

**THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA AT  
KAMPALA CIVIL APPEAL NO. 03 OF 2015**

**CORAM: AUGUSTINE NSHIMYE; ELDAD MWANGUSYA; RUBBY OPIO-AWERI;  
FAITH MWONDHA; LILLIAN TIBATEMWA-EKIRIKUBINZA;  
JJ.S.C**

**BETWEEN**

**ARIM FELIX CLIVE ::::::::::::::::::::::::::::::::::: APPELLANT**

**AND**

**STANBIC BANK (U) LTD ::::::::::::::::::::::::::::::::::: RESPONDENT**

*(Appeal from the judgment and orders of the Hon. Justices S. Kavuma, DCJ, Kenneth Kakuru and S. Bossa, JJA delivered at Kampala on the 1<sup>7</sup><sup>th</sup> day of April 2015)*

**JUDGMENT OF HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA.**

**Background**

This case comes as a second appeal from the Court of Appeal.

The brief background to the case is that the appellant was an employee of the Government of South Sudan (GOSS). He was contracted to design a student data base software management system on behalf of the South Sudan Ministry of Education, Science and Technology and pilot the same project in Uganda. As remuneration for the work done by the appellant, the GOSS made part payment in the sum of US Dollars 325, 060 into his account operated by the respondent Bank's branch in IPS- Kampala.

The account was in the names of Arim Felix Clive No.0240513096601.

On 3.8.2009, the appellant was arrested by plain clothed policemen and officials of the liaison office of GOSS and charged with embezzlement of the sum USD 232, 060. The appellant

alleged that while under detention, he was compelled by the liaison officers of South Sudan to sign a transfer form with instructions to his bankers, the respondent, to transfer back USD 190,000 to the GOSS.

On 22<sup>nd</sup> July 2009, pending further investigation into the alleged embezzled sum, the Chief Magistrate's Court at Buganda Road issued a mareva injunction against the appellant's bank account No.0240513096601 and the bank's suspense account No.0200540020100.

On 13.11.2009, the appellant wrote to his bankers directing them to countermand his instruction to transfer the USD 190,000 to GOSS. He instructed the bank to transfer back the said sum into his account. The bank did not comply with its client's (the appellant) instructions.

On 18.11.2009, the Chief Magistrate vacated the mareva injunction on the bank's suspense account but maintained the injunction on the appellant's account. This order further instructed the bank to complete the transfer of USD 190,000. The bank complied with the order and completed the transfer of the funds to GOSS.

The appellant sued his banker in negligence and breach of its duty to honour its client's mandate.

### **Issues at the High Court**

- 1. Whether the Defendant (current respondent) was negligent in transferring of the sum of USD 190,000 to the account of the GOSS.*
- 2. If so, whether such negligence caused the defendant any loss.*
- 3. In the alternative, whether the defendant paid out the money in obedience to the court order.*
- 4. Whether the plaintiff neglected and / or failed to mitigate its loss by appealing against the court order.*

### **Decision of the High Court**

The High Court held that a court's order supersedes a customer's instructions and has to be respected and obeyed whether valid or invalid, ex-parte or interparty. Court further held that a court cannot default a party who was honouring and respecting a court order.

That consequently, a court order could not be sidelined by the Plaintiffs countermand letter though he was customer of the bank. Therefore, the bank was not negligent in transferring the sum of USD 190,000 to GOSS as it was simply obeying a court order.

Dissatisfied with the decision of the High Court, the appellant appealed to the Court of Appeal on 3 grounds.

### **Grounds at the Court of Appeal**

- 1. The learned trial judge erred when he failed to evaluate the evidence on record and thereby came to a wrong conclusion and occasioned a miscarriage of justice to the appellant.*
- 2. The learned trial judge erred in law and fact when he held that the respondent was honouring a court order when he transferred the amount in question to GOSS.*
- 3. The learned trial judge erred in law and fact when he held that the respondent was not negligent when it transferred USD190,000 to GOSS.*

*However, both counsel for the appellant and respondent agreed at the joint scheduling conference to argue only one issue: “ Whether the learned trial judge properly evaluated the evidence on record and therefore arrived at a correct or proper conclusion. ”*

### **Findings of the Court of Appeal**

The court in determining the appeal struck off the record the ground formulated by counsel as it offended Rule 86 (1) of the Court of Appeal Rules which requires a Memorandum of Appeal to set forth the grounds of objection to the decision appealed from specifying the points which are alleged to have been wrongly decided.

