

**SUPREME COURT OF NIGERIA**  
FRIDAY 1ST JULY, 2016. SC. 8/2005  
**CORAM:- W. S. N. ONNOGHEN, O. RHODES-VIVOUR,**  
**N. S. NGWUTA, M. U. PETER-ODILI, A. SANUSI, JJSC**

JOMBO UNITED COMPANY LIMITED ..... APPELLANT  
AND  
LEADWAY ASSURANCE  
COMPANY LIMITED ..... RESPONDENT

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INSURANCE - Policy - Commencement - Contract of insurance is created - Where there exists unqualified acceptance by one party of an offer - Made by the other party (H1)

INSURANCE - Policy - Content - Contract of insurance should contain the terms and conditions - And rights and liabilities of parties thereto (H2)

INSURANCE - Action - Proof - To succeed in an action under such a contract - Plaintiff must tie himself within the terms and conditions of the policy (H3)

INSURANCE - Premium - Payment of - Premium is condition precedent to valid contract of insurance - As there cannot be cover in respect of risk - Except the premium is paid in advance (H4)

LEGISLATION - Provisions - Contradiction - By promulgating Marine Insurance Decree 1997 s. 50 - To contradict s. 23 of 1961 Act - Legislature intended to impliedly repeal s. 23 of 1961 Act (H5)

**FACTS**

This action commenced at the Federal High Court Port-Harcourt Division wherein plaintiff/appellant sued defendant/respondent, claiming damages for loss suffered as a result of respondent's breach of contract as well as the profits it would have earned from the availability of funds due to it on other business transaction. Appellant had on the 7<sup>th</sup> March 1997, entered into an agreement with respondent for the insurance of some bales of Icelandic stockfish

**3770 Jombo United. Co. Ltd. v. Leadway Assur. Co. Ltd. (2016) 7**

valued at USD33,880 and some bags of assorted Icelandic fish heads valued at USD122,048. The consignment is to be shipped from Iceland to Port Harcourt, Nigeria and the insurance is for the duration of the voyage. The contract agreement was backed up by two insurance policies which were marked as Exhibits A and B. Appellant has pursuant to the contract agreement, claimed that he paid the premium as agreed upon and sequel to that, respondent issued appellant with the aforesaid insurance policies. Unfortunately, on the 18<sup>th</sup> March 1997, appellant was informed by the shippers that the ship conveying the consignment got lost in the sea. Appellant immediately communicated the ugly development to respondent via a letter.

Thereafter, respondent requested for the shipping documents. Appellant subsequently made a claim of USD156,088 being the value of the insured goods. Respondent thereupon declined liability on the ground that the subject matter of the insurance had already been destroyed as at the date of insurance. It therefore refused to honour its obligation under the agreement despite repeated demands. As a last resort, appellant instituted the action in the Court against respondent. After full hearing in the matter, the trial Court entered judgment in favour of appellant in the sum of N12,482,240.00 being the value of the consignment. Aggrieved, respondent successfully appealed to the Court of Appeal Port Harcourt Division, which set aside the judgment of the trial Court on the ground that no premium was paid before the insurance coverage. Dissatisfied, appellant has appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

(1) Whether the Court of Appeal was correct in holding that Section 50 of the Insurance Decree 1997 had impliedly repealed Section 23 of the Marine Insurance Act 1961, thereby voiding the contract of marine insurance between the parties.

(2) Whether the Court of Appeal was correct in voiding the contract between the parties at the instance of the Defendant/Respondent.

**HELD** (Unanimously dismissing the appeal per

**SANUSI JSC)**

*INSURANCE - Policy - Commencement*

**1. The facts of the case are not in dispute that the agreement for the conveyance of the goods between the appellant and the respondent was entered into on 6th March 1997. Hence, that was the date for the commencement of the contract as clearly shown in the two insurance policies namely Exhibits A and B. It can be recalled that the relevant shipping documents were presented by the appellant to the respondent. The appellant did not however pay the agreed premium to the respondent during the period. Then on 18<sup>th</sup> March 1997 it was informed by the shippers vide a fax message that the ship carrying the appellant's goods got lost in the sea, even though the two marine policies were issued on 10th and 12th March 1997 respectively. Evidence however abounds that the ship left Iceland on 6th March 1997. I must stress here, that a contract of insurance is created only in a situation where there exists an unqualified acceptance by one party of an offer made by the other party. Consequently, if the parties are still in the process of negotiation, then it can be said that there is no valid and enforceable contract. (p. 3780 C)**

*INSURANCE - Policy - Content*

**2. It is my considered view, that a contract of insurance should always contain the terms and conditions of such contract including the rights and liabilities of the parties to the said contract. (p. 3780 G)**

*INSURANCE - Action - Proof*

**3. The important thing to consider in an action on a contract itself and for a plaintiff to succeed in an action under such a contract, it/he must tie himself within the terms and conditions of the policy or contract. (p. 3780 G)**

*INSURANCE - Premium - Payment of*

**4. Consequently, the fundamental purpose of an insurance contract is to give cover for an insurance risk. In other words, where a law states that there is no insurance cover unless premium is prepaid, than in effect it means that the contract is void if no premium is actually pre-paid.**

**Thus, from the contents of the provisions of Section 50(1) of the Insurance Act No.29, 1997 set out above, the premium is a condition precedent to a valid contract of insurance and there cannot be cover in respect of insurance risk UNLESS or EXCEPT the premium therefore is paid in advance.**

**B In the instant case, appellant did not pay any premium to the respondent which is the amount of money to be paid for the insurance policy before the risk of loss of the ship occurred, as such the contract of insurance, is ab initio void as rightly held by the court below. (p. 3780 H)**

