THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

CIVIL APPEAL NO. 88 OF 2016

(Arising from High Court at Nakawa Civil Appeal No. 12 of 2015, itself arising from the Chief Magistrate's Court at Nabweru Civil Suit No. 41 of 2011)

Barclays Bank of Uganda Limited :::::::::::::::::::::::::: Appellant

VERSUS

Gamuli Tukahirwa ::Respondent

Coram: Hon. Justice Alfonse Owiny Dollo, DCJ
Hon. Justice Kenneth Kakuru, JA
Hon. Justice Remmy Kasule, Ag.JA

JUDGMENT OF THE COURT

Background:

This is a second appeal originating from the Chief Magistrate's Court Nabweru Civil Suit No. 41 of 2011 in which the respondent to this appeal sued the appellant to recover UG.

SHS. 18,840,000= principal amount with interest thereon at 35% per annum as well as general damages for loss of business.

The respondent, who maintained a current account with the appellant bank, asserted in the suit, that the appellant through negligence had caused him to lose the above mentioned principal sum of money by honouring and paying out a cheque which he neither signed nor issued in favour of a third party. By reason of the appellant's said actions, the respondent incurred loss in his business and he claimed damages by reason thereof.

After a full trial, the Chief Magistrate's Court delivered Judgment dated 11th December, 2014 in favour of the respondent against the appellant. The trial Court ordered that the appellant pays to the respondent the principal sum of UG. SHS. 18,840,000= the same having been unlawfully debited from the respondent's account. It was also ordered that interest of 35% per annum be carried on the said sum as from the 21st February, 2011 when the said amount was debited from the respondent's account till payment in full. The trial Court also awarded to the respondent general damages of UG. SHS. 5,000,000= because of the inconveniences caused to him since 21st February, 2011 when the principal sum of UG. SHS. 18,840,000= was paid out of the respondent's stated account. The trial Court also ordered the said general damages to carry interest thereon at the commercial rate of 35% per annum from the 21st February, 2011 till payment in full.

Dissatisfied with the Judgment, the appellant lodged Civil Appeal No. 12 of 2015 to the High Court sitting at Nakawa. The

appeal was heard and determined by Hon. Lady Justice Elizabeth Ibanda Nahamya, and Judgment was delivered on 23rd November, 2015. The learned appellate Judge dismissed the appellant's appeal and made the following orders:

a) The appellant to refund to the respondent the principal sum of UG. SHS. 18,840,000=;
b) The respondent was awarded UG. SHS. 60,000,000= general damages for loss of business;
c) The principal sum of UG. SHS. 18,840,000= was to carry interest of 32% per annum from the date of filing the suit till payment in full;
d) The general damages of UG. SHS. 60,000,000= were to carry an interest of 25% per annum from the date of the trial Court's Judgment of 11th December, 2014 till payment in full;
e) The sums in (a) to (d) were to be paid by the appellant to the respondent within a month from the date of delivery of the High Court Judgment;
f) The interim order for stay of execution vide Miscellaneous Application No. 62 of 2015 issued by the High Court at Nakawa was lifted;
g) The parties to the High Court Civil Appeal No. 12 of 2015 were directed to file in the High Court a progressive report within a month from the date of the delivery of the Judgement in High Court Civil Appeal No. 12 of 2015;
h) The appellant was ordered to pay to the respondent the costs of the High Court appeal and those in the lower trial Chief Magistrate's Court.

Being still dissatisfied with the Judgment given in appeal by the High Court, the appellant lodged a second appeal to this Court.

Grounds of Appeal

According to the amended Memorandum of Appeal lodged in this Court on 5th December, 2017, the appeal is based on four grounds set out as follows:

1. The appellant Judge erred in law when she awarded the respondent a sum of UG. SHS. 60,000,000= as general damages without a cross-appeal and when the parties had not been heard on this issue and that the trial Magistrate did not have jurisdiction to make this award.
2. The appellant Judge erred in law when she awarded the respondent interest at the rate of 25% p.a. on the sum above running from the date of Judgment of the Magistrate's Court without the respondent having cross appealed on this point.
3. The appellant Judge erred in law when she awarded interest to the respondent on the special damages at the rate of 32% p.a. and general damages at the rate of 25% p.a. both rates being manifestly excessive.
4. The appellant Judge erred in law when she held that the appellant was liable to pay the respondent a sum of UG. SHS. 18,840,000= on the basis of extraneous matters and thus drawing a wrong conclusion that the applicant was negligent.

