.Khetani.

Advocate for the Plaintiff.

30

Filed by :-

D.P. Khetani, Esq.,
Advocate,
Duke House,
Duke Street,
Nairobi.

To:-

The United Marketing Company,
Shamas House,
Latema Road,
Nairobi.

40

In the
Supreme Court
of Kenya.

No. 2.

DEFENCE.

No. 2.
Defence.
14th February,
1958.

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1525 of 1957

HASHAM KARA

Plaintiff

versus

THE UNITED MARKETING CO.

Defendants

DEFENCE

1. The Defendants admit the names and descriptions of the parties hereto save and except that their address for service now is care of Sirley & Kean, Advocates, Princes' House, Government Road, Nairobi. 10
2. The Defendants deny that they were employed by the Plaintiff as alleged in Paragraph 3 of the Plaint or at all and put the Plaintiff to the strict proof of any such alleged employment.
3. The Defendants deny that they were under any of the duties set out in Paragraph 4 of the Plaint as though the same were expressly set out herein and denied seriatim and put the Plaintiff to the strict proof of such alleged duties. 20
4. The Defendants deny that they performed any acts in pursuance of the employment alleged in the Plaint which alleged employment is expressly denied.
5. The Defendants state that at the request of the Plaintiff they arranged insurance cover with the Jubilee Insurance Co., Ltd., in respect of the Plaintiff's shop on Plot No.2646, Bazaar Road, Nairobi until 17th November, 1954.
6. The Defendants deny that they were under any duty to renew the Policy referred to in paragraph 6 of the Plaint as alleged in paragraph 6 of the Plaint or at all. 30
7. The Defendants deny that they were negligent in any way as alleged in paragraph 7 of the Plaint or at all.
8. The Defendants deny that there was any privity of contract between the Plaintiff and the Defendants relating to the breach of duty complained of by the Plaintiff. 40

9. The Defendants deny that they owe any duty of care to the Plaintiff which could support a cause of action for negligence as apparently pleaded in paragraph 7 of the Plaint.

In the
Supreme Court
of Kenya.

No. 2.
Defence.
14th February,
1958
- continued.

10 10. The Defendants state that the Plaintiff was well aware that the insurance effected through the Defendants in respect of the Plaintiff's said property on Plot 2646 was effected by the Defendants with a named principal, Jubilee Insurance Co. Ltd., and that the Defendants acted merely as agents of the Jubilee Insurance Co. Ltd., to effect the said insurance.

11. If the Defendants were under any duty of renewal of the insurance cover of the said shop on behalf of the Plaintiff, which duty is specifically denied then the Defendants state that such duty was conditional on punctual payment by the Plaintiff of the relevant premium and state that the Plaintiff failed to pay the premium in question.

20 12. The Defendants do not admit that the insurance policy in question became due for renewal on 17th November 1955 as alleged.

13. The Defendants do not admit the statement of facts averred in paragraphs 8 and 9 of the Plaint and put the Plaintiff to the strict proof of the alleged loss and damage.

WHEREFORE the Defendants pray that this suit against them may be dismissed with costs.

DATED at Nairobi this 14th day of February, 1958.

30 Sgd: L. Kean
SIRLEY & KEAN
Advocates for the Defendant.

Filed by :-

Sirley & Kean, Advocates,
Princes' House, Government Road,
Nairobi.

Copy to :-

40 D.P. Khetani, Esq.,
Advocate,
Nairobi.

I consent to this Defence being filed out of time.

Sgd: D.P.Khetani
Advocate for the Plaintiff.

In the
Supreme Court
of Kenya.

No. 3.

JUDGES NOTES

No. 3.
Judges Notes.

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1525 of 1957

HASHAM KARA Plaintiff

versus

THE UNITED MARKETING COMPANY Defendants

27.1.58. (1) H.G.Thanawalla, (2) Mrs.K.H. Thana-
walla, (3) S.H.Thanawalla, trading as
the United Marketing Co., appears by
Messrs.D.N. & R.N. Khanna, Advocates,
Nairobi. 10

Sgd: H.F. Hamel
Deputy Registrar.

17.2.58. Defence filed by Messrs. Sirley & Kean,
Advocates, Nairobi.

J.Chambers,
Deputy Registrar.

4.3.58. Mr.Khetani for Plaintiff.
Bhan Singh for Sirley & Kean for Defend-
ants. By consent hearing date fixed for
9th and 10th June, 1958. 4th on the list. 20

J. Chambers,
Deputy Registrar.

18.7.58. Khetani for Plaintiff.
Bhan Singh for Sirley & Kean. By consent
hearing fixed for 26th and 27th January,
1959.

P.Heim.
Deputy Registrar.

26.1.59. Coram Templeton, J. 30
Salter Q.C. (with Khetani) for Plaintiff.
Mrs. Kean for Defendant.

Salter:- Claim for 46,270/75 arising
out of Defendants alleged negligence in
performance of contractual duties.

Defendants - Chief Agents for Jubilee
Insurance Co.

Plaint paragraphs 3 and 4. 4 (ii) and
(iii). Paragraph 5 - Course of dealing.
Plot 2646 subject of Policy 4762. 40

Paragraph 6, Paragraph 7, Paragraph 8, -
Fire - April, 1956 - damage 46,270/75.

In the
Supreme Court
of Kenya.

Defence Paragraph 2 - denies negligence.
" " 3 - denies duties.
" " 4 - denies any course of dealings
" " 5 - denies duty to renew. Admits
premium insured up to 17.11.54.

No. 3.
Judges Notes
- continued.

11 - Failure to pay premium.

10 Facts - Plaintiff first started dealings with De-
Tendants firm in 1942 under compulsory insurance
under Defence Regulations.

H.G. Thanawalla handled insurance on behalf of
Defendant.

Three properties insured through H.G. Thana-
walla and policies fell due for renewal on 17.11
in each year.

20 Plaintiff will say arrangement was as set out
in paragraph 3 - 4 Plaintiff, which contract was mutu-
ally agreed and carried out faithfully year by year.
Method of paying premiums rather lax - running
account premiums debited to Plaintiff contra ac-
count.

All premiums paid to H.G.Thanawalla and not to
Jubilee Insurance Co. He was responsible to Jubi-
lee and Plaintiff says was responsible to see re-
newals made. In 1955 Plaintiff had credit note of
200/- odd with United Marketing Co.

30 We submit Policy fell due 17th November, 1955.
Policy on shop in Bazaar Road not renewed but the
Policies on the other two shops were. How came it
the premiums paid on those two and not on the
Bazaar Road shop?

Defendant never informed Plaintiff the shop
was not covered as we submit was his duty. He will
say H.G. Thanawalla informed Plaintiff he had in-
structed Insurance Company to renew.

40 Day after fire conversation between Plaintiff's
son and Defendant that instructions to renew all
three had been issued. Later that morning Plain-
tiff consulted his Advocate and interviewed Defend-
ant in company with 2 leading members of Ismailia
Community. Defendants attitude was as far as he
was concerned Plaintiff was covered - that it was
a mistake on part of the Insurance Company and that
he was going by air to Mombasa to put it right. He

In the
Supreme Court
of Kenya.

No. 3.
Judges Notes
- continued.

did go but no satisfaction obtained and later Plaintiff informed Policy had expired in November, 1954 and had not been renewed.

Accounts will show Plaintiff had paid and been debited with premium up to November, 1955 and accounts after that date would have been debited in ordinary way for 1956.

Submitted clear breach of duty and negligence on part of Defendant.

Law - Submit Defendant.

10

Halsbury, 3rd Edition, Vol.22 page 201 and 382.

Insurance Brokers and Insurance Agents.

Course of dealing and actual contract of employment applied ordinary rules of agreement.

Vol. 1 - 152 top of page.

Part 7 - Formation of Agency. 153.

If that position is established there can be no doubt. Boustead on Agency 11th Edition, page 109 - second example.

Agent instructed to insure goods.

20

Smith v. Lascells - Vol.100 E.R. page 101 (2 T.R. 187).

Submit principles applicable here page 102.

Buller J. 3 instances - course of dealing.

Smith & Price, 175 E.R. 1268.

Head Note - 1269 Gill, C.J.

Submit clearly established that if a course of dealing between parties arises will be effected unless contrary instructions then apart from oral witnesses, Plaintiff has right to expect property to be insured.

30

Duty on Defendant to insure it and failure of that duty. Issues framed and agreed as follows:-

- (1) Did Plaintiff employ Defendant as his agent to effect his insurances on his properties.
- (2) If so, upon what terms.
- (3) Did Defendant commit any breach of that contract or was he negligent in his performance of it. If so, what damage resulted.

PLAINTIFF'S EVIDENCE

No. 4.

HASHAM KARA

P.W.1. HASHAM KARA sworn :-

Examined - Salter - -

I am a merchant carrying on business in Nairobi. I have been in business since 1938.

10 In 1956 and previously I was Lessee/Occupier of Plot 2646 Bazaar Road, Nairobi. I had occupied that shop since 1940.

I know the firm United Marketing Company. They are Insurance Agents - 3 partners. Thanawalla. The one Thanawalla I dealt with was Haiderali Thanawalla.

I had dealings with him such as insurance of the properties insurance of vehicles, lorries and cars, and Life Insurance policies of my four sons.

20 I first had dealings with him in 1942, when we had compulsory war insurance policies. After the war in 1950 I got through him, insurance of three properties.

I had a conversation with him at his office in 1950. It was arranged that year by year he should on his own account without my having to tell him renew the policies.

30 One was the Bazaar Road shop, the subject of this suit, my plot in Pangani, No.1530 and my residential plot on Blenheim Road. I was insuring the properties against fire and theft. The arrangements regarding payment was that he would debit me in his accounts. He used to buy provisions from me and in my books I had his personal account, and in his books, he had my account and we used to make entries in each others accounts. The accounts were settled. After a certain period we used to compare each others accounts and square them. If I owed him I would pay and if he owed, he would pay.

40 The Insurance Company was Jubilee Company. We had an order from our late Aga Khan that we should all insure our properties through Jubilee Company even if more premiums charged.

The money for the premiums as far as I can remember, I never at all sent direct to the Jubilee Insurance Company. The arrangement continued until

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.

Hasham Kara.
26th/27th
January, 1959.

Examination.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.

Hasham Kara.
26th/27th
January, 1959

Examination
- continued.

the time the fire took place. Mr. Thanawalla never told me before the fire that my policy had not been renewed. If a policy had not been renewed I would not come to know unless Mr. Thanawalla informed me. It was his responsibility to renew the policy. I was not to worry at all. He never told me he had not renewed the policy. If he had told me the policy on Bazaar Road shop not renewed, I would have asked him for the reason and if there was some reason I would have got it renewed through somebody else. So far as I was concerned the policies on all three properties were renewed up to end of 1956. Last premium I paid was in 1955.

10

In December, 1955 I received a receipt for premiums of Shs:234/42 dated 6th December, 1955. It included the premium for the burned property. (Put in as Exhibit 1).

I see this policy of insurance, No.4762 (put in as Exhibit 2). The number 4762 appears in Credit Note Ex.1 third item.

20

On the night of 9th April, 1956 there was a fire in my shop in Bazaar Road which resulted in everything being burned.

Following morning 10.4.56, I sent my son to the Defendant's office. When he came back he gave me certain information the result of which I went to Mr.Thanawalla's house. I saw Mr.Thanawalla and reported the fire and that shop burned. He said "You need not worry, come and see me at my office at half past ten".

30

We four persons, myself, Rahimtulla Suleman Verjee, Sadrudin Salehmohamed Alibhai and my son went to his office.

Rahimtulla Suleman Verjee is Mukhi of our Community i.e. in charge of treasury and local community of Aga Khan. He performs all religious ceremonies in Mosque. Sadrudin is the deputy to Rahimtulla Suleman Verjee.

At Mr. Thanawalla's office we saw Mr.Thanawalla himself. As we entered he welcomed us and then he said to me "Hashambhai don't worry, you don't have to. Your property is covered. I have got your cover". He added "To-day, at my own cost I am flying to Mombasa to see the Manager of Jubilee Insurance Co". He put a document in Mukhi's hands saying "See Hashambhai is already covered".

40

Salter: had given notice to produce.

Mr. Thanawalla said to Mukhi "I have written a letter on behalf of Hashambhai to Jubilee Insurance Company, Mombasa". He didn't say anything at that time except that he was flying to Mombasa that day.

10 The following day or 11th or 12th I saw him again. Mr. Thanawalla said he had been to Mombasa and saw the Jubilee Insurance Co. "Jubilee refuses to pay your claim". I said "then it is your responsibility". He didn't say anything. My son was present on that occasion. As far as I remember that is what took place.

After that I approached my lawyers.

I called two persons to assess the damage, one was Gulamhussein Verjee and Hassanali Tej Pal. They went on checking the goods, prepared lists and found prevailing market price.

20 I subsequently received a trading account from my Accountant and Auditors for period 1.1.56 to 9.4.56. He is Mr. G.K. Patel. I signed the trading account.

Salter: Will call the Accountant and Auditors and wish to put in the account agreed by Plaintiff. (Trading account put in as Exhibit 3). Value of stock salvaged 3,729/25.

I am claiming difference between that signed and amount of insurance cover.

Cross-Examined - Mrs. Kean

30 I kept books including stock books. The ledger shows in goods account how much goods received and how much sold.

I know what a record of stock is. In respect of the stock destroyed in this fire, I had books but they were all destroyed. Apart from the ledger I had stock books. In my present business I have stock books. The stock books of the goods destroyed by fire were kept on the shelf in the shop which caught fire. The stock books were burned.

40 I myself made the entries in those books. I used to take stock at end of December. My accountant at end of 1955 was Mr. G.K. Patel. Our previous auditor was Mr. Shah.

I was the person who kept the stock books. Mr. G.K. Patel would have all the books for auditing at

In the Supreme Court of Kenya.

Plaintiff's Evidence.

No. 4.

Hasham Kara.

26th/27th January, 1959

Examination - continued.

Cross-Examination.

In the Supreme Court of Kenya.

Plaintiff's Evidence.

No. 4.

Hasham Kara.
26th/27th
January, 1959.

Cross-
Examination
- continued.

the end of the year. At end of 1955 the stock books went to either Mr. Patel or Mr. Shah.

Not correct that we didn't have any stock books. If so, how could we do our Income Tax returns.

It was all misfortune. Usually we take our books to our house at night and put them in a safe. On this night they were left in the shop. At that time I was very seriously ill, on my death-bed. Only two or three books were recovered. I had been ill for 1½ to 2 months before that I confined to bed from February onwards. Fire was on 9th April. At that time I was confined to bed but had recovered to the extent of being able to be put in the car and carried to the scene of the fire.

10

I was walking a little but otherwise doing everything in my car. I was up and dressed. By that time I was improving.

Except for 3 or 4 books all were destroyed. Ledger 1956, Cash book - day book, 1956, and Cash Book for 1954 were recovered. I can produce no stock books as all were destroyed. I myself used to keep current books with me but account books for past years were kept on the shelf.

20

I say I agreed with Thanawalla that he would automatically renew all insurance year by year without reference to me. From 1950 he did renew all insurances without reference to me. I say I had no means of knowing if they had been renewed unless he informed me. Mr. Thanawalla was to handle these matters and debit the premiums which he used to pay on my behalf in my account and if the account fell short he should approach me and demand money from me. He used to write letters to say so much is owing.

30

Adjourned 12.40 p.m.

Resumed 2.15 p.m.

I first said Mr. Thanawalla had committed a breach of our arrangement at the time he said Jubilee Company had refused to pay. I told him it was his liability. My son was present, nobody else. I had entrusted the matter to my lawyers. I don't know whether they wrote him a letter.

40

Q. I put it to you that your instructions to Kapila and Kapila were not to make a claim against United Marketing Company, but against the Jubilee Insurance Company.

A. I left the matter completely to my Advocate. I don't remember if I instructed Mr.Khatani to claim against Mr. Thanawalla. As we could not file a case through Kapila, I approached Mr. Khatani.

In the Supreme Court of Kenya.

Plaintiff's Evidence.

No. 4.

Hasham Kara.

26th/27th January, 1959.

Cross-Examination - continued.

It was soon after the fire that the stock was taken and amount of claim assessed.

There was no question of my having any idea. It was ascertained from the books.

10 I don't remember if I ever thought loss would exceed Shs:50,000/- because it is three years ago.

The figure I instructed Kapila and Kapila to claim from Jubilee Insurance Company, I left in the hands of Kapila and Kapila. I can now remember that they said they were going to claim damages of Shs:50,000/-.

20 In April, 1956 I was asked by Mr.Kapila the total sum insured and I told him Shs:50,000/-. Don't remember if Mr.Kapila asked me how much the value of stock destroyed was. He had asked me the amount of insurance. I never informed Mr.Kapila the loss sustained was greater than the insured amount. It was not greater.

If Kapila on 21st April, 1956 wrote Jubilee Insurance Company "as value of loss sustained exceeds the amount insured" I think he had not taken into account the value of salvaged goods and it was Insurance Company's job to assess the value of loss. (Letter marked Exhibit A for identification).

30 When I discussed these insurance matters with Mr. Thanawalla in 1950 it was in November 1950. At this conversation only myself and Mr. Thanawalla were present. I placed three fire policies for properties, plus policies for lorries and cars.

40 Formerly he had his office opposite Express Transport Company and I don't know when he shifted from there but the conversation was in his office. I told him I was taking out the policies and didn't want to bother any more about them and he said "we will go on paying on your behalf, because that is our duty as insurance agents". This was 8 to 9 years ago. I don't remember everything that was said but after this conversation it was his practice year by year to pay the premiums and debit me. I don't rely only on the practice. The talk did take place that he would pay the premiums and debit me. I am not saying it was his duty to go on

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.

Hasham Kara.

26th/27th
January, 1959.

Cross-
Examination
- continued.

paying premiums whether I paid or not. He had to renew on my behalf and debit me. If I didn't want it continued I could close it but until that he had to carry on for an indefinite period. As he renewed my policies he used to debit my account. If premium not paid by me for 1953-54 he had to go on paying. As far as I know that was the practice. I approached Mr. Thanawalla to make this arrangement. I was not paying him for this but he was receiving his commission. It was his business.

10

If any correspondence was addressed to me in English about the insurances in 1954 I had my sons with me and the correspondence used to be put on the file. When invoices were received they were filed. From 1950 to 1954 insurance letters addressed to me were opened by my son. I think when correspondence was received he used to attend to it himself. Up to 1954 it was my son Amirale's job to attend to the insurance. When he received statements of account he used to settle them. It was already decided with Mr. Thanawalla that he would attend to it. If it was necessary my son used to ask me about things. He was making payments as and when he received accounts. Sometimes he asked for money every year, sometimes $1\frac{1}{2}$ years, sometimes six months.

20

I cannot remember if I received notices from Jubilee Insurance Company that premiums were about to fall due. We had a number of policies with Jubilee Insurance Company.

30

So far as I was concerned he used to produce the forms and ask me to sign. I had nothing to do with Jubilee Insurance Company. If I received any letter the letter would go to Mr. Thanawalla and I would receive a copy. So far as I can remember I have seen the words "copy to Hasham Kara". I definitely might have received copies but since the originals went to Mr. Thanawalla it was his business to attend to them. I don't remember because my son was managing that side of the business. I was able to find several receipts for 1952 and 1953 from the burned papers made out by Mr. Thanawalla. Receipts for premiums of the shop which was burned and other properties. Up to 1954 I don't know if we received renewal notices. I had already arranged that the policies would be renewed.

40

After my son had gone I received a notice. It was sent to me and then I went to Mr. Thanawalla and told him about the notice and what is the amount

due. He asked me where is the notice. I showed it to him and he snatched it from my hand and tore it and said it must be the mistake of his man. I asked amount due and paid. I think this was October or November 1955.

Between 1950 and 1954 I don't know what happened.

10 My son left for Uganda about May, 1955 and after he left all came upon me. Up to the middle of 1955 he handled it.

When Mr. Thanawalla wanted premium or instructions I don't remember him telephoning me. If any talk involving this took place I would try and remember it if reminded of it.

On 26.1.54 my son had gone to Thanawalla and made payment of 2,735/- or 2,740/- and had obtained a receipt.

20 Q. Is it not quite likely that between 1950-54 Mr. Thanawalla phoned you and asked about the premiums?

A. That is not correct. How could he ask for money when it was always paid.

30 I say that between 1950-55 the money was always paid if a letter was received. I can't say whether immediately or a couple of days later but no telephone calls were necessary. When I received last notice and came to know it was premium due I went and paid immediately. The arrangement was made with Thanawalla in 1950. He was handling all the account work of insurance but some work I had to do. I used to run the business make entries in the books and collect outstandings. This was the position about the whole business.

Up to 1954 my son was looking after the insurance accounts with Mr. Thanawalla and making payments to Mr. Thanawalla. Amirali and myself were the only ones doing the insurance.

40 We had cross account with Thanawalla, and continual dealings with him. My son used to go and square up the accounts with Thanawalla. Up to 1956 I have not had any dealings with Mr. Thanawalla. I informed Amirali that Mr. Thanawalla had instructions to renew all insurances, but when I cannot remember whether it was at the time of the arrangement or six months to one year after. I think I

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.

Hasham Kara.

26th/27th
January, 1959.

Cross-
Examination
- continued.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.
Hasham Kara.
26th/27th
January, 1959.

Cross-
Examination
- continued.

informed him at the time but I did tell him the arrangement had taken place. It was not necessary for me to instruct Mr. Thanawalla to renew policies as it was already arranged.

It is not true that Mr. Thanawalla used to tell us when premiums were due and ask for our instructions. He never approached me or to my knowledge my son. Not true that Mr. Thanawalla informed me no policy could be renewed unless premium paid. As far as I am concerned I thought the fire policy in question had been renewed in 1955.

10

I did not get Statement of premium for November, 1955-1956 but I can take it for granted from credit note of 6.12.55 that the policy is renewed.

Renewal slip with invoice for 1954-55 most of the papers have been burned but I have found a debit note dated 6.1.54. I used to get invoices when policy renewed for the premium of current year. If invoice dated 6.1.54 it would date from the November of the previous year. If policy renewed I would receive invoice with amount of premium payable. I would not agree I would have to pay the current premium before the following year would be renewed. It was his duty to renew it unless I received a registered notice telling me policy would not be renewed. I received no notice from Jubilee Insurance Company in November, 1954 that the policy had lapsed. If such a notice were sent it would not have any meaning because a copy of it would go to Mr. Thanawalla and it was for him to arrange.

20

30

I received an invoice on 6.1.54 covering premium up to November 1954. If policy renewed from November, 1954 to November 1955, I would in normal course have received an invoice but it has not been received in my hands.

Adjourned 4.00 p.m. Until 10.30 a.m. tomorrow.

J.S. Templeton.

27.1.59. Resumed

40

Appearance as before.

P.W.1 HASHAM KARA on same oath

Cross-Examined - Mrs. Kean continued

Subsequent to November, 1954 I don't know if I was debited with premium on Policy 4762 as I have not got the books.

I have asked Defendant to send accounts through my Advocates. I cannot say if they sent invoices as they were burned in the fire. Whatever papers I recovered I have handed over to my Advocates. I have not been able to see if they included monthly statements.

Salter: We have no monthly statements. We asked in April, 1958 for inspection but were not given it.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.

Hasham Kara.

26th/27th
January, 1959.

Cross-
Examination
- continued.

10 From November, 1953 to November, 1954 the premiums on the policies were paid. Statement shows that whole sum 2,735/- was paid on 28.1.54.

Whatever money we paid would be entered in the insurance account. That was in the books which were burned, in the ledger and Day Book. After the fire the insurance account was entered in the current account books which are at my shop. First entry is made in Day Book and then transferred to Ledger. All books relating to insurance in 1955 were burned. I have recovered only three books. It is in the Ledger that so much is on account of insurance. The ledger will not contain entries showing premiums paid i.e. numbers of policies or particulars but if I paid 1,000/- or 2,000/- it would be entered. "So much paid to Mr.Thanawalla in respect of insurance".

20

If matter refers to 1955 or 1954 I can argue. Details of insurance from 1950 to 1955.

As result of the dispute I went into the papers and was able to find out that in 1954 we had paid so much for insurance. I have not said that my insurance account was squared with the provision account of Mr. Thanawalla at my shop. I have said he was buying provisions from me and whenever he wanted money he used to tally his account with the provision account in our books and whatever balance was due was paid. He used to make entries in his account. I used to make entries in my account. If he stopped buying rations from me it doesn't mean he was to stop paying the premiums.

30

40

My evidence in examination in chief about squaring account (pp.4 and 5) I said that but it wasn't compulsory that he should buy rations from me. If he did buy rations or not, no such talk had taken place.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.

Hasham Kara.
26th/27th
January, 1959.

Cross-
Examination
- continued.

Q. After he bought rations did you deduct the money for rations from the amount due for premiums.

A. It was when he produced his account I used to tell him so much was due by him and he said to deduct that amount. On several occasions he used to advance money to me. I used to borrow from him.

(To Court: This arrangement was not part of the talk I had with him in 1950).

10

Up to 1954 I did not meet with him to square accounts.

The books of 1954 show that out of his dues of 2,700/- odd he has given credit for 1,100/- odd and has received cheque 25.1.54 for 1,505/- as the balance due.

When I borrowed money from Mr. Thanawalla he did not charge interest.

The Aga Khan's instructions were to insure with Jubilee Insurance Co., and also circular was sent by Mr. Thanawalla on behalf of Jubilee to that effect. Up to 1957-58 we have left them since the dispute.

20

I did cancel a policy with Jubilee. After the dispute I told Mr. Thanawalla he was charging 200/- too much and I produced papers showing this.

The instruction was that we should insure even if it was 1% more but not to the extent of 200/-.

This letter 17.11.53 addressed to Hasham Kara from Jubilee Insurance Company I don't know if my son received it. It is marked copy to Thanawalla. I think this amount is included.

30

(Salter: It is admitted in Defence that the cover was in force until 1954).

Amirali was handling the matter up to 1954.

All papers which I recovered I handed to my advocates. My two sons and myself gave all the papers to the advocates. I don't know if they included letters like that (from Jubilee Insurance Company).

40

I am saying that from 1950 to 1955 I gave no instruction to renew. He was bound by our original talk in 1950 to go on renewing the policies as and when they fell due until and unless we gave instructions to the contrary. Except on one occasion,

1955 September when I borrowed from Jubilee 150,000/-. At that time I was specifically told by Jubilee that all renewals in future should be done direct. There was no necessity to give instructions because he was renewing.

I don't know what my son did but as far as I was concerned the matter was decided.

In September, 1955 it was decided that either Mr. Thanawalla or Jubilee should insure the plot.

10

There was an order (sentence) passed against me but I was adjudged quite innocent on appeal. I had given evidence in a criminal case.

When I went to see Mr. Thanawalla after the fire it is not correct that he told me I had not paid the premium, and therefore policy had lapsed. He said "I am bound to you and that is why I am flying to Mombasa to recover your claim". In our presence he reserved his passage. It was not that he was trying to help me, he had failed in his duty. I was on good terms with him at that time.

20

This whole story of Mr. Thanawalla having to renew policies is not untrue and is not just something I have thought up afterwards to get money from somebody. If it is untrue what about the fact that he admitted in presence of 4 persons that I did not have to worry about it. He had said he had written to Jubilee and it was a matter between him and Jubilee.

Re-Examined -Salter.

30

When I went through my stock after the fire we did a physical check and not from books.

Before the fire we had previously carried out a physical check in December, 1955 when books were given to Income Tax Department.

The information concerning that check was submitted to my accountant.

40

Exhibit 3 trading account "To stocks on 1.1.56 48,000/-" That represents the result of our Stock check in December, 1955. "To purchases 53, /-". That figure comes from the book of January, 1956 Day book and ledger. My accountant saw those books when I went to obtain certificate to show stock, purchases and actual balance.

Salter: Letter 10th May, 1956 I ask for original. Mrs. Kean agrees to copy going in.

In the Supreme Court of Kenya.

Plaintiff's Evidence.

No. 4.

Hasham Kara.
26th/27th
January, 1959.

Cross-
Examination
- continued.

Re-Examination.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.

Hasham Kara.
26th/27th
January, 1959.

Re-Examination
- continued.
Exhibit 5.

Exhibit 6.

Exhibit 7.

Exhibit 8.

Exhibit 9.

Exhibit 10.

Exhibit 11.

Exhibit 12.

I wrote this letter of 10th May, 1956 (Put in as Exhibit 4) to Defendants "Liability to me" I mean he was not discharging liability to render correct account.

The statement which I received debiting Shs:1,504/66 is the statement now produced dated 25th April, 1956 after the fire.

Third item - Plot No.2646 Indian Bazaar Particulars 17.11.53 to 17.11.54 - Policy No.4762 - debit Shs.176/-. No credit has been shown in that account for 176/-. First two entries refer to insurance on Fort Hall Road properties and Blenheim Road property. It shows I was credited with premiums on those up to 17.11.56. Statement put in as Exhibit 5.

Premium 17.11.53 to 17.11.54 shown as 176/- in this invoice dated 13.1.54 (Exhibit 6).

Receipt 28.1.54 refers to receipt from me of 176/- on policy 4762 (Exhibit 7).

That shows insurance policy on shop was renewed for January 1954 to November 1954 but I have not been credited with that amount in Exhibit 5.

It shows that Exhibit 5 is not accurate. On 28.1.54 I received this credit note from United Marketing Company for Shs.485/- in respect of commission on all business up to date. That credit note is not reflected in the account of 25th April 1956.

(Credit note put in as Exhibit 8).

This cheque 25.1.54 drawn by me in favour of United Marketing Company for 1,505/- was in respect of the statement for 2,735/- (cheque put in as Exhibit 9).

It is in respect of this account which shows this amount was in full settlement. (Account put in as Exhibit 10).

Second credit on Exhibit 5 is in respect of a premium I said I paid cheques in September and October, 1955.

On 5.10.55 I gave him this cheque 760/02 (Exhibit 11) which is shown as credited.

On 13.9.55 I gave him this cheque for 768/84 (put in as Exhibit 12). It was given in payment because he told us so much was remaining due. We

10

20

30

40

went on paying him when he told us the amount due. That amount is not shown in Exhibit 5. When I had paid these two cheques in September and October, 1955 I thought I had paid up all premiums because I paid him on his demand that so much was due.

Exhibit 1 of 6.1.55 I received this credit note in respect of various premiums paid including premium on Policy 4762.

10 On 15th February, 1956 I gave Defendants a cheque for 1732/- in respect of premiums due 6.12.56 to 5.12.56 as shown in Exhibit 5. (two vehicles).

That cheque was paid on that day because he told me so much was due. At that time he did not mention that I owed any money in respect of any other premium for 1956.

20 Exhibit 5 shows premiums included in respect of property in Blenheim Road. from 28.11.55 to 28.11.56. I can't remember if the premium had been paid then.

So far as insurance is concerned I was not dealing differently with my shop in Bazaar from other properties. The premium for the shop was paid in the same way i.e. on his demand I used to make payments.

30 When I saw him after the fire Mr. Thanawalla as far as I can remember said nothing about Fort Hall Road, and Blenheim properties as to whether they were covered. He did not tell me that properties were covered for period to November, 1956. He said "it is all my responsibility". He placed the whole file and a letter in hands of Mukhi. I had not the slightest idea that my shop was not covered for that period. He was emphatic that I need not worry. Nobody ever asked me specifically for premium on that policy up to November, 1956. Whatever money was demanded was paid so I thought the premium was naturally paid.

T.A.R.

40

J.S. Templeton.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 4.

Hasham Kara.
26th/27th
January, 1959.

Re-Examination
- continued.

In the
Supreme Court
of Kenya.

No. 5.

AMIRALI HASHAM KARA

Plaintiff's
Evidence.

P.W.2. AMIRALI HASHAM KARA sworn:-

Examined - Salter:

No. 5.
Amirali
Hasham Kara.
27th January,
1959.

I am the son of Hasham Kara (Plaintiff). I assist him in his business. I have been doing that up to September 1955. I assisted in accounts and general business including insurances. I was doing all insurance accounts with Mr.Thanawalla regarding the insurance policies.

10

Examination.

We had an agreement with Mr.Thanawalla that he would renew all our policies when they expired and would debit the amount to our account. We both had accounts. He was buying goods from us and we had policies with him. We had several policies for cars, lorries and buildings.

During this time I was dealing with Mr.Thanawalla. Sometimes I saw him after a year, sometimes after six months. I saw him fairly often. Several times he mentioned the arrangement. When I used to mention policies he would say "It is my duty to renew it, don't worry about it". He used to debit the premium to our account and we used to settle after six months, a year or 18 months.

20

I used to make out my father's cheques, Exhibit 9 is in my writing also Exhibit 12 and Exhibit 11. Blank cheques are already signed by my father and I fill them in.

The amount I knew because Thanawalla used to tell me the amount.

30

When cheques paid in September and October, 1955 I was under the impression that nothing more was due and that the policies were up to date.

Period November 1955 to November 1956 the mutual arrangement was that he used to debit to our account and ask for money in due course. Whatever amount he asked for we paid.

I had no idea the shop was not insured. I was under impression that the policy had been renewed.

On morning after the fire I went to Mr.Thanawalla's office. I saw a Punjabi there who worked in the insurance department. He showed me a letter which he took from his office file and told me two

40

policies had been renewed. I couldn't follow him properly but I took it the policy for the shop was not renewed. I met his accountant Mr. Dave and asked him for the account. He wrote it out on a piece of paper. This is the one Mr. Dave gave me on that occasion (put in as Exhibit 14). It has an entry carried forward "MB 4762 2046 Shs:176/-". I understood that entry refers to the policy on the shop but it does not show whether that premium had been paid. I have seen a receipt for that amount. I went to see my father and told him of my visit to the office. From there we went to see Mr. Thanawalla at his house. Mr. Thanawalla told my father "You are covered, don't worry, come and see me at 10.30 a.m. in the office". From there we went to see Mr. A.R. Kapila and got advice and on his advice we went to see Mr. Sadrudin and with him went to the Mukhi Rehmatala Suleman Verjee.

10

Adjourned 12.40 p.m.

Resumed 2.15 p.m.

20

When we saw Mukhi we went to Mr. Thanawalla's office. Present were Mukhi, Sadrudin, my father and myself with Mr. Thanawalla. After formal greeting Mr. Thanawalla said to Mukhi "as far as I am concerned, Mr. Hasham is already covered with me, he should not worry". "I have already written a letter to renew his policy with Jubilee Insurance Co." Afterwards at same meeting he showed Mukhi a letter and requested him to read it. I did not read it myself. He said "I am booking my passage to Mombasa in your presence" and telephoned Airways for accommodation to Mombasa for the same day 10th April. He said "You don't worry, I will see that this claim is paid". He said "I can't understand why one policy in particular has not been renewed", the other policies were renewed. The one that was not was the shop policy. No reason was given at that meeting. He booked his seat to Mombasa in my presence. I next saw him following morning 11th April. He told my father in my presence that Jubilee is refusing to pay the claim. He didn't say why because the policy had not been renewed. My father told him "I don't know Jubilee Insurance Company, you are the principal man and it was your duty" and then we went away.

30

40

I went back to Uganda and my father was doing everything.

Mr. Thanawalla said at that meeting that he has already contacted the police. He used a word like "misfortune" I don't remember exactly.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 5.

Amirali
Hasham Kara.

27th January,
1959.

Examination
- continued.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 5.

Amirali
Hasham Kara.

27th January,
1959
- continued.

Cross-
Examination.

Cross-Examined - Mrs. Kean:

I started assisting my father with the insurance I think in 1950.

My father told me about the agreement that Mr. Thanawalla would renew policies, when I started looking after the insurance for him.

From 1950 - 1955 Mr. Thanawalla was automatically renewing without reference to me. At no time did he ask me for instructions to renew any policy.

As far as I remember I never gave him any instructions to renew. I think I never did so. It was his duty to renew.

He never asked me if I wanted such and such a policy renewed. I never asked him to renew a policy without his asking me. I never asked him to renew this particular policy on the shop MB 4762 nor instruct him to renew it. I don't think I ever signed any paper with instructions to renew. I am 99% sure I did not instruct him to renew.

I don't agree that I did give him verbal instructions. Maybe in the beginning 1949 or 1950 I may have given written instructions but I don't think so.

I never signed a document asking for renewal of this particular policy. I can't remember without seeing the letter whether I received one saying policy about to expire. I did receive printed forms to that effect. In respect of each policy I did not receive more than one.

This letter now produced about Policy No.4762 dated 5th October, 1953 bears my signature. It was asking to renew from 17th November 1953 to 17th November, 1954.

Salter: The question was whether witness had signed a particular document asking Thanawalla to renew Policy. This document purports to be signed on behalf of Jubilee Insurance Company. It is put to witness in order to get him to contradict himself. It is a stereotyped form. At bottom slip addressed not to Thanawalla but to Jubilee Insurance Company Ltd.

Trying to put in as contradiction something which has no bearing on the witness's answer. I have no objection to the letter going in but I object to the form of the question. (Put in as Exhibit B).

Exhibit B.

10

20

30

40

Q. To whom did you give instructions to renew?

A. To Mr. Thanawalla.

(Recorded at Mrs. Kean's request)

This paper came from Mombasa and I signed it and sent it back to Mombasa. This came by post and I sent it back by post.

10 Sometimes I used to give papers to Mr. Thanawalla and other times I would send direct. I might have sent one or two other notices similar to that to Jubilee in Mombasa. It is a long time ago and I cannot remember completely. I never gave a slip like this to Mr. Thanawalla. I had no conversation with Thanawalla about this particular slip. I used to sign plenty of papers in his office. I naturally cannot remember conversations word for word but I remember the substance. He used to take my signature on papers and I never paid much attention. I would have read this before I signed it. Before 20 it was shown to me I did remember that I had signed it, but not that it was in respect of Policy 4762. I remember signing one or two but not details of the particular policies. There is nothing special about this one which would cause me to remember.

In 1953 about the same time as this renewal notice I can't remember but I may have signed some to send to Mombasa.

Mr. Thanawalla has taken my signature in his office to many documents. (This other notice MB 6775 put in as Exhibit C).

30 I am quite sure I sent both Exhibits B and C direct to Jubilee and did not give to Thanawalla. He used to renew all policies but sometimes when I received these renewal notices I used to sign them and send to Jubilee.

All the motor policies used to be renewed by Mr. Thanawalla. I don't remember giving any instructions to Mr. Thanawalla or to Jubilee to renew any motor policy.

40 I was told by my father about the agreement. I used to sign so many documents so how can I remember details. I do remember Mr. Thanawalla used to renew policies. I would say without signing a slip the policy was renewed. I used to get printed renewal slips from Jubilee Insurance Company I think they came direct. I used to get invoices for

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 5.

Amirali
Hasham Kara.
27th January,
1959.

Cross-
Examination
- continued.

Exhibit C.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 5.

Amirali
Hasham Kara.
27th January,
1959.

Cross-
Examination
- continued.

premiums from Mr. Thanawalla. The renewal slips and invoices did not come together in the same envelope.

The arrangement for payment of premiums was that when he wanted the money he used to ask us. He used to ask us for money, never on the phone. He used to send bills and I used to go to him and we settled the amount.

The Statements used to come sometimes every two months sometimes after. We used to settle after a year, six months or 18 months. He used to ask me verbally to settle. 10

He was buying goods from us and we took our policies from him. He used to ask how much he owed us and he used to deduct it from our account.

I know that happened from my own knowledge. I remember it happening. It is not true that that never happened. If bill is 3,000/- I pay 1,700/- or something like that.

Against our premium account with Mr. Thanawalla there would be credits of the amounts he owed us in our books. 20

I don't know how he kept his accounts.

I used to debit rations in his account and at time of settling I would tell him amount due from him and used to make payment after he deducted the amount owing to us.

I never kept any details of insurance premiums. Nobody else kept details in my father's books. I kept stock books. They were kept in the shop. Usually we took all our account books home at night. At time of fire I had been staying in Uganda but I was actually in Nairobi that night. I kept stock books up to time I went away. 30

Q. Suggest practice was that you were given a year's credit for premiums up to that time. If policy renewed 1953-1954 you had to pay premium for 1952-53.

