
A Reformatory Approach To Suicide Clause In Life Insurance Policies: An Eagle's Eye View Of Article 66 Of The CIMA Code

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ABSTRACT

During the formation of a life insurance contract, specific exclusions are often upheld by the insurer with the aim of limiting his liability. This means that, if the excluded event results in the maturity of the policy, the sum insured shall not be paid. Common examples are claims relating to suicide, fraud, war, riot and civil commotion. Suicide clause is one of the topmost exclusions in life insurance policies. In cognizance with this, the CIMA Legislator slated this public policy disposition in article 66 of the CIMA Code with the aim of curtailing commercially planned suicides. However, the above provision does not entirely reflect the legislator's intent in the sense that it crafts the exclusion period to a limited number of years rather than throughout the currency of the policy. This therefore puts to test the utility of article 66 and it is in this regard that this paper sets out to make a comprehensive analysis of life policies in relation to claims where the life insured committed suicide within the exclusion period. Arguably, the author holds that leaving article 66 of the CIMA Code as it is, raises some ambiguities as to the exceptions, and refund by the insurer of premiums received. The conclusion in this paper is therefore based on the premise that, the disposition of article 66 above is not suitable to govern suicide clause in life policies.

Keywords: *Reform, suicide, suicide clause, life insurance, CIMA Code.*

INTRODUCTION

One thing which is so certain and sure is death and every man will eventually die one day notwithstanding the fact that no one knows when that will happen. Following this, it is important to cover such financial risk resulting from the death of a breadwinner or income producer in a family. The zeal to counter such hardship resulted to the conception of life insurance.¹

Many financial experts consider life insurance to be the cornerstone of sound financial planning. It can be an important tool in the following situations: replace income for dependents, pay final expenses, create an inheritance for heirs, pay federal “death” taxes and state “death” taxes, make significant charitable contributions, and create a source of savings.² Life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any.³ Life insurance in other words, is a contract of insurance in which the policy owner pays a premium to the insurer and the insurer pays the sum insured or provides a benefit to the policy owner, or a person nominated by the policy owner, on the occurrence of the Insured Life Event.⁴ Life insurance contract involves an undertaking by an insurer to pay a fix sum of money to a named beneficiary pursuant to a consideration (premium) furnished by a person called a policyholder when the event insured against, occurs which may be death or prolong illness.⁵

The insurer makes a contract with the insured to provide a sum assured as a death benefit to the person whom he nominated in the event of an unexpected death of the insured. Despite its

growing recognition as a means of both savings and investment for the survivors of the insured, it is regrettable that the CIMA⁶ code has not defined life insurance. It only states that:

⁶ CIMA is a French acronym which signifies Conférence Inter-Africaine des Marchés d'Assurance, loosely translated in English as Inter-African Conference for Insurance Markets⁶. At the initiative of CICA, the member states signed a treaty on 10th July 1992 establishing CIMA and the appendix of this treaty contained a shared insurance code known as the CIMA code which entered into force on the 15th of February 1995⁶. The code is the sole legislation that regulates the insurance industry in Sub-Sahara Africa. The sub-region consists of 15⁶ Sub-Saharan African states which include: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Gabon, Guinea Bissau, Equatorial Guinea, Ivory Coast, Mali, Niger, Togo, and Senegal, Congo Brazzaville and Comoros Island. The code is segmented into 8 different books which deal different aspects of the insurance industry.

Book I which is titled ‘The contract’ deals with the enactment of common rules applicable to non-marine insurance contracts and non-reinsurance contracts but, the payment of premium enshrined in Title I of this book applies to marine and river insurance⁶.

Book II deals with compulsory insurance, Book III titled ‘Companies’ is devoted to the treatment of the status of insurance companies operating in the CIMA member states.

Book IV talks of Accounting Rules applicable to Insurance Organizations and equally considers the fact that insurance companies are financial institutions and as a result, special attention needs to be accorded to the proper management of their accounts. Book V deals with general agents, brokers and other intermediaries. It is based on the common rules governing the exercise of the functions of insurance agents or intermediaries and the specific rules relating to general agents and brokers.