Duty of this Court:

Section 72 of the Civil Procedure Act deals with second appeals. It provides:

"72. Second Appeal

i) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that:

a) The decision is contrary to law or to some usage having the force of law.

b) The decision has failed to determine some material issue of law or usage having the force of law.

c) A substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits."

It follows therefore that this being a second appeal, the grounds of appeal must only be on matters of law. The duty of this Court, as the second appellate Court, is therefore to determine, as a matter of law whether or not the first appellate Court failed to carry out its duty as the first appellate Court.

In **Pandya V R [1957] EA 336** at p. 338 the then East Africa Court of Appeal held:

> *"On a second appeal to this Court..... it becomes a question of law as to whether the first appellate Court, on approaching its task, applied or failed to apply those basic principles."*

The basic principles that a Court of Appeal of first instance must carry out include a duty to rehear the case by reconsidering the evidence that was adduced at the trial. The said Court must then make up its own mind, not disregarding the Judgment appealed from, but carefully weighing and considering it, and deciding whether or not it is wrong or right. As to the manner and demeanour of witnesses the appellate Court of first instance, must be guided by the impression made on the trial Court that saw the witnesses testify so as to determine who was truthful. But there may be other factors, apart from manner and demeanour, which may show whether a statement of a particular witness is credible or not, and the Court in appeal on first instance, is entitled to take these into consideration, and if circumstances so warrant, come to a conclusion on the issue different from the one of the trial Court.

The duty of the second appellate Court is thus to determine whether, as a matter of law, the Court of Appeal of the first instance dealt with the appeal in accordance with the principles set out above.

This Court, as the second appellate, will proceed to resolve the grounds of the appeal on the basis of the above stated duty of a second appellate Court.

Resolution of the Grounds of Appeal:

Ground 1: This ground faults, as a matter of law, the High Court appellate Judge for increasing the award of general damages from UG. SHS. 5,000,000= to UG.SHS. 60,000,000=.

Counsel for the appellant submitted that the first appellate High Court Judge erred in law to award UG. SHS. 60,000,000= general

damages to the respondent when the said respondent never cross-appealed against the award of UG.SHS. 5,000,000= general damages by the trial Chief Magistrate's Court. None of the parties, whether the appellant or the respondent had been heard on appeal in the High Court on the issue of whether the award of UG. SHS. 5,000,000= general damages by the trial Court was adequate or not adequate as damages, in the circumstances of the case.

Further, it was the respondent who made a decision to lodge his original Civil Suit No. 41 of 2011 in the Chief Magistrate's Court, Nabweru, which Court had no pecuniary jurisdiction to award general damages of UG. SHS. 60,000,000= and as such it was an error of law for the first appellate Judge of the High Court to award such an amount of general damages that was beyond the pecuniary jurisdiction of the trial Chief Magistrate's Court.

Counsel for the respondent submitted in support of the learned High Court appellate Judge that Section 33 of the Judicature Act vested in the High Court, as the first appellate Court, inherent jurisdiction to award the UG. SHS. 60,000,000= general damages, notwithstanding the fact that the respondent never lodged a cross-appeal contesting the award of UG. SHS. 5,000,000= general damages by the trial Chief Magistrate's Court as being too little. Counsel thus prayed that this second appellate Court does not disturb the award of UG. SHS. 60,000,000= general damages by the first appellate High Court.

In resolving this ground, this Court notes that the respondent never cross-appealed to the High Court challenging the award or the quantum by the trial Chief Magistrate Court of the UG. SHS.

5,000,000= general damages, in the course of that Court determining Civil Appeal No. 12 of 2015 lodged by the appellant against the respondent.

It is also significant that Counsel for the respondent filed in Court on 7th September, 2015 the respondent's written submissions in opposition to High Court Civil Appeal No. 12 of 2015. Counsel for the respondent never made any submission challenging the award of UG. SHS. 5,000,000= general damages.