A. Not at all. Premium for cover November 1952-1953 we might have paid within two months or within 15 months when we settled accounts. If he made account the following day we would settle the following day. If insurance is taken out today we may have paid the following day if accounts were settled the following day. If 40

policy is renewed today, and I am called tomorrow to settle accounts the premium would be paid tomorrow. When Mr. Thanawalla asked us to pay we used to settle promptly. There was no particular time to settle but when he asked we used to pay.

My father was looking after the general business but he is uneducated and I was looking after the insurance. If he told me anything I would do it.

10 Blenheim Road property Policy was with S.B.S.A. or N.B.I. and if Mr. Thanawalla had not renewed the bank used to write him a letter. We used to get copies of correspondence from the bank. Can't remember getting copies of notices from Jubilee but I was receiving plenty of papers like that.

When N.B.I. sent premiums they did once or twice debit us.

20 Mr. Thanawalla used to debit the premiums to us but sometimes bank debited our account and got the policy renewed themselves. I kept a file of these papers but some of the files were burned in the fire. This letter now produced I don't remember receiving. Between 1950 and 1955 we used to get a lot of letters and notices from Jubilee and Thanawalla.

Notice of 11.10.1951 marked D for identification.

Notice of 5.10.53 marked E for identification.

30 This letter saying policy had lapsed I can't say if I received but similar stereotyped letters were received. (Marked Exhibit F for identification).

I had not told Mr. Thanawalla verbally I didn't want Policy on KBE 164 renewed. If I had given him instruction it would be in writing. He used to take my signature about things like that.

40 My brother Sultan Ali used this car. I don't remember if the policy was ever renewed. If I didn't want a policy renewed I would tell Mr. Thanawalla otherwise he used to renew them. If I wanted to renew vehicle licence I had to go to him to get a cover note before licence could be renewed.

This circular from Jubilee that motor policy about to expire. I used to get notices like that. Notice 7th December that expiry on 9th I might

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 5.

Amirali
Hasham Kara.

27th January,
1959.

Cross-
Examination
- continued.

Exhibit D.

Exhibit E.

Exhibit F.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 5.

Amirali
Hasham Kara.
27th January,
1959.

Cross-
Examination
- continued.

have signed it and sent to Jubilee. If I wanted the cover note for the new year I might have sent it. The signature on this I cannot identify. (Put in as Exhibit G).

This other renewal notice October, 1954, I may have received. We were getting plenty of them (Exhibit H for identification).

When he wanted money Mr. Thanawalla used to ask me, when statements used to come. Mr. Thanawalla did not sometimes have to ask me more than once for settlement. He did not make it clear that if we didn't settle he would not be in position to re-
new the policy. Not at all. We used to settle each time when he asked us. 10

I did not understand from my father that it was part of the arrangement that Mr. Thanawalla should purchase groceries which would go against the premiums. It was his business whether he wanted to buy rations or not.

He used to debit premiums and when he wanted payment he used to ask us. The arrangement was that he renewed the policies and debited our account and we used to pay when he sent the account. 20

After the fire no reason was given why shop policy not renewed.

It shows on statement that we have made all payments to them.

Exhibit 7 shows that premium paid 1953-1954. There is nothing to show it was 1952-1953. I don't agree the usual way was to pay premiums a year in arrear. I say this shows premium paid 1953-1954. 30

Particulars of Mr. Thanawalla's account 1950-1955 were in our books but some were burned. He did not tell me after the fire that trouble was because premium not paid.

When we went to consult Mr. Kapila I thought in my mind that we were already insured. There is no question of thinking. We were already insured.

Not correct that it is quite untrue. Mr. Thanawalla ever renewed any policy without specific reference and instructions either verbal or in writing from me or my family. I knew that Mr. Thanawalla told me it was his duty to renew policies. It was in his office but I cannot say whether 1950 or 1951. I remember it was when he had his 40

office in Victoria Street. In plenty of cases he renewed policies without reference to me.

I say it was his duty in all cases which he followed in all cases except for this one policy.

Re-Examined - Salter:

10 About his automatically renewing this policy when I saw him the day after the fire he told us in presence of Mukhi and Kamadia that "as far as Hasham is concerned he is already covered with me. Why should he worry". I understood it to mean he had renewed the policy.

When I received reminders about renewals we used to pay the money to Mr. Thanawalla. We never paid premiums to Insurance Company direct. We used to send Mr. Thanawalla accounts for goods bought from us so he would know how much he owed. I used to go to his office and he used to deduct whatever he owed and I gave him a cheque for the difference.

20 Credit slip Exhibit 8 commission on insurance 485/- that was commission which he gave my father on premiums paid - some sort of discount. We were not debiting the credit note received from Mr. Thanawalla in our books.

When premiums were outstanding we never got a credit note of that kind. We used to get after settlement. If I made a settlement today he used to give credit note up to the date.

30 Exhibit 1 shows commission of 234/42. That commission we would not have got if any premiums outstanding.

Exhibit 6 invoice dated 13.1.54 is in respect of premium on policy amount 176/- from 17.11.53 up to 17.11.54.

Exhibit 7 28th January 1954 for Shs:176/- policy No,4762.

Looking at Exhibit 6 and Exhibit 7 I can say that the payment on 21st January, 1954 was in respect of the invoice of 13.1.54.

40 To Court: When I posted renewal slips to Jubilee at Mombasa, I sent no money or cheque at all.

T.A.R.
J.S.Templeton, J.

Adjourned 4.15 p.m. until
11.30 a.m. tomorrow J.S.Templeton, J.

28.1.59. Resumed

Appearances as before.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 5.

Amirali
Hasham Kara.

27th January,
1959.

Cross-
Examination
- continued.

Re-Examination.

In the
Supreme Court
of Kenya.

No. 6.

REHMTULLA HUSSEIN SULEMAN VERJEE

Plaintiff's
Evidence.

P.W.3. REHMTULLA HUSSEIN SULEMAN VERJEE sworn:-

No. 6.
Rehmtulla
Hussein
Suleman Verjee.
28th January,
1959.
Examination.

Examined - Salter:

I carry on business in Nairobi. In 1956 I was Mukhi of Ismailia Community and still am. Duty is to perform all religious and formal duties laid down by H.H. the Aga Khan.

I know Hasham Kara, Plaintiff for many years. I remember him coming to see me in April, 1956 after a fire in his shop about 10th April. His son and Mr. Sadrudin Kamadia were with him. Kamadia is second to me. He performs all the duties in my absence. It was between 10 and 10.30 a.m. We went together to Mr. Thanawalla's office. We saw Mr. Thanawalla in his office. Present were Mr. Thanawalla, Plaintiff, his son, myself and Sadrudin. Mr. Thanawalla welcomed us and told Hasham Kara that why he has brought Mukhi and Kamadia with him. It was not necessary because as far as Hasham Kara was concerned he was fully covered. He was very sympathetic and said very sorry for the misfortune to Hasham Kara. Then he said "Well I am ringing up and booking a seat by Airways to Mombasa" which he did in our presence. He said he had already covered the policy and written a letter to Jubilee and he produced the letter and gave it to me to read.

10

20

Salter: I would ask for that letter or a copy before asking witness of his recollection of what it contained.

30

Mrs. Kean hands in copy letter of 1st November, 1954. I don't remember the date of the letter (shown letter) This is not the letter, there was another one.

My recollections of what I read in the letter was it was concerning Mr. Hasham Kara's affairs that instructions had been given by his company to renew all the policies and that as far as that letter was concerned Mr. Hasham Kara was fully covered and on strength of that letter Mr. Thanawalla was going to Mombasa to see Mr. Paroo the Managing Director.

40

I didn't know there was any dispute. He said

we should go back and when he returned from Mombasa he would see Hasham Kara and fix up this matter with him.

Hasham Kara asked in our presence whether he had ever asked Mr. Thanawalla to cancel his policies. Mr. Thanawalla said "No". Whether any dispute about not paying premiums and Mr. Thanawalla said "No".

Cross-Examined - Mrs. Kean:

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 6.

Rehmtulla
Hussein
Suleman Verjee.

28th January,
1959

Examination
- continued.

Cross-
Examination.

10 I understood I was asked to go to see Mr. Thanawalla because he was in trouble. I had no purpose but as Mukhi if any Community member is in any trouble, we go willingly with them to settle the matter.

20 Mr. Hasham when he came to my place was crying and asked me to accompany him. If there were any difficulties we go and try to settle them. We met with him for purpose of helping to settle his trouble. I didn't know there were difficulties about his fire insurance. He was crying and he told me his shop took fire and everything was burnt. He told me he was insured with Jubilee and Mr. Thanawalla had asked him to go to his office at 10.30 and would I accompany him and I said "Most willingly".

30 Before I went to Thanawalla's office Mr. Hasham Kara had not told me about trouble of insurance. He did not give impression that he knew insurance cover for the shop not in force. He didn't discuss anything. As far as I was concerned it was just going to make a formal claim. I didn't know the purpose but when Mr. Thanawalla said there was no trouble we left. I generally go when any member of community asks me whether that person is in trouble or not.

40 Mr. Thanawalla said going to see Mr. Paroo, Managing Director of Jubilee and get Hasham Kara's question settled and would see Hasham Kara when he returned. As far as I was aware this was just a normal claim. As far as I remember nobody at that meeting said that Mr. Hasham Kara's policy was not in force. The whole thing was we were there for 5 or 10 minutes and then Mr. Thanawalla said he was going to Mombasa to settle claim and then we had a cup of tea and went away. There was no argument about whether policy was in force. I don't

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 6.

Rehmtulla
Hussein
Suleman Verjee.

28th January,
1959.

Cross-
Examination
- continued.

remember Hasham Kara arguing anything because Mr. Thanawalla showed him he was fully covered. I gathered Mr. Thanawalla was going to Mombasa although everything was in order.

The letter I saw was addressed to Jubilee Insurance Co., from Thanawalla's office. I don't know the date of the letter. It referred particularly to that policy of the building which took fire. There was another one also, and he said these two were covered. 10

The letter concerning Hasham Kara's policy, there were instructions to renew all Hasham Kara's policies and the numbers of the policies were given. By time interview finished I was still under impression there was no query about the policy.

Mr. Hasham Kara saying "Have I ever asked for policies to be cancelled". I thought they must have had discussion previous to that, that remark must have been in connection with the fire. I can't remember everything that was said or the exact words. I made no note. I am relying entirely on my memory. 20

Mr. Thanawalla produced the letter and assured us "as you are here you can see this letter which shows there is no question of Mr. Hasham Kara not being fully covered". I asked Mr. Thanawalla if there would be any trouble about the policy and he said "No". I asked just for my own satisfaction.

I thought it was his duty to go to Mombasa, not that he was merely helping a member of his own community. 30

The Aga Khan's people do insure with Jubilee. As far as possible all people insure with Jubilee as they are our own community. The Aga Khan did direct that they should. Some of my own insurances are placed with Jubilee. Life insurances I have placed there. I don't remember offhand if motor and fire policies are direct with Jubilee or through an agent. I don't deal with the insurance, my brother does that. 40

Mr. Thanawalla stated that premiums had always been paid. Hasham Kara simply asked if any dispute about not paying premiums.

We went there to accompany Hasham Kara as a spectator. I didn't think of finding out the

reason. If there is any trouble with member of community we try and assist.

If before he came to see me Hasham Kara had been informed that his policy had expired I still say he did not tell me anything about that. He just asked me if I would accompany him to Mr. Thanawalla's office. He didn't mention anything about trying to get an ex gratia payment for Hasham Kara. He just said he was going down to Mombasa to fix up the matter.

I cannot remember the question whether or not the policy was in force being mentioned. It was not mentioned by Mr. Thanawalla that the premium had not been paid. As far as I remember Thanawalla definitely said there was no dispute over payment of premiums.

There has been a dispute referred to the Counsel in connection with a marriage in Thanawalla's family. There is no ill-feeling between myself and any member of Mr. Thanawalla's family. We are still on good terms.

Re-Examined - Salter:

The marriage dispute was in 1958 quite recently. I was asked to see Mr. Khatani about what took place at the meeting and gave my statement before there was any dispute.

Hasham Kara was heart-broken about the fire.

I knew Mr. Thanawalla at that time for many years.

Hasham Kara asked me to accompany him. He didn't mention why except that Thanawalla had asked him to come.

The letter shown to me was a copy. There was no signature on it. I said it was from the Company. I thought Mr. Thanawalla himself had written it. It was a letter giving instructions to renew all the policies. As far as I remember I was shown two letters. In respect of one letter Thanawalla said the policy on shop had been renewed. The conversation in Thanawalla's office was very friendly.

T.A.R.

J.S. Templeton, J.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 6.

Rehmtulla
Hussein
Suleman Verjee.

28th January,
1959.

Cross-
Examination
- continued.

Re-Examination.

In the
Supreme Court
of Kenya.

No. 7.

GULAMHUSSEIN VALJI

Plaintiff's
Evidence.

P.W.4. GULAMHUSSEIN VALJI sworn:-

Examined - Salter:

No. 7.
Gulamhussein
Valji.
28th January,
1959.

I have a transport business. I know Hasham Kara the Plaintiff. I remember a fire at his premises, on 9th or 10th April, 1956. I saw the damage done as result of the fire. Whatever was left we took stock of. I was accompanied by an old man whose name I don't know. From memory I would say value of stock was approximately over Shs:4,000/-. I see Exhibit 3. It bears my signature (indicated). Those were the values we placed upon the stock which we saw totalling 3,729/25. I have worked in such shops for many years and we fixed the values on what I knew and whatever I did not know we enquired from other shops. The value fixed were wholesale prices. That list I gave to Hasham Kara. The other signature on Exhibit 3 is something like Hassanali. The old man I did not know before. He is working in our Council office.

10

Examination.

20

Cross-
Examination.

Cross-Examined - Mrs. Kean:

I cannot read English but I can read English figures. I am able to read a word here and there. First three articles on list Exhibit 3 I cannot read.

I assisted in taking stock. I think the next day after the fire. When the fire took place I was out of Nairobi and when I passed by that shop after the fire I was requested to assist in taking stock. I cannot remember the date of the fire.

30

The whole job was not completed in one day. It took three to four days running. I checked to see that the items were correctly recorded. The list I prepared was in Gujerati language. When I signed the list (Exhibit 3) I compared the Gujerati total and this total and thereafter I signed. I don't know who did the translation.

Re-Examined: Nil.

T.A.R.

40

J.S. Templeton, J.

No. 8.

SADRUDIN SALEHMOHAMED ALIBHAIP.W.5. SADRUDIN SALEHMOHAMED ALIBHAI sworn:-Examined - Salter:

I am the Kamadia of Ismailia Community of Nairobi and was so in 1956 appointed October, 1954.

My duties are that I am next to Mukhi. In his absence I have to perform religious ceremonies, marriage, funeral etc. I take part in settlement of disputes. I know Hasham Kara. I remember a fire in his premises in Bazaar Road. I saw him in April, 1956. It was about 10th April, 1956. He approached me at my shop with his son Amirali. We went to Mukhi Rehmatulla Hussein and from there to Thanawalla's office.

I know Mr. Thanawalla. He is chief agent of Jubilee Insurance Company. We saw him. Present were I, Mukhi, Hasham Kara and his son, and he was in his office. When we went into the office Mr. Thanawalla welcomed us and told Mr. Hasham Kara it was not necessary to bring Mukhi and Kamadia but as we were there he was pleased. He told Hasham Kara he was fully covered about the fire that took place and he had already written a letter to Jubilee Co., for renewal of that particular policy. He took out a letter from his file and showed to Mukhi and then Mukhi passed it to me and I saw the letter. I don't remember the date, nor the year. The letter was written to Jubilee Insurance Co. by United Marketing Co., and signed by Mr. Thanawalla. The gist of the letter was that it was in respect of the policy to be renewed. We had been there about the matter of the fire and obviously the letter was about that policy. It said that policy No. something should be renewed for twelve months. I don't remember which twelve months. Then Mr. Thanawalla told us he was going to Mombasa for the particular matter and in our presence telephoned to book his air passage to Mombasa. He told us he was going to see Mr. Paroo of Jubilee for the matter about the fire.

Hasham Kara asked him did he ever refuse to pay any premiums and he said "No". I don't remember anything else. I saw only one letter. The atmosphere of the meeting was friendly talking friendly and we departed friendly. When we left

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 8.

Sadrudin
Salehmohamed
Alibhai.

28th January,
1959.

Examination.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 8.

Sadrudin
Salehmohamed
Aliphai.

28th January,
1959.

Examination
- continued.

I had the impression that he was fully covered with insurance and would get his claim. No mention was made that the property was not covered nor about any difficulty in meeting the claim.

Cross-Examined -- Mrs. Kean:

We went because we are religious heads of community. Hasham Kara had not informed me there was any trouble about his insurance policy. He started crying and when I asked him why, he told me his shop caught fire. He said nothing about having seen Mr. Kapila. He and his son were both together. I just said a few words of sympathy. Amirali did not say anything. I don't remember anything being said by Mr. Thanawalla to effect "I can't understand why one policy not renewed". There was no mention of difficulty about the policy. I do not remember each and everything said at that meeting. Hasham Kara asked "did he ever refuse to pay policy" and answer was "No". I don't know in what connection that was said. Hasham Kara first mentioned about paying premiums. Thanawalla did not mention it at that meeting. He may have done earlier.

10

20

Only one letter was shown to me. I think policy numbers were written in the heading. I could try and recognise the letter. It was United Marketing Co., typed.

I have not discussed this case over the lunch time with Mukhi except that he told me his evidence was finished.

30

Thanawalla did not say he would try his best to get the claim paid. He said going to see Mr. Paroo about the settlement of the policy. I thought as Hasham Kara was a poor man and because he might be requiring some money immediately, Thanawalla might be going to Mombasa because of that.

I am prepared to swear that as far as I can remember there was no conversation about whether or not policy had been renewed.

Exhibit I.

This letter now shown to me is not the one shown to me at the meeting. (Letter dated 1st November, 1954 marked Exhibit I for identification. Probably Mr. Thanawalla showed us the letter because he saw us in his office and wanted to create a good impression on us in spite of fact that as far as I was concerned I know of no difficulty about the policy. This interview took about 20 minutes.

40

Re-Examined - Salter: Nil.

T.A.R.
J.S. Templeton, J.

50

No. 9.

GORDHANBHAI CHATTERBHAI PATELP.W.6. GORDHANBHAI CHATTERBHAI PATEL sworn:-Examined - Salter:

10 I am an Accountant practising in Nairobi. In 1957 I audited the books of Hasham Kara. I prepared a trading account of his shop in Bazaar from 1.1.56 to 9.4.56. This (Exhibit 3) is the account and bears my signature. It shows stocks on 1.1.56 valued at 48,000/-. This figure was obtained from balance sheet of 31.12.1955 prepared by Shah & Shah. Purchases 53,365/70 was obtained from books of Hasham Kara from 1.1.56 to 9.4.56. Other figure 50,611/12 was from 1.1.56 to 9.4.56. Estimate of gross profit is arrived at based on previous performance in the business.

20 Note at bottom stock estimated 50,611/12. The approximate worth of stock on 9.4.56, as profit estimated on general rate of profit result would be the stock on hand. On sales there would be profit so stock plus purchases, plus profit would reveal the stock on hand. Mr. Hasham Kara gave the figure of 3,729/25 for stock salvaged. I didn't see this certificate attached to Exhibit 3. He gave me the figure and I accepted it.

30 In 1957 I was given one ledger and two cash books covering from 1.1.56 to 1957. I did not ask about the previous books. The figure prepared by Shah & Shah I don't remember if it was included in the books given to me.

This is a fair and reasonable trading account as far as I could ascertain.

Cross-Examined - Mrs. Kean:

For 1957 I have not completed the audit.

In the books I don't remember whether separate items for premiums, but the accounts will show some premiums paid in 1956.

40 I have been handed stock sheets at end of year not stock books. This trading account Exhibit 3 I prepared. I have not audited the books i.e. not examined the vouchers etc. I have prepared balance sheets for 1956 but not auditing. I do auditing

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 9.

Gordhanbhai
Chatterbhai
Patel.28th January,
1959.

Examination.

Cross-
Examination.

In the
Supreme Court
of Kenya.

Plaintiff's
Evidence.

No. 9.

Gordhanbhai
Chatterbhai
Patel.

28th January,
1959.

Cross-
Examination
- continued.

work. I have prepared these figures from the books but not instructed to audit. Purchases and sales are in ledgers and daily sales and purchases are in cash book. Stock 48,000/- was from previous balance sheet. I accepted it.

Re-Examined - Nil.

T.A.R.

J.S. Templeton, J.

Case for Plaintiff.

Mrs. Kean calls -

10

Defendants'
Evidence.

No.10.

Labh Shankar
Chagganlal
Dave.

28th January,
1959.

Examination.

DEFENDANTS' EVIDENCE

No. 10.

LABH SHANKAR CHAGGANLAL DAVE

D.W.1. LABH SHANKER CHAGGANLAL DAVE sworn:-

Examined - Mrs. Kean:

I am a bookkeeper employed by United Market-
ing Company since 1.4.55.

I am acquainted with their system of book-
keeping. I have the account and ledger relating
to Hasham Kara. I produce a copy which I made
myself.

20

Original ledger sheet H.13 goes back to 1951.
There are credits for actual payments and in some
cases to refund of premium. Some cases commission.
I can't find any credits for contra accounts.

On one side of ledger I debit premiums. Last
debit for premium on policy MB 4762 is 17.11.53 to
17.11.54.

This receipt for 176/- Exhibit 7 has corres-
ponding number in ledger 17538. It was against
policy 4762 for period 17.11.52 to 17.11.53.

30

Exhibit 6, invoice 1903 MB 4762 17.11.53 to
17.11.54 premium 176/-.

This receipt Exhibit 7 17538 applied to the
previous years payments.

Exhibit 6 refers to renewal slip 13185. Ledger shows it refers to same period 17.11.53 to 17.11.54.

Premium receipt previous to that 1951-52 receipt 24.12.52.

Premium for year previous to that is not shown on the ledger.

10 Policy MB 4789 period 28.11.51 to 28.11.52 premium 110/11 paid 24.12.52. Period 28.11.52-53 paid 3.2.53 receipt 15854. 28.11.53 to 28.11.54 Shs:95/60 19.11.53. 28.11.54 to 28.11.55 premium paid 24.12.54.

Policy MB 4775 - Fort Hall.

Period 16.11.51 - 16.11.52 receipt 9548 paid 24.12.52.

16.11.52-53 premium paid 29.1.54.

16.11.53-54 premium paid 10.4.56.

20 Exhibit 11 cheque 5.10.55 Shs:760/02 was against motor policy 5311 KPB 164 25.1.54 to 25.1.55 premium 926/- amount paid against it was 760/02. Balance of premium still outstanding.

Cheques for 768/84 Exhibit 12 was in respect of 543/- against KBP 412 from 4.5.55 to 3.5.56 premium 105/05 - 225/84 against CCA 7655 KBP 412 - 29.9.54 to 29.9.55 premium 382/-.

Cheque for 1732/- Shs:1,174/- against Policy MS 3852 - 6.12.55. to 5.12.56. - Balance 558/- to be adjusted against KBP 412.

30 Exhibit 14 is in my handwriting. The figures were taken from the books.

Credit Note Exhibit 8 - commission Shs:485/- is entered in ledger. Exhibit 1 dated 6.12.55 refers to Policy MB 4762 for 1953-1954. That commission was credited against the balance.

40 On 6.12.55 we passed credit note on account. When we passed it we had not received payment on MB 4762 for 1953 to 1954. Invoices for premiums are sent out as soon as we receive notice from the Insurance Companies. We send out a debit note and at end of same month we send a duplicate with a Statement. I can produce invoices relating to fire insurance for years 1953 to 1955.

If policy renewed from November, 1952 to November, 1953 and renewal slip arrived it is entered in register and debit passed. I invoice it on

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.10.

Labh Shankar
Chagganlal
Dave.

28th January,
1959.

Examination
- continued.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.10.

Labh Shankar
Chagganlal
Dave.

28th January,
1959.

Examination
- continued.

the spot at least before the end of the day. I
produce the following invoices -

- (1) Invoice No.1902 is addressed to Hasham Kara re policy MB 4755 - No.15186. Invoice 263/50 dated 13.1.54.
- (2) Invoice 1903 - 13.1.54 MB 4762 50,000/-. Renewal 1385 176/-.
- (3) Invoice 3194 of 22.12.54 MB 4789 -- Blenheim Rd.

There is no invoice for MB 4762 subsequent to Invoice No.1903. 10

There is no invoice for MB 4775 subsequent to 1902.

The account for MB 4762 was settled up to period 18.8.53 to 11.11.53 - Shs:129/25.

Statements were sent every month. Statement rendered say 31.10.55 gave particulars of debits up to that date. Copies of invoices were attached to statements and credit given for any payments and balance due shown. 20

In Mr. Hasham Kara's account there was always a debit balance.

In course of my duties I have several times asked Mr. Hasham Kara for cheques because I am keeping the accounts. Generally he takes time to pay.

This ledger sheet is an exact copy prepared by me of the ledger sheet (Ledger sheet put in as Exhibit N).

Exhibit N.

Adjourned 4.00 p.m. until 10.30 a.m. Friday 30th 30
1.59.

J.S.Templeton, J.

30th January,
1959.

30.1.59.

Salter & Khatani for Plaintiff.

Kean for Defendant.

By consent adjourned until 10.30 a.m.Monday 2.2.59.

J.S.Templeton, J.

2nd February,
1959.

2.2.59.

Resumed.

Appearances as before. 40

D.W.1. LABH SHANKER CHAGGAN LAL DAVE sworn:-

Cross-Examined - Salter:

On 10th April, 1956 I received two items 263/50 and 176/- total 439/50 from Plaintiff.

The payment of 176/- was for Policy MB 4762 from 17.11.53 to 17.11.54. It was paid by our cheque. Our firm paid cheque 176/- to Jubilee Insurance Company and credited Hasham Kara in our books.

10 On 15th February, 1956 we had a cheque for Shs:1,732/-. On 10th April, 1956 we did not receive 176/- from Hasham Kara or from anybody on his behalf. The premium was very old and if not paid we have to pay it.

That was the premium for old period 1953-54. It was paid on 10th April, 1956 because it was too much overdue.

20 I drew the cheque on instructions of Mr.Thanawalla. It might have been after 11.00 a.m. I see Exhibit 14. It is in my handwriting. I do not remember if I handed it to Mr. Amirali on 10th April, 1956 about 10.00 a.m. If Mr. Amirali said I gave it on 10th that may be so. It shows a premium of 176/- for policy 4762. It was outstanding when I gave Mr. Amirali that paper. If Mr.Amirali is right in saying I gave it to him on morning of 10th April, 1956 it means we paid the premium the same day. I did not ask Mr. Thanawalla why it was necessary to pay 176/- in respect of premium on premises which had been destroyed by fire. I paid 30 the premium into the bank as shown by pay in slip. Third item 10th April, 1956.

Hasham Kara Vasta 439/50 for credit of Jubilee Insurance Company ltd. Exhibit 15.

On that particular date he hadn't paid us that amount. He had paid big amount on 15th February 1956. I cannot be sure if the 439/50 was included. It did not include the exact amount. Some times they gave us a round figure cheque.

40 These two receipts dated 10.4.56 for 263/50 and 176/- MB4762 and shows payment by cheque "cheque 176/-". Exhibit 16.

I do not say that amount was paid on 15th February. On 15th February he paid cheque against two car policies. The amount of 176/- was not paid by Hasham Kara to our firm. I am saying we

In the Supreme Court of Kenya.

Defendants' Evidence.

No.10.

Labh Shankar Chagganlal Dave.

2nd February, 1959.

Cross-Examination.

In the
Supreme Court
of Kenya

Defendants'
Evidence.

No.10.

Labh Shankar
Chagganlal
Dave.

2nd February,
1959.

Cross-
Examination
- continued.

gave a receipt on 10th April, for a premium. He did not pay the 176/- as part of a larger cheque. He has never paid it. I issued receipt in his name for an amount he had not paid.

The paying slip to Jubilee Insurance Company.

This statement Exhibit 5 dated 25th April, 1956 contains entry showing 176/- as not paid although I issued a receipt for it on 10th April.

I showed the 176/- with no payment against it because the big amount on 15th February is not included. Sometimes I had not posted in the ledger for several days. Generally I start new months posting on 20th of following month. This statement was made out on 25th.

10

In 1955 I started working with Defendant Company on 1st April. I made no entries in the books before that. My knowledge of what the position of the premiums was before that is only hearsay.

I see Exhibit 6. It is an invoice No.1948 for the premium on policy 4762 for period 17.11.53 to 17.11.54. Exhibit 7 is receipt dated 28.1.54 and relates to invoice from 17.11.52 - 17.11.53. I did not make that entry myself. That payment in January 1954 was not for period 17.11.53 to 17.11.54. I say premium from 17.11.53 to 17.11.54 was paid on 10th April, 1956.

20

I see Exhibit 1. It shows credit of commission including commission on policy 4762 dated 6.12.55. Commission is usually credited. Sometimes we do it in advance, sometimes at time of payment and sometimes afterwards.

30

This is an adjustment of account a book entry. We can give commission at any time the client asks for it. Sometimes client asks for commission before sending the cheque. The fact that commission is credited does not necessarily show that there has been an adjustment of accounts. At time of issuing the credit after adjustment of commission there might still be a debit.

The Sh:176/- credited on 10th April, 1956 was not in respect of period from November, 1955 to November, 1956. It was in respect of premium for 1953-1954 according to my books. I say it is accurate.

40

Q. Why was it credited on 10th April, 1956?

A. We issued our cheque on 10th April and it was credited on that date.

Q. Do you think it is good bookkeeping to credit a client on 10th April, 1956 a payment in respect of a premium for 1953-54 which he has never even paid?

In the Supreme Court of Kenya.

A. The United Marketing Co., did often credit Mr. Hasham Kara with premium which he had not paid.

Defendants' Evidence.

No.10.

10 From 1.4.56 until 10.4.56 inclusive I say there was only one occasion when we paid money from Hasham Kara without receiving it from him. That was the one of 10th April, 1956.

Labh Shankar Chagganlal Dave.

On 28.1.54 we paid Jubilee Insurance Co. once. From 1951 we paid Jubilee on account of Hasham Kara.

2nd February, 1959.

Q. From the books can you say whether United Marketing Co., usually made payments of premiums to Jubilee on behalf of Hasham Kara before they had the money from Hasham Kara?

Cross-Examination - continued.

20 A. Sometimes we had to make payments because Jubilee told us to do so. If there is commission due to Hasham Kara we do make payments.

Q. When premiums were due did United Marketing Company pay and then have a settlement of accounts?

A. There is one item of this nature. During the one year I was there, there was only one occasion, 10th April, 1956 when premiums paid without receiving the money from Hasham Kara.

I see Exhibit 14 - Item of 437/95 overpaid. Exhibit 14 is in my handwriting. It shows the overpayment in my handwriting.

30 I made that entry from this book, to which I now refer. The overpayment was made in February 1960 as far as I can say but the

I can say in February 1956 he was not in credit because there was a debit to come. When that entry was made in or about February 1956 it looks as if he was in credit but he was never in credit. A cheque was received from Hasham Kara but the debit had not come from Jubilee. In the insurance business

40 The statement shows there was an overpayment. It can only show a credit for the time being.

If the books show an overpayment of 437/95 on a certain date I agree he is in credit with the firm on that particular date.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.10.

Labh Shankar
Chagganlal
Dave.

2nd February,
1959.

Cross-
Examination
- continued.

As far as I can ascertain from the books in February 1956 he was not in credit. These postings are not according to date. Credit entries are posted against the debit on date of payment. Entries are first made in Cash Book journal etc. It is not quite clear to me that there was a running account. At irregular times a balance was made and payments made in Hasham Kara's account.

I agree the monthly account was not settled each month. If the client does not pay the premium sometimes we pay, sometimes we press the client. United Marketing Co., paid the premiums to Jubilee when they were much overdue or if pressed by Jubilee. If we are pressed by Jubilee we have to pay because we are responsible. We pay in some cases and then debit it in our books. In Hasham Kara's case we paid once in 1954 and again in 1956. That does not mean that otherwise except for those two occasions Hasham Kara paid the premium to United Marketing Co., within reasonable time of there becoming due. On the two occasions they were very much overdue. 10

Re-Examined: Nil.

T.A.R.

J.S.Templeton, J.

Salter: In spite of agreement for inspection of books, Mr. Khetani was refused inspection of books or receipts.

Mrs.Kean: My client did agree to allow inspection of the books, but Mr. Dave was required to attend some other business, after inspection allowed from 10.15 to 11.30 a.m. If any further inspection required the usual formalities must be complied with. 30

Khetani: I went at 10.15 but I had to wait 45 minutes because they could not find a receipt. I did not go with Hasham Kara.

Mrs.Kean: I am agreeable to inspection, provided it is mutual.

ORDER:

By consent both parties to have inspection of books at time convenient to both parties. 40

J.S. Templeton, J.

Adjourned 12.30 p.m.

Resumed 2.15.

No. 11.

GULAMALI DEWJI MURJID.W.2. GULAMALI DEWJI MURJI sworn:Examined - Mrs. Kean:

I am employed by the Jubilee Insurance Company for the last 14 years. I was in charge of Fire department from 1948 for about six years until December 1954. I can produce the Jubilee Insurance Company's file relating to Policy MB 4762 and MB 4775. (Put in by consent as Exhibit "0") and also file relating to MB 4789.

10

(Salter: It would seem there may be letters and documents in the file which might not be evidence in this case. Ask that files go in subject to this objection).

In file 4762 proposal form dated 17.11.50 insurance against fire to cover Stock in Trade 40,000/- furniture 10,000/-.

20

When premium for fire policy is about to fall due expiry notice is sent one month before date of expiry in all cases. Original is sent to the insured, copy is sent to agent, 3rd copy for our file. I can produce copy of renewal notice for MB 4762 from 1954 for period November, 1954 to November, 1955 dated 15th October, 1954. Policy due to expire November, 1954. (Copy of renewal notice taken from file and marked Exhibit R).

This document is the third copy. Exhibit B is the original of that notice.

30

Letters received by Jubilee are always stamped by rubber stamp which contains the date and a number. Exhibit B was never received back with renewal instructions signed by Plaintiff. Exhibit B is a renewal slip signed by someone on behalf of Hasham Kara. We have never received that and it does not bear our rubber stamp.

Exhibit C another renewal notice for MB 4775 signed on behalf of Hasham Kara was also never received by us and does not bear our stamp.

In 1953 I used to sort out the renewal notices and pass over to the person in charge of the particular subject.

When I received renewal instructions for fire

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.11.

Gulamali
Dewji Murji.

2nd February,
1959.

Examination.

Exhibit R.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.11.

Gulamali
Dewji Murji.

2nd February,
1959.

Examination
- continued.

policy e.g. from November, 1953 to November, 1954, first we check up to see whether the last year's premium has been paid i.e. the premium for period 53-54 has been received and unless premium paid we do not renew the policy.

In Exhibit O we refer to our letter of 26th October, 1953.

Letter of 24.12.52 in file Exhibit P shows we were being asked to renew the three policies for period 16.11.53 to 16.11.54. 10

The policies had run from November, 1951 to November, 1952. Letter of 24.12.52 was for period 16.11.52 to 16.11.53. I am not correcting my previous answer.

Before renewing we would insist on the previous years premium being paid. If we get renewal instructions from an agent we would not renew unless we received the previous year's premium.

Letter of 24.12.52 says premium for the last year was collected. That means the premium for the previous year. 20

From looking at our file Exhibit P Policy MB 6775 premium from 16.11.51 to 16.11.52 was received 31.12.1952. MB 4775 premium from 16.11.52 to 16.11.53 was received on 6th February 1954. For period 16.11.53 to 16.11.54 premium paid on 19.4.56. When premium received on 6th February 1954 we wrote Letter of 25th January, 1954 from United Marketing Company to Jubilee was replied to on 5th February 1954 enclosing renewal slips 13185 and 13186 renewing the policy for further period of one year from November 1953 to November 1954. Renewal slip 13186 shows that 13185 was on policy MB 4762 or file Exhibit "O" renewing from 17.11.53 to 17.11.54. 30

Policy 4762 premium from 17.11.52 to 17.11.53 was paid on 6th February 1954. Renewal slip No. 11383.

Premium from November 1951 to November 1952 was paid on 31.12.52. Renewal slip No.9550. 40

Letter in Exhibit P 25.1.54 from United Marketing Co., to Jubilee Policies 4762 and 4775 was to renew from November 1953 to November 1954.

Letter 1st November 1954 in Exhibit P was asking to renew 4775. The policy was not renewed owing to non-payment of premium as stated in letter

of 15.11.54. Premium on renewal slip 13186 still remains unpaid. That was in respect of period 16.11.53 to 16.11.54 as premium from November 1953 to 1954 not paid we couldn't renew from November 1954 to November 1955. File P gives period on envelope at back.

10 Letter of 1.11.54 deals with policies including 4762 instructing us to renew. We could not renew 4762 because premium for the previous year was not paid. That is in accordance with letter of 16.11.54 on file Exhibit O. That referred to premium for period 17.11.53 to 17.11.54.

MB 4762 was renewed according to my records up to 17.11.54.

20 4775 was in force up to 16.11.54. When a policy lapsed immediately we used to send lapse notices to all insured. We did not keep copies. This copy letter now produced of 17.11.53 to Hasham Kara bears my initials. Copy was sent to United Marketing Company but third copy kept in our file. (Letter put in as Exhibit S).

Once the last year's premium is received by us we issue renewal certificate for the coming 12 months through our chief agent and issue debit for the premium.

30 Policy MB 4789 was ceded to National Bank of India Ltd. Before that it was assigned to Standard Bank of South Africa Ltd. When a Policy is assigned we get a document signed by proposer and when policy expired we send copy of renewal notice and lapse notice to the Mortgagees. Policy 4789 was in force up to 28.11.56.

Exhibit O contains a letter from Hasham Kara to the Aga Khan. The original petition was received by our office from the secretary to Aga Khan.

Salter: Several letters not admissible as not written between the parties.

40 Mrs. Kean: Witness summons served on gentleman who was in hospital. Only listed this letter today.

Cross-Examined - Salter:

Position was that all these policies were renewed in any year by payment of the previous year's premiums.

In the Supreme Court of Kenya.

Defendants' Evidence.

No.11.

Gulamali Dewji Murji.
2nd February, 1959.

Examination - continued.

Exhibit S.

Cross-Examination.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.11.

Gulamali
Dewji Murji.

2nd February,
1959.

Cross-
Examination
- continued.

We were allowing at least 12 months credit. When it was done through agents. In case the premium not paid Where United Marketing Co., pays the premium to Jubilee we allowed 12 months credit.

In the case of Hasham Kara all premiums were paid to us by the United Marketing Co. If policy fell due for renewal on 17.11.54 we would renew it provided premium paid for period 17.11.53 to 17.11.54.

10

In Exhibit O letter of 16.11.54 refers to four policies including 4762, renewing 6549 and referring to premiums for last year. 4762 and 4763 still remain unpaid. That refers to period 1953 to 1954.

It was quite clear we were telling United Marketing Co., that we were not renewing until they got the money.

As a course of dealing between Jubilee and United Marketing Co. when we tell the United Marketing Co. a policy is about to lapse I expect the agents to collect the outstanding.

20

Exhibit P letter of 25.1.54 from United Marketing Co., to Jubilee 4762 for Sh:50,000/- states "We have today collected the last year's premium, on policy 4762 etc. Please renew for a further year". The policy had expired in November, 1953. It was asking for renewal from 17.11.53 to 17.11.54.

If there had been a fire in December, 1953 the policy had lapsed.

30

We would have been prepared to accept the premium two months after expiry on the good faith of the agent.

The cover we issue is for 12 months only. If premium 53-54 paid we would renew from November, 1954 to November, 1955.

We might not get the 1953-54 premium until January or February 1955. In this case it happened that way.

In April, 1956 we got a premium. That was for period 1953-1954.

