

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CIVIL APPEAL NO. 101 OF 2013**

5

**BETWEEN**

**ARIM FELIX CLIVE .....APPELLANT**

**VERSUS**

**STANBIC BANK (U) LTD.....RESPONDENT**

10 *Appeal from the ruling and orders of the High court (Commercial Division) at Kampala before the Honourable Justice Wilson Masalu Musene dated the 3<sup>rd</sup> day of May 2013 in Civil Suit No. 237 of 2010)*

**CORAM: HON. MR. JUSTICE S.B.K. KAVUMA, DCJ**

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**HON. LADY JUSTICE SOLOMY BALUNGI BOSSA, JA**

**HON. MR. JUSTICE KENNETH KAKURU, JA**

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**JUDGMENT OF HON. MR. JUSTICE KENNETH KAKURU, JA**

This appeal arises out of the Judgment and decree of the High Court (Commercial Division) at Kampala before *Hon. Wilson Masalu Musene J* in High Court Civil Suit No. 237 of 2010 dated 3<sup>rd</sup> May 2013.

The brief back ground to this appeal is as follow;-

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The appellant was the plaintiff at the High Court. He sought to recover from the respondent who was the defendant a sum of United States Dollars (USD) 190,000,000 general damages and costs.

The appellant was a customer of the defendant Bank where he held an account in United States Dollars. He was also an employee of the Government of South Sudan (GOSS) at that material

time. He claims in paragraph 4(1) of the plaint to have been contracted by the GOSS to design a student Data Base Software Management System.

On 15<sup>th</sup> June 2009 USD 323,060,000 was remitted from the GOSS to the appellant's account No.024051309660 with Stanbic Bank (U) Ltd the respondent at its IPS branch in Kampala.

5 This transfer became a subject of Police investigations. On 22<sup>nd</sup> July 2009, the Police by application moved Buganda Road Chief Magistrate's Court to freeze the appellant's said bank account pending investigations.

On 14<sup>th</sup> July 2009 the Police detective investigating the matter deponed that United States Dollars 190,000 had been transferred from the appellant's account to another account  
10 No. 0200540020100 at International Business Centre (IBC). He requested the Court to issue an order freezing that account. On the same day 22<sup>nd</sup> July 2009 the Court issued an order directing the manager International Business Centre to withhold the said money until another order was issued by the same court directing otherwise. On 30<sup>th</sup> July 2009 the appellant was charged with  
15 embezzlement of United States Dollars 323,060, the property of GOSS. While in custody he gave written instructions to the bank to remit back to the GOSS the said amount of United States Dollars 190,000.

On 13<sup>th</sup> November 2009 the appellant wrote a letter to the manager Stanbic Bank IPS branch directing her to cancel the transfer of United States Dollars 190,000 from his account at that Bank Stanbic IPS branch to Account No. 03040298030 at International Business Centre. Another  
20 letter in similar terms followed on 18<sup>th</sup> November 2005 from Alaka and Company Advocates on behalf of the appellant again to the manager Stanbic Bank IPS Branch.

On 20<sup>th</sup> November 2009 Stanbic Bank's legal officer wrote to Alaka and Company Advocates advising them that the Bank had on instructions of Court remitted the United States Dollars 190,000 to GOSS account No. 030402080301 Kenya Commercial Bank (KCB) Jinja Road  
25 branch.

On 23<sup>rd</sup> February 2010 the Director of Public Prosecutions (DPP) discontinued criminal proceedings against the appellant.

On 9<sup>th</sup> March 2010 the respondent notified the appellant that his Account No. 0240513096601 at it's IPS Branch would be closed within 14 days of that letter.

On 28<sup>th</sup> June 2010 the appellant instituted the above mentioned suit against the respondent bank at the High Court for the recovery of the said USD 190,000. The suit was dismissed with no  
5 order as to costs on 3<sup>rd</sup> May 2013. The appellant being dissatisfied with Judgment of the High Court filed this appeal on the following grounds:-

- 10 **1. That the learned trial Judge erred in law and fact when he did not properly evaluate the evidence on record and thereby came to a wrong conclusion and occasioned a miscarriage of justice to the Appellant.**
- 2. The learned Judge erred in law and fact when he held that the Respondent was honouring and obeying a court order when it transferred US\$ 190,000.00 to the Government of South Sudan.**
- 15 **3. The learned Judge erred in law and fact when he held that the Respondent was not negligent when it transferred \$190,000.00 to Government of South Sudan**

At the hearing of this appeal **Mr. Renato Kania** appeared for the appellant while **Dr. Joseph**  
20 **Byamugisha** appeared for the respondent. Both counsel agreed to argue only one issue that had been agreed upon at the joint scheduling conference, namely:-

***“Whether the learned trial Judge properly evaluated the evidence on record and therefore arrived at a correct or proper conclusion”***

Learned counsel for the appellant submitted that the trial Judge had failed to find the respondent  
25 negligent when it transferred from his account USD 190,000 on the basis of a Court order dated 18<sup>th</sup> September 2009 which order was incapable of being complied with. The said order, counsel contended, could not have had the effect of authorizing the transfer of that money to the account of GOSS.

