

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 205 OF 1999

TORORO CEMENT INDUSTRY LTD:..... PLAINTIFF

VERSUS

THE CO-OPERATIVE BANK LTD:..... DEFENDANT

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI.

JUDGMENT: -

The plaintiff, a customer of the defendant Bank which is under statutory liquidation of Bank of Uganda, sued to recover the sum of Shs. 119,679,203/=. The money was lost by the plaintiff when it issued several cheques against which bank drafts were requested for but so issued to the wrong payee, Frenaco General Electronics. The customer had intended the payments to go to Uganda Revenue Authority but an accompanying request for drafts to be issued against the several cheques enabled payment by draft to be effected to the Franaco. It is the plaintiff's case that the Bank was liable in contract and negligence.

The first defendant denied liability contending further that in making the payments the Bank complied with the customer's mandate. In the alternative first defendant contended that the plaintiff suffered loss due to its own negligence. The Bank of Uganda denied liability altogether and pleaded lack of statutory notice.

I must deal with Bank of Uganda at the outset. The suit was initially filed against the Co-operative Bank Limited. Then at the beginning of the trial the counsel for the plaintiff sought for addition of the Bank of Uganda which was granted under Order 1 rule 10 of the Civil Procedure Rules. It seems that at this point in time it was not clear how to sue a closed Bank and in case of doubt the Bank of Uganda got added. The point was indeed raised in the submissions that the case against the Bank of Uganda must be dismissed. I would however strike out Bank of Uganda altogether as its joinder was uncalled for and no evidence was led regarding its liability in the action. The legal issues raised in the submissions ought to have been raised also much earlier in the trial. In the circumstances I would strike out Bank of Uganda, for the reason that it became apparent at the time of its joinder that plaintiff was in doubt as to whom it was entitled to recover from whether the closed Bank or its liquidator. In dealing with this issue of parties I would also amend the description of the defendant to read

“The Co-operative Bank Ltd (In Liquidation).”

At the trial itself the plaintiff called two witnesses while the defendant called one. The core issue in this case is whether the instruction issued and signed by the plaintiff's Paul Masaba was valid to entitle the bank to issue bank drafts against the cheques properly drawn according to mandate. Firstly I am satisfied that all the cheques exhibited in this court were duly signed and issued payable to the Bank. This was authority for the Bank to pay them. There was no evidence to show that the cheques were not signed by the authorised signatory. I did believe the evidence of DWI David Senoga who gave candid testimony in the brutal character of auditors. He was able to compare the exhibited cheques and the mandate, and he detailed the entire circumstances of the failed payments to Uganda Revenue Authority which were diverted to benefit a third party. He put to rest the possible questioning of the signatures on the instruments when the subject of a handwriting expert had been raised during his investigations. He also identified Paul Masaba as the writer of the cheques and also of the request forms for the bank drafts. According to this witness the forms instructing issuance of bank drafts were not mandatory forms. That the writing of the supplementary forms was sufficient for the bank to pay by draft to the person named in the supplementary form.

The role of Paul Masaba came out in the evidence of PWI Kanji in which he stated that Paul Masaba was the plaintiff's clerk/messenger entrusted to write out cheques and instructions including requisition forms for drafts. His role was also attested to by the second witness for the Cement Industry Mr. Chohan.

In this case we are not concerned with the cheques that were improperly issued or whose authority was forged in any way. We are dealing with instruments not being cheques under which payments were made by the banker to a third party not intended to receive the payment. The evidence is that Paul Masaba wrote the draft requisition forms (and the cheques) and he was for the purpose authorised to do so and did so on behalf of the customer who is the plaintiff here. His discovery of the loophole went undetected even by the customer in which case the Banker could itself not have known about it. He was able to divert payments not once but in a serial way over a period of time. But he had handwritten cheques for the plaintiff's proper signatures and he had filled out bankdraft requisition forms and the

banker knew that this was his authority. It is surprising except that the defendant's second witness conceded to being overwhelmed with work, that the diversions by Paul Masaba were never detected earlier. I am not sure why the plaintiff did not require immediate receipt evidence from Uganda Revenue Authority that payments had been made to the authority. In these circumstances it is difficult to hold the banker liable in negligence. There was also no breach of contract with the mandate and the issuance of the bankers drafts were according to authorised routine known by both the banker and customer. It seems to me that the plaintiff and others in its category would have the benefit of fidelity insurance policies as the genius stroke of Paul Masaba and his street legal breach of confidence can have common place occurrence. A larger insider generated conspiracy with other could not also be overruled. But the banker in this case was covered. In so saying I must dismiss this suit with costs.

R.O. OKUMU WENGI

JUDGE

28/01/2002.