THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA

CIVIL APPEAL NO. 013 OF 2020

BARCLAYS BANK OF UGANDA LIMITED :: APPELLANT

VERSUS

1. BUGA KASSIM
2. NAGAWA KHADIJA
3. MUSISI MAJID :: RESPONDENTS

BEFORE: Hon. Justice Isah Serunkuma

JUDGEMENT

This is a first appeal against the judgement of His Worship Daniel Lubowa in Civil Suit No. 0050 of 2018 at the Chief Magistrates Court of Arua.

Background

The respondents are administrators of the estate of the late Asina Bake who was operating account No. 5800382981 with the appellant bank. The late Asina died a natural death on 1st August 2004 at Kondiba village. The late Asina Bake was a beneficiary to the estate of the late Capt. Amani Adaki and was receiving survivor benefits through Barclays Bank. After her demise, the respondents did not process letters of administration until 2016 and it is at that time that they were notified by the appellant bank that the account belonging to the late Asina was being operated by some unknown person.

The appellant Bank advised them to lodge a complaint with them so as to initiate investigations and with help of the Bank's forensic operator, the fictitious person was arrested and the respondents were invited to make statements at Kibuli police station.

The fictitious person went by the names of Wanyana Betty who admitted having been advised by her boyfriend to open the said account and the boyfriend was working with the bank. By the time the account was handed to the respondents, Ug. Shs. 40.000.000/= had been withdrawn from the account. For the appellants, the said fictitious person had brought all the requisite documentation to the bank and successfully opened an account in the name of Asina Bake.

The trial Magistrate found for the respondents and awarded Ug. Shs. 38.569.774 as special damages, 10.000.000/= as general damages interest and costs of the suit. The appellants were dissatisfied with the decision of the trial court and filed this appeal on the following grounds;

1. The trial magistrate erred in law and in fact when he held that the appellant failed to follow the right procedure during the account opening;
2. The trial magistrate erred in law and in fact when he held that the appellant failed to obtain proper identification during banking transactions on the account;
3. The trial magistrate erred in law and in fact when he arrived at the wrong finding that the appellant was in breach of the Financial Institutions (Anti-Money Laundering) Regulations of 2010;
4. The trial magistrate erred in fact when he held that the appellant's employees had connived with the fraudulent individual;
5. The trial magistrate erred in law and in fact when he held that the first defendant was liable for the loss suffered by the plaintiffs in regard to money withdrawn from the account by the fraudulent person.

Representation

At the hearing of the appeal, Nasur Muhammed Buga appeared for the respondents while the appellant was unrepresented. Both parties filed written submissions.

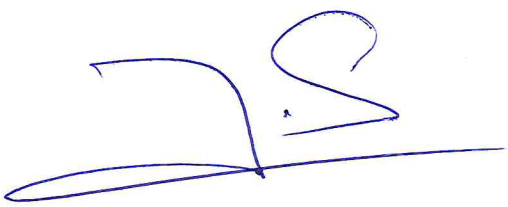
Appellants' submissions

Counsel submitted that the trial judge erroneously rejected the appellant's submission that an identity card was not necessary during account opening as long as there were other documents which identified the customer. Counsel submitted that whereas proof of the standing of the recommender in account opening was never adduced in court, there was no basis for court to presume that the recommender, Mr. Rama Nasser was not a respectable and competent person to referee a new customer in the bank. The said Rama Nasser was already an existent customer with an active account in the Bank and was in good standing with the Bank.

Counsel submitted that in 2007 when an account was opened, there was no standard form of identification of individuals in Uganda as National Identity Cards had not yet come into effect. The appellant relied on a letter from the customer's Local Council 1 Chairman to identify the customer, which letter was addressed to the Bank. Counsel argued that the letter sufficiently identified the customer and it was reasonable for the Bank in 2007 to reply on the letter as proof of the customer's identity and good standing.

It was submitted for the appellant that the respondents never alleged breach of the Financial Institutions (Anti-Money Laundering) Regulations 2010 in their pleadings and only purported to raise the same in their submissions. Counsel argued that the respondents were required to prove that there was a close enough relationship between the appellant and the respondents such that the damage could have been foreseen by the appellant.

Respondent's submissions



In reply, counsel submitted that it is a standard banking practice and law that there must be some key fundamental requirements that must be fulfilled by the customer to convince the bank to open an account with the bank. Counsel relied on the principles for consideration regarding a prospective customer by Holden Milnes J, in The law and practice of banking (London, Pitman Publication 1996) 5th Edition. The principles therein are; whether he has authorised the opening of an account in his name; whether he is the person he claims to be; whether he is employed by someone else and if so, the name of the employer. Counsel submitted that the bank did not satisfy itself of the fundamental requirements and was negligent in opening the account.