40

If there had been a fire in the meantime in 1954 we would not have paid up.

In April, 1956 we accepted premium for 1953-54 period. I have said if 1953-54 premium paid we

renewed for 1954-55. I have said if I received premium from November 1953 to November 1954 I would renew from November, 1954 to November, 1955.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.11.

Gulamali
Dewji Murji.

2nd February,
1959.

Cross-
Examination
- continued.

The payment in April, 1956 referred to period 1953-54. We would not have renewed without a new proposal as policy had lapsed. We didn't require new proposal in January, 1954 because we were acting on agents good faith. When we got premium April 1956 I considered it was for period 1953-54. By that time the policy had lapsed.

Policy 4789 was in force the 28th November, 1956. Premium was debited to the agents. We didn't receive cash. We renewed on instructions of United Marketing Co. It was considered as paid by debiting agency company.

A debit on 31st December, 1957 kept the policy in force up to 28th November, 1956. The Policy would have lapsed on 29th November, 1956. We waited for thirteen months. No cover from 29th to 28th November, 1957.

I was not present when Mr. Hasham Kara interviewed Mr. Thanawalla. I am stationed in Mombasa. Mr. Thanawalla came to our office very frequently. The accounts are kept by the accounts department.

On 11th April, 1956 I was not in charge of the fire department. I don't remember Mr. Thanawalla coming.

Premium received in April, 1956 paid into our account on 10th would be received by the Cash Department.

The entry as to when policy remained in force was made by me the day before yesterday. I had to get it from somebody else's entry in the books.

Although payment was made in April, 1956 it was not entered in this file until the day before yesterday. It is correct that at no time did our company ever get instructions direct from Mr. Hasham Kara or his son.

Re-Examined - Mrs. Kean:

Re-Examination.

This entry of April, 1956 on the envelope was made by me to complete the file, all the other entries were made previously.

Once a policy lapses and we receive a premium we only enter it in the register. The entries on the envelope are for convenience to know position of premiums. Renewal instructions we had received but premium not received.

T.A.R.

J.S.Templeton, J.

In the
Supreme Court
of Kenya.

No. 12.

SHAHBUDIN HASHAM AMARSHI

Defendants'
Evidence.

D.W.3. SHAHBUDIN HASHAM AMARSHI sworn:-

Examined - Mrs. Kean:

No.12.
Shahbudin
Hasham Amarshi.
2nd February,
1959.

I am employed by Jubilee Insurance as Motor Inspector for past 12 years.

I produce file dealing with motor policy of Mr. Hasham Kara.

Examination.

Renewal Notice dated 10th December, 1952 on Austin KB 164 signed by Amirali Hasham Kara was sent by United Marketing Co. with a covering letter. It has date stamp of 7th February, 1953.

10

As soon as letter is received in this office it is stamped with the date stamp and passed to the person concerned.

Our policy is to ask for the premium for the current year before we consider a claim if current premium not paid.

Exhibit I.

Renewal form and covering letter and proposal forms put in as Exhibit I.

20

Cross-
Examination.

Cross-Examined - Salter:

If a premium has not been paid on motor policy the insured is covered. The cover remains in force for the term of the policy.

If cover dated from 1.1.59 and premium not paid still covered to 31.12.59. Provided one pays the premium for the previous year one gets cover. We are allowing 12 months credit. If insured comes with a claim when premium not paid we say although you are covered you had better pay the current premium before we will consider your claim. The payment doesn't affect our consideration of the claim. It is a matter of policy.

30

This renewal notice in Exhibit T was sent out on 10.12.52 with perforated slip signed by Amirali we got from United Marketing Co., and it was clear it was passed to United Marketing Co., and they were the ones who asked for renewal. Irrespective of signature of Amirali we would have renewed on instructions of the agents.

40

Policy appears to have lapsed for more than a month before agent asked us to renew.

If there had been a claim in that fire before 3.1.53 and 5.2.53 we would not have considered it because the policy had lapsed.

We would have rejected the claim if claim one month after lapse of policy.

Re-Examined - Mrs. Kean:

During the time policy had lapsed no cover was in force. We required new proposal so as to issue a new policy.

10

T.A.R.

J.S. Templeton, J.

Adjourned 4.30 p.m. until 10.30 tomorrow.

J.S. Templeton, J.

3.2.59.

Resumed. Appearances as before.

Mrs.Kean: Particulars were asked for and I hand in letter asking for particulars dated 14.2.58 and replies of 1st and 3rd March 1958.

No. 13.

20

HAIDERALI GULAMHUSSEIN THANAWALLA.

D.W.4. HAIDERALI GULAMHUSSEIN THANAWALLA sworn:-

Examined - Mrs. Kean:

I am a partner in United Marketing Co. Certain insurances were effected by our firm on behalf of Hasham Kara.

30

I called many times on Mr.Hasham Kara and requested him to place his insurances with the Jubilee Co. and I also explained the benefit of insurance. Before he placed business with Jubilee his properties were not insured.

He asked if everybody's rate were the same and I said yes and he then asked to be given the advantage of some commission and would insure with Jubilee. I agreed to give him 10% commission. I heard Hasham Kara say the arrangement was that we were to renew insurance every year automatically unless he told us to the contrary. That is not true. We were not to be paid anything by Hasham Kara.

In the Supreme Court of Kenya.

Defendants' Evidence.

No.12.

Shahbudin Hasham Amarshi.

2nd February, 1959.

Cross-Examination - continued.

Re-Examination.

No.13.

Haiderali Gulamhussein Thanawalla.

3rd February, 1959.

Examination.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.13.

Haiderali
Gulamhussein
Thanawalla.

3rd February,
1959.

Examination
- continued.

I was then employed by P. Phillips & Co., The conversation took place at his shop in 1950. After 1950 I did not automatically renew any policy without instructions from Hasham Kara.

The number of insurance policies effected through our firm we have about 1,000 customers some with 15 cars. Premium insurance today is about £15,000 a month. We do not renew policies automatically for any customers without instructions. When a policy was about to expire original note is sent by Jubilee to the client and duplicate to me about one month before the risk expires. These are two copies of renewal notices which we received from Jubilee Co. (Put in as Exhibit U).

10

When I used to get advices from Mombasa I used to ring up all my clients or sometimes they came in because if I renew the policies I get commission.

Re: Hasham Kara's renewal notices sometimes I would ring them up, sometimes somebody came in. Sometimes I took verbal instructions, sometimes I got signatures on the bottom of renewal notice, sometimes telephone instructions.

20

Exhibits B and C came from my file as they are carbon copies which were sent to us. They remained on my file I did not send them to Jubilee.

Practise re payment of premiums on fire policies Exhibit B was to renew policy from November, 1953 to November, 1954.

The previous years premium must be paid before Jubilee will renew. My arrangement with Hasham Kara if he wanted renewed from November, 1953 to November, 1954 he would have to pay premium for 1952-53. Apart from one occasion in April, 1956 I did not at any time have advance premiums on behalf of Hasham Kara to get policies renewed. I never at any time agreed with Hasham Kara that I would get his policies renewed irrespective of whether he had paid the premium to my firm.

30

The evidence of Hasham Kara and Amirali that I was under a duty to keep and renewing for any number of years irrespective of payment of premium that was never agreed and never done. No agent would do that.

40

This letter of 1.11.54 addressed to Jubilee (Exhibit 1 for identification) was the letter I showed to Mukhi and the original was sent to the Jubilee and is in file Exhibit O.

MB 4762 I had not received instructions to renew when I wrote Exhibit 1. When instructions came to renew I asked him for premium for past year and he said if I wrote to Mombasa to renew he would send me a cheque. I did not receive cheque for previous year's premium. I received this letter of 16.11.54 from Mombasa informing that policy could not be renewed because premium had not been received. I telephoned him to send me a cheque.

10 I did not receive renewal slip MB 4762 for period 1954-55.

This letter 1.11.54 on file P is asking for MB 4775 to be renewed. I received instructions from Hasham Kara asking me to renew that policy. He said he would be sending me cheque for premium on both 4775 and 4762. I received letter 15.11.54 on Exhibit P asking me to remit the last year's premium on 4775 to enable it to be renewed. The premium on 4775 for 1954-55 was not paid by Hasham Kara. For period November 1955-56 I received no instructions from Hasham Kara to renew.

20

Q. In November 1954 when these letters were written what was the state of Hasham Kara's account?

A. On 30th October, 1954 he owed us a debit. I made the debit items on ledger sheet which were outstanding as at that date.

When I received renewal slip from Jubilee we used to debit the client and send him the renewal slip plus our invoice.

30

I produce duplicate letters dated from 1953 to 1955 from my files addressed to Hasham Kara enclosing renewal slips dealing with these three policies (Put in Exhibit V). One is dated 13.2.54 Policies 4762 and 4775. Invoice enclosed for 439/50 which I presume is for 1953-54 i.e. the date of last renewal slip.

Exhibit V.

40

The premium on MB 4775 and 4762 for year 1953-54 was never paid by Hasham Kara to our firm. Those premiums were paid by my firm to Jubilee on 10.4.56 after the fire.

The reason I went to Mombasa after the fire in connection with Hasham Kara
In ordinary way I would not go to Mombasa but as he came crying and I felt pity for him I said I would see the Managing Director and see if I could get him an ex gratia payment. The interview with

In the Supreme Court of Kenya.

Defendants' Evidence.

No.13.

Haiderali Gulamhussein Thanawalla.

3rd February, 1959.

Examination - continued.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.13.

Haiderali
Gulamhussein
Tharawalla.

3rd February,
1959.

Examination
- continued.

Cross-
Examination.

Mukhi Hasham Kara and his son. They came in and I said I felt pity for him and would go to Mombasa and see Insurance Co. and put the whole case to them and try to induce them to pay ex gratia though his insurance was not covered. At this interview I remember a few words that I said "About the policy the policy is not in force" but he was so depressed I didn't dwell on it but I paid the premium for that reasons the same day and debited Hasham Kara.

Hasham Kara's evidence of contra account for groceries. That is not correct. These cheques paid by Hasham Kara to United Marketing Co. Exhibits 11, 12 and 13.

768/84 was in payment of motor premiums.

760/2 was in payment of motor premiums.

1732/- was in payment of motor premiums.

If there is a claim he must pay the premium before claim is considered.

Cross-Examined - Salter:

On 10th April, 1956 I did not consider this shop was covered by insurance against fire. I did not tell the Plaintiff, his son Mukhi and Kamadia that it was. I explained that he was so much depressed Plaintiff, his son the Mukhi and Kamadia.

Q. Are you saying the Plaintiff, his son, the Mukhi and Kamadia told the Court something which was untrue?

A. I have said the shop was not covered but I would go to Mombasa to try and fix it up. They were quite happy.

It is not true what Mukhi said he might have misunderstood me. Kamadia and Mukhi were both together and may have both misunderstood. Plaintiff knew very well that he was not covered and also his son. Re letter of 4th July, 1956 in Exhibit O. Long paragraph on first page.

It is correct they came to my house and I said they should see me in my office at 10.30 a.m. I heard Hasham Kara give evidence of going to Mukhi and Kamadia. I did not say it was not necessary to bring Mukhi and Kamadia. I did not tell him I had obtained all necessary information. I gave Mukhi a paper, not a file, I did say I could not understand

10

20

30

40

why this policy was not renewed. I did say what is written about going to Mombasa. It is not true that he said what is set out at end of that paragraph "At that time he replied "No". It is true when he said "I asked him again Mombasa". I said that statement was correctly recorded that I could not understand why policy not renewed but it was in 1954.

10 Q. Is it correct you told these four gentlemen you did not understand why the policy had not been renewed?

A. That is right from the letter I showed him which refers to 54-55.

I did not mean to tell them property was covered. I said I don't understand why the policy was not renewed just to cool him down. I was not surprised that it was not renewed. I said that because I thought he must have already paid the premium.

20 I told those four men the policy is not in force. That letter that I had written to Mombasa and couldn't understand why policy not renewed it was just to give him a little bit of hope, and satisfaction. He was so nervous and depressed and I had in mind that I could get ex gratia payment.

30 I was not telling them that I had taken all necessary steps to renew and was surprised that it was not renewed. I have heard them say that. They have misunderstood me. It is not correct that I myself made a mistake and forgot to renew. Not true that I thought I had renewed it and when I found out mistake I thought it out. I just went out of my way to help him. Not true that in order to strengthen my case with Insurance Company I paid premium. I paid because as I was going to Mombasa I could say "Premium has been now paid". I didn't tell Hasham Kara, his son or Mukhi that I had paid premium on 10th April. The talk was not about that. I didn't tell Mukhi I had paid premium on 40 10th April nor Kamadia. It was not that I kept it secret from them. I thought it would satisfy them. They never asked whether the premium was paid.

This paying in slip (Part of Exhibit 15) of 10th April, 1956. The amount paid to credit of Jubilee was 439/50. Sh:439/50 is a premium for shop, 176/- also for another policy.

No claim had been made in respect of the other policy. I paid the premium on that one because in

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.13.

Haiderali
Gulamhussein
Thanawalla.

3rd February,
1959

Cross-
Examination
-- continued.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.13.

Haiderali
Gulamhussein
Thanawalla.
3rd February,
1959.

Cross-
Examination
- continued.

1954 instructions were sent to renew two policies and as I was going to Mombasa I paid and would ask them to renew or give a new insurance.

Sh:263/50 has "cheque" against it. That does not mean payment made by Hasham Kara by cheque.

176/- against payment by cheque. Receipt for Hasham Kara.

When instructions were given to make out this receipt, it was not to give impression that cheque had been given. "Received from Hasham Kara Vasta - Sh:176/- only in respect of policy MB 4762 - fire renewal slip 13185 Sh:176/- cheque. 10

According to my evidence Hasham Kara never paid that money and never paid by cheque. I have not given a wholly wrong receipt. I paid it on his behalf in order to re-insure him again. If no arrangement for me to pay premiums on his behalf and did not renew when I got instructions the whole thing in my mind was not renew the insurance. Between 1954 and date of fire I did not lead Hasham Kara to suppose shop was covered, against fire. It was expired in 1954. I say he knew the policy had expired. 20

It was debited to him already but in order to reassure him about the fire I paid to Jubilee. The whole thing was in my mind to go to Mombasa and say previous year's premium has now been paid. Would you renew up to before fire so that claim could be settled.

The word "reassure" which I used I mean Plaintiff wasn't insured then and to reassure him he was going to get a new policy. I was not trying to reassure him that he was covered and then paid the premium secretly. There was no secret in it. I had debited him some time before and I paid it on his behalf without telling him. 30

Exhibit 5 is my account original in pencil and copy typed dated 25th April, 1956. I had paid premium on 10th April, 1956 in respect of a debit of two years old. It would be credited at the end of the month. Letter from Mr.A.R.Kapila telling me my accounts were invoiced. In April, 1956 I do remember Mr. Hasham Kara insisting on up to date account when I came back from Mombasa. I didn't give any instructions for it. Anybody goes to the accountant and he will prepare it. 40

On 10th April, 1956 I don't know if the accountant gave rough account to Mr.Amirali (Exhibit 14).

The Sh:439/50 was paid in I think about 12 o'clock. I instructed my accountant to pay it. I think this was the first time. If my accountant said it was the second time I wouldn't agree because he never paid.

I see Exhibit N. on 27.1.54 I remember receiving a cheque for 1505/- from Hasham Kara. I have a credit in my ledger for that amount.

10 On 29.1.54 I credited Plaintiff with 745/80. I can produce the bank slip. I have credited it to Guardian & Eastern Insurance Company Ltd.

On body of slip it is written "cheque from Hasham Kara Vasta 745/80". It is the cashier who collects the money. I have dealings with Guardian & Eastern. I am principal representative.

Bank slip put in as Exhibit 17.

I had dealings in 1954 with Guardian & Eastern in respect of Hasham Kara's burglary insurance.

20 I was not showing 745/80 out of 1505/- as a payment, in order to square his account up to 1953 we gave him credit note for commission and paid 745/80 as part of the balance.

The 745/80 was not something United Marketing Co. owed to Guardian & Eastern on 29.1.54. I was holding their Power of Attorney.

It was not the cheque of my firm which was paid. Cheque of Hasham Kara was received and that is why it is marked.

30 On 27.1.54 I received 1505/- from Hasham Kara. I did not draw my own cheque for 745/80 and paid to Guardian. Nor did I make it out as though it had come from Hasham Kara, because I was owing Hasham Kara 745/80 in respect of groceries. Counterfoil cheque book for 29.1.54 and Bank Statement of that date.

Q. Did you or not, not draw cheque on United Marketing Co., in favour of Guardian & Eastern for 745/80 which was paid into their account on 29.1.54?

40 A. My accountant would know if cheque was drawn. It is from the Bank slip I am saying this is not true.

It would not surprise me to know it was not debited in any of his banking accounts. He may have borrowed from somebody's cheque book. There

In the Supreme Court of Kenya.

Defendants' Evidence.

No.13.

Haiderali Gulamhussein Thanawalla.

3rd February, 1959.

Cross-Examination - continued.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.13.

Haiderali
Gulamhussein
Thanawalla.

3rd February,
1959.

Cross-
Examination
- continued.

are hundreds of cheques and I don't give instructions for every cheque. I have never owed Hasham Kara that amount 745/80 for provisions in January 1954. My wife had an account with him for provisions. I pay her every month a certain amount. I couldn't tell if she had a running account with Hasham Kara for provisions. I don't know if my wife ran into a debt from time to time with Hasham Kara. It should be true at no time was a credit allowed in my books in respect of provisions. 10

I cannot swear anything for my wife. She may have bought from him.

Adjourned 12.40 p.m.

Resumed 2.15 p.m.

D.W.4. H.G.THANAWALLA

Cross-Examined - Salter continued:

I see Exhibit 5. On 24th April, 1956 I received this letter from Hasham Kara which says yesterday Hasham Kara received an account. Three matters are mentioned for which credit not given.

- | | |
|---|--------|
| A. Amount outstanding against you for goods 463-84 | 20 |
| B. Repairing charges lorry KBE 164 | 200-00 |
| C. Repairing charges KBP 412 | 160-00 |
| D. Commission on invoices MS 38562 and Plot 265,
Blenheim Road, Nairobi. | |

(Original letter put in as Exhibit 18). I did not reply to that letter. On 10th May, 1956 I received a further letter from Hasham Kara. This is it - Exhibit 4. I sent him the detailed account from 1950. I haven't got a copy here and at the same time I saw him. I didn't make the adjustments requested because I told him it was nothing to do with me. My wife has a separate account which has nothing to do with me. 30

Q. In letter Exhibit 18 24.4.56 he is asking to credit his account with 463/84 for goods standing against you in his books. Why didn't you write back and say it was nothing to do with you?

A. I told him verbally that any personal account has nothing to do with me. I don't know the exact date. He once came to my house and had a row with my wife about her account, but that account has never been offset against office account. 40

He was trying to find some ways out of it to show that I owed him money. That was not true.

"Goods delivered up to October, 1955". He said that. There was a reply to that letter of 24.4.56 (Letter of 24.4.56 and 27.4.56) put in as Exhibit W).

I had had dealings with Hasham Kara since 1942 long before 1950. My wife's mother had bought goods from the shop ever since he started it.

10 He had not placed insurances with me prior to 1950 except Life insurance. In 1950 he arranged to give me whatever business he had. We had been on friendly terms for a number of years. Whatever premiums were due he should pay me direct that was the arrangement. Before 1950 he had Life Policy only. Life premium he paid direct to the Company. In November 1950 we had a meeting. He signed proposal in November, 1950. There may have been more than one meeting. The agreement was not that in
20 view of the past dealings I would renew all premiums when they become due. I would debit the premium to him and renew the policy but he must pay in a reasonable time. I would not pay the money to the insurance company and debit the account of Hasham Kara and expect him to pay within a reasonable time. The arrangement was that I would renew the policies as due would be debited by Insurance Company probably at end of 12 months. I would
30 debit Hasham Kara and expect to be paid by him within a reasonable time. It was not agreed between us that I would renew the policies as they fell due without any instructions unless he said "Don't". Nor was he in the same way allowing my family credit for goods. We had not running contra accounts which were adjusted from time to time.

It was not that I used to write and say he owed me so much and he used to come along and we adjusted the accounts between us.

40 I agree that Exhibits 11, 12 and 13 three cheques one 13th September, 1955 for 768/84. That was because he had a claim on his car and premium was not paid. Following month 5th October, 1955 he gave me cheque for 760/02 for motor car premium. According to his evidence that squared the account up to that time but I don't agree. In December, 1955 Exhibit 1 is a credit note for commission for various policies. That was commission which I agreed to pay.

In the Supreme Court of Kenya.

Defendants' Evidence.

No.13.

Haiderali Gulamhussein Thanawalla.

3rd February, 1959.

Cross-Examination
- continued.

In the
Supreme Court
of Kenya.

Defendants'
Evidence.

No.13.

Haiderali
Gulamhussein
Tharawalla.

3rd February,
1959.

Cross-
Examination
- continued.

Commission was paid as soon as we invoiced them irrespective of whether premiums paid or not. We don't pay cash commission. It goes to credit of his account. We only issue credit notes when the time is convenient to sort them out.

That credit for commission was paid after the policy on the shop had fallen due for renewal and after the policy had expired.

This was 1953-54 commission credited in December, 1955.

I must have invoiced that in 1953 and not again in 1956 because we did not get a debit note from Mombasa.

The credit note is in respect of two years earlier. He didn't pay the premiums on those two renewal notes. The policies mentioned in that credit I say I had received no premiums by December, 1955. Credit notes are made by my accountant and whenever it occurs to him he sends them out.

Exhibit 13 cheque dated 15th February 1956 for Sh:1732/- that was for premiums. I couldn't say if he has had commission credited to him for that amount. Between November, 1953 and November, 1954 I went once to Hasham Kara. It must be in December 1954. He said he would send the cheque. He asked me to renew and I said unless he paid the premiums the policy would not be renewed. In 1955 when getting cheques on other policies I told him the account was still pending.

Q. Did you ever tell him in 1954 or 1955 that he was not insured in respect of this shop against fire?
A. Yes I did tell him once.

Q. Why should he come to you in tears on 10th April, 1956?

A. As 3 months were passed, I thought he might have insured with somebody else.

I understood the purpose of his visit was to make a claim in respect of this policy. I thought he came to get an ex gratia payment.

It is not true that the word "ex gratia" was never used during the whole of that interview.

This cash book has entry of 29.1.54 of payment from Hasham Kara Vasta to my Company of 745/80. First entry on page 8.

10

20

30

40

Hasham Kara is not scratched out and word "cancelled" is written and in its place Highways Construction Company. It is scratched out in first line and then appears on fifth line.

Hasham Kara H 27 745/80 to Guardian Eastern Insurance Company and another 745/80 immediately against it "See receipt for details".

10 I am saying Hasham Kara gave us a cheque for 745/80. I don't know if his banking account doesn't show any such figure.

Re-Examined - Mrs. Kean: Nil.

To Court: The premium I paid on 12.4.56 was for November 1953-54. I wanted to get him an ex gratia payment.

In the Supreme Court of Kenya.

Defendants' Evidence.

No.13.

Haiderali Gulamhussein Thanawalla.

3rd February, 1959.

Cross-Examination - continued.

No. 14(a).

ADDRESS OF COUNSEL FOR DEFENDANTS

Case for Defence

Mrs. Kean addresses:

20 Case really depends on one proposition of fact i.e. even assuming the Marine cases apply there must be an order to insure before there can be a liability for disobedience of an order to insure.

Halsbury 3rd Edition Vol.22 page 47 dealing with marine insurance para.

"To whom in order to insure has been transmitted."

30 Three examples from Smith & Lascelles. All three only apply in deciding whether an order to insure must be obeyed. 100 E.R. page 101 Buller J. 102.

One person cannot compel another to make an insurance against his consent.

Plaint and Particulars relevant period November 1955-56 specific instruction is not alleged.

It is alleged Plaintiff para.4(ii) a specific verbal agreement that automatic renewals would take place unless orders to the contrary.

No.14(a)

Address of Counsel for Defendants.

3rd February, 1959.

In the
Supreme Court
of Kenya.

No.14(a)

Address of
Counsel for
Defendants.

3rd February,
1959
- continued.

Plaintiff has also sought to establish a course of practice.

Specific oral agreement 1950 Court must see how consistent Plaintiff has been in putting it forward.

(1) Plaintiff only raised the alleged agreement when actual case filed.

Prior to filing claim never any suggestion that such a plaint reached.

Letter to Aga Khan in File 'O' of 4th July, 1956. Does not mention any agreement whereby Thanawalla or United Marketing Co., would insure automatically unless contrary instruction.

10

Submit this alleged agreement was purely an afterthought. Course of practice in dealing bound up with whether evidence of arrangement is true. Plaintiff wants to go further and say that arrangement was carried out.

Actual documentary evidence makes it quite positive that there was never any course of dealing whereby the Defendant automatically renewed without instructions from Plaintiff.

20

Exhibits O and P show that specific instructions given by United Marketing Co. on different dates.

Signed renewal instructions of Amirali relating to the very policy for last period for which the premiums were covered.

Amiraly said Exhibits B and C were sent direct to Jubilee by him. Independent evidence from Jubilee that B and C were not sent to Jubilee and do not bear their stamp.

30

Submit that shows conclusively that Amirali was not telling the truth. Amirali conceded he gave instructions re motor policies.

Exhibit Q dealing with Blenheim Road property dealt with on different basis as assigned to National Bank of India and therefore cannot support the alleged course of dealing.

Plaintiff puts the agreement higher i.e. that Defendants had to renew irrespective of whether premiums were paid. Independent documentary evidence shows that first policy only renewed if premium for previous years paid.

40

Always question of collection of previous

year's premiums. For those matters there is evidence in black and white.

Submit proved premiums MB 4762 and 4755 from November 1953-54, was not paid. No accounts produced by Plaintiff to establish the contrary. Sought to establish that premium paid on 4762 from November 1953-54 but Exhibit 7 of 28.1.54 Sh:176/- was the premium from 1952 to 1953.

10 Invoiced on 13.1.54 was next year's premium November 1953-54 which was not paid. Evidence is that Hasham Kara was always one year in arrear and and then he would get renewal slip and invoice for the new period. He paid 52-53 got Exhibit 7 and then renewal slip issued and invoice for following year.

20 Letter that money was due to Hasham Kara. The three policies were dealt with in different ways. Submission that 4762 should also have been automatically renewed because the other two were automatically renewed. Evidence does not support that.

Meeting after fire not of much assistance quite clear that the recollection of the Mukhi and Kamadia was no longer very clear.

30 First Exhibit 'I' in File 'O' was shown to them and both were quite positive that was not the letter shown to them. No other letter in existence renewing the policy. Both adamant on point that no discussion that policy not renewed but Amirali gave evidence that there was discussion. If no question whether policy in force why the need to show the letter.

40 Mr. Thanawalla has said the main discussion was the unfortunate position. Meeting not for purpose of inquiring into Mr. Thanawalla's duties. Fact that policy not renewed appears from Amirali's evidence. As regards the payment made by Thanawalla on 12th April he has given reason that it was merely with view to assisting Hasham Kara in his misfortune. It is not suggested that any instructions were given to renew the policy for period 1955-56. Evidence is that renewal notices were sent direct to Hasham Kara.

Customs of United Marketing Co., was to send the original renewal slip to Hasham Kara. Not a case where he was not getting the information. If any question of Thanawalla renewing automatically it is remarkable that letter Exhibit 5 dated

In the
Supreme Court
of Kenya.

No.14(a)

Address of
Counsel for
Defendants.

3rd February,
1959

- continued.

In the
Supreme Court
of Kenya.

No.14(a)

Address of
Counsel for
Defendants.

3rd February,
1959
- continued.

17.11.53 addressed to Hasham Kara re MB 4775 that the policy had expired. That again shows never any question of automatic renewal instructions. This letter shows automatic renewal just did not happen. Whole of evidence is against suggestion that everything was left to Thanawalla.

Thanawalla has said he used to ask his clients if they wished to renew because he would get commission. Just because he does that it does not cast upon him a duty to do so.

10

No legal duty to give notices Halsbury 2nd Edition Vol. 18 page 456 - footnote page No obligation on insurance company to send renewal notices.

In this case no renewal notice in November, 1955 because policy was no longer in force.

Fact that Defendant was not paid is important - 3rd Edition - Halsbury - Vol.22 page 47 para.30.

No consideration for promise.

No dispute that Thanawalla not paid.

20

No action lies for a non-fasance.

Whether Thanawalla were agents?

They were on every occasion when instructions were given to renew but that is not sufficient for Plaintiff's case.

Plaint para.4 Plaintiff has given evidence only regarding (ii).

Simpson v. Accidental Fire Insurance 140 E.R. 413 - Life Insurance premium not paid.

Held company not estopped from denying payment although it had acted on basis of payment having been made.

30

No question of any estoppel.

Law.

Smith v. Lascelles is a marine insurance case - principles have never been applied to a no marine case and submit that case does not apply here.

Buller J's judgment is dealing with merchant sending in one country and correspondent abroad. Unless case of Smith v. Lascelles applies general principles that person who without consideration and voluntarily promises to secure insurance is not liable for non-feasance.

40

In the
Supreme Court
of Kenya.

No.14(b)

Address of
Counsel for
Plaintiff.

3rd February,
1959

- continued.

Plaintiff was not covered. That is the test of credibility. Submit it is incredible that 2 entirely disinterested and eminent members of the community should be quite emphatic he said :- "You needn't worry, you are covered, I am going to Mombasa to see your claim met".

He then produced a letter. What was the object of its production except what they had said "I have told the company to renew". What other purpose could he have had in producing it. Both witnesses say it was not the letter which has been produced in Court.

10

Defendant's evidence. He himself used the word "reassure" Plaintiff. Reassure of what? Not that he was not covered. Trying to reassure Plaintiff he was covered and need not worry. If that is accepted that is virtually an admission that he had failed in his duty and is liable.

Further consideration that he went and paid into Jubilee Insurance Company the amount of the premium without saying anything to Plaintiff. Hoping no doubt that he could persuade them that the policy should be renewed.

20

What is point of paying a premium due for year 1953-54 when policy had expired when according to Defendant's evidence Plaintiff

What possible good could it do. Submit abundantly clear he was trying to cover up his mistake and if that is accepted it assists in deciding whether there was agreement that he should renew from time to time. That is entirely consistent with such an agreement and that he had failed in his duty.

30

Manner in which accounts kept whole thing is in a state of confusion. Not surprising that Thanawalla himself might have thought premium had been paid. He may have thought payment on 10th April, was for 1954-55 period.

Mr. Dave was not there in 1952-53 or 53-54. It may well be there was a mistake and that Hasham Kara had paid that premium and that is why receipt was given.

40

Exhibit 5 doesn't show any credit for 176/- paid on behalf of Hasham Kara or not.

On 10th April not only is that payment but form of receipt "cheque". That was meant to show it was a cheque of Hasham Kara.

If Defendant's evidence is accepted it is quite remarkable that a receipt in that form was issued.

Submit significance was that he was going to produce it to Insurance Company and say this man has paid which would put Thanawalla in the clear.

Plaintiff's son gave evidence with frankness and submit it is clear that there was this course of dealing and that premiums were paid from time to time.

10 Clearing of accounts. Supported by the cheques given and the irregular periods when balance struck.

Submit the whole evidence shows Plaintiff was relying on Defendant with whom he had had dealings.

Law:

(1) Submission that Order to insure is necessary.

Submit that is present in contract itself.

"Go on insuring unless I tell you not to do so" That is sufficient order.

20 (2) Principles of Smith v. Lascelles not applied to non marine insurance cases.

I emphasised that was a case of marine insurance, but if contract in terms pleaded by Plaintiff it would be analogous to what is held to be a rule in Maritime insurance.

(3) Guilty of non-feasance. Submit that is not good law nor in accordance with facts.

30 In this case Defendant did get paid for the insurance effected. He was paid commission on every policy. He did get a consideration for it.

Insurance broker is an agent of the person who employs him and comes within ordinary agency law.

Halsbury - 3rd Edition Vol.22 page 201 - para. 382.

In this case whole question depends on what was the contract. If it was that he was to insure without instruction and failed to do so then he was in breach of contractual obligation.

Not a mere omission or non-feasance.

40 Submit whole of evidence supports Plaintiff's evidence whether documentary or not.

In the
Supreme Court
of Kenya.

No.14(b)

Address of
Counsel for
Plaintiff.

3rd February,
1959

- continued.

In the
Supreme Court
of Kenya.

Events of 10th April, 1956 can leave no doubt
the agreement was established. There was a breach
of it and damages have been proved to Court's sat-
isfaction.

No.14(b)
Address of
Counsel for
Plaintiff.
3rd February,
1959
- continued.

C.A.V.

J.S. Templeton, J.
3.2.59.

No. 15.
Judgment.
27th April,
1959.

No. 15.

JUDGMENT

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1525 of 1957.

10

HASHAM KARA

Plaintiff

- versus -

THE UNITED MARKETING CO.

Defendant

JUDGMENT

The Plaintiff is a merchant who for many years
carried on business in a shop on plot No.2646 Baz-
aar Road, Nairobi, of which he was the lessee. The
Defendants are chief agents of the Jubilee Insur-
ance Co., Ltd., and it is not in dispute that,
with effect from 17th November, 1950 the Plaintiff
took out an insurance policy with that company
through the Defendants covering his stock in trade
and furniture to the extent of Shs:50,000/-.

20

On the night of 11th-12th April 1956 a fire
occurred at the Plaintiff's premises and his stock
in trade and furniture were almost completely des-
troyed.

After various interviews to which reference
will be made it came to light that the policy in
question, No.M.B.4762 was no longer in force. It
is the Plaintiff's case that the Defendant firm
was employed by him to insure and keep insured
various moveable and immoveable properties, includ-
ing the property the subject of Policy No.M.B.4762,
and that by virtue of an arrangement made in 1950
when such insurances were about to be effected it

30

was the duty of the Defendants to renew all such insurances without reference to the Plaintiff unless instructions to the contrary were given.

In the
Supreme Court
of Kenya.

It is alleged in the plaint that the Defendants, in breach of such duty, failed to renew the said policy on the due date and failed to inform the Plaintiff that it had not been renewed. The Plaintiff therefore claims from the Defendants the sum of Shs:46,270/75 being the amount for which the stock in trade and furniture were insured less the value of goods salvaged amounting to -
Shs:3,729/25.

No.15.
Judgment.
27th April,
1959
- continued.

Issues were framed and agreed as follows :-

Did the Plaintiff employ the Defendants as his agent to effect his insurances on his properties? If so, upon what terms?

Did the Defendants commit any breach of that contract or was he negligent in his performance of it? If so, what damage resulted?

It is common ground that in 1950 a conversation took place regarding insurances between the Plaintiff and Mr.H.G.Thanawalla, a partner in the Defendant firm, as a result of which the Plaintiff agreed to give all his insurance business to the Defendants, but there is a direct conflict between the evidence of the Plaintiff and that of Mr.Thanawalla regarding the terms of the arrangement.

The Plaintiff said it was arranged that year by year the Defendants would renew the policies without any instructions from him and debit his account with the premiums and that this arrangement continued until the fire took place and at that time he was under the impression that Policy No.M.B.4762 and the policies on his other two immovable properties had been renewed for the year 1956. Regarding the payment of premiums the Plaintiff said that during the period in question Mr. Thanawalla had been buying goods at his shop and from time to time the accounts were squared and any balance due for premiums was paid. The payments were not made at regular intervals but as and when requested by Mr. Thanawalla.

In cross-examination the Plaintiff denied ever having been asked by Mr. Thanawalla for instructions to renew policies and said instructions to renew were not necessary as Mr. Thanawalla was bound by the original talk in 1950 to go on renewing

In the
Supreme Court
of Kenya.

No.15.
Judgment.
27th April,
1959
- continued.

the policies unless and until he gave instructions to the contrary.

Mr. Thanawalla said it was not true that he agreed to keep on renewing policies without instructions or that the practice was for the amount due for goods to be set off against the premiums. He said that apart from one occasion in April 1956 he did not at any time advance premiums on behalf of the Plaintiff, but that in accordance with the practice of the Jubilee Insurance Company a policy which fell due for renewal was renewed upon payment of the previous year's premium. Referring to a letter dated 1st November 1954 (Exhibit 1) instructing the Jubilee Insurance Co., to renew Policy No.M.B.4762 for a further year Mr.Thanawalla said when he wrote that letter he had not received instructions to renew, but when he received a reply dated 16th November, 1954 that the policy could not be renewed as the previous year's premium was not paid he telephoned the Plaintiff to send a cheque. 10 20

Since only the Plaintiff and Mr. Thanawalla were present at the interview referred to it is necessary to examine the surrounding circumstances in order to decide the terms of the arrangement entered into between them.

In support of the Plaintiff's version of what occurred there is first of all the evidence of his son Amirali Hasham Kara who said he assisted his father in the business from 1950 to September 1955 and handled all the insurance accounts. During this time Mr. Thanawalla was buying goods from the Plaintiff's shop and the arrangement was that Mr. Thanawalla renewed policies when they expired and debited the Plaintiff's account and from time to time sent an account. When this happened Amirali said he would go and settle the account by making out his father's cheque which had already been signed, for the amount of such account less the amount due to the Plaintiff for goods. This witness said his father told him about the agreement that Mr.Thanawalla would renew all policies when he first took over the insurance part of the business and that Mr. Thanawalla himself on several occasions told him not to worry about the policies as it was his duty to renew them, and that they were in fact renewed without reference to him or his father. 30 40

Dealing with the events immediately after the fire Amirali said that on the morning of 10th April, 50

1956 he went to Mr. Thanawalla's office and saw a Punjabi clerk and Mr. Dave the accountant. Mr. Dave gave him a rough account in pencil (Exhibit 14) containing an entry relating to Policy M.B. 4762 but he gathered from what they said that the policy had not been renewed. He reported to his father and they both went to Mr. Thanawalla's house and Mr. Thanawalla said "You are covered. Don't worry. Come and see me at 10.30 in the office."

In the
Supreme Court
of Kenya.

No.15.

Judgment.

27th April,
1959

- continued.

10 At 10.30 that morning a meeting took place between Mr. Thanawalla and the Plaintiff and his son at which two other people were present who, I feel sure, can be accepted as completely independent witnesses, namely: Mr. Rehmtulla Hussein Sulman Verjee the Mukhi of the Ismailia Community and Mr. Sadrudin Saleh Mohamed Alibhai the Kamadia of the Community. Although it is true, as pointed out for the defence, that the purpose of the meeting was not to enquire into Mr. Thanawalla's duties,
20 the evidence about the meeting is nevertheless of great importance as it throws some light upon what was in the minds of the parties on the day after the fire. I therefore set out below the evidence of the five persons present regarding what took place at the meeting -

Plaintiff

Examination-in-chief:

(Hashambai)

30 "As we entered he welcomed us and then he said to me "Hashambai don't worry, you don't have to. Your property is covered. I have got your cover" He added 'Today at my own cost I am flying to Mombasa to see the Manager of Jubilee Insurance Co.'" He put a document in Mukhi's hands saying 'See Hashambhai is already covered'. Mr. Thanawalla said to Mukhi 'I have written a letter on behalf of Hashambhai to Jubilee Insurance Company Mombasa'

Cross-Examination:

40 "When I went to see Mr. Thanawalla after the fire it is not correct that he told me I have not paid the premium and therefore policy had lapsed. He said 'I am bound to you and that is why I am flying to Mombasa to recover your claim'. In our presence he reserved his passage'.

In the
Supreme Court
of Kenya.

No.15.
Judgment.
27th April,
1959
- continued.

Re-Examination:

"When I saw him after the fire Mr.Thanawalla as far as I can remember said nothing about Fort Hall Road and Blenheim properties as to whether they were covered. He did not tell me what properties were covered for period to November 1956. He said 'it is all my responsibility'. He placed the whole file and a letter in hands of Mukhi. I had not the slightest idea that my shop was not covered for that period. He was emphatic that I need not worry".