The court held that the issue as framed was too general and would allow the appellant to go on a fishing expedition to the prejudice of the respondent.

The court therefore ignored the issue and proceeded to determine the appeal based on the 3 grounds of appeal reproduced above.

The first ground was struck out for offending Rule 86 (1) of the Court of Appeal that requires a Memorandum of Appeal to set forth the grounds of objection to the decision appealed from.

The court resolved the remaining two grounds jointly. In the lead judgment of Kakuru JA, the court found as follows:

*... the bank was justified in refusing to comply with the appellant’s request. First, the order issued by Court on 22<sup>nd</sup> July 2009 was still in place. That order required the respondent to withhold that said amount which was a subject of criminal investigations until another order directing otherwise.*

*The instructions from the appellant were clearly of no consequence as the Bank account upon which that money was held had been frozen and could not be operated by the appellant or the Bank itself. The appellant had no authority to make any transactions in respect of any account upon which that money was being held.*

*I find the argument by the appellant that the order [vacating the injunction] was redundant in so far as there was a discrepancy between the account number stated in the order and the actual account number, untenable. The transaction in respect of the said United States Dollars 190,000 had a well - documented background. The money was held at an account whose number was issued by the respondent bank. That account was stated to be a suspense account. If the court made an error in its order while referring to that account, that error was of no consequence at all.*

*A bank account may be identified by name, number or code or by a combination of any of the above. The account number referred to in the court order was number 020054002010100 and that referred to in the appellant's letter of 13<sup>th</sup> November 2009 was 020554002010100. The court found the discrepancy in the account numbers too minor to be of any consequence. The account was sufficiently described in the court order itself. I agree with the learned trial judge that the respondent had a duty and obligation to obey a court order. It was not open to disregard it whether it contained errors minor or major.*

Dissatisfied with the Court of Appeal findings, the appellant appealed to this court on the following grounds:

- 1. The learned Justices of Appeal erred in law when they failed in their duty as the 1<sup>st</sup> appellate court to subject the evidence on the record of the trial court to fresh and exhaustive scrutiny and thereby came to a wrong conclusion that the respondent was not negligent.**
- 2. The learned Justice of Appeal erred in law when they held that the discrepancy in account numbers was very minor and of no consequence thereby occasioning a miscarriage of justice.**
- 3. The learned Justices of Appeal erred in law when they agreed with the trial judge that the respondent had a duty and obligation to obey a court order whether or**

**not it contained errors.**

**4. The learned Justices of Appeal erred in law when they held that no negligence was established thereby occasioning a miscarriage of justice.**

**Appearances**

Dr. Joseph Byamugisha appeared for the respondent while Mr. Renato Kania appeared for the appellant. The appellant filed written submissions which he adopted during the hearing of the appeal. The respondent on the other hand replied to the written submissions orally.

Counsel for the appellant argued grounds 1 and 4 together and then combined grounds 2 and 3.

**Grounds 1 and 4**

**Appellant's submission**

For the appellant, it was submitted that the Justices of Appeal failed to exhaustively scrutinize exhibit D3 and all the evidence relating to it. The exhibit is a Stanbic Bank transfer form filled by Arim Felix Clive as Arim Felix Clive Josephine Lagu.

It was submitted that the appellant filled the form defectively with different names so that the bank would realize that there was something wrong and this would prevent the transfer of USD 190,000 from his account. That however, the respondent bank negligently or carelessly failed to notice the defect and went ahead to transfer the money to the bank's suspense account.

**Grounds 2 and 3**

**Appellant's submission**

Under grounds 2 and 3, the appellant faulted the learned Justices of Appeal's finding that the discrepancy in the court order freezing the account was minor and of no consequence.

In reference to the court order that had an error, counsel argued that since the respondent bank had temporarily put the money transferred in its suspense account which it named, it should not have honoured a court order freezing the said account with an error. He argued that arising from this, the court order could not be executed and thus the transfer of USD 190,000 was incapable of being completed through it.