Book VI centres on individual insurance organizations. It provides for Automobile Guarantee Fund (AGF) which provides that each member state needs to have an AGF so that in case there is a damage caused by an unknown person or one who is uninsured, the fund shall be used to cater for the expenses except there is a legal derogation from the obligation to bear insurance in the limit of the ceilings set by the texts of each member state. Book VII of the CIMA Code was a major milestone in Francophone Africa in that it allowed the development of Micro-insurance and Index-insurance. The book was adopted in April 2012 by the Council of Ministers of the member states.

And Book VIII of the CIMA code was adopted on the 9th of April 2015. It is titled, ‘Reinsurance’. It consists of 44 articles, dealing with general provisions, rules of formation and operation, cooperation agreements and exchange of information, financial arrangements and accounting rules relating to reinsurance. See to this effect, Ngoe Kamadje A., (2021), op.cit, pp.17-18.

¹ Ngoe Kamadje A., (2021), “Insurable interest in the validity of life assurance contracts: An appraisal of the CIMA Code”, Unpublished Masters Dissertation, Faculty of Law and Political Science, University of Dschang, p.6.

² Insurance Information Institute, (2010), *Insurance Handbook A guide to insurance: what it does and how it works*, P. 16.

³ Section 2(11) of Insurance Act of India (1938)

⁴ Ian E., Peter M., *et al.* on Life Insurance Background Paper 29, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, P.1.

⁵ Ngoe Kamadje A., (2021), op.cit, p.16.

*The sum insured in terms of life assurance and insurance against accident affecting people are fixed at the time of the contract.*⁷

In the vast majority of cases, a life insurance contract is considered as a 'four-parties' transaction which consists of the insurer, policyholder, life insured or assured and the beneficiary.⁸ However, the policyholder can at the same time be the life insured and names another person as beneficiary, which reduces the parties to three. In ordinary life insurance, the insured situation is the loss of life assured resulting from an illness or accident. It makes no difference whether the death was caused by natural or unnatural causes, or even by a third-party criminal act. Contracts whose objectives are contrary to public policy are unenforceable by the courts.

During the formation of the contract,⁹ specific exclusions are often upheld by the insurer with the aim of limiting his liability. This means that, if the excluded event results in the maturity of the policy, the sum insured shall not be paid. This comes as a result of the fact that insurance companies are out to make profit and to safeguard their interests. Common examples are claims relating to suicide, fraud, war, riot and civil commotion.¹⁰ Suicide clause is one of the topmost exclusions in life insurance policies which of course is our bone of contention in this paper.

Suicide or *felo de se* or *felonia de se*¹¹ means a wilful and intentional act on the part of the self-destroyer or the act or an instance of taking one's own life voluntarily and intentionally.¹² *felonia de se* Referring to it as

felo de se, the Athenians punished the one who took his own life voluntarily and intentionally, by cutting off his hand. In the 18th century in England, a suicide was guilty of a double offence: one spiritual, in invading the prerogative of the Almighty and rushing into his immediate presence uncalled for; the other temporal, against the King who had an interest in the preservation of all his subjects. In fact, while labelling suicide as a felony committed on one's self, it was ranked among the highest crimes.¹³

Knowledge of criminal laws in the CIMA member states reveals that, even attempted suicide is not punishable. It is rather Civil law that punishes suicide. This is done through non-payment of policy proceeds to the named beneficiaries when the life insured dies by suicide within a period of two years.¹⁴ The statutory authority for this is Article 66 of the CIMA Code. It states thus:

Insurance in the event of death is of no effect if the insured person voluntarily and consciously commits suicide during the first two years of the contract.

From the above provision, where the life insured commits suicide after the two-year exclusion period, his beneficiaries shall be compensated. However, from the wordings of the above provision, the Legislator intends that, suicide committed by a life insured in the state of insanity shall be compensable even when he commits it within the exclusion period. This is because, he is not conscious of his actions. It should be noted that even when the clause is not expressly stated in the contract, the parties cannot however waive it. Nevertheless, the insurer should at all times make sure the clause is present and visible to the prospective buyer.