**C**

*LEGISLATION - Provisions - Contradiction*

**5. To my mind, the provisions of the later Decree of 1997, which provides a condition contrary to the one in the provisions of Section 23 of the 1961 Act, one can say without any fear of contradiction, that the position provided in Section 23 of the 1961 Act is no longer tenable or applicable by reason that the legislature provides a contrary provisions which can be said to mean that the condition or position provided by Section 23 is no longer valid and no longer subsists. The intention of the legislature by promulgating Section 50 of the Marine Insurance Decree of 1997 to contradict or conflict with Section 23 of the 1961 Act one can say that the legislature intended to impliedly repeal Section 23 of the Act which it has power so to do expressly or impliedly. It is even trite, that where two acts make conflicting or contrary provisions, the implication that the earlier statute is repealed is irresistible as in the present case. My view on this, is that the Lower Court's finding that Section 23 of Insurance Act of 1961 had been impliedly repealed by Section 50 of the Marine Insurance Decree of 1997 cannot be faulted or flawed. I therefore also resolve this first issue against the appellant. (p. 3782 A)**

**H NOTABLE POINTS OF INTEREST**

**RHODES-VIVOUR JSC**

**1. Insurance premium – Meaning of**

Premium is a payment made by the insured to keep an insurance policy alive. It is usually a periodic payment. A contract of insurance

would be void if premium is not paid. (p. 3784 D)

## ***2. Marine insurance – Meaning of***

A marine insurance or contract of marine insurance is an agreement to indemnify against damage to a ship, cargo, or profits involved in a journey by sea. In this case a contract of marine Insurance was negotiated by the parties for the respondent to indemnify the plaintiff/appellant against damage or loss of his consignment of fish in the voyage from Iceland to Nigeria. (p. 3784 D)

## **REPRESENTATION**

C. Ogunji, Esq. with C. Okafor, Esq., for the Appellant  
No appearance for the Respondent

## **CASES REFERRED TO**

AP v. Owoduni (1991) 1 NWLR (pt. 210) 391  
Governor of Kaduna State v. Kagoma (1982) 6 SC 8  
Sodipo v. Lemminkainen (1986) 1 NWLR (pt. 14) 220  
Yadis Nig. Ltd. v. NIC Ltd. (2007) ALL (pt. 3700) 1348  
Ajaokuta Steel Co. v. Corpus Ltd. (2004) 16 NWLR (pt. 899) 369  
Chime v. United Nig. Co. Ltd. (1972) 2 ECSLR 808  
Irukwu v. T.M.I.B. (1997) 12 NWLR (pt. 531) 113  
Crownstar & C. Ltd. v. MV Vali (2000) 1 NWLR (pt. 639) 37  
Murfitt v. Royal Insurance Co. Ltd. (1922) 38 TLR 334  
Tahs ASS v. Akwuzie Ind. Nig Ltd (1995) 14 NWLR (pt. 388) 233  
In Re Turner EX. P. Attwater (1876) 5 Ch. D 27  
Abacha v. Fawehinmi (2000) 6 NWLR (pt. 660) 228  
Ariori v. Elemo (1983) 1 SCNLR 1  
NICON v. Power & Ind. Eng. Co Ltd (1986) 1 NWLR (pt. 14) 1  
Trade Bank Plc v. L.I.L.G.C. (2003) 3 NWLR (pt. 806) 11

## **STATUTES REFERRED TO**

Insurance Decree of 1997, ss. 50, 95  
Marine Insurance Act of 1961, s. 23

## **LEAD JUDGMENT BY SANUSI JSC**

At the Federal High Court Port-Harcourt Division (Trial court), the plaintiff now appellant sued the respondent as defendant at the

trial court for the under listed reliefs as adumbrated in paragraph 19(5) of its statement of claim. The reliefs sought are as follows:

The plaintiff has suffered loss and damages as a result of the defendant's breach of contract as well as the profits it would have earned from the availability of funds due to it on other business transaction.

**PARTICULARS OF DAMAGES SUFFERED**

1. Loss of 121 bales of Icelandic stockfish =US\$33,880
  2. Loss of 1,907 bags of Assorted Icelandic fishHeads - US122,048
- TOTAL = US\$756,02s

C US\$156,029 equivalent in Naira at the rate of N80 to US\$1 = N72,482,240.00

Total Damages claimed = N20,000,000 (Twenty Million Naira Only) being damages against the defendants jointly and severally.

D The facts of the case as could be gathered from the record are briefly summarised below. The appellant herein, entered into an agreement with the respondent on 7th of March 1997 for the insurance of 121 bales of Icelandic stockfish valued at 33,880 US\$ dollars and 1,907 bags of assorted Iceland fish valued at 122,048.00 US dollars  
E for duration of the voyage which commenced in Iceland to Port Harcourt. The contract agreement was backed or supported by two insurance policies which were marked as Exhibits A and B. Prior to the execution of the contract agreement, the appellant presented relevant shipping documents to the respondent at the latter's request  
F vide his letters marked Exhibit C, D and D1 which were the invoices, as well as Exhibits D2 and D3 which were the bills of lading, all these documents were submitted to the respondent under a covering letter dated 8th April 1997 which was also exhibited at the trial and  
G marked Exhibit D4.

The appellant, has pursuant to the contract agreement, claimed that he paid the premium as agreed upon and sequel to that, the respondent issued the appellant with "Insurance Policies" also exhibited at the trial and marked as Exhibits A and B. Part of the Insurance  
H Policies i.e. Exhibits A and B read as bellow:-

*"We the Assurances Leadway Assurance Company Limited, hereby agree in consideration of the payment of a premium, to be agreed, to insure against loss, damages liability or expenses in the manner hereinafter provided"*

On the 18th March 1997, the appellant received fax message from the shippers that the ship carrying the consignment got lost in the sea. The fax message was tendered in evidence at the trial, admitted and marked as Exhibit F1 and the appellant immediately communicated this development to the respondent through a letter.

