

SUPREME COURT OF NIGERIA
FRIDAY 12TH DECEMBER, 2003. SC. 136/1990
CORAM:- S. M. A. BELGORE, I. L. KUTIGI, S. U. ONU,
E. O. OGWUEGBU, Y. O. ADIO, JJSC

JESSICA TRADING CO. LTD APPELLANT
AND
BENDEL INSURANCE CO. LTD RESPONDENT

ACTIONS - Cause of action - Applicable law - The law applicable to a matter is the one in force - When the incident in question occurred (H1)

CONTRACTS - Contract of insurance - Meaning - By Marine Insurance Act 1961 s. 3 - Such contract is one whereby insurer undertakes to indemnify the assured - In manner agreed against marine losses (H2)

STATUTES - Insurance - Contract - Policy - Marine Insurance Act s. 2 refers to marine policy - Which is a unilateral undertaking by insurers - To pay sum insured on happening of specified event (H3)

INSURANCE - Document - Interpretation - Where a statement in a document is clear and not ambiguous - It should be given its literal meaning (H4)

CONTRACTS - Insurance - Voyage & time policy - Distinction - The former refers to insurance of subject matter from one place to another - While the latter refers to insurance for a definite period of time (H5)

CONTRACTS - Insurance - Precautions - The insured is to ensure inter-alia that the policy contains a “continuation clause” (H6)

CONTRACTS - Insurance - Liability - Where loss was due to damage to goods in accident - Which occurred after expiry of the policy - Insurer will not be liable to indemnify the insured (H7)

JUDGMENTS - Slip - Effect - It is not every slip of a judge that will result in his judgment being set aside - Save where same affects the decision appealed against (H8)

FACTS

Appellant (the insured) took out a marine cover (Exhibits “D” to “D8”) from respondent (the insurer) in relation to his cargo which was being shipped from Europe to the port in Warri, Nigeria. Upon payment of the premium, appellant was issued with a marine certificate of insurance (Exhibit “F”). An endorsement as per open cover No. MAR. 3195/8/77, was made on Exhibit “F”, and it was subject to the condition that Exhibit “F” was to terminate immediately after completion of discharge of the goods insured from the Overseas carrying vessel at the final port of discharge. Exhibit “D” to “D8” was otherwise known as open cover No. MAR. 3195/8/77.

However, the ship which carried the consignment of sugar, got involved in an accident at Abidjan. The parties held a meeting in relation to the matter where they agreed on certain terms which were set out in a letter, referred to as “compromise agreement”. Appellant allegedly complied with the terms of the compromise agreement, but respondent did not perform its own part. It was for that reason that appellant instituted this action at the Federal High Court. After the hearing, the learned trial Judge entered judgment for appellant. Dissatisfied, respondent lodged an appeal to the Court of Appeal, Benin City Division. The court held that particular loss was exempted from the insurance policy and in any case the policy had expired before the accident in question occurred. Being aggrieved, appellant filed appeal in the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether any of the documents (Exhibits “D” to “D8”, “F” and “T”) on which the appellant relied in this case was a marine insurance policy and, if so, the nature of the policy.

2. If the answer to the first part of issue (1) is in the affirmative, whether it could legally be said that, under the provisions of the marine insurance policy or policies, the respondent was liable to indemnify the appellant for the loss or damage, if any, suffered by the appellant as a result of the accident involving the vessel, M.V. Vori at Abidjan (West Africa) on the 4th September, 1978.

3. If the answer to the question raised under issue (2) is in the affirmative, what was the nature and extent of the indemnity, if any?

4. Whether the court below was right in dismissing the cross-appeal of the appellant in its entirety.”

HELD (Unanimously dismissing the appeal per **ADIO JSC**)

Cause of action - Applicable law

1. For the avoidance of doubt, one of the preliminary matters that must be noted is that the law that is applicable to a matter was the law that was in force when the incident in question occurred. For that reason, the legislation that was applicable in this case was the Marine Insurance Act, 1961. Therefore, the words, “the Act” wherever they occur in this judgment, except where it is otherwise stated, mean the Marine Insurance Act, 1961. (p. 2862 G)

Contract of insurance - Meaning

2. A contract of insurance is, according to section 3 of the Act, a contract - whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the loss incident to marine adventure. (p. 2862 H)

Insurance - Contract - Policy

3. The word “policy” under section 2 of the Act means a marine policy. Its ordinary meaning is that, in form, it is a unilateral undertaking by the insurers to pay the sum insured on the happening of the specified event and, unless and until rectified, is the exclusive record of the contract. (p. 2863 A)

Document - Interpretation

4. There was no evidence whether the respondent ever issued any insurance policy to the appellant pursuant to the undertaking given and set out above. Further, it could not be properly or legally said that Exhibit “F” was based on Exhibit “D”

to “D8” or that it was the authority for the making of Exhibit “F” because Exhibit “D-D8” was no longer in operation at the time that Exhibit “F” was being issued to the appellant on the 13th July, 1978. The court below was, therefore, right in holding that Exhibit “F” was not a marine insurance policy. The statement certifying, in Exhibit “F”, that the respondent would issue a policy/policies in the standard form to the appellant is clear and not ambiguous. Where a statement in a document is clear and not ambiguous it should be given its literal meaning. (p. 2864 E)