10

Amirali Hasham Kara

Examination-in-chief:

"After formal greeting Mr.Thanawalla said to Mukhi 'As far as I am concerned Mr.Hasham is already covered with me. He should not worry. I have already written a letter to renew his policy with Jubilee Insurance Company'. Afterwards at same meeting he showed Mukhi a letter and requested him to read it. I did not read it myself. He said 'I am booking my passage to Mombasa in your presence' and telephoned Airways for accommodation to Mombasa for the same day 10th April. He said 'You don't worry. I will see that his claim is paid'. He said I can't understand why one policy in particular has not been renewed".

20

Rehmtulla H.S.Verjee

Examination-in-chief:

"Mr.Thanawalla welcomed us and told Hasham Kara that why he has brought Mukhi and Kamadia with him. It was not necessary because as far as Hasham Kara was concerned he was fully covered. He was very sympathetic and said very sorry for the misfortune to Hasham Kara. Then he said 'Well I am ringing up and booking a seat by Airways to Mombasa' which he did in our presence. He said he had already covered the policy and written a letter to Jubilee and he produced the letter and gave it to me to read".

30

40

When shown the letter put in as Exhibit 1 this witness said:

"This is not the letter, there was another one. My recollection of what I read in the letter

In the
Supreme Court
of Kenya.

No.15.

Judgment.

27th April,
1959

- continued.

concerning Mr.Hasham Kara's affairs that instructions had been given by his company to renew all his policies and that as far as that letter was concerned Mr.Hasham Kara was fully covered and on the strength of that letter Mr. Thanawalla was going to Mombasa to see Mr. Paroo the Managing Director. I didn't know there was any dispute. He said we should go back and when he returned from Mombasa he would see Hasham Kara and fix up this matter with him. Hasham Kara asked in our presence whether he had ever asked Mr.Thanawalla to cancel his policies. Mr.Thanawalla said 'No' whether any dispute about not paying premiums and Mr.Thanawalla said 'No'.

Cross-Examination:

"Before I went to Thanawalla's office Mr. Hasham Kara had not told me about trouble of insurance. He did not give impression that he knew insurance cover for shop not in force. He didn't discuss anything. As far as I was concerned it was just going to make a formal claim. I didn't know the purpose but when Mr. Thanawalla said there was no trouble we left. I generally go when any member of community asks me whether that person is in trouble or not.

Mr.Thanawalla said going to see Mr.Paroo Managing Director of Jubilee and get Hasham Kara's question settled and would see Hasham Kara when he returned. As far as I was aware this was just a normal claim. As far as I remember nobody at that meeting said that Mr. Hasham Kara's policy was not in force. The whole thing was we were there for five or ten minutes and when Mr. Thanawalla said he was going to Mombasa to settle claim then we had a cup of tea and went away. There was no argument about whether policy was in force. I don't remember Hasham Kara arguing anything because Mr.Thanawalla showed him he was fully covered. I gathered Mr.Thanawalla was going to Mombasa although everything was in order. The letter I saw was addressed to Jubilee Insurance Co., from Thanawalla's office. I don't know the date of the letter. It referred particularly to that policy of the building which took fire. There was another one also and he said these two were covered. The letter was concerning Hasham Kara's policies. There were instructions to renew all

In the
Supreme Court
of Kenya.

No.15.
Judgment.
27th April,
1959
- continued.

Hasham Kara's policies and the numbers of the policies were given. By the time interview finished I was still under impression there was no query about the policy.

Mr.Hasham Kara saying 'Have I ever asked for policies to be cancelled'. I thought they must have had discussion prior to that. That remark must have been in connection with the fire. I can't remember everything that was said or the exact words. I made no notes. I am relying entirely on my memory. Mr. Thanawalla produced the letter and assured us 'As you are here you can see this letter which shows there is no question of Mr. Hasham Kara not being fully covered'. I asked Mr. Thanawalla if there would be any trouble about the policy and he said 'No'. I asked just for my own satisfaction".

10

"If before he came to see me Hasham Kara had been informed that his policy had expired I still say he did not tell me anything about that. He just asked me if I would accompany him to Mr. Thanawalla's office. He didn't mention anything about trying to get an ex gratia payment for Hasham Kara. He just said he was going down to Mombasa to fix up the matter. I cannot remember the question whether or not the policy was in force being mentioned. It was not mentioned by Mr. Thanawalla that the premium had not been paid. As far as I remember Thanawalla definitely said there was no dispute over payment of premiums.

20

30

Re-Examined:

"Hasham Kara asked me to accompany him. He didn't mention why except that Mr. Thanawalla had asked him to come. The letter shown to me was a copy. There was no signature on it I said it was from the Company. I thought Mr. Thanawalla himself had written it. It was a letter giving instructions to renew all the policies. As far as I remember I was shown two letters. In respect of one letter Thanawalla said the policy on shop had been renewed".

40

Sadrudin Salehmohamed Alibhai

Examination-in-Chief:

"When we went into the office Mr. Thanawalla welcomed us and told Mr.Hasham Kara it was

not necessary to bring Mukhi and Kamadia but as we were there he was pleased. He told Hasham Kara he was fully covered about the fire that took place and he had already written a letter to Jubilee Company for renewal of that particular policy. He took out a letter from his file and showed it to Mukhi and then Mukhi passed it to me and I saw the letter. I don't remember the date nor the year. The letter was written to Jubilee Insurance Co., by United Marketing Co., and signed by Mr. Thanawalla. The gist of the letter was that it was in respect of the policy to be renewed. We had been there about the matter of the fire and obviously the letter was about that policy. It said that Policy No. something should be renewed for twelve months. I don't remember which twelve months. Then Mr. Thanawalla told us he was going to Mombasa for that particular matter and in our presence telephoned to book his air passage to Mombasa. He told us he was going to see Mr. Paroo of Jubilee for the matter about the fire Hasham Kara asked him did he ever refuse to pay premiums and he said 'No'. I don't remember anything else. I saw only one letter. The atmosphere of the meeting was friendly, talking friendly and we departed friendly. When we left I had the impression that he was fully covered with insurance and would get his claim. No mention was made that the property was not covered nor about any difficulty in meeting the claim".

10

20

30

In the Supreme Court of Kenya.

No.15.

Judgment.

27th April, 1959

- continued.

Cross-Examination:

"I don't remember anything being said by Mr. Thanawalla to effect 'can't understand why one policy not renewed'. There was no mention of difficulty about the policy. I do not remember each and everything said at that meeting. Hasham Kara asked did he ever refuse to pay policy and answer was 'No'. I don't know in what connection that was said. Hasham Kara just mentioned about paying premiums. Thanawalla did not mention it at that meeting. He may have done earlier. Only one letter was shown to me. I think policy numbers were written in the heading. I could try and recognise the letter".

40

Thanawalla did not say he would try his best

In the
Supreme Court
of Kenya.

No.15.

Judgment.

27th April,
1959

- continued.

to get the claim paid. He said going to see Mr. Paroo about the settlement of the policy. I thought as Hasham Kara was a poor man and because he might be requiring some money immediately Thanawalla might be going to Mombasa because of that. I am prepared to swear that as far as I can remember there was no conversation about whether or not policy had been renewed. This letter now shown to me is not the one shown to me at the meeting. Probably Mr. Thanawalla showed us the letter because he saw us in his office and wanted to create a good impression on us in spite of fact that as far as I was concerned I knew of no difficulty about the policy".

10

Defendant

Examination-in-chief:

"The reason I went to Mombasa after the fire in connection with Hasham Kara, in ordinary way I wouldn't go to Mombasa but as he came crying and I felt pity for him I said I would see Managing Director and see if I could get him an ex gratia payment. The interview with Mukhi, Hasham Kara and his son. They came in and I said I felt pity for him and would go to Mombasa and see Insurance Co. and put the whole case to them and try to induce them to pay ex gratia though his insurance was not covered. At this interview I remember a few words that I said: 'About the policy, the policy is not in force', but he was so depressed I didn't dwell on it but I paid the premium for that reason the same day and debited Hasham Kara".

20

30

Cross-Examination:

"On 10th April, 1956 I did not consider this shop was covered by insurance against fire. I did not tell the Plaintiff, his son, Mukhi and Kamadia that it was. I explained that he was so much depressed".

40

"I have said the shop was not covered but I would go to Mombasa to try and fix it up. They were quite happy. It is not true what Mukhi said; he might have misunderstood me. Kamadia and Mukhi were both together and may have both misunderstood. Plaintiff knew very well that he was not covered and also his son.

Re letter of 5th July, 1956 (Exhibit O) long paragraph of first page, it is correct they came to my house and I said they should see me in my office at 10.30 a.m. I heard Hasham Kara give evidence of going to Mukhi and Kamadia. I did say it was not necessary to bring Mukhi and Kamadia. I did not tell him I had obtained all necessary information. I gave Mukhi a paper not a file. I did say I could not understand why this policy was not renewed. I did say what is written about going to Mombasa. It is not true that he said what is set out at end of that paragraph - 'At that time I asked Mr. Thanawalla that I had been taking insurance with him since the last ten years and was renewing my policies every year and accordingly he was debiting me with the amounts of premiums. I asked Mr. Thanawalla if I ever objected to pay premiums on receipt of advices from him to which he replied "No". It is true when he said I asked him again, another question, that if I ever instructed him not to renew the insurance of my shop? He again replied "No". He then told me that that was why he wanted to go and see Mr. Paroo at Mombasa".

I said that statement was correctly recorded that I could not understand why policy not renewed but it was in 1954.

Q. Is it correct you told these four gentlemen you did not understand why the policy had not been renewed?

A. That is right from the letter I showed him which refers to '54-'55. I did not mean to tell them property was covered. I said I don't understand why the policy was not renewed just to cool him down. I was not surprised that it was not renewed. I said that because I thought he must have already paid the premium.

I told those four men the policy is not in force, that letter that I had written to Mombasa and couldn't understand why policy not renewed, it was just to give him a little bit of hope and satisfaction. He was so nervous and depressed and I had in mind that I could get ex gratia payment. I was not telling them that I had taken all necessary steps to renew and was surprised that it was not renewed. I have heard them say that. They have misunderstood me. It is not correct that I myself

In the
Supreme Court
of Kenya.

No.15.

Judgment.

27th April,
1959

- continued.

In the
Supreme Court
of Kenya.

No.15.
Judgment.
27th April,
1959
- continued.

made a mistake and forgot to renew. Not true that I thought I had renewed it and when I found out mistake I bluffed it out. Just went out of my way to help him. Not true that in order to strengthen my case with Insurance Company I paid premium. I paid it because as I was going to Mombasa I could say 'Premium has now been paid'.

I didn't tell Hasham Kara, his son or Mukhi that I had paid premium on 10th April. The talk was not about that. I didn't tell Mukhi I had paid on 10th April, nor Kamadia. It was not that I kept it secret from them. I thought it would satisfy them. They never asked whether the premium was paid".

10

After considering all that evidence, and the discrepancies which have been pointed out, I am forced to the conclusion that the Defendant was not telling the truth when he said he told the four people present at that meeting that the policy was not in force and that he would try to get an ex gratia payment. It seems to me that the only interpretation which can be put on the Defendant's attitude is that he was intent upon reassuring everybody that Hasham Kara's property was covered by insurance and that he need not worry about payment of his claim. Whether he was deliberately misleading them well knowing that the property was not covered, or whether at that time he himself thought it was covered, seems to me to make no difference. In either case the evidence raises a very strong inference that the Defendant considered he himself was responsible for renewing the policy, and this is supported by his subsequent conduct. He immediately made arrangements to fly that day to Mombasa and before going paid into the Jubilee Insurance Company's account on behalf of the Plaintiff the sum of Shs.439/50 which included Shs:176/- in respect of the premium on Policy No. M.B.4762.

20

30

40

Except on the basis of the Defendant's liability to renew the policy how can this payment of premium on 10th April, 1956 be explained? The Defendant explained it by saying he paid it because in 1954 instructions were sent to renew and as he was going to Mombasa he would ask the Company to renew or give a new insurance, and later he said "it was debited to him already but in order to reassure him about the fire I paid to Jubilee. The whole thing was in my mind to go to Mombasa and

50

say 'Previous year's premium has now been paid. Would you renew up to before the fire so that the claim could be settled'".

In the
Supreme Court
of Kenya.

No.15.

Judgment.

27th April,
1959

- continued.

10 This refers to a practice of the Jubilee Insurance Co., of which evidence was given that a policy is renewed upon payment of the previous year's premium. It seems from the evidence of the two employees of the Jubilee Insurance Co., that this practice applied where insurances were effected through an Agent; in other words the Defendant as agent of the Company would be given one year's credit in which to collect premiums from insured persons. It may well be that this practice was partly responsible for the confusion which has arisen in this case regarding payment of premiums. In any event the final result of the payment of 10th April, 1956, was not to renew Policy M.B.4762 for the period 17.11.54 to 17.11.55, which would have been a pre-requisite before the claim could be considered. According to Mr. Gulamali Dewji Murji that payment was accepted by the Insurance Company as renewing the policy up to 17.11.54, although he also gave evidence that the policy, having already lapsed, could not be renewed without a new proposal.

30 I am quite satisfied that in making the payment of 10th April, 1956 the Defendant was under the impression that it would renew the policy up to 17th November, 1955 and enable the Plaintiff's claim to be considered, and that at that time there was no thought in his mind of asking for an ex gratia payment.

40 A great deal of evidence was given by Mr.L.S.C. Dave, the Defendant's book-keeper since 1st April, 1955, who produced various invoices regarding insurance premiums, but admitted that his knowledge of the position before 1.4.55 was hearsay. His attempts to relate the amounts of various cheques given by the Plaintiff to insurance premiums failed to satisfy me that the arrangement between the parties was that premiums should be paid when due, as alleged by the Defendant in his evidence. Mr.Dave admitted that he was not sure if a cheque for Shs:1732 dated 15th February, 1956 included the sum of Shs:439/50 paid to Jubilee Insurance Company's account on 10th April, 1956, and said that sometimes Plaintiff gave a round figure cheque. When asked if he considered it good bookkeeping to credit a client on 10th April, 1956 with the amount of a premium for 1953-54 which he had never paid his

50

In the
Supreme Court
of Kenya.

No.15.
Judgment.
27th April,
1959
- continued.

answer was "The United Marketing Co., did often credit Mr. Hasham Kara with premiums which he had not paid".

Two other matters in the evidence of this witness require to be considered; on 6th December, 1955 the Plaintiff was credited by the Defendant with commission on various insurance policies including Policy M.B.4762. Both Mr. Dave and the Defendant said that the fact that commission had been credited did not necessarily mean that the premium had been paid or that there had been an adjustment of accounts. I find this difficult to accept.

10

Again, in the account Exhibit 14 made out by Mr. Dave, which I am satisfied was given by him to the Plaintiff's son on 10th April, 1956, there is shown an overpayment of Shs:437/95. When pressed in cross-examination Mr. Dave eventually agreed that the Plaintiff must have been in credit with the Defendant on the particular date in February, 1956 when that overpayment appeared in the books.

20

It seems to me that Mr. Dave's evidence, instead of assisting the Defendant, proves conclusively that the course of dealing between the Plaintiff and the Defendant was far from being the normal relationship between an insured person and an insurance agent.

There is a great deal of other evidence in this case to which I do not consider it necessary to refer in detail.

30

I believe the evidence of the Plaintiff and his son that the Defendant agreed to look after his insurance business and to renew the policies from time to time and debit the Plaintiff with the premiums and that that arrangement was in fact carried out until the failure to renew Policy M.B. 4762 came to light as the result of the fire.

That there was consideration for this agreement is clear from the Defendant's own evidence that he was entitled to commission on all insurance business transacted by him.

40

I am satisfied that in failing to renew Policy No. M.B. 4762 the Defendant committed a breach of the agreement and is liable to the Plaintiff in damages.

I accept the evidence of Mr.G.C.Patel that the value of the stock in hand on 9th April, 1956 was approximately Shs:50,611/12, as shown in Exhibit

3, and the evidence of Mr. Gulamhussein Valji that the value of the salvaged goods was approximately Shs:3,729/25. The amount claimed by the Plaintiff is therefore reasonable.

There will be judgment for the Plaintiff for Shs:46,270/75 with interest and costs as prayed.

J.S. Templeton, J.
27.4.59.

In the
Supreme Court
of Kenya.

No.15.
Judgment.
27th April,
1959
- continued.

10 Georgiadis: applies for certificate for Q.C. under R.61(1) Remuneration of Advocates Ordinance - Application refused.

J.S. Templeton, J.

Mota Singh asks for stay of execution under R.41(4) C.P. Rules as appeal is being filed.

ORDER: Execution stayed until matter can be argued in Chambers in presence of Counsel for both parties.

J.S. Templeton, J.
27.4.59.

20 I certify this is a true copy of the original.

Sgd: P.Heim,
Deputy Registrar,
H.M. Supreme Court of Kenya.

No. 16.

DECREE.

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1525 of 1957.

HASHAM KARA

Plaintiff

- versus -

30 THE UNITED MARKETING COMPANY

Defendants

DECREE

CLAIM FOR: Shs:46,270/75
Interest at Court rates.
Costs.

No.16.
Decree.
27th April,
1959.
(Issued
8th July, 1959)

THIS SUIT coming on the 26th, 27th, 28th January and 2nd and 3rd February 1959 for hearing and on the 27th April, 1959 for judgment before the Honourable Mr. Justice J.S. Templeton in the presence

In the
Supreme Court
of Kenya.

No.16.

Decree.

27th April,
1959.

(Issued
8th July, 1959)
- continued.

of Counsel for the Plaintiff and Counsel for the
Defendants IT IS ORDERED:

1. That the Defendants do pay to the Plaintiff the sum of Shs:51,284/25 as more particularly set forth hereunder with interest thereon at the rate of six per cent per annum from the 28th day of April, 1959 until payment in full.
2. That the Defendants do pay to the Plaintiff his costs of this suit to be tax and certified by the Taxing Master of this Court.

Principal	Shs:46,270.75
Interest thereon at 8% per annum from 19.12.57 to 27.4.59	<u>5,013.50</u>
	Shs:51,284.25

10

GIVEN under my hand and the Seal of the Court at Nairobi this 27th day of April, 1959.

ISSUED on this 8th day of July, 1959.

BY THE COURT,

Sgd: G. WADDELL,
DEPUTY REGISTRAR,
SUPREME COURT OF KENYA, NAIROBI.

20

In the
Court of Appeal
for Eastern
Africa.

No.17.

Memorandum of
Appeal.

8th July, 1959.

No. 17.

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

CIVIL APPEAL NO. 56 of 1959.

BETWEEN:- UNITED MARKETING CO. Appellants

- and -

HASHAM KARA Respondent

30

(Appeal from Judgment of Her Majesty's Supreme Court of Kenya at Nairobi (The Honourable Mr. Justice Templeton) given on the 27th day of April, 1959 in Supreme Court Civil Case No.1525 of 1957.

BETWEEN:- HASHAM KARA Plaintiff

- and -

UNITED MARKETING COMPANY Defendants

MEMORANDUM OF APPEAL

In the Court
of Appeal for
Eastern Africa.

No.17.

Memorandum of
Appeal.

8th July, 1959
- continued.

THE UNITED MARKETING COMPANY the Appellants above named appeal to Her Majesty's Court of Appeal for Eastern Africa against the whole of the decision above mentioned on the following grounds:

- 10 1. That the learned Judge in believing the evidence of the Respondent and his son to the effect that the Appellants had agreed to renew the policies of Insurance of the Respondent from time to time and to debit him with the premiums and that arrangement was in fact carried out until the failure to renew Policy MB.4762 came to light found against the weight of the evidence.
2. That the learned Judge in arriving at the conclusion of fact hereinbefore referred to failed to advert consider or give adequate or any weight to the documentary evidence before him to the effect that the arrangement hereinbefore referred to was not in fact carried out.
- 20 3. That the learned Judge in believing the evidence of the Respondent and his son failed to advert consider or give any or any adequate weight to the discrepancies and untruthful statements in their evidence.
- 30 4. That the learned Judge in placing undue weight on the meeting which took place after the fire failed to advert or give any or any adequate consideration to the fact that the memories of Messrs. R.H.S.Verji and S.H.M.Alibhai were shown to be not good and that the recollections of the said witnesses of what happened differed from the recollection of the Respondent's son.
5. That the learned Judge in giving undue weight to the above mentioned extent erred in law in failing to advert to the inherent inconsistencies and improbabilities of this incident as put forward by the Respondent and his witnesses.
6. That the learned Judge erred in law in holding that the Respondent was entitled to damages.
- 40 7. That the learned Judge erred in law in holding that the alleged non-feasance on the part of the Appellants gave rise to the cause of action.

WHEREFORE THE APPELLANTS PRAY that the Judgment of the Court below may be set aside and that the Appellants may be awarded costs of this appeal and costs of the Court below or that this Honourable

In the Court
of Appeal for
Eastern Africa.

Court may make such other Order as in the premises
to it seems fit.

DATED at Nairobi this 8th day of July, 1959.

No.17.

Sgd: L.I.C.
for SIRLEY & KEAN,
ADVOCATES FOR THE APPELLANT.

Memorandum of
Appeal.

8th July, 1959
- continued.

To:
The Honourable the Judges of Her Majesty's
Court of Appeal for Eastern Africa.

And to:
S.R.Kapila & Kapila Advocates, Nairobi.

10

The address for service of the Appellants is:-
c/o Sirley & Kean, Advocates, Princes House,
Government Road, Nairobi.

FILED the 8th day of July, 1959 at Nairobi.

COURT OF APPEAL
FOR
EASTERN AFRICA.

Sgd: R.M.PATEL,
For REGISTRAR,
H.M. COURT OF APPEAL FOR
EASTERN AFRICA.

No.18.

No. 18.

20

Amended
Memorandum of
Appeal.
8th July, 1959.

AMENDED MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

CIVIL APPEAL NO. 56 of 1959

BETWEEN:- THE UNITED MARKETING COMPANY Appellant

- and -

HASHAM KARA Respondent

(Appeal from Judgment of Her Majesty's Supreme
Court of Kenya at Nairobi (The Honourable Mr.
Justice Templeton) given on the 27th day of
April, 1959 in Supreme Court Civil Case No.
1525 of 1957)

30

BETWEEN:- HASHAM KARA Plaintiff

- and -

THE UNITED MARKETING COMPANY Defendant)

AMENDED MEMORANDUM OF APPEAL

In the Court
of Appeal for
Eastern Africa.

No.18.

Amended
Memorandum of
Appeal.

8th July, 1959
- continued.

THE UNITED MARKETING COMPANY the Appellants above-named appeal to Her Majesty's Court of Appeal for Eastern Africa against the whole of the decision above mentioned on the following grounds:-

1. The learned Judge failed to appreciate that the employment (if any) was but gratuitous.

2. The learned Judge failed to appreciate that there was neither reward nor promise of reward emanating from the Respondent or any other person to the Appellants.

3. The learned Judge failed to notice, that commission on insurance business, was not a consideration moving from the Respondent, or the price for services to the Respondent.

4. The learned Judge did not direct himself correctly on the law, that under such an employment, the Appellants, were not bound to do anything; and on failure to do anything at all, that is to take out an insurance cover, the Respondent principal had no remedy in law, against the Appellants, as such agent.

5. The learned Judge erred in drawing the legal inference, that there was a relationship of principal and agent between the Appellants and the Respondent at the material date, upon the facts found or properly supported by the evidence.

6. There was no evidence that the Appellant firm was in existence at the material date, or that at the material date D.W.4, was expressly authorised to bind the Appellant firm, or that the agency (if any) was accepted by him in the ordinary course of business.

7. That the learned Judge in believing the evidence of the Respondent and his son to the effect that the Appellant had agreed to renew the policies of Insurance of the Respondent from time to time and to debit him with the premiums and that arrangement was in fact carried out until the failure to renew policy No.MB.4762 came to light found against the weight of the evidence.

8. That the learned Judge in arriving at the conclusion of fact hereinbefore referred to failed to advert consider or give adequate or any weight to the documentary evidence before him to the effect that the arrangement hereinbefore referred to was not in fact carried out.

In the Court
of Appeal for
Eastern Africa.

No.18.

Amended
Memorandum of
Appeal.

8th July, 1959
- continued.

9. That the learned Judge in believing the evidence of the Respondent and his son failed to advert consider or give any or any adequate weight to the discrepancies and untruthful statements in their evidence.

10. That the learned Judge in placing undue weight on the meeting which took place after the fire failed to advert or give any or any adequate consideration to the fact that the memories of Messrs. R.H.S.Verji and S.H.M. Alibhai were shown to be not good and that the recollections of the said witnesses of what happened differed from the recollection of the Respondent's son. 10

11. That the learned Judge in giving undue weight to the above-mentioned extent erred in law in failing to advert to the inherent inconsistencies and improbabilities of this incident as put forward by the Respondent and his witnesses.

12. That the learned Judge erred in law in holding that the Respondent was entitled to damages. 20

13. That the learned Judge erred in law in holding that the alleged non-feasance on the part of the Appellant gave rise to the cause of action.

WHEREFORE THE APPELLANT PRAYS that the Judgment of the Court below may be set aside and that the Appellants may be awarded costs of this appeal and costs of the Court below or that this Honourable Court may make such other Order as in the premises to it seems fit.

DATED at Nairobi this 8th day of July, 1959. 30

For D.N. & R.N. KHANNA,

Sgd: D.N. KHANNA

ADVOCATES FOR THE APPELLANTS.

To:

The Honourable the Judges of Her Majesty's
Court of Appeal for Eastern Africa.

And to:

Messrs. Korde & Esmail, Advocates, Nairobi.

The address for service of the Appellant is -

Care of Messrs.D.N. & R.N. Khanna, Advocates, 40
Sheikh Building, Victoria Street, P.O.Box 1197,
Nairobi.

FILED the day of 1960 at Nairobi.

In the Court of Appeal for Eastern Africa.

H.M. COURT OF APPEAL FOR EASTERN AFRICA NAIROBI CENTRAL REGISTRY

Sgd: R.M.PATEL, for Registrar, H.M. COURT OF APPEAL FOR EASTERN AFRICA.

No.18.

Amended Memorandum of Appeal.

8th July, 1959 - continued.

Filed on 2/6/1960.

No. 19.

No.19.

10

NOTES OF ARGUMENTS OF SIR KENNETH O'CONNOR, PRESIDENT

Notes of Arguments of Sir Kenneth O'Connor, President.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

12th September, 1960.

CIVIL APPEAL NO.56 of 1959

BETWEEN:- THE UNITED MARKETING CO. Appellants - and - HASHAM KARA Respondent

NOTES TAKEN BY THE HON.THE PRESIDENT - SIR KENNETH O'CONNOR.

20

12.9.60. Coram: O'Connor, P. Gould, Ag. V.P. Frawshaw, J.A.

Khanna for Appellant. Salter, Q.C., Gama Rose with him for Respondent.

Khanna:

Amendments:

Para. 2 add "or any other person". Para. 3 " "or the price for services to the Respondent"

Salter:

30

I don't object to the addition of these words, but I shall make submissions regarding the first six paragraphs of the Memo.

I think amendments allowed to be filed without prejudice to objections. Do not know whether that

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

12th September,
1960
- continued.

is confined to the merits or whether I can object to their inclusion in this Court.

Khanna: Six grounds of appeal were not conditionally allowed. My recollection is that the judge allowed them unconditionally.

Salter: I want to argue that these grounds are not open on the ground that they raise a case which was not raised in the lower Court.

Gould, Ag.V.P.:

I put it in the same position as for grounds originally included - subject to any objection which could be taken after that had been done. 10

Khanna given leave to open the amended grounds subject to objection and the risk of having them struck out at some later stage.

Salter to have an opportunity to answer them.

Khanna:

Respondent recovered judgment for a sum being alleged loss in a fire on the grounds that Appellants were his agents to take out insurance year by year and that they had broken that agreement without just cause. 20

Respondent rested on allegation that Thanawalla had agreed to renew policies automatically unless he received specific instructions to the contrary.

My objection to the judgment is that the implications on that case were not fully appreciated or analysed in the judgment.

Implicit in Respondent's case were 4 propositions: 30

- (1) That Thanawalla was not merely empowered to renew insurances but was bound under an enforceable contract to do so, a breach of which would make him answerable for the entire loss;
- (2) That Thanawalla was not merely empowered to pay the renewal premium if he so wished, but was bound to pay it out of his own or his firm's money to the Insurance Company and that Thanawalla was to look on Respondent as his debtor for the premium paid on each renewal and that Thanawalla could sue for one or more premiums reimbursed but given in default of payment to the Insurance Company. This does 40

not fit in with Respondent's answer at p.16 line 29.

It is not suggested that this was a duty in an individual case, but a general duty owed by all insurance agents.

- (3) Assumption was to be acted on each year when there were no variations in the risk.
- (4) That either Thanawalla was to renew whether or not Respondent signed any form of renewal instructions confirming that there was no change in the risk; and that
- (5) Thanawalla must renew without reference to Respondent as to changes in the risk. This would fit in with production of forms for Respondent's or his son's signature.

In the Court of Appeal for Eastern Africa.

No.19.

Notes of Arguments of Sir Kenneth O'Connor, President.

12th September, 1960

- continued.

10

P.17 line 30.

Those are the 4 implications of a successful case.

An express agreement was relied on.

P.3. para.3.

20

" 4.

Course of dealing could not be made basis of claim as case is pleaded.

What is the direct evidence of such express agreement?

P.11, lines 29, 30, 31.

"renew the policies" - vague general statement.

P.15, lines 11-15.

Nothing about the specific terms pleaded in the plaint.

30

P.20, lines 2-3.

Renewal notice sent to whom. Alleged agreement unusual. Agent not in position to make full disclosure, bound to renew. Agent who, without reference, said "No changes" would be guilty of negligence.

Agreement so unusual Court would require strict proof of cogent evidence before giving effect to such an agreement.

Halsbury 3rd Vol.22, p.248, para.484.

40

Duty of assured on renewal to correct inaccurate statement.

In the Court
of appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

12th September,
1960
- continued.

If he stipulates not to be liable it is near
entering into illegal contract.

Welford and Otter-Barry, 3rd, p.160.

No businessman would agree to enter into such
an obligation - bound to renew without instructions
or even signature.

Is not this a lawyer's agreement as an after-
thought set up as a means of extracting the loss
from someone.

P.98.

10

Written to the Insurance Company:

"Your agent". No reasons to him being any-
thing else.

Complete volte face after the Insurance Com-
pany declined liability. No suggestion before
that that he was agent of Respondent.

Proposition (1)

Were there imperative standing instructions
to renew?

Consideration: Record P.17 lines 11, 12.

"I was not paying him for this but he was
receiving his commission".

20

P.59, lines 8, 9.

P.73, lines 9-13.

P.76, last 3 lines.

P.129, lines 29-31.

Submit wrong.

This was not consideration.

Halsbury 3rd Vol.1, p.183, para.427, note (h)
"and similarly where the agency is gratuitous".

Balfe v. West 138 E.R.1281.

30

p.1982. Phinn.

p.1283. I adopt this and say that if the Appell-
ant failed to renew the insurance no action lies
in the absence of the

Jervis, C.J.

Difference in principals' rights against re-
munerated and unremunerated agent.

Mulla: Indian Contract Act 8th at p.622. s.185.
But whether he will act is a different matter. But

a gratuitous employment does not bind the agent to do anything.

Halsbury 3rd Vol.22 pp.47,48, para.80. p.201 para.382.

Distinction between marine and non marine insurance. Exception not appreciate below.

Ireland v. Livingstone (1872) L.R. 5 H.L. 395.

P.398 line 17. Commission charged to buyer.

10 P.406 last paragraph. p.407 Normal consideration is the charging of commission. p.408.

If there is an agency the principal must get the benefit of any cheapness. You cannot charge commissions received from insurers and keep it.

Line 1. - It would be a positive fraud.

The United Marketing Co. would be committing a fraud if they did not pass on commission.

20 There may be agents of insurers and insured. If an agent of the assured he must pass on all received to principal unless there is an express contract to the contrary or an implied contract with custom well understood by assured.

Cases can arise where interests conflict. Respondent relied on Smith v. Lascelles 100 E.R.101.

D.Marine case not applicable.

P.102 - 3 Rules:

"The second class of case"

30 That is concerned with a duty to obey explicit instructions to insure doing away with consideration and does not apply where no explicit instructions are given. It concerns correspondents abroad who could not effect insurance. Not applicable here.

Arnold Mar. Insurance. 14th Edn. Vol.166 para. 146.

Concerns only marine insurance.

Consideration is defined in S.2 Indian Contract Act. Mulla 8th p.12(d).

40 Indian law wider that consideration need not emanate from promises.

"At the desire of the promisor".

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

12th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

12th September,
1960

- continued.

Commission paid by Jubilee was not because they acted for the Respondents but because they were charge agents and entitled to commission for cases emanating from that area.

There was never a meeting at which the Respondent said he would act for the Appellant for consideration.

P.18 "Or any other person footnote (m).

At the request of the proc and the promisee.

H.Kara never requested Jubilee to pay nor did United Company request Jubilee to pay because of H.Kara. 10

P.19. Indian law in conformity with Denning L.J's wishes (p.19).

Dutton v. Poole.

Mulla pp. 18, 19, 20.

There is no nexus between Jubilee, Appellants and Appellants and Respondents nor was any request or promise made.

Section 2 and no case was cited to the Judge. 20

Salter's argument was supported without reference to Section 2.

Grounds 1 to 4.

Ground 5. No reason to infer that he was a remunerated agent. If unremunerated action would not succeed.

Ground 6. Will elaborate this in general argument covering grounds 7 to 12. 13 already dealt with.

Adjourn to 2.30.

K.O'C.

2.30 p.m. Bench and Bar as before:

30

Khanna continues:

Evidence: Whether Thanawalla and firm agree without remuneration to advance premiums out of own pockets irrevocable until instructions received to the contrary and that if for any reason it was not passed to insurance, he was to notify insured.

5 heads:

1. Direct evidence of agreement.
2. Amirali's evidence.
3. Actual course of business making alleged agreement probable or improbable. 40

- 4. Interview on 10/4/56.
- 5. Payment of premium on 10/4/56.

Thanawalla or Appellants were paying in order to get Respondent's business. Unlikely that they were paying to undertake onerous duties.

P.59 1.3. H.K. was receiving something for insuring through Thanawalla.

P.60 11. 1-12. There was no incentive to undertake such onerous duties.

10 P.15. L.15.

P.12. L.15. Untrue he received renewal notice in respect of Policy in October, 1953.

He knew there was renewal up to November '53.

P.93. Ditto to 17/11/54.

Received similar notice in respect to other policies between December '51 and October '53.

P.80. Motor insurance.

P.81. Motor insurance.

P.80. Amended instructions.

20 P.86. Instructions to renew - amended particulars of.

P.88. Ditto.

P.89.

P.83. Notified of lapse of policy.

P.52. Ll.3 to 6. Mulji.

P.20. Ll.2 and 3. Notice for whom?

30 Thanawalla was not getting anything but was paying to get the business. Onus is heavy. Judge should want to be satisfied as to nature and extent of alleged agreement.

Pp.59, 60.

P. 67, 1.15.

Submit that no reasonable Judge could hold on that evidence that the alleged agreement was established. On sufficiency of evidence this Court is as good a position as Judge below.

(2) Amirali's evidence:

P.26. Ll.17-19. Doesn't state source of information as to the Agreement.

40 P.26. 1.26.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

12th September,
1960
continued.

In the Court
of Appeal for
Eastern Africa.

This is after enquiry after a particular
policy. Thanawalla will look after formalities of renewal.

P.28. Ll.25, 27.

Hearsay. Wrongly admitted and acted on at
p.120 l.15. P.31. l.2. read in light of
p.27 Ll.13-15.

Odd that he did not say this i/c.

P.34. l.15.

(3) Course of Dealing.

10

Trial judge ignored evidence in manner in
which Respondent's business was dealt with after
1950 though that sheds light on whether agreement
was made.

Respondent's evidence p.15 Ll.13, 14.

Not correct Policy No.4762 expired on 16/11/54
(p.53 Ll.29, 30) some time before the fire.

P.83. Informed that policy lapsed.

P.91. He would then say you have committed a
breach of my agreement on two occasions.

20

P.15.

P.19. Ll.18, 19.

P.59. l.24. Thanawalla contradicts.

Instructions were specifically taken on each
occasion. He has said that from 1950-1955 he gave
no instructions to renew. But see Pp.80, 81, 86,
88, renewal notice sent by him. Pp.17, L.31.

P.18. l.2. Untrue - original sent to the accused
and copies to the agent.

Evidence of Respondent not very specific to
say the least.

30

Insufficient to enable reasonable judge to
come to a conclusion that there was this unusual
agreement.

Amirali. P.29. l.7.

Thanawalla. P.59, Ll.24-27.

P.29, l.10.

P.32, Ll.13, 14, 20, 21.

P.29, Ll.12, 13.

P.33, l.g.

40

No.19.
Notes of
Arguments of
Sir Kenneth
O'Connor,
President.
12th September,
1960
- continued.

P.30, Ll.8, 9. Contract p.29, Ll.8, 9.
 Confronted with right instructions. See p.30
 Ll. 21, 22.

P.30, Ll. 1, 2.

P.30, Ll.4-5. "I never gave".

Amarshi c/f p.57, l.12.

P.57/58.

10 Fits in with Thanawalla's evidence that some-
 times he got oral or 'phone instructions and some-
 times someone came in.

Alleged unusual agreement unsupported by course
 of business.

(4) Interview on 10/4/56.

Indirect evidence which may help to lend cre-
 dence to case put up i.e. express agreement of kind
 alleged. Evidence was confused - it does not ad-
 vance case of special agreement.

20 Either Respondent's son was told that the
 policy was not renewed. If agent had done all that
 he was required to do, transmit instructions -

People not quite clear on fundamental fact
 whether premises insured or not.

P.13 Respondent's evidence l.14 - 20.

See 1.3. Why say this?

You do not fly at your own expense if it is
 covered!

Why enlist head of community unless he thinks
 something has gone wrong.

30 P.36 Ll.1 & 2. Why sympathetic to H.K. if in-
 sured.

P.41 l.15. Why write about renewal if he was
 already covered - in mid-year.

Pp.61-63.

P.61 l.16.

P.62 l.3 etc.

Son says he found they were not covered.

P.63.

c.f. p.61 Ll.17-23.

c.f. p.69 Ll.11-14.

40 P.38 Mukhi 31. Cf 1.13 Why was it his duty.

In the Court
 of Appeal for
 Eastern Africa.

No.19.

Notes of
 Arguments of
 Sir Kenneth
 O'Connor,
 President.

12th September,
 1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

12th September,
1960

- continued.

Thanawalla must have told him there was no cover.

All parties agreed that one letter was shown
Mukhi.

P.39 etc.

No point in writing about the renewal after
the fire. Must have been on the footing there
was no cover. Then he shifts to two letters.

P.41 Ll.17-19.

L.31, 32 "I saw only one letter".

P.13 Ll.18-20 Respondent speaks of "a docu- 10
ment".

P.26 l.2 "whole file and letter".

P.62 l.20 "A paper, not a file".

Id. of letter remained obscure at the trial.

P.13 Ll.19, 20.

Mukhi cannot remember the date of the letter.

P.37 Ll.27-32 "The letter I saw etc." may be
confusing the cover on the two other properties.

P.38.

All this evidence does not help to solve prob- 20
lem whether this unusual agreement likely to be
made.

Letter useless unless written at the proper
time for cover for year 1955-56.

? Written later to cover up.

Adjourn to 11 a.m. tomorrow.

13th September,
1960.

13.9.60. Bench and bar as before.

Khanna continues:

Passage I could not find yesterday.

P.22 Ll.28, 29. "From 1950 to '55 I gave no 30
instructions to renew".

Yesterday was dealing with interview. May
have confused other two properties which were cov-
ered.

P.36 Ll.13 to 18. Mukhi's recollection very
vague. Obscure. Before or after letter.

To Court: Jubilee was asked to produce this
letter but all they had was a letter in 1954.

P.41 l.18. Alibhai doesn't remember date or
year.

P.62 l.29. p.95 - that is the 1954 letter.

