

SUPREME COURT OF NIGERIA

5TH JUNE, 1998. SC. 72/1992

**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, M. E. OGUNDARE,
S. U. ONU, A. I. IGUH, JJSC.**

BALA JAMES NGILLARI PLAINTIFF/APPELLANT
AND
NATIONAL INSURANCE DEFENDANT/RESPONDENT
CORPORATION OF NIGERIA

***INSURANCE** - Contract - Validity - Proposal form and premium which were accepted by the agent without any qualification - Are sufficient to complete the contract - A formal policy of insurance is not a necessity.*

***INSURANCE** - Life insurance contract - Is created where there has been an unqualified acceptance by one party of an offer made by the other - As in this case.*

FACTS

The Plaintiff/appellant instituted an action against the defendant/respondent claiming inter alia; "N50,000.00 being the agreed sum payable as death benefit under the contract of insurance between the deceased and the defendant." The plaintiff is the administrator of the estate of one Jesse James Ngillari deceased who died intestate in Maiduguri on 17/8/85. The defendant is a corporate body engaged in insurance business with its head office in Lagos and branches all over the country.

On 1/3/84, the defendant's agent in maiduguri one S.A. Onuh, in the course of his duties as such agent approached the deceased in the plaintiff's office. In the presence of the plaintiff, the agent advised the deceased to take out a combined endowment /life Insurance Policy with the defendant. Both the agent and the plaintiff assisted the deceased to complete the defendant's proposal form which the agent brought along with him. The deceased at the request of the agent also submitted a type written additional statement which together with the duly completed pro-

posals form were handed over to the agent. He read them over and after satisfying himself as to their contents, demanded the sum of N449.05 from the deceased as premium. The deceased was short of fund and it was the plaintiff who issued his personal cheque for the amount in favour of the defendant. The deceased subsequently paid N2,694.30 in cash to the agent being the total premium payable by the deceased up to the end of December, 1985. The agent acknowledged receipt on a plain type written sheet of paper duly signed by him (Exhibit D). The agent undertook to bring an official receipt for all the monies collected from the deceased together with the policy certificate in three days time. Neither the official receipt nor the policy certificate was ever received from the defendant or its agent. Nothing more was heard from the agent or defendant until 29/11/84 when a letter (Exhibit E.) was addressed to the deceased care of plaintiff's office putting the deceased on notice that the agent S. A. Onuh was no longer in the employment of the defendant and that in future the deceased should pay his premium directly to the defendant's office in Maiduguri. The deceased sent a reply on 15/12/84 informing the defendant that he had already paid his premium up to and including December 1985 to the agent and that he was still awaiting the official receipts and the Policy Certificate as well.

The deceased died intestate on 17/8/85. The plaintiff notified the defendant. The defendant in a letter dated 21/4/86 denied any contractual relationship with the deceased and have failed to pay the sum of N50,000.00 or any part thereof payable to the estate of the deceased under the said contract of insurance. The defendant admitted receiving from its Maiduguri agent, the proposal form duly completed by the deceased and the payment of N449.05 being first installment of premium paid by the deceased. It, however denied any payment of N2,694.30 being made to it. It further contended that there was no contract of insurance in this case because there was neither a policy document issued nor a letter of acceptance; particularly when it sought without success for more information from the deceased to enable it accept or reject the proposal as the case may be. At the conclusion of trial, the learned trial judge held that the plaintiff proved his claims against the defendant

and entered judgment in his favour. Dissatisfied, the defendant appealed to the Court of Appeal, Jos Division. That court allowed the appeal in part. Aggrieved by the decision, the plaintiff has now appealed to the Supreme Court raising three issues but the appeal was determined based on one central issue.

ISSUE FOR DETERMINATION

Whether or not there was a valid contract of insurance between the deceased and the respondent at all material times.

HELD (Unanimously allowing the appeal per lead judgment of **KUTIGI JSC**)

Life Insurance - How created

1. I am clearly of the view therefore that on the facts before the court, one cannot escape the conclusion that all elements of a valid contract were present in the case. The deceased made his proposal when he completed the Application Form (now Proposal Form) on the fateful day, 1/3/84. He also gave additional statement. The respondent's agent read them and after satisfying himself demanded payment of the first premium of N449.05 which the deceased immediately paid. In addition on 2/3/84 another premium of N2,694.30 was paid up to and including December, 1985. I must stress here that a contract of insurance like any other contract is created where there has been an unqualified acceptance by one party of an offer made by the other, as in this case. The irresistible conclusion I have arrived at in this case is therefore that applying the law above to the facts and circumstances of this case, there was no doubt that there was a valid concluded contract of life insurance between the deceased and the respondent at all material times as found by the trial High Court. (p. 1417 A/1420 A)

Validity of insurance contract

2. I find no substance in the contention of the respondent that for there to be a valid contract in this case there ought to have been either a formal letter of acceptance or a formal policy of insurance addressed to the deceased. I should probably repeat again that the Application or Proposal

Form which was accepted by the agent without any qualification was sufficient to have completed the contract. And that conclusion was even further fortified when the agent demanded payment and accepted from the deceased, premium, without any qualification either. I must repeat here again that it was never the case of the respondent on the pleadings that their agent had no power or authority to accept on its behalf any offer for insurance or accept premium at all. (p. 1420 D)

NOTABLE POINTS OF INTEREST
BELGORE JSC

1. Contract of Insurance - General Principle

There is no rule of insurance law which makes a contract invalid simply because not all the premium has been paid or that no premium has been paid at all. What is important is that there is a contract of insurance. In cases however whereby the insurer demands payment of premium before the contract can become operative, that is a valid exception to the general principle I explained earlier. In the instant case the deceased insured relied on the respondent's agent, filled the form and paid the premium. In life insurance it is usual for the insurers to intimate that they are not bound until the premium is paid and the policy is issued. Once the rate of premium is fixed and the insured has paid the sum after the advice of the insurer's agent a valid contract of insurance has been completed. (p. 1421 A)

ONU JSC

2. Court of Appeal wrongfully held there was no valid insurance

The writer of the lead judgment of the court below concurred in by the two other members of her panel, after dwelling at length on what constitutes elementary contract, to wit: offer and acceptance which she argued were lacking in the case in hand, concluded that the constituents of a valid contract of insurance being absent, Respondent's defence must perforce be allowed to subsist. After setting aside the award of N50,000.00 damages to the Appellant, in what I think is an erroneous decision, the court below in making a consequential order then com-

mandated that "The sum of N449.05 and N2,694.30 (sic) paid to the appellant's agent to be refunded to the Respondent." This later order constitutes the background to the two issues deployed to attack the decision which I have no hesitation in answering in the negative. The learned Justices of the court below were therefore clearly wrong to have held B that there was no valid contract. (p. 1427 F)

REPRESENTATION

Charles Obishai for plaintiff/appellant

M. A. O. Okulaja for defendant/respondent

C

CASES REFERRED TO

Lewis & Peat (N.R.I.) Ltd. v. Akhimien (1976) 7 SC. 157 at 167;

Akintola v. Solano (19986) 2 NWLR 598 at 621

Otapo v. Sunmonu (1987) 2 NWLR (Part 58) 587 at 622.

