THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL APPEAL NO. 005 OF 2023

(Arising from Fort Portal Chief Magistrate's Court Misc. Cause No. 30 Of 2021)

KCB BANK :: APPELLANT

VERSUS

1. JOANITA KATAIKE ::: RESPONDENTS

2. MURUNGI AMON

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

JUDGMENT

This is an appeal against the orders and ruling of His Worship Kule Moses Lubangula, the then Chief Magistrate of the Chief Magistrate's Court of Fort Portal delivered on the 22nd day of December 2021 wherein the appellant bank was ordered to grant the respondents access to their joint bank account and pay costs to the application. Being dissatisfied with the ruling and orders therein, the appellant bank filed this appeal.

Background

The respondents operate a joint Bank Account NO. 2290542903 in the appellant bank. On the 23rd of April 2021, the said bank account was credited with UGX. 50,000,000/= (Uganda shillings fifty million only), being proceeds from the sale of land comprised in FV KB 0108 Folio 4 Plot 13 Block 50, land at Bulingo in Kyegegwa district jointly owned by the respondents. When the respondents attempted to withdraw money from the joint bank account, the appellant bank denied them access. After several futile attempts to access their account, the respondents filed MSc. Cause No. 30 of 2021 in the Chief Magistrate's Court of Fort Portal

at Fort Portal. In their submissions, the appellant bank stated it froze the respondents' joint bank account following a tip-off from the Financial Intelligence Authority (FIA) and that the 2nd respondent was undergoing criminal charges vide KBE/CRB/185/2021. The trial Chief Magistrate found in favour of the respondents and ordered the appellant bank to unconditionally release the joint bank account in issue for the respondents' access. The appellant bank was also ordered to pay the costs of the application.

Being dissatisfied with the decision of the trial Chief Magistrate, the appellant bank appealed to this court on the following grounds: -

1. The learned trial magistrate erred in law and fact when he entertained and heard the matter in which he did not have pecuniary jurisdiction thereby arriving at a wrong conclusion.
2. That the learned trial magistrate erred in law and fact when he brought forward the hearing of the matter to the 22nd December 2021 than the actual date the matter had been fixed for hearing on 2nd February 2022 thereby portraying bias and partiality in his decision.
3. That the trial magistrate erred in law and fact when he failed to make a finding that the respondents had sued the wrong party thereby arriving at a wrong conclusion.
4. That the trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong decision.

Representation and hearing

The appellant bank was represented by M/S Sekabanja & Co. Advocates while the respondents were represented by M/S Ngaruye Ruhindi,

Spencer & Co. Advocates. Both counsel filed written submissions which have been considered by this court.

Duty of the first appellate court

This being a first appeal, this court is under a duty to reappraise the evidence, subject it to exhaustive scrutiny and draw its own inferences of fact, to reach its independent conclusion as to whether the decision of the trial court can be sustained. This duty is well explained in the case of ***Father Nanensio Begumisa and three others v. Eric Tiberaga SCCA 17of 2000*** where court held thus:

> ***"It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions."***

It is not the function of a first appellate court to merely scrutinize the evidence to see if there is some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the trial court's findings should be supported. In doing so, court should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses ***(see Peters v. Sunday Post [1958] E.A 424).***

Against this background, I now re-evaluate the evidence presented at trial against the appellant's grounds of appeal.

Consideration by Court

Before I consider the grounds of the appeal, I must address the point of law raised by the Counsel for the respondents that the 2nd ground of appeal ought to be struck off as it offends order 43 rule 1 (2) of the ***Civil Procedure Rules***.

Order 43 of the ***Civil Procedure Rules*** which governs Appeals to the High Court provides in Rule 1 sub-rule 2 as follows:

> ***"The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively."***

Courts have time and again struck off grounds of appeal that are argumentative or imprecise for they neither render guidance to the court on the extent of evaluation of evidence nor call for specific adjudication.