The practise of paying the proceeds in case of intentional suicide in a fit state of mind by the insured after the exclusion period is justified on the logical presumption that, no one can plan and wait to commit suicide for such period.¹⁵

⁷ Article 56 paragraph 1 of the CIMA Code.

⁸ This is generally referred to as, third party policies.

⁹ Generally, insurance contracts as a whole, are standard form contracts or contracts of adhesion, where the insurer prepares the proposal form and presents it to the policyholder on a take it or leave it basis.

¹⁰ Vivek D., (2014), "Suicide Clause in Life Policies in India: How far legally valid?", p.38.

¹¹ The Latin expression of suicide which means, felon of himself. It is a n archaic legal term that usually refers to suicide. See, Nikita J. on Analysis of suicide clause in life insurance policy retrieved from, www.legalserviceindia.com, accessed on the 6th of June 2023.

¹² www.miriam-webster.com, accessed on the 7th of June 2023.

¹³ Vivek D., (2014), op.cit, p.40.

¹⁴ It should be noted that this only applies to persons on whose lives life policies have been procured.

¹⁵ The Latin expression of suicide which means, felon of himself. It is a n archaic legal term that usually refers to suicide. See, Nikita J. on Analysis of suicide clause in life

However, this goes against the criminal law principle which holds that, no man shall be allowed to take advantage of his own wrong which is expressed in the Latin maxim, “*ex turpi causa non oritur actio*”.¹⁶ In countries like India, the law goes as far as allowing the insurer to remit the premiums to the beneficiaries where the life insured commits suicide during the exclusion period.

An eagle’s eye view of article 66 reveals that the CIMA Legislator does not intend to prevent commercially planned suicides. This is because, the provision crafts the exclusion period to a limited number of years rather than throughout the currency of the policy. The authors hold the view that, though the beneficiaries will suffer for a wrong they did not commit, they should however not be compensated where the life insured dies by suicide. This is in line with Plato’s analysis which reads thus:

*“Man is a prisoner who has no right to open the door of his prison and runaway. A man should wait and not take his own life until God summons him.”*¹⁷

The above dictum points to the fact that, we have no right to take our lives in exchange for monetary benefits in favour of our survivors. This paper therefore sets out to make a comprehensive analysis of life policies in relation to claims where the life insured committed suicide within the exclusion period. In this connection, it will be important to examine the rationale behind the imposition of suicide clause in life policies, the position of the CIMA Code, exceptions for its application and the tips for eliminating or reducing commercially planned deaths.

THE RAISON D’ETRE FOR SUICIDE CLAUSE IN LIFE ASSURANCE POLICIES

The principal aim or reason for suicide clause is to eliminate moral hazard.¹⁸ In life insurance,

insurance policy retrieved from www.legalserviceindia.com, op.cit.

¹⁶ No cause of action arises out of a wrong.

¹⁷ Vivek D., (2014), op.cit, p.40.

¹⁸ Moral hazard is a condition that increases the expected frequency or severity of a loss. See to this effect, Eyong A. and Enow G. B., (2020), *Fundamentals of Insurance Law in Cameroon*, LAP LAMBERT Academic Publishing, p.13.

suicide clause reduces the incentive to commit suicide immediately after purchasing the policy due to the fact that, the beneficiaries can only recoup their benefits if suicide is committed after two years following its issuance. There are policyholders who may procure a life policy with the aim of protecting their families against financial difficulties by later committing suicide immediately after being issued the policy. It is therefore necessary to include such a clause in the policy form so as to deter such behaviour.

Interestingly, article 66 is salutary because it discourages suicide in the sense that, if the policyholder initially procured a policy to later on commit suicide so that the sum assured can be paid, he would have to wait until the lapse of two years before he can do so. Before this period elapses, he may have changed his mind on committing such an act. Therefore, suicide clauses in life policies are indispensable.