Counsel submitted that the appellant bank did not obtain references or recommendation from the respectable customer of the bank and there was no proof of the identity, respectability and status of the recommender of the said fictitious person. The bank failed to prove that they followed the proper procedure for opening an account. Counsel relied on the decision in **Bank of Baroda (U) Ltd Vs Wilson Buyonjo Kamugunda; SCCA No. 010 of 2004** in which it was held that the bank had a duty to prove that in opening the account, it exercised due care.

Counsel argued that the bank statement adduced in evidence shows that big amounts of money were withdrawn from the account by the fictitious person and at a time when national Identity Cards were in use but the bank never bothered to get proper identification from the person withdrawing the money.

Counsel submitted further that the appellant acted in breach of the Financial Institutions (Anti Money Laundering) Regulations 2010, which requires a bank to demand that a customer disclose his true identity while conducting transactions. Counsel argued that there was enough evidence to prove that the appellant's servants connived with Betty Wanyana to defraud the respondents of their benefits.

Consideration of the appeal

Before I delve into the merits of this appeal, I recall that this is a first appeal and as such, the law enjoins this court to review and re-evaluate the evidence as a whole, closely scrutinize it, draw its own inferences, and come to its conclusion on the matter. This duty is recognized in **Rule 30(i) (a)** of the Rules of this Court.

30. Power to reappraise evidence and to take additional evidence.

(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—

(a) reappraise the evidence and draw inferences of fact; and

(b) in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner.

The cases of **Pandya v R [1957] EA 336** and **Kifamunte Henry v Uganda SCCA No. 10 of 1997** have also succinctly re-stated this principle. I have borne these principles in mind in resolving this appeal. I have also duly considered the submissions of both parties and the authorities cited.

Grounds 1, 2 and 3 are interrelated and raise the issue of whether the bank carried out due diligence in account opening with regard to identification of the fictitious person and as such, I will resolve them together.

The procedure of account opening with a bank requires that a customer fulfills certain requirements before the bank can open an account for the customer. The law on account opening was echoed in the case of **Bank of Baroda (U) Ltd Vs Wilson Buyonjo Kamugunda SCCA No. 10 of 2004**. The Supreme Court held that the bank had a duty to prove that in opening the account, it exercised due care. The court held further that it is a well-known recognized practice of bankers in this country not to open an account for a new customer without first ascertaining the respectability of the customer.

The evidence of DW1 was to the effect that it was not necessary to ask for an identification card during account opening at that time as long as the bank is satisfied with other documents which properly identified the customer. That presentation of an identification document was not compulsory in account opening. It is my considered view that in the absence of a national identification card, since at that time they were not yet in established, the appellant bank had to exercise due diligence and demand another form of identification from the fictitious person before opening an account with the bank.

In addition, the recommender of the fictitious person was an employee of the bank and as such, the bank cannot detach itself from the opening of the account by the fictitious person. The late Asina Bake was a customer of the bank and they owed her estate a duty of care. The fictitious person subsequently withdrew money from the account in 2016 at a time when national identity cards had been established but the appellant bank did not require such identification from the fictitious person before withdrawing money from the account.

Regulation 6 of the Financial Institutions (Anti Money Laundering) Regulations 2010 provides that;

> *6. Anonymous accounts*
>
> *(1) A financial institution shall not keep anonymous accounts or accounts in fictitious names.*
>
> *(2) A financial institution shall identify, on the basis of an official or other reliable identifying document and record, the identity of their customers, either occasional or usual, when establishing business relations or conducting transactions.*
>
> *(3) Sub regulation (2) shall apply, in particular to—*
>
> *(a) the opening of accounts or passbooks;*

(b) fiduciary transactions;

(c) the renting of safe-deposit boxes;

(d) the use of safe custody facilities; and

(e) large cash transactions.

The bank, by opening an account of a fictitious person, without proper identification, breached Rule 6 of the Financial Institutions (Anti Money Laundering) Regulations. The fictitious person, Wanyana Betty, renewed the ATM card in 2016 and still, the bank failed to obtain proper identification from her. This was, in my view, an act of negligence that the bank has to be held liable for. I therefore find no merit in all the grounds of appeal and they accordingly fail.

I find no reason to interfere with the finding and orders of the trial Magistrate and uphold them as such.

This appeal is dismissed with costs to the respondent.

I so order.

Dated and Delivered this 31st Day of March 2023.

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Isah Serunkuma
JUDGE