Ajao v. Alao (1986) 5 NWLR (Part 45) 802.

Okpaloka v. Umeh (1976) 9-10 SC, 269 at 300

Mogaji v. Odofin (1978) 4 SC. 91 at 94)

Odofin v. Ayoola (1984)11 SC. 72 at 106

Ebba v. Ogodo (1984)4 SC. 84 at 98

Ajayi v. Texaco (1987) 9-11 SC 1 at 27

Kasaduku v. Atolagbe (1973)5 SC. 195

Ekpeyong v. Essiet (1975)3 SC. 107

Lawal v. Dawodu (1972) 8 and 9 SC. 83 at 115

Assurance Co. Ltd v. Wuraola (1969) All NLR 14

Northern Assurance Co. Ltd. v. Wuraola (1969) All N.L.R. 14

D

E

F

G

BOOKS REFERRED TO

Halsbury's Laws of England, Fourth Edition, Volume 25

McGillivray & Parkington on Insurance Law, 6th Edition, page 86

Borstead on Agency, page 1 Article 1

H

LEAD JUDGMENT BY KUTIGI JSC

The plaintiff is the administrator of the estate of one Jesse James Ngillari, deceased, who died intestate in Maiduguri on 17/8/85 . The defendant is a corporate body engaged in insurance business with its head office in Lagos and branches all over the country including Maiduguri.

On 1/3/84, the defendant's agent in Maiduguri, one S.A. Onuh, in the course of his duties as agent, approached the deceased in the plaintiff's office. In the presence of the plaintiff, the agent advised the deceased to take out a combined Endowment /life Insurance Policy with the defendant. Both the agent and the plaintiff assisted the deceased to complete the defendant's proposal form which the agent brought along with him. The deceased at the request of the agent also submitted a type-written additional statement which together with the duly completed proposal form were handed over to the agent. He read them over and after satisfying himself as to their contents, demanded the sum of N449.05 from the deceased as Premium. The deceased was short of funds and it was the plaintiff who issued his personal cheque for the amount in favour of the defendant. The deceased was schedule to attend a course at the college of pharmacy, Yaba, Lagos, and had before then arrange with his bankers to have his salary paid to him over there. The deceased and the agent therefore both agreed that the deceased should make a further payment of N2,694.30 being the total premiums payable by the deceased up to the end of December, 1985 when the deceased was expected to have returned to Maiduguri. On the following day which was 2/3/84, the deceased paid this additional sum in cash to the agent. The agent acknowledged receipt on a plain typewritten sheet of paper duly signed by him (see Exhibit D.) The agent undertook to bring an official receipt for all the monies collected from the deceased together with the policy certificate in three day's time, when according to him, the cheque issued by the plaintiff would have been honoured or cleared. Neither the official receipt nor the policy certificate was ever received from the defendant or its agent. That the deceased at all material times believed the agent to be defendant's agent, whose duty it was to prospect

for clients for the defendant and that the deceased dealt with the agent as such. That the agent suggested and the deceased agreed, that the deceased should take out a life policy for 30 years with effect from 1/3/84. That should the deceased die before the maturity date of 2014 A.D. the defendant would pay his estate the benefit of N50,000.00 with profit and B should the deceased survive to maturity date, the said sum would be paid to him with profits.

After payment of premium as stated above to the agent, the plaintiff and the deceased did not hear anything again either from the agent or C defendant until 29/11/84 when a letter (see Exhibit E.) was addressed to the deceased in care of plaintiff's office putting the deceased on notice that the agent S.A. Onuh was no longer in the employment of the defendant and that in future, the deceased should deal or pay his premium D directly to the defendant's office in Maiduguri. The deceased sent a reply on 15/12/84 informing the defendant that he had already in fact paid his premium up to and including December, 1985 to the agent and that he was still awaiting the official receipts and the policy certificate as well.

As stated above, the deceased died intestate on 17/8/85 and during E the currency of the contract of insurance between him and the defendant. The plaintiff notified the defendant. The defendant in a letter dated 21/4/86 denied any contractual relationship with the deceased and have F failed to pay the sum of N50,000.00 or any part thereof accruable to the estate of the deceased under the said contract of insurance.

The plaintiff therefore went to court claiming the following reliefs per paragraph 18 of his statement of claiming:

"a. N50,000.00. being the agreed sum payable as death benefit G under contract of insurance between the deceased and the defendant.

b. N5,000.00 as 10% interest payable on the agreed sum of N50,000.00 covering the period 21st April, 1986 to April, 1987.

c. Payment of a further interest at the court's rate of 10% per annum on the above total sum of N55,000.00 with effect from the date H of judgment until final liquidation."

The case for the defendant on the other hand is that on 21/3/84 at its Head Office in Lagos it actually received from its Maiduguri agent

S.A. Onuh, the proposal form duly completed by the deceased, a Medical Report on the life of the deceased as well as his Statutory Declaration of Age. It also admitted receiving payment of N449.05 being first instalment of premium paid by the deceased. It however, denied any payment of N2,694.30 being made to it. That on 15/10/84 it mailed a letter (see Exhibit "1") to the deceased from Lagos asking him to under -go a chest x-ray test and to further complete Financial Questionnaire Form to enable the defendant assess deceased's financial position in view of the magnitude of the sum assured, and that no reply was received from the deceased. The plaintiff denied receipt of the letter by the deceased. That there was no contract of insurance in this case because there was neither a policy document issued nor a letter of acceptance by the defendant, particularly when it sought without success for more information from the deceased to enable it accept or reject the proposal as the case may be.

At the trial, pleadings were filed and exchanged. The plaintiff testified for himself while two witnesses testified for and on behalf of the defendant. Thereafter counsel addressed the court. In a reserved and well considered judgment, the learned trial judge, Ogunbiyi, J. , held that the plaintiff proved his claims against the defendant when she concluded her judgment thus:-

"Accordingly, and in the final result all the plaintiff's claims in paragraph 18 succeed and in respect of which I make the following orders:-

(1) That the plaintiff as the administrator of the Estate of the deceased, Mr. Jesse James Ngillari is entitled to the claims against the defendants as per paragraph 18 of his statement of claim as follows:-

(a) N50,000 being the agreed sum payable as death benefit under the contract of insurance between the deceased and the defendants.

