

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL COURT DIVISION**

**HCT-00-CV-CS-0137-2004**

**STANBIC BANK (UGANDA) LTD ..... PLAINTIFF**

**VERSUS**

**SINO AFRICA HEALTH LTD ..... DEFENDANT**

**BEFORE: JUSTICE LAMECK N. MUKASA**

**JUDGMENT:**

The Plaintiff, Stanbic Bank Uganda Limited, at all material times carried on banking business at their branch at Kireka and elsewhere. M/S Dr. Ssemugoma Joseph and Gwatiro Nursing Home maintained current accounts at the said branch. On 28<sup>th</sup> August 2003, the said Ssemugoma Joseph and Gwatiro Nursing Home drew cheques in the total sum of shs9,000,000/= payable to the defendant. Particulars of the cheques were:-

<b>Date</b>	<b>Cheque No.</b>	<b>Amount</b>	<b>Drawer</b>
28/8/03	000503	Shs4,500,000	Semugooma Joseph
28/8/03	000512	Shs4.500,000	Gwatiro Nursing Home

On 28<sup>th</sup> August 2003 the said Semugoma Joseph and Gwatiro Nursing Home by countermand notice of the same date ordered the plaintiff to stop payment of the said cheques.

The plaintiff's claim against the defendant, Sino Africa Health Limited, is that on 1<sup>st</sup>

September 2003 the plaintiff's staff, inadvertently overlooking the said countermand, paid the said cheques to the defendant. The plaintiff contends that the sum of the 9,000,000/= is recoverable from the defendant as money paid under a mistake of fact.

By the plaintiff's advocate's letter of 9<sup>th</sup> February 2004 the defendant was asked to refund the said sum but the defendant refused to do so. Thus this suit.

In defence, the defendant states that it entered into a contract with Gwatiro Nursing Home to supply it with a Dental Chair model CS300A for a total sum of Ughs18,000,000/= of which the said buyer made a part payment by the two cheques.

On 28<sup>th</sup> August 2003 the defendant deposited the cheques with its Bankers DFCU Bank. On 3<sup>rd</sup> September 2003 the defendant checked its account and found the cheques had been honoured with payment.

The defendant contends that the payment was consideration in regard to the said contract to supply a Dental chair. That it deposited the said cheques in good faith and in normal business practice. That the cheques were currently honoured and it was not at fault whatsoever.

Representation was Mr. Kanyemibwa for the plaintiff and Mr. Mukiibi Sentamu from the defendant.

At a Sheduling Conference held on 16<sup>th</sup> December 2004, before my brother Justice Sempa –Lugayizi, a Scheduling Memorandum signed by Counsel for both parties and filed on 24<sup>th</sup> October 204 was adopted. The following facts were therein agreed:-

1. The plaintiff is a banker.
2. Ssemugoma Joseph and Gwatiro Nursing Home were at all material times the plaintiff's customers at its Kireka Branch.
3. On 28<sup>th</sup> August 2003 the said customers drew two cheques respectively for a total sum of Shs9,000,000/= in favour of the defendant pursuant to a contract

between the defendant and the said customers.

4. On 28<sup>th</sup> August 2003 the defendant deposited the said cheques with its bankers M/s DFCU Bank for collection.
5. On 1<sup>st</sup> September 2003 the plaintiff debited the said customers' accounts and released a sum of Shs9,000,000 to the defendant's said bankers.
6. The plaintiff demanded from the defendant a refund the said sum as money paid under a mistake of fact but the defendant refused to do so.

The following issues were agreed upon for court's determination:-

1. Whether on 28<sup>th</sup> August 2003 the plaintiff received a countermand notice in respect of the cheques issued by Gwatiro Nursing Home and Ssemugoma Joseph for a total sum of shs9,000,000/= in favour of the defendant.
2. Whether payment of the said cheques by the plaintiff on 3<sup>rd</sup> September, 2003 was made under a mistake of fact. (Date should be changed to 1<sup>st</sup> September 2003)
3. Whether the defendant furnished consideration to the plaintiff's said customers in respect of the cheques.
4. If so, whether the plaintiff is entitled to payment of the said sum from the defendant
5. Remedies

Issues No. 1 Whether on the 28<sup>th</sup> August 2003 the plaintiff received a countermand notice in respect of the cheques issued by Gwatiro Nursing Home and Ssemugoma Joseph for a total sum of Shs9,000,000/= in favour of the defendant.