P.36 Mukhi said (p.95) that this was not the letter.

Amirali says nothing about this.

P.13 Ll.22,23 gives impression that was a letter written after the event.

P.16 l.24:

Ev. of Mukhi and kamadia too vague to be of any use.

10 Account given by Amirali doesn't fit with Mukhi and with K's version.

P.28 Ll.8-10. This may have caused confusion in the minds of Mukhi and K. They thought he was saying all were covered.

P.37 Ll.18-19.

P.42 Ll.12,13 Kamadia Alibhai. Thanawalla also confused.

20 P.62 Ll.20,21. Thanawalla himself says that he said he could not understand why this policy was not renewed. On this point the evidence of H.K. (Amirali) and Thanawalla does not agree with Mukhi and Kamadia.

P.125 l.54.

According to Respondent p.23 Ll.13,14 "I am bound to you"

This would only make sense if he told them that he was not covered.

No other witness repeats that remark.

30 P.26 l.2. Why say "it is all my responsibility" if he was covered?

P.36 Ll.24,25. Why should there be a discussion about cancelling policies if he was covered.

P.41 Ll.30, 31.

P.39 Ll. 2 and 3.

When critically examined the evidence as to the interview of the 10/4 is not of assistance.

(5) Payment of premium on 10/4/56.

40 Respondent and trial judge relied on the payment after the event as evidence that the Appellants were under a duty to pay the premium and renew the policy. Judge misunderstood Thanawalla's evidence on this point.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

13th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

13th September,
1960

- continued.

The practice was that Jubilee apparently waited for 12 months before saying "no further insurance".

They were not paid for the '52-53 insurance.

They were not paid for the '53-54 insurance.

But they had given cover for '53-54 expecting that the agent Thanawalla would pay before that came due.

Thanawalla was not bothering to press for payment of the premium until he was pressed by Jubilee. 10

For '52-53 he received payment and he had got cover for 53-54 without having paid Jubilee or collected from the Respondent.

P.95. On the 1X1/54 he asked for cover for '54-55.

Jubilee paid no attention because they had not received the previous year's premium. For this reason they did not send out a renewal notice for '54-55 or '55-56. 20

What Thanawalla did on the day after the fire sent one premium that would go to pay the '53-54 premium leaving still two years' premiums unpaid. To bring the insurance up to date he should have sent 3 lots of premiums. This system of credit is supported by p.54 Ll.1, 2, p.53 l.26. (Ex.0.p.3).

On the 16/11 they declined to renew on ground premium not paid and so notified Thanawalla's firm. The renewal notice must have ceased. So the Respondent should have known that there were no insurances from '54-55 and '55-56. 30

P.55 Ll.20, 21. Premium would have been accepted 14 months later if there had been no fire.

On the 10/4/56 this interview at which everyone was confused and excited, Thanawalla may have thought that they would accept liability for premium if one year sent. In that frame of mind he paid it and thought he would at a personal interview get the insurance validated retrospectively. This is not evidence of a duty to renew of the kind alleged. 40

Summarise: Direct evidence too meagre to prove suggested agreement. Respondent uneducated (p.32 Ll.7,8). No real grasp of insurance methods. Respondent has given very inaccurate evidence as to the accounts.

Differences over insurance began after Amirali left business (p.18, Ll.17,18).

P.14. Ll.31,32. At the time of the interview Respondent seriously ill. Evidence should be largely discounted. Does not make sense.

Mukhi & Sons. Memory of witness confused.

10. This evidence quite understandable and does lead to presumption that he was liable. If Amirali right he said "I cannot understand why this one is not covered". Respondent did not pay.

No implied agreement pleaded.

Course of dealing does not amount to much and does not fortify alleged agreement.

No agreement that he would keep on indefinitely. No incentive why Thanawalla should give credit indefinitely.

P.18 Ll. 31,32.

P.34 Ll. 20,21. Inconsistent with Hasham Kara's version.

20 Respondent's contention of indefinite credit could not be reconciled with it.

P.114 - 22.11.54. Exhibit 5.

A payment in November '54 covers 18.1.54 to 17.1.55. Payment 1 month after cover began.

30 Alleged that there was an overpayment on 13.12.55 of Sh:437/95. That may have been intended to clear up 439/- odd on Fort Hall Road and Indian Bazaar properties or this may have been accidentally overpaid. P.50 Ll.15, 16. Supposition. He was not in credit.

P.129 l.9. Not accurate as Dave said that there was not an overpayment.

Salter hands in copies of Exhibit 14.

Exhibit 5 p.114. Payments made in respect of individual premiums and not a balance of accounts.

Payment made in year premium due.

40 Appellant's version that he was to pay individual premiums within reasonable time is only right one. Exhibit 14 doesn't show date and it is impossible to tell if Respondent's payment premature.

Exhibit 5 indicates that Respondent owed money to Appellant at all times after the 22.11.54.

In the Court of Appeal for Eastern Africa.

No.19.

Notes of Arguments of Sir Kenneth O'Connor, President.

13th September, 1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

13th September,
1960

- continued.

Judgment p.129. Judge attaches undue weight to conditional admissions of Dave.

Alleged overpayment of 437/- must represent a difference due on policy and the sum actually paid.

Dave's statement should be disregarded - coming from a witness confused by cross-examination and asked to answer a conditional question.

If there had been an overpayment in respect of a balance of account payer must be in credit.

But if overpayment refers to a single item, balance may still be adverse.

Respondent alleges right to set off against premiums purchases by Thanawalla of provisions.

This must fail because -

(1) Arrangement not proved. Did not form part of original agreement 1950 (p.22 Ll.1, 2).

P.33 Ll.16/19.

Evidence as to course of dealings is unconvincing

P.21 Ll.14-21.

P.22 Ll. 3-6.

P.31 Ll. 8-10.

P.67 Ll. 9-15. P.99, p.100.

P.68 l.14. No set off for commission.

Separate debt by one partner cannot be set off against debt by firm.

Halsbury 3. Vol.28 519 para.1004.

Afortiori. Dr. merely wife of a partner.

Fact that dr. and cr. items respond so closely indicates no deduction made for premium.

Respondent has failed to prove what should have been allowed in account for provisions.

Letter 24.4.56 (p.113).

Does not say account was in credit when premium fell due.

P.3. Complaint para.4.

Alleged express terms set out:

(iii) Duty to inform.

Not pressed at the trial. Difficult to see how it could exist without more comp. agreement than proved.

10

20

30

40

Respondent's honesty for trial judge, but his reliability and competence to give evidence on insurance and account is another thing. Falsehoods.

Exhibit 5 p.24 lines 17,18 "It shows ...'56".

Wrong. See p.114. Exhibit 5.

P.24 lines 23-25.

Respondent has overlooked that on 25.1.54 he paid a cheque in settlement of the account (p.24 l.32, p.25).

10 P.102. Though payment made as a lump sum, separate receipts would be given.

P.24 l.29. p.103.

He would pay end balance of account in January '54.

P.25. l.8. On 13.9.55 I gave 768/84 as shown in Exhibit 5 is of the payments 225/84 and 543.

Finding of fact with regard to unusual Agreement.

20 Adjourn to 2.30.

2.30 p.m. Bench and Bar as before.

Khanna continues:

Payment of 768/84. 2 payments 225/84 and 583/-.

How could this Respondent - illiterate - confidently make assertions in the witness box. This is after the adjournment on re-examination. Probable that this evidence is wrong.

Ex.N. A/c.

30 Copy of ledger a/c from 1951.

I have not been able to arrive at any credit in favour of the Respondent on which judge based his statement on page 129.

Court (G).

What does "overpayment" in Exhibit 14 mean?

Khanna: "I do not know".

Salter: p.50 line 13.

G. This Exhibit 14 shows no dates.

40 Khanna: "If the books show" They do not. Certainly not in February '56.

In the Court of Appeal for Eastern Africa.

No.19.

Notes of Arguments of Sir Kenneth O'Connor, President.

13th September, 1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

13th September,
1960
- continued.

This is not a case of credibility.

It is a question of wrong inferences from the primary facts found. Judge does not base himself on demeanour.

P.126 line 30 to end.

The Court of Appeal is in as good a position as the Judge.

Benmax v. Austin (1955) A.C.307.

Headnote p.373. "But I cannot ... perception and evaluation ... of facts".

10

Hicks v. Br.T.C. (1958) 1 W.L.R.493.

P.507. "Not only has the power but it is its duty to substantiate its own inference".

Yuill v. Yuill (1945) 1 All. E.R.183. p.189.

Demeanour - does not apply here.

P.188. If you come to a contrary view, you should say so.

Flower v. Ebbw Vale (1936) A.C.206.

P.220 "That being so ..."

"Question of the sufficiency of their evidence to establish what the Respondent had to prove".

20

Having regard to a vague and ambiguous agreement in 1951, the Appellant was entitled to act on a reasonable interpretation of his mandate.

Halsbury 3 Vol.1 p.165.

Ireland v. Livingstone (1872) 5 E and Ir. Ap.395, 416 "Now it appears ... "

The Appellants acted on a reasonable view of their instructions.

(1) From the course of conduct it was clear that they were to renew without instructions.

30

(2) Their understanding was that if the previous year's premium was not paid within the current year, they were not to renew. That is that they would only give as much credit as they got from the Jubilee.

(3) Their understanding was that they were not to renew without giving the assured an opportunity to notify circumstances attending the risk.

40

Cover having lapsed in 1954 inconceivable story of Respondent.

If Respondent did not get any renewal notice for 1954 and 1955 should have put him on his guard.

The op. cause of the loss is the inactivity of the Respondent breaking the chain of causation.

Rushton v. Turner Bros. (1960) 1 W.L.R.96.

Judgment p.117 (reads judgment).

p.119 line 6. "In cross-examination ... "

10 Impossible for contract to go on for ever with elaborate duties claimed and not proved.

Line 28 - bases himself on surrounding circumstances.

Undue prominence given to the interview and does not submit it to critical examination. Merely repeats evidence.

P.128 line 11. Undue weight given to the payment of the 10/4.

20 Evidence of Appellant insufficient to make out such an unusual agreement.

Allow appeal with costs.

3.21. Salter:

Case started as on simple issue of fact.

P.11 Issues.

No real dispute as to amount of damages. Appreciated that case was one of fact.

P.69 line 29.

Came down to what was the contract; or was there a contract.

30 P.74 line 9.

In the first Memorandum of Appeal p.1 substantially it was an appeal on fact on ground that findings against the weight of evidence etc.

Grounds 6 and 7 only raised questions of law.

Khanna has endeavoured to take this case away from the agreed issues and present it in a different light to what was pleaded or argued.

Amended Memorandum.

40 Ground 1. Never specifically or clearly pleaded.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

13th September,
1960
- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

13th September,
1960

- continued.

P.73. Only passage lines 9 to 14.

"No consideration for the promise". Raised inci-
dentally and not supported by authorities.

P.119 Judge did examine surrounding circum-
stances.

P.129 Having considered evidence Judge comes
to his conclusion.

Line 16.

Line 28. Judge was saying "here was an unusu-
al arrangement - one which the Plaintiff said there
was". It was not argued that it was gratuitous. 10

Grounds 2 to 5 of amended Grounds of Appeal:

Some submissions apply.

P.117. It was not in dispute that Plaintiff
took out an insurance policy through the Defendant.

Ground 6. No argues.

Khanna: I am relying on this p.59.

S. Not pleaded. Paras. 5 and 10 of the De-
fence "Defendants".

Ground 6.

20

Khanna: I do not press this if you feel that
it was not sufficiently pleaded and opportunity to
call evidence on it not given.

Salter told we do not think Ground 6 can be
raised at this stage.

Grounds 1 to 5. It was never put in cross-
examination that the Appellant was employed gratu-
itously. The cross-examination was on the basis
that there was no duty to renew automatically.

Only passage was that Respondent was to get
10% of the insurance commission. 30

These grounds come within prins. on p.1675 of
Annual Practice 1960 O.58 r.9.

Wilson v. United Co's Bk. (1920) A.C.103, 106.
N.Staffordshire Rly. Co. v. Edge. 254,262.
(see p.73)

P.67 line 22.

P.11 line 29.

P.15. He was receiving his commission.

It was never put to him that that was not
enough. 40

10 Khanna's address, in the last part which covered Ground 12, said that the Respondent knew that the policies must have lapsed and acted with folly and apathy and said that the damage was due to his lack of action. That again is not stated in the Memorandum and if there had been an argument that should have been pleaded and would have been made an issue. Submit that argument not open. Argument should be based only on the issues framed and considered by the Judge.

Ruling:

Grounds 1 to 5 are open to the Appellant.

The argument of laches or apathy raised on Ground 12 is not open.

Adjourned to 10.30 tomorrow.

K.K. O'Connor, P.
13.9.60.

14.9.60. Bench and Bar as before.

Salter continues:

20 Khanna said that the basis of the Respondent's case was allegation that Thanawalla had agreed to renew automatically; but that was not the only basis of the Respondent's case below.

Case rested on the whole contract as pleaded in paras. 3 and 4 of the Plaintiff.

P.3 para.3 "to insure and get insured". Next para. elaborates duties.

30 Para.4(v) "generally to superintend and advise". Appellant was agent for at least one other insurance company.

P.65 line 17.

Jubilee not only company.

Appellant was carrying on the business of an insurance broker.

As such it was his duty to superintend and advise respondent on his insurance business.

Question of authority to agent.

Halsbury 3 Vol.22 p.201. para.382.

Broker is agent of insured.

40 Whatever may have been the position of the Appellant vis-a-vis Jubilee, he was also the agent

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

13th September,
1960

- continued.

14th September,
1960.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960

- continued.

of the Respondent in the conduct of the Respondent's insurance business and if he failed to discharge his duties as shown he was liable for any loss caused by his neglect. C.L. & S. 212. Indian Contract Act.

Mulla 8th Ed. p.664.

Thanawalla agent of Respondent has to show skill and diligence in the exercise of his agency.

Halsbury 3 Vol.1 p.184; 185; 186.

Broker is agent of insured.

10

Shee v. Clarkson 104 E.R.199.

P.200 Dixon & Co. v. Devitt 32 T.L.R.547.

Once you hand your business over to an agent you don't have to do anything yourself.

P.548 Col.2 "The appellant said ..."

Was the agreement pleaded in para. 4 being established. No conflict re employment.

P.11 line 23.

P.12 line 1 etc.

P.15 line 11.

20

P.16 line 29.

P.17 it was his business.

P.18 line 28.

Pp.21, 22.

P.22.

P.23.

P.25 line 25.

Respondent had made this arrangement in 1950. The setting off of rations was a practice adopted occasionally for the purpose of settling accounts.

30

It was the duty of the Appellant to pay the insurance company.

Accounts would show debit for the premium.

Borne out by Appellant's evidence.

P.58. Appellant line 28.

P.59.

P.67 line 16 Important.

Submit that is corroboration of what the Appellant said.

P.68 Statement contradictory.

40

Judge concluded Appellant not a straightforward witness.

Respondent's evidence preferred.

The evidence is sufficient to establish the contract.

Khanna commented on the implications and said Judge had not appreciated them.

(1) That Appellants would have to pay his own amounts.

(3) No change in risk.

10

(4) bound to renew with or without instructions.

But shown that it was the intention of Appellant as agent to have a premium (?)

Assumption of known agent. Respondent was leaving all that side of the business in the hands of the Appellant. There was no duty to supervise Appellant's carrying on.

If there was a danger of changing circumstances being overlooked that would not affect the risk.

20

Any penalty for non-disclosure would fall on shoulders of Respondent not on Appellant.

Implied that if there were change of circumstances the Respondent would notify and renew on certain basis.

Not to do so in absence of or instructions would not be negligence.

If the contract abnormal then the judge realised that in the matter of the accounts and the 12 months credit being given by the Insurance Co.

30

Judgment p.129 "course of dealing" not the same as the contract but nothing objectionable in the contract.

Appellant anxious to get business.

Khanna referred to p.95.

Reason they thought he was in fact covered. When he found that he was not covered, he said "that is your responsibility"

He proceeded.

Court: Not for over 12 months.

Salter: I agree. I do not know the reason.

40

Can it be said the contract defeated because there is no consideration.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960

- continued.

P.58. I called many times and asked him to insure with Jubilee.

Who is promisor.

P.6 para.5. "At request of the Plaintiff".

But see p.58.

P.59 line 4. But agent agrees to give Respondent 10%.

Mulla 8th p.16 para.2.

Who was the promisor.

Either Appellant went to Respondent and said if you will give me your business I promised to look after it for you and give you 10% and the Respondent said "Yes I will give you my insurance business on those terms" or Respondent said "you give me 10% and I promise to give my insurance business and you can then draw your customary commission from the insurance company". 10

Either way there was consideration in law.

S.2(d)(e)(f).

The Respondent by filling in a proposal form fulfills his promise to give the agent his insurance business. 20

The payment of commission by the Appellant to the Respondent plays an important part and also the mutual promises.

Khanna submitted that it would be wrong for the Appellant to accept commission without knowledge of Respondent.

Insurance cases are exception to general rule.

S.216 Mulla p.670. 30

P.674 "Payments authorised by custom".

G.W. Insurance Co. v. Cunliffe (1874) 9 Ch.D. 525.

P.535.

P.537.

P.539, 540.

Baring v. Stanton (1876) 3 Ch.D.502.

P.505, 6.

It is a custom of the insurance business that these commissions should be allowed; if it was in the interests of the Appellants to be able to get 40

that commission. Respondent knew he was to get that commission and bargained for 10% of it. Ample consideration.

Halsbury 3. Vol.1 p.185.

If there was consideration there was no gratuitous agency. But if there was, s.185 Indian Contract Act (no consideration necessary to create agency) Halsbury para.432.

10 Even if there were a gratuitous agency the duty imposed on the Appellant was at the least to take such care and diligence as he would in his own affairs but I submit higher as a person in that business he must carry out his duties as an ordinary insurance broker would carry them out and he failed to do so. It must be the duty of such an agent to see that a policy was renewed.

20 Accept that there is no liability for non-feasance; but I submit that once you enter on a performance of the agency; ordinary duties of diligence and skill apply. There was no duty on him to do anything; but if he did ordinary standards would apply.

Halsbury 3 Vol.22 pp.47/48. para.80.

30 Submit here is a man who held himself out as possessing knowledge of insurance; and since he entered on the agency generally he was liable. You must regard the time the agency was created - 1950. If you think the agency then created was to obtain and keep cover, once he starts that conduct of business he is bound to carry out the terms with diligence. He must renew or inform the Respondent that a policy had not been renewed.

Original contract.

Fully borne out by course of dealing. He kept on renewing year after year.

No substance in Khanna's submission.

P.57-58.

P.81.

40 We would have renewed on instructions of the agents Insurance policy on all insurances dealt with in the same way.

Renewal notices sent out by the Company as a routine matter. Some sent by the son or a partner. They were sent to the agents and they asked for

In the Court of Appeal for Eastern Africa.

No.19.

Notes of Arguments of Sir Kenneth O'Connor, President.

14th September, 1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960
- continued.

renewal. Course of dealing was that policies would be renewed on Appellants instructions which would debit Appellant but 12 months after they have instructions to renew, so that Respondent not called on to pay for at least 12 months or a reasonable time.

Course of dealing shows continuing action by the Appellant whether he was a gratuitous agent or not bringing him within standards required. No case of non-feasance ever arose. 10

Amirali p.26. Concede not present in 1950.

No evidence of what the agreements were but on the course of dealing and on

P.26 line 15.

P.27.

P.28 line 22. hearsay.

P.29 line 28. That referred to one of the printed forms.

P.30, 31.

Does not affect the question of the payment of the premiums. 20

P.32.

P.33 line 20.

P.34 line 20. This was in a case of a year to year basis as between Respondent and Appellant.

In para.5 of defence it is admitted that there was cover till 17.11.54. The premium for the period 17/11/54 to 17/11/55 would not be sent to agents till 17/11/55. He would notify Respondent and be expected to repay within a reasonable time and that premium should have been paid on 17/11/55 by the Appellant who would subsequently debit Respondent. It appears that the policy would not lapse for another year i.e. for 1956. 30

Khanna. Exhibit O. Letter of the 16/11/54 from Gen. Manager? of Jubilee to United Marketing Co. (United Marketing Co. notified that premium on Policy 4762 remains unpaid) (On 1/11/54 from Appellant to Jubilee to renew several policies) that means for period 17/11/53 to '54 to enable us to renew to end of 1954. 40

Having got that it was the duty of the Appellant to pay Sh:176/- for '53-54 so that under the practice there would have been cover for the following 12 months. It does not appear that there was a copy to the Respondent.

Adjourn to 2.15.

2.15 p.m. Bench and Bar as before.

Salter continues:

Court (Crawshaw).

P.60 line 19.

Salter: According to the arrangement it would be the duty of the Appellant to pay the premium and press Respondent to pay him.

P.18 line 10. May not be the same occasion. He was anxious to pay what was due.

10

P.26 line 3.

P.25 line 21.

Cr. if the Respondent had known that the policy had lapsed and done nothing about it the position might have been different.

Salter: p.27 line 8.

P.53 Exhibit 0 last line.

P.54 Lines 1-5. Line 28.

P.55, 56.

20

Appellant made a mistake in not paying premium for 1954-55 which would have given cover in 1956.

To Court:

Pp.80,81 sent to insured and copied to agent. Evidence was that Respondent or his son sent them to the Appellant. Respondent did say that on one occasion he might have sent them direct to the Company. The Company did not think so and wrote to the agents to recover from the customer.

30

That is consonant with pleadings and the episode of tearing up the notice. Khanna said he did not pay promptly.

P.102 Exhibit 7.

Provisional receipt "advance deposit" p.101. 13.1.54.

This seems to be the period which the company said it had not been paid.

P.103.

40

P.110 Odd that he gets a credit note in December 1955 on 10% commission received from the Company if the premium had not been paid for 1953, 54.

Exhibit N. Ledger Account.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960

-- continued.

Balance half way down right hand column is referred to on page 105 of the Record.

2735-80 = 485 + 1505 - 745 - 80 in right.

Accounting as at 31/1/54.

Confusion in account caused by the 12 months credit system. Shows that premium not paid punctually only because not punctually demanded.

In at least one case Respondent was receiving commission on premiums one of which was alleged not to have been paid. 10

P.102 "advance deposit".

Exhibit 14. Overpayment of 437/95. This is accounted for on Exhibit N.

There was a credit in the books due to the Respondent on the 13/9/55.

Duty of Respondent to pay out of funds in hand.

Interview on 10/4/60.

Khanna commented on interview - conduct only consistent with knowledge of 20

But son had already gone to see Thanawalla before interview.

P.13 line 3.

P.27 line 10. Amirali.

As a result of what the son told the father he was very worried as to whether he was covered.

Khanna criticises Mukhi and Kamadia and says that their recollections cannot be relied on.

Considering the lapse of time (about three years) not surprising if their recollection varies. 30

They were not confused about the Appellant trying to reassure them.

P.62 line 27.

He did not think that the Respondent had paid the premiums.

P.56 Never direct instructions.

Was the Appellant doing so to deceive or mislead Respondent and his party.

P.62 line 1, line 20.

P.64.

Pp.121-126. Conclusion justified. 40

P.47 "if not paid, we have to pay it".

Could there be any motive for that payment except that Appellant knew that he had tripped up and he hoped that by covering this up he would be able to say it had been paid and ask for ex. gr. treatment.

P.65 line 7.

10 Ireland v. Livingstone commented on in BOUS-TEAD 4th Ed. p.49. Nothing to do with the present case. The whole case for the Respondent is that there was an unequivocal contract - no ambiguity about it.

Khanna said interview on 4/4 was crux of Judge's decision. There was only one fire and one policy that could have been discussed.

Question of fact apart from question of consideration.

Judge justified in his conclusion. His decision should stand.

20 Khanna in reply. Mrs. Kean in Court below did not fight fact - she raised no consideration marine cases etc.

Salter said the Appellant should have lent their money and waited for settlement.

Nothing in the plea about lending money.

Salter relied on para.3 as well as 4 of plaint "insure and keep insured". Nothing to support that. Only a promise to renew.

30 Salter said "generally to superintend and advise". No evidence in support of that having agreed.

Salter said he was an insurance broker because he held P.A. from Guardian Insurance. Does not prove that they were insurance brokers generally.

Salter quoted Shee v. Clarkson as a case of common agency. v. limited application. No conflict of interest. A Dual agency does not exist in cases of conflict. HALSBURY 3 p.303 para.385.

40 Dixon v. Devitt. No bearing. It deals with a broker who does insure but departs from instructions. Does not deal with case of person who does not insure.

Salter relied on passage to show that there was a promise to lend agents' money.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960
- continued.

P.11 line 23. "I had dealings" with him.
Does not prove more than customer.

P.15 line 11 "used to pay on my behalf" does
n't import an obligation. Doesn't say "was bound
to pay on my behalf".

"If the account fell short he should
demand money from me".

P.12 last para.

P.22 no reference to "squaring accounts".

Crawshaw, J. p.67. How do you interpret that? 10

Khanna: There was a period of credit allowed
to Thanawalla.

There is only one instance - after the fire -
that he paid out of his own moneys. That was be-
cause Respondent was worried and was pressed by
the members of his community.

P.23 to line 2 proves nothing. Was there an
obligation.

P.25 line 25 "on demand" doesn't fit in.

Son did not have honesty to say that he was 20
not present at the original interview.

P.67. Merely debiting and not paying cash to
the insurer was not paying cash.

Salter conceded the 4 obligations of the con-
tract.

No evidence of any agreement to advise.

P.201. HALSBURY 3 Vol.22.

There must be a specific assent by the insured
or special instructions on each occasion.

P.98 I saw that letter written after the in- 30
terview.

Why did it take 12 months to construct a case
against Thanawalla.

No preliminary letter.

Why change of advocates?

Consideration.

Salter: The 10% which leaves the pocket of
Thanawalla cannot make him an agent for reward.

The 90% emanated from the principals. Hasham
Kara was never privy to that. 40

The two cases Salter relied on dealt with custom of the City of London.

Salter said there was misfeasance in something taken out. But if you do not take out the renewal, that cannot be misfeasance. Giving standing instructions is the same as giving individual instructions each year.

Pp.57, 58.
P. 27 Lines 5, 6.

10 "debit" doesn't mean paying the insurers.

In due course - vague.

Exhibit O. 16/11/54 merely a carbon copy. We do not know whether there was an original and whether it was copied to him.

P.60 lines 20, 23.

Money was being paid within the policy year.

P.18 "tore renewal notice" not put to Appellant.

20 Is it believable that Respondent did not know premium not paid?

P.30 I am quite sure.

Business man when he settled account is it believable he did not know premium not debited or claimed.

Exhibit 7 p.102. Printed form - Inapplicable words not struck out.

P.101. Commission not worked out at regular intervals. Cannot assume 485/- commission on suit property.

30 Exhibit N. Salter assumed credit in the hands of the Appellant. It was no part of his case that there was sufficient money to pay those premiums.

If Exhibit N. shows what Salter says why did not he Cross-examine Dave on it.

Interview on 10/4. Have dealt with that.

Does it make sense that Thanawalla should have to go to Mombasa. Why should he pay out of his own moneys?

40 It would only be "Please go and plead on our behalf".

Things had gone wrong through no fault of the Appellant, Thanawalla was helping them at his expense.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.19.

Notes of
Arguments of
Sir Kenneth
O'Connor,
President.

14th September,
1960
-- continued.

15th September,
1960.

Thanawalla was not to insure except on specific confirmation that there was no change in the risk.

Case only brought after 12 months. Should not have succeeded. You re-hear case.

Allowed appeal.

Adjourn till 10 a.m. tomorrow.

K.K. O'Connor, P.

14/9/60.

15.9.60.

Bench and Bar as before.

Judgment of the Court read.

10

Appeal dismissed with costs.

K.K. O'Connor, P.

15/9/60.

Salter: I apply for certificate for two Counsel.

Khanna: I oppose. No grounds. No need for 2nd Counsel. The Appellant did not think it necessary to be represented by two Counsel. We think should be an exception.

Certificate for two Counsel refused.

15/9/60.

K.K. O'Connor, P.

20

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960.

No. 20.

NOTES OF ARGUMENTS OF ACTING VICE-PRESIDENT,
MR. JUSTICE GOULD

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI.

CIVIL APPEAL NO. 56 of 1959.

BETWEEN:- THE UNITED MARKETING CO. Appellants

- and -

HASHAM KARA

Respondent

NOTES TAKEN BY THE HON. THE AG. VICE-PRESIDENT,
MR. JUSTICE GOULD.

12.9.60. Coram: O'Connor, P.
Gould, Ag. V.P.
Crawshaw, J.A.

In the Court
of Appeal for
Eastern Africa.

Khanna for Appellant
Salter, Q.C., Gama Rose with him, for Respondent.

No.20.

Khanna: Two small amendments to which there is no objection.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

Para.2 "or any other person" to be added in last line - after "Respondent".

12th September,
1960

10 Para.3 at end. Comma, and add "or a price for services to the Respondent" at end.

- continued.

Salter: No objections to the amendments but will submit at such stage as Court thinks fit. I will submit that the total amendments should not be argued at all in this Court. If that is position I should construct the order as allowing me to do that.

Question is now a in answer.

20 Gould, Ag.V.P. It was my order. I would construe it as placing the Memorandum of Appeal in same position as if the additional grounds had been included in it.

All open to such objection or answer before this Court as if had been in Memorandum of Appeal all the time.

By Court: Feel disposed to allow the grounds to be opened subject to objection and of striking them out if Court so decides.

30 Khanna: The Respondent recovered judgment for alleged loss in a fire burning stock in trade and furniture, on ground that Appellants were his agents and duty to renew.

Respondent rested his case at trial largely on alleged agreement about 1950 to renew automatically unless he received specific instructions to the contrary.

My complaint is that implications of that were not fully appreciated or analysed in the judgment.

40 Implicit in Respondent's case were at least 4 propositions:-

First that Thanawalla was not merely empowered

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960

- continued.

to renew if he wished, but bound under an enforce-
able contract to do so a breach of which made him
answerable for entire loss.

Second. T. not merely empowered to pay the
premium if he wished but bound to pay it out of
own moneys or firm's moneys to the Insurance Co.
and was to look on Respondent as his debtor for
the premium paid in each year. And he, T. could
if necessary sue for premium but could not himself
default with Insurance Co. This does not fit in
with Respondent's answer at p. 16, lines 30-32.
This duty to Appellant as quoted by Respondent is
not a contractual duty - but a general one.

10

Third. Appellant was to act on assumption
each year that there were no variations in the
risk.

Fourth. Either T. or his firm was to renew
whether or not Respondent signed a form of instruc-
tions saying whether there were any changes - and
to renew without referring back to the Respondent
for any purpose whatever.

20

This aspect did not fit in with the production
of forms for his son's signature as and when re-
newals came up.

e.g. p.17 Lines 29-30.

Will put before Court some of the evidence of
an express agreement.

Plaint paras. 3 and 4.

Subsequent events were relied on re the probability
of this express agreement having been made.

30

Course of dealing as such could not be relied on
in the pleading as basis of claim.

P.11, lines 29-31. In chief. Nothing about elab-
orate terms. Have to read into it obligations of
a very stringent character.

P.15, lines 13-15.

Nothing about the elaborate specific terms which
he relied on in plaint.

P.20, lines 2-3.

He nowhere says this duty was not a duty owed
by law but emanated from a specific contract. The
alleged agreement was unusual in that agent not in
position to know of disclose changes. Puts him

40

between devil and deep sea. If he said no changes and in fact his principal could say he was negligent.

So unusual that would never expect any insurance house to undertake such an obligation. Would waive strict proof regardless of fact that Court disbelieved Respondent.

22 Halsbury (3rd) 248, para.484.

10 Heavy duty to correct inaccuracies each time of renewal.

The contract alleged is almost an illegal one.

Welford and Otter-Barry, Fire Ins. (3rd) 160.

To renew without obtaining fresh instructions - or to get a signature to renewal form. Almost a conspiracy.

Required strict proof.

20 Is this contract the work of art of someone well versed in law? Is it a lawyer's agreement set up to find some means of extracting the loss from someone.

Hard to explain why letter at p.98 was ever sent. This was after the conference.

No allegation that he saw Mr. T. about his default. A copy sent to Appellant. A complete volte face after Insurance Co., declined liability.

No word in any letter preceding action of any specific agreement.

30 Q.1. Was there a binding obligation to insure in any year. Was there a standing instruction to renew? Have to distinguish between standing instructions to renew which they might or might not follow - or a clearly precise agreement to do so in any event.

P.17, lines 11-12. Not paying.

P.59, lines 8-9. No payment.

P.73. Consideration, 1.9. Answered at p.76, lines 11-30 - considerable. P.129, line 29.

40 This was not consideration. First I submit in Court below Counsel and judge fell into a fundamental error. Failed to appreciate that whereas in marine cases no consideration is needed, as between a merchant and his correspondent abroad consider it necessary.

In the Court of Appeal for Eastern Africa.

No.20.

Notes of Arguments of The Acting Vice-President, Mr. Justice Gould.

12th September, 1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960
- continued.

1 Halsbury (3rd) para. 427, Note (h).

I found myself strongly on
Balfe v. West 138 E.R. 1281.

Argument of Phinn at p.1282.

I adopt this - and say that if in any year the in-
surance was actually underwritten by Respondent
and he did something amiss to Counsel law - he
would be liable.

P. 1283 - bottom.

Difference between principals rights against
remunerated and unremunerated agent. 10

Mulla's Indian Contract Act (8th) 622. Don't
require consideration to appoint agent - but whether
he acts is different question.

"Negligence in what he has already set about". But
does not bind agent to do anything. This is the
same principle.

22 Halsbury (3rd) para. 80, p.47.

No duty to start. If start must use due care and
skill. 20

Idem p.201, para.382. "non marine character".
broker is his agent.

Clear distinction between non-marine and marine
character.

Ireland v. Livingstone (1872) L.R. 5 H.L.395.
Merchant, England v. Correspondent, Mauritius.

P. 398. "In order to keep ...

P.406. "The terms ...

P.407. "If ...

Stresses an essential point of consideration
is the charging of commission. 30

P.408. "The contract ...

Principle is that if there is an agency the
principal must get the benefit of the cheapness,
or commission, etc.

P.408 "It would ...

Respondent only entitled to keep what emanates
from his principal. The two capacities of agent
for insurers and for company can give rise to con-
flict. Must pass all benefit to the principal. 40

Would have to be an express contract, or an implied contract with a well understood custom.

Cases can arise in which party can't consistently act for 2 principals.

Respondent relied on Smith v. Lascelles (1788) 100 E.R. 101.

That is a marine case not applicable to the present one.

P.102. Three rules.

10 Second class... Based on a duty to obey explicit instructions to insure. No authority for saying that continued duty to insure without instructions. Also it concerns correspondents abroad. In present case both reside in same place and was in a position to give instructions and to verify whether carried out in any year.

20 Arnold Marine Insurance (14th Edn.) Vol. 1, p.166, para.146. Concerned with marine insurance only. Undertaking to effect insurance - never taken steps - not liable - but are certain cases in which express order must be complied with.

Smith v. Lascelles is one of the exceptions. Earlier I said commission from Jubilee did not constitute consideration. Reason is

Definition in s.2. of Indian Contract Act.

Mulla 8th p.12.

30 Slightly wider than English law in that it can emanate from promisor or any other person. Hence my amendment of G/A. Crucial words are "at the desire of the promisor". The commission paid by Jubilee was not because they acted as agent for Respondents but because they were chief agents and entitled to commission which was not paid for benefit of Respondent on his behalf. Jubilee did not say they would pay commission if the Respondent promised to renew etc. They would have to go that far.

40 P.18, Mulla "or any other person". Adapt footnote (m) if a third party at the request of promisee etc.

The promisee never requested the Jubilee to pay commission to Appellant - nor did they pay it in return for the services rendered to Hasham Kara, with their knowledge and requirement.

Dutton v. Poole 83 E.R. 523.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960
- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960
- continued.

Mulla Indian Evidence Act restores authority of earlier decisions.

There is no nexus as between the 3 parties. Nor any request or promise made as between the 3 persons concerning the rendering of the services. No case or section was cited to Judge. Needs more than cursory examination. Judge endorsed Salter's argument without analysis or authority.

What nexus. Some relationship - promise interconnected.

10

So much for ground 1.

Ground 2. Covered.

" 3. "
" 4. "

Ground 5. I will elaborate. Involves which remunerated and unremunerated. Submit no room for holding remunerated agent.

Ground 6.

I will elaborate Grounds 5 and 6 in general evidence covering grounds 7-12. 13 I have dealt with.

20

Adjourned to 2.30 p.m.

2.30 p.m. Bench and Bar as before.

Khanna continues:-

Pass to consideration of whether the Appellant entered into this contract. To continue till Respondent notified to contrary.

Direct evidence.

Amirali's evidence.

Actual course of business.

Interview of 10.4.56.

30

Payment of premium on 10.4.56.

No incentive to T. to undertake onerous duties.

P.59. Thanawalla. Line 3. Gave him 10%. Far from paying for these services he was being paid something to insure through Thanawalla.

P.60. Lines 1-12.

Respondent says he was the only person present when arrangement made.

P.15. Line 14.

Intimations at p.86 - inconsistent.

Knew from that letter if not otherwise that in fact there was a renewal up to 1953.

P.93. Same for 1954.

Also in respect of other policies he received notices re other policies.

December 1951 - October 1953.

P.80. In respect of motor insurance.

10 P.81. Ditto.

At p.80 - at foot - request to renew. Note word amended.

P.86. Similar. October 1953.

P.88. "

P.89.

In January 1953 he received a notification that a policy had lapsed. P.83.

Mulji's evidence.

P.52, Lines 3-6. Expiry notices, etc.

20 P.20, Lines 2-3, muddle-headed statement.

P.59-60, p.67-8.

P.59, lines 6-9.

Do not have to be concerned with the judge's view on credibility. It is a question of the sufficiency of the evidence.

Strange letter from J. Kapila & Co. Volte face with no preliminary letter.

Amirali: p.26, lines 17-19. He does not then state source of information.

30 2nd occasion.

P.26, lines 25-6. That is consistent with the renewal of a particular policy.

Sounds as if he was enquiring after receiving a renewal notice.

3rd. p.28, lines 25-7. Obviously hearsay. Wrongly acted on by judge.

Judgment p.120, line 15.

Amirali at p.34. Read with p.27 lines 13-15. This is morning after fire. Later was renewed.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960
- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
the Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960
- continued.

P.34 line 2. Compare.

Line 7. Would have put this in forefront of testimony instead of this afterthought during cross-examination.

P.34 line 15.

When he says in 1950 and 1951 contemporaneously with the arrangement an admission was made to him he leaves it till cross-examination.

All his references could be to the formalities.

3rd para. Course of dealing. Judge ignored the evidence as to how these matters were dealt with after 1950, though it sheds much light on 9 of alleged agreement. 10

First - Respondent's evidence. Page 15, lines 13-14.

But p.53, lines 29 and 30. This is Murji of Jubilee.

P.83. Informed by letter policy had lapsed.

P.91. Another expiry notice.

Did he allege a flagrant breach against the Appellant on these 2 occasions. 20

Second point. P.15. Says had no means of knowing. Contradicted by the notices.

P.19. Lines 18-19.

Contradicted by Thanawalla on p.59, line 24. And he is supported by the slips in evidence.

Respondent says from 1950-55 he gave no instructions to renew.

Untrue -

(pp.80, 81, 86 and 88) notices already referred to 30

Also Jubilee invariably sent notices to the insured it is likely that many more were signed by the Respondent.

P.17, line 31. P.18, line 2.

Untrue originals to Thanawalla. P.52. Copies to agent.

Evidence of course of dealing not very satisfactory.

Under the head Amirali. He says he never gave verbal instructions to renew. P.29 line 7. 40

P.59 lines 24-27. Appellants' version.

P.29, line 10.

Line 28. Did give instructions.

P.32, lines 12-14. Lines 20-21.

P.29, line 13.

P.33, line 9.

P.30 lines 8-9. Contrast this with p.29 lines 8-9. Denies that he is confronted by written signatures.