Whereas the appellant conceded that there is a duty imposed upon persons to whom court orders are addressed, he submitted that a court order should not be obeyed in the terms of the directives if it has errors.

Further, counsel for the appellant submitted that the respondent as a bank was duty bound to examine the court orders for purposes of excluding any errors. Counsel relied on the American authority of **John Maddox and Carol Maddox vs. First Westroads Bank, 256 NW2d 647 (1977)** to support his argument.

In conclusion, he prayed that the court takes judicial notice that in banking practice in Uganda, bank accounts are identified by both the account name and the account number but not one in isolation

of the other. That, where there is a discrepancy in one, then it cannot be used to identify the same account.

### **Respondent's submission**

#### **Grounds 1 and 2**

Counsel for the respondent argued that ground 1 of the Memorandum of Appeal ought to be ignored as it was struck out by the learned Justices of Appeal for offending Rule 86 (1) of the Court of Appeal Rules.

In regard to ground 2, counsel for the respondent argued that since the freezing order issued by court on 22<sup>nd</sup> July 2009 was still in place, the instructions from the appellant given on 13.11.2009 before the freezing order was vacated were of no consequence. That the bank account on which the USD 190,000 was held had been frozen and could not be operated by either the appellant or the bank at the time the appellant attempted to countermand the instruction to his bankers. Consequently, the appellant's argument that the respondent should have complied with the said instructions has no merit.

In further argument, counsel for the respondent submitted that that the court order issued by the Chief Magistrate's Court of Buganda Road on 18<sup>th</sup> November 2009 had a dual purpose. First, the order vacated the freezing order in respect to the account operated by the respondent (the suspense account) at International Business Centre (IBC), Crested Towers Branch; and secondly, ordered the transfer of USD190, 000 to GOSS to be completed. Counsel thus argued that the respondent was not negligent in continuing with the transfer as the court had instructed it to do so. He prayed that for these reasons, the decision of the Court of Appeal be upheld and that the appeal be dismissed with costs.

#### **Grounds 3 and 4**

In regard to ground 3, the respondent submitted that all the parties were aware of the details and chronology of events in the order issued by the court. That therefore, the error in the court order could not be a ground not to obey the court order. Counsel relied on **Article 128 (2) of the Constitution** which provides that no person or authority can interfere with the courts or judicial officers in the exercise of their judicial functions. He also relied on the English authority of **Hadkinson v Hadkinson [1952] All ER 567 at 569** where Romer, L. J held that it is the plain and unqualified obligation of every person against or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is

discharged.

### **Appellant's Reply**

In reply to ground 1, the appellant argued that the ground was different from that which appeared in the Court of Appeal. That the ground as stated in the Memorandum of Appeal was specific and no longer offended Rule 86 (1) of the Court of Appeal Rules.

In regard to obeying the court order which had errors, counsel argued that although it was incumbent on the bank to respect the order, the bank upon realizing the error in the account numbers should have gone back to court to seek clarification.

Counsel prayed that the court over turns the judgment and orders of the Court of Appeal and grants the appellant costs in this Court and the courts below.

### **Analysis of Court**

#### **Grounds 1 and 4**

The essence of the arguments under these grounds relates to negligence of a banker in handling a customer's bank account. I note that there can be no negligence without a duty of care. The



duty of care in the present case accrues from the existence of a fiduciary relationship between the banker (in this case the respondent) and its customer (in this case the appellant).

It was contended that the respondent bank failed in its duty of care to its customer when it did not critically examine the bank transfer form authorized by the appellant.

It was further contended that the respondent bank failed in its duty when it acted contrary to the customer's countermand instructions.

*I will deal with the first issue: whether the respondent bank violated its duty of care to its customer in the manner in which it handled the "defectively" filled transfer form.*

The appellant stated that he intentionally filled the transfer form with a different name i.e Josephine Yanga Lagu Felix Arim Clive instead of that which was recorded as his account name with the bank - Arim Felix Clive. The appellant further stated that he did this deliberately so that his bankers would easily detect the anomaly and thereby thwart the transfer of the said amount.

