

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]**

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CIVIL SUIT No. 44 OF 2014

JESSICA KAKOOZA ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ECOBANK UGANDA LIMITED ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. Mr. JUSTICE B. KAINAMURA

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JUDGMENT

The plaintiff brought this suit against the defendant for breach of banker/ customer contract for alleged failure to credit deposits on her account, fraudulent crediting of her account, breach of Consumer Protection guidelines, breach of duty of care and negligence in failing to convert an overdraft facility into a mid-term loan contrary to the banking principles of treating customers fairly, reliability and transparency. The plaintiff sought for an award of special damages, general damages and costs of the suit arising from the above alleged breaches by the defendant.

It was the plaintiff's claim in her amended plaint that on 2nd May, 2009, the plaintiff under the trade name 'Kakooza's shop' opened a current account No.0010266100085101 with the defendant Bank. The plaintiff had a good working relationship with the defendant and the defendant supported the plaintiff's business by extending to her credit facilities that were reviewed from time to time; these included overdrafts, bank guarantees and term loans to facilitate the plaintiff's short term working capital requirements.

The plaintiff's business partners later changed the supplier procurement plans and the plaintiff wrote a letter to the defendant with a request for the defendant to term out her overdraft facility into a medium term loan, which the defendant refused to do. In breach of the defendant's duty to the plaintiff, several payments made by the plaintiff were not credited onto her account or were deposited several days thereafter which greatly affected the interest on her overdraft facility.

Further, that the defendant through its agents used to fill in the plaintiff's deposit slips under the guise of helping her but subsequently the said deposits were queried by the defendant and charges of fraud were pressed against the plaintiff. However, Director of Public Prosecutions did not find evidence to support the said charges against the plaintiff. The defendant without making
5 a demand in writing and without default on the part of the plaintiff issued a Notice of Default to the plaintiff and it was seeking to realize its security by sale of the plaintiff's property.

The defendant, on the other hand contested the claim and contended in its amended written statement of defence that it offered the plaintiff overdraft and guarantee facilities on several occasions secured by a legal mortgage over property comprised in LRV 4317 Folio 7 Plot 5
10 Ssenyonyi lane. Further, that all monies deposited by the plaintiff were at all times and in a timely manner deposited to her account and the defendant was not in breach of any law in its dealings with the plaintiff.

In its amended written statement of defence, the defendant also raised a counter claim against the plaintiff seeking an award of UGX 686,188,571/=, being monies, allegedly, owed to the
15 defendant/counter claimant and costs. It was indicated that the demands had been made on the plaintiff for settlement but that the demands had never been responded to.

The following issues were agreed upon by the parties for determination:

1. *Whether the defendant was negligent and acted in breach of its banker-customer relationship with the plaintiff.*
- 20 2. *Whether the defendant's acts and omissions adversely affected the plaintiff's business operations.*
3. *Whether the plaintiff is indebted to the defendant.*
4. *What remedies are available to the parties in the circumstances.*

Considering that issue 2 and 4 are related, I shall address them together under the general head of
25 remedies available to the parties. Therefore, I shall address the issues in the following order:

1. *Whether the defendant was negligent and acted in breach of its banker-customer relationship with the plaintiff.*
2. *Whether the plaintiff is indebted to the defendant.*

3. *What remedies are available to the parties in the circumstances.*

At the hearing of the suit, the plaintiff was represented by Mr. Fredrick Ssempebwa and Mr. John Bosco Mudde, while the defendant was represented by Mr. Ernest Sembatya.

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ISSUE 1: Whether the defendant was negligent and acted in breach of its banker-customer relationship with the plaintiff.

It was the plaintiff's evidence at trial (PW1) that in 2009, she opened account
10 No.1101000855019 with the defendant Bank, which was later changed to account
No.0010266100085101. She testified that initially she had a good working relationship with the
defendant and the defendant supported her business by extending to her credit facilities including
overdraft facilities, bank guarantees and term loans, which facilities would be reviewed from
time to time. Upon the plaintiff's business suppliers changing procurement plans where it was
15 necessary for the plaintiff to have instant cash before conducting business, that she requested the
defendant bank to convert her overdraft facility into a medium term loan; however the defendant
unreasonably declined to do so.