In the case of ***Ibaga Taratizio Vs Tarakpe Faustina Civil Appeal No. 04 of 2017,*** Justice Stephen Mubiru held thus:

> ***"A ground of appeal that is general in nature and does not identify any specific error committed by court whose decision is appealed or identify the specific matter of fact, law or mixed law and fact that was wrongly decided so as to guide and require the appellate court to make a specific finding to the extent of re-valuating evidence, is not sustainable for it does not call for any specific adjudication."***

In the case of ***Kizito Mumpi Ssalongo vs Seruga Frank Civil Appeal No. 68 of 2010*** Justice Tuhaise (as she then was) struck off ground 7 of the appeal which read in part ***"yet there was unanimous agreement by the said vendor's family who all endorsed and witnessed the transaction"*** as being outrightly argumentative and narrative.

In the case of ***Migadde Richard Lubinga and others Vs Nakibuule Sandra and others HC Civil Appeal No. 53 of 2019***, Lady Justice Immaculate Busingye Byaruhanga struck off the third ground of appeal for being argumentative. In that appeal, the third ground of appeal read thus***: "The Learned Trial Magistrate erred in law and fact when she entered judgment and made orders against all the appellants inclusive of the second appellant yet she does not own any interest on the suit land in her personal capacity."*** Court noted that words "***all the appellants inclusive of the second appellant yet she does not own any interest on the suit land in her personal capacity"*** ought to have been used in the submissions and not in the grounds for appeal.

In the instant appeal, the question of whether ground No. 2 is argumentative, or narrative can only be addressed by analyzing its wording, which is as follows:

> ***"That the learned trial magistrate erred in law and fact when he brought forward the hearing of the matter to the 22nd of December 2021 than the actual date the matter had been fixed for hearing on 2nd February 2022 thereby portraying bias and partiality in his decision."***

In ***Sietco V Noble Builders(U) Ltd, Civil Appeal No. 31 of 1995***, the Supreme Court struck out some grounds of a memorandum of appeal as incompetent because they did not concisely and specifically point out the points which were allegedly wrongly decided by the trial Judge. In the instant case, the test is whether the words in ground 2 of the memorandum of appeal do not concisely and specifically point out the points which were allegedly wrongly decided by the trial Magistrate as to be incompetent.

The words in ground No. 2 that "***when he brought forward the hearing of the matter to the 22nd of December 2021 than the actual date the matter had been fixed for hearing on 2nd February 2022 thereby portraying bias and partiality in his decision"*** do not concisely and specifically point out the point of law of fact which was allegedly wrongly decided by the trial Magistrate. Besides, one wonders how these words are related to the eventual finding of the learned Magistrate. Like it was held in the case of ***Migadde Richard Lubinga (Supra)*** these are words or arguments which should be embedded in the submissions, and they accordingly offend Order 42 Rule 1 (2) of ***the Civil Procedure Rules***. I accordingly strike off ground 2 of appeal for being merely narrative and incompetent.

Ground 1: The learned trial magistrate erred in law and fact when he entertained and heard the matter in which he did not have pecuniary jurisdiction thereby arriving at a wrong conclusion.

Counsel for the appellant bank submitted that the trial magistrate was not vested with the jurisdiction to entertain the matter. Counsel argued that jurisdiction is a creature of statute and went on to cite section 207(1) of the Magistrate Courts Act No.7 of 2007 which is to the effect that a chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed UGX. 50,000,000/=.

Counsel argued that the value of the agreement which was the source of the money was UGX. 290,000,000/= and that although only UGX. 50,000,000/= had been deposited as of 23rd April 2021, more UGX. 50,000,000/= would have been deposited on the 25th day of July 2021 had the account not been frozen. Counsel argued that the subject matter, in this case, would be the entire sum as stated in the land sale agreement

but not what was on account No. 2290542903 at the time of the filing of the application.

Counsel referred this court to the case ***Pastoli Vs Kabale district Local Government and others (2008) 2 EA 300*** where it was held that a court acting without jurisdiction or contrary to the provisions of the law acts illegally and the proceedings thereof are null and void.

On the other hand, counsel for the appellant argued that the trial magistrate was vested with the jurisdiction to entertain the matter. Counsel submitted that annexure "B" to the affidavit in support of the application clearly showed that the money deposited in the account on the 23rd of April 2021 was UGX. 50,000,000/= and was the same amount on the 17th day of May 2021, the date on which this application was filed in court. On that date, the second instalment as per the land sale agreement had not been deposited.