Insurance - Voyage & time policy - Distinction

5. A contract for voyage policy and a contract for time policy are not mutually exclusive. Both of them may be included in the same policy. Where the contract is to insure the subject matter “at and from”, or from one place to another or others, the policy is called a voyage policy and where the contract is to insure the subject matter for a definite period of time the policy is called a time policy. A contract for both voyage and time may be included in the same policy. (p. 2865 D)

Insurance - Precautions

6. There was nothing strange, wrong or irregular in the said marine insurance policy (Exhibit “D” to “D8”) except that certain precautions must be taken to ensure maximum and effective protection of the insured, in this case, the appellant. One of the precautions to be taken was for the appellant to ensure that all the vessels carrying its goods from Europe to Warri did so and discharged the goods within the limited period (7th July, 1977 to 6th July, 1978) specified in the policy. Further, if a vessel that left the European Port loaded with appellant’s goods within the limited period would not be able to reach Warri and discharge the appellant’s goods within the limited period, as a result of which the policy would expire, the appellant had to renew the policy so as to cover the appellant’s goods for the time that the vessel would require to get to Warri (its destination) and discharge the appellant’s goods. Another method of taking precaution is for the insured

to ensure that the policy contains what is generally referred to in insurance business as “continuation clause” which automatically continues the insurance after the expiration of the insured period until the ship arrives at her port of destination. (p. 2866 A)

B

Insurance - Liability

7. This is because where the loss which occurred was as a result of damage to the vessel or goods in an accident which happened after the expiry of the policy and before its renewal, the insurer will not be liable to indemnify the insured for such a loss. (p. 2866 D)

C

JUDGMENTS - Slip - Effect

8. It is not every slip of a Judge in his judgment that will result in his judgment being upset. For a mistake to have that result it must be substantial in the sense that it affects the decision appealed against. (p. 2869 H)

D

CASES REFERRED TO

E

Union Bank of Nigeria v. Ozigi (1994) 3 NWLR (Pt. 333) 385

Ezeoke v. Nwagbo (1988) 1 NWLR (Pt.72) 616

Mora v. Nwalusi (1992) 2 SCNLR 73

Fatola v. Mustapha (1985) 2 NWLR (Pt. 7) 438

F

Charlesworth v. Faber (1900) 5 Com. Cas 400

Solicitor General Western Nigeria v. Adebajo (1971) All NLR 178

STATUTE REFERRED TO

Marine Insurance Act 1961, ss. 2, 3, 24

G

BOOK REFERRED TO

Halsbury's Laws of England 4th Ed. Vol. 25 para. 406

REPRESENTATION

H

Appellant absent and unrepresented

R. I. I. Ogbebor, for the Respondents

LEAD JUDGMENT BY ADIO JSC

The appellant (the insured) took out a marine cover (Exhibits “D” to “D8”) from the respondent (the insurer) in relation to his cargo (white sugar) which was being shipped from somewhere in Europe to the port in Warri, Nigeria. The open cover was to “remain open and to attach to all sending made after 7th July, 1977 to 6th July, 1978”. It was one of the terms of the policy that the cover was to terminate immediately after completion of discharge overside of the goods insured from the oversea carrying vessel at the Nigeria Port. Upon paying the premium, the appellant was issued a marine certificate of insurance (Exhibit “F”) on the 13th July, 1978. An endorsement” as per open cover No. MAR. 3195/8/77”, was made on Exhibit “F”, and it was subject to the condition that Exhibit “F” was to terminate immediately after completion of discharge overside of the goods insured from the Oversea carrying vessel at the final port of discharge. Exhibit “D” to “D8” was otherwise known as open cover No. MAR. 3195/8/77.

The ship, M.V. Vori, which carried the consignment of sugar, got burnt off Abidjan. Some of the sugar consignment was salvaged. The parties held a meeting in relation to the matter. They agreed on certain terms which were set out in a letter, Exhibit “T”, otherwise referred to as “compromise agreement”, it was alleged that the appellant complied with the terms of the compromise agreement, Exhibit “T”, but the respondent did not observe and/or perform its own part. It was for that reason that the appellant instituted the present action in which it’s claim was as follows:-

- “1(a) N146,138.18 being cost of 13, 371 bags of lost sugar.*
- (b) N29,375 being money paid to Messrs. Blaesberg which*
- towed the crippled M.V. Vori with its remaining cargo to Warri port.*
- (c) N2,000 being expenditure on overtime services authorised*
- by the defendant.*
- (d) N142,371 being loss suffered by the plaintiff as interest on*
- bank overdraft in that the defendant kept the plaintiff out of plaintiff’s*
- money.*

2. Alternatively payment of the sum of N319,984.19 as indemnification of the plaintiff by the defendant for loss of the plaintiff’s cargo insured by the defendant, for plaintiff’s portion of cargo interest contribution in getting the remains of the vessel carrying the cargo

to Warri, for discharge expenses, and interest on the money lost which was not paid in time."