Counsel relied on exhibit P4, the order of the Magistrate's Court dated 22<sup>nd</sup> July 2009. He  
30 submitted that, the order vacated an earlier order that had frozen account No. 02005002010100 at International Business Centre, Crested Towers.

Counsel contended that exhibit P3 which is the first order of Court freezing the appellant's account referred to Account No. 0200540020100 at International Business Centre yet the subsequent order from the same court referred to Account No. 020554002010100.

5 He submitted that the order to unfreeze the account referred to a different account from that that had been frozen earlier. That the consequence of this was that the account first referred to, upon which the money was held, remained frozen and as such the bank could not have legally transferred the money from that account to that of GOSS at Kenya Commercial Bank. Counsel cited the case of *John Madox and Carol Madox versus First Westroads Bank (The Supreme Court of Nebraska) [20<sup>th</sup> July 1977]* as authority to support his contention that the bank had acted negligently to the detriment of the appellant. He prayed for the appeal to be allowed.

In reply Dr. Byamugisha learned counsel for the respondent argued that the appellant had departed from his pleadings and had argued a completely different case. He submitted that the appellant's case as set out in the plaint was different from what had been pursued at this appeal.

15 He also submitted that the appellant had departed from the facts agreed upon by both parties at the joint scheduling conference at this court.

Counsel submitted that the appellant had instructed the Bank to remit the money to GOSS. That he was at all times aware that the money had been remitted. That when he wrote the second letter reversing the earlier request to transfer the money he clearly stated that he was calling back the money to his account, acknowledging that the money had already left his account.

20

In alternative to the above counsel argued that, the order of court freezing the appellant's Bank account which was issued on 22<sup>nd</sup> July 2009 remained in force, as such the appellant could not have had any authority to operate a frozen account either by instructing the Bank not remit the money, or to return it.

25 He submitted that the issue of the two court orders referring to different account numbers had no effect on the transfer because the subject matter of the transfer of United States Dollars 190,000 was well known to the parties.

Finally he submitted that the Bank had a duty to comply with Court orders and that an order of court must be complied with irrespective of what the parties think of it. He cited the case of ***Housing Finance Bank and Another vs Edward Musisi (Court of Appeal Miscellaneous Application No. 158 of 2010)***.

5 Counsel faulted the trial Judge for not having awarded the respondent costs at the High Court. He prayed for costs at this court from and at the court below.

In rejoinder counsel for the appellant argued that the respondent was negligent and breached its duty when it disregarded the appellants express instructions not to transfer the money to GOSS and when it purported to rely on a court order that did not and could not have ordered the Bank  
10 to transfer the said amount. He retaliated his earlier prayers that the appeal be allowed.

This is a first appeal, and as such this court as a first appellate court is required to evaluate the evidence and make its own inferences on all issues of fact and law. See **Rule 30(1)** of the Rules of this Court and ***Fr. Narcensio Begumisa & others vs Eric Tibebaaga (Supreme Court Civil Appeal No. 17 of 2002, in*** particular the Judgment of Hon. Justice J. Mulenga JSC.

15 The appellant in his plaint sought the following remedies;-

“ i ***Judiciary A declaration that the court order issued by Buganda Road Magistrates Court dated 18<sup>th</sup> of November 2009 was not an imperative order to pay but merely lifted an earlier injunctive order of the same court and did not oblige the defendant to disregard the Plaintiffs orders countermanding his  
20 earlier order to pay.***

ii. ***A declaration that the defendant was obliged to obey the plaintiffs orders stopping payment of US. \$ 190,000.00 and the plaintiffs account cannot be charged for this amount.***

25 iii. ***A declaration is made that disregard of the plaintiffs orders by the defendant led to loss t the plaintiff of U.S. \$ 190,000.00.***

***Special damages of U.S. \$ 190,000.00. be awarded.***

30 ***General damages.”***

The High Court held that the respondent Bank was not negligent in transferring United States Dollars 190,000 to the Government of Southern Sudan as it was simply obeying a court order. The Court also held that the appellant was not entitled to the remedies sought.

5 The issue for determination by this court as framed by both counsel at the joint scheduling conference has already been set out earlier in this Judgment

That issue as framed clearly offends the provisions of **Rule 86(1)** of the Rules of this Court which require a memorandum of appeal to set forth and without narrative the grounds of objection to the decisions appealed from, specifying the points which are alleged to have been wrongly decided.