Thereafter, the respondent wrote exhibit C requesting for shipping documents i.e. exhibits D, D1, D2 and D3. He subsequently made a claim of 156,088US dollars being the value of the insured goods. The respondent thereupon declined liability on the ground that the subject matter of the insurance had already been destroyed as at the date of insurance through Exhibit F2. It therefore refused to honour its obligation under the agreement despite repeated demands. As a last resort, appellant instituted an action against the respondent.

Before the commencement of hearing in the suit, the respondent filed a motion on notice seeking the dismissal of the suit/action on the following grounds:-

(i) That by virtue of Section 50 of Insurance Decree of 1997, there can be no valid contract of marine insurance without payment of premium.

(ii) That the goods were not in existence as at the time the contract was entered into.

The trial court heard the motion and later dismissed same after it duly considered the applicable laws and finally entered judgment in favour of the appellant in the sum of N12,482,240.00 being the value of the consignment. Thus, the trial court in its judgment found in favour of the appellant at page 196 as below:

*"The defendant undertook to indemnify the plaintiff in the event of any loss, incident to marine adventure the afore mentioned amount to my mind was what was in contemplation of the parties at the time they made the contract as the probable breach of it, anything outside that amount was not in my humble opinion, contemplated by the parties. The judgment is therefore hereby entered in favour of the plaintiff against the defendant in the sum of only N12,482,240.00."*

Obviously dissatisfied by the judgment of the trial court, the respondent successfully appealed to the Court of Appeal [the court below] which set aside the judgment of the trial court after allowing the appeal.

In its finding while allowing the appeal, the court below held

thus:-

*“In the event, I rule that no liability attaches to the appellant on the transaction and the contract of marine insurance between the appellant and respondent is void and unenforceable as no premium was paid before this coverage. The appeal succeeds, it is allowed.*

B *The judgment of the court below delivered on 1st November 2001 is set aside. I make no order as to costs”*

C Appellant herein, became dissatisfied with the judgment of the court below hence it appealed to this court by filing a notice of appeal dated 19th November 2004 containing three grounds of appeal. Briefs were later filed and exchanged in view of the practice and rules on this court.

D In the brief of argument filed on 17/3/2005 by the appellant, two issues for determination were encapsulated from the grounds of appeal by the appellant which said issues are set out below:-

(1) Whether the Court of Appeal was correct in holding that Section 50 of the Insurance Decree 1997 had impliedly repealed Section 23 of the Marine Insurance Act 1961, thereby voiding the contract of marine insurance between the parties.

E (2) Whether the Court of Appeal was correct in voiding the contract between the parties at the instance of the Defendant/Respondent.

F Upon being served with the appellant’s brief of argument, the respondent also filed its brief of argument on 17/3/2005 and therein a sole issue for determination of the appeal was raised and the issue reads as follows:-

G *“Whether in law, a valid contract of insurance could exist before 6th March 1997 or at all, when the cargo was lost when no premium was paid before 10th and 12th March 1997”*

H Looking at the two sets of issues raised by the learned counsel for the parties, it is my view that it is apt to treat this appeal based on the two issues raised in the appellant’s brief of argument. I shall therefore be guided by them in determining this appeal, as they subsumed the lone issue raised in the respondent’s brief and I will consider them together.

In arguing the first issue, the learned counsel for the appellant submitted that the court below was wrong in its findings because the Marine Insurance Act of 1961 is a special legislation which can dero-



gate from Insurance decree of 1997. He stated that the trial court gave reason for its decision that the provision of Section 50 of the Insurance Decree 1997 would not apply to a contract of Marine Insurance (See page 5 of the appellant's brief. He also quoted a portion of the trial court's judgment at pages 5 to 6 of his brief of argument and submitted that the trial court referred to the decision in the cases of Governor of Kaduna vs. Lawal Kagoma ANLR 160 at 172 and BAMIGBOYE vs ADMINISTRATOR-GENERAL 14 WACA 616 at 619. He argued that neither the respondent nor the Court of Appeal, showed that the trial court was wrong in its application of the maxim of "*specialia generalibus derogant*" before coming to its conclusion. In further submission, learned counsel argued that the court below was wrong in its application of the above maxim as there was no ground of appeal or argument by the respondent at the court below requesting the specific and fundamental basis of the trial court's decision and consequently, he argued that there was no basis for setting aside the judgment of the trial court. He referred to GREGORY'S case (1596) 6 Cox Rep 195. B C D

In a further submission, the learned counsel for the appellant argued that the Marine Insurance Act 1961 is a special provision/ legislation dealing with insurance generally. He submitted that the Marine Insurance Act 1997 is a general provision Section 50 of the Marine Insurance Decree of could not rip up Section 23 of the Marine Insurance Act of 1961 which the law makers made specially and exclusively for contract of marine insurance. He said the decision of the Court of Appeal was silent on the complaint of the appellant that had the law makers intended to repeal any provision of the Marine Insurance Act it would have done so the same way it did in Section 95 of the Insurance Decree of 1997 where it was expressly stated that in case of conflict between the provisions of the Decree and the provisions of the Act, the provisions of the Decree will prevail. Based on these submissions he urged this court to set aside the decision of the court below. E F G

On the second issue for determination regarding the question whether the court below was right in voiding the contract between the parties at the instance of the defendant/respondent, the learned counsel for the appellant submitted that the court below was wrong in law to have voided the contract between the parties at the H

defendant's/respondent's instance because the respondent cannot turn round to seek the nullification of the contract on the basis of non-payment of premium at the time of the contract.