The learned trial Judge in a considered judgment entered judgment for the appellant with costs assessed at N3,000.00. Dissatisfied with the judgment, the respondent lodged an appeal to the Court of Appeal. Ogundare, J.C.A., who read the leading judgment pointed out that section 24(1) of the Marine Insurance Act, 1961 constituted an absolute bar to the admissibility of evidence of the existence of marine insurance contract in civil proceedings unless embodied in a policy of marine insurance. He also pointed out that the principal documents on which the marine insurance contract in this case revolved were: (a) marine open cover (Exhibit "D" to "D8"), (b) marine certificate of insurance (Exhibit "F"), (c) Bill of lading (Exhibit "G") and (d) compromise agreement (Exhibit "T"). After setting out the provisions of section 24 (1) of the Marine Insurance Act, 1961, he held that one of the aforesaid four documents was a marine insurance policy.

The learned Justice of the court below also held that having regard to the dates inserted in Exhibits "D" to "D8" and "F", the policy was a time policy. In his view, the dates inserted in Exhibits "D" to "D8", Exhibit "F" and Exhibit "T" showed clearly that the Marine Insurance Certificate (Exhibit "F") and the alleged Compromise Agreement (Exhibit "T") could not be properly said to be based on Exhibit "D" to "D8", the open cover policy, which had expired before the issuance of the Marine Insurance Certificate and the making of the Compromise Agreement. He, therefore, concluded that the appellant's goods were not covered by any policy of insurance issued by the respondent at the time of the accident.

There was a cross-appeal on the question whether the damages awarded could be reviewed upwards; interest on the amount awarded; the replacement cost of the export commodity, and devaluation of the naira. The Court below held that particular loss was exempted from the policy and in any case, the policy had expired before the accident in question occurred. What constituted depreciation of the naira was neither pleaded nor proved.

In accordance with the rules of this court, the parties filed and exchanged briefs. It is, however, necessary to deal with certain preliminary matters before giving consideration to the issues identified

for determination in the briefs filed by the parties. Altogether, six issues for determination were set out in the appellant's brief while six issues were set down for determination in the respondent's brief. I think that by now the issues involved or necessary to be resolved for the determination of this case have been narrowed. The crucial issue
 B is whether under the provisions of the open cover policy (Exhibit "D" to "D8"), the Marine Insurance Certificate (Exhibit "F") or the Com-
 promise Agreement (Exhibit "T") either alone or in combination with one another it could rightly or legally be said that the respondent was
 C liable to indemnify the appellant for the loss or damage, if any, suf-
 fered by the appellant as a result of the accident involving the ship,
 M.V. Vori at Abidjan (West Africa) on the 4th September, 1978. Hav-
 ing regard to the issues set down by each party in its brief and the
 circumstances mentioned above, I am of the view that the following
 D issues set out hereunder are reasonably sufficient for the determina-
 tion of this appeal;

- "1. Whether any of the documents (Exhibits "D" to "D8", "F" and "T") on which the appellant relied in this case was a marine insurance policy and, if so, the nature of the policy.*
- E *2. If the answer to the first part of issue (1) is in the affirmative, whether it could legally be said that, under the provisions of the ma-
 rine insurance policy or policies, the respondent was liable to indem-
 nify the appellant for the loss or damage, if any, suffered by the ap-
 F pellant as a result of the accident involving the vessel, M.V. Vori at
 Abidjan (West Africa) on the 4th September, 1978.*
- 3. If the answer to the question raised under issue (2) is in the affirmative, what was the nature and extent of the indemnity, if any?*
- 4. Whether the court below was right in dismissing the cross-
 G appeal of the appellant in its entirety."*

**For the avoidance of doubt, one of the preliminary mat-
 ters that must be noted is that the law that is applicable to a
 matter was the law that was in force when the incident in ques-
 tion occurred.** See *Fatola v. Mustapha*, (1985) 2 NWLR (Pt.7) 438.
 H **For that reason, the legislation that was applicable in this case
 was the Marine Insurance Act, 1961. Therefore, the words,
 "the Act" wherever they occur in this judgment, except where
 it is otherwise stated, mean the Marine Insurance Act, 1961.
 A contract of insurance is, according to section 3 of the Act,**

a contract - whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the loss incident to marine adventure. The word "policy" under section 2 of the Act means a marine policy. Its ordinary meaning is that, in form, it is a unilateral undertaking by the insurers to pay the sum insured on the happening of the specified event and, unless and until rectified, is the exclusive record of the contract. See Halsbury's Laws of England, 4th Ed. Vol. 25 para. 406. The exclusive nature of a policy of insurance, as evidence of the contract of marine insurance, was affirmed by section 24 (1) of the Act which provided, inter alia, as follows:-

"24.(1) Subject to the provisions of any statute, a contract of marine insurance shall not be admissible in evidence unless it is embodied in a marine policy in accordance with the form in the first Schedule to this Act or to the like effect."

