

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

CIVIL SUIT NO. 410 OF 2002

**1. JOHN KAWANGA
2. REMMY KASULE both t/a
M/S. KAWANGA AND KASULE
ADVOCATES}PLAINTIFFS**

VERSUS

STANBIC BANK UGANDA LTDDEFENDANT

Before: The Hon. Mr. Justice E. S. Lugayizi

JUDGMENT

The plaintiffs sued the defendant for breach of contract and prayed for the following remedies,

1. General damages.
2. Interest on general damages at 25% p.a. from 5/4/2002 till payment in full.
3. Costs of the suit.

In its WSD the defendant denied the above claim and averred that it did not breach the contract.

At the scheduling conference the parties herein admitted the following facts:

1. That the plaintiffs are joint operators of current account No. 0140002789802 at the defendant's bank.
2. That on 28th March 2002 the plaintiffs drew two cheques on the above account, that is to say a cheque in the sum of shs. 113,934,675/= that was payable to the National Union of Clerical Commercial Professional and Technical Employees Union (which Court will refer to hereinafter as the "Union") and another one in the sum of shs. 2m/= that was payable to Mrs. Margaret Kyeyune.

3. On 3rd April 2002 the plaintiffs obtained a provisional statement from the defendant showing that the defendant had debited the said account with the above two sums of money.

4. Subsequently, the respective payees of the cheques presented them for payment and the defendant returned them unpaid with the endorsement "***drawers confirmation required***".

5. On 7th April 2002 the payees of the said cheques approached the plaintiffs over the dishonour of their cheques.

6. The plaintiffs contacted the defendant which made alternative arrangements to pay the sums under the two cheques.

In addition to the above the parties herein also agreed to admit the following documents as exhibits without formally proving them:

1. The cheques in question, which Court marked as Exh. P1 and P2 respectively.

2. The provisional statement in respect of the plaintiffs' clients' account, which Court marked as Exh. P3.

3. The plaintiffs' bank statements running from 27th November 2001 to 30th June 2002, which Court marked as Exh. D1.

4. The specimen signature cards of the plaintiffs, which Court marked as Exh. D2.

5. The telephone call log sheet for the defendant's extension No. 434 running from 1st April 2002 to 30th April 2002, which Court marked as Exh. D3.

The parties herein further agreed that Court would decide the suit on the basis of the following issues:

1. Whether the defendant's dishonour of the two cheques constituted a breach of contract.

2. The available remedies.

At the time of hearing the suit the plaintiffs called one witness, namely Mr. Remmy Kasule (PWI). The defendant called two witnesses, namely, Ms. Susan Odoro (DW1) and Mr. Paulo Mulyankolo Musoke (DW2).

In very brief terms the plaintiffs' witness Mr. Kasule testified as follows:

That he and Mr. John Kawanga are advocates. They have been practicing law under the name of Kawanga and Kasule Advocates for a long time. Their firm of advocates has had two accounts with the defendant since 1974; and one of those accounts (i.e. account No. 0140002789802) which is the subject of this judgement is their clients' account. On 28th March 2002 the plaintiffs issued two cheques in respect of that account to the Union and Mrs. Kyeyune. On 3rd April 2002 Mr. Kasule visited the defendant's place of work and inquired about the said cheques. One of the defendant's employees (a teller) advised him that the cheques were debited to their clients' account on 2nd April 2002. To confirm that fact the defendant's employee gave Mr. Kasule a statement (Exh. P3). Mr. Kasule went away and advised the payees of the cheques in question that all was well the defendant would honour the cheques. However, on 7th April 2002 Mr. Kasule was surprised when 50 Union members invaded their chambers. They alleged that the plaintiffs had embezzled their money because the cheque the plaintiffs' drew in their favour had bounced. The Union members, then, threatened to take the plaintiffs to the police. However, Mr. Kasule managed to calm them down. Two of their representatives agreed to go with him to the defendant's place of work to find out what had gone wrong with their cheque. At the defendant's place of work its officers whom Mr. Kasule talked to apologised for the dishonour of the cheques and promised to put the matter right soon. Subsequently, they did so. They honoured the Union members' cheque. However, the defendant later dishonoured the cheque the plaintiffs drew in favour of Mrs. Kyeyune. Once again Mr. Kasule had to visit the defendant's place of work to put this matter right. Mr. Kasule concluded his testimony by pointing out that the plaintiffs suffered injury to their reputation as a result of the dishonour of the cheques in question. For that reason they were seeking general damages and costs of the suit.