He said the party cannot waive statutory provision designed for his own protection. He cited and referred to the cases of AP vs  
 B OWODUNNI (1991) 1 NWLR (Pt.210) 391 at 415/416 and ARIORI  
 v ELEMO. He also argued that the issuing of Exhibits A and B with-  
 out insisting on prior payment of premium, the defendant/respon-  
 dent is estopped from relying on her own conscious act to void the  
 C contract she benefited from. He urged this court to reverse the deci-  
 sion of the court below and allow the appeal.

In reacting to the above submissions by the appellant's learned  
 counsel, the learned counsel for the respondent, especially on the  
 core issue of none payment of premium, referred to Section 24(1) of  
 D Marine Insurance Act of 1961 which makes it mandatory that a con-  
 tract of Marine Insurance be embodied in a policy. He said a contract  
 which was not so embodied is inadmissible as was held in the case of  
 NATIONAL INSURANCE CORPORATION OF NIGERIA VS POWER  
 INDUSTRIAL ENGINEERING Co. LTD (1986) 1 NWLR (Pt.14) 1  
 E where it was held that a court cannot take cognizance of a marine  
 insurance contract not embodied in a policy, even if it was admitted  
 without objection.

Learned counsel contended that under the 1997 Decree, it is  
 clear that until premium is paid, there cannot be a valid and enforce-  
 F able insurance contract as the insurance contract is void and unen-  
 forceable. He again argued that, even if the parties had agreed in a  
 contract of marine insurance prior to the sinking of the ship and a  
 binding contract is formed, such contract remains incomplete with-  
 G out the payment of aforementioned premium and the party cannot  
 benefit from the purported contract. In a further submission, the  
 respondent's counsel cited Section 1 of the Insurance Decree 1997  
 which stipulates that the Decree shall apply to all insurance business  
 and insurers other than the business carried on or by insurer listed  
 H and described under the said provision. He added that the use of the  
 word "shall", in the said provisions is mandatory and that it applies to  
 marine insurance contract.

By way of further expatiation, learned counsel for respondent  
 stated that Section 2(1) of the Decree had classified insurance busi-

ness into two, namely:- (a) General Insurance business and (b) Life Insurance business. He said the first category i.e. General Insurance, was further sub divided into 14 classes. He added that Section 2(3)(f) of the Decree had also mentioned Marine and Aviation Business as the type of insurance business which is covered by Section 1 of the Decree, while Section 2[3] of the Decree listed goods in transit, insurance by road, water and sea. According to the learned counsel, the law is intended to apply to marine insurance and impliedly repealed that aspect of the 1961 law. With regard to the implied repeal enactment the learned counsel argued that laws can be repealed either expressly or impliedly because provisions of a later enactment are aimed at amending the earlier provisions in the repealed, or earlier or previous law, especially where there exists provisions inconsistent with the earlier or previous law. See the case of GOVERNOR OF KADUNA STATE VS KAGOMA (1982) 6 SC 8.

With regard to loss of cargo before the contract became complete, the respondent's counsel referred to the decided authority of POWER AND ENGINEERING case (supra) where it was held that a court cannot take cognizance of a Marine Insurance contract not embedded in a policy even if it was admitted without objection. As regards the construction of insurance policy, the respondent's counsel contended that mandatory provisions of a statute cannot be waived by a party. In his opinion, a court will not enforce a contract based on illegality and also will not permit a contract founded on illegality to be effective. See SODIPO VS LEMMINKAINEN & ANOR (1986) 1 NWLR (Pt.14) 220. He then concluded his submission by arguing that the Marine Insurance Decree of 1997 bears a mandatory provision which in its very nature and language may not be waived by a party to an insurance contract including contract for insurance of marine nature. He finally urged this court to affirm the decision of the court below.

I will consider the second issue for determination proposed by the appellant which queries whether the court below was correct in voiding the contract between the parties at the respondent's instance. In dealing with this issue I deem it apt to reproduce and consider the two provisions on which the arguments of the parties in this appeal revolve or hinged their respective arguments on. Section 23 of the Marine Insurance Act 1961 reads thus:-

*“A contract of marine insurance shall be deemed to be concluded when proposal of the insured is accepted by the insurer whether his policy is the issue or not and for the purpose of showing when the proposal was accepted reference may be made to ship, a covering note or other customary memorandum of the contract.”*

B On the other hand Section 50(1) of the Insurance Decree 1997 provides

*“The receipt of an insurance premium shall be a condition precedent to a valid contract of insurance, and there shall be no cover in respect of an insurance risk unless the premium is said in advance.”*

C **The facts of the case are not in dispute that the agreement for the conveyance of the goods between the appellant and the respondent was entered into on 6th March 1997. Hence, that was the date for the commencement of the contract as clearly shown in the two insurance policies namely Exhibits A and B. It can be recalled that the relevant shipping documents were presented by the appellant to the respondent. The appellant did not however pay the agreed premium to the respondent during the period. Then on 18<sup>th</sup> March 1997**  
 E **it was informed by the shippers vide a fax message that the ship carrying the appellant’s goods got lost in the sea, even though the two marine policies were issued on 10th and 12th March 1997 respectively. Evidence however abounds that the ship left Iceland on 6th March 1997. I must stress here, that a**  
 F **contract of insurance is created only in a situation where there exists an unqualified acceptance by one party of an offer made by the other party. Consequently, if the parties are still in the process of negotiation, then it can be said that there is no**  
 G **valid and enforceable contract.**

**It is my considered view, that a contract of insurance should always contain the terms and conditions of such contract including the rights and liabilities of the parties to the said contract. The important thing to consider in an action on**  
 H **a contract itself and for a plaintiff to succeed in an action under such a contract, it/he must tie himself within the terms and conditions of the policy or contract. See YADIS NIGERIA LTD VS NIC LTD (2007) ALL (Pt.3700) 1348. Consequently, the fundamental purpose of an insurance contract is to give cover**

**for an insurance risk. In other words, where a law states that there is no insurance cover unless premium is prepaid, than in effect it means that the contract is void if no premium is actually pre-paid.** See AJAOKUTA STEEL CO LTD VS. CORPUS LTD (2004) 16 NWLR (Pt.899) 369.

