

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 79 OF 2013
(ARISING FROM CIVIL SUIT NO. 1597 OF 2010)

BARCLAYS BANK OF UGANDA LIMITED :::::::::::::::::::: APPELLANT

VERSUS

ALTAF HUSSEIN :::::::::::::::::::: RESPONDENT

BEFORE: THE HON LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

a) Introduction

1. This is the judgment in an appeal from the decision of Her Worship Aanyu Margaret at Mengo Chief Magistrates Court. In her ruling of 6th May 2013, the trial Magistrate allowed the claim in Civil Suit No.1597 of 2010. In this Civil Suit, the Respondent sued the Appellant for recovery of special damages of Ug. Shs: 13,050,000/=, general damages, interest and costs of the suit.
2. The Appellant is represented by Mr. David Ssempala of M/s. Kigozi Ssempala Mukasa Obonyo Advocates and the Respondent is represented by Ms. Harriet Tumuhairwe of M/s. Okecho, Baranyanga & Co. Advocates.

3. Based on the grounds of appeal in the Memorandum of Appeal, the issues agreed for resolution at the scheduling conference were:
 - i. Whether the Learned Trial Magistrate erred in law and fact when she found that the Appellant breached her duty or that she was negligent in her duty owed to the Respondent.
 - ii. Whether the Trial Magistrate erred in law and fact when she found that the Respondent is entitled to special damages.
 - iii. Whether the Trial Magistrate erred in law and fact in awarding exorbitant general damages which was unreasonable in the circumstances of this case.

b) Analysis

4. I have carefully looked at the trial record, pleadings and submissions in this appeal. The Supreme Court in **Father Nanensio Begumisa and 3 Ors v. Eric Tiberaga SCCA No. 17 of 2004** observed that the legal obligation of the first appellate court is to re - appraise evidence and is founded in common law, rather than rules of procedure. 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 never seen or heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions. (Also see **F.K. Zabwe v. Orient bank and others SCCA No. 4 of 2006.**) I will adopt this standard in my assessment.
5. Briefly the facts are that the Respondent received an offer of a 2% discount from Sadolin paint on the purchase of paint using a negotiated rate of Ug. Shs: 2050/= to a dollar provided the money reached the Sadolin bank account in Citi bank in seven working days from 16th October 2008.
6. On 17th October 2008, the Respondent filled a telegraphic transfer form (herein after the TT form) in the Appellant's Arua branch instructing the Appellant to transfer US Dollars 50,000 to Sadolin paint (U) Ltd account held in Citi bank. The telegraphic transfer was expected to be made within four working days. This was not realised and

Sadolin paint withdrew its offer. The Respondent holds the Appellant responsible for this offer withdrawal and the loss he incurred as a result.

7. The Respondent contends that its head office which was to process the transfer received the TT on 20th October 2008, processed it on 21st October 2008 and debited the Respondent's account on 22nd October 2008 in favour of Sadolin paint. Further that the money was released to Barclays New York bank where the Appellant holds its dollar account and that Barclays New York sent this money on 23rd October 2008. The Respondent also insists that beyond it releasing the money to Barclays bank New York, it had no control over the process that followed and that it executed the transfer in the four days.
8. The Respondent requested and the Appellant committed to transfer US Dollars 50,000 from his shilling account in the Appellant bank to the Sadolin paint dollar count in Citi bank within four days. The Respondent then filled a TT form at the Arua branch of the Appellant on 17th October 2008 which was a Friday. In normal banking business, even if banks may open on Saturdays a reference to days in their transactions is to working days.
9. This means that the four days that the Appellant committed would be 17th October 2008 (excluding 18th and 19th which were weekends), 20th, 21st and 22nd October 2008. The Appellant's head office received the TT form and debited the Respondent's account on 22nd October 2008. After debiting, because the money was being transferred into a dollar account in another bank, it had to go through the Appellant's clearing house in New York. This was done on that very day. Eventually the money was credited on the 4th November 2008 13 working days after. Clearly this was beyond the four working days the Appellant had committed.
10. In normal banking business it is risky to have expected such a transaction involving money going through a clearing house in another country to have been deposited with in four days yet the current practise of banks today is to take time checking for money laundering and fraudulent transactions.

11. In these circumstances given the nature of the transaction, the Respondent voluntarily assumed a risk when he sought the said transaction to be effected in four days. In the same way the Appellant acted dishonestly by promising to have the transaction completed within four days when it was near impossible. So the loss suffered by the Respondent falls to an extent on the Appellant but the Respondent also assumed the risk of this loss from the start to an extent. So the trial Magistrate erred in failing to take account of this voluntary assumption of risk by the Respondent which a reasonable man conducting the nature of transaction that was in issue should have considered in choosing whether to go on with the transaction or avoid it. The award of special damages without taking account of this was also erroneous.
12. Taking account of this voluntary assumption of risk by the Respondent and the dishonesty of the Appellant in promising the impossible I will not award special damages to the Respondent. I would also reduce the general damages to Ug. Shs. 2,500,000/=. No interest is awarded. Each party shall bear its own costs for this appeal and in the lower court.

I so order

LYDIA MUGAMBE

JUDGE

17 AUGUST, 2017