(b) N5,000 as 10% interest payable on the agreed sum of N50,000 covering the period 21st April, 1986 to 21st April, 1987.

(c) Payment of a further interest at the court's rate of 10% per annum on the above total sums of N55,000 with effect from the date of judgment, being today the 12th day of December, 1987 until final liquidation.

(d) I shall also award costs in this suit in favour of the plaintiff and which I would assess at N300.00."

Dissatisfied with the judgment of the High Court, the defendant appealed to the Court of Appeal, Jos Judicial Division. The Court of Appeal in its judgment allowed the appeal in part, The lead judgment of Mukhtar JCA., and with which the other justices agreed, on page 141 concluded thus:-

"In the final analysis the appeal before this court succeeds in part. The judgment of Ogunbiyi, J. Bornu State High Court is set aside. Costs is awarded at N300.00 in favour of the appellant in this appeal. This court orders that the N50,000 damages (sic) already paid to the respondent shall be refunded to the appellant as urged by learned counsel for the appellant at the hearing of this appeal. The sums of N449.05 and N2,694.30 paid to the appellant's agent to be refunded to the respondent,"

Aggrieved by the decision of the Court of Appeal, the plaintiff (hereinafter called the appellant) has now appealed to this court. The defendant will also henceforth be called the respondent. The parties filed and exchanged briefs of argument as provided by the Rules of Court. These were adopted at the hearing by counsel and a few additional oral submissions were made.

In the appellant's brief, three issues have been submitted for determination as follows:-

"(1) Whether the learned Justices of the Court of Appeal were right in setting aside the findings of the trial court on the N2,694.30 paid to the respondent as premium and on Exhibit 1 (Re respondent's letter to the deceased) when there were no grounds of appeal challenging these findings.

(2) Was the lower court right in holding that the respondent successfully denied receiving the sum of N2,694.30 from the deceased?

(3) Considering the pleadings and evidence, was there a valid contract of insurance before the death of the deceased between the parties?"

My first observation is that I fail to see what issues (1) and (2)

above are intended to achieve in the light of the order made by the court of Appeal above to the effect that the N2,684,30 as well as N449.05 paid to the respondent's agent be refunded to the appellant, be that as it may, I think counsel for the respondent was correct when he said that the central issue in this appeal is whether or not there was a valid contract of insurance between the deceased and the respondent at all material times. This is in fact appellant's issue (3) above. And it would appear that issues (1) and (2) will also be taken care of in the process.

Now, I have already tried to summarise the facts of the case above. The appellant filed a statement of claim of 18 paragraphs. The respondent in its Amended statement of Defence admitted paragraphs 1,2,3,4,5,6,7,8, and 15 of the statement of claim which read thus:-

"(1) The plaintiff is a legal practitioner and the administrator of the Estate of Jesse James Ngillari deceased, who died intestate on the 17th August, 1985 at Maiduguri. On the 17th March, 1987, letters of Administration of the said deceased's Estate were duly granted to the plaintiff as such administrator by the Probate Registry of the High Court of Justice Borno state. The said letter of administration is hereby pleaded and will be founded upon at the trial of the suit. The plaintiff resides in Maiduguri within the jurisdiction of this Honourable court.

(2) The defendants are a corporate body established by Decree No. 22 of 1969 capable of suing and being sued. The defendants are engaged in the business of Insurance. The defendants have their Head Office in Lagos and branch offices all over Nigeria with one in Maiduguri.

(3) The plaintiff states that on the 18th March, 1987, he duly served on the defendants Managing Director by registered post one months notice of his intention to commence legal proceedings against the said defendants in the manner provided by s. 28 (2) of Decree No. 22 1969. The original of the said Notice dated 18th March, 1987 is the defendants possession and the same is hereby pleaded.

(4) That in or about 1st March, 1984, Mr. S.A. Onuh, one of the defendants' agents in Maiduguri approached the deceased in the plaintiffs' office in Maiduguri advising the deceased to take out a combined

Endowment /Life insurance with the defendants.

(5) *That on the said date aforesaid in the presence of the plaintiff herein, the deceased with the assistance of the defendants said agent duly completed the defendants proposal form which the said agent had brought along with him. The deceased at the request of the defendants agent also submitted a type written "additional statement" which together with the defendants proposal form were duly handed over to defendants agent. The plaintiff avers that before parting with the original proposal form, the deceased caused a photocopy of same to be made and kept with him for his records. The originals of the defendants proposal form dated 1st March , 1984, signed by the deceased as well as the additional statement also dated 1st March 1984, are hereby pleaded and will be founded upon at the trial of this suit.*

(6) *The plaintiff avers that upon the receipt both the proposal form and the additional statement from the deceased; the defendants said agent read both documents and after satisfying himself as to its contents demanded the sum of N449:05k from the deceased as premium.*

(7) *That the deceased was short of funds at the time; the plaintiff who is also a junior brother to the deceased; at the request of the deceased drew out a cheque on his account with the First Bank of Nigeria Limited, Maiduguri for the sum of N449.05 K in favour of the defendants in settlement of the premium as demanded by the defendants agent.*

(8) *The plaintiff avers that the proceeds covered by the aforesaid cheque amounting to N449.05 K has since been received by the defendants. The plaintiff will at the trial of this suit tender and found upon the cheque in question and the same is hereby pleaded.*

(15) *By a letter dated 29th November, 1984; the defendants notified the deceased that their said agent Mr.. S.A. Onuh was no longer in their employment, warning the deceased not to further transact any business with the said agent. The plaintiff pleads that following the death of the deceased; the plaintiff searched all the deceased's properties in Lagos and Maiduguri for the whereabouts of the said letter but could not locate same. Copy of the said letter of the 29th November, 1984 in the plaintiff's possession is hereby pleaded and will be founded upon at the trial of this*

suit.