PW2, Dr, Joseph Ssemugoma testified that he is the Medical Superintendent of Gwatiro Nursing Home, Hospital. He has an account at the plaintiff bank's Kireka Branch. Gwatiro Nursing Home also has an account at the same branch. The witness is the sole signatory to both accounts. On 28<sup>th</sup> August 2003 he drew two cheques each in the sum of 4,500,000/= . One on his account and another on Gwatiro Nursing Home's account. The cheques were payment to the defendant. Both cheques were drawn on

the plaintiff bank's Kireka Branch. The defendant's witness Kong Dong Sheng, acknowledged having received payment by the two cheques for which he had issued a receipt, Exhibit D2. Photocopies of the cheques were received as Exhibit P1 drawn on Ssemugoma Joseph's Account and Exhibit P2 drawn on Gwatiro Nursing Home's Account.

PW2 testified that on the same date of issue, that is 28<sup>th</sup> August 2003, he wrote to the Bank Manager, Kireka Branch, a letter, exhibit P3, stopping payment of the said cheques. The witness stated that the letter was delivered by his Secretary and received by Teller No. 7 on 28<sup>th</sup> August 2003 at 12:47 p.m. That he also rang the Branch Manager who confirmed to him that she has received the letter.

Ssambya Benon, PW1 stated that at the material time he was working with the plaintiff bank at the Operation Processing Centre Department, at the Former UCB Building as a Team Leader. The witness learnt about the two cheques when Stanbic Bank, Kireka Branch raised a complaint that cheques which had been stopped payment by Gwatiro Nursing Home and Ssemugoma Joseph had been paid. On investigating the complaint he found out that payment of the cheques had been stopped on 28<sup>th</sup> August 2003. The witness identified exhibit P3 as the countermand note and exhibits P1 and P2 as the photocopies of the cheques.

Exhibit P3, a letter dated 28<sup>th</sup> August 2003, written on the letter head of Gwatiro Hospital states:-

“Manager  
Stanbic Bank (U)  
Kireka Branch.  
Re: Requesting To Stop Cheques

I am requesting you kindly to stop the following cheques which are written under Sino Africa Company.

(1) Account under SSEMUGOMA JOSEPH No. 0140010022301  
Cheque No. 000503 ANF 009010000001  
Total 4,500,000/=

(2) Account under GWATIRO NURSING HOME  
No. 014001005051  
Cheque No. 000512 ANF 009010000001

I will be happy in case you put my request under consideration.”

The letter is signed by Joseph Ssemugoma and bears the stamp of Gwatiro Nursing Home and stamped by a stamp indicating:

“Stanbic Bank Uganda Kireka Branch 28<sup>th</sup> August 2003 TELLER7.”

And there is a signature, above which is an endorsement “12.47 p.m.”

The Bills of Exchange Act Section 72 (l) defines a cheque as a bill of exchange drawn on a banker payable on demand. Section 74 of the Act provides:-

“The duty and authority of a banker to pay a cheque drawn on him or her by his or her customer are determined by

- (a) Countermand of payment;
- (b) Notice of the customer’s death.”

The Blacks Law Dictionary 7<sup>th</sup> Edition defines countermand as:

“An action that has the effect of voiding something previously ordered, a revocation.”

Section 2 of the Bills of Exchange Act defines a bill of exchange as “an unconditional order in writing, addressed by one person to another, signed by the person 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 a person or to the order of a specified person or to bearer.”

The cheques drawn by Ssemugoma Joseph and Gwatiro Nursing Home were their respective orders to the plaintiff to pay to the defendant in respect of each cheque a sum of Shs4,500,000/=. The letter, exhibit P3, was stopping payment of the two cheques. It was revoking the previous order to pay. Thus amounted to a countermand. Its author and signatory was Ssemugoma Joseph, the signatory in respect of the two accounts . There is clear evidence on Exhibit P3 that this countermand letter was received at the Plaintiff's Kireka Branch by Teller No. 7 on 28<sup>th</sup> August, 2003 at 12:47 p.m. PW1 Ssambya Benon gave evidence that while investigating the complaint he discovered that the cheques had been stopped by countermand letter dated 28<sup>th</sup> August 2002. He identified Exhibit P3 as the letter. The above evidence shows that on the 28<sup>th</sup> August 2003, the plaintiff at its Kireka Branch received a countermand notice in respect of the two cheques. Therefore the first issue is answered in the affirmative.

