

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

**HCT-00-CC-CS-0237-2010**

**ARIM FELIX CLIVE ..... PLAINTIFF**

**VERSUS**

**STANBIC BANK UGANDA LIMITED .....DEFENDANT**

**BEFORE: HON MR. JUSTICE M. W. MUSENE**

**JUDGMENT**

The background to this case is that the plaintiff Arim Felix Clive was in February 2008 contracted by the Government of Southern Sudan to develop a computer program for the Ministry of Education, Science and Technology, and Pilot the same in Uganda. On 1.6. 2009 the Government of Southern Sudan made a part payment of its contractual sum worth US\$325.060 to the plaintiff, which was remitted to his account No 240513096601 with the defendant, Stanbic Bank Uganda Limited, IPS branch, Kampala,. One and half months later, on 3.8.2009, following the arrest of the plaintiff by plain cloth policemen and officials of the liaison office of the Government of South Sudan, the plaintiff was charged in Buganda Road Chief Magistrates Court with embezzlement C/S 268 (a) of the penal code Act, Cap 120, laws of Uganda.

The plaintiff, under compulsion instructed the defendant Bank for transfer back US\$190.000 to the Government of Southern Sudan. The Chief Magistrates Court Buganda Road issued an order freezing the plaintiff's account No 0240513096601 and ordered the Bank to withhold the above money of US\$190,000 until another order directing otherwise was issued. On 13.11.2009, the plaintiffs wrote to the Bank Counter **Manding his instructions** to Government of southern Sudan that he had revoked the transfer of US\$190,000. The plaintiff's lawyers also wrote on the

19.11.2009 to the Defendant Bank informing them of the Plaintiff's Countermand and attached the plaintiff's letter counter manding the transaction. On the 18.11.2009 on the same date the Chief Magistrate's court of Buganda Road ordered the lifting of its earlier order on the transaction and gave a fresh order that the transaction be completed. The defendant Bank was served with the order on 19.11.2009 and they implemented the same by paying US\$19,000.00 to the government of South Sudan contrary to the instructions of the plaintiff. This act aggrieved the plaintiff, hence commencing the instant case against the defendant Bank. In the mean time, the D.P.P. subsequently discontinued proceedings on the charge of embezzlement against the plaintiff. At the Scheduling Conference, the following issues were framed for determination:

- 1. *Whether the Defendant was negligent in the transferring of the sum of US\$190,000.00 to the account of the Government of South Sudan.***
- 2. *If so, whether such negligence caused the defendant any loss.***
- 3. *In the alternative whether the Defendant paid out the money in obedience to the court order***
- 4. *Whether the plaintiff neglected and /or failed to mitigate its loss by appealing against the court order.***

As far as the resolution of the issues is concerned, this court has carefully considered the written submissions by both sides and the pleadings on record. And the issues will be handled one by one. Negligence was pleaded in paragraph 11 of the plaintiff's claim and the particulars of negligence and breach of duties were set out in paragraph 11 (a) to (K) of the plaint.

A summary of those particulars of negligence or the plaintiff's case were that he is the owner and operator of account No. 02040513096601 with the Defendant. And that there was a contractual relationship between him and the Defendant which obliged the defendant not only to exercise a duty of care when dealing with transactions relating to his account.

Secondly, that the bank also has a duty and obligation to obey his commands. It was therefore emphasised that pursuant to the instructions of the plaintiffs in a letter dated 13.11.2009 stopping

the Bank from making payment, the defendant Bank ignored the same and did the contrary (proceeded to make payments to the Government of South Sudan), an act that the plaintiff attribute's negligence on the part of the defendant. In his submissions, counsel for the defendant contends that although the particulars of negligence were pleaded, most of the facts relied on in the submissions were neither pleaded nor was there evidence to adduce the same in court.

Counsel for the Defendant particularly contested the plaintiffs submissions (by his counsel) that the provisions of the Bills of Exchange Act, Cap 68 Laws of Uganda were applicable in the instant facts.

As far as negligence is concerned, it is by far the widest ranging tort, encompassing virtually all intentional, wrongful conduct that injures others.

Negligence was defined in **Biyth Vs Birmingham Water Works Co (1856) 11 Exch. 781** as a breach of duty caused by the omission to do something which a reasonable man guided by those considerations which ordinary regulate the conduct of human affairs would do or doing something which a reasonable man would not do. One of the most important concepts in the law of negligence is the test of a reasonable person. This test provides for the standard by which a person's conduct is judged. Thus in the case of **Biyta Vs Birmingham Water Works Co.** quoted above, **Alderson B** noted that a potential defendant will be negligent by falling below the standards of the ordinary reasonable person in his or her situation i.e. by doing something which a reasonable man would not do, or failing to do something which the reasonable man would do.

The courts in this country and elsewhere in the common wealth have always applied this objective and will decide if the defendant fell below the standard of a reasonable man. The standard of care expected from this hypothetical character is objective not taking into account the characteristics of weakness of the defendant in the instant case. For example the standard of care expected from the learner-driver is the same as that required by a qualified driver. The case of **Hall Vs Brooklands Auto Racing Club (1933) K. B. 205** refers;

A person acts negligently therefore if he/she has departed from the conduct expected of a reasonable prudent person acting under similar circumstances. The hypothetical reasonable person provides an objective by which the conduct of others is judged.