Subsequently, that while the plaintiff was scanning through her documents from the defendant,
she discovered that: several payments made by her were either not credited onto her account or
20 were deposited several days thereafter which greatly affected the interest on the overdraft
facility; the defendant through its agents used to fill in some of the bank deposit slips under the
guise of helping her and she also discovered that she had paid interest over and above what she
was enjoined to pay to the bank. Further, that on the 6th February, 2012, the plaintiff deposited a
cheque of UGX 20,000,000/= but the same was returned unpaid more than a month after its
25 deposit without any explanation. It was the plaintiff's further testimony that on 27th March, 2013,
she applied for a two weeks temporary overdraft that was meant to expire on 8th April, 2013, but
the funds were availed on 27th March, 2013, and interest was charged for the entire period.

Further, that on the 31st August, 2012, the plaintiff deposited UGX 160,000,000/= but the same was never credited to her account.

It was PW1's further testimony that regardless of the plaintiff's request for her bank statement, the defendant never availed the same. That it was after the plaintiff's Advocates writing to the defendant and through the intervention of Bank of Uganda that the bank statements were availed but still without availing the loan statements. Further, that the defendant also made false and baseless allegations against the plaintiff to the police that the plaintiff had defrauded the bank in concert with the bank's employees but the Director of Public Prosecutions did not find any evidence against the plaintiff.

10 PW2, Oluka Francis, testified that he had banking experience of 13 years. In that regard, that the plaintiff requested him to review her banking documents including bank statements, facility letters and copies of deposit slips relating to the plaintiff's banking relationship with the defendant. It was his testimony that in the course of reviewing the above stated documents, he found that there were missing deposits totaling to UGX 82,970,000/= and that the said missing
15 deposits were appearing on different dates and many times the bank delayed to credit the plaintiff's account with cash deposits which made the plaintiff incur additional interest on the overdraft facility.

It was DW2's further testimony that while the plaintiff applied for and was granted a temporary overdraft facility on 22nd March, 2013, that was to expire on 8th April, 2013, she was availed with
20 the funds on 27th March, 2013, and in effect the plaintiff had the facility for only 12 days instead of 17 days.

The defendant on the other hand led the evidence of Johnson Galabuzi (DW1), who was the Head, Local Corporates and SME with the defendant Bank. It was his testimony that on several occasions, the defendant granted to the plaintiff overdraft and guarantee facilities, to wit:

- 25
1. Guarantee facility for a year in the amount of UGX 150,000,000/= (5th May, 2009), secured by a legal mortgage, later renewed for a further period of 12 months by offer dated 26th April, 2011 and further renewed by offer dated 9th May, 2012 for 12 months.
 2. Overdraft facility for six months of UGX 150,000,000/= (10th June, 2010), secured by a legal mortgage, by offer letter dated 4th January, 2011 it was renewed for a further 12

months and further renewed for a further 12 months by offer letter dated 2nd February, 2012. By variation of offer dated 26th April, 2012, the defendant varied the plaintiff's overdraft facility by granting her a further 100,000,000/=, the entire facility therefore totaling to UGX 250,000,000/= and expiring on 13th February, 2013.

3. Term loan of UGX 150,000,000/= for a period of 18 months (23rd November, 2011).
4. By offer dated 21st September, 2012, the plaintiff was granted an additional facility of UGX 100,000,000/=.
5. At the plaintiff's request the facilities dated 26th April, 2011 and 21st September, 2012, were restructured. By letter dated 21st March, 2013, the defendant offered to renew the plaintiff's overdraft facility of UGX 250,000,000/= and at the time the plaintiff was indebted to the defendant in the sum of UGX 540,000,000/=.
6. Temporary overdraft of UGX 100,000,000/= (27th March, 2013).

It was DW1's further testimony that upon the plaintiff having been in default of servicing her indebtedness amounting to UGX 629,773,996.57/=: the defendant made a demand on her to settle the same and also issued a Notice in Default in accordance with the Mortgage Act. However, that by letter dated 13th November, 2013, the plaintiff demanded a reconciliation of her account on the basis that some deposits were never credited onto her account and that she had paid interest over and above what she ought to have paid. DW1 contended that the plaintiff had never brought to his attention the above allegations, nor had she ever notified the Bank that UGX 160,000,000/= had not been credited to her account. Further, that the defendant requested the plaintiff for substantiation of the above allegations but the plaintiff did not give any response.