Issue No. 2. *Whether payment of the said cheques by the plaintiff on 1<sup>st</sup> September, 2003 was made under a mistake of fact.*

Ssambya Benon testified that all the plaintiff's branches are connected to the plaintiff's computer system. They have a code within the system to stop cheques for payment. If a customer wants to stop a cheque from payment he can deposit the notice at any branch of the plaintiff convenient to the customer. The branch which gets the countermand is supposed to stop the payment of the cheque on the plaintiff's computer system. The plaintiff's evidence shows that the countermand notice was received by the plaintiff's Kireka branch on 28<sup>th</sup> August 2003 at 12:47 p.m.

The witness further testified that he is a team leader in the plaintiff's Operations Processing Centre. The Centre receives inward and outward cheques drawn on the plaintiff's bank, verifies the signature and upon such verification debits the respective accounts and releases the funds. He testified that the cheques in issue were inward cheques. These are cheque issued by the plaintiff's customer, banked by the payee in a bank other than the plaintiff bank. Such cheques go through the central clearing system at the Central Bank. The cheque is forwarded

to the Processing Department of the plaintiff's Operations Processing Centre. At the department cheques are processed and debited on the clients account. The following day the cheque is passed to the Bank Office Department of the Operations Processing Centre where the witness is the team leader. At the department the signature and debits are verified. Where payment of the cheque is stopped by a customer and is so endorsed it is sent back to the Processing Department where the debit entry is reversed. The cheque is thereafter sent back through the clearing system to the collecting bank. Where a cheque is stopped by a customer the bank acts on the countermand by marking on it "Cheque Stopped by Drawer."

Where a cheque has no endorsement affecting its payment, the same is cleared and filed as paid. The witness gave evidence that there are set rules of clearance. Inward cheques take four days after which the proceeds will be available on the payee's account with the collecting bank. In this case that was the defendant's account with DFCU Bank.

The witness testified further that at the Operations Processing Centre cheques are received by a Ledger Clerk. At the material time the Ledger Clerk was Percy Anywar. Normally the Ledger Clerk is supposed to pass the cheques to the Team Leader, who at the material time was the witness. When he received the complaint and started the investigations he discovered that the cheques were each endorsed "Cheque Stopped by Drawer" yet they had not been passed to him as team leader for reversal. He explained that when a cheque so endorsed is passed to him, he initials it and passes it over to the Processing Department for reversal. The cheques had been stamped as received by the collecting bank, DFCU Ltd, on 28<sup>th</sup> August 2003. They went through the Clearing House on 29<sup>th</sup> August 2003 and also had the plaintiff banks stamp dated 1<sup>st</sup> September 2003. Between 28<sup>th</sup> August 2003 and 1<sup>st</sup> September 2003 the witness had not handled the cheques. The clearing days had already lapsed so the cheques were already time barred. When the witness realised the mistake he immediately

contacted DFCU Bank Manager but the DFCU Bank refused to receive the back the cheques as they were already time barred. The bank statement of Gwatiro Nursing Home, exhibit P4, show that on 1<sup>st</sup> September 2003 it was debited with cheque No512 in the sum of shs4,500,000/=. Also the bank statement of Ssemugooma Joseph, exhibit P5, show that it was on the same date debited with cheque No. 503 in the sum of Shs4,500,000/=.

The plaintiff's Kireka Branch had received the countermand notice on 28<sup>th</sup> August 2003.

