

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 214 OF 2021

WORLD ISLAMIC CALL SOCIETY:::PLAINTIFF

VERSUS

TROPICAL BANK LIMITED :::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff is an international and interstate humanitarian organization duly registered in Uganda. In 2019, the plaintiff executed a Host Agreement with the Government of Uganda where the Government covenanted to grant the plaintiff immunity from all legal processes. The plaintiff has been operating four bank accounts with the defendant viz; **Account Nos; 0140005328 (USD), 0140005339 (EURO), 0140005347 (UGX) and 0140005355 (UGX)** opened in 2019.

Sometime around April 2020, the plaintiff attempted to transact against its Uganda Shilling and Dollar accounts which were used for daily organization operations and was shocked to discover that the said accounts and the other accounts were frozen/suspended by the defendant. The Plaintiff was informed that the accounts were frozen under instructions from the “General Manager” of World Islamic Call Society in Tripoli-Libya.

The defendant ignored protestation from the plaintiff against the arbitrary freezing of its bank accounts as well as directives from the Ministry of Foreign Affairs on the status of the plaintiff and the need to lift the restrictions on its accounts.

The plaintiff challenged the actions of the defendant as being unlawful, suspicious and unjustified and in breach of the Diplomatic Privileges Act and Host Agreement. It was their case that the defendant acted arbitrarily in unilaterally suspending/freezing the plaintiff's accounts without notifying or giving the plaintiff a hearing. The plaintiff has been denied the use of the money by the defendant which has caused untold suffering, anguish, loss, inconvenience and hardships as the plaintiff cannot operate normally.

The plaintiff sued the defendant seeking for:

- 1. Declaratory orders that the blocking/suspension or freezing of operations on its bank accounts is unlawful and a violation of the plaintiff's rights;*
- 2. An Order to direct the defendant to unfreeze the plaintiff's bank accounts;*
- 3. Permanent injunction restraining the defendant from further illegally blocking/suspending or freezing operations on the plaintiff's bank accounts;*
- 4. General damages for breach of bank/customer relationship;*
- 5. Exemplary damages;*
- 6. Interest on general damages at court rate per annum from the date of judgment till payment in full;*
- 7. Costs of the suit;*
- 8. Any other or further relief that the court may deem fit.*

The defendant contended in its defence that it received instructions from the General Manager of the World Islamic Call Society directing it to freeze the accounts of the organization. Upon receipt of the instructions, the defendant informed the Country Director and also the Libyan Embassy in

Uganda considering that the plaintiff is a Libyan International and Interstate humanitarian organization having its head office in Tripoli Libya.

Subsequently on 21st April 2021, the defendant received a letter from the Country Director of the plaintiff wherein the defendant was referred to a communication from a purported Chairman of the Steering Committee of the World Islamic Call Society, Tripoli Libya which was countering the instructions the defendant had received from the General Manager of the World Islamic Call Society, Tripoli Libya.

The defendant sought guidance of the Libyan Embassy in respect of the conflicting instructions from the same organization to no vain. The defendant contends that she only acted on instructions from the plaintiff's General Manager in Tripoli, Libya.

The plaintiff in rejoinder contended that the defendant acted negligently and recklessly when it acted on instructions of the said General Manager of the World Islamic Call Society to freeze its accounts before inquiring from the Libyan Embassy or the Ministry of Foreign Affairs. The defendant disregarded the guidance and advice of the Libyan Embassy regarding the legitimate persons/authority on matters of the plaintiff.

The plaintiff was represented by *Mr. Ahmed Kassim Esq* and the defendant was represented by *Ms. Aida Nanjala*

According to the Joint scheduling memorandum, the parties agreed on the following facts and issues to be resolved by this court.

AGREED FACTS

1. The plaintiff is an international and interstate humanitarian organization duly registered in Uganda.

2. The plaintiff is a customer of the defendant by virtue of **Account Nos; 0140005328 (USD), 0140005339 (EURO), 0140005347 (UGX) and 0140005355 (UGX)** opened in 2019
3. The plaintiff is a diplomatic entity clothed with diplomatic immunity.
4. The defendant placed and still maintains restrictions on the plaintiff's accounts.