Counsel for either party filed written submissions in support of and in opposition of the claim.

In his written submissions, counsel for the plaintiff made reference to the testimony of the plaintiff that the defendant had unreasonably declined to convert her overdraft facility into a medium term loan. Counsel submitted that under normal banking practice, it was in the best interest to treat a customer fairly by converting the overdraft facility to a term loan once a review of facility utilization was conducted.

Counsel restated the plaintiff's and PW2's evidence that some deposits made by the plaintiff were not credited to her account; the plaintiff deposited a cheque which was returned unpaid a

month later without explanation; the defendant refused to avail the plaintiff with her bank statements and deposit slips on request and that PW2 had discovered late crediting of the plaintiff's account on some deposits she made.

Counsel further submitted that it was grossly negligent in alleging criminal conduct against the plaintiff before calling her to cross check her deposits that were alleged to be dubious. Counsel cited Section 1(a) of the Bank of Uganda Financial Consumer Protection Guidelines where it is stated that a financial service provider shall act fairly and reasonably in all its dealings with a consumer. Counsel relied on *N Joachimson Vs Swiss Bank Corp [1921] 3 KB 110 at 127*, and submitted that the actions of the defendant were negligent and that this court should so find.

10 In reply, Counsel for the defendant cited *“Essays in Banking Law and Practice” by Grcae Patrick Tumwine* where it is stated that:

15 *“The duties owed by the banker to a customer largely relate 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. The first two will be discussed when discussing the rights and duties of bankers and securities for banker’s advances respectively. Presently, it is intended to discuss information concerning the dealings of the customer which is generally known as the duty of secrecy.”*

20 Counsel submitted that from the above, the duties of a banker were: to carry out the customer’s payment instructions, dealing with securities deposited with the bank and banker/customer confidentiality.

It was counsel’s contention that in declining the plaintiff’s request to convert the overdraft facility into a medium term loan, the defendant was acting within its rights, which could not be construed as acting unfairly. With regard to the temporary overdraft facility that was apparently
25 availed to the plaintiff late, counsel for the defendant submitted that it was presumptuous for the plaintiff to assume that her application for an overdraft would be automatically granted and that if so granted it ought to have been done by a particular date. Further, that while the plaintiff alleged that the defendant’s staff used to fill in deposit slips for her, such deposit slips were not tendered in evidence.

Counsel further submitted that it was not the duty of the Bank to keep deposit slips on behalf of the customer and that the Bank's duty was limited to honoring of instructions.

In rejoinder, counsel for the plaintiff submitted that the defendant was in breach of its duty to the plaintiff of carrying out the customer's payment instructions when it did not cash a cheque of
5 UGX 20,000,000/= banked by the plaintiff on the 6th February, 2012, and was in breach of its bank customer duty of confidentiality when it reported a matter against the plaintiff without first exhausting internal review mechanisms such as inviting the plaintiff and discussing the issues at hand.

I have carefully considered the evidence adduced by the parties, the law and the submissions of
10 counsel in regard to this issue.

The plaintiff's case against the defendant is for negligence and for breach of its duties as a banker to the customer. From the evidence on record, it is not in dispute that the plaintiff held a bank account with the defendant bank and the defendant had been offering the plaintiff banking services since 2009. As stated by **Grace Patrick Tumwine Mukubwa** in his **Essays in African**
15 **Banking Law and Practice**, the relationship of banker/customer is a contractual one, with the bank having a 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. (Also see **Joachimson Vs Swiss Bank Corp (1921) 3 KB 110 at 127**).

In the present case, the plaintiff contends that some of her deposits were not credited to her
20 account, which the plaintiff contends was negligent on the part of the Bank.