On the part of the appellant, there was also no submission at all in the written submissions filed in the High Court in Civil Appeal No. 12 of 2015 by the appellant's Counsel challenging the award by the trial Court of general damages of UG. SHS. 5,000,000=, either the quantum or otherwise. Indeed the appellant in his amended Memorandum of Appeal in Civil Appeal No. 12 of 2015 never raised a specific ground challenging the award of UG. SHS. 5,000,000= general damages whether its quantum or otherwise.

In the considered view of this Court, neither the appellant nor the respondent submitted in the High Court in Civil Appal No. 12 of 2015 on the issue of the award by the trial Chief Magistrate's Court of general damages of UG. SHS. 5,000,000=. The issue was also never a specific ground of appeal or cross-appeal in the said High Court Civil Appeal No. 12 of 2015.

The learned High Court appellate Judge never called upon any Counsel, whether for the appellant, or the respondent, to address Court on the issue of the award of general damages, where or not the award was adequate or too little in the circumstances.

In her Judgment, the learned High Court appellate Judge, stated that:

> *"The respondent was not satisfied with the award of general damages of UG. SHS. 5,000,000= awarded by the trial Magistrate. It was the submission of the respondent that he was earning between UG. SHS. 9,000,000-10,000,000= per month. The money was stolen in February, 2011. Since then the respondent had spent 45 months without earning from his business.*
>
> *In the alternative, the respondent submitted that if Court cannot give the highest amount of general damages required, at worst, it should consider that even if he was earning UG. SHS. 1,000,000= per month, although it was not the case in this matter, the trial Magistrate would have awarded the respondent a sum of UG. SHS. 45,000,000= as general damages. He asked this Court to award him the maximum general damages for the loss of his business, interest at 35% and costs of the suit".*

As already noted in this Judgment, the respondent never lodged a cross-appeal to High Court Civil Appeal No. 12 of 2015 challenging the award to him of UG. SHS. 5,000,000= general damages by the trial Chief Magistrate. With respect to the learned appellate High Court Judge, in the absence of a cross-appeal on the issue of general damages awarded, there was no basis in law for the learned Judge to find and hold that the respondent was dissatisfied with the award of the said general damages by the trial Chief Magistrate's Court.

Further, as already stated, Counsel for the respondent never submitted specifically on the issue of the said general damages either in person before the High Court or through written submissions filed in that Court in Civil Appeal No. 12 of 2015. The submissions on the issue that the learned appellate Judge relies upon as being those of the respondent, and which are contained in the quotation produced above out of the learned Judge's Judgment, were submissions made by the respondent, then plaintiff, at the trial before the Chief Magistrate's Court in the original Civil Suit No. 41 of 2011. These submissions just happened to be part of the submissions attached as annexure "FV" to the respondent's written submissions in High Court Civil Appeal No. 12 of 2015. The contents of annexure "FV" to the respondent's Counsel's submissions were attached, according to the explanation of Counsel for the respondent which is on Court record, for the purpose of:

> *"The trial Court found and we also submit as we did especially in the lower Court and we reiterate those submissions and attach a copy of our five reasons why the bank was in breach and was negligent and it is marked "FV".* ***See: page 109 Record of Appeal dated 22nd April, 2016.***

Hence the purpose of the attachment of the submissions made at the trial before the trial Chief Magistrate marked "FV" by Counsel for the respondent to the respondent's submissions in High Court Civil Appeal No. 12 of 2015 was not because the respondent was challenging the award of general damages of UG. SHS. 5,000,000= as being inadequate, but rather, the respondent was providing

proof on appeal to the High Court that the appellant bank was in breach and was negligent in its contractual obligations to the respondent.

As a matter of law an appeal is instituted in the appellate Court by lodgement of a Memorandum of Appeal in that Court. The Memorandum sets out concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points alleged to have been wrongfully decided and the nature of the relief which it is proposed to ask the appellate Court to make. When the respondent to the appeal desires to contend at the hearing of the appeal that the decisions of the lower Court or any part of it should be varied or reversed, then such respondent has to give notice to that effect, specifying the grounds of his/her contention and the nature of the order which that respondent proposes to ask Court to make. Such a notice has to state the names and addresses of any person to be served with copies of the said notice.

The Uganda Supreme Court in **Civil Appeal No. 1 of 2003: Mohammed Mohammed Hamid vs Roko Construction Ltd** stated:

> *"Further we have perused the eight grounds of appeal which were lodged in the Court of Appeal on behalf of the present respondent. None of those eight grounds of appeal in the Memorandum complains about illegalities upon which the learned Justices of Appeal decided the appeal. In our considered view, and with great respect, the decision of the*

Court of Appeal contravened Rule 102(c) of the Rules of the Court of Appeal".