**Thus, from the contents of the provisions of Section 50(1) of the Insurance Act No.29, 1997 set out above, the premium is a condition precedent to a valid contract of insurance and there cannot be cover in respect of insurance risk UNLESS or EXCEPT the premium therefore is paid in advance.** See AJAOKUTA STEEL CO LTD vs CORPUS LTD (supra), CHARLES CHIME VS UNITED NIGERIA CO. LTD (1972) 2 ECSR 808; IRUKWU vs T M I B (1997) 12 NWLR (Pt.531) 113. **In the instant case, appellant did not pay any premium to the respondent which is the amount of money to be paid for the insurance policy before the risk of loss of the ship occurred, as such the contract of insurance, is ab initio void as rightly held by the court below.** As I stated earlier, marine insurance contract must be covered by a policy and if not so covered or embodied, it is not even admissible in evidence.

With regard to Section 23 of the Marine Insurance Act 1961, it is clear from the provision of Section 50(1) of the Insurance Decree 1997 the latter provisions was meant to repeal or replace the provision of the former Act by providing that premium must be prepaid before a marine insurance contract could be valid and enforceable. Once such premium was not paid in advance, the contract becomes void and unenforceable. The Lower Court is therefore correct in so holding. Moreso, the latter Act or provision is later in time. I therefore hereby resolve this second issue against the appellant.

The first issue for determination whether the court below was correct in holding that Section 50 of the Insurance Decree of 1997 had impliedly repealed Section 23 of the Marine insurance Act of 1961. I have partially dealt with this issue when treating the second issue supra. For purpose of clarity, it can be said that Section 23 of the Marine Insurance Act a marine insurance can be covered and valued upon oral transaction and also permits payment of premium to be made subsequently. Conversely, Section 50(1) of the Insurance Decree of 1997 which is later in time of promulgation, makes a

contract of marine insurance valid and enforceable ONLY upon condition precedent to the effect that premium MUST be paid in advance, once such condition precedent of prepayment of premium is not met, the contract becomes void and unenforceable.

**To my mind, the provisions of the later Decree of 1997, which provides a condition contrary to the one in the provisions of Section 23 of the 1961 Act, one can say without any fear of contradiction, that the position provided in Section 23 of the 1961 Act is no longer tenable or applicable by reason that the legislature provides a contrary provisions which can be said to mean that the condition or position provided by Section 23 is no longer valid and no longer subsists. See CROWNSTAR & CO LTD vs M V VALI (2000) 1 NWLR (Pt.639) 37. The intention of the legislature by promulgating Section 50 of the Marine Insurance Decree of 1997 to contradict or conflict with Section 23 of the 1961 Act one can say that the legislature intended to impliedly repeal Section 23 of the Act which it has power so to do expressly or impliedly. It is even trite, that where two acts make conflicting or contrary provisions, the implication that the earlier statute is repealed is irresistible as in the present case. See GOVERNOR OF KADUNA STATE vs. KAGOMA (supra). My view on this, is that the Lower Court's finding that Section 23 of Insurance Act of 1961 had been impliedly repealed by Section 50 of the Marine Insurance Decree of 1997 cannot be faulted or flawed. I therefore also resolve this first issue against the appellant.**

Apropos of the above, having resolved the two issues raised by appellant against him, I hold the view that this appeal is without any merit. It deserves to be dismissed and I accordingly do same. I affirm the decision of the court below which upturned and set aside the judgment of the trial court. Appeal is therefore hereby dismissed with N100,000.00 costs in favour of the respondent herein.

H

### **ONNOGHEN JSC**

I have had the benefit of reading in draft the lead Judgment of my learned brother SANUSI JSC just delivered.

I agree with his reasoning and conclusion that the appeal is

without merit and ought to be dismissed.

It is not in dispute that exhibits ‘A’ and ‘B’ were made on 10th and 12th March, 1997 while the cargo allegedly insured left Iceland on the 6th of March, 1997. It is also not in dispute that the vessel carrying the cargo so insured, MV Disarfel sank on 9th March, 1997. It is therefore clear that the contracts, exhibits ‘A’ and ‘B’ were made after the cargo concerned had perished in the high seas. B

The above notwithstanding it is clear that at the time the alleged contracts were made, no premium was paid by appellant. By virtue of the provision of Section 50(7) of the Insurance Decree No. 2 of 1997, the receipt of an insurance premium is a condition precedent to the validity of an insurance contract. It follows therefore, that there can be no insurance cover in respect of an insurance risk unless the premium is paid in advance. C

It is for the above reasons and the more detailed reasons contained in the said lead Judgment of my learned brother that I too find no merit in the appeal and consequently dismiss same with costs as assessed and fixed in the lead Judgment. D

I abide by the other consequential orders made in the said lead Judgment. E

Appeal dismissed.