In addition to the admissions above by the respondent, the appellant also gave evidence in line with his statement of claim which the learned trial judge believed and accepted. From the pleadings and evidence therefore the following facts were undisputed and consequently established:-

(a) *That at all material times one Mr. S.A. Onuh was the agent of the respondent. The respondent pleaded nothing nor adduced any evidence to show any limitations of the agent's power or authority.*

(b) *That on 1/3/84 the agent in the appellant's office advised the deceased to take a Life Insurance Policy for 30 years with effect from 1/3/84 with the respondent. The agent produced the Application form which the deceased duly completed with an additional statement.*

(c) *The agent read over the completed Application Form (now Proposal Form) and was satisfied. He there and then demanded payment of first premium of N449,05 from the deceased. This sum was paid to the agent.*

(d) *The agent demanded a further payment of N 2,694.30 being total premium up to and including December, 1985, when the deceased disclosed that he would be away on course in Lagos and that his salaries would henceforth be paid to him in Lagos.*

(e) *On 2/3/84 the sum of N2694.30 being premium was accordingly paid to the agent by the deceased. The agent promised to bring the receipt for the premium as well as the policy of insurance itself in three days time. It was never to be until the deceased died on 17/8/85 as stated above.*

(f) *On 21/3/84 at its Head Office in Lagos the respondent received the deceased's Proposal Form together with his Medical Report and Declaration of Age. It also received the first premium of N449.05 K paid by the deceased.*

(g) *On 29/11/84 the respondent in Lagos addressed a letter to the deceased warning him not to deal with or pay his premium to the agent who had ceased to be their employee but to pay directly to the office in Maiduguri.*

I am clearly of the view therefore that on the facts before the court, one cannot escape the conclusion that all elements of a valid contract were present in the case. The deceased made his proposal when he completed the Application Form (now Proposal Form) on the fateful day, 1/3/84. He also gave additional statement. The respondent's agent read them and after satisfying himself demanded payment of the first premium of N449.05 which the deceased immediately paid. In addition on 2/3/84 another premium of N2,694.30 was paid up to and including December, 1985. I must stress here that a contract of insurance like any other contract is created where there has been an unqualified acceptance by one party of an offer made by the other, as in this case. B C

The only defence pleaded by the respondent is as contained in paragraph 2(b) of the Amended Statement of Defence thus:- D

"In further reply to paragraph 5, the defendant wrote and mailed to the deceased/plaintiff (the proposer) on the 15th October, 1984 directly from its Head Office in Lagos asking the plaintiff to undergo X-ray test and to further complete financial questionnaire form to enable the defendant assess his financial position in view of the magnitude of the amount to be assured. The defendant avers that to the best of his knowledge no reply was received from the plaintiff. The letter referred to above is hereby pleaded and will be founded upon at the trial of this suit." E F

The letter was admitted in evidence as Exhibit 1. Needless to say that the appellant denied receipt of this letter by the deceased. The appellant, however, at the trial stated categorically that:-

"At the time the Proposal Form was filed, there was no indication that any other information other than what was filled in the Proposal Form coupled with the additional statement is required." G

I must add also that there was no indication from the agent that the contract was subject to any approval of the respondent. As this was never pleaded any evidence led thereon went to no issue (see for example EMEGOKWE v. OKADIGBO (1973) 4 SC. 113). It should also be remembered as shown above that the respondent even after 15/10/84 (Ex-

hibit 1) still found it necessary to communicate with the deceased when on 29/11/84 it warned the deceased not to deal with or pay further premium to their agent who had been dismissed but to deal direct with the respondent's office in Maiduguri. It knew the deceased to be its customer. I think under these circumstances the learned trial judge must be right when she said in her judgment:-

This document Exhibit 1, is in my view belated having regard to the conclusion reached as per above to the effect that a valid contract came into existence on the 1st day of March and a further confirmation was again made on the 2nd of March by the payment and acceptance of N2,694.30 subsequent to which Exhibit D was made."

The Court of Appeal was wrong to have held a contrary view. It was also in evidence which was never denied that the respondent received the offer from the deceased in its office in Lagos on 21/3/84 and did not deem it necessary to write Exhibit I until 15/10/84 seven months after! I do not think I need any authority to say that time is of the essence of an insurance contract. I clearly find no merit in the defence raised by the respondent. The Court of Appeal was therefore wrong when it held (per Mukhtar, JCA., who read the lead judgment) that:-

"I am of the view that all the foregoing reasonings put together does (sic) not qualify whatever that transpired between the deceased Jesse Ngillari and the appellant Insurance Company to be a valid contract of insurance. Negotiation was commenced, Yes, but no valid insurance subsisted as a result of the negotiation. The elements of offer and acceptance by the parties, that constitute valid contract are lacking. Consequently, the learned trial judge was in error when she held that there was a valid contract."

The learned trial judge was certainly right for holding as she did, that there was a valid contract of life insurance between the deceased and the respondent. The learned authors of Halsbury's Laws of England, Fourth Edition, Volume 25, dealing with the general principles of non-marine insurance (as in this case) said in these paragraphs as follows:-

"398. Necessity for offer and acceptance A contract of insurance, like any other contract, is created where there has been an unquali-

fied acceptance by one party of an offer made by the other. So long as the matter is still under negotiation, there is no contract, although it is open to the parties, pending conclusion of the negotiations, to enter into an interim contract of a limited nature"

"399. Acceptance of the offer. Where a proposal in the normal form is accepted without qualification, the contract is complete and the insurers are bound to issue, and the proposer to accept, a policy in accordance with the stipulations of the proposal ADDIE & SONS v. INSURANCE CORP. LTD. (1898) 14 TLR 544).

Indeed, although writing is necessary in marine insurance, in other forms of insurance there is no legal necessity (MURFIT v. ROYAL INSURANCE CO. LTD. (1922) 38 TLR 334). Any positive act indicative of an intention to create a contract may be sufficient acceptance; for example receipt of the premium without demur or qualification or conduct precluding the insurers from disputing receipt of the premium. HARRINGTON v. PEARL LIFE ASSURANCE CO. LTD. (1913) 30 TLR 24; RE ECONOMIC FIRE OFFICE (1896) 12 TLR 142; XENOS v. WICKHAM (1866) LR 2 HL 296 at 308). Even a demand for the premium may be sufficient."

"405. The policy. In relation to contracts of non-marine insurance there are no statutory requirements comparable with those contained in the Marine Insurance Act 1906 prescribing the form of document to be used or the minimum particulars to be contained in it; indeed even a parol contract of non-marine insurance appear to be valid. Therefore, any document which contains the terms of the contract may be treated as, or even called, a policy. (RE PROFITS AND INCOME INSURANCE CO. (1929) 1 CH 262 at 269; FORSIKRINGSAKT NATIONAL (OF COPENHAGEN) v. A-G (1925) A. C. 639 at 642)"

"460. Payment of premium. The premium may be paid by the assured to the insurers to the insurers or to an insurance agent acting on behalf of the insurers. If the agent has authority to receive it the payment binds the insurers. ACEY v. FERNIE (1840) 7 W & M 151). The authority need not be an express authority; it may be implied from circumstances. (MONTREAL ASSURANCE CO. v. M' GILLIVRAY (1859) 13 MOO

PCC 87)"

(Underlining is supplied by me for emphasis only).