I have carefully perused the deposit slips availed by the plaintiff and tendered in evidence (EXH P3) as part of the deposits she made but were apparently not credited to her account. I have also carefully looked at the bank statements availed by both the plaintiff and the defendant and I have made comparison to determine whether the said deposits were indeed not reflected on the bank
25 statements. I find that indeed some deposits made by the plaintiff were not credited to her account and are not reflected on the statements. These are:

1. Deposit of UGX 2,500,000/= made on 15th September, 2012.
2. Deposit of UGX 2,000,000/= made on 15th September, 2012.

3. Deposit of UGX 5,600,000/= made on 16th May, 2012.
4. Deposit of UGX 2,480,000/= made on 16th May, 2012.
5. Deposit of UGX 1,000,000/= made on 16th May, 2012.
6. Deposit of UGX 3,420,000/= made on 15th May, 2012.
- 5 7. Deposit of UGX 1,400,000/= made on 15th May, 2012.
8. Deposit of UGX 2,000,000/= made on 16th May, 2012.
9. Deposit of UGX 11,000,000/= made on 16th May, 2012.
10. Deposit of UGX 5,000,000/= made on 17th October, 2011.
11. Deposit of UGX 3,500,000/= made on 19th October, 2011.
- 10 12. Deposit of UGX 3,900,000/= made on 17th March, 2012.
13. Deposit of UGX 104,000,000/= made on 27th September, 2010.

The court in ***Donoghue Vs Stevenson (1932) ac 502***, established three ingredients making up a case of negligence as follows;

- 1) The defendant owed a duty of care to the plaintiff,
- 15 2) There was a breach of that duty by the defendant,
- 3) The plaintiff suffered injury as a result of the breach.

It is apparent that the defendant owed a duty of care to the plaintiff by virtue of the contractual relationship they had as banker and customer. I find that the defendant was in breach of its duty of care when it failed to ensure that the deposits made by the plaintiff were credited to her
20 account, thereby causing her loss.

With regard to the 160,000,000/= which the plaintiff alleges that she deposited but was not reflected on her account, I am not convinced by her testimony. While she testified that she lost her bag which contained the deposit slip reflecting the 160,000,000/=, the police report indicates that the plaintiff reported the loss of her bag containing bank deposit slips amounting to UGX
25 200,000,000/=. Further, while the theft is alleged to have taken place in 2013, the report was done in 2015.

I also do not accept the submission of counsel for the plaintiff that the defendant had a duty of availing the plaintiff with the copies of the deposit slips in its custody. It is not in dispute that the plaintiff was given a copy of the deposit slips and the Bank retained its copy, which in my view

the Bank was not obliged to avail to the plaintiff on demand considering that she was given her own copies of the deposit slips. I have looked at Guideline 7(a) of the Bank of Uganda Financial Consumer Protection which counsel for the plaintiff relies upon to submit that the defendant was obligated to avail its copies of the deposit slips. It states as follows:

5 *“Where a consumer has a bank account or a loan with a financial services provider, the financial services provider shall provide the consumer with statements of his or her account or a loan account showing what transpired since the last statement that affected the account of the consumer, including balance changes, payments, disbursements and costs.”*

10 I find that there is nothing in the above guideline which mandates the defendant to provide its copies of the deposit slips to the customer. Besides, the defendant had the option of applying for the production of documents in court at the hearing and that was not done. The law in this country is that he who alleges must prove, and it was incumbent upon the plaintiff to adduce sufficient evidence that the said deposit was made. I am not persuaded that the plaintiff deposited
15 the UGX 160,000,000/= which, apparently, was not credited to her account.

The plaintiff also alleged that on several occasions, she had made deposits but the defendant had delayed to credit her account, with the result that the plaintiff would incur additional interest on the overdraft facilities. The plaintiff tendered into evidence several deposit slips indicating that the crediting of her account had been carried out several days after her deposit. I have carefully
20 looked at the said deposit slips and made comparison of the same with the plaintiff’s Statement of Account. Indeed, all the said deposits were credited two days after the deposits were made.

During cross examination, DW1 indicated that whenever a customer deposits money, it was supposed to be deposited immediately if it was cash. However, it was also his evidence that if a deposit was made on a Saturday, it would be reflected on the account on the Monday following
25 and that interest was not charged over the weekends, and I am persuaded by this testimony. I have carefully looked at the deposit slips and the Account Statement; I find that all the deposits complained about by the plaintiff were made on Saturdays and credited on Mondays. I therefore, find that this complaint is without basis and I disallow it.