ISSUES

1. *Who are the legitimate/authorized persons to act on behalf of the plaintiff in Uganda?*
2. *Whether the plaintiff enjoys immunity against attachment of its accounts?*
3. *What remedies are the parties entitled to?*

This court has considered the pleadings and reformulated the issues to be determined as follows. See *Barugahare v AG* [1990-1991] KALR 34

1. *Whether the blocking/suspension or freezing of the operations of the plaintiffs bank accounts is unlawful and a violation of the plaintiff's rights?*
2. *What remedies are available to the plaintiff?*

The parties led evidence of one witness each, for the plaintiff Abdul Basit Abu Ajila Mustafa Daboub-Country Director World Islamic Call Society (WICS) and the defendant evidence was adduced by Mr. Hamis Kintu-Branch Manager, Kampala Road Branch.

Whether the blocking/suspension or freezing of the operations of the plaintiffs bank accounts is unlawful and a violation of the plaintiff's rights?

PW1 testified that in April 2019, the plaintiff executed a Host agreement with the Government of Uganda for the establishment of its head office in Kampala, Uganda. He testified that in November 2020, the embassy of

Libya vide diplomatic note dated 24th November 2020 informed the ministry of Foreign Affairs of Uganda as well as Tropical Bank of the changes that had been made, among other things, in the leadership of the plaintiff, including the designation of Mr. Saleh Salim Al-Fakhri as the Chairman of the Steering Committee and authorized legal representative. He testified that he was appointed as Country Director of the plaintiff in November by Mr. Saleh Salim Al-Fakhri, the authorized legal representative of the plaintiff.

Plaintiff's counsel submitted that PW 1 denied knowing the authors of the purported letter of instruction to freeze the plaintiff's accounts. It is not disputed that the PW1 was accredited by the Ministry of Foreign Affairs of Uganda as the Country Director of the plaintiff with the mandate to operated/transact on the plaintiff's accounts. PW1 further testified that in September 2021, the Ministry of Foreign Affairs of Uganda wrote to the defendant and appraised it of the status of the plaintiff including the designation of Mr. Saleh Salim Al-Fakhri, as the Chairman of the Steering Committee and authorized legal representative of WICS. He further testified that around the same time in November 2021, the plaintiff received a letter from the embassy of Libya in Uganda informing the plaintiff that the embassy had clarified on the issues raised by the bank in their letter referenced TBL/LC/31/21 to wit; that there has not been any changes to the leadership of WICS.

DW1 testified that he does not know how the purported letter of instruction to freeze the accounts was received by the bank. He also testified that he was not privy to the communication between the bank, the embassy of Libya and the ministry of Foreign Affairs of Uganda regarding the clarification on the status of WICS and its authorized legal representatives. The only inference to be drawn is that DW1 is oblivious of the facts of this case and his evidence should be disregarded.

Counsel for the plaintiff submitted that a reputable bank like the defendant should not have put restrictions on the accounts of one of its outstanding

customers within hours of receipt of a dubious letter from strangers without notifying or giving the plaintiff a hearing? The alleged action of maintaining the restrictions in the interest of having the funds safe guarded is simply void from its own premise.

In summary on issue one, there is enough evidence on a balance of probability showing that the plaintiff's current leadership in Uganda is the legitimate/legally authorized to act on behalf of the plaintiff in Uganda in so far as:

1. The Embassy of Libya in Uganda vide a Diplomatic Note dated 24th November 2020 confirmed to the bank and the Ministry of Foreign Affairs that the legal representative of the plaintiff is Mr. Saleh Salim Al-Fakri in his capacity as Chairman of the Steering Committee **(see..Exh. PE4);**
2. The current Country Director of the plaintiff, Mr. Abdul Basit Abu Ajila Mustafa Daboub was duly appointed by the Chairman of the Steering Committee **(see..Exh. PE5,);**
3. The Country Director presented his credentials and was accredited by the Ministry of Foreign Affairs of Uganda **(see. Exh. PE6, ,PE7 & PE8);**
4. The Embassy of Libya in Uganda recommended the Country Director and Mr. AbdelSalam A. Ali, the Financial Controller to the defendant as signatories to the plaintiff's bank accounts;
5. The Ministry of Foreign Affairs of Uganda commended the plaintiff for account opening and confirmed that the two signatories (the Country Director and the Financial Controller) were properly vetted by the relevant security apparatus in Uganda and cleared for accreditation **(see. Exh.PE9);**
6. The Embassy of Libya in Uganda clarified to the bank on issues raised in their letter referenced TBL/LC/31/21 to wit; that there has not been any changes to the leadership of WICS and that WICS is an independent entity separate from the Embassy **(see. Exh. PE16)**

7. The Ministry of Foreign Affairs of Uganda wrote to the defendant and apprised it of the status of WICS including the designation of Mr. Saleh Salim Al-Fakhri, as the Chairman of the Steering Committee and authorized Legal Representative of WICS. (see. Exh. PE14)

The plaintiff's counsel submitted that that this court be pleased to find that the above accredited officials are the legitimate/authorized persons to act on behalf of the plaintiff in Uganda and that the decision to freeze the account was unlawful.

