

You shall cooperate – or face the consequences

11 June 2022

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The High Court of South Africa has found in favour of King Price Insurance Co (King Price) in its decision to reject a claim and subsequently cancel a policy after the insured refused to provide the necessary information required to verify the claim.

The case

In April 2022, the insured submitted a motor claim following a collision that caused damage to his vehicle. King Price asked the insured to consent to access his mobile phone and billing records to validate the claim, but the insured refused.

In repudiating liability for the claim, King Price relied on a breach of General Condition 5 of the policy, which read as follows:

- 5.1 The Applicant undertook to always provide the Respondent with true and complete information.
- 5.2 The Applicant also undertook to provide the Respondent with all information and documentation that the Respondent asks for and to do so within the time frame set by the Respondent.
- 5.3 The Applicant undertook to provide the Respondent with any relevant documents required to validate the claim.
- 5.4 The Applicant undertook to comply with the Respondent's instructions and requests as and when required.

King Price also cancelled the policy. The insured then filed a complaint with the Ombudsman for Short Term Insurance. The Ombudsman dismissed the complaint, endorsing the decision of King Price, prompting the insured to apply to the court for relief. The insured maintained that granting access to the information requested was unreasonable and that King Price had failed to give an undertaking to safeguard his personal information.

The decision

In finding its decision, the court referred to Taljaard v Sentrale Raad Vir Kooperatiewe Assuransie BPK 1974 (2) SA 450 (A) and Commercial Union Assurance Company of South Africa Ltd v KwaZulu Finance and Investment Corporation and Another 1995 (3) SA 751 (A). Both cases confirm that the insurer bears the burden for proving the decision upon which it relies.

Whilst the court did not specify which part, if not all, of the condition was breached, it ultimately found the insured to be in breach and thus King Price was entitled to reject the claim and cancel the policy.

Key considerations

It is worth noting that the court did not expressly deal with the insured's arguments as to why he refused consent to access the relevant information required by King Price. It would seem that the court did not place any value in these arguments, serving as an important reminder for insureds.

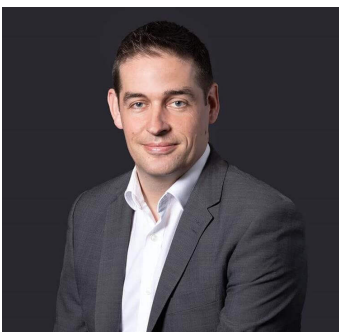
Terms such as General Condition 5 of the policy are commonplace in motor policies and are considered essential due to the duties created by them.

Under English law, the position may have been different, although much will have turned upon the drafting of the cooperation provisions in the policy; in particular whether the condition was drafted as a condition precedent or a nominative term. This case serves as a useful reminder of the importance of cooperation conditions and ensuring they are drafted in a way that gives insurers as much protection as possible.

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