10 Parties are required to comply with this rule even when they are framing issues arising from the memorandum of appeal. The issue as framed is too general and allows the appellant to go on a fishing expedition to the prejudice of the respondent. This is the mischief the above rule was intended to remedy.

15 I will therefore ignore the issue as framed and proceed to determine the appeal based on the grounds of appeal set out earlier in this judgment.

The first ground of appeal offends **Rule 86(1)** of the Rules of this Court already referred to above. For the reasons I have already stated above I would strike it out on that account.

20 The second ground of appeal is that the learned trial Judge erred in law and in fact when he held that the respondent was honouring a court order when he transferred the amount in question to GOSS.

The third ground is that learned trial Judge should have found that the respondent was negligent when it transferred the money in issue to GOSS. I shall determine the two grounds together.

25 It is the respondent case that he held an account with the respondent Bank at its IPS Branch. That account was No. 0240513096601 according to paragraph 4(4) of the plaint. That account was on 15<sup>th</sup> June 2009 credited with US\$ 323,060 by the GOSS.

The police suspected that the above transaction was fraudulent and commenced criminal investigations against the appellant. As a precautionary measure the police sought an order from court freezing the said account as the investigations continued.

5 However, by the time the police sought the order, United States Dollars 190,000 had already been transferred from the IPS account above mentioned to another account at the respondent's other branch known as the International Business Centre. The transfer had been affected on 14<sup>th</sup> July 2009.

In this regard paragraph 6 of the statutory declaration made by No. 24285, Detective Corporal Muwanga Joshua states as follows:-

10                   ***“6. That I pray for an order to be issued withholding the above said money (190,000 US Dollars) on the said Account No. 0200540020100 at the International Business Centre until another order will be obtained to decide where the money will be transferred to”***

15 On the same day the request was made on 22/07/ 2009 the Chief Magistrates' Court at Buganda Road issued an order as follows:-

***To: The Manager  
International Business Centre (IBC)  
Crested Towers  
Kampala.***

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**ORDER**

25                   ***Whereas it has been proved to me that in fact according to reasonable suspicion cash meant for Account Number 030402980301 of Government of Southern Sudan at Kenya Commercial Bank (KCB) Kampala was diverted on Account Number 0240513096601 at Stanbic IPS Branch and later transferred to Account No. 0200540020100 at International Business Centre (IBC.)***

*Upon by or in respect of which an offence has been committed or which is / are necessary for the conduct of investigations into an offence in the said International Business Centre.*

*This is to authorize and require you to withhold the said amount of money US\$ 190,000 until another order will be obtained directing otherwise.*

*Given under my hand and seal of court on this 22<sup>nd</sup> day of July, 2009 at Buganda Road Court.*

.....  
**MAGISTRATE**

Subsequent to the issuance of this order, the appellant was arrested and charged with embezzlement. According to paragraph 7 of the plaint while in custody he instructed the Bank to pay the said amount USD 190,000 to the account of the GOSS. The date when the said instructions were given is not stated in the plaint. It is however clear that it was after the said amount United States Dollars 190,000 had been transferred from Stanbic Bank IPS branch to the International Business Centre which was on 14/7/2009.

On 13<sup>th</sup> November 2009 the appellant wrote the following letter to the respondent's Manager at its IPS branch.

*Felix Clive Arim  
P.O. Box 30304  
Kampala,  
Uganda  
13.11.2009*

*The Manager,  
Stanbic Bank IPS Branch  
Kampala*

*Dear Madam,*

**RE: cancellation and recalling back the transfer of 14th/July/2009 from my Account**

**No: 0240513096601 (Arim Felix Clive) to A/e No:030402980301**



*The above refers;*

*This serves to notify you that I hereby cancel instructions to remit USD 190.000 from my account No: 0240513096601 to A/C No: 030402980301 and recalling back to my account No: 0240513096601 which was transferred on the 14<sup>th</sup>/July/2009 and being held at International Business Centre Account No: 020554002010100,*

*Yours faithfully'*

*Felix Clive Arim*

*C.C. My Lawyer, Ms. Alaka & Co. Advocates  
File*

The Bank did not comply. I find that the Bank was justified in refusing to comply with the appellant's request. First, the order issued by Court on 22<sup>nd</sup> July 2009 was still in place. That order required the respondent to withhold that said amount which was a subject of criminal investigations until another order directing otherwise.

The instructions from the appellant were clearly of no consequence as the Bank account upon which that money was held had been frozen and could not be operated by the respondent or the Bank itself. The appellant had no authority to make any transactions in respect of any account upon which that money was being held.

The respondent's argument that the respondent should have complied with the said instructions have no merit.