Rule 102(c) of the Court of Appeal Rules, whose provisions the Supreme Court has interpreted as being mandatory, sets out the law of general application as regards grounds of appeal. It provides:

"102(c). The Court shall not allow an appeal or cross appeal on any ground not set forth or implicit in the Memorandum of Appeal or notice of cross appeal, without affording the respondent or any person who in relation to that ground should have been made a respondent, or the appellant, as the case may be, an opportunity of being heard on that ground".

In the considered view of this Court, the principles expressed in the Court of Appeal Rule 102(c) are also the ones expressed in Order 43 Rule 2 of the Civil Procedure Rules that regulate the procedure of appeals form Magistrates Courts to the High Court. It provides:

"O.43 r 2: Grounds which may be taken in appeal

1) The appellant shall not, except by leave of the Court, argue, or be heard in support of any ground of objection not set forth in the Memorandum of Appeal.

2) The High Court in deciding the appeal shall not be confined to the grounds of objection set forth in the Memorandum of Appeal or taken by leave of the Court under this rule; but the High Court shall not rest its decision on any other ground unless the

party who may be affected by the decision has had a sufficient opportunity of contesting the case on that ground".

This Court therefore finds merit in the appellant's contention that the question of general damages was never a ground of appeal or a cross appeal before the High Court in Civil Appeal No. 12 of 2015. It was a matter that was never specifically submitted upon by both the appellant and the respondent before the learned High Court appellate Judge. The matter was not at all canvassed before the learned Judge. The Judge never required any of the Counsel for any of the parties to address her on the issue. Thus the learned appellate Judge never availed a fair hearing, or a hearing at all, to the appellant (and respondent) before increasing the general damages from UG. SHS. 5,000,000= to UG. SHS. 60,000,000=. This, with respect, was an error of law on part of the learned appellate Judge. She had no inherent jurisdiction to act as she did in contravention of the principle of ensuring fair hearing.

Ground 1 of the appeal thus succeeds.

Grounds 2 and 3

These grounds are inter-related and both fault in law the appellate Judge for awarding interest at the rate of 25% per annum on the general damages from the date of Judgement till payment in full and interest of 32% per annum on the principal sum of UG. SHS. 18,840,000=.

In the amended plaint in the Chief Magistrate's Court Civil Suit No. 041 of 2011 (pages 6-9 of the Record of Appeal dated 22nd April, 2016) the plaintiff, now respondent, prayed to be awarded;

(a) Principal sum of UG. SHS. 18,840,000=

(b) General damages for loss of business and profits

(c) Interest at commercial rate of 35% per annum

(d) Costs of the suit

The trial Chief Magistrate at the conclusion of his Judgment dated 11th December, 2014 stated:

"The plaintiff is therefore awarded all remedies as prayed for in the plaint and I also award general damages of 5 million Ugandan shillings because of the inconveniences caused to him since 21st February, 2011".

It is not in the trial Chief Magistrate's Judgment that he awarded interest of 32% per annum either on the principal sum or on the general damages. Indeed the Court Decree (pages 7 and 8 of the Court Record Volume III) has interest of 35% per annum as the interest payable on the principal sum.

This Court's appreciation of the remedies awarded by the trial Chief Magistrate's Court is that the respondent as plaintiff was awarded interest at 35% per annum on the sums that the said Court ordered to be paid to him, that is the principal sum and the general damages. The justification of the award of this rate of interest, that the trial Chief Magistrate's Court accepted, was because the respondent, had taken a loan from a commercial bank and was being charged this very interest rate of 35% per annum on the said loan amount. There was no specific ground of appeal that was drawn up in High Court Civil Appeal No. 12 of 2015 by the appellant challenging the rate of interest to be very high. The

respondent himself was being charged the same interest rate on his loan.

The learned High Court appellate Judge was thus not right to assert in her Judgment as related to the principal sum that:

> *"The trial Magistrate awarded him interest of 32% being the interest that he was charged while serving the loan".*

The figure of the interest of 32% per annum was submitted by Counsel for the respondent (then plaintiff) but it is not what the trial Chief Magistrate awarded. The trial Chief Magistrate awarded interest as was prayed for in the plaint, which was 35% per annum. This was on both principal sum and general damages.