The irresistible conclusion I have arrived at in this case is therefore that applying the law above to the facts and circumstances of this case, there was no doubt that there was a valid concluded contract of life insurance between the deceased and the respondent at all material times as found by the trial High Court.

The Court of Appeal again clearly erred in law when Mukhtar, JCA., held thus:-

"With the payment of the deposit coupled with the mere completion of Exhibit B, which merely contained informations I fail to perceive a valid contract existing In so far as the present case is concerned the only action taken so far was the filing of Exhibit B and payment, and a policy has not even materialised."

I find no substance in the contention of the respondent that for there to be a valid contract in this case there ought to have been either a formal letter of acceptance or a formal policy of insurance addressed to the deceased. I should probably repeat again that the Application or Proposal Form which was accepted by the agent without any qualification was sufficient to have completed the contract. And that conclusion was even further fortified when the agent demanded payment and accepted from the deceased, premium, without any qualification either. I must repeat here again that it was never the case of the respondent on the pleadings that their agent had no power or authority to accept on its behalf any offer for insurance or accept premium at all.

This appeal is therefore clearly meritorious. I accordingly allow it. The judgment of the Court of Appeal together with its order for costs are set aside while the judgment of the trial High Court, Maiduguri, delivered on 12th day of November, 1987 is hereby restored.

The plaintiff/appellant is awarded costs of this appeal which is assessed at Ten Thousand Naira (N10,000.00) only.

BELGORE JSC

There is no rule of insurance law which makes a contract invalid simply because not all the premium has been paid or that no premium has been paid at all. What is important is that there is a contract of insurance. In cases however whereby the insurer demands payment of premium before the contract can become operative, that is a valid exception to the general principle I explained earlier. In the instant case the deceased insured relied on the respondent's agent, filled the form and paid the premium. In life insurance it is usual for the insurers to intimate that they are not bound until the premium is paid and the policy is issued. Once the rate of premium is fixed and the insured has paid the sum after the advice of the insurer's agent a valid contract of insurance has been completed. The agent is presumed to have not only the express authority bestowed upon him by his principal but also impliedly the further authority to do all things necessary in the ordinary course of selling insurance policy by making sure that he presented correctly the terms and conditions of the insurance before accepting payment of premium from the insured. The appellant's evidence of how the respondent's agent approached the deceased and convinced him to insure has not been controverted. The notice that the agent no longer represented the respondent obviously did not vitiate all he did before the notice. There subsisted a valid insurance contract between the respondent and the insured deceased on which the appellant as personal representative can sue.

For the foregoing reasons and the fuller reasons in the judgment of my learned brother Kutigi, J.S.C., I also allow this appeal as deserving in merit. I set aside the judgment of the Court of Appeal and restore the judgment of the trial High Court of Borno State. I award the same costs as in Kutigi, J.S.C's judgment.

OGUNDARE JSC

I agree entirely with the judgment just delivered by my learned brother, Kutigi JSC. I have nothing more to add, For the reasons given by him in this said judgment I, too, allow the appeal and abide by all the

consequential orders made by Kutigi JSC.

ONU JSC

I had a preview of the judgment just delivered by my learned brother Kutigi, JSC before now and I agree with him that this appeal is meritorious and ought therefore to succeed.

The facts of the case have been ably set out in the leading judgment of my learned brother to need any further re-stating. Suffice it to say that being desirous of adding a word or two of mine to the three issues considered therein, I would go about doing so by treating issues 1 and 2 together and then issue 3 separately, as follows:-

ISSUES 1 AND 2

These two issues which can and ought to be considered together complain thus:

"1. Whether the learned Justices of the Court of Appeal were right in setting aside the findings of the trial court on the N2,694.30 paid to the Respondent as premium and on Exhibit 1 (the Respondent's letter to the deceased) when there were no grounds of appeal challenging these findings.

2. Was the lower court right in holding that the respondent successfully denied receiving the sum of N2,694.30 from the deceased?"

Pertinent and of significance to these issues are paragraphs 9-13 of the Appellant's Amended Statement of Claim wherein he averred:

"9. It was further agreed upon between the deceased and the defendants agent that as the deceased was scheduled to attend a course at the college of Pharmacy, Yaba, Lagos and had already prior to meeting the defendants agent arranged with his Bankers to have his salaries and other emoluments paid to him in Lagos, the deceased will the following day make a further payment of N2,694.30 in cash to cover the total premium payable by the deceased up to December, 1985 when the deceased was expected to complete his course.

10. The Plaintiff pleads that on the 2nd March, 1984; the deceased paid the further sum of N2,694.30 to the defendants agent in cash, which amount the defendants agent acknowledged on a plain type

written sheet of paper duly signed by him on the said 2nd March, 1984.

11. The defendants agent undertook to bring an official receipt covering all monies received from the deceased in three days time together with the policy certificate when according to him, the cheques issued by the plaintiff will have been cleared. The Plaintiff avers that to the best of his knowledge; neither the official receipt referred to above nor the policy certificate was ever received from the defendants. The receipt referred to above is hereby pleaded and will be founded upon at the trial of this suit.

12. The plaintiff avers that neither has the defendants returned all the monies received from the deceased as premium or part thereof.

13. The plaintiff avers that at all material times to this action; the deceased believed that Mr. S.A. Onuh was an agent of the defendants acting within the scope of his authority."

For its defence the Respondent pleaded in answer to the above averments in paragraphs 4 and 5 of the Statement of Defence as follows:-

"4. The defendant denies paragraphs 9 and 10 of the Statement of Claim and avers that no such payments has been made to the defendant as payment of the deceased premium.

5. The defendant is not in a position to admit or deny paragraphs 11, 12 and 13 of the Statement of Claim and will put the plaintiff to the strictest proof thereof."