P.30, lines 21-2.

10 Line 19. Exhibits B & C. direct. These are on p.86 and 88.

P.30, lines 1 and 2. Lines 4 and 5. That is wrong. See p.57 and 58. Amarshi p.57, line 12. line 31.

All this supports Thanawalla when he says sometimes this way and sometimes that way.

This witness' evidence does not provide anything supporting even indefinitely this unusual agreement.

20 Interview of 10th April.

This is indirect evidence which may lend credence to the only case put up - whether there was a specific agreement.

Analysis shows the evidence does not advance that case one whit.

30 Either the son was told it had not been renewed, or it was insured, in which case no need to go with members of the community and make solicitation for agent to go to Mombasa. If he said "I can understand why not renewed" shows all parties knew it was not. Or was he bluffing them that it was knowing not. Impossible to say what bottom of it is.

Respondent.

P.13, line 14.

Must have had some doubts. Why would agent say "Don't worry" etc. if No.9 of policy not being in force.

40 You don't go flying all that way if it is covered - you go if not covered, to point out their error.

Appellant is trying to create evidence by

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960

- continued.

taking witnesses to support case of strange behaviour by Appellant.

The head of the community comes. Why enlist his support if no reason to believe something had gone wrong.

P.36 lines 1 and 2.

Not case for sympathy if he was covered. Would be if he wasn't.

Alibhai. p.41, lines 15-17.

Doesn't make sense. Why write in middle of year. Mr. T. denies it. P.61-3. 10

P.61 line 16. This does make sense. Plead for ex gratia payment.

The son was also there. He had found one already - but not a word.

P.62.

Line 13. Son. Borne out by son's evidence.

P.61, lines 17-23. P.62 lines 4-5.

P.69, line 11. P.61 lines 17-23.

P.38, line 13. Why? Only possible explanation is that Thanawalla must have told him no cover and only chance was ex gratia payment. 20

All parties agreed that at least 1 letter shown to Mr. Mukhi.

P.39 lines 21-22. Confused.

Brings in 2 letters.

This must have been founded on fact of no cover - no other explanation possible.

Then he shifts to 2 letters.

P.41 lines 17-19. Alibhai. 1 letter. 30

Respondent speaks of a document.

P.13, line 18 -

P.26, line 2 which file and letter.

P.62, line 20. Thanawalla. A letter - no file.

Identity of the letter remained absolutely obscure at trial.

Respondent and Mukhi confused.

P.37, lines 27-32. Mukhi also.

There were two other covers on other property - may confuse them. Why should he remain in belief that no trouble - sympathy.

P.39 lines 20-32.

If written after went - useless unless it was written at proper time - he couldn't have held them - see there is proof.

Adjourned to 11 a.m.

13.9.60. Bench and Bar as before.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

12th September,
1960
- continued.

13th September,
1960.

10 Khanna continues:

Yesterday failed to find a reference.

P.22 lines 20 and 29.

Dealing with the conversation.

P.36, lines 13-18. Mukhi's recollection very vague. Quite obscure.

P.41 line 19. Can't remember date, year, etc.

P.12. The Appellant - line 29.

That reference to the letter at p.95.

20 Refer to renewal for the previous year. But Mukhi turned round and said it was a different letter.

P.36, lines 11-12.

Amirali says nothing about its contents.

Respondent p.13, lines 22 and 23. Seems suggest it was after the event.

P.16, lines 24-25.

All this about the letter so vague and confusing that it does not assist - driven back to the primary evidence of inaugural interview.

30 Amirali. p.28, lines 8-16. Does not fit in. One policy not renewed - the crucial one.

I do not suggest Mukhi dishonest but confused.

P.37, lines 18-19. No one said it was not in force.

P.32, lines 12-13.

P.62, lines 20-21. Couldn't understand why not renewed.

Judge has not critically examined all this.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

Respondent at p.23 lines 13-14 embellishes.

This is consistent if he told them not covered. Not if he was saying there was a cover. No other witness repeats this remark.

P.26, line 2. His responsibility would not arise unless he had admitted there was no cover and it was on him. But the 3 gentlemen say he said he was fully covered.

P.36, line 23. Can understand this unless gist was he was not covered.

10

P.41, lines 30-31. This doesn't make sense unless gist was "no cover".

Respondent and Mukhi both deny that Appellant told them it had lapsed.

P.23, lines 11-13.

P.39, lines 2-3.

? Does the insurance afford any assistance.

Payment of premium on 10.4.56.

Submit the judge misunderstood the nature of Mr. Thanawalla's somewhat confused evidence on this point.

20

Practice was that Jubilee waited 12 months before putting foot down. They were paid for '52 '53 insurance. They were not paid for '53-'54 insurance but had given cover for that period expecting that agent would pay before expiry of that period. Mr. Thanawalla in his turn did not press for payment until he was pressed. For '52 and '53 he made payment from reserve funds and got a cover for '53-'54.

30

In November '54 by letter at p.95 he asked for '54-'55. This apparently reached them but they apparently paid no attention as had not been paid for '53-'54. So they did not send out a renewal for '54-'55 or '55-'56.

Record p.54 lines 1-2. P.53 line 26 Ex. O.

Counsel. Not copies. Have original.

(Letter to Appellant asking for premium to enable them to renew last year's premium).

So Jubilee then said - if you want cover send us 176/-.

40

Respondent must have known something amiss - no insurance 1954-5 or 1955-6.

Some evidence - p.55 - further 2 months grace provided no fine accrued meanwhile.

P.55, line 20.

(Now p.55, line 26).

In April 1956 - ten minute P.18 Mr.Thanawalla confused - may have thought that if the one payment was made they would issue a cover.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

10 Stands to reason he would do all he could to assist - either to validate retrospectively or to get an ex gratia payment.

This was not a matter which could have been dealt with successfully by correspondence. Attitude not consistent with Mr. Thanawalla's defence or imply a duty to renew of kind alleged.

Sum up under 5 heads.

20 1. Knew evidence is very meagre to prove anything like the suggested agreement. Respondent not educated (p.32, lines 7-8). Doubts his competence to give evidence about accounts. His difficulties seem to have begun after May 1955 when son Amirali left the business.

P.18, line 25.

Amirali had first-hand knowledge. P.14 time of interview Respondent very sick. Lines 31-32.

I am not attacking honesty of Mukhi and his No.2. Confused.

Payment of 10th April - explainable.

30 Preference to go and discuss - make 1 year's payment - do whatever he could. It was not to cover up his own omission. No implied agreement pleaded.

Evidence strongly indicates that he had notice of impending expiry of each policy.

No shred of evidence he would advance enough money each year to pay for all the policies. Suit is result of desperate man. Some of Respondent's evidence suggests premiums were paid as they fell due.

Page 18, line 32.

40 Page 34, line 20. This is inconsistent with implication of Respondent's version. If he was to get 18 months credit beyond what Jubilee allowed he would be $2\frac{1}{2}$ years late. Inconceivable.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960
- continued.

Respondent's contention unreasonable with line
5 page 114. Credit 22.11.54. Cover is 18.1.54-
55. That is actually during the period of cover.
On 24.12.54 Shs:95.60 - a month after cover began.

C.C.A.7655 2 payments before policy year runs
out. Shs:405/- during policy year.

13/955 C V.32861.

C CB.5311 - part payment. given late.

MS 3852 paid during policy year.

Question of his alleged over-payment. Alleged
on 13.9.55 of 437/95. That may have been intended
and clear. 439/50 unpaid on Fort Hall and Indian
Bazaar properties. Or could have been accidentally
overpaid. Page 50, lines 15-16. Page 129, line
9 judge makes

10

Not quite accurate. Seems to me that son's
evidence proves relationship was ordinary and that
insured and the insurance agent. Ask leave to
hand in Exhibit 14 - left out of record. Exhibit
5 shows 2 things - 1. Payments in respect of in-
dividual premiums. 2. Usually during the policy
year. Follows that Respondent's evidence inacc-
urate as to time of payment and mode of credit.

20

Exhibit 14 has no dates. Can't tell if prema-
ture. If taken that payable in the policy year
the Respondent owed money to Appellant at all times
after the 22.11.54. Undue weight given this fac-
tor. The 437.95 must represent difference between
165/98 CCB 5311 and the 540/- actually paid on ?
Does statement shown be disregarded as a non-
sequitur when pressed in cross-examination and
asked to answer a conditional question. But can
such be averse to payee - Question of date of
credit etc.

30

Appellant alleged right to set-off various
sums for provisions bought by Appellant's wife.
Contention must fail. Alleged arrangement was
not proved. Conceded arrangement concerning cross
account; did not form part of the 1950 agreement.

Record 22 lines 1 & 2. Page 33 lines 16-19.
Page 21 lines 25- Page 22 line 3. Page 31
lines 8-10. Page 67 top. Page 99. Page 100 Goods.
Private account. Page 68 line 14.

40

A separate debt by one partner can't be set
off against a debt owing to firm.

28 Halsbury (3rd) 519 - as a general rule except

express and implicit agreement. Afortiori where debtor is actually wife of partner. Credits and debits in Exhibit 5 correspond so closely that indicates that no deduction made in respect of the amounts paid as premiums. Respondent has failed to prove how much should have been allowed for the provisions.

In the Court
of Appeal for
Eastern Africa.

—————
No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

10 Page 113 letter of 24.4.56. Goods up to October 1956. Quite insufficient to establish Thanawalla owed him a sufficient sum to put his account in credit when the premium fell due. Plaint para. 4(iii). Duty to inform. This does not appear to have been impressed at trial. If anything went amiss it was this. This duty not pressed. Respondent's honesty primarily for judge. His reliability is a different matter. I have drawn attention to errors and discrepancies. Page 24 lines 17-18. This clearly wrong. See Exhibit 5 page 114. Page 25 lines 23-25.

20 Respondent overlooked that on 25.11.54 he paid a cheque in settlement of his account to date. Page 24 bottom. If he paid one sum in settlement does it follow that need of 28.1.54.

30 Page 102 relates to a part of the sum. No doubts separate receipts given, though paid as a lump sum. Page 22 line 25. Credit note is Exhibit 8 page 103. Says not reflected in page 114. Hence, again it would be in the general settlement. Page 25 line 8 Exhibit 12. This is in fact shown in Exhibit 5 at page 114 in 2 payments of 225/84 6543/-.

(Self? 102 and 103 on 28/1. General settlement on 25/1).

Adjourned to 2.30 p.m.

Sgd: T.J.G.

2.30 p.m. Bench and Bar as before.

Khanna continues:

the payment.

40 Page 114 382/- on 13th September 1955 and 156/16 don't add up. This illiterate confidently makes a statement on these accounts, from witness box - how can he say by a glance what the statement does and does not reflect. Either he was deliberately wrong or does not know what he was doing.

May be better way of reading this Exhibit N, unless one up. This is a copy of ledger

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

account from 1952. I have twice to add them up and can find no overpayment. Shows no credit in February 1956. (Exhibit 14 was done page 50). This is a case of sufficiency of primary facts - inferences from them - and he did not base them on demeanour. Relies only on the interview of 10/4. So important that he sets out about 5 pages of evidence. Then

Page 126. This is his first - crux of matter. "inference" line 41. So this Court is in as good a position; Case like that in Benmax v. Austin M. (1955) A.C.307, page 373. Heeks v. B.T.C. 1958 1 W.L.R. 493 at 507. If satisfied inference wrong duty to change it.

10

Yuill v. Yuill (1945) 1 All E.R. 183.

Testing demeanour against rest of the evidence. In fact judge here did not or discount demeanour.

Flower v. Ebb Vale (1936) A.C.206 at 220. That being so succeed. "Sufficiency of evidence to establish the case". I submit that is case here. Vague agreement. Appellant entitled to all in a reasonable interpretation of his mandate.

20

1 Halsbury (3rd) 164.

All good faith - reasonable interpretation. Ireland v. Livingstone (1872) L.R. 5 H.L. 395 at 416 "now In this case Appellant acted on a reasonable view of their instructions. Two things apparent. Not to insure without instructions - form or phone etc. Their understanding was that if the premium was not paid within the year succeeding the cover they did not have to go further. Gave as much credit as they got. If money came along within that time alright, otherwise payments lapse. And they were not to renew without confirmation that no change in risk. This insurance lapsed in 1954 it is inconceivable that Respondent did not deliberately choose not to renew - act of folly - awakening after fire. 16-17 months after expiry. He knew from renewal notices arriving a month before of impending expiry. If he got none in 1955 he should have been on his guard. Operative cause was his own failure - folly breaking chain of causation and shows not attributable to Appellant.

30

40

Rushton v. Turner Bros. (1960) 1 W.L.R. 96 page 119 line 6. I have demonstrated the instructions were given. Line 29 examines surrounding

circumstances. Then gives prominence to the interview - no critical examination of it. Page 126, Page 127, Page 128 lines 6-11. Undue weight to this payment of premium.

Ask appeal allowed with costs here and below.

Salter:

10 This case started on simple issue of facts. Conducted on those lines and the 3 simple issues on page 11 line 6. There was no real dispute about the damage - not now contested. It was appreciated that case was one of fact. Page 69 line 29. I agreed. Page 74 line 9.

That was case before judge. In first Memorandum of Appeal it was substantially on fact. Perhaps Nos. 6 and 7 referred law.

Submissions now made to this Court were in an endeavour to lift it out of those issues and to present case in a different light from original pleadings or argument.

20 New ground 1. Much argument on this. Not pleaded - or clearly.

Pages 6-7 - of gratuitous agency. Never seriously argued.

Mrs. Kean said in a sentence - no consideration. P.73.

Was only raised almost incidentally. No authorities.

30 The learned judge did examine it under issue 2 - terms. If any real question had arisen on consideration it could have come within this issue.

Judge's conclusion, p.129, line 16.

Line 29 consideration.

I will have to refer to authority in reply to learned friend in this Court. But judge was saying - here was an arrangement which was unusual - but it was not argued that it was gratuitous.

2, 3, 4, 5 Grounds of Appeal are all subject to same observations. They all assume a gratuitous arrangement.

40 P.117. Not disputed it was taken out "through" the Defendant.

Ground 6.

(Court: This was not raised.)

In the Court of Appeal for Eastern Africa.

No.20.

Notes of Arguments of The Acting Vice-President, Mr. Justice Gould.

13th September, 1960
- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960
- continued.

(Khanna: No. But p. 59, line 10)

Salter: First it was never pleaded. Defence suggests it is admitted. They arranged an insurance cover.

Certainly argued.

Khanna: If Court feels not sufficiently notified etc. it is in court's hands.

Court: We will not trouble Salter and deal with it. Can't be raised now, i.e. para 6.

Salter: The other grounds 1-5. It was never put in cross-examination that the Appellant was employed gratuitously. Question whether Appellant was to receive no reward at all could have been dealt with in evidence if raised. Respondent said he was going to get 10% which in fact he did get. Could have been dealt with in evidence.

10

White Book (1960) p.1675, 0.58, R.9.

Wilson v. United Counties Bank (1920) A.C. 103 at 106 at 108, para.2.

North Staffordshire R. v. Edge. Idem p.254 at 262. "few cases whence failure to raise point would not prejudice the other litigant".

20

Raised in a line only.

P.67, line 23 Appellant.

That is Appellant's own evidence.

P.11-12. Respondent.

P.15, line 11. This was the time to take point of gratuitous agency.

P.16, line 30.

P.17. "It was his business". It was not enough not to put to him that the commission was not consideration. Never put in cross-examination.

30

In this context last paragraph of my learned Friend's address which virtually covered Ground 12 - not clear why unless it was that there was no contract. But learned Friend put it in different way - full knowledge - extreme folly in so allowing them to lapse - he said real cause of loss was his apathy. This puts the matter far beyond what is stated in memorandum of appeal - if it had been an argument in the case surely it would have been pleaded and in issue. Can't find it in defence or issues. Submit not now open.

40

Argument should be limited to the issues.

By Court:

- (1) Point of consideration is open to be taken and argued. Grounds 1-5.
- (2) Ground 12 - folly etc. - is not open.

Adjourned to 10.30 a.m.

10.30 a.m. 14.9.60. Bench and Bar as before.

Salter continues:

10 My learned Friend said basis of our case in lower Court was that he had agreed to renew automatically. Not the whole of our case - not the only basis. Rested on the whole of the contract on pages 3 and 4 of plaint.

Plaint para.3. Employment. To cause and keep insured.

The next paragraph elaborates the duties alleged to be attached to that employment.

4 (V) is important. Superintend and advise.

20 It has rather been assumed that the Appellant was merely agent for Jubilee. Undoubtedly their Chief Agent - but p.65, line 7 - at least one other company. Guardian and Eastern. Then Power of Attorney.

Clear Jubilee was not the only Company. Fair inference that Appellant was carrying on business as insurance broker. Hence the plea of duty to superintend and advise.

Therefore authority of agent is important.

22 Halsbury (3rd) 201. Para.382.

30 Non-marine - broker - the broker is his agent - ordinary law of agency.

Whatever may have been the position of Appellant vis a vis the Jubilee he was also the agent of the Respondent in the conduct of his insurance business.

If he failed to discharge his duties he is responsible, at common law and Section 212 of Indian Contract Act.

Mulla (8th) p.664.

40 If start with position that he was respondent's agent. Must show reasonable skill and diligence. 1 Halsbury (3rd) 184-6. para.431 -

In the Court of Appeal for Eastern Africa.

No.20.

Notes of Arguments of The Acting Vice-President, Mr. Justice Gould.

13th September, 1960
- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960
- continued.

That a broker is in fact the common agent of insured as well as the insurers.

Shee v. Clarkson 104 E.R. 199.

Headnote.

P.200 (bottom) Trustee for insured.

Dickson v. Devitt 32 T.L.R.547.

In support of proposition that once you hand business to agent you don't have to keep a watch yourself.

Marine risk case. P.548, para.2.

10

Then in turn to see if in fact that agreement was established.

Submit there was no real controversy about employment of Respondent as agent.

P.11, line 23.

P.12, line 1. Bazaar Road. Pangani. Blenheim Road.

P.15, line 11. P.16, line 29. This is the Dickson v. Devitt case.

P.17. Top.

P.18, line 28.

P.21, line 13. P.22, 1.

20

Observe line 21 my interjection. Based on para.5 of defence.

Line 28.

P.23, line 1. he was renewing.

P.25, line 26.

Submit that on that evidence Respondent had made this arrangement as pleaded, that the selling off of rations was not part of contract but a practice adopted as matter of convenience to settle account. Account as kept would show debit when premium was due - same, on ration account.

30

This is entirely borne out by Appellants own evidence. Leave out consideration - not there when 1950 agreement was made.

P.58, line 28. Called many times.

P.59, line 3. Line 24.

P.67. Rely strongly on this.

Line 16 to bottom of page.

40

Entire corroboration of Respondent.

Line 31 to p.68. Seems to vary the statement.

Somewhat introductory. When you have that judge's assessment of credibility comes in. Rested largely on impression on judge's mind re the interview of 10/4 that Appellant not a credible witness.

Submit Appellant had a change of mind at bottom of page 67.

10 Submit as a whole it is sufficient to establish the contract.

Learned friend says judge did not appreciate 1. that Appellant would have to pay out of own pocket.

2. Regard Respondent as debtor.

3. That Appellant as agent would have to act on assumption of no change of circumstances.

4. Bound to renew whether he received any signed instructions or not.

20 This is fair comment on implications of such a relationship but it is I submit fully shown that it was the intention of Appellant to pay the premiums - he always did. Agree Respondent a debtor then. Submit the evidence showed Respondent did not want to be bothered with insurance matters - left all that side to Appellant. As a broker it was Appellants duty to advise him on his policies.

30 If there was a danger of changing circumstances being overlooked, that would not amount to negligence of the Appellant. If same change of circumstances no one would accuse him of that if he didn't know. No illegality or conspiracy as suggested. Would result in cancellation etc.: that would fall on the Respondent not the Appellant. Submit it would be implied that if there were a change of circumstances the change would have to be told by Respondent to Appellant - in lieu of saying "Don't renew". Say he wanted to increase or decrease. The matter of the 12 months credit. P.129 judgment. Reference to course of dealing. He had taken the other evidence into account. That is the c/d as distinct to the formation of the contract. Submit nothing in terms of contract which runs contrary to normal business - in view of his anxiety to get the business. Letter at p.98 referred to. Why claim on insurance company. Para.3 of the letter. Reason surely was that at interview of 10th April the Appellant was taking the attitude that Respondent was covered.

40

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

If so insurance had to pay. We know the insurance company said they were not going to pay. Possible that Respondent was still thinking that Mr. T. had not made mistake. When he found out - it is in his evidence - he said to T. "Well that is your responsibility".

Plaint was issued about 18 months later - I don't know the reason for the delay.

Now said no consideration and the agency a gratuitous one. I have called attention to p.58 - requests to place it with Jubilee. Who was the promisor? 10

Para.5, p.6 of Defence - arranged at request of Plaintiff. In one sense true. But some importance to the passages at pp.58 and 59, line 4 where Appellant agreed to give him 10%. Mulla (8th) p.16, 2nd para.

"at the desire of the promisor"

It can be put in two or more ways.

Either the Appellant said "if you will give me all your insurance I promise to look after it all for you, see that cover is given, renewals, and give you 10% - Respondent says Yes". 20

Or Respondent after requests says you give me 10% and I promise to give you all my business. Means I will be putting you in the way of drawing your customary commission from the insurance coy. Whichever way one looks at it and apart from the customs to which I will refer, I submit there was consideration in law, coming within Section 2(d) (e) (f) of I.C.A. p.12. 30

Respondent by signing proposals forms is carrying out his promise to give his business. So looked at a third way offer by Respondent accepted by Appellant.

Submit the payment of commission plays important part - i.e. the 10%

I understood my learned friend saw wrong for Appellant to accept a commission without employers knowledge. There is in insurance cases an exception to general rule which is in Section 216 of I.C.A. 40

P.670. Mulla (8th) That is the rule.

But at p.675. Payment authorised by custom. "brokerage and insurance". No special consent

needed. Business in the usual manner. Not obnoxious to the rule.

It was known to both parties that insurance company would pay the commission to Appellant.

Whether look at it purely contractual matter - or as custom of trade - there was clearly consideration.

The 2 cases under that paragraph.

G.W. Ins. Co. v. Cunliffe (1874) p Ch.D.525.

10 P.535, last para. 536.

537, para 2. Name does not matter. Broker - agent.

P.539 "Now, the Plaintiffs

Baring v. Stanton (1876) 3 Ch.D.502 at 505

"That really seems

20 It is a custom of the insurance business that these commissions are allowed. In the interests of Appellant that he should be put in a position to get that commission - by getting insurance work from Respondent. Respondent knew - make a bargain on own account that he was to get 10%. 1 Halsbury (3rd) 185. If there was consideration there was no gratuitous agency.

But on point taken by learned Friend. What is the duty of a gratuitous agent. Section 85, 169. No consideration needed. 1 Halsbury (3rd) para.432. Only bound to use such skill as he has except where he has represented self as skilled. Ordinary care and diligence.

30 Even if there were a gratuitous agency here, the duty imposed on the Appellant, holding self out as skilled in insurance business, was at least carried out with such care and diligence as he would in his own affairs; higher, as an individual insurance broker might be expected to carry them out. Even in the lower category surely duty of such an agent to see that a policy was renewed.

40 I accept proposition that there is no liability for non-feasance. I do submit that once you enter into the fulfilment of your duties as agent - then the ordinary duties of skill care and diligence apply.

If, contrary to my submission he was gratuitous, there was no duty on him to do anything, but if he entered on it.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

22 Halsbury (3rd) 47-48. Para.80. Voluntarily promises to procure. No. If he enters on the performance. Yes.

Every insurance broker - skilled earned with interpretation of entering upon each specific act of renewal etc. Material time 1950. If agency then created was to look after all the insurance business - then once he starts on that - unless on that conduct of business - bound to carry it out with diligence. If satisfied it was a term to renew unless had contrary instructions he had to take care - or to say "I haven't done it". To inform. Submit that is the insurance position. Not a separate agency each year.

10

Submit that is fully borne out by the course of dealing. He did not merely renew once and then set to do nothing. Went on year after year. Even until after this fire. This and other properties.

P.57-8. Insurance of Jubilee Insurance Co., P.57, line 31 to p.81.

20

Stereotyped form.

P.58. We got from U.M. Co. clearly passed to them.

True this was a motor policy. No evidence that properties dealt with in any but same way.

Clearly names sent out by Insurance Co., as routine. Printed form at bottom. On occasions signed by the son. Were sent - not to insured - but the agents. They (Appellants) asked for renewal. Note p.58, line 3.

30

The course of dealing (p.57) was in accordance with Respondents own evidence. Custom to give credit for term of months. Respondent not called on to pay for at least 12 months, though may have done so earlier, in some cases. Appellant said he was happy as long as get paid in a reasonable time.

On the question of renewal notices and course of dealing not much difference between us. Shows a continuing action from 1950 on, by Appellant, gratuitous agent or not, to bring him with the requirements of due care etc. Non-feasance did not arise.

40

Evidence of the son Amirali. Of course he was not present at agreement. Submit judge merely recited what son said - not influenced. Son's

evidence is important as to the course of dealing. He would also be entitled to give evidence as to what the Appellant himself had said about it.

In the Court of Appeal for Eastern Africa.

Appears to have done that.

P.26, line 15, line 25. This is not hearsay.

P.28. In cross-examination, 2nd para is hearsay. Line 28. Automatically renewing.

P.29, line 28. Instructions to T.

10 P.31. Payment of premiums. Bill Statements Settlements.

P.31, line 30. Premiums put on settlements.

P.34, line 20.

Son's evidence shows abundantly that it was not a case of a year to year business. Policies were renewed as fell due - irregular settlements.

(To Crawshaw: The evidence was that Respondent did not know the policy had lapsed. Will find it later).

20 S. para 5 admits cover till 17th November, 1954. Take that in the course of dealing - then premium November 1954 to 1955. Premium 1954-55 should have been paid at the end of that period by Appellant who would subsequently detect Appellants. And if that was paid it would cover the succeeding 12 months also. Exhibit O.

30 Means on 1st November. Letter on file. Defence plea must mean - by reason of the credit. Having got Exhibit O it was duty of Appellant at least to pay the 1953, 1954 premium which would cover to November, 1955. No copy sent of Exhibit O.

Adjourned to 2.15.

2.15 p.m. Bench and Bar as before.

Salter continues:

Crawshaw J.A. P.60, line 22 "telephone".

As to the fact of that if in fact he approved it would be duty of Appellant to pay it and press Respondent for reference.

P.18, line 10. This may refer. Not sure.

P.26, line 3. Specific denial of knowledge.

40 P.25, line 18. Cheque.

P.27. Some evidence. Line 8 (September '55).

No.20.

Notes of Arguments of The Acting Vice-President, Mr. Justice Gould.

13th September, 1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

Come back to letters of November in Exhibit O.

P.53. Insurance inspectors. line 32.

P.54-5.

P.56, line 27. Never any direct instructions.

Clear what happened is that there was a muddle by the Appellant as to what had been paid and what not. They made a mistake - hope to show it from accounts.

This company particularly deals with a particular community (Ismaili) which may account for peculiar methods.

10

Pros line 27 consonant with p.81.

S. Submit so. Stereotyped form. Respondent a son would, on receipt, send it along to Appellant.

I think the son said he might have sent some to the company direct. Clear the company looked to the Appellant.

There are 1 or 2 instances which appear to support Respondent's evidence and have to be paid.

P.102, E.7, 28.1.54. Provisional receipt.

20

P.101, 13.1.54. This insurance is for '53-54.

This period is for the period actually the Company said wasn't paid. ? some mistake.

Looks as if 102 refers to 101.

P.103. On 28.1.54 Respondent got paid commission on all business to date.

P.110, 6.12.55. Com. on MB 4762 which was then. Add that he gets a credit note in December 1955 for commission which Appellant has presumably received if the premium had not been paid 1953-54. Were Appellants keeping their accounts straight. The whole of this is relevant to the general course of dealing between the parties.

30

Exhibit N.

Entry MB 4762. '52-53. 50,000/-.

Note balance on right centre. That was the settlement I submit referred to on p.105 of record - statement 31. '54 2735/80 was the payment then.

The 13.2.54 MB 4762 is, on the evidence, what was paid on 10.4.56.

40

I have loose book keeping. That these were accounting times. Settlement p.105 l E.N.

Finally Exhibit 14 had this statement up on over payment of

Exhibit IL On Exhibit N. 924/- after the bar.

The 2/- is the 1st item in Exhibit 14.

Then 926.00. 760.02 = 165/98.

Then 62, 92, 206/25.

The 382/- = 156.11 225.84.

10 The credit is passed as 105.05. 543.

The 176 on Exhibit 14 shows was a credit as at 13.9.55. Turn to interview of 10th April.

L.F. says don't offer sympathy in the context. But what is context. The son had already gone to see Mr.T. Respondents p.13, line 3 and son's also shows that Respondent also saw him at house - before the office.

By that time Respondent highly suspicious as to whether covered or not.

20 P.27, line 10. Son. Policy for shop not renewed. Father - to house - to office. Very essential to appreciate these sequences of events. Clear they were worried. Sympathy might be expressed to anyone who had had a fire.

My learned friend referred to the two leading members of community as confused etc.

30 After the lapse of time between April 1956 and January 1959 not surprising they varied as to details. Would at once attract suspicion if they did not.

The one thing they were sure of is that Appellant said "Don't worry. It is all right. You are covered. I am going to Mombasa". When consider the attitude of Appellant no wonder they were clear on that.

P.62, line 27. line 30.

40 All this passage is utterly untrue. Why should he think Respondent had paid premium. Insurance inspector confirms he dealt only with Appellant. Clearly he was out to deceive or mislead the Respondent and party.

P.62, line 3. Depressed. Line 10. Happy.

In the Court of Appeal for Eastern Africa.

No.20.

Notes of Arguments of The Acting Vice-President, Mr. Justice Gould.

13th September, 1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960
- continued.

Line 20. Couldn't understand. But he knew
it was not renewed.

What was his purpose

P.64, line 16.

Line 20 - meant probably April 10th. Don't
want a false point.

I invited the Judge to make this interview a
test of credibility.

P.126, line 29 - not uttering truth. Judge
justified. 10

Then question why he paid the premium on
10.4.56.

P.47, line 5 "from the Plaintiff".

P.47, line 13. Our cheque. "We have to pay
it". It was too much overdue. Clear statement
it was their concern to pay it.

P.48, line 7.

Could there be any possible means for that
payment, except that Appellant knew he should have
paid it, he had tripped up. Hoped to cover it. 20
Say to Manager, Mombasa - the premium has been
paid. I'll get into trouble if you don't pay.

The Appellant was asked in cross-examination.
P.65, line 7.

Would appear it was being suggested that he
had paid Shs.700/- odd though he had not received
it from the Respondent.

Judge rightly attached importance to the
April payment.

Ireland v. Livingstone Bowstead (11th) 30
P.48 and 34 comments on this. Principle clear.
But - submit no relation to present case. Whole
case for the Respondent is that there was an un-
equivocal contract, and a breach of it or negli-
gent performance.

Learned Friend said the 10/4 interview was
the crux of decision. In sense of credibility
test yes. Could have been no confusion as to what
policy was being discussed. Fact. Only question
of law - was there consideration - or liability 40
even if gratuitous.

Submit clearly consideration.

Khanna: Hardly accurate to say that Counsel below fought it out as a question of fact. Hardly accurate. The question of consideration and the marine cases.

In the Court of Appeal for Eastern Africa.

There is no explicit reference to any arrangement to advance money, in the plaint.

No.20.

L.F. relies on para.3. There was no iota of evidence to support that wording.

Notes of Arguments of The Acting Vice-President, Mr. Justice Gould.

10 Para.4(v). No scintilla of evidence to support "superintend and advise" or any request.

Alleged insurance broker because he had p/d of insurance coy. Shows he was their agent. Not that he was a broker.

13th September, 1960

- continued.

Shee v. Clark was quoted as one of common agency. It is a narrow case - broker held policy and premiums. Limited application.

Where there is conflict dual agency cannot co-exist.

22 Halsbury (3rd) 203, para.385.

20 Dickson v. Devitt. Not slightest bearing. It deals with a broker who does obey an order to insure but departs from his instructions.

Learned friend relied on p.11, line 23. Having dealings showed he was a customer - not an employer. P.15, line 11.

"Used to pay on my behalf" does not import obligation.

P.16, p.18.

30 If he were and paid immediately if he got a notice there was no credit agreed upon.

P.22. P.67.

Only means there was apparently a period of credit allowed to Mr. T - he insured and he simply waited for like period of 12 months. If he wasn't paid he in turn didn't pay. Doesn't mean he was obliged to pay.

40 There is only one instance - 10.4.56 after fire that out of his own money he paid for 2 properties. Exceptional circumstances. They said "you must go to Mombasa".

P.23, line 2. Proves nothing.

P.25, line If he paid on demand that does

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
the Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960
- continued.

not fit in with not having to pay until period of credit expired. These practices cannot operate retrospectively to become part of the contract.

Appellant said he wasn't paying unless he received.

Merely debiting and not paying costs to insurers is not evidence.

Jubilee debited him and he debited the insured. Had 12 months to pay.

Practice had grown up with favoured customer of allowing him to pay within period of credit. The instructions at foot of renewal values gives a lie to the assertion that he was to renew automatically. 10

It is certain that either the signature of the insured to the particulars is essential - or that the agent has the authority to assent.

22 Halsbury 201-2.

It is of the essence that his signature should be there. 20

My learned friend can't explain why the letter at p.98 was written claiming from the insurance company. And why over 12 months to sue. Why no preliminary letter.

Question of 10% out of commission. The 10% can't be a reward to Thanawalla. He pays that out. The 90% emanated from Jubilee and Respondent had no nexus.

The remuneration of brokers in City of London can't apply here. 30

I understood learned friend to say misfeasance. How can that be when you don't take out renewal at all. How is a person who gives specific instructions on each occasion in a worse position than he who gives a general standing order to renew.

Is it entering on the work of agency if you merely accept the employment. If you promise to take out insurance and don't you are under no liability.

Pp.57 and 58. 40

The evidence refers to one particular form. He means instructions with assent of assured on each occasion.

P.27, lines 5-6. The debit entry does not prove he would first pay the insurers.

P.32, lines 1-2.

Exhibit O. Carbon copy. 16/11. Don't know if a copy was sent to Respondent.

10 It was not put to Appellant that he had torn up a renewal notice. Was it likely that Respondent does not check up on the accounts when he settled up. The son said clearly he sometimes sent the renewal notices direct to Jubilee.

How can Respondent say he didn't check accounts when there were these letters questioning them. (Friday after fire). But astute business man - would he not know premium never debited or claimed.

P.102. Much made of this. A printed form concerning life policies. Used any old form.

P.101. The debit note.

20 102 must be on evidence 1952-3. Commission 103. Shows worked out commission on work done.

From Exhibit N. Learned friend assumes on 15.2.56 there was a credit. He has not pleaded there was sufficient credit to pay these premiums.

Only way is to take into account all entries in Exhibit N.

Was opportunity to cross-examine. Doubt on it.

30 Interview of 10.4.56. Simply say the question for this Court to please itself - does it make sense - why should he pay his expenses. Isn't it - "please go and plead on our behalf".

Question of 10.4.56. Lets in. Things gone wrong through no fault of Appellants.

All goes to show he was not to insure except against a specific order and no obligation moral or otherwise to pay. After 12 months of scheming he devises this plan to get his money back.

Ask Court to disagree with the learned judge.

C.A.V.

to 10 a.m.

40 15.9.60. Bench and Bar as before.

Judgment of the Court read.

Appeal dismissed with costs.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
The Acting
Vice-President,
Mr. Justice
Gould.

13th September,
1960

- continued.

15th September,
1960.

In the Court
of Appeal for
Eastern Africa.

No.20.

Notes of
Arguments of
Mr. Justice
Gould.

10th September,
1960
- continued.

SALTER: In view of additional points raised and
course of appeal ask for certificate for 2 Coun-
sel.

KHANNA: I oppose. No ground as one Counsel could
have done just as well. We had only one. The
judgment shows the nature of the issues. Facts and
consideration. Should be exception.

By Court: Certificate for 2 Counsel refused.

(Intd.) T.G.

Ag. V.P.

10

No.21.

Notes of
Arguments of
Crawshaw, J.A.
12th September,
1960.

No. 21.

NOTES OF ARGUMENTS OF CRAWSHAW, J.A.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI
CIVIL APPEAL NO.56 of 1959.

BETWEEN:- THE UNITED MARKETING CO. Appellants
- and -
HASHAM KARA Respondent

NOTES TAKEN BY CRAWSHAW, J.A.

12.9.60. Coram: O'Connor, P. 20
Gould, V.P.
Crawshaw, J.A.

Khanna for Appellant.

Salter Q.C., Gama Rose with him, for Respondent.

Khanna: Amendments to Memo. not opposed by Salter.

Salter: Understand that the first 6 paragraphs of
amended appeal were allowed to be added by judge
in Chambers without prejudice to objection. Does
not know whether objection was meant to be their
admission on their merit. 30

Khanna: The grounds were allowed unconditionally.

Salter: The new grounds raise matters not taken
at trial.

Acting Vice-President: The application was allowed in the sense that the new grounds were allowed to form part of the Memorandum as if included in original Memorandum, the whole being subject to any objection subsequently taken.

In the Court of Appeal for Eastern Africa.

No.21.

President: We will hear Khanna on all the grounds of appeal subject to argument by Salter later as to their being struck out.

Notes of Arguments of Crawshaw, J.A.

12th September, 1960
- continued.

10 Khanna: Respondent directed his case at trial on ground that Thanawalla had agreed in 1950 to renew all policies automatically unless he received instructions to contrary. This position was not analysed in course of judgment. Four propositions in Respondent's case:-

(a) Thanawalla was not merely empowered to renew, but was bound under enforceable contract to do so and breach of contract would make him answerable for entire loss.

20 (b) Thanawalla was not merely empowered to pay premium on renewals, but was bound to pay it out of his or his firm's money to insurers and Thanawalla or his firm was to look upon Respondent as his debtor therefor, and that Thanawalla or his firm could if necessary sue Respondent for default but not ...

30 This implication does not fit in with Respondent's answer at pages 16/29. Not suggested as being a particular duty to one insurance agent, but a general duty to all insurance agents. T. had no general or special Power of Attorney.

(c) Either T. or his firm was to renew whether or not Respondent signed any renewal instructions disclosing whether there were any changes needing disclosure.

40 This aspect of Respondent's case did not fit in with production of forms for Respondent's signature whenever failure to renew. P.17/29. "He" presumably means T.

Para.3 of Plaintiff and para.4. Respondent was relying on express terms. "Cause of dealing" only admissible as showing light on whether there was or was not an express agreement, and if so the terms thereof.

Record

11/29: Nothing about how far Appellant's duties

In the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.
12th September,
1960
- continued.

extended. Vague statement only. One has to read into it obligation of very strict character.

15/11. Nothing about the alleged specific terms. Nowhere substantiated in evidence. Nothing about liability if default etc.

20/2. Alleged agreement unusual, as agent had no information to make necessary disclosure for renewals. If T. said no change of circumstances and in fact there were, he could be held negligent by Respondent. Otherwise he would be saying no alteration in circumstances.

10

No insurance agent would ever take up such a position. Terms would have to be strictly proved.

22 Volume Halsbury 3rd Ed. 248 para.484.

Each renewal is fresh contract, and disclosure must be made. Any insurance agent would know this. Any mis-statement of facts would make insurance liable if contract not valid because of change of circumstances.

Welford & Otter-Barry 3rd Edn. 160 seq.

20

Alleged term of contract is that Thanawalla should renew without any reference to Respondent on expiry. If express agreement what in fact were the terms? Is it a lawyer's agreement set up to extract the loss from someone, or was this just a loose agreement by an illiterate Respondent.

Why should letter at p.98 have been written. Reference is to Thanawalla as being agent of insurers and not of Respondent.

Volte face after Insurance Co. had refused liability.

30

Submits act of desperate man driven to last resource. Was there binding obligation to insure in any year, making Thanawalla liable for breach?

