THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

H.C.C.S NO. 927 OF 1999

CRANE BANK LTD :: **PLAINTIFF**

VERSUS

1. MRS ANKE ALEMAYEHU]

2. RAINBOW INTERNATIONAL SCHOOL] ::::::::::: **DEFENDANTS**

BEFORE: THE HON. LADY JUSTICE M.S. ARACH - AMOKO

JUDGMENT:

The Plaintiff is a banking institution operating in Uganda. The 2nd Defendant was a school established in Uganda by the 1st Defendant, its proprietor and Director at the material time. The facts of this case are simple; and straightforward. The 1st Defendant was indebted to the Plaintiff. In order to settle the debt, she issued three cheques dated 30/4/97, worth a total of US $23,159. The cheques were drawn on A/C No.
050007312 of the 2nd Defendant at the Plaintiff Bank. All the three cheques were dishonoured on presentation. Notice of dishonour was duly given to the Defendants. The Plaintiff brought this suit for Judgment against the Defendants jointly/severally or alternatively for:

In a bid to prove its claim, the Plaintiff adduced the evidence of Mr. Alizera Kalan, head of its international division (PW1). He informed Court that he was involved in the transaction which led to this suit. On the 13/2/97, the Plaintiff bank purchased a cheque worth US $21,773, issued by Mrs. Alemayehu on her personal account with Credit Lyonais Bank, New York. That same day, and before her cheque was cleared by the corresponding bank in New York, the Plaintiff paid her the equivalent Uganda shillings. This was a service the Plaintiff extended only to reputable people or NGO's who were well known to the bank. The 1st Defendant was such a person as a Director and authorised signatory of the 2nd Defendant.

That cheque was however, returned unpaid. When the bank contacted her, she pleaded that she had run out of funds because she had invested the money in the school and she would soon recover the money to pay from the school. She then issued the 3 post-dated cheques in

issue. She was the only authorised signatory to the school account. All the three cheques bounced; with the words “Refer to Drawer.” (Exhibit P1).

The cheques were not taken under duress. They were taken in good faith. This was obvious from the letters the 1st Defendant wrote promising to clear the debt. (Exh. P3). The bank parted with money and should be paid back the amount with compounded interest at 36% p.a, plus legal fees.

The 1st Defendant was absent during the hearing although notified. Her lawyer Mr. Byamugisha had earlier on informed this Court that she was in U.K. When he made giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to the bearer.”

Under S. 55 of the Act, the drawer a bill is liable to compensate the holder if a bill is dishonoured. The relevant part provides that:

55 (1) The drawer of a bill by drawing it -

(a) engages that on due presentment it shall be accepted and paid according to its terror, and that if it be dishonoured he will compensate the holder or any endorser who is compelled to pay it, provided the requisite proceedings on dishonour be duly taken.”

A holder of a dishonoured cheque may therefore sue the drawer on the consideration as well as on the instrument. The general rule is that payment by cheque or other negotiable instrument is conditional upon payment and the debtor is not discharged unless and until the cheque instrument is honoured. See: **Essays in African Banking Law and Practice (supra)** at page 205.

Regarding the **1st** issue, Mr. Kiapi submitted that there is indeed a cause of action against the Defendants. He relied on the case of **AUTO GARAGE -VS MOTOKOV** [1971] EA 151 (per Spry V.P) where it is stated that where a plaint shows that a Plaintiff enjoyed a right, that right has been violated, and the Defendant is liable,

- Plaintiff in the sum claimed, Mr. Makada contended that much as the 1st Defendant was a Director and proprietor in the school, her indebtedness was personal together with her

husband, who is not even a party to the suit. PW1 testified on how the indebtedness arose but no where did he state how the 2nd Defendant came into the picture, apart from saying that the cheques had been issued on its account.

Mr. Makada further argued that no liability had been established since no valuable consideration had been shown to have accrued to his client under the transaction. In fact there was no transaction between the Plaintiff and the 2i,d Defendant. In order to disclose a cause of action there should have been a debt or a loan advanced to the 2 Defendant, which is not pleaded.

Further it has not been shown that there was any interest or benefit or forbearance accruing against the 2i,d Defendant in favour of the Plaintiff.

The Plaintiff has not shown any contract or any price that he paid or lost to the 2 Defendant. In short, there is no benefit that the Plaintiff gave the 2nd Defendant so as to give it a right against the 2nd Defendant. Where there is no valuable consideration which has been proved, the party claiming relief cannot bring an action on an instrument. He relied on the cases of **Curie -Vs- Misa** (1875) LR Exh. 162 **Edward -Vs- Chancellor** (1885) CR 52 and referred to Halsburys Laws of England Vol. 8 at 135 and S.27 of the Act. The Plaintiff's action which is based on an instrument must therefore fail.

(a) any consideration sufficient to support a simple contract.

(b) (b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on deemed or at a future time."

Under section 30 (1) however, every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value. It provides:"30 (1) Every party whose signature appears, a bill is prima facie deemed to have become a party thereto for value."

The general effect of these provisions is therefore that contrary to the general rule in contract, the burden of proof is put on the Defendant to prove any special circumstances which exonerate him from liability on the cheque. It is a rebuttable presumption of fact.

The party resisting payment of a bill has to rebut it by proving either that there was absence or failure of consideration or that the consideration was illegal. See: **Patel Brothers -Vs- Hasmani** (1952) 19 EACA 170.

In Shirley -Vs- Tanganyika Tegry Plastics Ltd, [1968] EA 528, Saidi J. said:
"Generally there would be a presumption of S.30 (1) that a promissory note must be deemed to have been given for good consideration and that the holder in due course was a holder for value. That being so, the onus of establishing the negative of these presumptions is on the defence. However, if the defence has no direct evidence of its own to negative the presumptions, to get the money back from the school and for the same reason she issued the post dated cheques drawn on the school."

PW 1 repeated this statement in cross-examination where he maintained that:
"She said she had financial problems and had invested the money in the school."
In the case of **Lombard Banking Ltd -Vs- Ghandi and Anor** (1949) 2 K.B 727 the Supreme Court of Kenya held inter alia, that consideration sufficient to support a simple contract need not more directly from the promisee as long as some right, interest, profit or benefit accrues to the promisor or some forbearance, detriment, loss or responsibility is given, suffered or undertaken by the promisee.

In conclusion on the 1 issue, I therefore hold that there is a cause of action against both Defendants - the one who issued the cheque as well as the account holder.

Issue No. 2 is whether the cheques were issued under duress and whether they were countermanded. Unfortunately, no evidence was led to prove this allegation. The 1st Defendant chose not to participate in the proceedings despite being summoned. She would have been the best person to prove that she issued the cheques under duress, and who was responsible for that duress. That evidence is lacking. On the contrary, there is evidence by PW1 who witnessed the signing that she was even allowed to sign post-dated cheques.

In the case before me, the amount of the cheques was established as US $23,159. I therefore award this amount plus interest at l5% p.a from the date of filing as prayed, till payment in full.

I also award costs of the suit.

In the result, I enter Judgment against the Defendants jointly and severally for:

1. US$23,159.
2. Interest thereon at 15% p.a from date of filing till payment in full.
3. Costs of the suit.

MS. Arach - Amoko

JUDGE

23/4/03