In view of the fundamental importance of a policy of marine insurance contract one would appreciate the necessity for determination of the question raised under issue (1) above which was whether any of the documents on which the appellant relied on the alleged respondent's liability was a marine insurance policy and, if so, the nature of the Policy. The court below identified four principal documents on which the marine insurance contract, in this case, revolved. They were:

"(a) Exhibit "D" - "D8": Marine Open Cover effective from 7th July, 1977 to 6th July, 1978;

(b) Exhibit "F": Marine Certificate of Insurance effective from 13th July, 1978;

(c) Exhibit "G" Bill of Lading of 21st July, 1978 endorsed to plaintiff/respondent;

(d) Exhibit "T": Compromise Agreement B/C/MAR/98/78 of 3rd April, 1979"

After due consideration of the aforesaid principal documents, the court below came to the conclusion that Exhibit "D" to "D8" was a marine insurance policy. It was common ground that Exhibit "D" to "D8" was a marine open cover. A maritime open cover issued under a contract of marine insurance is a floating policy of marine insurance and it was the main contract. See National Insurance Corporation of

Nigeria v. Power and Industrial Engineering Co. Ltd., (1986) 1 NWLR (Pt.14) 1 at Pp. 18 & 19. Different consideration applied to the document called Marine Certificate of Insurance, Exhibit "F". Ogundere, J.C.A. expressed the view that the certificate, Exhibit "F", was not a policy and it did not contain all the terms of the policy. The other
B Justices (Achike and Ejiwunmi), JJ.C.A. agreed with him.

The submission made for the appellant was that Exhibit "F" itself was insurance policy. The respondent's contention was that the document was not a marine insurance policy. Apart from other things,
C it has to be pointed out that endorsements made on, the rubber stamp impressions affixed to, and that statements in Exhibit "F" have implications and or their own meanings. The declaration in Exhibit "F" was that art insurance had been effected with the respondent for the appellant. For the conditions of the insurance, a person, on the
D basis of the endorsement on Exhibit "F", should refer to the conditions set out in Exhibit "D" to "D8". Indeed, it was clear from the contents of Exhibit "F" that the document was not a policy and that it never purported to be one. The opening statement immediately below the heading of Exhibit "F" was as follows:-

E *"This is to certify that BENDEL INSURANCE COMPANY LIMITED have undertaken to issue policy/policies of insurance on the standard form of the companies combined policy in which will be embodied the insurance declared hereunder to have been effected."*

F ***There was no evidence whether the respondent ever issued any insurance policy to the appellant pursuant to the undertaking given and set out above. Further, it could not be properly or legally said that Exhibit "F" was based on Exhibit "D" to "D8" or that it was the authority for the making of Exhibit "F" because Exhibit "D-D8" was no longer in operation at the time that Exhibit "F" was being issued to the appellant on the 13th July, 1978. The court below was, therefore, right in holding that Exhibit "F" was not a marine insurance policy. The statement certifying, in Exhibit "F", that the respondent***
G
would issue a policy/policies in the standard form to the appellant is clear and not ambiguous. Where a statement in a document is clear and not ambiguous it should be given its literal meaning. See Solicitor General, Western Nigeria v. Adebajo (1971) All NLR 178 cited with approval in Union Bank of Nigeria v.
H

Ozigi, (1994) 3 NWLR (Pt. 333) 385. The appellant did not produce any marine policy issued by the respondent to the appellant pursuant to the aforesaid statement in Exhibit "F". The answer to the question raised under the first part of issue (1) is that the only principal document upon which the appellant relied which was a marine insurance policy was Exhibit "D" to "D8".

It is now necessary to deal with the second part of the question raised under issue (1) that is, to find out the nature of the marine insurance cover policy, Exhibit "D" to "D8". I have found it more convenient to deal with the question raised under the second part of issue (1) and the question raised under issue (2) together. The learned counsel for the appellant submitted that it was a voyage policy while the contention for the respondent was that it was a time policy. There was a misconception which seemed to have led to the confusion or complication in this case. **A contract for voyage policy and a contract for time policy are not mutually exclusive. Both of them may be included in the same policy. Where the contract is to insure the subject matter "at and from", or from one place to another or others, the policy is called a voyage policy and where the contract is to insure the subject matter for a definite period of time the policy is called a time policy. A contract for both voyage and time may be included in the same policy.** See section 27 of the Act. The conclusion arrived at by the court below was that Exhibit "D" to "D8" was a time policy because its period and date of attachment specified therein was "on or after 7th July, 1977 to 6th July, 1978." The respondent and the court below were partially right in their contention or view. The appellant too was partially right in its own view that the policy was a voyage policy. After all, the following was inter alia, a statement in the marine policy, Exhibit "D" to "D8":-

"This OPEN COVER is effected to insure for the voyage and in the conditions named therein, the interest specified herein shipped within the limited period mentioned herein whether by or for the account of the ASSURED during the attachment of this insurance"