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### ***RHODES-VIVOUR JSC***

I have had the advantage of reading in draft the leading judgment of my learned brother, Sanusi, JSC. For the reasons given by his lordship, I agree that the appeal should be dismissed. I propose to add only a few observations, but first the facts. F

The appellant imports stockfish into Nigeria from Iceland. On 7 March, 1997 it entered into a contract of marine insurance with the respondent. The insurance was to cover 121 bales of stockfish and 1907 bags of assorted fish valued at \$33,880, and \$122,048 United State dollars. A ship with the appellant’s consignment of fish set sail from a Port in Iceland, but on 18 March 1997 the ship disappeared on the High seas with no trace whatsoever. The appellant, as plaintiff sued the respondent for the loss of his consignment. He won. The trial court entered judgment for the sum of N12,482,240.00 (Twelve million, four hundred and eight-two thousand, two hundred and H

forty naira. This judgment was upset on appeal. This is what the Court of Appeal said:

*“In the event, I rule that no liability attaches to the appellant on the transaction and the contract of marine insurance between the appellant and respondent is void and unenforceable as no premium was paid before this coverage. The appeal succeeds, it is allowed. The judgment of the court below delivered on 1 November 2001 is set aside...”*

According to the Court of Appeal the contract of marine insurance entered into by the parties was void, and so the respondent (the insurance company) was not liable to pay any money to the appellant for the loss of his goods. Can this be correct?

Before I answer my question I must explain Premium and marine insurance, since they are referred to in the judgment of the Court of Appeal.

Premium is a payment made by the insured to keep an insurance policy alive. It is usually a periodic payment. A contract of insurance would be void if premium is not paid.

A marine insurance or contract of marine insurance is an agreement to indemnify against damage to a ship, cargo, or profits involved in a journey by sea. In this case a contract of marine Insurance was negotiated by the parties for the respondent to indemnify the plaintiff/appellant against damage or loss of his consignment of fish in the voyage from Iceland to Nigeria.

Now, section 50(1) of the Insurance Decree of 1997 states that:

*“The receipt of an insurance premium shall be a condition precedent to a valid contract of insurance, and there shall be no cover in respect of an insurance risk unless the premium is paid in advance.”*

A careful reading of the above makes it abundantly clear that where premium is not paid there is no cover for the goods insured. That is to say, that for there to be a valid contract of insurance the premium must be paid as and when due. The payment of an insurance premium is thus a condition precedent to a valid contract of insurance. See *Irukwu v. T.M.I.B.* (1997) 12 NWLR (pt.531) p. 113.

The appellant failed to pay any premium to the respondent before the ship left the shores of Iceland and so the Court of Appeal was right to conclude that the contract of marine insurance between



the appellant and respondent is void.

For this brief reason, as well as those more fully given in the leading judgment I would dismiss the appeal.

Appeal dismissed with costs of N100,000 in favour of the respondent.

B

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### **NGWUTA JSC**

I have read in draft before now the lead judgment delivered by my learned brother, Amiru Sanusi, JSC. I agree with the reasons advanced for dismissing the appeal. C

Under Section 23 of the Marine Insurance Act of 1961 a contract of insurance shall be deemed to be concluded when the proposal of the insured is accepted by the insurer even when no policy has been issued. But the operative Act governing the contractual relationship of the parties is the Insurance Decree now Act of 1997, Section 50 (1) of which provides: D

*“The receipt of an insurance premium shall be a condition precedent to a valid contract of insurance, and there shall be no insurance risk unless the premium is paid in advance.”* E

Payment of premium is a condition precedent to a valid insurance contract. In this case there is no evidence that premium was paid and so there was no valid contract of insurance when the “allegedly insured” were lost at sea. It cannot be said, on the facts disclosed, that there was an unqualified acceptance by one party of an offer made by other party. See *Murfitt v. Royal Insurance Co Ltd* (1922) 38 TLR 334; *Tahs ASS v. Akwuzie Ind. Nig Ltd* (1995) 14 NWLR (Pt. 388) 233. F

Extracts from Exhibits A and B (the Insurance Policies) read in part: G

*“We the Assurances Leadway Assurance Company Limited, hereby agree in consideration of the Payment of a premium, to be agreed, to insure against loss, damages liability or expenses in the manner hereinafter provided.”* H

In my view, this is an expression of intention to enter into an insurance contract. It is not an insurance contract upon which the appellant can recover for the loss of the goods in question.

For the above and the fuller reasons in the lead judgment I

also dismiss the appeal for lack of merit. I endorse the order for N100,000.00 costs in favour of the Respondent.

Appeal dismissed.

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B

**PETER-ODILI JSC**

I am in total agreement with the judgment just delivered by my learned brother, Amiru Sanusi, JSC and in support of the reasoning. I shall make some remarks.

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This appeal is by the plaintiff in an action instituted at the Federal High Court, Port Harcourt Division and it is against the Judgment of the Court of Appeal or Court below delivered on the 18th day of November, 2004, by the Appellate Court allowing the appeal by the Defendant/Respondent against the judgment of the trial Court

D delivered on the 3rd day of November, 2000.

The facts leading to this appeal have been well set out in the lead judgment and there is no point repeating them.

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On the 11th day of April, 2016 date of hearing, learned counsel for the Appellant, Chidozie Ogunji Esq. adopted the Appellant's Brief settled by O. A. Obianwu SAN and filed on the 17/3/2005. In the Brief were distilled two issues for determination which are thus:-

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1. Whether the Court of Appeal was correct in holding that Section 50 of the Insurance Decree 1997 had impliedly repealed Section 23 of the Marine Insurance Act, 1961, thereby voiding the contracts of Marine Insurance between the parties.

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2. Whether the Court of Appeal was correct in voiding the contract between the parties at the instance of the Defendant/Respondent.