In essence, the defendant's witnesses testified as follows. The defendant dishonoured the cheques for good cause. Firstly, Mr. Kasule's signature on both cheques looked suspect. It did not flow continuously. Instead, it was divided into two parts; and that projection made it differ materially

from the specimen the defendant took from Mr. Kasule when he and his partner opened the account. Secondly, the sums involved were big. This was not consistent with the normal trend whereby the plaintiffs drew only fairly small cheques of shs. 1m/= or so, against their clients' account. For the above reasons, the defendant thought that it was necessary to obtain the plaintiffs' confirmation that the cheques were genuine before honouring them. The defendant therefore tried to communicate with the plaintiffs to get the conformation but it did not succeed. Thereafter, it had no choice but to dishonour the cheques. In the circumstances, the defendant urged Court to dismiss the plaintiffs' claim with costs.

Court will, below, resolve the agreed issues. In doing so it will take into account the relevant law and the evidence on record.

With regard to the first issue, that is to say whether the defendant's dishonour of the two cheques constituted a breach of contract the plaintiffs submitted that it did, but the defendant was of a contrary view; and both parties gave their reasons for their positions which are on record.

The law is that if a customer's account has funds on it or the customer has arranged credit facilities before hand and the cheque he has drawn is in legal form, his banker must honour the cheque to the letter. If he does not do so he is in breach of contract. **(See Halsbury's Laws of England Fourth Edition Reissue pages 142-152.)** However, the above is not exhaustive in addition to it a reasonable and honest banker must honour a cheque after ascertaining that there is no real possibility *(not amounting to a probability)* that a third party is endeavouring to defraud the customer. **(See Halsbury's Laws of England Supra.)** In short, if there were funds on a customer's account a banker would only be justified in refusing to pay a cheque if it is ambiguous in form, in that it raises in the banker's mind reasonable suspicion that a third party might be endeavouring to misappropriate the customer's money. (See Halsbury's **Laws of England Supra.**)

In the instant case, it is not in dispute that the plaintiffs had sufficient funds on their clients' account when the defendant dishonoured the cheques in question. It may even be true that the defendant found Mr. Kasule's signature on the said cheques suspect. However, the crux of the

matter is whether at the time of dishonouring the cheques the defendant, as a reasonable and honest banker, needed confirmation that Mr. Kasule's signature was not a forgery that could have resulted in the misappropriation of the funds on the account in question? If, Court answers the above question in the affirmative it would mean that the defendant's dishonour of the cheques did not constitute a breach of contract; otherwise it did.

After carefully considering all the evidence on record Court is of the opinion that it must answer the above question in the negative; and these are its reasons for doing so. Mr. Kasule testified that a few days after the plaintiffs had given their clients the cheques in question he, personally, visited the defendant's place of work. He checked their clients' account with one of the defendant's employees (a teller) and found that the defendant had debited the account with the cheques in question. As confirmation of that fact the teller gave Mr. Kasule a statement (i.e.Exh.P3) showing the above state of affairs.

The defendant did not deny or contradict the above piece of evidence. Therefore, Court thinks that the said evidence represents the truth.

Now if, as a matter of fact, Mr. Kasule visited the defendant on 3rd April 2002, inquired about the state of their clients' account and, without raising a finger, went away with a statement (Exh. P3) showing that the defendant had debited the said account with the cheques in question what other confirmation did the defendant need from the plaintiffs to show that the said cheques were not forged? Needless to say, the defendant did not need further confirmation from the plaintiffs that the cheques in question were not forged after Mr. Kasule had visited its place of work on 3' April 2002, for that visit had dispelled any suspicion surrounding the cheques. But, perhaps the defendant should blame itself for having an uncoordinated administration. While part of its administration (i.e. the teller) had confirmed from Mr. Kasule on 3rd April 2002 that the cheques in question were genuine, the rest of the defendant's administration was in a deep slumber. It woke up after 3rd April 2002. Unaware of what had transpired in its house a few days before, it proceeded to dishonour the cheques and requested for confirmation of the drawers' signatures, which was, at that point, not necessary.

All in all, Court is satisfied that the plaintiffs succeeded in proving, on a balance of probabilities, that the defendant's dishonour of the cheques amounted to a breach of contract.

With regard to the second issue, that is to say the available remedies the fact that the plaintiffs have succeeded in proving their case under the first issue means that they are entitled to some remedies. However, it should be remembered that the remedies, which the plaintiffs are seeking were outlined at the beginning of this judgment. Therefore, Court will, below, go through those remedies with a view to deciding whether it will grant them to the plaintiffs.