The defendant counsel submitted that they received instructions from General Manager in Tripoli Libya instructing it to freeze its accounts domiciled with the bank. The defendant as a matter of prudence immediately informed the plaintiff and the Libyan Embassy about the instructions it had received and requested the Embassy to confirm whether the instructions were genuine and the person who had issued them had the mandate to issue them.

It was the defendant's contention that the funds on the plaintiff's accounts are received from the Headquarters in Tripoli-Libya. Therefore, the plaintiff being a Libyan entity, it was prudent on the part of the defendant to seek for authentication from Libyan Embassy in Uganda as to who was the right authority to deal with.

The Libyan Embassy did not provide the requested guidance on who was the right authority to deal with regarding the Organisations accounts considering conflicting instructions were coming from the same organistaion. The non-Committal letter from the Libyan Embassy whom it presumed to have all requisite information regarding Libyan Entities in Uganda only compounded matters as the defendant in its capacity as Bank could not determine who to deal with and the only option it had was to place a Post No Debit restrictions on the accounts as to avoid being seen to side with a wrong authority.

Analysis

The plaintiff is an International and Interstate Organisation which was accredited by the Ministry of Foreign Affairs of Uganda in April 2019. The plaintiff executed a Host agreement with the Government of Uganda for the establishment of its head office in Kampala, Uganda. Under the said agreement the Country Director of the plaintiff has the mandate to operated/transact on the plaintiff's accounts. The plaintiff has been operating four bank accounts with the defendant viz; Account Nos; 0140005328 (USD), 0140005339 (EURO), 0140005347 (UGX) and 0140005355 (UGX) opened in 2019.

Therefore, the plaintiff is a body corporate in Uganda with capacity to carry on humanitarian business in Uganda and is duly recognized in that capacity. Under Article 14 of the *Host Agreement between the Government of Uganda and World Islamic Call Society Regarding an Establishment of a Country Office in Uganda* it is provided as follows:

- (1) *The Organisation shall hold and operate a bank account or bank accounts in its name in the Republic of Uganda*
- (2) *The bank accounts of the Organisation shall be inviolable. The bank Accounts shall be immune from requisition, attachment and /or any other form of interference, whether by executive, administrative, judicial or legislative action in accordance with the Diplomatic Privileges Act chapter 201 of the Laws of Uganda.*
- (3) *All monies and funds of the Organization shall be paid and deposited into the organisation's bank account or accounts as the case may be.*
- (4) *Where it elects to operate and hold multiple bank accounts in its name, the organization shall maintain no more than four bank accounts at a time.*
- (5) *The Country Director and Financial Controller shall be the signatories to the bank accounts.*

The plaintiff under the agreement is mandated to operate bank accounts in Uganda through the Country Director and Financial Controller. This therefore means no other person has any mandate to interfere with bank operations in Uganda. The actions of the bank to block/freeze the bank

accounts of the plaintiff premised on alleged communication from the General Manager of World Islamic Call Society would be illegal and supported by authority of the agreement authorizing its operations in Uganda.

The bank-customer relationship created by opening bank accounts in Uganda could not be subjected to extraneous decisions by third parties (head office) and in case they had intended to retain some degree of control in Uganda, then they ought to have inserted a clause in the Host Agreement. Otherwise, the interference with the smooth operations of the bank account would be jeopardized with third party instructions simply because the head office thinks otherwise.

This court takes judicial notice of the fact Libya as country is going through a lot of turmoil and turbulence which may make it impossible to know the central point of authority of government. The alleged communications made by the General Manager of World Islamic Call Society must be subjected to a thorough scrutiny through the relevant authorities like Libyan Embassy and Ministry of Foreign Affairs of Uganda as a party to the Host Agreement.