The voyage was from the European port (that is, in Europe) to Warri in Nigeria and the period and date of attachment, which was one of the conditions of the policy, was 7th July, 1977 to 6th July, 1978. In the circumstance, a contract for both voyage and a contract

for time were included in the same policy, Exhibit “D” to “D8”. ***There was nothing strange, wrong or irregular in the said marine insurance policy (Exhibit “D” to “D8”) except that certain precautions must be taken to ensure maximum and effective protection of the insured, in this case, the appellant. One of the precautions to be taken was for the appellant to ensure that all the vessels carrying its goods from Europe to Warri did so and discharged the goods within the limited period (7th July, 1977 to 6th July, 1978) specified in the policy. Further, if a vessel that left the European Port loaded with appellant’s goods within the limited period would not be able to reach Warri and discharge the appellant’s goods within the limited period, as a result of which the policy would expire, the appellant had to renew the policy so as to cover the appellant’s goods for the time that the vessel would require to get to Warri (its destination) and discharge the appellant’s goods. This is because where the loss which occurred was as a result of damage to the vessel or goods in an accident which happened after the expiry of the policy and before its renewal, the insurer will not be liable to indemnify the insured for such a loss.*** See *Lockyer v. Offley* (1786), 1 Term Rep, 252. ***Another method of taking precaution is for the insured to ensure that the policy contains what is generally referred to in insurance business as “continuation clause” which automatically continues the insurance after the expiration of the insured period until the ship arrives at her port of destination.*** See *Charlesworth v. Faber* (1900) 5 Com. Cas 400.

Even if Exhibit “F” was regarded as a policy, the endorsement” as per open cover No. MAR. 3195/8/77 immediately below “*MARINE CERTIFICATE OF INSURANCE*” and “*CONDITIONS OF INSURANCE*” therein was intended or calculated to incorporate or link Exhibit “F” with “D” to “D8” (otherwise known as Open Cover No. MAR.3195/8/77), at any rate, so as to adopt or incorporate the conditions in Exhibit “D” to “D8” into Exhibit “F”. If that was so, all that I have said above concerning Exhibit “D” to “D8” containing a time (7th July, 1977 to 6th July, 1978) and voyage contract in the same policy; the contracts of time and voyage being in the same policy not being irregular; some of the precautions which must be taken to en-

sure maximum and effective protection of the appellant; the consequence of failure to take the precautions; the expiration of the time contract in the policy at a time that the vessel had not reached its destination (Warri); failure to renew time contract before vessel was involved in an accident causing damage to vessel and goods; and the question that the insurer would not be liable to indemnify the insured for the loss thereby caused to the insured, are applicable with equal force to the situation under Exhibit "F".

The appellant could not properly contend that Exhibit "D" to "D8" or Exhibit "F" that adopted and incorporated in itself the conditions contained in Exhibit "D" to "D8", did not expire on the 6th July, 1978, at a time when the vessel in question in this case had not completed the voyage from Europe to Warri and discharged the appellants' goods. Under the heading: "THE FACTS" at page 4 of the appellants' Brief it was stated as follows:-

"By Exhibit D-D8, made on 7.7.77, effective for 12 months and with 6.7.78 as expiry date the parties established between themselves a contract of marine insurance, evidenced by a Marine Open Cover Policy, Exhibit D-D8 in the proceedings"

The foregoing was not all. In paragraph 4.02 under the heading: "ARGUMENT" there was the following statement:-

"4.02 In the entire proceedings there are three instruments establishing contractual relationships (sic) between the plaintiff and the defendant: they are Exhibits D-D8, F and T. The first document, to wit Exhibit D-D8 took effect on 7th July, 1977 and has a life span of 12 months, with 6th July, 1976 (sic) as its terminal (i.e. expiring) date. Thus after close of day on 6th July, 1978. Exhibit "D" - "D8" is functus officio: shipped, even on 6th July, 1978, the SENDING is covered; risk attaches. But shipped even only 1 day later on 7th July 1978 risk does not attach: Exhibit D - D8 has automatically become stale and useless".

If Exhibit "D" to "D8", as stated or contended in the appellant's brief, expired, became stale, and functus officio on 6th July, 1978, when the journey of the vessel carrying appellant's goods to Warri had not been completed, the responsibility was on the appellant to renew the time policy to cover the period between the time of the expiration of the policy up to the time the vessel would be able to complete the voyage and discharge the appellant's goods. As the

appellant did not do so, the respondent was not liable to the appellant for the loss caused by the involvement of the vessel in an accident at the time that it happened.