The learned appellate Judge awarded interest of 25% per annum on the general damages of UG. SHS. 60,000,000= which damages this Court has already found to have been assessed and awarded contrary to the law.

Having set aside the said award, and given the fact that the appellant never specifically appealed against the interest awarded by the trial Chief Magistrate, this Court finds no reason in law for interfering with the rate of interest as awarded by the trial Chief Magistrate. In conclusion on these two grounds, this Court upholds the Judgment of the trial Chief Magistrate in that the principal sum of UG. SHS. 18,840,000= is to carry interest of 35% per annum as from 21st February, 2011 the date the respondent lost the said principal sum by being debited from his account, up to the date of payment in full.

As to the general damages, interest on general damages is intended to be compensatory in nature against the person in breach of the contractual obligations: See: **Star Supermarket (U) Ltd vs Attorney General, Court of Appeal Civil Appeal No. 34 of 2000**. The said interest runs from the date of Judgment till payment in full. See: **Fernandes –vs- The People [1972] EA 62.**

Accordingly interest at the rate of 35% per annum awarded by the trial Chief Magistrate's Court shall be charged on the general damages of UG. SHS. 5,000,000= as from 11th December, 2014, the date of delivery of the Judgment by the trial Chief Magistrate's Court up to payment in full. Grounds 2 and 3 of the appeal thus stand disallowed.

Ground 4:

Under this ground the learned High Court appellate Judge is stated to have erred in law for holding that the appellant was liable to pay the respondent the principal sum of UG. SHS. 18,840,000= and that, that holding was based on extraneous matters, that led the learned appellate Judge to a wrong conclusion that the appellant was negligent.

For the appellant, it was submitted that there was no justification in law to hold the bank negligent as the bank contacted the respondent before paying out the suit cheque out of the respondent's account. Further, the suit cheque was properly examined in the normal course of things, and the same appeared genuine to all intents and purposes and also the signature of the drawer of the cheque thereon was similar to that of the respondent.

Counsel for the respondent, on the other hand, submitted that it had been established as a matter of law, that the appellant had failed in its duties as a bank towards its customer/client, the respondent. The bank had failed to notice the forgeries on the cheque in question and yet the respondent had just recently reported to the appellant, the loss of two cheque leafs relating to his account with the appellant bank. Thus the appellant was, at the material time, on the alert as regards any operations concerning the respondent's said account.

As the second appellate Court, this Court is satisfied that the trial Chief Magistrate's Court evaluated and carefully considered the evidence adduced by both parties to the suit and concluded that the appellant, as a reasonable banker, did not exercise reasonable care and skill in paying out the principal sum of UG. SHS. 18,840,000= out of the respondent's account. The trial Court rightly found that the appellant did not meet the legal test set out in the case of **Consultant Surveyors and Planners –v- Standard Bank [1984] HCB 57**, such a test being that of a reasonable banker exercising reasonable care and skill in carrying out its responsible duties to customers and clients, like the respondent. The fact that on receiving the suit cheque the appellant's employees did not notice that the fraudster's telephone number 0701-11275 written at the back of the suit cheque was different from that on his account which was number 0702-112575, the failure by the bank employees to use extra precaution on the respondent's account given the fact that the respondent had just reported to the appellant bank loss of his two cheque leafs, and the further failure by the bank to use its dark room to determine

whether the cheque leaf was genuine and unaltered, were all considered by the trial Court and provided a basis for the trial Court's finding that the appellant had been negligent as a bank to the prejudice of the respondent. The trial Court thus applied the law pronounced by the Uganda Supreme Court in **STANBIC Bank (u) Ltd v Uganda CROCS Ltd, SCCA No. 4 of 2004** that a bank has a duty of care to its customer and as such, a bank must not be negligent towards its customer and thus cannot charge its customer with money lost through its negligence.