17/11,12

73/9-13) Respondent at p.76/30. **Argument** as to 129/29) consideration. Judge's observation.

Submit judge in error as to consideration. In marine cases no consideration needed to incur binding obligation. It is required in non-marine cases.

40

Halsbury Vol.I p.183 - note (h) paragraph 427.

Belfe v. West 138 E.R. 1281, 1282, 83 (bottom).

Submits in instant case no consideration. Difference between right of principle where consideration and no consideration.

In the Court of Appeal for Eastern Africa.

Mulla on Indian Contract Act, 8th Ed. 622.

No.21.

If you wish to appoint an agent - e.g. Power of Attorney no consideration necessary but if agent does nothing principle has no remedy.

Notes of Arguments of Crawshaw, J.A.

12th September, 1960

- continued.

10

Halsbury p.47 para.80. "Liability of Insurance Agent". and this sums up Belfe v. West.

22nd Halsbury p.201 paragraph 382.

Distinction drawn between marine and non-marine insurance.

20

Ireland v. Livingstone (1872) L.R. 5 H.L.395, 398 - question of consideration penultimate paragraph 17th line; top of page. Page 406 last paragraph. 407 middle paragraph. 408 middle. Agent for insured cannot take commission from insurers as otherwise fraud on principle (p.408 top), unless agent passes on commission to insured - unless express contract to contrary, or custom well understood. Different interests at issue, e.g. disclosure.

30

Smith v. Lascelles 100 E.R. 101 relied on by Respondent. It was however a marine case and not applicable in instant case. 102 sets out 3 rules; the second one is the only one which could possibly apply. It is combined with duty to insure by express instructions. It also refers to persons abroad whereas in instant case Respondent and Appellant in same place and it could be checked if instructions carried out.

Arnold Marine Insurance 166 paragraph 146 as to general principles and 3 exceptional cases all of which relate to merchants with correspondents abroad.

40

No consideration instant case. S.2 Indian Contract Act - Mulla 8th Ed. page 12. Indian law slightly wider than English law in that consideration gave move from promisor or promisee. "At desire of the promisor". The commission paid to Appellant was not because of insured. The commission was not paid in fact. There would have had to be an agreement that Thanawalla agreed to accept Respondent's instructions if insurers gave commission.

Mulla page 18 "at the request of promisee"

In the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.

12th September,
1960
- continued.

i.e. Hasham Kara never asked insurers to pay com-
mission to Thanawalla. Indian law conforms with
Lord Denning's wishes.

Dutton v. Poole 83 E.R. 523. And see Mulla's
comments on it. Submits no nexus between the 3
parties. Judge did not receive assistance by
agreement by either party on this complex question
of consideration and he only cursorily dealt with
it.

Adjourned to 2.30

E.D.W. Crawshaw,
J.A.

10

2.30 p.m. Bench and Bar as before.

Khanna continues:

Respondent's case was that Thanawalla could
not renounce his obligations.

1. Terms of Agreement.
2. Amirali's evidence.
3. Course of business making.
4. Interview of 10th April 1956.
5. Payment of premium on 10th April 1956.

20

59/3. Appellant was paying for getting Respondent
business, so unlikely to undertake onerous obliga-
tions.

60/1-12. "No agent would that".

15/14. This is untrue. See 86 and 93. Respon-
dent also received notice in respect of other
policies between 1951 and 1953. See p.80 etc.
Plaint draws no distinction between cars and other
property.

30

In each notice, Respondent told to notice if
any change in nature of vish.

90)
88) Notification and request for renewal.
89)

83 Respondent informed that policy lapsed.

52/3-6 Procedure of sending notices.

20/2 Suggests Respondent did not understand agree-
ment in alleged terms.

Judge should not have been satisfied with mere
allegation of terms of agreement.

40

59/6

67/17 sq. Appellant's evidence as to arrangements. This Court is in as good position as Judge to find as to sufficiency of evidence.

In the Court of Appeal for Eastern Africa.

22. Amirali's evidence. Amirali not present at meetings. He does not state source of his information.

No.21.

26/25. This could refer to a particular policy. He would look after formalities of renewal.

Notes of Arguments of Crawshaw, J.A.

10 25) "My father told me" - Hearsay, admitted
120/15) by Judge.

12th September, 1960

34/3-10) Suggest after-thought - Not brought
27/13-15) out until Cross-examination.

- continued.

Judge ignored the manner Respondent's insurance dealt with after 1950.

15/13 "Without ref. to me". This is incorrect. See p.53/29-30.

83. Respondent did not take up this matter with Appellant. Alleged head of agreement and see 15/14.

20 19/18. See Thanawalla's evidence as to this and renewal notices. Untrue when Respondent says he gave no instructions to Appellant to renew - see 80 seq.

17/31) This also untrue, because originals went
18/2) to Respondent and copies to Thanawalla.
52)

Respondent's evidence and Amirali's clearly unsatisfactory.

30 29/7) Amirali says he never gave verbal instruc-
59/24) tions to Thanawalla to renew. Thanawalla
disagrees.

32/13-14)
32/20-21) Now admits he did sign papers.
29/14)
30/8)

40 30/21
30/19
30/1
30/4) This is quite wrong. See p.57/12.
58/1)

All this fits in with Thanawalla's evidence as to says in which he used to receive instructions.

in the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.

12th September,
1960
- continued.

Interview of 10th April.

Indirect evidence as to whether there was express agreement. Submits evidence so confused as not to assist a finding thereon. Why should Respondent enlist help of local leaders. If Respondent had said he could not understand why policy not renewed, respondent would know it was not renewed.

13/15-17 Must have been some reason for saying this. Appellant would not fly to Mombasa if covered, only if not covered. Why should Respondent enlist elders? Why should he think anything wrong? 10

36 top } Evidence hot and cold. If "fully covered"
41 } why write about renewal. Does not make
61/63 } sense. T. denies this "In ordinary way
would not go to Mombasa but"
Submits this makes sense.

69/12 Ex-gratia payment.

38/30

38/13 Why should he say it was Thanawalla's duty to go to Mombasa, unless it was true that Thanawalla was to pay for ex-gratia payment. 20

39/18. Must have been on footing no cover and refers to 2 letters, then to 1 letter. Trying to get out of difficulty.

41/17-19 } Respondent refers to 1 letter only.
13/19 } Identity of letter remains absolutely
36/3 } obscure.
62/20 }

37/27-32) There were two other properties covered and there may have been confusion. 30

Evidence shows that Respondent knew there was something wrong when went to Appellant. Appellant must have said no cover.

Adjourned to 11 to-morrow.

E.D.W. Crawshaw,
J.A. 12/9.

13th September,
1960.

13.9.60. Bench and Bar as before.

Khanna continues:

22/28,9 Plaintiff says from 1950-1955 he gave no instructions to renew. 40

37,39,36/13-18. Letter shows recollection of Mukhi very vague.

In the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.

13th September,
1960
- continued.

41/19. Only letter Jubilee had was one written in 1954.

62/29. The letter was the one of 1.11.54 - p.95.

36/11. Mukhi said 95 was not the letter.

13/22. Amirali said nothing about letter.

16/25. Why P.& T. present at interview 1950.

What took place on 10th April 1956 so confusing that one has to fall back on original agreement.

10 28/8.) Amirali says "I can't understand why one
42/11) policy not been renewed - shop
62/21) policy". Whereas others at meeting on
29) 10th April, other than T., said T. said P.
was covered. Judge set out evidence ver-
batim, but did not consider this contra-
dictory evidence.

23/13. Does not make sense if Thanawalla had said Plaintiff was fully covered. No other witness mentions this crucial renewal.

20 26/2. Why should he say this if Thanawalla had maintained Plaintiff fully covered.

26/22. Ditto. Submits the gist of discussion was that Plaintiff was not covered.

41/30. Ditto.

23/11-13)
39/2, 3.)

Payment of premium on 10th April.

30 Respondent relied on this as showing Thanawalla liable to renew. Submits judge misunderstood nature of Thanawalla's somewhat confused evidence on this point.

Practice was for Jubilee to wait 12 months before regarding policy as lapsed. They were paid for 1952/53 insurance but not for 1953-54, but gave cover for 53/54 in anticipation of being paid by Thanawalla. Thanawalla was not bothering to press for payment until he himself was pressed for payment by Jubilee. He got cover for 53/54 without getting payment from Respondent.

40 95. Thanawalla asked for insurance covering 54/55, but Jubilee paid no attention to it as they had not been paid for previous period. Payment after fire would have gone to period 53/55, leaving still 2 years premium due. Had Thanawalla wished to have premiums brought up to date he should have sent 3 years premiums.

In the Court
of Appeal for
Eastern Africa.

54/1, 2 } Shows system.
63/26 }

No.21.

Renewal notices must have ceased in view of Exhibit O 3 (p.54/3) as 3 years in arrears by April 1956.

Notes of
Arguments of
Crawshaw, J.A.

55/20. If policy had expired November 1954, could have been renewed up to January 1955. Thanawalla might have thought that this one policy being out of date, Jubilee might allow it to be regularised by paying premium, as ex gratia. He might have gone to Mombasa to have policy invalidated. This not inconsistent with Thanawalla's defence, and gives no ground for inferring Plaintiff's alleged agreement.

13th September,
1960
- continued.

10

Evidence very meagre to prove anything like the suggested agreement. Plaintiff not educated (p.32/7,8) and had no grasp of insurance matters, and gave confusing evidence. Troubles seem to have started after 1955 when Amirali left father's business (18/17). Amirali's evidence largely hearsay.

20

On 10th April '56, Plaintiff very sick man (14/31), and being uneducated and shocked at loss, evidence worth very little. Thanawalla was prepared to do everything he could to get the money and so went to Mombasa.

Implied course of dealing does not much support terms of express agreement. Evidence of Plaintiff instructing Thanawalla to renew. Submits Plaintiff's allegation is act of desperate man trying to support indefinite agreement.

30

Credit

18/31-3. Plaintiff saying he went and paid premium when due. No question therefore of Thanawalla always giving credit and settling on running account.

24/20-21. Amirali said Ditto.

114. Some items show payments after cover began.

13.9.55 alleged over-payment of 437/95. This may have been the accidentally overpaid, or to pay insurance premium due of 439/-.

50. Submits conclusion of judge non sequitur.

40

129/9 Refers Exhibit 14 not in record.

In p.114 Respondent was to pay each individual payment as it became due. Respondent owes money to Appellant at all times after 22 November 1954.

Judge attaches undue weight to conditional admission. The alleged overpayment must represent difference between 100/- odd due on one premium and 500/- odd paid on.

In the Court of Appeal for Eastern Africa.

No.21.

Notes of Arguments of Crawshaw, J.A.

13th September, 1960
- continued.

10 Agrees overpayment in respect of balance of account, but if it relates to only a single item in account it may be still adverse to payee. Respondent has alleged right to set off premium debts against amount due by T's wife. This contention must fail because

(a) The alleged management not proved - it has been conceded it did not form part of 1950 agreement. 22/1.2 and 33/16-19.

{21/14-21
{22/3-6
{31/8-10

67/9-15 and 99 and 100.

68/14 - commission.

20 Separate debt owing by 1 party cannot be set off against debt due to firm.

Vol.28 p.519 Halsbury para.1004.

Afortiori where debt is owed by wife of a partner.

Debits and credits follow so closely so as to indicate no credit in respect of premiums.

113(a) Not evident that sufficient sum in credit Plaintiff. Cl.4(iii) not pressed at trial, and difficult to see how much duty existed.

30 Respondent's honesty a matter for trial, but his reliability is another matter. Evidence even shows falsehoods.

24/17,18. This is clearly wrong - see Exhibit 5 at p.114.

24/23. On 25/1/54 Respondent paid cheque to settle account to date 24/31 to 25/3. Submits receipt at p.102 relates to part of this sum.

(24/29 Respondent says not reflected at p.114.
(103 Commission would be credited.

40 28/8. The sum is shown in 114, split into payments of 225/84 and 543.

2.30 p.m. Bench and Bar as before.

Khanna continues:

Both above sums are of 13th September.

In the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.
13th September,
1960
- continued.

How could illiterate person like Respondent make such confident security regarding 114 unless led by Counsel.

114 should be read with Exhibit H. (Put in account marked H.13).

On looking at figures unable, as Judge at 129 does, to find anything in favour of Respondent. The account does not show overpayment February '56.

Case depends on sufficiency of evidence on primary facts. Judge does not mention demeanour of witnesses. He merely draws inference from meeting of 10th April, and alleged overpayment. p.126/29. 10

This Court is in as good a position to draw inferences, a duty of this Court.

Benmax v. Austin Motors (1955) A.C.370, 73.

Hicks v. B.T.C. (1958) 1 W.L.R. 493, 507 (final para.).

Yuill v. Yuill (1945) 1 All. E.R. 183, 188 H. Untrue answers by P. and his witnesses. J. does not comment on demeanour. He disbelieves T. because of inferences from 10th April. 20

Flower v. Ebbw Vale (1936) A.C.206, 220 - 11th line from top. Sufficiency of evidence rather than credibility.

Appellant entitled to act on reasonable interpretation of his mandate - Halsbury Vol. 1 p.164, para.385.

Ireland v. Livingstone 1872 L.R. 5 H.L. 395, 416 Line 11. 30

Thanawalla understood he was to give Respondent as much credit as Jubilee gave, and that instructions would be written, verbal, 'phone.

Not to insure unless Respondent gave notice of any material facts.

Policy lapsed November '54. Highly improbable that Respondent, with knowledge of this, did not commit complete act of folly in not taking any action. If he got renewal notices after that date he should have been on his guard. Apathy of Respondent - act of folly - making the damages his own responsibility. 40

Rushton v. Turner (1960) W.L.R.96.

Respondent could not remain inactive for 17 months and then claim someone else responsible.

JUDGMENT:

119/6. Instructions were at times given.

119/29. Judge did not believe one or other, but relied on surrounding circumstances.

126/29. Interview of 10th April not subjected to critical examination in light of all evidence.

128/6. Undue weight to payment.

129/9. " " to over-payment.

10 SALTER: 11/8. Case started as simple issue of fact - see issue. Quantum of damages is not being disputed.

69/29.

1. Original appeal was on facts.

Khanna has tried to lift case out of a simple one of fact and put it in a different light.

Ground 1. of new memo was not specifically pleaded.

73/9. Argued no consideration for promise, otherwise not mentioned.

20 Judge considered surrounding circumstances to come to a conclusion as to terms of agreement.

129/16. Judge's conclusion as to normal relationship.

Salter queries if ground 6 has been argued.

Khanna says there is evidence (59/10) of T. who was not cross-examined thereon. Not argued in lower Court.

Salter not pleaded; w/s suggests not disputed.

Khanna Does not press this ground.

Salter contd.

30 Never in cross-examination that Appellant employed gratuitously.

1675 Annual Practice 1960 O.58 r.9.

Wilson v. U.C.B. 1920 A.C.103, 106. Fact of case do not help.

N.S.Rly. Co. vs. Edge 1920 A.C.254, 62.

Submits 1st five grounds of appeal should be struck out.

67/23.

Ground 12. Khanna referred to Respondent's folly

In the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.

13th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

and apathy, and therefore no damages. This goes
beyond w/s and argument in lower Court, and should
be struck out.

No.21.

Court's Ruling

Notes of
Arguments of
Crawshaw, J.A.

Grounds relating to consideration are open to
Appellant, but not Ground 12.

13th September,
1960

Adjourned to tomorrow 10.30

E.D.W. Crawshaw, J.A.

- continued.

14.9.1960. Bench and Bar as before.

14th September,
1960.

SALTER continues:

10

Submits Respondent's allegation that T. had
agreed automatically to renew policies, is not the
only automatic requirements of agreement - not the
only case of Respondent which relied on all terms
of contract as specified in plaint.

65/7. T. was agent for another insurance company
also, and took out policy for Respondent with it.
T. carried on business of insurance broker, and
duty to advise Respondent etc.

22 Halsbury 201 para.382 sub.s.4. Broker is
insured's agent. If he failed to discharge these
duties he was liable to loss resulting - S.212
Ind. Cont. A. as well as Common Law. Mulla 8th Ed.
664. Skill and diligence.

20

1 Halsbury 184, 6 para.431.

Shee v. Clark 104 E.R. 199 - Headnote.

Dickson v. Devitt 32 (1916) T.L.R. - 547, 548
rt.h.col. 2nd para.

Submits no real controversy as to employment
of T. as agent.

30

11/23 History goes back to '42.

12/1 Squaring of accounts.

15/11 " "

16/29 As to arrangement and practice

18/28

21/13 Squaring accounts.

25/26 In 1950 contract, the practice of setting
off was not provided for - the practice grew up.
Duty of T. to account to Jubilee for premiums and
debit Respondent.

40

58/28 T. asked Respondent for the business.

59/24

67/16 Submits consideration of Respondent's allegation of arrangement. T. goes on to contradict himself which is fact J. could take into consideration.

In the Court of Appeal for Eastern Africa.

No.21.

Notes of Arguments of Crawshaw, J.A.

14th September, 1960

- continued.

10

(1) T. paying out of his own money, (2) debit Respondent and if necessary sue him. (3) act on assumption no change in circumstances and (4) bound to renew whether or not received instructions. These are points raised by Khanna. But it is clear that T. did in fact pay the premiums; Respondent never paid them direct. Evidence shows Respondent did not want to be bothered with insurance matters and left everything to broker.

20

Submits no negligence on part of Respondent. Any penalty for non-disclosure of material factor would fall on Respondent not on T. If Respondent was to give instructions not to renew, it would follow that he would give instructions of any change in conditions.

129/16 Cause of dealing - far from normal. This is cause of dealing as distinct from contract which was not abnormal.

98. Reason for this letter was that T. took attitude on 10th April that Respondent was covered, and that T. would not have made mistake and that Jubilee were liable.

30

Consdn. (58/30
(59/4 "at request of P."
(6/22
(129/29
8th Ed.Mulla 15,16 "at the desire of promisor"

40

Either T. went to Respondent and said "if you will give me all your insurance business I promise to look after it all for you - 10%. Respondent agrees, or Respondent having been approached by T. says "You give me 10% and I will give you all my business" i.e. "I will be putting you in the way of business with Insurance Co."

Submits whichever way looked at, it consdn. in law. Mulla p.12 - reciprocal promises. Respondent by filling in proposal form is carrying out his promise. Offer by Respondent accepted by T.

S.216 Ind.Cont. Ac. - p.670 - Mulla. 674, commentary shows exception - "Payments authorised by custom".

In the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.
14th September,
1960
- continued.

Great Western Insurance Co. v. Cunliffe (1874)
9 Ch. App. Cases 525, 535 last para. As to agents
retaining benefit - e.g. T., as agent of Respond-
ent keeping commission from Jubilee. 537 2nd para.
339 penult. para.

Baring v. Stanton (1876) 3 Ch.D.502.

1 Halsbury 185

What is duty of gratuitous agent? S.185 Ind.
Cont. Act.

Halsbury 185 - duty of agent.

10

Even if gratuitous in instant case, submits
duty at least to take same care as he would in his
own affairs.

Agrees no liability for non-feasance. But when
once enter into duties as agent, then ordinary du-
ties of care, skill and diligence apply. If gratu-
itous agent, then agrees no liability to do any-
thing, but if once starts acting as agent then he
is legally bound to use due care and skill.

228 Halsbury 48

20

T. held himself out as insurance agent and en-
tered on discharge of duties as agent, as shown by
course of dealings. He went on year after year,
renewing and making payments to Jubilee.

(57/31 Example of manner in which the policies
(81 were dealt with.

26. As to renewals. Amirali's evidence as to
course of dealings. But see 34/20.

6/23. T. admits cover up to 17/11/54. Notice of
lapsing would be sent to T., who would inform Re-
spondent. See Exhibit 'C' letter dated 16.11.54
from Jubilee, presumably, to Appellant firm. It
looks as if Appellant had asked for renewal.
And letter 1.11.1954. (and see p.60/20 that T.
informed Respondent of position). It looks as if
para.5 w/s means 'credit' year cover only to end
November 1954. No copy of letter of 16.11.54 shown
as sent to Respondent.

30

2.15 p.m. Bench and Bar as before.

Salter continues:

40

{60/20 Submit it would be duty of Appellant to
{ pay premium and try and get renewal.

18/10 This appears to have been in 1955.
 26/3-4 Did not know shop was not covered.
 25/21
 27/8 Amirali left business in September 1955.
 53/32 Replies as to Exhibit 'O'.
 54/1
 54/5 Do not know if this was money as credit renewal.
 54/27 As to policy 4762 so far as Jubilee was concerned.

In the Court
 of Appeal for
 Eastern Africa.

No.21.

Notes of
 Arguments of
 Crawshaw, J.A.
 14th September,
 1960
 -- continued.

10

(101 Suggests payment for
 { 84
 (103 53/54 might have been paid.
 110 This shows commission to 6/12/55 inc. on
 policy MP 4762. Suggests payment of
 premium for 53/54, as commission would
 be credited.

H.13. There is a second payment of premium on
 4762 on 13.2.54.

20

Premiums were not paid punctually because
 they were not demanded punctually.

Exhibit 14. Overpayment accounted for in H.13
 13/9/55 - Cr. for 176/-.

Interview on 10th April

13/3) Amirali had been to T. before the inter-
 27/10) view.

Submit Respondent was worried as to cover
 when going to see T.

10

Evidence of 2 independent witnesses. Long
 time after event. They agreed however on main
 point that T. said Respondent was covered.

67/27.

62/3) inconsistent.
 63/1)

64/16

47/14 Dave says "we have to pay it" (the premi-
 um).

Only motive for payment by T. 10th April
 '56 was because he had tripped up and hoped, by
 visit to Mombasa, to have it accepted.

Ireland v. Livingstone - See Boustead

In the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.
14th September,
1960
- continued.

11th Ed. 48, Art.34. Case nothing to do with instant case. Case for Respondent was an unequivocal contract.

Interview on 10th April a test of credibility.

Case almost entirely a question of fact, and Judge entitled to come to conclusion he did.

Khanna: No reference in Plaintiff to T. having to advance premium and debit Respondent.

No evidence to support para.4(v) of Plaintiff.

No evidence that T. insures traders generally. 10

Where conflict - no dual agency.

22 Halsbury 203 para.385.

Shee v. Clark of very limited application and does not assist.

Dickson v. Devitt does not help either, does not apply where total failure to insure.

11/23. Merely having 'dealings' is not general agency.

15/17. "on my behalf".

16/31. Does not suggest contract to lend money. 20
22

67/28. A period of credit was allowed to T. He was allowed 12 months credit and he gave Respondent credit. Does not mean T. lent money and paid policy, irrespective of whether he was 1st paid by Respondent.

Payment on 10th April. It is not known why he paid premium on 2 property that day.

The fact that T. did insure without instruction, does not mean that there was agreement that he should do so. Practices which may have grown up cannot be retrospective and become an agreement of 1950. 30

Mere debiting Respondent and not paying money to Jubilee, is not equivalent to lending money.

A mere intention to help a customer, does not prove an obligation.

2 Halsbury 201.

98. Salter has failed to explain why this was sent to Jubilee. And why 1 year before deciding to file suit against T. 40

Commission. The 10% is a loss to T., not a payment to him.

Practice in U.K. as to brokerage cannot be imported here. They are special cases.

Submits that if duty done badly it is a misfeasance, but not if it is not done at all.

Each renewal creates a new contract.

A gratuitous promise to renew, creates no liability if nothing is done about it at all.

10 Merely because T. renews one year and fails to the next, creates no liability.

(60/20-3

(18/10 - T. not cross-examined as to this.

30/19 Amirali used to send renewal requests "direct to Jubilee".

Respondent checked and queried accounts, surely he must have seen that premium on suit policy had not been paid.

102. Must be for period '52/53.

20 Respondent's commission worked out at irregular intervals. Not safe to assume it was paid in respect of '54/55 or '55/56, and such has not been proved - onus on Respondent.

As to overpayment, all entries in account must be considered, not just selected few. Dave contradicted himself and was not then cross-examined by reference to specific item in account.

30 10 April Why should T. pay out of his own pocket, and be encouraged to go to Mombasa. It was desired he should plead with Jubilee because Respondent had failed to cause renewal.

Judge did not give adequate scrutiny to evidence.

Adjourned to tomorrow at 10.

E.D.W.Crawshaw.

15.9.60. Bench and Bar as before.
Judgment of the Court read.
Appeal dismissed with costs.

E.D.W.Crawshaw,
J.A.

40

In the Court
of Appeal for
Eastern Africa.

No.21.

Notes of
Arguments of
Crawshaw, J.A.

14th September,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.22.

Judgment.
15th September,
1960.

No. 22.

JUDGMENT

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI.

CIVIL APPEAL NO. 56 of 1959

BETWEEN:- THE UNITED MARKETING CO. Appellants

- and -

HASHAM KARA Respondent

JUDGMENT OF COURT

This Appeal has been brought from the Judgment and decree of the Supreme Court of Kenya, whereby the Respondent (Plaintiff) was awarded against the Appellants (Defendants) the sum of Shs:46,270/75 with interest Shs:5,013/50 and costs, in respect of the Appellants' breach of duty and/or negligence in failing to keep in force an insurance policy covering the stock-in-trade furniture and fixtures of the Respondent against fire. After the subject matter of the policy had been destroyed by fire it was found that the policy had lapsed. 10

The Respondent pleaded an agreement with the Appellants whereby he alleged that he had employed the Appellants to cause to be insured and to keep insured all the movable and immovable property from time to time in his ownership or occupation and this agreement was denied by the Appellant in his Defence. 20

In the Court below, although the question of consideration was touched upon briefly, the case was argued almost entirely as involving only the question of fact whether the agreement had or had not been made as alleged. The learned Judge resolved this question in favour of the Respondent. Evidence was given at some length for both sides and we have in this court had the benefit of an exhaustive argument upon it, in which all points which could be made for either side, have been ably made by Counsel. We do not deem it necessary to recapitulate the evidence or the arguments, as, having considered both with care, we are unable to see any reason for differing from the finding of the learned Judge in the Court below in favour of the Respondent's case. 30 40

The question whether there was consideration for the promise of the Appellants, was argued more fully before this Court than it was in the Court below. We are satisfied, upon the facts as found, that there was consideration, both under the English law of contract, and within the provisions of Section 2(d) of the Indian Contract Act.

The appeal is therefore dismissed with costs.

K.K. O'CONNOR,
President.

T.J.GOULD,
Acting Vice-President.

E.D.W.CRAWSHAW,
Justice of Appeal.

NAIROBI,
15th September, 1960.

I certify that this is a true copy of the original.

Sgd: ?
for Registrar.
20.9.1960.

In the Court
of Appeal for
Eastern Africa.

No.22.

Judgment.

15th September,
1960

- continued.

10

20

No. 23.

ORDER

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

CIVIL APPEAL NO. 56 of 1959.

BETWEEN:- THE UNITED MARKETING CO. Appellants

- and -

HASHAM KARA Respondent

In Court This 15th day of September, 1960

Before the Honourable the President (Sir Kenneth O'Connor)
the Honourable the Acting Vice President (Mr. Justice Gould)
and the Honourable Mr. Justice Crawshaw,
a Justice of Appeal.

ORDER

THIS APPEAL coming on the 12th, 13th and 14th

No.23.

Order.

15th September,
1960.

30

In the Court
of Appeal for
Eastern Africa.

No.23.

15th September,
1960
- continued.

days of September, 1960 for hearing AND UPON HEAR-
ING D.N. Khanna Esquire of Counsel for the Appell-
ant and Clive S. S. Esquire of Her Majesty's
Counsel and M. Da Gama Rose Esquire of Counsel for
the Respondent IT IS ORDERED that this Appeal be
and is hereby dismissed with costs.

GIVEN under my hand and the Seal of the
Court at Nairobi, the 15th day of September, 1960.

Sgd: F. HARLAND,
Registrar.

10

Issued at Nairobi this 11th day of October, 1960.

I certify that this is a true copy of
the original.

R.M.PATEL
for Registrar.
12.10.60

Court of Appeal for Eastern Africa.

No.24.

Order
Granting Final
Leave to
Appeal.
2nd March,
1961.

No. 24.

ORDER GRANTING FINAL LEAVE TO APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

20

CIVIL APPLICATION NO.7 of 1960

(IN THE MATTER OF AN INTENDED APPEAL to the PRIVY
COUNCIL)

BETWEEN:- THE UNITED MARKETING COMPANY Applicants

- and -

HASHAM KARA

Respondent

(Intended Appeal from the final judgment of the
Court of Appeal for Eastern Africa at Nairobi
dated 15th September 1960

30

in

Civil Appeal No.56 of 1959

Between:- The United Marketing Company Appellants

- and -

Hasham Kara

Respondent)

IN CHAMBERS this 2nd day of March 1961.

Before The Honourable

The Vice-President
(Sir Alastair Forbes).

ORDER.

In the Court
of Appeal for
Eastern Africa.

No.24.

Order Granting
Final Leave to
Appeal.

2nd March,
1961

- continued.

10

UPON the Application presented to this Court on the 17th day of February, 1961, by Counsel for the above-named Applicants for final leave to Appeal to Her Majesty in Council AND UPON READING the Affidavit of Himatlal Naran of Nairobi in the Colony of Kenya Clerk sworn on the 16th day of February, 1961 in support thereof and the Exhibits therein referred to and marked "HN1" and "HN2" AND UPON HEARING Counsel for the Applicants and for the Respondent THIS COURT DOETH ORDER that the application for final leave to appeal to Her Majesty in Council be and is hereby granted AND DOETH DIRECT that the Record including this Order be despatched to England within fourteen days from the date of issue of this Order AND DOETH FURTHER ORDER that the costs of this application do abide the result of the appeal.

20

GIVEN under my hand and the Seal of the Court at Nairobi this 2nd day of March, 1961.

F. HARLAND,
Registrar.

H.M.Court of Appeal for Eastern Africa

ISSUED this 3rd day of March, 1961.

I certify this is true copy of
the original.

RAWJI PATEL,
for Registrar,
7.3.61.

Exhibits

No.1.

Credit Note,
United
Marketing
Company to
Hasham Kara.
6th December,
1955.

E X H I B I T S

No. 1. - CREDIT NOTE

UNITED MARKETING COMPANY TO HASHAM KARA.

Phone: 22833.

P.O. Box 579,
LATEMA ROAD,
Nairobi.

6.12.1955.

CREDIT NOTE

M/s. Hasham Kara Vasta.
P.O. Box 1501, Nairobi.

10

THE UNITED MARKETING COMPANY.

Life, Motor, Personal Accident, Workmen's Compen-
sation, Sickness, Marine, Burglary, Baggage, Plate
Glass, Cash in Transit, Comprehensive Insurance
all Risks, Pedal Cycle Consequential Loss, Public
Liability, Aviation.

Shs: Cts.

By Commission on -

- MB 4775
- MB 4762
- CCB 5311
- PM 27511
- PM 29225
- PM 29493
- CCA 7655
- 168056
- MB 4789

20

Shs: 2,344-19

234-42

No. 106.

No. 3. -- TRADING ACCOUNT, HASHAM KARA,
1-1-1956 to 9-4-1956

HASHAM KARA - NAIROBI

TRADING ACCOUNT FROM 1-1-1956 to 9-4-1956.

To Stocks on 1-1-56	48,000-00	By Sales	55,754-66
" Purchases	53,365-78	" Stock- on-hand	
" Estimate of Gross Profit	5,000-00	on 9-4-56	<u>50,611-12</u>
10 TOTAL	Shs: <u>106,365-78</u>	TOTAL	Shs: <u>106,365-78</u>

Exhibits

No. 3.

Trading
Account,
Hasham Kara,
1.1.1956 to
9.4.1956.
17th August,
1957.

20 I have prepared the above Trading Account for the period from 1-1-1956 to 9-4-1956 from the books of Hasham Kara of Nairobi, and I estimate that the stock-on-hand on 9-4-1956 before the evening when fire took place should have been approximately worth Shs:50,611-12. After fire, I have been informed that he could obtain the stock amounting to Shs:3,729-25. Thus the value of the total stock lost by fire should have been Shs:46,881-87.

Sgd: G.C.Patel
ACCOUNTANT & AUDITOR.

The above Trading Account of my firm for the period from 1-1-1956 to 9-4-1956, is hereby certified by me as true and correct.

Sgd: for
HASHAM KARA -
NAIROBI.

HASHAM KARA
in

Sgd:
PROPRIETOR.

30 P.O. Box 3894,
Nairobi.
17th August, 1957.

Exhibits

No. 4.

No. 4. - LETTER, HASHAM KARA TO UNITED MARKETING COMPANY.

10th May, 1956

Letter,
Hasham Kara to
United
Marketing
Company.
10th May, 1956.

Messrs. United Marketing Company,
P.O. Box No.579,
Nairobi.

Dear Sirs,

Re my account with you for insurance.

I am in receipt of your statement dated 30th April, 1956 and surprised that you have without complying with my request made in my letters to you, sent the said statement claiming Shs:1,504-66. By rendering such statements you cannot escape your liability to me and also your obligation to me to send to me a statement containing the necessary requirements as have been demanded by me in my previous correspondence. According to my account there should be a credit balance in my favour. The position of your account seems to be quite hopeless and it appears that you are trying to cover your position by rendering false and inaccurate statements.

I again request you to comply with my request and let me have your detailed statement showing the dates on which you made entries against me in your books. Please also note that credits for various amounts claimed in my letters must be shown in your statement I ask for.

I insist on having a detailed statement of a/c from the beginning of my dealings with you which is as you know from 17th November, 1950.

Yours faithfully,

Sgd: HASHAM KARA.

No. 5. - STATEMENT, UNITED MARKETING COMPANY TO HASHAM KARA

Hasham Kara Vasta, Esq.,
P.O. Box 1501, Nairobi.

25th April, 1956

Dr. to: UNITED MARKETING COMPANY
INSURANCE AGENTS, MANUFACTURER'S REPRESENTATIVES AND DISTRIBUTORS.
P.O. BOX 579. PHONE NO. 22833 & 34
NAIROBI.

CAR OR PLOT NO.	PARTICULARS	CREDIT DATE	POL. NO.	DEBIT	CREDIT
KBE 164	18. 1.54 to 17. 1.55	22.11.54	925956	926-00	924-00
209/1530 Fort Hall Road	16.11.53 to 16.11.54		MB 4775	263-50	
2646 Indian Bazaar	17.11.53 to 17.11.54		MB 4762	176-00	
KBE 164	25. 1.54 to 24. 1.55	5.10.55	CCB 5311	926-00	760-02
H 9388	12. 2.54 to 11. 2.55		PM 27511	62-00	
J 850	2. 7.54 to 1. 7.55		PM 29225	92-00	
A 5129	20. 7.54 to 19. 7.55	28. 6.55	PM 29493	405-00	405-00
KBP 412	29. 9.54 to 28. 9.55	13. 9.55	CCA 7655	382-00	225-84
		14. 5.55			156-16
2256 Blenheim Road	29.11.54 to 24.12.55	24.12.54	MB 4789	95-60	95-60
KBP 412	4. 5.55 to	13. 9.55	CV 32861	105-05	543-00
A 5129	2. 8.55 to 1. 8.56		PM 33661	78-50	
2256 Blenheim Road	28.11.55 to 28.11.56		168056	206-25	
Do.	28.11.54 to 28.11.55		168056	206-25	
Do.	28.11.55 to 28.11.56		MB 4789	84-25	
	Commission C/N 106				234-42
MVC 315	6.12.55 to 5.12.56	15. 2.56	MS 3852	1174-00	1174-00
KBP 412		15. 2.56			558-00
A 2057	13. 1.56 to 12. 1.57		PM 35178	21.30	
Plot 6 Karachi Road	12. 1.56 to 12. 1.57		MB 8264	1377-00	
	By carried down				1504-66
	To brought forward			6580-70	6580-70
				1504-66	

Exhibits
No. 5.
Statement,
United
Marketing
Company to
Hasham Kara.
25th April,
1956.

Exhibits

No. 6.

Invoice
 United
 Marketing
 Company to
 Hasham Kara.
 13th January,
 1954.

No. 6. - INVOICE, UNITED MARKETING COMPANY,
 TO HASHAM KARA.

Telephone 3849 Gram: Unimarket. Box 579, Nairobi.
 No.1903 Nairobi, 13.1.54.

INVOICE.

Hasham Kara Vasta, Esq.,
 Box 1501, Nairobi.

Dr. to THE UNITED MARKETING COMPANY.
 Principal Representatives: Messrs. Guardian Eastern
 Insurance Co., Ltd.,

Chief Agents: The Jubilee Insurance Co. Limited.

10

POL. NO.	PLOT OR CAR NO.	COVERING PERIOD	AMOUNT COVERED	INTEREST	PREMIUM AMOUNT	TOTAL
MB 4762	50,000/- Plot 2646 Indian Bazaar	17-11-53 to 17-11-54	50,000/-	QS/13185 Stamp	175/- 1/-	176/-

No. 7.

Provisional
 Receipt,
 United
 Marketing
 Company to
 Hasham Kara.
 28th January,
 1954.

No. 7. - PROVISIONAL RECEIPT, UNITED MARKETING
 COMPANY TO HASHAM KARA.

No. 17538 Nairobi.
 28.1.54.

PROVISIONAL RECEIPT

Received from Mr. Hasham Kara Vasta the sum of
 Shillings One hundred and seventy six only, being
 advance deposit in respect of proposal of Assurance
premium on Policy No.

No.
 MB/4762 on the life of
 for Shs: dated under table.

Shs: 176/-

Sgd:

Agents/T. Canvasser.

N.B. This receipt will be exchanged for a Receipt
 signed by Head Office Official.

20

30

No. 8. - CREDIT NOTE, UNITED MARKETING COMPANY
TO HASHAM KARA.

Exhibits

No. 8.

Form 31
Phone: 3849

CREDIT NOTE

P.O. Box 579,
Victoria Street.
Nairobi.
28.1.54.

Credit Note,
United
Marketing
Company to
Hasham Kara.

Mr. Hasham Kara Vasta,
Nairobi.

28th January,
1954.

10

THE UNITED MARKETING COMPANY.

FIRE, MOTOR, PERSONAL ACCIDENT, WORKMEN'S COMPEN-
SATION, SICKNESS, MARINE, BURGLARY, BAGGAGE, PLATE
GLASS, CASH IN TRANSIT, COMPREHENSIVE, INSURANCE
ALL RISKS, PEDAL CYCLE, CONSEQUENTIAL LOSS, PUBLIC
LIABILITY, AVIATION.

Shs: Cts.

By Commission on insurance
business up to date

485-00

20

No. 1546.
E. & O.E.

No.10. - STATEMENT, UNITED MARKETING COMPANY
TO HASHAM KARA.

No.10.

Phone: 22833

Shamas House,
Latema Road,
Nairobi.

Statement,
United
Marketing
Company to
Hasham Kara.

P.O. Box No.579.

31st January, 1954.

STATEMENT

Mr. Hasham Kara Vasta, Esq.,
P.O. Box 1501, Nairobi.

31st January,
1954.

30

In account with THE UNITED MARKETING COMPANY
(Established 1931)

Insurance Agents, Manufacturers' Representatives
and Distributors.

DATE	POLICY NO.	DEBIT SHS:CTS.	CREDIT SHS:CTS.
To Account Rendered		2735-80	
By Settlement			2735-80
To Inv. 1895		926-00	

Exhibits
 No.15 (part)
 Bank Pay-in
 Slip.
 24th December,
 1954.

No.15 (Part) - BANK PAY IN SLIP.

THE STANDARD BANK OF SOUTH AFRICA, LIMITED
 DETAMERE AVENUE, NAIROBI,
 KENYA COLONY.

CREDIT: 24th December, 1954

The Jubilee Insurance Company Ltd.,

Notes

Silver

Copper

Postal Orders for Collection

10

Total of Cash and Postal Orders Shs:-

CHEQUES etc., handed in to be collected and
 to be available as cash when paid (Give
 drawer's name) Use one line for each cheque.