The plaintiff also contends that contrary to normal banking practice, the defendant had unpaid the plaintiff's cheque more than a month after the cheque had been deposited without proper explanation. Counsel for the plaintiff indicated that the cheque was returned unpaid when the plaintiff had sufficient funds to pay the cheque. In **Konark Investments (U) Ltd Vs Stanbic Bank (U) Ltd, HC Civil Suit No.116 of 2010**, the court while citing **Kavak Rubber Company Ltd Vs Burden and Others (No.2) [1972]2 ALL ER 1210**, it was stated as follows:

In Selangor United Rubber Estates Ltd verses Craddock and others (1968) 2 ALL E.R. 1073, it was held that the paying banks' liability to its customers is in negligence. At page 1109 of the judgment:

'The Hilton case turned on the stopping of a cheque. The drawing of a cheque and the stopping of a cheque are both instructions to a banker. The banker's obligations with regard to his customer's instructions are the same whether they are to pay or to stop (though subject, of course, to the difference in the substance of the instructions given). There seems no ground for saying that the duty of care applies to instructions to stop but not to instructions to pay, or vice versa.'

Lord Dunedin said 'It must always be remembered that a bank can be sued just as much for failing to honour a cheque as for cashing a cheque that had been stopped.'

It is trite law that a bank is bound to honour cheques drawn on it by a customer provided there are sufficient funds standing to the credit of the customer. In the present case, the cheque that was returned unpaid was not tendered in evidence. Counsel for the plaintiff indicated that it was the cheque reflected on the Account Statement as deposited on 6th February, 2012, Cheque No.247 IFO Mukwano Industries. It was indicated that the same cheque was returned unpaid on 15th March, 2012. I have looked at the Account Statement and indeed the plaintiff's cheque No.247 in favour of Mukwano Industries, for the sum of UGX 20,000,000/= was returned unpaid. However, it appears from the Statement of Account that at the time when the said cheque was deposited, the amount outstanding to the plaintiff was UGX 196,482,412.41/= which was not sufficient to honour the cheque.

I find that although the defendant indeed returned the cheque way beyond the time when financial institutions ordinarily return unpaid cheques which is usually within a period of 4 days, there is no law that compelled the defendant to do so. While that is the general banking practice, it is not the law. In that regard, I find that considering that the plaintiff did not have sufficient
5 funds in order for the defendant to be obligated to honour her instructions of paying the cheque, I do not find merit with this complaint by the plaintiff.

It was also the plaintiff's case that the defendant acted negligently in alleging criminal conduct against the plaintiff before calling her to confirm the allegations that were brought against her and that the bank was in breach of its duty of confidentiality. It is not in dispute that the
10 defendant made a complaint against the plaintiff and several of its employees for apparently conspiring to defraud the bank. Counsel for the plaintiff relied on Guideline 1(a) of the Bank of Uganda Financial Consumer Protection Guidelines which provides that a financial services shall act fairly and reasonably in all its dealings with a consumer.

It is an implied term of the contract between a banker and a customer that the banker enters into
15 a qualified obligation not to disclose information concerning the customer's affairs without his consent (*See Tournier Vs National Provincial and Union Bank of England (1924)1 KB 461*). In the present case, the plaintiff has not given any evidence that the defendant revealed any information in relation to her account. Her evidence was that the complaint lodged by the defendant to police was that she in concert with the bank's employees had defrauded the bank by
20 making false deposits to the plaintiff's account. Besides, the complaint was in relation to interests of the bank which is an exception to the duty of confidentiality. I find that the defendant had a right of bringing to the attention of the police what was considered to be criminal and contrary to the interests of the bank.

I find that there was no negligence proved against the defendant on this particular instance. The
25 court in *Obed Tashobya Vs DFCU Bank (U) Ltd, HC Civil Suit No. 742 of 2004*, adopted the standard set by Lord Warrington in *Lloyd Bank Ltd Vs E.B Savory & Co [1933] AC 201*, where it was stated that:

“The standard by which the absence or otherwise of negligence is to be determined must be ascertained by reference to the practice of reasonable men

carrying on the business of bankers and endeavoring to do so in such a manner as may be calculated to protect themselves and others against fraud”.

I have considered the circumstances of this case and I find that there was nothing unreasonable about the defendant reporting a complaint of suspected fraud against it. While it would have been
5 courteous for the defendant to invite the plaintiff and inform her about the allegations before reporting to police, there was nothing that compelled the defendant to do so. I do not find that the defendant acted unreasonably in any way.

I also accept the submission of counsel for the defendant that the guidelines sought to be relied upon by the plaintiff are directory and not mandatory considering that they are not law.