I now come to Exhibit "T" which, according to the submission made for the appellant, was a document which could support a claim for indemnity by the appellant against the respondent in relation to the loss which occurred as a result of the accident in which the vessel, M.V. Vori, was involved on the way to Warri. The position of the respondent was that Exhibit "T" could not have that effect in law, as it had no legal basis. The view of the court below was that the terms of Exhibit "T" were agreed upon by the appellant and the respondent at a time when Exhibit "D" to "D8", which they believed constituted the legal basis for the said compromise agreement, had expired. Exhibit "T" was, therefore, meaningless and worthless. The legal position in relation to Exhibit "D" to "D8", Exhibit "F" and Exhibit "T" was summarized by the court below as follows:-

"Thus when the respondent was later informed that all was not lost the respondent company approached their insurer, the appellant and agreed Exhibit "T" which was predicated on Exhibit "D" to "D8" which in fact had expired.

In view of the above, the main insurance contract herein, the marine insurance open cover lasting from 7th July, 1977 to 6th July 1978, Exhibit "D" to "D8" cannot be said to incorporate Exhibit "F" the marine certificate of insurance of 13th July, 1978, issued some 7 days after the expiry of Exhibit "D" - "D8" which was not renewed after its expiry. Afortiori Exhibit "D" - "D8" cannot cover the loss of cargo on the motor vessel "Vori" burnt at sea on the 4th September, 1978.

In an effort to gum some paper over that difficulty, Exhibit "T" BIC/MAR/98/78 of 3rd April, 1979, the so-called compromise agreement was concluded and acknowledged by the appellant insurance company. The effort also hit a stone wall and disintegrated because it was not backed by any consideration nor was it under seal. It also offends section 24 (1) of the Marine Insurance Act, 1961; which cannot be waved. (sic)"

I entirely agree with the view expressed above by the court below on the extent, if at all, of the legal effect, if any, of Exhibit "D" to "D8", Exhibit "F" or Exhibit "T". The answer to the question raised

under issue (2) is negative. The respondent was not liable to indemnify the appellant under the provisions of Exhibit “D” to “D8”, Exhibit “F” or Exhibit “T” for the loss suffered by the appellant in connection with the destruction of its goods in the M.V. Vori when it was involved in an accident at Abidjan on its voyage towards Warri.

The next question to be examined is the controversy which arose in connection with the date, “21st July, 1978” which was dealt with in the brief filed by the parties. The complaint of the appellant was that the date “21st June, 1978” which appeared on the face of the bill of lading (Exhibit “G”) showed that the cargo of the appellant was delivered or sent on that date. For that reason, Exhibit “D” to “D8” covered it. According to, the appellant, the date “21st July, 1978,” held by the court below to be the date that the cargo was sent with Exhibit “G” was completely irrelevant. The appellant stated inter alia, as follows in its brief:

“As already stated above, the date 21st July, 1978, is foreign to the entire proceedings and without more, places Exhibit “G” outside the ambit and coverage of Exhibit “D” to “D8”. The date, without more, determines the entire matter brought before the Court of Appeal.”

It is sufficient, in relation to this aspect of the matter, to state that the respondent in its brief pointed out, and I agree with it, that the evidence of the 2nd P.W. (witness for the appellant) was that the bill of lading was endorsed to him by the end of July 1978. The aforesaid endorsement is at the back of Exhibit “G” signed and dated “31/7/78” by whoever endorsed it to the appellant. Certainly, the date “21st June, 1978” on Exhibit “O” was the date that Exhibit “G” was issued but that might not necessarily be the same date as the date on which it was endorsed to the appellant. In any case, the issue now appears academic and not decisive as the inability of the appellant to obtain indemnity from the respondent was due to the fact that the policy covering the appellant’s goods had expired and not renewed at the time that M.V. Vori was involved in an accident. That was a finding which could be legitimately made and which was, in fact, made on the basis of the evidence on record. ***It is not every slip of a Judge in his judgment that will result in his judgment being upset. For a mistake to have that result it must be substantial in the sense that it affects the decision appealed***

against. See Ezeoke v. Nwagbo, (1988) 1 NWLR (Pt.72) 616; and Mora v. Nwalusi (1992) 2 SCNLR 73; (1962) All NLR 681 at P. 689.

In view of the answer to the question raised under issue (2) it is not necessary to consider and/or determine the question raised under issue (3) or issue (4). The appeal has no merit. The judgment of the Court of Appeal on the appeal and the cross-appeal before it is affirmed. This appeal is dismissed with N1,000.00 cost.

BELGORE JSC

I am in full agreement with the judgment of my learned brother, Adio, J.S.C., wherein he concluded that this appeal has no merit. I adopt his reasoning and conclusion as mine in dismissing this appeal. I award N1,000.00 as costs against the appellant in favour of the respondent.

KUTIGI JSC

I have had a preview of the judgment just read by my learned brother Adio, J.S.C. I agree with him that the appeal has no merit. It is accordingly dismissed with N1,000,00 costs against the appellant.

OGWUEGBU JSC

The judgment just delivered by my learned brother Adio, J.S.C. was made available to me in draft. I agree with his reasoning and conclusion. I, too, will dismiss the appeal.

This is an appeal by the plaintiff against the decision of the Court of Appeal, Benin Division allowing the appeal of the defendant to that court and dismissing the plaintiff's cross-appeal.