Counsel for the appellant submitted that the respondent bank was under a duty to critically examine the transfer form to detect the anomaly and since the respondent bank did not do so, it was liable in negligence. In support of his argument, counsel cited the authorities of **John Maddox and Carol Maddox vs. First Westroads Bank (Supra)**; and two authorities from the Supreme Court of the Philippines - **Philippine National Bank vs. Norman Y. Pike, G.R. No. 146918**; **Citibank N.A vs. SPS. Luis & Carmelta Cabamongan G.R. No. 146918**. In these authorities, the courts held banks liable in negligence for paying out sums of money to fraudsters who had forged signatures of their

customers. The courts ordered the banks to refund the money paid out to the fraudsters.

In **Maddox vs. First Westroads Bank (supra)**, the Supreme Court of Nebraska in finding the bank liable held *inter alia* that:

**It is elementary that a bank is held bound to know the genuine signature of its customers. A bank may not permit withdrawal of funds from a savings account absent an order of its depositor.**

In **Philippine National Bank vs. Norman Y. Pike (supra)**, the Supreme Court of the Philippines compared signatures in the questioned withdrawal slips with the known signatures of the depositor and was convinced that the signatures were forged. The court affirmed the decision of the trial court and the Court of Appeal by holding the bank negligent in performance of its duties in allowing unauthorized withdrawals to be made.

In **Citibank N.A vs. SPS. Luis and Ors (supra)**, spouses Luis and Carmelita opened a joint account with the petitioner bank in trust for their sons. A fraudster imposing to be Carmelita presented stolen bank deposit certificates of the spouses to the bank and withdrew money from the account. The spouses sued the bank in negligence. The Supreme Court held that:

**... since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected and high standards of integrity and performance is even required of it ... it has been sufficiently shown that the signatures of Carmelita in the forms for pretermination of deposits are forgeries. Citibank, with its signature verification**

procedure, failed to detect the forgery. Its negligence consisted in the omission of that degree of diligence required of banks. Citibank cannot label its negligence as mere mistake or human error.

I find that the above authorities cited by the appellant's counsel are irrelevant in the matter before Court and do not support the appellant's case. The present case is not one in which payment of money by the bank was made on a forged instrument of payment as was the case in the authorities cited by counsel. It is a fact that the transfer form was signed by the account holder (the appellant) himself. Further, the payment of money was not made to a fraudster. It was made to the prescribed beneficiary - the Government of South Sudan (GOSS). In this respect therefore, I do not find the respondent bank to have been negligent.

In further support of the finding that a case of negligence was not proved against the respondent bank, I take note of the fact that on receiving the impugned transfer order signed by the appellant and when the money left the appellant's account, the bank did not immediately transfer the funds to the GOSS but instead opened a suspense account.

A suspense account is an account in the general ledger that temporarily stores any transactions for which there is uncertainty about the account in which they should be recorded. It is only when the accounting staff investigates and clarifies the purpose of this type of transaction that the transaction is shifted out of the suspense account and into the correct account(s). An entry into a suspense account may be a debit or a credit. **(See: Wikipedia The Free Encyclopedia, [https:// en.wikipedia.org](https://en.wikipedia.org) accessed on 2<sup>nd</sup> December, 2016).**

In the present matter, the bank opened a suspense account to record the 190,000 USD on a temporary basis because the appropriate account could not be determined at the time the transaction needed to be recorded.

The appellant stated that he made a deliberate error in the names he used while filling out the transfer form. I come to the conclusion that it is due to this apparent error that the bank opened a suspense account on which the funds were deposited before completing the transaction to the beneficiary. I note that much later, at the time when the bank transferred the funds to the GOSS in obedience to a court order, there was no doubt that the transfer instrument had been signed by the bank's customer/the account holder. I accordingly conclude that in performing the above duties, the bank acted with due diligence.

*I will now deal with the second question; whether the respondent bank failed in its duty when it acted contrary to the customer's countermand instructions.*

One of the general principles in the banker-customer relationship is that a bank is expected to comply strictly with their customer's orders. (See for example the persuasive authority of **Bank of New South Wales v Laing [1954] AC 135** wherein the Judicial

Committee of the Privy Council held that there was an obligation on a bank to comply with their customer's payment order so long as the account was in credit). However, I am aware that this duty is not absolute.