1. General damages:

Mr. Kasule testified that when the defendant dishonoured the cheques in question the Union members were furious. They invaded the plaintiffs' chambers, in a big number, and threatened to take them to the police because they thought that the plaintiffs had embezzled their money. In Mr. Kasule's opinion the dishonour of the cheques injured the plaintiffs' reputation. For that reason, the plaintiffs' advocate Mr. Mubiru, urged Court to award each of his two clients shs. 6m/= as general damages.

The defendant's advocate Mr. Wamala did not agree with the above claim. He submitted that the plaintiffs did not suffer any injury to their reputation. Alternatively, Mr. Wamala argued that should Court find otherwise, then it should award the plaintiffs only nominal damages since they were not traders. Mr. Wamala cited, among others, the case of **Coker v Standard Bank of Nigeria Ltd (1976) ALR Comm 174**, in support of that position.

The ordinary remedy for breach of contract is general damages. (See **Hadley v Baxendale (1854, 9 Exch. 341)**) It is also a settled principle of law that a plaintiff who cannot prove actual damage or loss for breach of contract is only entitled to nominal damages. (See **Gibbons v Westminster Bank Ltd (1939) 2 K.B. 882 at 888 quoted in Essays in African Banking Law and Practice at page 272.**) But the above principle has exceptions; and one of them is that where a banker has, without justification, dishonoured a trader's cheque the trader is entitled to substantial damages; and does not need to plead and prove actual damage. (See **Gibbons Westminster Bank Ltd Supra.**) For it is presumed that the wrongful dishonour of the cheque automatically injures the trader's commercial credit. However, courts have consistently refused

to extend the above exception to cover other businesspersons, who are not traders, whose cheques bankers have dishonoured. Such other businesspersons must prove actual damage or injury before courts award them substantial damages. For example, in the case of **Coker v Standard Bank of Nigeria Ltd (Supra)** after the dishonour of his cheque court awarded the plaintiff, who was a legal practitioner, only nominal damages. It did so because the plaintiff was not a trader and did not prove actual damage. Uganda seems to have followed that line of judicial thinking in **Patel v National and Grindlays Bank Ltd Supreme Court Civil Appeal No. 14 of 1992 (Unreported)**.

Be that as it may, Court thinks that the line of judicial thinking in **Coker v Standard Bank of Nigeria Ltd Supra; and Patel v National and Grindlays Bank (Supra)** does not bind it. For it violates Article 21(1) of the Constitution in that it discriminates among business persons in cases where bankers have dishonoured cheques. Indeed, that line of judicial thinking visibly favours traders more than any other businesspersons. In other words, it does not offer all businesspersons equal protection of the law in cases where banks have dishonoured cheques. To that extent the above decisions are unconstitutional; and Court will not follow them. That means that the plaintiffs being advocates who are engaged in commercial legal business are entitled to substantial damages for the dishonour of the cheques in question without proving actual damage or injury.

The above aside, the plaintiffs' testimony in the area under consideration was that when the defendant dishonoured the cheques in question the Union members lost confidence in the plaintiffs and wanted to take them to the police for theft of their money.

The defendant did not deny or contradict the above piece of evidence.

In Court's opinion, the Union members' loss of confidence in the plaintiffs (albeit short lived) represents damage or injury to the plaintiffs' reputation. In the circumstances, Court agrees with Mr. Mubiru that the plaintiffs proved, on a balance of probabilities, that they suffered actual damage or injury to their reputation. For that reason, too, the plaintiffs are entitled to substantial damages.

However, Court is mindful of the fact that those damages must be temperate and reasonable. (See Essays in **African Banking Law and Practice** at page 273.) Considering all (including the plaintiffs' standing in society as long term legal practitioners; the fall in the shilling vis-à-vis the US dollar; and the big number of Union members (50) who lost confidence in the plaintiffs on the dishonour of the cheques) Court thinks that an award of shs. 5m/= for each plaintiff will be sufficient compensation as general damages for breach of contract.

2. Interest:

Court will award the plaintiffs interest on general damages at Court rate from 5th April 2002 till payment in full.

3. Costs:

Since the plaintiffs' suit has succeeded it means that the defendant must bear the costs of the suit.

In conclusion, Court has no choice but to enter judgement in favour of the plaintiffs in the following terms,

- (a) the defendant shall pay each of the plaintiffs a sum of shs. 5m/— as general damages for breach of contract;
- (b) the defendant shall pay interest on the above award at Court rate from 5th April 2002 till payment in full;
- (c) the defendant shall bear the costs of the suit.

E.S. Lugaizi (J)

27/6/2003

Read before: At

Mr. I. Kyaruha

Mr. Wamala for defendant

Mr. Ziwa - Clerk

E.S. Lugaizi (J)

27/6/2003