The actions of the bank through its Managing Director to receive directions on how the bank account in Uganda should be operated is an abuse of authority. Indeed, when the bank found its self in such an undesirable situation opted to consult and seek guidance from Libyan Embassy and Ministry of Foreign Affairs who confirmed that the current/present Country Director is the person mandated to operate the bank accounts in Uganda.

The mandate of the plaintiff bank accounts is guided by Host Agreement and it can only be changed by amending the agreement to take away the authority of the Country-Director.

The bank is in fear of annoying some people in Libya (General Manager) and they have opted to do this at the expense of their obligations as

bankers. The customer in Uganda who is mandated to manage the bank accounts is prejudiced by the said actions and this is the risk of liability they will have to face for failure to enquire into the true circumstances of the case.

The relationship between the plaintiff and bank being that of a customer and a banker. The bank has a duty of care to the plaintiff in relation to its accounts with the bank and not to 3rd parties just like in this present case. The General Manager of World Islamic Call Society in Libya ought to act within the mandate of the organization in interference with entities in other countries. The court must intervene to curb prima facie acts of illegality committed by the defendant bank which does not stem from the contractual relationship.

The bank's mandate is usually established at the start of the banker-customer relationship, when the customer signs one or more detailed account opening forms. The bank can only act in accordance with customer's instructions, and a breach will amount to a breach of contract by the bank. The bank's management was wrong to receive instructions from third parties to contract even though it was from the country of origin of the plaintiff.

In the case of *Banax Ltd v Gold Trust Bank Ltd [1990-1994] EA 37 (SC)* court noted that; The duty of a banker is to act in accordance with lawful requests of his customer in the normal operation of the customer's accounts and therefore the refusal by the bank to carry out lawful requests and wrongly suspending the account until the High Court gave a judgment was in breach of its contract.

In case the head office of World Islamic Call Society wanted to retain control of the bank accounts in Uganda, they were at liberty to include such clauses in the relationship between the bank and customer. They would have expressly agreed to any peculiar arrangement to define the relationship including the imposition of obligations and responsibilities

outside the ordinary bank customer relationship known under the law. See *Pertamina Energy Trading Ltd v Credit Suisse* [2006] 4 SLR(R) 273

The decision to freeze an account often happens with no warning or explanation. Customers suddenly find they have no access to cash: direct debits and standing orders are suspended. The customer suffers distress and inconvenience because they cannot access banking facilities. The bank after getting clarity on the plaintiff from the respective offices like the Libyan Embassy in Uganda and Ministry of Foreign Affairs of Uganda ought to have lifted the freeze instead of continuing to insist on getting further instructions from third parties from Tripoli-Libya.

The defendant has been biased towards persons or entities who are not parties to the bank customer relationship in Uganda as noted earlier. The Ministry of Foreign Affairs of Uganda wrote to the defendant and appraised it of the status of the plaintiff including the designation of Mr. Saleh Salim Al-Fakhri, as the Chairman of the Steering Committee and authorized legal representative of WICS.

In addition, the plaintiff received a letter from the embassy of Libya in Uganda informing them that the embassy had clarified on the issues raised by the bank in their letter referenced TBL/LC/31/21 to wit; that there has not been any changes to the leadership of WICS. Despite the above appraisal and clarification from the Embassy and the directive from the Ministry of Foreign Affairs of Uganda, the defendant has continued to maintain restriction on the plaintiff's accounts.

The actions of the defendant are in total breach of contract between the plaintiff and defendant rotating around bank-customer relationship. The bank is entitled to close/freeze the bank account but they ought to treat the customer fairly by ensuring that the freeze was justified and ensure that the freeze is quickly lifted instead of making it appear indefinite. Therefore, no prudent banker faced with the same circumstances would regard the course of action taken on the facts to be justifiable.

The defendant is in breach of the contract and the continued freeze is unjustified and thus illegal.

What remedies are available to the plaintiff?

1. The court issues a declaratory Order that the blocking/suspension or freezing of operations on its bank accounts is unlawful and a violation of the plaintiff's rights.
2. An Order issues to direct the defendant to unfreeze the plaintiff's bank accounts with immediate effect and unconditionally.
3. No order is made for general and Exemplary damages since the plaintiff did not make out any case for their award.
4. The plaintiff is awarded costs of the suit

I so order.

SSEKAANA MUSA

JUDGE

9th May 2022