We are satisfied that, as a matter of law, the trial Chief Magistrate's Court properly analysed and evaluated the evidence that was adduced and rightly came to the conclusion that the appellant, then the defendant, had acted negligently and was under obligation to pay to the respondent the principal sum of UG. SHS. 18,840,000=

The learned High Court appellate Judge in her Judgement in High Court Civil Appeal No. 12 of 2015 rightly and properly directed herself as to the duty of an the appellate Court of first instance. This duty is one where the said Court carries out a re-appraisal and a re-valuation of the evidence adduced at trial and draws its own conclusions from that evidence, where necessary. The learned appellate Judge properly directed herself as to this duty of the first appellate Court relying on the authorities of **Maimuna s/o Patrick Mutoo vs Wilson Njau Nyaki, Civil Appeal No. 131 of 1994, Peters vs Sunday Post Ltd [1958] EA 424, Watt vs Thomas [1974] 1 ALLER 582** and **Astariko EA Abuli –vs- Elifas M. Ambaisi Civil Appeal No. 228 of 1998.**

The learned appellate Judge having so properly and rightly directed herself as to the duty of an appellate Court of first instance, proceeded to consider and re-evaluate the evidence adduced at trial by both the plaintiff and defendant as parties to the original suit and then proceeded to resolve whether the trial Court reached the right conclusion on the issue as to whether the appellant was negligent in debiting the respondent's account with UG. SHS. 18,840,000= and whether the appellant is liable to pay such amount of money to the respondent.

The learned appellate Judge on re-considering and re-evaluating the evidence found that the trial Chief Magistrate had properly evaluated the evidence adduce before the Court at trial and the learned High Court appellate Judge concurred with the findings of the trial Chief Magistrate. These findings were that the suit cheque was a forgery as to the signature of the respondent as a drawer of the same, and that the cheque number 0138 that was used to pay the fraudster had been altered from Cheque leaf number 0133, which cheque leaf the respondent had reported to the appellant as having been stolen from him and the clearance of the same had been specifically stopped by the respondent. The cheque leaf No. 0138 was still intact in the respondent's cheque book by the time he made a complaint to the appellant regarding the missing cheque leafs, and even by the time of the trial of the suit.

Having reviewed and re-evaluated all the evidence adduced at trial by the plaintiff and the defendant as well as their respective witnesses on the issue of payment of cheque leaf number 0138 in

the sum of UG. SHS. 18,840,000= the learned appellate Judge concluded that:

> *"I will not fault my brother, His Worship Lawrence Tweyanze. He properly evaluated the evidence on record and the submissions of the parties and he rightly pointed out in his Judgment. See pages 2 and 5 of the lower Court's Judgment. I conquer with the findings of the trial Magistrate".*

Later, the learned appellate High Court Judge continued in her Judgement that:

> *"Accordingly, based on the evident record of the lower Court and considering the appellant's witnesses who confirm that the appellant was negligent on how it handled the case, it is my considered opinion that the trial Magistrate took into account all the evidence. He also considered the supporting documents and the submissions of the parties. Thus he came to the right conclusion in holding that the appellant was negligent in executing its duties thereby depriving the respondent of his money. It is my finding that the trial Magistrate properly evaluated the evidence on record thereby reaching the correct decision. Therefore the five grounds of appeal are hereby dismissed".*

This Court notes that of the five grounds of appeal that the learned High Court appellate Judge dismissed, four of them were in respect of payment by the appellant of the suit cheque number 0138 in the sum of UG. SHS. 18,840,000=. The fifth ground was a general one faulting the trial Chief Magistrate of having not properly evaluated the evidence on record, thereby reaching at a wrong decision. It is

therefore safe to conclude that the main substance of the five grounds of appeal to the High Court had to do with the payment by the appellant of UG. SHS. 18,840,000= on the suit cheque No. 0138 fraudulently drawn on the account of the respondent with the appellant.

We are unable to accept the submission made for the appellant that the appellant satisfied the standard of care of a reasonable bank in paying out the cheque number 0138 in the sum of UG. SHS. 18,840,000=.

The learned appellate Judge of the High properly re-examined and re-evaluated all the evidence adduced on this point and we find that she was right to uphold the holding of the trial Chief Magistrate that the appellant was negligent in failing to find out that the signature of the drawer of the said cheque was not the one of the respondent, that the cheque serial number 0133 had been altered to be serial number 0138 and also for failing to detect that fraud was going on at the material time of the payment of the said suit cheque because when the appellant's employee Agaba called to contact the respondent on the correct number 0782-186345, the call was diverted to another MTN number 0778-731612 which was not of the respondent. The said Agaba, who was not personally familiar with the voice of the respondent, took no steps to ensure that the one talking on the said MTN number 0778-731612 was actually the respondent. As it turned out such erson was not the respondent, but the fraudster, who took th SHS. 18,840,000=.

