

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]**

C.S. NO. 408 OF 2000

IBRAHIM KIBIRIGE:..... PLAINTIFF

VERSUS

1. U.C.B]

2. CITICORP]:..... DEFENDANTS

BEFORE: THE HON. LADY JUSTICE MS. ARACH - AMOKO

JUDGMENT:

The Plaintiff is a Ugandan businessman. The first Defendant was a bank duly incorporated in Uganda at the material time. The 2nd Defendant is a U.S based company dealing in the sale of Travellers cheques.

The Plaintiff brought this action against both Defendants jointly and severally for breach of contract, or in the alternative for money had and received, special damages of US \$4,000, general damages plus costs of the suit.

The facts of this case are that the Plaintiff bought US \$4,000 worth of Travellers cheques on the 24/11/99 from the former UCB, acting as agents of CITICORP (2nd Defendant). The terms and conditions of the Purchase Agreement were that:

- The Plaintiff had to sign each TC immediately on receipt.

- To take reasonable care to safe guard each TC.

- Immediately notify CITICORP and police of loss or theft of the TCs giving full details and answers to CITICORP's satisfaction; and fill a Refund Claim Form.

The Plaintiff would not be entitled to the refund if he failed to perform any of the above obligations. Approval of CITICORP was required for any refund. The TCs were stolen from him on the 1/1/2001.

The Plaintiff reported to the police and UCB; and filed a claim form on the 24/1/2000 (Exhibit P4). The Defendants did not refund the TCs. The Plaintiff lost patience and filed this action on 17/4/2000. Thereafter the 2 Defendant refunded the TC on 12/8/2000.

The 1st Defendant denied liability and contended that it acted as agent of a disclosed Principal, CITICORP. The suit is therefore misconceived against it and should be dismissed with costs. The case was eventually dropped against it by the Plaintiff.

The 2nd Defendant did not file a defence within the prescribed time although summons were served on it on 17/12/2001 by Mr. Robert Edelman, a process server in Long Island, USA. Since the USD 4,000 had been refunded by the time the hearing commenced, the Plaintiff's counsel then proceeded against the 2nd Defendant in respect of the following issues only:

1. General damages.
2. Interest.
3. Costs.

He called 3 witnesses in a bid to prove these issues:

- Samuel Wamala (PW1) - a close friend of the Plaintiff who said he was involved in the transaction, and assisted the Plaintiff to follow up the refund.

- PW 2 - the Plaintiff PW3 - Mrs. Ruth Emunyu - Director External Operation, Bank of Uganda. She testified on the interest rates.

The issues for determination are:

1. Whether the 2 Defendant breached the contract.
2. If so, whether the Plaintiff is entitled to general damages and interest, and how much.
3. Costs.

Regarding the 1st issue, Mr. Brian Othieno, learned counsel for the Plaintiff submitted that the 2nd Defendant was under a contractual obligation to refund the lost TCs, under the terms and conditions of the Purchase Agreement (Exh P5). Indeed it did so, but refused to pay any interest for late payment. The cheques were lost on 3/1/2000. The refund was made on 23/12/2000 - one year after the loss. This was after the 1st Defendant's General Manager Mr. Okello had advised the Plaintiff to return after 3 days to collect his money; and after Ms Shell of the 2nd Defendant had given him 30 days to refund the money. The failure by the 2nd Defendant to refund the TCs immediately was contrary to a material term in the Purchase Agreement which provided for immediate refund and a breach of the contract of sale of the said TCs.

The Plaintiff is accordingly entitled to damages for such breach. He cited the case of **Ewadi - Vs- Bank of Credit and Commerce International South Africa** (1989) ALL ER 243 - a case with similar facts where the Court held that the bank was under obligation to refund lost or stolen TCs and also awarded interest on the cheque volume for late payment. In the instant case, the Defendants refusal to refund amounted to breach of contract. He also cited the case of **Nakawa Trading Co. Limited -Vs- Coffee Marketing Board HCCS No. 137/91** where Byamugisha J. held that a breach of contract occurs when one party fails to fulfil its

obligations impaired by terms.

I have considered this argument carefully. In the instant case, it is true that the 2nd Defendant was under obligation to refund the TCs if in case of loss or theft, provided he fulfilled the terms and conditions therein. The law is,

“If the loss of the instruments occurs while they do not bear a counter signature, the traveller is entitled to obtain their face value from the issuing banker, provided he signs an indemnity. Such an indemnity would protect the banker if it turned out that, despite the travellers statement, the cheques had been counter signed before they were lost”

See: **Chitty on contracts 24th Edn 2502.**

In the EL AWADI case, it was held Inter alia that the purchase agreement which had similar wording as the one In the instant case, was to be construed as placing the Issuers under an obligation to refund the purchaser of its with had been lost or stolen, subject only the discretion where the purchaser had failed to comply with the expressed or implied terms of the agreement; that In the absence of any breach by the Plaintiff of any express term issuers could only be absorbed from obligation only If there were an implied term that the Plaintiff would not be grossly negligent or reckless.

It appears the Plaintiff complied with the terms of the Purchase Agreement because the 2nd Defendant has refunded this money I have not been able to read in the agreement that the TCs would be refunded immediately on reporting. This would not be feasible since the 2nd Defendant has to carry out Investigations first, before making a refund. I do not find any breach of contract on the part of the 2nd Defendant. This issue is answered in the negative.

Regarding interest, since I have held that the time taken was to enable the 2nd Defendant to carry out investigations. I find no justification in penalising it with an award of Interest. The expenses claimed for telephone calls of US 800 is also disallowed since it was not pleaded nor proved by any receipts. The US \$300 for service out of jurisdiction was not pleaded. Special damages must be pleaded and proved. See: **John Nagenda -Vs- Sabena Belgian World Airlines (1992) 1 KALR**

13.

All in all, I find no merit in this action; and I dismiss it accordingly. I award no costs to the 2nd Defendant since it did not participate in the action.

M.S. Arach - Amoko

JUDGE

24.4.03