On 18<sup>th</sup> November 2009 the Court issued another order in the following terms;-

**ORDER**  
***(Under S.200 and S.202 (1) MCA)***

*This application coming this 18<sup>th</sup> day of November 2009, at 2.30 p.m, before Buganda Road Grade 1 Magistrate, His Worship Francis Kobusheshe, sitting at Buganda Road Court, in the presence of Festo Nsenga, Principal State Attorney, counsel for the Applicant, and Caleb Alaka, Counsel for the respondent.*

*It is hereby ordred and decreed that*

*1. Account No.0240513096601, in the names of ARIM FELIX CLIVE, at STANBIC IPS Branch, frozen by this court on 15<sup>th</sup> day of July 2009 shall remain so frozen till further notice.*

*2. The order by this court of the 22<sup>nd</sup> day of July 2009, freezing Account no. 020054002020100 of IBC Crested Towers Branch is hereby vacated.*

*3. That the transfer of US\$ 190,000 to the Government of Southern Sudan (GOSS) Account No. 030402080301 KCB Jinja Road (Main) Branch via the above IBC Account be completed.*

*Given under my hand, and the seal of this Honourable Court, this 18<sup>th</sup> day of November 2009, at Buganda Road Court Kampala*

.....  
**MAGISTRATE.**

This order maintained a freeze on the appellant’s account at IPS branch, in which case, the said account could neither be operated by the respondent nor by the appellant.

However, the same order lifted the freeze on the account at International Business Centre Branch upon which the USD 190,000 had been transferred was still being held.

The same order simultaneously directed the respondent to complete the transaction of transferring USD 190,000 to the account of the GOSS. The respondent complied.

I find the argument by the appellant that the order above was redundant in so far as there was a discrepancy between the account number stated in the order and the actual account number untenable.

5 The transaction in respect of the said Unites States Dollar 190,000 had a well documented background. The money was held at an account whose number was issued by the responded Bank. That account was stated to be a suspense account. If the court made an error in its order while referring to that account that error was of no consequence at all.

10 All the parties were aware as to what the order effectively referred to. A bank account may be identified by name, number or code or by a combination any of the above. The account referred to in the court order is number 020054002010100 at International Business Centre Crested Towers Branch of the respondent. The account No. referred to in the appellants letter of 13<sup>th</sup> November 2009 is number 020554002010100. I find that the discrepancy is too minor to be of any consequence. In any event the account is sufficiently described in the court order itself.

15 I agree with learned trial Judge that the respondent had a duty and obligation to obey a court order. It was not open to him to disregard it whether or not it contained errors minor or major.

The learned trial Judge clearly and correctly set out the law regarding compliance with court orders when he cited the authorities of;- ***Housing Finance Bank Ltd and Another vs Edward Musisi Court of Appeal (Miscellaneous Application No. 158 of 2010)*** and ***Stanbic Bank vs The Commissioner General of Uganda Revenue Authority, High Court (Miscellaneous***  
20 ***Application No. 42 of 2010)***, (both unreported).

The position of the law set out in the above authorities that a party who knows an order whether null and void, regular or irregular cannot be permitted to disobey it was recently re affirmed by this court in ***Court of Appeal Civil Application No. 327 Of 2014 Kyaggwe Coffee Curing Estates Ltd Versus Emmanuel Lukwajju***. (unreported).

25 In any event counsel for the appellant conceded during his submissions before this court that if the court order had contained no error the appellant would not have instituted the suit.

I have already found that the discrepancy in the account numbers as set out in the court order was very minor and of no consequence. That the order sufficiently described the account. That the account could be identified by other means other than the number.

I find that the two grounds of appeal have no merit.

5 Accordingly the appeal fails and is hereby dismissed.

I have found no reason whatsoever why the learned trial Judge did not award costs to the respondent. I notice that there is no cross appeal filed by the respondent in respect of costs. However, the appellant seeks costs in this court and in the court below.

I think that is sufficient to re-open the issue of costs at the High Court.

10 The learned trial Judge at P8 of his Judgment held as follows:-

*“Since the plaintiff has not proved his case on the balance of probabilities, then he is not entitled to any relief. I shall only consider the circumstances of the case as a whole and the fact that the plaintiff was in the end exonerated of the embezzlement charges. I shall not therefore condemn him in costs. I order that each party meets their own costs.”*

A successful party ought not to be denied costs except in justifiable circumstances.

The reason given by the learned trial Judge with all due respect did not relate to the claim before him. It related to a criminal trial. Withdrawal of charges does not amount to exoneration. Since the case against the defendant now respondent had not been proved he was entitled to costs.

20 Accordingly I would order that the appellant pays costs in this court and in the court below.

**Dated at Kampala this 17<sup>th</sup> day of April 2015.**

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.....  
**HON. MR. JUSTICE KENNETH KAKURU**

**JUSTICE OF APPEAL**