A defendant is not liable in negligence even if he did not act with reasonable care if he did not owe a duty to the plaintiff. Whether a defendant has a duty to protect the plaintiff from harm is a question to be decided by the court. Overtime, courts have developed numerous rules creating and limiting a person's duty to others and sometimes duties are established or limited by statute. So whether the defendant owes the plaintiff a duty depends upon the relationship between the defendant and the plaintiff. A pre-existing relationship can create an affirmative duty to exercise reasonable care.

As far as the present case is concerned, I have no doubt whatsoever that the plaintiff being a customer of the defendant, the defendant owed him a duty. The only problem that arises in this case is the court order freezing the customer's account. Does the customer have the right to unfreeze a court order or is it the court that issued the order. Counsel for the plaintiff submissions were to the effect that a court order freezing the plaintiff's order to pay was not enough to vindicate the Bank of its responsibility to its customer.

With respect to the submissions by counsel for the plaintiff, this court is of the strong view that a court's order supersedes and has to be respected and obeyed in such circumstances. This court and any other court cannot default a party who was honouring and respecting a court order. For avoidance of doubt, the Buganda road chief magistrate's court made the following orders:-

**“ACCOUNT NO. 0240513096601, IN THE NAME OF ARIM FELIX CLIVE AT STANBIC BANK IPS BRANCH, FROZEN BY THIS COURT ON THE 15<sup>TH</sup> DAY OF JULY 2009 SHALL REMAIN SO FROZEN UNTIL FURTHER NOTICE.”**

**2. The order by this court of the 22<sup>nd</sup> day of July, 2009 freezing Account No. 020054002010 of IBC Crested Towers Branch is hereby vacated**

**3. That the transfer of \$ 190,000 to the Government of Southern Sudan Account No. 030402080301 KCB Jinja Road (Main Brach via above account be completed.”**

And during the hearing of the case, the defendant's witnesses testified that the defendant complied with the order by completing the transfer of the funds. In the case of **Housing Finance**

**Bank Ltd and Another Vs Edward Musisi, Miscellaneous Application N. 158 of 2010.** The court of Appeal at page 11 of the Ruling; held that the Principle of the law is that the whole purpose of litigation as a process of judicial administration is lost if an order issued by court through set judicial process in the normal functioning of the courts are not complied with in full by those targeted. It was further held that a party who knows of an order, whether null or void, regular or irregular, cannot be permitted to disobey it. In the same view, I have read the decision of my learned sister, Justice Mulyagonja Kakooza, as she then was in the case of **Stanbic Bank Vs The Commissioner General of Uganda Revenue Authority, HC-MA-No. 0042 of 2010,** quoted by Counsel for the Defendant.

Justice Mulyagonja held:-

“the general principle regarding respect for court orders was stated in **Chuck Vs Cremer ( I Coop Temp Cott 342)** cited in the judgment of **Rooney L. J. in Hadikson Vs Hadkinson** that

“**A party who knows of an order whether null or void, regular or irregular cannot be permitted to disobey it .... It would be most dangerous to hold the suitors or their solicitors, could themselves judge whether an order was null or void – whether it was regular or irregular.**

**That they should come to the court and not take it upon themselves to determine such a question. That the course of the part knowing an order, which was null or irregular, and might be affected by it was plaint. He should apply to the court that it might be discharged. As long as it existed, it must not be disobeyed.”**

Needless to emphasise, court orders have to be respected, whether valid or invalid, ex-parte or interparty. In the present case, a court order marked exhibit P3 was issued on 22.7.2009, to the manager of international Business Center Crested Towers by the court instruction it to withhold the said amount of money \$190,000 Until an order directing otherwise pursuant to that order the defendant Bank withheld the transfer of the money back to the Government of South Sudan, followed the court order and froze the account. In such circumstances, a court order could not be sidelined by the letter of plaintiff though he was customer of the Defendant Bank.

In conclusion therefore, I find and hold that the defendant Bank was not negligent in transferring the sum of US\$190,000 to the account of government of South Sudan as it was simply obeying a court order. The first issue is accordingly, resolved in the negative.

Having found the first issue in the negative the second issue is also resolved in the negative. This is because if any loss was occasioned to the plaintiff, the defendant is not responsible as it did not act negatively.

The third issue was raised in the alternative as to whether the defendant paid out the money in obedience of a court order. This is already settled in view of the finding and holding of this court on the first issue. Needless to emphasise, this court has already ruled that the Defendant paid out the money pursuant to a court order.

The last issue is with regard to the remedies available. 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.

Judge

3.5.2013

Dr. Byamugisha for Defendant present

Plaintiff present

Counsel for the plaintiff absent

Ojambo Court Clerk present

Court: Judgment read out in open court.

Justice W. M. Musene

High Court Judge

3.5.2013