The facts of the case may be summarised as follows: The plaintiff took out a marine open cover (Exhibits "D"- "D8") from the defendant and it was endorsed on Exhibit "D" - "D8" that it would remain open for the full amount therein stated and attach to all sending made on or after 7th July, 1977 to 6th July, 1978. By a Marine Certificate of Insurance (Exhibit "F") issued by the defendant on 13th July, 1978, the plaintiff paid a premium of N1,092.95 for the insurance of 1000 M.T. white sugar valued N218,589.75 being shipped

at a European Port to Warri Port in Nigeria. It was clearly endorsed on Exhibit "F": "As Per Open Cover No. MAR 3195/8/77." The ship carrying the consignment of sugar, M. V. Vori caught fire and burnt on the high seas off the coast of Abidjan. Some of the sugar consignment was salvaged by a Danish Company which claimed N29,375.00 for its services. At a meeting between the parties on 3rd April, 1979 an agreement was reached between them. The defendant confirmed the agreement in a letter addressed to the plaintiff the same day (i.e. 3rd April, 1979). This letter was admitted in evidence as Exhibit "T". Part of Exhibit "T" reads:

"I hereby write to confirm the acceptability of these conditions by the company for a mutual compromise:-"

(1) That you should collect all available bags of your imported sugar on board M/V Vori and any loss or discrepancy sustained, should be forwarded for settlement.

(2) That you should pay the general average for towage as invoiced to you by Blaesberg and Company which is N29,375.00. However, the necessary receipts for the payment of the said amount should be forwarded for reimbursement.

(3) That the company will be responsible for the over-time liability in respect of the custom men to be posted to the site during discharge."

The plaintiff claimed that it performed its own part of the terms of the agreement and the defendant did not perform its own part hence this action. The plaintiff claimed as follows:-

"(1) Damages for breach of contract of 3:4:79, to wit,

(a) N146,138.18 being cost of 13,371 bags of sugar lost;

(b) N29,375.00 being money paid to Messrs Blaesberg on the authorization of the defendant:

(c) N2,000.00 being expenditure on overtime services authorised by the defendant.

(d) N142,371.01 being loss suffered by the plaintiff as interest on bank overdraft for that the defendant kept the plaintiff out of his (plaintiff's) money.

(2) Alternatively, payment of the said sum of N319,884.19 as indemnification of the plaintiff by the defendant for loss of plaintiff's cargo insured by the defendant, for plaintiff's portion of cargo interests contribution in getting the remains of the carrying vessel and

cargo to Warri, for discharge expenses and interest on the money lost which was not paid at the proper time."

After trial, Akpamgbo, J. gave judgment for the plaintiff. Dissatisfied with the said judgment, the defendant appealed against the decision. The plaintiff cross-appealed in respect of interest which was not awarded and an upward review of general damages as a result of inflation. The defendant's appeal was allowed and the cross-appeal was dismissed. The plaintiff has appealed to this court against the decision of the court below setting aside the judgment of the trial court. Counsel on both sides filed briefs of argument. Issues for determination in the appeal were formulated in the respective briefs of argument. Everything taken together, I think the main issue in the appeal is whether there existed at all material times a valid marine insurance policy issued by the defendant in favour of the plaintiff in respect of the 1000 M.T of white sugar. In that regard, Exhibit "D" - "D8" (Marine Open Cover), Exhibit "F" (Marine Insurance Certificate) and Exhibit "T" (The Compromise Agreement) will be critically considered.

The parties joined issue on the existence or validity of a marine insurance contract. The plaintiff pleaded Exhibit "F" as the contract of marine insurance made between it and the defendant and Exhibit "D" - "D8" as the conditions of the insurance policy effected on 7:7:77 and effective for all sending made on 7:7:77 and up to 6: 7: 78. In paragraphs 5 to 9 of the statement of defence, the defendant averred that:-

1. There was no policy/contract of marine insurance in existence between it and the plaintiff in 1978 or at any other time;
2. Exhibit "F" dated 13:7:78 was issued by the defendant to the plaintiff as Per Open Cover (Exhibit ("D" - "D8") both of which are "Binding in Honour;
3. The Marine Open Cover (Exhibit "D" - "D8") had long expired by the time Exhibit "F" was issued and
4. The said Exhibit "D" - "D8" having expired on 6:7:78 is an ineffectual document vis-a-vis the shipment of the plaintiff's sugar.

The court below rightly found that Exhibit "D" - "D8" is a policy embodying the contract and any certificate of marine insurance following it is subject to it and is an endorsement thereon. See *National Insurance Corporation of Nigeria v. Power and Industrial Engineer-*

ing Co. Ltd. (1986) 1 NWLR (Pt. 14) 1 at 18-19.

Exhibit "F" - a Marine Certificate of Insurance is not in itself a marine insurance policy. It is endorsed to it the following expression:

"As Per Open Cover No. MAR. 3 195/8/77".

This is a reference to the policy Exhibit "D" - "D8".