There are instances when the bank's decision not to honour its customer's instructions will not amount to breach of its duty to the customer. Indeed in **Stanbic Bank Uganda Ltd v Uganda Crocs Limited (Civil Appeal No.4 of 2004 SC)**, this Court impliedly limited the fiduciary duty of a bank to situations of "normalcy" when it stated that:

**(The) legal Principles which govern the relationship between a bank and its customer are well settled. The duty of a bank is to act in accordance with the lawful requests of its customer in normal operation of its customer's account. (Emphasis added)**

The English persuasive authority of **Her Majesty's Commissioners of Customs and Excise vs. Barclays Bank pic (2006) UKHL 28**, is on fours with the matter before this Court. The House of Lords was confronted with the issue of whether a bank, notified of a freezing injunction granted to the third party against one of the bank's customers owes a duty to the third party to take reasonable care to comply with the terms of the injunction.

Lord Bingham held:

**A bank's relationship with its customers is subject to the law of the land, which provides for the grant of freezing injunctions. It seems to me in the final analysis unjust and unreasonable that the Bank should, on being notified of an order which it had no opportunity to resist, become exposed to liability.**

*Lord Walker held: "The bank's duty to its customer was overridden and suspended by the freezing order. Its position was a neutral position. "*

*Lord Hoffman held: "the freezing order suspended the bank's duty to its client."*

In the present appeal, the evidence on record shows that before the transfer was completed to the GOSS, the money was put in a suspense account by the respondent bank. On 22.7.2009, while the money was still in the suspense account, the bank was served with an injunction freezing both the appellant's account and the suspense account. On 18.11.2009, an order was issued by the court vacating the injunction on the suspense account but maintained the injunction on the appellant's account. The appellant's countermand was made on 13.11.2009 while the injunction still existed. It must therefore follow that any instruction received by the bank from the customer during the existence of the injunction was of no effect.

Based on the above authorities and the evidence on record, I conclude that the legal order (mareva injunction) was binding on the respondent bank and took precedence over the customer's countermand instructions and order of re-transfer of the money into his account.

I therefore find that there was no breach of duty of care by the respondent to its customer - the appellant.

### **Grounds 2 and 3**

The essence of the argument in these grounds lays in the fact that there was an error in the court order vacating the injunction on the suspense account. The error related to identification

of the suspense account. Whereas the earlier order freezing the suspense account was identified as 0200540020100, the vacating order identified the same account as 020054002010100. The appellant thus argued that the bank should not have gone ahead to complete the transfer because the vacating order had identified a nonexistent suspense account. The respondent on the other hand argued that the respondent was bound to follow the order despite its client's countermand instruction.

I note that the transfer under question had a detailed background history which was well known to both the appellant and the respondent bank. The vacating court order which made an error in identification of the account number should be understood and interpreted in the context of the history of the transaction and not in isolation; the order in its entirety was correct only that the suspense account had an error. Any employee of the bank who received the "defective" court order would on the face of it have been able to link the order to the customer (appellant).

The learned Justice of Appeal while affirming the decision of the High Court found as follows:

*The transaction in respect of the said USD 190,000 had a well-documented background. The money was held at an account whose number was issued by the respondent Bank. That account was stated to be a suspense account.*

*If the court made an error in its order while referring to that account that error was of no consequence at all ...*

*I agree with the learned trial judge that the respondent had a duty and obligation to obey a court order. It was not open to him to disregard it whether or not it contained errors minor or major.*

I come to the conclusion that the Court of Appeal was right in finding that the transaction in respect of the USD 190,000 had a well-documented background. All the parties were aware as to what the order effectively referred to.

In his oral submissions, the appellant's counsel prayed that this Court takes Judicial Notice of the practice of identification of a customer's bank account by **both** the account name and the account number. Counsel argued that a customer's bank account is identified by both the account number and name of the customer and not one in isolation of the other. That relying solely on an account number cannot effectively identify the customer. It was this that counsel wanted this Court to take Judicial Notice of. Counsel further argued that since the Court Order referred to a non-existent account number, it could not have conveyed a message that money be transferred out of the account (the suspense account) where it was held. It was further argued that when the bank received an order with errors, it should have sought a discharge and sought an amendment of the order before acting on it. That because the bank failed to act

in this manner, the appellant's money would not have been "wrongly" sent to the Government of Southern Sudan.