On the pleadings, it is clear from the Respondent's Statement of Defence wherein it has averred that "The Defendant is not in a position to admit or deny paragraphs 11, 12 and 13 of the statement of claim" amounts to insufficient denial or insufficient traverse to put the matter thus denied in issue. This court has so decided in a number of cases. See for instance Lewis & Peat (N.R.I.) Ltd. v. Akhimien (1976) 7 SC. 157 at 167; Akintola v. Solano (19986) 2 NWLR 598 at 621 and Otapo v. Sunmonu (1987) 2 NWLR (Part 58) 587 at 622. See also Ajao v. Alao (1986) 5 NWLR (Part 45) 802. Thus, from the onset, the learned trial Judge would have been right to discountenance and or to have struck out the pleading in paragraph 5 of the Respondent's statement of defence (ibid). Be that as it may, the trial court relying on decisions of this court such as

National Insurance Corporation of Nigeria v. Power and Industrial Engineering Co. Ltd. (1986) 1 NWLR (Part 14) 1 at 20, 26 and 27; Mojibola & others v. National Bank of Nigeria Ltd (1978) 3 SC. 119 at 127; Halsbury's Laws of England 4th Edition paragraph 339 page 222 and a High Court decision: Esewe v. Asiemo & ors (1974) 4 University of Ife Law Reports page 225 at 357 - 358, held inter alia as follows:-

"It is in no dispute that the deceased, Mr. Jesse James Nggilari (sic) completed a proposal form given him by the defendant's agent Mr. S.A. Onuh and also gave an additional statement at the request of the said agent, marked Exhibits B and C respectively, and the same which were made in the presence of the plaintiff."

The learned trial Judge after comparing and contrasting the facts in the cases set out above as well as the conclusions arrived at therein, continued by observing as follows:-

"In the matter before the court, it is pertinent to determine whether or not there was an intention to create a contract of Endowment/Life Insurance between the deceased and the defendants. This has to be looked not in the light of the facts available and also circumstance of the transaction that took place. This is so because from the available evidence, the said Mr. S. A. Onuh, was an agent of the defendants approached the deceased, gave him proposal form, which he assisted him to complete, obtained an additional statement and thereafter collected a sum of N449.05 as premium payment. These are all admitted by the defendant in their amended statement of defence. A portion of Exhibit B, the proposal form completed reads as follows:-

"I agree that this proposal form and declaration together with any other statements in connection herewith shall be the basis of the contract of this assurance." (Underlining is mine for emphasis).

The question to ask at this juncture is this, as at the time of the signing of the document, could it be inferred or read from the circumstances by any reasons that the deceased either doubted the agent or was completing the same subject to a condition? This I would answer in the negative for two reasons:- (1) There is no indication anywhere that such any (sic) condition exists and which had been drawn to the attention of the deceased.

(2) i.e. secondly, in the light of paragraph 13 of the plaintiff's statement of claim which was concluded as deemed admitted by the defendants; where the deceased was said to have believed at all material times that Mr. S. A. Onuh was an agent of the defendants and therefore acting within the scope of his authority. For these reasons, I am in full agree- B
ment with the view held by Atake, J. in the authority of Esewe (supra), a High Court authority as it may be and which only serves as persuasive. In other words, the acceptance of the offer in this case was in no doubt demonstrated by the conduct of the parties as well as by the documents C
that have passed between them as laid down in the case of Mojibola (supra)."

Continuing, the learned trial Judge further held:

"This document Exhibit 1, is in my view belated having regard D
to the conclusion reached as per above to the effect that a valid contract came into existence on the 1st March, and a further confirmation was again made on the 2nd March by the payment and acceptance of N2,694.30 subsequent to Exhibit D was made"

After setting out the contents of Exhibits 1, C and D, the learned trial E
Judge said among other things:

" Further more, the plaintiff in his evidence before this court, gave detailed story of the circumstance that necessitated N2,694.30 ad- F
ditional payment. This was corroborated by both Exhibit C and D the additional statement and the temporary receipt respectively"

In conclusion, the learned trial judge had this to say on the addi-
tional statement and payment of N2,694.30 to the respondent's agent Mr. S.A. Onuh:

"Following from the above transactions in particular the comple- G
tion of the proposal forms, payment and receipt of the sum of N449.05, and also the subsequent further payment of N2,694.30 I hold the view that from the totality of all these, coupled with the conduct of the de-
ceased and the said agent on behalf of the defendants, a valid contract H
of Endowment /Life Insurance contract had been taken out. The ad-
vance payment of the same had been made up to December, 1985 and
which was received by the said agent Mr .Onuh either or deemed to have

been made on behalf of the defendants. In other words, the additional statement and payment of the N2,694,30 had confirmed further that valid contract had been taken out."

I cannot agree more. On the totality of the evidence, oral and documentary which the trial court evaluated (having seen, heard and observed the demeanor of the witnesses) an appeal court can only intervene to set the decision arrived at aside when and only when the trial court failed to make good use of the advantage it had, particularly in a case where credibility is not involved. See Okpaloka v. Umeh (1976) 9-10 SC, 269 at 300; Ebba v. Ogodo (1984)4 SC.84 at 98 and Atolagbe v. Shorun (1985)1 NWLR (part 2) 360. In the case in hand, the Court of Appeal appears clearly not to be on firm ground when on appeal, It held without rehearing the entire case and dispassionately weighing the cases of both sides (see Mogaji v. Odofoin (1978)4 SC.91 at 94) before setting same aside as it did. Thus, the court below was palpably wrong to have held in the face of overwhelming evidence as follows:-

"..... If the proposer accepts the terms contained in the acceptance letter, he indicates by paying the premium after the first deposit paid, it is then that a contract exists. In this case there was no contract because the above process did not take place, in that first, they needed more information from the defendant which they sought and in fact got no reply on the absence of an existing contract between the parties the defendant refused to honour the plaintiff's claim on the deceased's death."

Continuing, the court below maintained:

"..... The need for Exhibit 'C' arose because the deceased was proceeding to Lagos for a training that will last up to December, 1985 and Exhibit 'D' was issued as temporary receipt when the premium payable on the life policy proposal for up to December, 1985 i.e. N2,694.30 was allegedly paid by the deceased. This payment was in a very quick succession of the payment of the deposit i.e. two days later. One wonders what was the criteria for the latter payment and why a temporary receipt was issued instead of the company's official receipt, as was issued in respect of payment of the deposit of N449.05. It is amazing that the deceased contended (sic) himself with only a temporary typed receipt

after the payment of such huge sum of N2,694.30 when he very well knew that the defendant's official receipt as was issued to him earlier on existed"