Exhibits "D" - "D8" is a time policy since it contains two limits of time. It attaches to all sending made on 7:7:77 and up to 6:7:78 both dates inclusive. The policy covered losses occurring between the two dates whether partial or total, even though the extent of loss is only ascertained after 6th July, 1978. See section 27 of Marine Insurance Act No. 54 of 1961 which reads:

"Where a contract is to insure the subject-matter "at and from", or from one place to another or others, the policy, is called a voyage policy; and where the contract is to insure the subject-matter for a definite period of time the policy is called a time policy.. "

The policy Exhibit "D" - "D8" covered the goods of the plaintiff during the period stipulated therein. The fire incident which burnt the plaintiff's consignment of white sugar took place on or about 4:9:78 after the life span of Exhibit "D" - "D8" had expired and the policy did not contain a clause, called the "continuation clause", which continues the insurance after the expiration of the insured period until the ship arrives at her port of destination.

At the time Exhibit "F" dated 13:7:78 came into existence, Exhibit "D" - had expired. The Marine Open Cover (Exhibit "D" - "D8") having come to an end on 6:7:78, it cannot be said to incorporate Exhibit "F". In the circumstance, Exhibit "D" - "D8" did not cover the loss of plaintiff's cargo on the motor vessel M/V Vori which caught fire on 4:9:78. The defendant is therefore not liable to the plaintiff for the loss that resulted from the accident.

The plaintiff has urged in the alternative that Exhibit "T", (letter dated 3:4:79 by the defendant to the plaintiff) was substituted as the agreement reached by the parties after the M/V Vori was brought to Warri port to discharge its cargo including the remains of the plaintiff's cargo. The learned plaintiff's counsel also argued that Exhibit "T" is a kind of estoppel which prevented the defendant from going back from its existence having extinguished Exhibit "F". She relied on the case of Charles Rickard Ltd. v. Oppenheim (1950) 1 K.B. 616. It seems clear that when the parties entered into the com-

promise agreement expressed in Exhibit “T”, they were under a common mistake which was fundamental to the whole agreement. Both parties thought that the Marine Open Cover (Exhibit “D” - “D8”) was still in existence and enforceable. The plaintiff had no valid claim after 6:7:78 on the defendant. If he had no claim on the Marine
 B Open Cover, it is not equitable that he should have a good claim on Exhibit “T”. See *Magee v. Pennine Insurance Co. Ltd.* (1969) 2 All E.R. 891. The doctrine of estoppel does not therefore apply having regard to the common mistake. The alternative claim under Exhibit
 C “T” was rightly rejected by the court below. In the result, Exhibit “T” is not a valid, contractual document which can bind the parties.

For the above reasons and the fuller reasons given in the lead judgment, I, too, dismiss the appeal. I abide by the order for costs made in the lead judgment of my learned brother Adio, J.S.C.
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ONU JSC

I have had a preview of the judgment just delivered by my learned brother Adio, J.S.C. and with it I am in entire agreement that
 E the appeal is lacking in merit and ought therefore to fail. The cardinal or crucial issue for decision as I see it in this case whose facts are straightforward and not in dispute, is whether, considered standing alone or together with the other documentary evidence (otherwise referred to as the principal documents) involved herein, Exhibits “D”
 F to “D8” (the open cover policy otherwise also known as a time policy) bind the parties thereto.

For this to occur, it is pertinent firstly, to determine what the purports of these pieces of documentary evidence are. While Exhibit
 G ‘D’ to ‘D8’ as a marine open cover made pursuant to Section 24(1) of the Marine Insurance Act, Cap. 216 Laws of the Federation had a life span of 12 months and having effect from 7th July, 1977 to 6th July, 1978, Exhibit “F”, constituted a document of marine certificate of insurance issued 7 days after the expiry of Exhibit ‘D’ to ‘D8’.
 H Exhibit G on the other hand, is the bill of lading that came into existence on 21/7/78 after the marine cover had expired while the vessel M.V. Vori was lost at sea off the coast of Abidjan on 4/9/78 long after Exhibit ‘D’ to ‘D8’ had expired. Finally, Exhibit ‘T’, otherwise called a compromise agreement, which was entered into between the ap-

pellant and the respondent but which because Exhibit 'D' to 'D8' had expired before the accident involving the M.V. Vori which perished with its cargo of sugar, became meaningless itself and left to hang in the air for not elongating the life of Exhibit 'D' to 'D8'. Not only did Exhibit 'F' therefore fail to provide any marine insurance cover to the appellant for the loss of the cargo on 4th September, 1978 when the M.V. Vori had its accident, no risk, I venture to add, attached thereto vide section 24(1) Marine Insurance Act, Cap. 216 Laws of the Federation of Nigeria, 1990. Thus, the non-liability of the respondent as the insurer for the loss caused to the cargo on M.V. Vori leaving the appellant without a remedy for the presumed contractual relations founded on any of these documents.

It is for the above reasons and the more elaborate ones proffered in the judgment of my learned brother Adio, J.S.C. that I too dismiss this appeal and make the same orders for costs as assessed therein. Appeal dismissed.

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