The plaintiff's Operations Processing Centre received the cheques on 29<sup>th</sup> August 2003 from the defendant's bank, DFCU Bank Ltd, According to PW1, the said department receives inward and outward cheques drawn on the plaintiff bank, verifies the signatures and debits the drawer's account. By the time the plaintiff's Operations Processing Centre received the cheques its Kireka Branch had already received the countermand notice. When Percy Anywar, the Ledger Clerk at the OPC department, received the cheques instead of passing them to PW1 who was her team leader, she filed them away. As a result the normal process took its course and by the time the plaintiff's Kireka Branch raised a complaint with the department as to the payment of the said cheques which had been stopped, the same had already been debited on the drawers' /clients' accounts and funds released to the collecting bank, DFCU for the account of the defendant. In the circumstances Counsel for the plaintiff submitted that the sum of shs9,000,000/= was paid by the plaintiff from the accounts of Gwatiro Nursing Home and Dr. Joseph Ssemugoma under a mistake of fact.

One of the bankers basic obligations is to honour his customer's cheques, provided there are sufficient funds in the account. Another equally basic obligation of the banker is to obey his customers instructions to countermand payment. A banker who pays a cheque in defiance of notice of countermand, pays without authority and without mandate. See Section 74 (a) of the Bills of Exchange Act. When the plaintiff bank paid



the cheques after receipt of the customer's instructions to countermand payment of the cheques it acted without the drawers authority. The plaintiff acted under a mistake that it had the mandate to pay whereas not. Therefore the second issue is also answered in the affirmative.

Issue No 3 Whether the defendant furnished consideration to the plaintiff's said customers in respect of the cheques.

The cheques were drawn by Gwatiro Nursing Home and Dr. Joseph Ssemugoma towards part payment for a dental chair to be supplied by the defendant pursuant to an Agreement dated 27<sup>th</sup> August 2003. The agreement, Exhibit D1, states:-

“ CONSIDERATION

- a) The Vendor hereby supplies to the Purchaser the said goods at the agreed purchase price of UgShs18,000,000/= (eighteen million shillings only).
- b) The sum of UgShs9,000,000/= (nine million only) to be paid as down payment upon the execution of these presents immediately on signing the agreement receipt whereof the vendor hereby acknowledges .
- c) The sum of Ugshs 9,000,000/= (Nine Million shillings) to be paid in instalments of Ugshs1,500,000/= (one million five hundred thousand shillings) per month for a period of six months.”

Dr. Ssemugoma Joseph testified that they signed the agreement on 27<sup>th</sup> August 2003. The defendant informed him that they were to deliver the dental chair on 28<sup>th</sup> August, 2003 at 9:00a.m. So he dated the cheques which he paid to the defendant 28<sup>th</sup> August 2003 and was issued with a receipt Exhibit D2. On 28<sup>th</sup> August 2003 at around 7:30a .m. he was called on phone by the defendant's Sales Representative one Deo, who told him that the dental chair had got mechanical problems, and they were not

going to be able to deliver it. That he requested Deo not to bank the cheques. He sought for the immediate delivery to him of the cheques. The information prompted him to immediately communicate to the Bank Manager stopping payment of the two cheques.

The defence witness Kong Dong Sheng in his testimony stated:-

“It is not true that the dental chair got damaged and could not be delivered. The equipment is okay. The equipment is available in my stock and we can deliver it even now. I do not know that Ssemugooma informed Deo not to bank the cheques,. ---.”

According to the witness he had not yet supplied the Dental Chair because he had got a telephone call from the customer asking him to first hold on with the installation of the chair because the customer had to first properly prepare the building where the chair was to be installed. He contends that without the information that the premises were ready for installation they could not go ahead with the installation.

Kong Dong Sheng’s evidence clearly show that the chair has to date not been delivered to Gwatiro Nursing Home Hospital. The witness’ reasons for failure to deliver are contrary to the spirit of the written agreement. The agreement provides.

“FURTHER ITEMS

- a) --
- b) The vender warrants that the equipment shall be delivered immediately and installation can be done within at most 1 (one week) from the date of receipt of down payment.
- c) The price quoted here caters for the following
  - (i) cost of transportation up to the site of installation
  - (ii) installation cost.

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- 7. The vender warrants that in the event that she fails to deliver the equipment within the agreed period of time then the purchaser shall

subject the funds already paid to her to fine of 0.5% per week by the purchaser till delivery is made, unless both parties agree otherwise.

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9.No other warranty agreement or representation made hereto, or any modification hereof, shall be binding upon the vender or his assigns unless endorsed hereon in writing.