THE CIMA CODE’S POSITION ON SUICIDE CLAUSE

As has been highlighted above, the CIMA Code’s standpoint is not different from the international trend as far as the treatment of suicide clause in life policies is concerned. In fact, a keen reading of article 66 of the CIMA Code reveals that, where the policyholder commits suicide within two years following the issuance of the policy, his beneficiaries shall not be compensated. This will equally be the case where the policy is renewed although the CIMA Code has not stipulated anything to this effect. The exclusion clause has to apply because the renewal transforms into another contract which of course has to respect article 66. The question of whether suicide committed by an insane life insured to activate the compensation of the named beneficiaries is paramount. It must be said that the word “consciously” in article 66 of the CIMA Code is not for fancy. An insane person is not usually conscious of his acts and so, where he commits suicide when covered by a life policy, the policy benefits shall be paid to the named beneficiaries.

Another salient point to be noted under the CIMA Code in relation to suicide clause is that, its desire to curb commercially planned deaths

has even triggered it to forbid the payment of part or a totality of the premiums paid to the beneficiaries where the suicide was committed within the exclusion period contrary to what operates in countries like India. It must however be remarked that the reason for the remittal of the premium where the insured commits suicide during the exclusion period is because, the insurer must not be left to go away with the premium despite the fact that the insured acted in bad faith.

There is equally the need to know if the execution of a life insured for having committed a criminal offence within the two years exclusion period is compensable under the CIMA Code or will be equated to suicide. From the wordings of article 66, suicide is when someone voluntarily and consciously takes his own life. Following this, it worthy to therefore comment that, execution either by firing squad or hanging of a life insured following the commission of a capital offence cannot be equated to suicide and hence cannot deprive the beneficiaries from compensation when it takes place within two years from the policy date.

EXCEPTIONS FOR THE APPLICATION OF SUICIDE CLAUSE IN LIFE POLICIES AND THE CIMA CODE'S STANDPOINT

Generally, the suicide provisions made the insurance policy effectively null and void such that all payments made for premium are meaningless and nothing can be paid on behalf of the deceased as premium. Once a life insured commits suicide within the exclusion period, his beneficiaries shall be deprived from claiming the sum assured. In fact under the CIMA Code, premiums paid are not reimbursed by the insurer for the interest of the beneficiaries. Nevertheless, there exist some reasonable exceptions for the application of this public policy clause. Such exceptions include; (a) assigned policies, (b) non-provision of the clause in the policy as well as (c) group policies.

Inapplicability on assigned life policies

Assignment refers to transfer by the policyholder of legal rights or interest in the life assurance policy.¹⁹ Life insurance policies are assignable

¹⁹ Insurable Interest- Insurance Continuing Education: BestEd CE, p9.

except when prohibited by law, the policy's provision, or by mutual agreement of the contracting parties. Assignment of policy is associated with beneficiary rights; determining who will receive the proceeds when the *celui qui vie* (CQV)²⁰ dies. The assignment of the policy is in fact a change of policyholder without change of subject-matter (the life insured) and the insurer.²¹

From the above premise, one can reasonably wish that, the early maturity of an assigned life policy occasioned by suicide be subject to payment of the policy benefits to the assignee. In essence, where the life insured of an assigned policy commits suicide within the exclusion period, the assignee who becomes the beneficiary shall be compensated.

However, the CIMA Code has not said anything to this effect whereas it upholds the assignment of life policies. For the time being, suicide committed within two years by the life insured deactivates the right to claim policy benefits in accordance with policies concluded within the CIMA sub-region. Given the CIMA Code's strong attachment to the idea that one should not be allowed to benefit from his own wrong, insurers should be held to compensate the assignee only up to the value of his debt.²²

Absence of the clause in the policy

In many countries, the life insurance laws require that the inclusion of suicide clause in life policies before it can decline liability to compensate beneficiaries. Failing this, the insurer cannot raise the suicide clause defence. This signifies that, for an insurer to be able to contest payment against a life policy where the insured committed suicide, it must be included in the policy.

The CIMA Code has not however, mentioned whether the exclusion clause must be inserted in the policy before the beneficiaries can be compensated. However, all suicides committed within two years following the issuance of the policy shall automatically deprive beneficiaries

²⁰ A third party life policy whereby the policyholder buys a policy to cover the life of person other than himself.