In reply, counsel for the respondent argued against the Court taking Judicial Notice of the above mentioned practice. He averred that although two witnesses from the bank had testified during trial of the matter, no questions were put to them regarding the practice and that therefore no evidence had been adduced in court [to prove that the practice was notorious].

I note that Judicial Notice is a doctrine and/or the process by which courts take cognizance of a matter which is so notorious or clearly established that there is no need for a party seeking for its recognition by court, to adduce formal evidence for its proof. According to the **Black's Law Dictionary, 9<sup>th</sup> Edition, page 670**, a matter or practice is said to be notorious if it is "generally known and talked of, well or widely known, forming a part of common knowledge, universally recognized".

**In Halsbury's Laws of England, 3<sup>rd</sup> Edition, Vol. 15, it is stated:**

**Judicial notice is taken of facts which are familiar to any judicial tribunal by virtue of their universal notoriety or regular occurrence in the ordinary course of nature or business. As judges must bring to the consideration of the questions they have to decide their knowledge of the common affairs of life, it is not necessary on the trial of any action to give formal evidence of matters with which men of ordinary intelligence are acquainted whether in general or to natural phenomenon.**

In **Mifumi (U) Ltd & 12 Ors vs. AG & Kenneth Kakuru, Constitutional Appeal No. 02 of 2014** this Court observed that where a custom is so notorious that judges are by their regular interaction aware of its existence, it is not necessary that such practice is formally proved in order for the court to take judicial notice of it. (*See the lead judgment of Tumwesigye JSC*)

**Sections 55 and 56 of the Evidence Act** deal with the doctrine of Judicial Notice in Uganda.

Section 55 provides that: “Facts judicially noticeable need not be proved.” Section 56 (1) provides a list of “Facts of which court must take judicial notice”.

I note that *Bank Practice* is not among the “facts” that courts are obliged to take judicial notice of under Section 56 (1) of the Act. Nevertheless, as noted by Kavuma, JA, in **Mifumi (U) Ltd & 12 Ors vs. AG & Kenneth Kakuru, Constitutional Petition No. 12 of 2007**, the list prescribed by the section is not exhaustive.

Section 56 (3) provides that: if the court is called upon by any person to take judicial notice of any fact, it may refuse to do so until that person produces any such book or document as it may consider necessary to enable it to do so.

In **Gbaniyi Osafire and John Emeri vs Paul Odi and Okwumaso Nwaje / SC 149/1987**, the Nigerian Supreme Court expounded the doctrine of Judicial Notice as follows:



**Matters which can be judicially noticed fall into 2 broad classes. First, there are those which are so notorious that the court automatically takes notice of them, once it is invited to do so.**

**Secondly, there are others which, although judicially noticeable, the court will not do so until something is produced, though not formally tendered as evidence, in order to inform the court or refresh its memory on the matter before it notices it. On this broad division of judicial notice, the courts have usually refused to take notice of matters falling within the 2<sup>nd</sup> category when the material from which it can inform itself or refresh its memory is not produced by the party inviting it to take notice of the particular matter.**

In his submissions, the appellant's counsel did not refer this Court to any authority or literature to support the assertion that in banking practice, a customer is identified by both the account number and account name.

Arising from the above analysis of and in light of the above persuasive authority, I decline to take judicial notice of the said practice.

I therefore find that grounds 2 and 3 lack merit.

Having found that all grounds lack merit, I hereby dismiss the appeal with costs to the respondent.