Further, both the trial Chief Magistrate and the learned appellate High Court Judge found, and the appellant did not contradict the finding, that at the material time of the lodgement and payment of the suit cheque number 0138, the appellant's employee Joyce Nabukenya, who never testified in the case, was, according to the mobile phone print outs exhibited at the trial, in constant communication by mobile phone with the fraudster. This period was from 5th February, 2011 up to 24th February, 2011. The appellant bank also ignored the crossing and replacement of the respondent's mobile phone number with the fictitious one of the fraudster on the suit cheque. The fact that the fictitious number 0702-112575 that the fraudster used to open his account was ignored by the appellant bank employees coupled with the other facts set out above, all these constituted negligence on the part of the appellant bank to the prejudice of the respondent.

The learned High Court appellate Judge found the trial Chief Magistrate's Court to have been right to apply and to hold, on the basis of Section 23 of the Bills of Exchange Act, that the appellant as a bank was liable to the respondent, as its customer/client. Section 23 of the Bills of Exchange Act provides:

"23. Forged or Unauthorized Signature

Subject to this Act, where a signature on a bill is forged or placed on the bill without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge for it or to enforce payment of it against any party to it can be

acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority; but nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery".

This Court finds that the trial Chief Magistrate's Court properly dealt with the evidence and the law including the above stated Section 23 of the Bills of Exchange Act, and also that the learned High Court appellate Judge properly re-considered and re-evaluated the evidence adduced at trial of the suit and arrived at the right conclusion on the issue of the suit cheque and the order of payment by the appellant to the respondent of the principal sum of UG. SHS. 18,840,000=. We accordingly find no merit in ground 4 of the appeal. The same is disallowed.

Ground 1 of the appeal having been allowed, this Court sets aside the award to the respondent against the appellant of UG. SHS. 60,000,000= general damages by the appellate High Court in Civil Appeal No. 12 of 2015. The interest of 25% per annum ordered by the said appellate High Court to be paid on the said general damages from the date the trial Magistrate's Court delivered Judgment till payment in full is also set aside.

Instead, this Court reinstates the award by the trial Chief Magistrate's Court of UG. SHS. 5,000,000= general damages payable by the appellant to the respondent together with interest thereon at 35% per annum from 11th December, 2014, being the

date of delivery of Judgment by the trial Chief Magistrate's Court, till payment in full.

Again pursuant to the trial Chief Magistrate's Judgment, the appellant is also to pay to the respondent the principal sum of UG. SHS. 18,840,000= together with interest thereon of 35% per annum from 21st February, 2011, the date the suit cheque was paid, till payment in full.

As to costs, the appellant has succeeded only as regards ground 1 of the appeal. The respondent has succeeded in resisting grounds 2,3 and 4 of the appeal which have been dismissed. We accordingly award ⅞ of the costs of appeal at this Court to the respondent.

Accordingly we now make the following orders:

1) This appeal substantially fails having succeeded only in respect of ground 1 of the appeal and the rest of the grounds having been dismissed.
2) The appellant shall pay the respondent special damages of UG. SHS. 18,840,000=.
3) The appellant shall also pay to the respondent UG. SHS. 5,000,000= being general damages.
4) The special damages of Ug. Shs. 18,840,000= shall attract interest at 35% per annum from 21st February, 2011, the date the suit cheque was paid out, until payment in full.
5) The general damages of Ug. Shs. 5,000,000= shall attract interest at 35% per annum from 11th December, 2014, the date of delivery of Judgment by the trial Chief Magistrate's Court until payment is full.

6) The appellant shall pay to the respondent full costs of the suit at the trial Court and those of the appeal at the High Court.

7) The appellant shall pay to the respondent ⅞ of the costs of the appeal to this Court.

It is so ordered.

Dated at Kampala this.....18th..... **day of.....Jan.:. 2019**

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Alfonse Owiny Dollo
Deputy Chief Justice

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Kenneth Kakuru
Justice of Appeal

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Remmy Kasule
Ag. Justice of Appeal