²¹ Zhen J., "Insurable interest in life insurance: a Chinese perspective", *Journal of Business Law*, p .16.

²² This should be the routine in case where the assignee is a creditor to the life insured/assignor.

from receiving the policy proceeds. The author suggests that, though the exclusion clause is statute driven, it is always important for such a clause to feature in bold print on the policy form so as to derive the policyholder's consent. This will enable the insured/policyholders to be aware of the consequences of committing suicide within the exclusion period.

Inapplicability in group policies

Article 95 of the CIMA Code describes group insurance in the following words:

*A group insurance contract is the contract taken out by a legal person or an entrepreneur with a view to the membership of a group of people meeting the conditions defined in the contract, for the coverage of risks depending on the duration of human life, risks affecting the physical integrity of the person or related to maternity, risks of incapacity for work or invalidity or the risk of unemployment.*²³

With group assurance, a single contract covers an entire group of people whereby the employer is the policyholder and the employees or members of the group are the ones covered by the group policy or are referred to as the lives insured.²⁴

Despite being a subject of life insurance, group insurance taken up by an employer or an organization does not include a suicide clause.²⁵ It is however pertinent to remark that, the CIMA Code is silent on the applicability of suicide clause in group policies. However, a plain reading of article 66 of the CIMA Code gives one the impression that the clause is applicable in group policies following the expression, "Insurance in the event of death is of no effect if..." The interpretation of this provision is left to the courts which in most cases will not be satisfactory based on its ambiguous nature.

Nevertheless, international trend upholds the non-inclusion of the clause in group policies. This is because; the life cover here is that of the

²³ Article 95 of the CIMA code.

²⁴ Loloh M. N., (2013), Nature and Scope of Life Insurance Contracts: A Comparative Study of the Common Law Inspired Life Assurance Act in Former West Cameroon and the CIMA code, Masters Dissertation, University of Dschang, p.53.

²⁵ Does life insurance pay for suicidal death? Retrieved from www.progressive.com, accessed on 2nd July 2023.

organization, employer or legal entity instead of the individual members.²⁶ Hence, the policy proceeds will be paid to the named beneficiary even when a member dies by suicide. This implies that if a member commits suicide within the exclusion period, the clause cannot be evoked to deprive compensation. It is therefore imperative for the CIMA Legislator to clear the air on whether the clause applies in group policies or not.

CONCLUSION AND REFORMATORY GUIDELINES

Although the purchase of life policies within the CIMA sub-region and the perpetration of the act by insured is still low, there is prospect that the reverse will be true for the above two premises in the nearest future. In this light, the amelioration of the CIMA Code's standpoint on the subject of suicide is pressing. This comes as a result of the fact that, the CIMA Code's disposition on suicide is not elaborate and at the same time disincentive to assignees and gives insurers the latitude to arbitrarily deny life insurance claims based on commission of suicide within the exclusion period. Against this backdrop, and while taking into consideration the suggestions made above, it is pertinent to add the following:

Firstly, the CIMA Legislator in view of eliminating suicide; should not limit the number of years for the application of the suicide clause. It should rather cover the life span of the policy. This implies that, a new article 66 should be adopted which will prevent the payment of policy proceeds to beneficiaries where death results from suicide without given giving credence to any time limit.

Another step is to provide for the repayment of the premiums already paid by the policyholder or life insured, to the beneficiaries or the policyholder's estate as the case may be. This should be done after cutting off all administrative expenses incurred by the insurer at the contracting phase.

In *grosso-modo*, the reform should provide that; if a life insured voluntarily and consciously takes

²⁶ What is suicide clause in life insurance policy?, retrieved from www.comparepolicy.com, accessed on the 2nd of July 2023.

his life during the currency of the life insurance policy, the insurer's liability will be limited to the premium paid. It should be stated equally that, the above suggestion shall not be applicable to group policies. This will go a long way to reduce the purchase of life policies for the purpose of committing suicide given that suicide will render sum assured non-payable.

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