Dated at Kampala this 22<sup>nd</sup> Day of December 2016

HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA, JSC

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**CORAM: (Justice Nshimye, Justice Eldad Mwangusya, Justice Rubby Opio Aweri, Justice Faith Mwendha, Justice Professor Lillian Tibatemwa-Ekirikubinza, JSC).**

**CIVIL APPEAL NO. 03 OF 2015**

ARIM FELIX CLIVE:::APPELLANT

**VERSUS**

STANBIC BANK (U) LTD:::RESPONDENT

(Appeal from the judgment and orders of the Hon. Justice S.B.K Kavuma, DCJ, Kenneth Kakuru and Justice Solomy Balungi Bossa, JJA delivered at Kampala on the 17<sup>th</sup> day of April 2015).

**JUDGMENT OF HON. JUSTICE A.S. NSHIMYE, JSC**

This is an appeal by Arim Felix Clive, the appellant, seeking to set aside the decision of the Constitutional Court of 17<sup>th</sup> April 2015 which was against him.

We heard the appeal and considered the submissions of both counsel for the parties. We came to the opinion that there were no merits in the three grounds of appeal adduced by the appellant.

The back ground facts of the case have been ably stated in the lead judgment of my sister Hon. Lady Justice Prof. Lillian Tibatemwa-Ekirikubinza, which I had the advantage of reading while still in draft.

I agree with her evidential evaluation, discussion of the relevant law and reasoning while disposing of the three grounds of appeal. I concur with her that, the appeal be dismissed with costs.

Since other Justices on the Coram concur in their signed supporting judgments, the appeal is dismissed with costs to the respondent.

Dated at Kampala this 22<sup>nd</sup> day of December 2016.

HON. JUSTICE A.S NSHIMYE  
JUSTICE OF THE SUPREME COURT

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**CIVIL APPEAL NO. 03 OF 2015**

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FAITH MWONDHA; LILLIAN TIBATEMWA-EKIRIKUBINZA; J.S.C.

ARIM FELIX CLIVE:::APPELLANT

Versus

STANBIC BANK (U) LTD ::: RESPONDENT

*(Appeal from the judgment and orders of the Hon. Justices S. Kavuma, DCJ, Kenneth Kakuru  
and S. Bossa, JJA delivered at Kampala on the 17<sup>th</sup> day of April 2015)*

**JUDGMENT OF HON. JUSTICE MWANGUSYA ELDAD, JSC**

I have had the benefit of reading in draft the judgment of LILLIAN TIBATEMWA-EKIRIKUBINZA, JSC. I agree with her draft that the appeal should be dismissed.

I also agree with the order for costs proposed by her.

Dated at Kampala this 22<sup>nd</sup> day of December, 2016

Hon. Justice Mwangusya Eldad, JSC.

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT**  
**KAMPALA**  
**CIVIL APPEAL NO. 03 OF 2015**

**Coram:** Justice Augustine Nshimye, Justice Eldad Mwangusya,  
Justice Rubby Opio Aweri, Justice Faith Mwondha,  
Justice Professor Lillian Tibatemwa-Ekirikubinza,  
JSC.

**ARIM** **FELIX**  
**CLIVE**.....**APPELLANT**

**=VERSUS=**

**STANBIC** **BANK** (U)  
**LTD**.....**RESPONDENT**

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Kampala on the 17<sup>th</sup> day of April 2015)*

**Judgment of Hon. Justice Rubby Opio Aweri, JSC**

I have read in draft the judgment of my learned sister, Hon.  
Justice Professor Lillian Tibatemwa-Ekirikubinza, JSC.

I concur with her that this appeal has no merit and that it 25  
should be dismissed with costs.

Dated at Kampala this 22<sup>nd</sup> day of December 2016

Hon. Justice Rubby Opio aweri

**Justice of the Supreme Court**

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**CIVIL APPEAL NO. 03 OF 2015**

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RUBBY OPIO AWERI; FAITH MWONDHA; LILLIAN  
TIBATEMWA-EKIRIKUBINZA; J.S.C.

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**JUDGMENT OF HON. LADY JUSTICE FAITH MWONDHA.**  
**JSC**

I have had the opportunity to read in the draft the judgment of LILLIAN TIBATEMWA-EKIRIKUBINZA, JSC. I agree with her draft that the appeal should be dismissed with costs.

Dated at Kampala this 22<sup>nd</sup> day of December, 2016

Hon. Lady Justice  
Faith Mwendha  
**JUSTICE OF THE  
SUPREME  
COURT**