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Neither Respondent nor counsel appearing for the Respondent being present and there being proof of service on the party/counsel, the Court took the Brief of Argument settled by C.A. Candide-Johnson SAN for the Respondent as argued. A single issue was identified by the Respondent which is as follows:-

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Whether in law a valid contract of insurance could exist before 9th March 1997 or at all, when the Cargo was lost when no premium was paid before 10th and 12th March, 1997.

The two issues as crafted by the Appellant really say the same thing in effect and I shall use the second issue as crafted in the deter-

mination of this appeal and that is, viz:-

Whether the Court of Appeal was correct in voiding the contract between the parties at the instance of the Defendant/Respondent.

Learned counsel for the Appellant submitted that the Court below was wrong because the Marine Insurance Act, 1961 being a special legislation which could derogate from the Insurance Decree, 1997, a general legislation and so Section 50 of the Insurance Decree 1997 would not apply to a contract of Marine Insurance. That the trial Court was on course in its decision supported by a long line of judicial authorities such as In Gregory's Case (1596) 6 CO REP (77) E.R.282; In Re Turner EX. P. Attwater (1876) 5 Ch.D 27 etc.

That in the case of the conflict between the provisions of the Decree and the provisions of the Companies and Allied Matters Act, the Decree would prevail and so would apply in this instant Act of 1951. He cited Abacha v. Fawehinmi (2000) 6 NWLR (pt.660) 228 at 303 - 304.

In respect to the matter of the Court below voiding the contract between the parties learned counsel for the Appellant said Defendant/Respondent issued Exhibits 'A' and 'B' and collected the agreed premiums subsequently and so Respondent cannot turn around to seek nullification of the contract on the basis of non-payment of the premium at the time of the contract. That the law is settled that a party can waive a statutory provision designed for his own protection.

Learned counsel for the Appellant relied on A. P. v. Owodunni (1991) 8 NWLR (Pt.210) 391 at 415 - 416; Ariori v. Elemo (1983) 1 SCNLR 1 AT 22 ETC.

In response, learned counsel for the Respondent stated that Section 24 (1) of the Marine Insurance Act 1961 makes it mandatory that a contract of marine insurance be embodied in a policy and a contract not so embodied is inadmissible and so the trial judge was in error to hold that by virtue of Section 23 Marine Insurance Act 1961, a policy of insurance can be concluded before payment of premium. He cited NICON v. Power & Ind. Engineering Co Ltd (1986) 1 NWLR (Pt.14) 1.

That the language of section 50 of the Insurance Decree 1997 is clear and not ambiguous while remaining mandatory with the im-

plication that making payment of the premium condition precedent to the validity of the Insurance Cover. He cited J. S. Atolagbe & Anor v. Ahaji Muhammadu Awuni & Ors (1997) 9 NWLR (Pt. 522) 537 at 565; J. O. Irukwu v. Trinity Mills Insurance Brokers (1997) 12 NWLR (pt.531) 113 at 134 - 135 (C A).

B That since the 1997 is a later legislation in the event of conflict with an earlier related statute, the latter would take precedence. He relied on Crownstar & Co Ltd v. M V Vali (2000) 1 NWLR (pt.639) 37 at 62 etc.

C Learned counsel for the Respondent contended that where the provisions of both statutes are so directly contradictory to one another then, the implication is that the earlier specific statute is repealed. He cited Trade Bank Plc v. L. I. L. G. C. (2003) 3 NWLR (pt. 806) 11 at 26 - 27; Governor of Kaduna State v. Kogoma (1982) 6 SC 87.

D The divergent positions on either side of the divide may be captured hereunder thus:- For the Appellant, that Section 50 of the Insurance Decree 1977 being a general provision cannot in law impliedly repeal the provisions of Section 23 of the Marine Insurance E Act, 1961 which is a specific provision for Marine Insurance only. That the Court below did not show that the trial Court erred in its application of the maxim Specialia Generalibus Derogant and the Respondent cannot be allowed to take benefit of her own conscious and deliberate decision not to obtain the requisite premium before F issuing Exhibits 'A' and 'B' especially when non receipt of the premium before cover does not render the contract illegal.

The Respondent's stance is that since there was no premium paid before 10th or 12th March 1997, then ipso facto there was no G contract before either of those dates and since on 10th March 1997 the risk had already occurred, the subject matter of the contract was lost and the contract was void.

The Court of Appeal faced with what the learned trial Judge had done and the Record before it held inter alia per Omage JCA at H pages 322 and 323 of the Record thus:-

*"In this appeal, the words of the two statues are clear and unambiguous; the issue to be considered in the determination of the appeal turn on the interpretation of the law in the provisions of Section 50 of the law of 1997; which is a subsequent law on insurance.*

*Admittedly, the custom and practice in the operation of marine insurance are not precisely the same as in an ordinary insurance transaction; of marine insurance is an insurance and the subsequent law provides that the receipt of premium shall be a condition precedent.*

*I have seen no provisions in the 1997 Insurance Act, which excludes marine insurance from its application. Under the rules of interpretation, while it is a fact that a right acquired under a statute will not be taken from a party whose right thereon has repined, it is not always necessary to include a clause for repeating the law which confer the right for subsequent transition once the now provisions are inconsistent and provide rules of contrary effect to the clause in a previous law. Generally a statute is definite as to what it repeals by its enactment; and a schedule may recite the existing law repealed. Invariably, our legislative aides who draft laws are usually less than tardy and such schedules do not take cognizance of all existing laws with which subsequent laws have inconsistent provisions. The Courts in the performance of their functions as interpreters of the law usually lean against implying the repeal of law by implication. However, where the provisions of the two acts are so plainly repugnant, one to the other provisions, and demand inconsistent conclusion that effect cannot be given to both at the same time, a repeal of the earlier provision of the law by implication in the operation of the new provisions is inevitable.*