Where a court of trial which saw and heard the witnesses has come to specific findings of fact on the evidence and issues before it, an appellate court which had no similar opportunity should refrain from coming to different findings unless it can show that the conclusions could not follow from the evidence before it. See Odofin v. Ayoola (1984)11 SC.72 at 106. Ebba v. Ogodo (1984)4 SC.84 at 98 and Babatunde Ajayi v. Texaco (1987) 9-11 SC 1 at 27. It is also an established principle that the Court of Appeal will not substitute its own findings with those of the trial court and although evaluation of evidence and findings of fact are matters within the exclusive province of the trial court, an appellate court will only interfere where they are found to be perverse and misapprehensive of the facts. See Mogaji v. Odofin (supra) Iyaro v. The State (1988)1 NWLR (part 64) 256; Kate Enterprises v. Daewoo (Nig) Ltd (1985)2 NWLR 116 and Awoyale v. Ogunbiyi (1986)2 NWLR 626 at 648. Where, as in the instant case, there appears to be a full and comprehensive evaluation on the part of the trial court but none by the Court of Appeal that reheard the case on appeal, this court sitting on a further appeal will not shirk in its responsibility to set aside the judgment of the court below which ought not to be allowed to stand following the principle enunciated by this court in Kasaduku v. Atolagbe (1973)5 SC.195; Ekpeyong & Ors . v. Essiet & Ors. (1975)3SC.107; Lawal v. Dawodu (1972) 8 and 9 SC.83 at 115 and Mogaji v. Odofin (supra). The writer of the lead judgment of the court below concurred in by the two other members of her panel, after dwelling at length on what constitutes elementary contract , to wit: offer and acceptance which she argued were lacking in the case in hand, concluded that the constituents of a valid contract of insurance being absent, Respondent's defence must perforce be allowed to subsist. After setting aside the award of N50,000.00 damages to the Appellant, in what I think is an erroneous decision, the court below in making a consequential order then commanded that "The sum of N449.05 and N2,694.30(sic) paid to the appellant's agent to be refunded to the Re-

spondent." This later order constitutes the background to the two issues deployed to attack the decision which I have no hesitation in answering in the negative. The learned Justices of the court below were therefore clearly wrong to have held that there was no valid contract. See Okubule v. Oyagbola (1990) 4 NWLR (part 147) 723. In McGillivray & Parkington on Insurance Law 6th Edition page 86, the learned authors said:

"There is no Rule of Insurance Law that there can be no binding contract of insurance until the premium has been actually paid or the policy has been issued. Once the terms of the insurance have been agreed upon by the parties, there is prima facie binding contract of insurance, and the assured is obliged to pay a premium as agreed while the insurers for their part must deliver a policy containing the agreed terms."

In the instant case, the respondent knew that there was a valid and subsisting contract between it and the deceased. Hence, in its letter informing the latter of the dismissal of its agent (Mr. S. A. Onuh), it stated inter alia:

"Payment of premium by you should be made direct to this office."

This court had held in Royal Exchange v. Chukwurah (1976) 11 SC 295 at 301-303 that the terms in a proposal form were binding on the parties. Also in The Northern Assurance Co. Ltd V. Wuraola (1969) All NLR 14, this court held that proposal form forms part of the contractual relationship notwithstanding the fact that the insurer has not issued a policy to the insured. The court below abysmally misconceived the case and its judgment cannot be allowed to stand.

ISSUE 3:

This issue asks: was there a valid contract? or fully stated: considering the pleadings and evidence, was there a valid contract of insurance before the death of the deceased between the parties?

The preponderance of evidence, oral and documentary, decided cases as well as the circumstances of the instant case, point irresistibly to a positive answer. On the principle laid down in National Insurance Corporation of Nigeria v. Power and Industrial Engineering Co. Ltd. (supra) this court quoting with approval from the decision of the trial

judge said:

"At the High Court, the learned trial judge Belgore, J. dealing with this question in his judgment said:

"From the moment the proposal was made, accepted and the demanded premium paid, a valid contract was subsisting between the plaintiff and the defendant," (underlining is mine for emphasis). B

The principle laid down above albeit coming as it does from the High Court, is in my view, as solid as rock which I uphold as applicable to the instant case. See Bioku v. Light Machine Industry (Nig) & Anor (1986) NWLR (part 39)42. C

The circumstances in which Exhibit B. - (the proposal form of insurance), Exhibit C- (the duplicate additional statement) and Exhibit D - the (the type written temporary receipt issued on behalf of the Respondent) came into being (notwithstanding that Exhibit 1-letter requesting the deceased to submit an X-ray and other health forms which appellant denied as having been received by him, estop the Respondent from pleading or asserting otherwise than that it is the disclosed principal of Mr. S.A. Onuh, their agent and that the parties were ad idem on their contractual relationship and obligations. It is immaterial that by Exhibit 'E' -a belated letter of termination of the appointment of Mr.S.A.Onuh, which also contained a purported warning given by the Respondent that any person dealing with that agent did so at his own risk, did not terminate the contract of insurance with the deceased/third party. It having already been made and binding between the parties, See Borstead on Agency, page 1, Article 1 and Freeman .v. Buckhurst Park Properties Mangnal Ltd. (1964) 1 All E.R. 630 at 644. D E F

It is for these reasons but particularly the ones contained in the leading judgment of my learned brother Kutigi, JSC that I too allow this appeal and set aside the decision of the court below. I abide by the consequential orders contained in the leading judgment inclusive of the order for costs G H

IGUH JSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother Kutigi, J.S.C. and I agree entirely that there is merit in this appeal and that the same ought to be allowed.

B The facts that gave rise to this appeal have been adequately set out in the leading judgment and I need not recount them in any detail any more. It suffices to state that the central issue for consideration in this appeal is whether or not there was a concluded valid and enforceable contract of insurance between the deceased, Jesse James Ngillari, and the respondent. The learned trial judge had held that there was a valid contract of insurance between them. This is as against the finding of the court below that no such contract had materialised. The Court of Appeal, in the leading judgment of Mukhtar, J.C.A. with which Adio, D J.C.A. as he then was, and Okezie, J.C.A. agreed, had stated as follows-

"Negotiation was commenced, yes, but no valid insurance subsisted as a result of the negotiation. The elements of offer and acceptance by parties, that constitute valid contract are lacking. Consequently, E the learned trial judge was in error when she held that there was a valid contract."

It is not in dispute that one Mr. S.A. Onuh who negotiated the transaction in issue with the deceased Jesse James Ngillari was at all material times an accredited agent of the respondent. The evidence of F the appellant, the Administrator of the estate of the deceased, was that he was in his office with the deceased on the 1st day of March, 1984 when the said Mr. Onuh invited the deceased to take out a life policy with his principal, the respondent company. The deceased agreed and duly completed the respondent's proposal form, Exhibit B, together with the additional statement, Exhibits C, with the assistance of Mr. Onuh who then demanded payment of N449.05 deposit premium. The Appellant duly G paid the deposit to the respondent's agent. A further payment of H N2,694.30) was paid the following day by the deceased to the said Mr. Onuh to cover the premium from 1st March, 1984 to the end of December, 1985 as agreed to by the parties.