10.The vender warrants that the Purchaser inspected the equipment before making up decision to pay for it.

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It is the witness' testimony that the agreement was prepared by him. The money was part payment for a consideration to be provided by the defendant and this comprised of supplying the dental chair, delivery or transporting it to Gwatiro Nursing Home Hospital, installing the same and providing after sale service during the guarantee period of one year. Warranty 10 shows that the Chair was available and was inspected by the purchaser before payment. In the circumstances I find Mr. Mukiibi's submission that it was the purchaser who had failed to take delivery of the Chair not supported by any evidence. The Defendant's witness admits that at the material times Deo was the defendant's employee whose duties included sales. Dr. Ssemugooma Joseph's testimony about what Deo told him on phone was direct evidence of what the said Deo had told the witness. I do not agree with Mr. Mukiibi's submission that such evidence was hearsay and not admirable. In light of the provisions in the agreement which required variation to the agreement to be in writing and the provision for weekly penalty for failure to deliver I find Kong Dong Sheng's testimony that he was on phone stopped by the customer without any written instructions to that effect unbelievable. The agreed period of delivery and installation was immediate but at the most within one week. Under the agreement any instructions stopping immediate delivery had to be in writing. Section 91 of the Evidence Act excludes oral evidence where the terms a contract have been reduced to the form of a document. Further Dr. Ssemugooma was not cross-examined about the alleged telephone instructions stopping immediate delivery. I also find it unbelievable that any of the parties could enter into an agreement which provided for immediate delivery and installation when the premises where it was to be installed

were not yet ready. Again Dr Ssemugooma was not cross-examined about the suitability of the premises for the installation. There is no evidence to show that delivery was subject to the cheques being honoured by the Drawers' bankers. In any case evidence available shows that the cheques dated 28<sup>th</sup> August 2003 were cleared and funds available for the defendant's collection on 1<sup>st</sup> September 2003. No evidence was adduced to show that the chair had been delivered and installation failed due to the unsuitability of the premises. Considering all the above I find that there was failed consideration. In answer to the third issue the defendant failed to furnish any consideration to the plaintiff's customer in respect of the cheques

Issue No 4 Whether the plaintiff is entitled to payment of the said sum from the defendant.

Court has a duty to protect against unjust enrichment. As regards the law on whether a bank which overlooks its customers instructions to stop payment of a cheque in consequence pays the cheque on presentation can recover the money from the payee as having been paid under a mistake both Counsel cited Barclays Bank Ltd Vs W. J. Simms Son & Cooke (Southern) Ltd (1980) 1 Q B 677. In that case a housing association drew a cheque for £24,000 on its account with the plaintiff bank, in favour of a building company. The following day a receiver was appointed to call in the building company's assets and as a result the association phoned the bank to give instructions to stop the cheque, subsequently confirming its telephone instructions in writing to the bank. The banks computer was programmed accordingly, and the following morning the amendment to the computer was scheduled by the bank's staff. That same day the receiver presented the cheque, and the banks paying official overlooking the stop instruction made payment on that date. The bank did not give notice to the company or the receiver of its claim for repayment on the day the cheque was paid but subsequently demanded repayment of the sum of £24,000 as money paid under a mistake of fact.

A number of authorities were cited by both counsel of the plaintiff and the defendants which were reviewed by Justice Robert Goff. The issue was whether a bank which overlooks its customer's instructions to stop payment of a cheque and in consequence pays the cheque on presentation, can recover the money from the payee as having been paid under a mistake of fact. It is exactly the same issue before me. In his judgement Justice Goff first dealt with principles upon which the money is recoverable on the ground that it has been paid under a mistake of fact. Secondly he considered the application of those principles to a case where a bank has paid, under a mistaken of fact, a cheque drawn upon it by a customer. Thirdly he considered the circumstances in which the payee has a good defence to the bank's claim to recover the money on the principle in *Cocks Vs Masterman, 9B & C 902*. At page 695 he laid down the following general principles relating to recovery of money paid under a mistake of fact.:-

- “(1) If a person pays money to another under mistake of fact which causes him to make the payment, he is prima facie, entitled to recover the money paid under a mistake of fact.
- (2) His claim may however fail if-
  - (a) The payer intends that the payee shall have the money at all the events; whether the fact be true or false, or is deemed in law so to intend.
  - (b) The payment is made for good consideration, in particular if the money is paid to discharge and does discharge a debt owed to the payee. (or a principal on whose behalf he is authorised to receive the payment) by the payer or by a third party which he authorised to discharge the debt;
  - (c) The payee has changed his position in good faith or is deemed in law to have done so.”