Section 207(1)(a) of the Magistrates Courts Act Cap 16 as amended provides that:

> ***(1) Subject to this section and any other written law, the jurisdiction of magistrates presiding over magistrates courts for the trial and determination of causes and matters of a civil nature shall be as follows —***
>
> > ***(a) a chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass."***

Undoubtedly from the wording of section 207(1)(a), the pecuniary jurisdiction of a Chief Magistrate is capped at UGX 50,000,000/=, save for disputes relating to conversion, damage to property or trespass.

In this matter, the respondents operate a joint bank account with the appellant bank. The appellant bank froze their account, which had UGX 50,000,000/=, being proceeds from a land transaction. The respondents went to the lower court and obtained an order for the unconditional release of their bank account. The appellant bank appealed to this court, contesting the pecuniary jurisdiction of the lower court.

The appellant bank argues that the lower court did not have pecuniary jurisdiction to hear the matter because the bank account was expected to have more than UGX 50,000,000/= deposited into it, as the land transaction was valued at UGX 290,000,000/=. However, by the time the respondents filed their suit in the lower court, on the 17th day of May 2021, the bank account in issue had only UGX 50,000,000/=, which is within the pecuniary jurisdiction of the lower court.

The appellant's argument, if taken at face value, can only be described as speculative and bereft of a cogent foundation. This is because at the time the respondents invoked the jurisdiction of the lower court, their account balance remained at UGX 50,000,000/=, a sum well within the lower court's pecuniary jurisdiction. The fact that the land transaction's total value was substantially higher does not, in itself, provide a legitimate basis to challenge the lower court's jurisdiction.

Furthermore, it is essential to emphasize that the appellant bank's position appears to lack a reasonable nexus with the factual matrix of this matter. Notably, the bank was not privy to the land sale agreement, and there exists no concrete indication that additional instalments were slated to be deposited into the same bank account. Speculation alone

cannot serve as a solid legal footing for contesting the jurisdiction of the lower court.

In light of the foregoing, this court finds the appellant bank's argument to be devoid of logical coherence and legally untenable. In the premises, Ground 1 of this appeal is rejected.

Ground 3: That the trial magistrate erred in law and fact when he failed to make a finding that the respondents had sued the wrong party thereby arriving at a wrong conclusion.

Counsel for the appellant bank argued that the bank was only an agent (an accountable officer) of the FIA under section 19(1)(c)(ii) of the Anti-money Laundering Act. Counsel referred this court to the case of ***Palmfox International (U) Ltd Vs DFCU Bank(U) Ltd Msc. Cause No. 423 of 2017*** where Justice Ssekaana Musa held that the Anti-money Laundering Act enjoins banks to detect any suspicious transactions conducted by their customers.

Counsel argued that the appellant bank was mandated by the law to freeze the respondents' joint bank account following a tip-off from the FIA. Counsel argued that this was well known by the respondents who refused to add FIA as a party to the application, yet FIA was better placed to adduce any evidence on criminal investigations against the 2nd respondent.

On the other hand, counsel for the appellants submitted that the appellant was the right party to be sued after freezing the respondents' joint bank account. Counsel argued that there was no evidence adduced in the trial court that the appellant acted on the directives of FIA hence there was no need to add FIA to the application.

To make a logical and cogent finding on ground 3, one must refer to the nature of the banker-customer relationship. In the case of ***Jessica Kakooza Vs Ecobank Uganda Limited Civil Suit No. 44 of 2014*** Hon. Justice B. Kainamura quoting ***Grace Patrick Tumwine Mukubwa*** in his book ***"Essays in African Banking Law and Practice"***, held thus:

> ***"The relationship of banker/customer is a contractual one, with the bank having duties relating to carrying out the customer's payment instructions, dealing with securities deposited with the bank and the way the banker handles information concerning the affairs of the customer."***

In the case of ***Joachimson v Swiss Bank Corporation [1921] 3 KB 110***, while describing the nature of the banker-customer relationship and the obligation of the former to the latter, lord Atkin LJ held thus:

> ***"The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them... it includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank..., and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except on reasonable notice."***

The case of ***Joachimson v Swiss Bank Corporation (supra)*** is to the effect that for a current or savings account, sums are repayable upon demand. It, therefore, follows that once a customer makes a demand for payment of his deposit, and the banker fails to honour such demand, the banker becomes a debtor to the customer, and in that case, a customer

can take legal action against such a banker. When a customer sues the banker for recovery of his money in a current or savings account, the customer is suing on the banker-customer contract.