10 I also find that there was no law that compelled the defendant to convert the plaintiff’s overdraft facility into a term loan on request or comply with her application for temporary overdraft within a given period of time. Besides, she had the option of rejecting the overdraft facility if she considered that the purpose for which she required it had been overtaken by events or she did not need it any more.

15 In view of the above, I find that this issue succeeds in as far as the defendant did not credit the plaintiff’s account upon her making deposits. I do not find merit with the rest of the allegations raised by the plaintiff.

In the result, issue one partly succeeds.

ISSUE 2: Whether the plaintiff is indebted to the defendant

20 It was the testimony of DW1 that as of 10th February, 2014, the plaintiff was indebted to the defendant Bank/counterclaimant in the sum of UGX 686,188,871.29/= which amount continues to attract interest and for which the defendant/counterclaimant was entitled to have recourse to the security held. It was his testimony that the plaintiff having been in default, the defendant had by letter dated 15th March, 2013, made
25 a demand on her to settle the amounts owing, which the plaintiff did not heed and by letter dated 29th November, 2013, the defendant’s Advocates made a demand on the plaintiff to settle the amounts owing and further issued a Notice in Default in accordance with the Mortgage Act.

On the other hand, it was the testimony of the plaintiff that through the intervention of Bank of Uganda, the plaintiff was availed with a Loan Statement (EXH P11) which indicated that she was not indebted to the defendant. It was her further testimony that regardless of the fact that she did not owe the defendant any money, the defendant was still threatening to realize the securities on the Mortgage of properties constituted on Plot 1917 Block 244 Land at Kisugu and Kyadondo LRV 43.7 Folio 7 Block 15 plot 5 Land at Nsambya.

In his written submissions, counsel for the defendant/counterclaimant submitted that throughout her testimony, the plaintiff did not state that she had paid what she owed the bank and that when asked during cross examination if she has so paid, she only indicated that the Loan Statement showed that she was not indebted to the defendant.

While relying on **Regulations 6, 11(5), 11(6) and 9 of the Credit Classifications (Credit Classification and Provisioning) Regulations, SI No.43 of 2005**, Counsel contended that the plaintiff's debt was written off but this did not mean that the plaintiff had settled her debt. Counsel further submitted that basing on **Regulation 14(2)** of the above Regulations, the defendant had the obligation of initiating procedures to realize any security once a credit facility becomes non performing.

In reply, counsel for the plaintiff submitted that the contentions by counsel for the defendant that the debt was written off were submissions from the bar which were not part of the evidence at trial.

I agree with the submission of counsel for the defendant/counter claimant that indeed the evidence on record does not reflect that the plaintiff made any payments in satisfaction of her indebtedness to the defendant. During cross examination, the plaintiff admitted that the defendant had extended to her credit facilities in the form of overdraft facilities, guarantees and a term loan extended to her. The major basis of her argument that she is not indebted to the defendant is that the Account Statement reflects her as having 0 balance as of 02 May, 2014. However, I also find that the same statement does not reflect payments in satisfaction of the debt.

I do not agree with the submission of counsel for the plaintiff that the submission of counsel for the defendant in regard to how the Account Statement reflects 0 balance as of 2nd May, 2014, is a submission from the bar. Counsel for the defendant relates the Account Statement with the

position of the law on debts which have exceeded a period of 90 days and I am persuaded by the said argument.

Regulation 6 of the Financial Institutions (Credit Classification and Provisioning)

Regulations provides that a credit facility with a pre-established repayment schedule shall be considered non-performing if the principal or interest is due and unpaid for ninety days or more or the principal or interest payments equal to ninety days interest or more have been capitalized, refinanced, restructured or rolled over. I accept the explanation of counsel for the defendant that the plaintiff's debt was written off and it was so reflected on the Account Statement by the transactions between 3rd April, 2014 and 2nd May 2014.

10 In regard to the above, the defendant's counterclaim is allowed and I find that the plaintiff is indebted to the defendant in the sums reflected on the Account Statement and Loan Statement as remaining unpaid.

15

ISSUE 3: *What remedies are available to the parties in the circumstances*

General Damages:

It was the plaintiff's testimony that because the defendant did not credit her account every time she made deposits, computations of daily accrued interest would have been made within the reasonably acceptable confines of the facilities enjoyed by her. Further that the above also created mistrust between her and her suppliers considering that cheques she issued to them would sometimes be returned unpaid.