Then applying the above principles to where a bank pays a cheque drawn upon it by a customer of the bank, in what circumstances may the bank recover the payment from the payee on the ground that it was paid under a mistake of fact;

Justice Goff at pages 699 -700 states:-

- i) “It is a basic obligation owed by a bank to its customer that it will honour on presentation cheques drawn by the customer on the bank provided that there are sufficient funds in the customer’s account to meet the cheque or the bank has agreed to provide the customer with overdraft facilities sufficient to meet the cheque. Where the bank honours such a cheque, it acts within its mandate, with the result that the bank is entitled to debit the customer’s account with the amount of the cheque, and further that the bank’s payment is effective to discharge the obligation of the customer to the payee on the cheque, because the bank has paid the cheque with the authority of the customer. “(see page 699 para C- D).
- ii) “In other cases, however, a bank which pays a cheque drawn or purported to be drawn by its customer pays without mandate. A bank does so if for example, it overlooks or ignores notice of its customer’s death, or if it pays a cheque bearing the forged signature of its customer as drawer, but, more important for present purposes, a bank will pay without mandate if it overlooks or ignores notice of countermand of the customer; and unless the customer is able to and does ratify the payment, the bank cannot debit the customer’s account, nor will its payment be effective to discharge the obligation (if any) of the customer on the cheque, because the bank had no authority to discharge such obligation.” (See page 699 para G-H)
- iii) “It is against the background of these principles --- that I have to consider the position of a bank which pays a cheque under mistake of fact. In such a case, the crucial question is, -- whether the payment was with or without mandate. The two typical situations, which exemplify payment with or without

mandate, arise first where the bank pays in the mistaken belief that there are sufficient funds or overdraft facilities to meet the cheque, and second where the bank overlooks notice of countermand given by the customer. In each case, there is mistake by the bank, which causes the bank to make the payment.” (See page 700 para A-B).

- iv) “In the second case,--- the bank’s payment is without mandate. The bank has no recourse to its customer,; and the debt of the customer to the payee on the cheque is not discharged. Prima facie, the bank is entitled to receive the money from the payee, unless the payee has changed his position in good faith or is deemed in law to have done so.” (See page 700 para D).

On the principle in Cooks Vs Masterman 9B & C 902 Justice Goff stated:-

“The principle to be derived from this case is probably that, if the plaintiff fails to give notice on the day of payment that the bill contained a forged signature and that the money, having been paid in ignorance of that fact, is being claimed back, the defendant is deprived of the opportunity of giving notice of dishonour on the day when the bill falls due. and so is deemed to have changed his position and has good defence to the claim on that ground. But, whatever the precise basis of the defence, its is clearly founded on the need for the defendant to give notice of dishonour, and it can therefore have no application where notice of dishonour is not required.”

He held that it is a prerequisite of the application of the defence that, the defendant should be under a duty to give notice of dishonour. Under section 49 (2) (c) (V) of the Bills of Exchange Act notice of dishonour is dispensed with where the drawer has countermanded payment.

Applying the above principles to the present case the plaintiff’s customers had on 28<sup>th</sup> August 2003 served the plaintiff’s Kireka Branch with countermand notice of the

cheques. The plaintiff bank overlooked the drawer's instructions to stop payment of the cheques, which mistake caused the plaintiff to pay the cheques. In view of the countermand the plaintiff bank acted without mandate and so the payment was not effective to discharge the drawer's obligation on the cheques. It follows that the plaintiff bank when it paid without the mandate, did so solely as principal and on its own behalf. Not as agent of the drawers of the cheques. In the circumstances the defendant did not give any consideration for the plaintiff' bank's payment to it. There was no contract between the plaintiff and the defendant. The plaintiff bank owed no obligation to the defendant to pay it. There is no evidence to show that having received the payment the defendant supplied the dental chair to the drawers of the cheques at all. So there is no evidence of any actual change of position on the part of the defendant. Even the defendant's written statement of defence is devoid of any pleadings of facts relating to the defendant's alleged change of position. Mr. Mukiibi's submission that the defendant had banked the cheques on the 28<sup>th</sup> August 2003 in goodfaith is unacceptable. Section 89 of the Bills of Exchange Act defines "good faith" as follows:-

"A thing is deemed to be done in good faith within the meaning of this Act where it is in fact done honestly, whether it is done negligently, or not."