The appellant went further to state the precise terms ad condi-

tions of the contract as agreed upon between the parties as contained in the proposal form, Exhibit B. In effect, the deceased insured his life for 30 years in the sum of N50,000.00 with interest thereon with effect from the 1st day of March, 1984. It was not disputed that the respondent's agent, Mr. Onuh, was authorised to demand and collect premium from an insured on behalf of the respondent. B

The deceased died on the 17th August, 1985 before the official receipts for the premiums paid to the respondent and his insurance policy were delivered to him. The respondent failed to pay the agreed sum of N50,000.00 with the accrued interest to the deceased's estate under the said contract of insurance hence this action. C

There can be no doubt that an ordinary contract of insurance, like any other contract, is created where there has been an unqualified acceptance by one party of an offer made by the other party. So long as the matter is still under negotiation, it is beyond argument that there would not have been reached, any consensus ad idem between the parties to the transaction hence there would have been no concluded contract as at such a stage. D

To constitute a contract of insurance there must be a clear offer by one party to which there must equally be an unqualified acceptance by the other party. A prima facie binding insurance contract comes into existence the moment an insurance proposal in the normal form is accepted unequivocally without qualification by the insurers. But so long as the matter is still under negotiation, there is no contract. See Allis - Chalmers Co. V. Maryland Fidelity and Deposit Co. (1916) 144 L.T.433, H.L. Such proposal form generally sets out the precise terms upon which the insurers are prepared to contract and such terms, once accepted by the proposer and submitted to the insurers, are binding on the parties. Thus, by completing, signing and returning the proposal form to the insurers, the proposer commits himself to those terms and undertakes to pay whatever the insurers may charge by way of premium. See H Halsbury's Laws of England, 4th Edition, Vol. 25, Paragraph 398 at page 221. E F G

Where, therefore, a proposal form containing the material terms

Ngillari v. NICON (1998) 6 KLR Onu JSC Upon which the insurers are prepared to contract is accepted unconditionally, the contract is deemed complete and the insurers are bound to issue, and the proposer to accept, a policy of insurance in accordance with the terms stipulated in the said proposal form. See Addie and sons .v. Insurance corporation Ltd (1898) 14 T.L.R. 544.

I think it ought to be observed that whereas in non marine insurance contracts, such as the one under consideration, the usual practice is for the proposer to complete, sign and return the proposal form to the insurers , there is no legal necessity on his part to complete any proposal form before a valid and enforceable contract may arise. It is only in marine insurances transactions that writing is a conditio sine qua non for an enforceable contract to arise. It seems to me that the law, in so far as non-marine insurance transactions are concerned, is that even an oral contract of such insurance is valid so long as it is reasonably clear that there is a definite intention on the part of the parties to enter into such a contract provided, however, the parties concerned are in consensus ad idem on the fundamental essentials of such insurance contract. Indeed, as the learned authors of Halsbury's Laws of England, 4th Edition, Volume 25, paragraph 399 at page 222 put it-

"Indeed, although writing is necessary in marine insurance, in other forms of insurance there is no legal necessity. Any positive act indicative of an intention to create a contract may be sufficient acceptance; for example receipt of the premium without demur or qualification or conduct precluding the insurers from disputing receipt of the premium. Even a demand for the premium may be sufficient."

(Underlining supplied).

See too Harrington v. Pearl Life Assurance Co. Ltd (1914) 30 T.L.R. 613 C.A. Xenos V. Wickham (1866) L.R. 2 H.L. 296 at 308.

Accordingly, It seems to me that even a parol contract of non-marine insurance may be binding and enforceable, so long as all the fundamental essentials of such contract are present. See Halsbury Laws of England, Ibid, Paragraph 405 at page 225. Consequently any document which fully contains the fundamental essentials or terms of an insurance

contract may, it seems be treated as an insurance policy particularly as there is no requirement of a statutory or formal document to create a contract of insurance. Where, therefore, a contract of insurance is created by any binding means that, to all intents and purposes, must be regarded as the "policy".

Finally on the general law in relation to contracts of non-marine insurance, it has been stated with approval that there is no rule of law stipulating that there can be no valid and enforceable contract of insurance until the premium has been actually paid or the policy has been issued. As the learned authors of MacGillivray and Parkington on Insurance Law, 6th Edition, page 86 put it-

"Once the terms of the insurance have been agreed upon by the parties, there is prima facie a binding contract of insurance, and the assured is obliged to pay a premium as agreed, while the insurers for their part must deliver the a policy containing the agreed terms."

Once the contract of insurance is established, the terms in the proposal form constitute part of the contractual relationship between the parties, and it will make no difference that the insurer has not yet issued a policy to the insured. See The Northern Assurance Co. Ltd. v. Wuraola (1969) All N.L.R. 14.

Turning once again to the relevant aspects of the facts of the present case, it is not controverted that the appellant is the administrator of the estate of the deceased Jesse James Ngillari. It is also not in dispute that on the 1st March, 1984, the respondent's agent, one Mr. S.A. Onuh, in the course of his employment, approached the deceased and persuaded him to enter into combined Endowment/Life Insurance contract with the respondent. Consequently, the said agent offered the respondent's proposal form containing the terms of the contract to the deceased who with the assistance of the respondent's agent Completed and signed the same and submitted it to the said agent for necessary action.

More importantly, is the fact that on the agent's request for the necessary premium, the deceased on the same 1st March, 1984 paid the sum of N449.05 as demanded being the first instalment thereof. Again, on demand, the deceased, the following day, paid an additional lump sum

of N2,694.30 to the respondent's agent to cover the whole premium up to December, 1985. A typewritten receipt was issued by the agent to the deceased with a promise to deliver the official receipt along with the policy certificate in three days time. These documents were never issued to the deceased who died on the 17th August, 1985.

Upon a close analysis of the principles of law above enunciated, there can be no doubt whatever that on the facts of this case, a valid and enforceable contract of insurance was entered into between the late Jesse James Ngilliari and the respondent. This contract was concluded when the respondent's proposal form with the terms of the contract were unconditionally accepted, signed and returned to the respondent's agent who thereupon demanded and collected the first premium of N449,05 and the second instalment of N2,694.30 to cover the premium from 1st March, 1984 to the end of December, 1985. The Court of Appeal, with profound respect, was therefore in grave error when it held as follows-

" With the payment of the deposit coupled with the mere completion of Exhibit 'B' which merely contained information, I fail to perceive a valid contract existing in so far as the present case is concerned, the only action taken so far was the filling of Exhibit B and payment and a policy has not even materialised."

In the light of the foregoing, issue 3 must be resolved in favour of the appellant.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Kutigi, J.S.C. that I too allow this appeal and set aside the decision of the court below and restore the judgment of the trial court. I abide by the consequential orders, including those as to cost, made in the said judgment.