Counsel for the plaintiff in his written submissions restated the above evidence given by the plaintiff and was of the view that the defendant's acts or omissions adversely affected the plaintiff's business operations. It was counsel's submission that a case in point was Mukwano Industries which recalled the bank guarantee issued by the defendant Bank.

Counsel prayed that the plaintiff ought to be compensated in the sum of UGX 300,000,000/= as general damages in order to put the plaintiff in the position she would have been in but for the acts of the defendant.

5 In reply, counsel for the defendant submitted that the plaintiff did not prove how the non crediting of her account adversely affected her business and the plaintiff did not state the amount of interest that was charged over and above what she was supposed to be charged. Further, that there was no evidence on record to show that the reason why Mukwano Industries Ltd recalled the guarantee was because of the dishonored cheques issued to them.

10 Counsel further submitted that the plaintiff had failed to show that her alleged loss was attributable to the defendant. Counsel cited ***Hadley Vs Baxendale (1854) 9 Ex.341*** where it was held that damages which a party ought receive should be such as may fairly and reasonably be considered either arising naturally or such as may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach.

15 The object of an award of damages is to give the aggrieved party compensation for the loss he/she has suffered as a result of the other party's actions, and are intended to place such aggrieved party in the same position in monetary terms, had the act complained of not taken place. (***See Robert Cuossens Vs Attorney General, SCCA No.8 of 1999***). I also accept the submission of counsel for the defendant that the loss sought to be compensated ought be such that it arises naturally from the act complained of.

20 In the present case, I find that indeed some of the cheques issued by the plaintiff to her business channels were returned unpaid due to insufficient funds yet some of her deposits were never credited to her account by the defendant. It is only natural that the above would create distrust and tension between the plaintiff and her said business relations. I find that the breach by the defendant in failing to credit the plaintiff's account on several instances indeed caused her loss.

25 In view of the above, I find that the plaintiff is entitled to an award of general damages. I therefore award the plaintiff general damages of UGX 100,000,000/=.

Special damages:

Counsel for the plaintiff submitted that the plaintiff was entitled to special damages of UGX 3,047,530,000/= as money directly lost by her.

5 Counsel for the defendant submitted that while the plaintiff was seeking for special damages, no evidence was adduced in order for this Court to make such an award. Counsel relied on ***John Nagenda Vs Sabana World Airlines, [1992] KALR 13***, and submitted that the plaintiff had not proved the claim for special damages.

It is trite law that special damages should be specifically pleaded and proved. (See ***Adonia Tumusiime Vs Bushenyi District Local Government and AG HCCS No 32 of 2012***).

10 In the present case, I find that the plaintiff pleaded and proved the following claims as deposits she made but were never credited to her account:

1. UGX 2,500,000/= made on 15th September, 2012.
2. UGX 2,000,000/= made on 15th September, 2012.
3. UGX 5,600,000/= made on 16th May, 2012.
- 15 4. UGX 2,480,000/= made on 16th May, 2012.
5. UGX 1,000,000/= made on 16th May, 2012.
6. UGX 3,420,000/= made on 15th May, 2012.
7. UGX 1,400,000/= made on 15th May, 2012.
8. UGX 2,000,000/= made on 16th May, 2012.
- 20 9. UGX 11,000,000/= made on 16th May, 2012.
10. UGX 5,000,000/= made on 17th October, 2011.
11. UGX 3,500,000/= made on 19th October, 2011.
12. UGX 3,900,000/= made on 17th March, 2012.
13. UGX 104,000,000/= made on 27th September, 2010.

25 In conclusion, I find that the claim by the plaintiff partly succeeds and awards made as follows:

1. Special damages of UGX 32,980,000/=
2. General damages of UGX 100,000,000/=

3. 12% Interest on the award (1) above from the date of filing the suit till payment in full.
4. Interest at court rate on award (2) above from the date of judgment till payment in full.
5. Costs of the suit.

I also find that that the plaintiff was indebted to the defendant in the sum of UGX
5 686,188,871.29/= as of 10th February, 2014. The defendant is also awarded interest at 15% per
annum from the date of filing the counterclaim till payment in full. The defendant is also
awarded the costs of the counterclaim.

It is so ordered.

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B. Kainamura

Judge

01.09.2016