*In Icharaock v. Merchant (1990) 1 Q. B. A decision of a British Court in 1900; the Court held that a section in Criminal Evidence Act made subsequent to Criminal Evidence Act of 1898, was intended to establish a single rule for all Criminal Courts, and intended to supersede the special rules as to evidence of all accused in criminal cases, created by previous statutes in relation to particular offences specified in the law, when no reference was made to the previous various enactments which provisions turn to be inconsistent with the new law.*

*Similarly I will hold, and so rule that the provisions of Section 50 of the Insurance Act of 1997, which makes any contract of insurance unenforceable unless the condition precedent of payment of premium in the transaction is concurrent or simultaneous is complied with, there is no insurance cover; consequently, the provisions of sec-*

*tion 23 of the Marine Insurance Act which enables a marine insurance to be covered and valid, upon oral transaction, and allows for payment of premium to be made subsequently is inconsistent with an existing law of Insurance Act 1997, it is therefore inapplicable to the agreement between the parties made on 7th March 1997 and paid for on 19th March 1997. In the event, I rule that no liability attaches to the Appellant in the transaction and the contract of marine insurance between the Appellant and Respondent is void and unenforceable as no premium was paid before the coverage”.*

The Appellant urges this Court to restore the judgment of the trial Court which the Lower Court had set aside. I shall recast some salient aspects of that decision of the Court of trial which are hereunder stated thus:-

*“It is therefore my view and this I hold that in so far as the Marine Insurance Act is a special legislation on Marine Insurance and in so far as it is a subsisting law having not been repealed by the Insurance Decree to my knowledge, it can derogate from the Insurance Decree which is just a general legislation on every type of insurance business. This is notwithstanding the fact that the insurance Decree is a later legislation. The case of SEWARD v. VERA CRUZ 1984 A.C. 59 presented a situation of a special provision in one Act and a general provision in a later Act as in the instant case. This is what Lord Selborne C. said at P.68 of the Report:-*

*“Now if anything is certain, it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold the earlier special legislation indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention so to do”.*

In my understanding what is at play here is the applicable law in giving effect to the contract subject of the litigation and the appeal before this Court. That is whether it is the Marine Insurance Act 1961, Sections 23 and 24 (1) specifically and then the other Section 53 thereof on the one hand or the Insurance Act 1997 particularly Section 50.

The learned trial judge utilizing the Marine Insurance Act 1961 as the operable Law took the view that it is a special legislation on Marine Insurance and so cannot be taken as inferior to the 1997

Insurance Act dealing with general insurance business and the result being that the insurance policy between the parties was valid even in the absence of the payment of the premium.

The learned trial judge in taking that route had applied the decision of this Court in *National Insurance Corporation of Nigeria v. Power & Industrial Engineering Co. Ltd* (1986) 1 NWLR (Pt. 14) 1 B Per Obaseki JSC at page 19.

The Court of Appeal refused to tow that line on the ground that the language of the subsequent legislation Insurance Decree (now Act) 1997 was applicable and made the receipt of an insurance premium a condition precedent to the validity of an insurance policy, this pursuant to Section 50 of the Insurance Act which prescribes as follows:- C

*“The receipt of an insurance premium shall be a condition precedent to a valid contract of insurance and there shall be no cover in respect of an insurance risk, unless the premium is paid in advance”.* D

Clearly, Section 50 of the Insurance Act has imposed an obstacle or impediment and its removal is the opening of the road upon which a valid insurance policy is dependent if the condition precedent is not disposed of then, the happening of the insurance policy would remain an intention and not a valid contract. This Court per Uwais CJN has stated what a “Condition precedent” entails in the case of *J. S. Atolagbe & Anor v. Alhaji Muhammadu Awuni & Ors* (1997) 9 NWLR (Pt. 522) 537 at 565 thus:- E

*“Condition is a provision which makes the existence of a right dependent on the happening of an event, the right is then additional as opposed to an absolute right. A true condition is where the event on which the existence of a right depends is in the future uncertain. A ‘condition precedent’ is one that delays the vesting of a right until the happening of an event”.* F G

The above principle was applied by Acholonu JCA (as he then was) in *J. O. Irukwu v. Trinity Mills Insurance Brokers* (1997) 12 NWLR (Pt.531) 11 at 134 - 135, thus:

*“By virtue of the provision of Section 50(1) of the Insurance Decree No.2 of 1997 the receipt of an Insurance premium is a condition precedent to a valid contract of insurance and there can be no cover in respect of an insurance risk unless the premium is paid in advance... There cannot be insurance whereby the insurer will in-* H

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*demnified without the payment of premium”.*

The interpretation of Section 50 of the Insurance Act, 1997 above stated clearly settles the situation on ground and underscores the fact that there is no dichotomy between insurance policies in relation to all matters, marine insurance inclusive. Therefore, I agree  
B with learned counsel for the Respondent that the Insurance Act 1997 is a law dealing specifically with insurance and it is a consolidating Act of general effect and application and so the maxim “*Generalia Specialibus Non Derogant*” (general things do not derogate from  
C special things), is not relevant for that reason and so the submission of the Appellant for the application of the 1961 Marine Insurance Act as a special act for purposes of Marine contracts has been made ineffective in this regard as even the Marine Insurance has been well covered by this 1997 Insurance Act.

D It follows therefore that by the time the goods purportedly insured had been lost at sea and since the premium had not been paid before that happening, there was no insurance cover for the loss and the claim cannot be validly made as the condition precedent had not been fulfilled. The Court below having handled the matter  
E before it in the appropriate manner, there is no basis upon which I can hold a contrary opinion.

Upon the foregoing and the better and fuller reasoning in the lead judgment, I also dismiss the appeal and abide by the consequential orders made.  
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