Jamal Habib 378-42

Habib Moton 162-80

National Bank of India Ltd., 95-60

United Marketing Company 114-98

Coronation Builders 789-50

Twentieth Century P. Store 146-00

20

1687-30

Amount in words:- Shs: One thousand six hundred
 eighty seven and cents thirty.

Paid in by (Signature) The United Marketing Co.

ENDORSEMENT AT THE BACK.

P.R. NO. 21008 H. Moton 43-50

21009 Do. 119-50

21010 Do. 32-00

21011 T.J. Hosking 102-00

21012 S.E. Vasanjee 343-20

21013 H. Kara 95-60

21014 Coronation

Builders 789-50

21015 Twentieth C P St. 81-00

21016 Do. 81-00

30

1687-30

No.15 (Part) - BANK PAY IN SLIP

THE STANDARD BANK OF SOUTH AFRICA LIMITED,
NAIROBI
KENYA COLONY.

29th June, 1955

CREDIT

JUBILEE INSURANCE CO., LTD.

Exhibits

No.15 (Part)
Bank Pay in
Slip.

29th June,
1955.

Notes
Silver
Copper
10 Postal Orders for Collection
Total of Cash and Postal Orders.

CHEQUES: etc., handed in to be collected and to be
available as cash when paid (Give drawer's name)
Use one line for each cheque

Hasham Kara Vasta	405-00
Paris Printing House	76-50
E.A. Leather Factory	<u>409-50</u>
	<u>891-00</u>

Amount in words Shs: Eight hundred ninety one only

Paid by (Signature) United Marketing Co.

20

ENDORSEMENT AT THE BACK

Receipt No.21430	E.A. Leather Factory	Shs:409-50
" "	21431 Paris Furnishing House	76-50
" "	21432 Gulam Husein Kara	<u>405-00</u>
		<u>891-00</u>

No.15 (Part) - BANK PAY IN SLIP

THE STANDARD BANK OF SOUTH AFRICA LIMITED
DELAMERE AVENUE, NAIROBI
KENYA COLONY.

14th September, 1955

CREDIT

UNITED MARKETING COMPANY

No.15 (Part)
Bank Pay in
Slip.

14th September,
1955.

30 Notes 10-00
Silver 50
Copper 30
Postal Orders for Collection
Total of cash and Postal Orders 10-80

<u>Exhibits</u>		10-80
No.15 (Part)	Cheques etc., handed in to be collected	
Bank Pay in Slip.	and to be available as cash when paid	
	(Give drawer's name) Use one line for	
	each cheque.	
14th September, 1955	Redcol Provision Stores	1133-20
-- continued.	Hasham Kara	<u>768-84</u>
		<u>1912-84</u>

Amount in words: One thousand nine hundred and twelve shillings and cents eighty four.

Paid in by (Signature) United Marketing Co. 10

ENDORSEMENT AT THE BACK

81. Cash Sale	Shs: 5-00
42. Redcol Provision Stores	1133-20
43. Hasham Kara	768-84
44. L.C. Dave	<u>5-80</u>
Total	Shs: <u>1912-84</u>

No.15 (Part)

Bank Pay in Slip.

6th October, 1955.

NO.15 (Part) - BANK PAY IN SLIP

THE STANDARD BANK OF SOUTH AFRICA LIMITED
DELAMERE AVENUE, NAIROBI
KENYA COLONY.

CREDIT 6th October, 1955 20
THE UNITED MARKETING COMPANY

Notes
Silver
Copper

Postal Orders for Collection
Total of Cash and Postal Orders

Cheques etc., handed in to be collected and to be available as cash when paid (Give drawer's name) Use one line for each cheque.

Hasham Kara Vasta	760-02	30
Novelty Grocers	71-00	
Salter & Whittakers	<u>219-20</u>	
	<u>1050-22</u>	

Amount in words One thousand fifty and cents
Twenty two only.

Paid in by (Signature)	United Marketing Co.	<u>Exhibits</u>
		No.15 (Part)
	<u>ENDORSEMENT AT THE BACK</u>	Bank Pay in Slip.
71. Hasham Kara Vasta	760-20 - Cheque	6th October, 1955
72. Novelty Grocers	71-00 "	- continued.
73. Salter & Whittaker	219-20 "	
	<u>1050-40</u>	

	<u>No.15 (Part) - BANK PAY IN SLIP</u>	No.15 (Part)
	THE STANDARD BANK OF SOUTH AFRICA LIMITED	Bank Pay in Slip.
	DELAMERE AVENUE, NAIROBI	16th February, 1956.
10	KENYA COLONY.	
	CREDIT	16th February, 1956
	UNITED MARKETING COMPANY.	

Notes	
Silver	1-00
Silver	-50
Copper	
Postal Orders for Collection	
Total of Cash and Postal Orders	Shs: <u>1-50</u>

20 Cheques etc., handed in to be collected and to be available as cash when paid. (Give drawer's name) Use one line for each cheque

Hasham Kara.	<u>1732-00</u>
	<u>1733-50</u>

Amount in words: One thousand seven hundred thirty three and cents fifty only.

Paid in by (Signature) United Marketing Co.

	<u>ENDORSEMENT AT THE BACK</u>
184. Hasham Kara	1732-00
Credit Purchase a/c	<u>1-50</u>
	<u>1733-50</u>
Total	<u>1733-50</u>

ExhibitsNo.15 (Part) - BANK PAY IN SLIP

No.15 (Part)
Bank Pay in
Slip.

THE STANDARD BANK OF SOUTH AFRICA LIMITED
DELAMERE AVENUE, NAIROBI
KENYA COLONY

10th April,
1956.

CREDIT: 10th April, 1956
JUBILEE INSURANCE COMPANY LIMITED

Notes	320-00	
Silver		
Copper		
Postal Orders for Collection		10
Total of Cash and Postal Orders	320-00	

Cheques etc., handed in to be collected
and to be available as cash when paid
(Give drawer's name). Use one line for
each cheque.

Mathari Transport	103-50	
Mohamed Akmal Khan	483-50	
Hasham Kara Vasta	439-50	
	1286-50	20

Amount in words Shs: One thousand two hundred
eighty six and cents fifty only.

Paid in by (Signature) United Marketing Co.
Sgd: J.D. Dave.

ENDORSEMENT AT THE BACK

23474	Mathari Transport Co.	Shs: 103-50	cheque	
23475	Mohamed Akmal Khan	423-50	"	
23286	Rapid Commercial Co.	117-00	Cash	
23287	Mohamed Ismail	203-00	"	
23288	Hasham Kara Vasta	263-50	Cheque	30
23289	" " "	176-00	"	
		Shs: 1286-50		

No. 17 - BANK PAY IN SLIP

Exhibits

THE STANDARD BANK OF SOUTH AFRICA LIMITED
NAIROBI
KENYA COLONY

No.17.

Bank Pay in
Slip.

CREDIT

January 29th, 1954

29th January,
1954.

TRIPPLICATE

GUARDIAN EASTERN INSURANCE CO., LTD.

Notes
Silver

10

Copper
Postal Orders for Collection

Total cash and Postal Orders

Cheques etc., handed in to be collected
and to be available as cash when paid
(Give drawer's name) Use one line for
each cheque.

Cheque from Hasham Kara Vasta

745-80

745-80

DEFERRED CLEARANCE
NO. 4 TELLER
29 Jan.1954.

20

STANDARD BANK OF S.A. LIMITED
NAIROBI.

Amount in words: Seven hundred and forty five
and cents eighty only.

Paid in by (Signature) United Marketing Co.

ENDORSEMENT AT THE BACK

Cheque from Hasham Kara Vasta

Shs: 745/80

ExhibitsNo.18. - LETTER, HASHAM KARA TO UNITED MARKETING
COMPANY

No.18.

Letter,
Hasham Kara
to United
Marketing
Company.

24th April,
1956.

HEAD OFFICE
NAIROBI. ESTABLISHED 1904 Branches
KIU & SUITAN HAMUD
WHOLESALE & RETAIL GENERAL MERCHANT & COMMISSION
AGENT.

Dealer in: RATION, PROVISION, GROCERY, PURE D.C.
& MANYUKI BUTTER, MACHAKOS GHEE AND ALL KINDS OF
COUNTRY PRODUCE.

Red: No.

Telephone No: 3276
Bazaar Road, P.O.Box 1501,
Nairobi, 24th April, 1956.
Kenya Colony.

10

The United Marketing Company,
Nairobi.

Dear Sirs,

Re our account

Yesterday when we called at your office we
were supplied with a copy of our account as it ap-
peared in your books of account.

20

On careful study of the said account we find
that you have not credited our account with the
following items:-

- (a) The amount outstanding against you (Mr.
Thanawalla) for goods sold and delivered
up to October, 1956 Shs:463-84.
- (b) Repairing charge agreed to be
paid by you for lorry
No.KBE 164 200-00
- (c) Repairing charges due in re-
spect of Motor Car No.KBP 412
payable to Sahawa Singh & Co. 160-00
- (d) Commission on the insurance
effected through you on Lorry
MS 3852 and Plot No. 2256,
Blenheim Road, Nairobi.

30

We shall be glad if you will send us a de-
tailed account after crediting our account with
you with the above mentioned items.

Yours faithfully,

40

Sgd: HASHAM KARA
(in Gujareate)

"A" - LETTER, KAPILA & KAPILA TO JUBILEE
INSURANCE CO. LTD.

Exhibits

"A"

S.R.KAPILA & KAPILA
ADVOCATES

P.O.Box 1144,
Imperial Chambers,
Government Road,
Nairobi,
Kenya Colony.

Letter, Kapila
& Kapila to
Jubilee
Insurance
Co., Ltd.

S.R. KAPILA, REGISTERED
B.A., LL.B.

21st April, 1956.

21st April,
1956.

A.R. KAPILA,
Barrister-at-Law.

KANTA KAPILA,
Barrister-at-Law.

10

The Jubilee Insurance Co., Ltd.,
P.O. Box 220,
Mombasa.

Dear Sirs,

Fire Policy No.MB/4762 - Hasham Kara.

We are acting for Mr. Hasham Kara, the insured under your above fire policy.

As you have been made aware already, our client's insured stock and furniture were destroyed or damaged by fire which occurred on the night of April the 9/10th.

20

We understand from our client that on the 10th April 1956 the said incident was reported by him to your agent Mr. Thanawalla of the United Marketing Company Nairobi and in consequence of the said report, we understand that Mr.Thanawalla saw your general manager Mr. Kassamali Paroo.

In terms of the said insurance policy, we on behalf of our client hereby give you notice that our client will claim damages from your Company in the sum of Shs:50,000/-, the sum insured thereunder, as the value of the loss sustained by him exceeds the sum insured under the policy.

30

Yours faithfully,
for S.R. KAPILA & KAPILA.

Sgd: A.R. Kapila.

Copy to:-

Messrs. United Marketing Company,
Nairobi.

Exhibits

"B"

"B" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA.

Letter,
Jubilee
Insurance
Co., Ltd., to
Hasham Kara.
5th October,
1953.

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

Telephone	HEAD OFFICE	Telegrams
420	MOMBASA	Jubilee
P.O.Box 220	KENYA PROTECTORATE.	CODE: BENTLEYS
	MOMBASA	
		5th October, 1953.

To Hasham Kara Vasta Esq.,
P.O. Box No.1501, Nairobi.

Dear Sir/s, Madam,

10

We beg to remind you that your Fire Policy as undermentioned will expire at 4.00 p.m. on 17th November, 1953 and we shall be glad to receive your instructions to renew the same at your earliest convenience in which case, please utilise the subjoined form.

If any alteration has taken place in the risk, whether as regards occupation, value or otherwise, please advise us of such change.

Awaiting the favour of your early instructions and thanking you in anticipation.

20

We are,
Yours faithfully,
Sgd: ?
General Manager.

A: U.M.C.

Policy No. MB/4762.
Sum Insured Shs: 50,000/-.
Renewal Premium Shs: 175/- Stamp 1/- Total
Shs: 176/-.

Particulars of Risk: On Non-Hazardous stock in trade such as provisions, ration, ghee, cutlery etc., and on Furniture contained in a building situate on Plot No.2646, Indian Bazaar, Nairobi.

30

To, Jubilee Insurance Co., Ltd.,
P.O. Box No.220, Mombasa.

Dear Sirs,

Please renew my policy No.MB/4762 (as per amended particulars given above) @ for a further period of one year.

Signature of the Insured
For HASHAM KARA,
Sgd: A.H. Kara.

40

@ Strike off if not applicable.

"C" - LETTER, JUBILEE INSURANCE CO., LTD., to
HASHAM KARA

Exhibits

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

"C"

Telephone
420
P.O.Box 220.

HEAD OFFICE
MOMBASA
KENYA PROTECTORATE.
Codes: Bentleys

Telegrams:
Jubilee

Letter,
Jubilee
Insurance
Co., Ltd., to
Hasham Kara.

5th October, 1953.

5th October,
1953.

To Hasham Kara Vasta, Esq.,
P.O. Box No.1501, Nairobi.

10 Dear Sir/s, Madam,

We beg to remind you that your Fire Policy as undermentioned will expire at 4.00 p.m. on 16th November, 1953, and we shall be glad to receive your instructions to renew the same at your earliest convenience in which case please utilise the adjoined form.

If any alteration has taken place in the risk, whether as regards occupation, value or otherwise, please advise us of such change.

20 Awaiting the favour of your early instructions and thanking you in anticipation.

We are,
Yours faithfully,
Sgd: ?
GENERAL MANAGER.

A: U.M.C.

Policy No. MB/4775.
Sum Insured Shs:75,000/-.
Renewal Premium Shs:262/50, Stamp 1/- Total Shs:
263/50.

30 Particulars of Risk: On a building including out-houses, situate on Plot No.209/1530, Fort Hall Road, Nairobi.

To: The Jubilee Insurance Co., Ltd.,
P.O. Box No.220, Mombasa.

Dear Sirs,

Please renew my Policy No.MB/4775 (as per amended particulars given above) @ for a further period of one year.

Yours faithfully,
For HASHAM KARA
Sgd: A.H. Kara.
(Signature of the Insured)

40

@ Strike off not applicable.

Exhibits

"D" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA

"D"

Letter,
Jubilee
Insurance
Co., Ltd., to
Hasham Kara.

11th October,
1951.

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

Telephone HEAD OFFICE Telegrams:
420 MOMBASA Jubilee
P.O.Box 220. KENYA PROTECTORATE CODES: BENTLEYS.

MOMBASA

11th October, 1951.

To: Hasham Kara Vasta Esq., P.O. Box 1501, Nairobi 10
as Assignor: and The National Bank of India
Ltd., as Assignees.

Dear Sir/s, Madam,

We beg to remind you that your Fire Policy as undermentioned will expire at 4.00 p.m. on 28th November, 1951, and we shall be glad to receive your instructions to renew the same at your earliest convenience in which case, please utilise the sub-joined form.

If any alteration has taken place in the risk 20
whether as regards occupation, value or otherwise,
please advise us of such change.

Awaiting the favour of your early instructions
and thanking you in anticipation.

We are,

Yours faithfully,

A: U.M. Co.

Sgd: ?

GENERAL MANAGER.

Policy No.MB/4789.

Sum Insured Shs: 62,400/-,

Renewal Premium Shs:109/20 Stamp 1/- Total Shs: 30
110/20.

Particulars of Risk: One Building including out-
houses detached, and on 6 months' Rental Value,
situate on Plot No.209/2256, Blenheim Road, Nairobi.

To: The Jubilee Insurance Co., Ltd.,
P.O. Box No.220, Mombasa.

Dear Sirs,

Please renew my Policy No.MB/4789 (as per am-
ended particulars given above) @ for a further
period of one year.

Yours faithfully,

Signature of the Insured.

@ Strike off if not applicable.

"E" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA

Exhibits

"E"

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

Telephone HEAD OFFICE Telegrams:
420 MOMBASA Jubilee
P.O.Box 220 KENYA PROTECTORATE CODES: BENTLEYS

Letter,
Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.

MOMBASA
5th October, 1953

5th October,
1953.

10 To: Hasham Kara Vasta Esq., Box No.1501, Nairobi
as Assignor: and The National Bank of India Ltd.,
as Assignees.

Dear Sir/s, Madam,

We beg to remind you that your Fire Policy as
undermentioned will expire at 4.00 on 28th Novem-
ber, 1953, and we shall be glad to receive your
instructions to renew the same at your earliest
convenience in which case, please utilise the sub-
joined form.

20 If any alteration has taken place in the risk
whether as regards occupation, value or otherwise,
please advise us of such change.

Awaiting the favour of your early instructions
and thanking you in anticipation.

We are,
Yours faithfully,
Sgd: ?
GENERAL MANAGER.

A: U.M.C.

Policy No.MB/4789.

Sum Insured Shs:62,400/-

30 Renewal Premium Shs:94/60 Stamp 1/- Total Shs:95/60.
Particulars of Risk: On a building including out-
houses and on 6th months rental value of the build-
ing, situate on Plot No.209/2256, Blenheim Road,
Nairobi.

To: The Jubilee Insurance Co., Ltd.,
P.O. Box 220, Mombasa.

Dear Sirs,

40 Please renew my Policy No.MB/4789 (as per am-
ended particulars given above) @ for a further
period of one year.

Yours faithfully,

Signature of the Insured.

@ Strike off if not applicable.

Exhibits

"F"

Letter,
Jubilee
Insurance
Co., Ltd., to
Hasham Kara.

5th January,
1953.

"F" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

HEAD OFFICE: MOMBASA
KENYA PROTECTORATE.

P.O. Box 220.
Hasham Kara, Esq.,
P.O. Box 1501,
Nairobi.

Telegrams:
Jubilee
Codes: Bentleys.

Mombasa.
5th January, 1953.

10

Dear Sir,

Re: Your Motor Policy No. CV/20761.
Covering Austin KBE 164.
Against Comprehensive Risk for
Shs: 15,000/-.

Your kind attention is invited to our advice
to you of 10th December, 1952, notifying you of
the expiry of your policy on 3rd January, 1953.

20

Not having received instructions from you,
the Policy stands lapsed.

May we be favoured with your instructions as
to its renewal?

Yours faithfully,
Sgd: ?
GENERAL MANAGER.

Copy to :-

The United Marketing Co.,
Nairobi.

"G"

Letter,
Jubilee
Insurance Co.
Ltd., to
Hasham Kara.

7th December,
1951.

"G" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA

THE JUBILEE INSURANCE COMPANY, LIMITED
(Incorporated in Kenya)

BRANCHES

INDIA:-
Albert Building,
Hornby Road, P.O.
Box 184, Bombay.

HEAD OFFICE
Kilindini Road, P.O.Box 220,
Mombasa, Kenya Colony.

7th December, 1951.

30

To: Hasham Kara, Esq.,
P.O. Box No.1501, Nairobi.

Dear Sir/s,

We beg to remind you that your Motor Insurance

40

Policy, as undermentioned, will expire on 9th January, 1952, and we shall be glad to receive your instructions to renew the same at your earliest convenience in which case please utilise the sub-joined form.

If any alteration is desired in the nature of risk whether as regards unit or otherwise, please advise us of such changes by correcting the relevant particulars mentioned hereunder.

10 Awaiting the favour of your early instructions and thanking you in anticipation.

We are Dear Sir/s,
Yours faithfully,

Sgd: ?

GENERAL MANAGER.

Policy No.PM/18694

Nature of Risk: Comp. Risk with P/A cover for Mr. Amirali H. Kara.

Make of Car/Vehicle: Chevrolet.

20 Value Shs: 8,000/-, Registered No. J.850.

Renewal Premium Shs: 389/- Horse Power: 28.

N.B. In view of the depreciation in the value of the Car/Vehicle, please advise us the revised value of the same.

To:-

The Jubilee Insurance Co., Ltd.

Please renew my Policy No.PM/18694 as per amended particulars given above for a further period of one year.

30

Sgd: Mohamed Akber
for HASHAM KARA.
(Signature of the Insured)

Copy to:-

The United Marketing Co.,
Nairobi.

Exhibits

"G"

Letter,
Jubilee
Insurance Co.
Ltd., to
Hasham Kara.

7th December,
1951

- continued.

Exhibits
"H"
Letter,
Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.
15th October,
1954.

"H" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA.

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

Telephone: HEAD OFFICE
420 MOMBASA
P.O.Box 220. KENYA PROTECTORATE

Telegrams:
Jubilee

CODES: BENTLEYS

MOMBASA

15th October, 1954

To: Hasham Kara Vasta, Esq.,
P.O. Box 1501,
Nairobi.

10

Dear Sir/s, Madam,

We beg to remind you that your Fire Policy as undermentioned will expire at 4.00 p.m. on 17th November, 1954, and we shall be glad to have your instructions to renew the same at your earliest convenience in which case, please utilise the sub-joined form.

If any alteration has taken place in the risk, 20
whether as regards occupation, value or otherwise,
please advise us of such change.

Awaiting the favour of your early instructions
and thanking you in anticipation.

We are,
Yours faithfully,
Sgd: ?
GENERAL MANAGER.

A: U.M.C.

Policy No.MB/4762.

Sum Insured Shs: 50,000/-.

Renewal Premium Shs: 175/- Stamp 1/- Total Shs: 30
176/-. Particulars of Risk: On non-hazardous
stock in trade such as Provisions, Ration, Ghee,
etc., contained in a Building on Plot No.2646,
Indian Bazaar, Nairobi.

To: The Jubilee Insurance Co., Ltd.,
P.O. Box No.220, Mombasa.

Dear Sirs,

Please renew my Policy No.MB/4762 (as per
amended particulars given above) @ for a further
period of one year.

Yours faithfully,

40

Signature of the Insured.

@ Strike off if not applicable.

"I" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HEAD OFFICE, MOMBASA.

Exhibits

"I"

Fire: 341/34. 1st November, 1954
The General Manager,
Jubilee Insurance Co., Ltd.,
Mombasa.

Letter,
Jubilee
Insurance Co.,
Ltd., to
Head Office,
Mombasa.

Dear Sir,

1st November,
1954.

10

- Re: Fire Policy MB/4762 - Shs:50,000/-
Hasham Kara Vasta Esq., - Nairobi.
- Re: Fire Policy 4767 - Shs:214,000/-.
Illam Din s/o Ahmed Din - Nairobi.
- Re: Fire Policy MB/6549 - Shs:275,000/-.
Alimohamed Janmohamed Kurji Esq., -
N'B I.
- Re: Fire Policy MB/4763 - Shs:45,000/-
Noormohamed Verji Mwani Esq., Nairobi.

Please renew the above Policies for a further
period of one year and let us have your Renewal
Slips.

20

Yours faithfully,
JUBILEE INSURANCE COMPANY LTD.
CHIEF AGENTS.

"R" - RENEWAL NOTICE

"R"

15th October, 1954

Hasham Kara Vasta,
P.O. Box No.1501,
Nairobi.

Renewal
Notice.

15th October,
1954.

17th November, 1954.

A: U.M.Co.

4762

50,000/-

30

175/- 1/- 176/-.

On non-hazardous stock in trade such as pro-
visions Ration, Ghee, etc., contained in a Build-
ing on Plot No.2646, Indian Bazaar, Nairobi.

Sgd: ?

4762.

Exhibits

"S"

"S" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA.

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

Letter,
Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.
17th November,
1953.

Telephone:
420.
P.O.Box 220.

HEAD OFFICE
MOMBASA
KENYA PROTECTORATE.

Telegrams:
Jubilee.
Codes:
Bentleys.

Hasham Kara Vasta,
P.O.Box No.1501,
Nairobi.

Mombasa,
17th November, 1953 10

Dear Sir,

Re: FIRE INSURANCE

We find the following policy, particulars of which are as mentioned hereunder, expired on 16th November, 1953, and although notice regarding the date of its expiry was sent by us to you, we are so far without any instructions as to its renewal.

Policy No. MB/4775 - Shs:75,000/-
On a Building including outhouses, situate
on Plot No.209/1530, Fort Hall Road, Nairobi. 20

Renewal premium Shs: 262/50 plus Sh. 1/-
Stamp duty.

Premium of Shs:263/50, for the last year in respect of R.S. 11382 still remains unpaid. We shall therefore be glad if you will remit the total amount of Shs:527/- to enable us to renew the policy up to 16th November, 1954.

Yours faithfully,

Sgd: ?

30

GENERAL MANAGER.

GDM/NWD.

Copy to :-

The United Marketing Company,
P.O. Box No. 579,
Nairobi.

"T" - LETTER, JUBILEE INSURANCE CO. LTD.
TO HASHAM KARA

Exhibits

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

"T"

Letter,
Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.

10th December,
1952.

BRANCHES:-

INDIA:- Albert Building,
Hornby Road,
P.O.Box 184,
Mombasa.

HEAD OFFICE,
Kilindini Road,
P.O. Box 220,
Mombasa
(Kenya Colony)

10 To:- Hasham Kara, Esq.,
P.O.Box No.1501, Nairobi.

10th December, 1952

Dear Sir/s,

We beg to remind you that your Motor Insurance Policy as undermentioned, will expire on 3rd January, '53, and we shall be glad to receive your instructions to renew the same at your earliest convenience, in which case please utilise the sub-joined form.

20 If any alteration is desired in the nature of risk whether as regards unit or otherwise, please advise us of such changes by correcting the relevant particulars mentioned hereunder.

Awaiting the favour of your early instructions and thanking you in anticipation.

We are, Dear Sir/s,
Yours faithfully,

GENERAL MANAGER.

30 Policy No.CV/20761 Nature of Risk: Comprehensive Risk. Make of Car/Vehicle: Austin Registered No. KBE 164. Value Shs:15,000/- Horse Power 28.6. Renewal Premium Shs: 860/- Subject to no claim Bonus @ 10% amounting to Shs:86/- provided no claim is made in respect of the current year i.e. Nett premium Shs: 774/-

N.B. In view of the depreciation in the value of the Car/Vehicle, please advise us the revised value of the same.

To: The Jubilee Insurance Co., Ltd.,

Please renew my Policy No.CV/20761 as per amended particulars given above for a further period of one year.

Sgd: Hamidi Hasham Kara
(Signature of the Insured)
Copy to :-
The United Marketing Co.,
Nairobi.

Exhibits

"T" - INSURANCE PROPOSAL FORM

(MOTOR VEHICLES)

Insurance
Proposal
Form.

Chief Agents: The United Marketing Co.
Insurance, Share Brokers
and Commission Agents,
P.O. Box 579, Nairobi.

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

1. Full Name of Proposers: HASHAM KARA
2. Address: P.O. Box 1501, Nairobi. 10
3. Trade or Business: Merchant.
4. No. of drivers employed? One.
5. Term of Insurance for 12 months from
until

Particulars of Vehicles to be Insured (Schedule)

Regis- tered Letter and Number	Make	Type of Body	Cubic Capacity Treas- ury Maker's	Date of Manu- fac- ture	Proposer's estimate of present value (in- cluding accessories)	
KBE 164	Austin	Truck	30	19	£ 750	20

7. State fully the purpose for which the Vehicle will be used? Transport of other's goods.
8. Will Trailer(s) be attached to the Vehicle(s)?
No. If so, how many? D/A.
9. What is the value of each? N/A. Do you wish Trailer(s) to be insured? N/A.
10. Is the Vehicle your sole and absolute property? Yes. 30
11. Date of purchase by you and price paid and whether new or second hand? Held, £750, new.
12. If more than one Vehicle to be insured, how many will be used at a time? No.
13. Do you desire to bear any portion of claim? If so, state amount. No.
14. Have you or any of drivers referred to in questions any physical defect or infirmity, or have you or they suffered from a fit of any kind? No. 40

Exhibits

"T"

Insurance
Proposal
Form.

- continued.

- 15. Have any of your drivers been fined or had their licences endorsed? No.
- 16. Are the Vehicles at present in a thorough state of repair? Yes.
- 17. Are your brakes in good working order and regularly examined? Yes.
- 18. State in which East African territories the Vehicle is normally garaged? Nairobi.
- 10 19. Give record of Accidents and/or Losses during past five years in connection with any Motor Vehicle owned or driven by you, whether insured including any claim outstanding.

TOTAL NUMBER OF ACCIDENTS AND LOSSES

Records with Yourselves.

- 20. State fully from your knowledge if the Proposed Motor Vehicle or Vehicles met any accident or accidents previously and the risk has been cancelled or declined by any Insurance Co., If so, by which Company and when? No.
- 20 21. Has any Company or Underwriter either in respect of you or your partners or any other member of your firm ever:-
 - Declined your proposal? No.
 - Required an increased premium? No.
 - Required you to bear the first portion of any loss? No.
 - Cancelled or refused to renew your policy? No.
- 30 22. Are you entitled to a "No Claim Bonus"? Yes.
 If so, for how many years up to this date have you previously been insured continuously, without claim and with which Companies?
 Yourselves.

23. Particulars of Insurance required: Comprehensive.

40 I/WE DESIRE TO INSURE WITH THE JUBILEE INSURANCE CO. LTD. the Vehicle or Vehicles described in the above proposal, and I/We hereby warrant that the above statements and particulars are true, and I/We have not suppressed, mis-represented or mis-stated any material fact and I/We agree that this declaration shall be the basis of the contract between me/us and the Company.

19. DATED at this day of

Signature of Proposer: for Hasham Kara Sd.

Exhibits

"T"

Letter,
Jubilee
Insurance Co.,
Ltd., to
Head Office,
Mombasa.

5th February,
1953.

"T" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HEAD OFFICE, MOMBASA.

JUBILEE INSURANCE
COMPANY LIMITED
(Incorporated in Kenya)

THE UNITED MARKETING CO.
Established 1931.
P.O. Box 1679 -
Latema Road. Phone
3849.
Grams: UNIMARKET
CORS: BENTLEYS, A.B.C.
6th Ed.

BUSINESS TRANSACTED

10

Life, Fire, Motor, Workmens' Compensation, Marine
Personal Accident, Burglary, Glass, Baggage.

Dept. Moto. When replying please quote No.799/53

Nairobi, Kenya Colony.

5th February, 1953.

The General Manager,
The Jubilee Insurance Co. Ltd.,
MOMBASA.

Dear Sir,

Re: MOTOR PROPOSAL FORMS -
HASHAM KARA, Esq.,
MOTOR POLICY NO:CV/20761
MOTOR POLICY NO:PM/18694.

20

Please renew the above two Motor Policies for
a further period of one year and let us have your
Renewal Slips in due course.

We enclose two Motor Proposal Forms duly com-
pleted in view of a long lapse of time since the
date of expiry.

Yours faithfully,

JUBILEE INSURANCE COMPANY LTD.

Sgd: ?

CHIEF AGENTS.

SHT/DL
Encs;

"U/1" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA

Exhibits

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

"U/1"

TELEPHONE: HEAD OFFICE MOMBASA Telegrams: JUBILEE.
420
P.O.Box 220 KENYA PROTECTORATE CODES: BENTLEYS

Letter,
Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.

11th October, 1951

11th October,
1951.

To: Hasham Kara Vasta, Esq.,
P.O. Box No.1501, Nairobi.

10

Dear Sir/s, Madam,

We beg to remind you that your Fire Policy as undermentioned will expire at 4.00 p.m. on 16th November, 1951, and we shall be glad to receive your instructions to renew the same at your earliest convenience in which case, please utilise the subjoined form.

If any alteration has taken place in the risk, whether as regards occupation, value or otherwise, please advise us of such change.

20

Awaiting the favour of your early instructions and thanking you in anticipation.

We are,
Yours faithfully,

A: U.M. Co.

Sgd: ?
GENERAL MANAGER.

Policy No.MB/4775.
Sum Insured Shs: 75,000/-
Renewal Premium Shs: 262/50, Stamp 1/- Total Shs:
263/50. Particulars of Risk: On a Building including out-houses, situate on Plot No.209/1530, Fort Hall Road, Nairobi.

30

To: The Jubilee Insurance Co., Ltd.,
P.O.Box No.220, Mombasa.

Dear Sirs,

Please renew my policy No. MB/4775 (as per amended particulars given above) @ for a further period of one year.

Yours faithfully,

40

Signature of the Insured.

@ Strike off if not applicable.

Exhibits

"U/2" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA

"U/2"

Letter,
Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.
5th October,
1953.

THE JUBILEE INSURANCE COMPANY LIMITED
(Incorporated in Kenya)

Telephone: HEAD OFFICE
420 MOMBASA
P.O.Box 220. KENYA PROTECTORATE
MOMBASA
5th October, 1953.

Telegrams:
Jubilee.
Codes: Bentleys.

To: Hasham Kara Vasta, Esq.,
P.O. Box 1501, Nairobi.

10

Dear Sir/s, Madam,

We beg to remind you that your Fire Policy will expire at 4.00 p.m. on 17th November, 1953, and we shall be glad to receive your instructions to renew the same at your earliest convenience in which case, please utilise the subjoined form.

If any alteration has taken place in the risk whether as regards occupation, value or otherwise, please advise us of such change.

20

Awaiting the favour of your early instructions and thanking you in anticipation.

We are,
Yours faithfully,

A: U.M.C.

Sgd: ?
GENERAL MANAGER.

Policy No.MB/4762.

Sum Insured Shs: 50,000/-.

Renewal Premium Shs: 175/- Stamp 1/- Total Shs:
176/-. Particulars of Risk: On Non-hazardous
stock in trade such as provisions, ration, ghee,
cutlery, etc., and on furniture contained in a
building situate on Plot No.2646, Indian Bazaar,
Nairobi.

30

To: The Jubilee Insurance Co., Ltd.,
P.O.Box 220, MOMBASA.

Dear Sirs,

Please renew my policy No.MB/4762 (as per amended particulars given above @ for a further period of one year.

40

Yours faithfully,
Signature of Insured.
Sgd: for HASHAM KARA.
Not signed.

@ Strike off if not applicable.

"V/1" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA

Exhibits

Fire. 311/T/54 13th February, 1954
Hasham Kara Vasta, Esq.,
P.O.Box 1501, NAIROBI.

"V/1"
Letter,
Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.

Dear Sir,

13th February,
1954.

10

Re: Fire Policies Nos. MB/4762 cover-
ing your stock-in-trade, contained
in a Building on Plot No.2646, In-
dian Bazaar at Nairobi and also
furniture in the same building -
Total insurance Shs:50,000/-; and
MB/4775 covering your Building in-
cluding outhouses on Plot No.
209/1530, Fort Hall Road, Nairobi
for Shs:75,000/-.

20

We are enclosing herewith for your retention
our Fire Renewal Slips Nos.13185 and 13186 renew-
ing the above two policies for a further period of
one year.

We also enclose herewith our invoice for a
total sum of Shs: 439/50, being the amount of re-
newal premiums and stamp duty on the renewal of
the policies, and shall be glad to receive your
cheque for the amount at your earliest convenience.

Yours faithfully,
p.p. JUBILEE INSURANCE CO., LTD.,

CHIEF AGENTS.

"V/2" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA.

"V/2"

30

Fire: 41/55 4th February, 1955.
Hasham Kara, Esq.,
P.O.Box 1501, Nairobi.

Letter,
Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.

Dear Sir,

4th February,
1955.

40

Renewal Slip No.14466 covering build-
ing on Plot No.209/2256, Blenheim Road,
Nairobi.

We have pleasure in enclosing herewith the
above Renewal Slip renewing the Policy for a fur-
ther period of one year, and trust this Document
will be found in order.

Exhibits

"V/2"

Letter, Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.

4th February,
1955

-- continued.

Assuring you of our best services at all
times.

Yours faithfully,

JUBILEE INSURANCE CO. LTD.

CHIEF AGENTS.

HGT/DL.

"V/3"

Letter, Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.

20th December,
1954.

"V/3" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA.

Fire: 429/54 20th December, 1954.

Hasham Kara Vasta, Esq.,
Indian Bazaar, NAIROBI.

10

Dear Sir,

Fire Policy No. MB/4789 -
Covering Building and
Outhouses on Plot No.2256
- Shs: 62,400/-.

We have pleasure in enclosing herewith our
Renewal Certificate No.14466, renewing the above
Policy for a further period of one year as from
28th ultimo, and shall be extremely obliged if
you will be good enough to let us have your
cheque for Shs: 95/60, being the amount of premium
and stamp duty due thereon.

20

Assuring you of our best services at all
times.

Yours faithfully,

JUBILEE INSURANCE CO., LTD.,

CHIEF AGENTS.

SHT/GS.
Encl.

Invoice 3194 - 22/12/54.

30

"V/4" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA.

Exhibits

"V/4"

Fire: 1121/53 10th January, 1953.

Letter, Jubilee Insurance Co., Ltd., to Hasham Kara.

Hasham Kara Vasta, Esq.,
P.O. Box 1501, NAIROBI.

10th January, 1953.

Dear Sir,

Fire Policies Nos.MB/4775 & 4762

10 We have pleasure in enclosing Fire Renewal Slips Nos. 11382 and 11383, together with Invoice No.439, amounting to Shs: 439/50, for which we shall be glad to receive cheque at your early convenience.

Yours faithfully,
THE JUBILEE INSURANCE CO. LTD.
Sgd: ?
CHIEF AGENTS.

"V/5" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA

"V/5"

9671/53. 12th November, 1953.

Letter, Jubilee Insurance Co., Ltd., to Hasham Kara.

20 Hasham Kara Vasta, Esq.,
P.O.Box 1501, NAIROBI.

12th November, 1953.

Dear Sir,

Fire Policy No. MB/4789.
Plot No. 209/2256, Blenheim Road,
Nairobi.

30 We have pleasure in enclosing herewith our Renewal Slip No.12758, and shall be glad to receive your cheque for Shs: 95/60, being the premium due under the above Policy.

Assuring you of our best services at all times.

Yours faithfully,
JUBILEE INSURANCE CO. LTD.
p.p. THE UNITED MARKETING CO.
Sgd: ?
CHIEF AGENTS.

Exhibits"W/1""W/1" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA.

Letter, Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.
24th April,
1956.

Accounts. 724/56 24th April, 1956.
Hasham Kara, Esq.,
Bazaar Road,
NAIROBI.
Dear Sir,

Re: Your Account with us

We thank you for your letter of even date and
our comments are as under :-

10

Item (b) - Repairing charge for Lorry No.KBE.
164

As you know we have never authorised you to
repair this Lorry and as such we cannot pass you a
credit note for Shs:200/-.

Item (c) - Repairing charge for Motor Car No.
KBP 412 - payable to Messrs. Sahawa Singh &
Co.

We have never authorised the lorry to be re-
paired by M/S. Sahawa Singh & Co., and as such we
are not liable to pay the bill.

20

As you know all repairs are sanctioned by us
on receiving sanction from our Principals and
under written authority. In case you have such an
authority in respect of the above items, it would
be to your advantage to produce them for our in-
spection.

As requested we enclose herewith our detailed
statement and would request you to forward us your
cheque for the amount at your very earliest con-
venience.

30

Yours faithfully,

Sgd: ?

Manager.

"W/2" - LETTER, JUBILEE INSURANCE CO. LTD. TO
HASHAM KARA.

Exhibits

"W/2"

Accounts. 780/36. 27th April, 1956.

Hasham Kara, Esq.,
Bazaar Road,
P.O. Box 1501,
NAIROBI.

Letter, Jubilee
Insurance Co.,
Ltd., to
Hasham Kara.

27th April,
1956.

Dear Sir,

Re: Your account with us.

10 With further reference to your letter of the
24th instant and our reply of the same date, we
note that you have referred to a sum of Shs:463/84
for goods supplied to Mrs. Thanawalla. You will
agree that this is a private account and as such
should not have been reflected in our Company's
account as we do not have any contra account. This
point has been explained to you on previous occasions
when you had agreed that our Company is not
liable for the settlement of accounts for purchases
20 made by Mrs. Thanawalla and that you would forward
your account to her direct. For your information
Mrs. Thanawalla has promised to forward you her
cheque on receipt of your detailed statement.

Yours faithfully,

Manager.

IN THE PRIVY COUNCIL

No. 117 of 1961

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N

THE UNITED MARKETING COMPANY (Defendants) Appellants

- and -

HASHAM KARA (Plaintiff) Respondent

RECORD OF PROCEEDINGS

GOODMAN DERRICK & CO.,
30, Bouverie Street,
London, E.C.4.

Solicitors for the Appellants.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Respondent.