The agreement between the defendant and the drawers of the cheques was signed on 27<sup>th</sup> August 2003. The cheques though paid to the defendant that day; were dated 28<sup>th</sup> August 2003. It is clear that the cheques had been so dated to coincide with the agreed date of delivery of the chair to the drawer's premises. Having failed to deliver the chair as per the agreement there was no honesty on the part of the defendant when it proceeded to bank the cheques on its account. Also deposite Dr. Ssemugooma's instructions to the defendant's Sales Representative, one Deo, the defendant went ahead and banked the cheques. The defendant's level of dishonesty is further exhibited by its failure to deliver the chair to date despite the mistaken payment of the money to it



by the plaintiff bank.

Where a cheque is countermanded by the drawer there is no legal requirement on the drawer's bank to give notice of the countermand to the payee. That notwithstanding the plaintiff bank, through its staff, PW1, immediately it became aware of the mistake contacted the defendant's bank DFCU Ltd and in the company of Dr Ssemugooma contacted the defendant for a refund but the efforts yielded no fruits. The defendant's bankers refused to reverse the payment and the defendant refused to refund the money. Thus this suit. The plaintiff restored its customer's money as evidenced by the Court judgment in High Court Civil Suit No 809 of 2003, Joseph Ssemugooma and Gwatiro Nursing Home Vs Stanbic Bank Uganda Ltd, Exhibit P10; the letter dated 12<sup>th</sup> January 2004 which forwarded payment to Joseph Ssemugooma's lawyers – exhibit P11 and photocopies of the payment cheques, exhibits P12 and P13.

Accordingly I find that the plaintiff is entitled to recover from the defendant the sum of Shs9,000,000/= as money paid under a mistake of fact.

Issue No. 5 Remedies:

The plaintiff prayed for a declaration that the sum of Shs9,000,000/= was paid to the defendant under a mistake of fact. I so declare.

The plaintiff prayed for 9,000,000/=. In view of my finding above the plaintiff is awarded the same.

The plaintiff prayed for interest on the above sum at 25% per annum from 1<sup>st</sup> September 2003, the date when the drawers' accounts were debited with the payment of the cheques. Section 26(2) of the Civil Procedure Act provides:

“Where and so far as a decree is for the payment of money, the Court may in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of suit to the date of

the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the Court thinks fit. “

In Congo Trading Corporation Ltd Vs Uganda Land Commission & The Attorney General C.A. C..A. No 38 of 2002. Justice Mpagi Bahingaine held:

“ The section clearly empowers the Court to determine and award rates in respect of different periods. In principle the plaintiff would be entitled to interest on the amount from the date (after accrual of the cause of action) when the plaintiff incurred the loss in question or when the respondent denied him the use of his money by withholding it.”

In justification of the interest claimed, Counsel for the plaintiff submitted that the plaintiff is a commercial entity, which is in the business of lending money. That the defendant had deprived the plaintiff of the said money by holding on to it. The evidence of PW1 and PW2 shows that the defendant became aware that the plaintiff had paid the money under the said cheques by mistake in early September 2003. The plaintiff's requests for refund were ignored and the defendant has since held on the money. The plaintiff by nature of its business is a custodian or trustee of its customers' funds deposited with it, which the defendant was holding on without any consideration. Therefore the plaintiff is awarded interest as prayed.

In the final result judgment is passed in favour of the plaintiff in the following terms:-

1. Shs9,000,000/=
2. Interest on the above sum at the rate of 25% per annum from 1<sup>st</sup> September 2003 until payment in full.
3. Costs of this suit

Hon. Mr. Lameck N. Mukasa

**JUDGE**

5<sup>th</sup> February 2008

**IN THE REPUBLIC OF UGANDA**