In this case, the respondents, who are the bank customers, had money held with the appellant bank, and when they demanded the money, the appellant bank refused to release the funds on the account claiming that the account was frozen following a tip-off from the FIA. The bank argues that the respondents should have sued the FIA, which tipped off the bank about the 2nd respondent's conduct.

As it was held in ***Joachimson v Swiss Bank Corporation (supra),*** the relationship between the appellant bank and the respondents is a contractual one. The appellant bank owed a duty to the respondents to hold their deposits safely and to make them available on demand. When the respondents made the demand for payment, the bank was obliged to honour that demand. When the bank failed to honour the demand, the respondents were entitled to sue the appellant bank under the banker-customer relationship.

It is immaterial that the respondents did join FIA to the application before the trial magistrate. The respondents were at liberty to sue the appellant bank alone or jointly with FIA if they so wished. In the case of ***Bahemuka Vs Anywar [1987] HCB 71*** court held that a plaintiff is at liberty to sue anybody he thinks has a claim against and cannot be forced to sue somebody. I therefore find no merit in ground 3 of the appeal.

Ground 4: That the trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong decision.

Counsel for the appellant argued that if the trial magistrate had not called the matter forward and properly evaluated the evidence, he would have reached a different decision and found that the FIA would have been added as a party and consequently shed light on the ongoing criminal investigations against the 2nd respondent. On the other hand, counsel for the respondents submitted that there was no evidence to evaluate and prayed that the appeal be dismissed with costs.

Unfortunately, counsel for the appellant did not direct this court to the kind of evidence that needed fresh scrutiny or evaluation. Nonetheless, counsel for the appellant seemed to suggest that it froze the respondents' joint bank account based on the instructions from the FIA.

Under section 21(k), of the Anti-money Laundering Act 2013 as amended, FIA may instruct any accountable person to take such steps as may be appropriate to enforcing compliance with the Act or to facilitate investigations anticipated by the Authority. It is not in dispute that the appellant bank is an accountable person under the Anti-money Laundering Act. However, the appellant bank did not provide evidence to show that it was duly instructed by FIA to freeze the respondents' joint bank account.

While the appellant bank has the obligation under section 6 of the Anti-money Laundering Act 2013 as amended to institute Anti-money measures, it must conduct due diligence without prejudice to its customers. In the instant case, on the 3rd day of May 2021, the 1st respondent wrote to the appellant bank protesting her failure to access the money and provided proof of the source funds deposited in the bank account, the proof being the sale of land that the respondents jointly owned. Again, on the 6th day of May 2021, the respondents' lawyers issued a demand notice to the appellant bank concerning the frozen bank

account. However, there is no indication that the appellant bank provided an adequate response to its customers (the respondents herein) either directly or through its lawyers. This was not only a clear act of abdication of the bank's duty to its customers but also a failure to undertake due diligence under the Anti-money Laundering Act 2013, as amended.

While the appellant bank claimed that it froze the respondents' joint bank account following a tip-off from the FIA, it did not give any proof, whether documentary or otherwise, to support the claim. Without any proof to support that claim, I am inclined to believe that the appellant bank's decision to freeze the respondents' joint account was merely speculative and devoid of any cogent foundation. I should add that without express instructions from a competent authority, as defined under the Anti-money Laundering Act, 2013 as amended, the appellant bank had no power to freeze the respondents' joint bank account. Therefore, ground 4 of the appeal is found in negative.

In conclusion, this appeal is hereby dismissed with costs to the respondents, as it is without merit.

It is so ordered.

Dated at Fort Portal this 23rd day of October 2023

Vincent Emmy Mugabo

Judge