

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

H.C.C.S NO 432 OF 2018

CHRISTIAN RURAL EYE SIGHT PROMOTION LIMITED=====

PLAINTIFF

VERSUS

1. NKENGERO SHAFIQUE
2. KABANDA JULIUS
3. MUTESI SANDRA
4. MWESIGWA JAMES (T/a Christian Rural Eye
sight Promotion Wakiso)
5. M/S STANBIC BANK UGANDA LIMITED



=====

DEFENDENTS

BEFORE HON. MR. JUSTICE SSEKAANA MUSA

JUDGMENT

Sometime in 2017, through Xova AMPH GmbH as the processing agent, the Plaintiff applied successfully to M/S Novartis Pharma AG of Switzerland for a grant of Euros 40000 (Euros Forty Thousand only) for the sole purpose of improving Children Vision and Eye Sight care in Mbale-Manafwa district. On the 12th July 2017, the plaintiff issued invoice No.200 for the sum of 40000 (Forty Thousand Euros) excluding the sum of reimbursable local contribution on equipment of 6500(Euros six thousand five hundred only).

The Plaintiff signed a grant Agreement with M/S Novartis under which the project was to be implemented and further furnished its accounts details to which the funds were to be credited held with Centenary Bank Limited, Mbale Branch A/C NO.3110300715. M/s Novartis , remitted the funds to the plaintiff but the same were intercepted ,converted/ diverted and credited onto Account NO. 9030013785278 held by the 5th Defendant on the 12th December 2017 in the sum of UGX 159,100,500/= and a further sum of UGX 27,638,880/= on the 13th April 2018.

PLAINTIFFS' CASE

The Plaintiff seeks to recover from the Defendants Euros 40000 which it alleges was its money negligently and fraudulently paid by the 5th Defendant Bank to a third party, Christian Rural Eye Sight Promotions (CRESP) of Wakiso. The Plaintiff's case against the 5th Defendant is found in paragraph 6(viii) of the Plaint where it states that –

“M/s Novartis, remitted the funds to the Plaintiff but the same were intercepted, converted/diverted and credited onto Account No.9030013785278 held by the 5th Defendant on the 12th December 2017

The 5th defendant contended that proper due diligence was followed in opening account No. 9030013785276 in respect of Christian Rural Eye Sight Promotion, through confirmation of their founding documents, residence and account signatory verification. The defendant has no knowledge of conversion of any funds belonging to the plaintiff as alleged.

On the 21st of March 2019, an interlocutory judgment was entered in the matter against the 1st -4th Defendants under 0. 9 r. 5 and 10 of the Civil Procedure Rules in default of filing a defence. The matter was thus only defended by the 5th Defendant.

AGREED FACTS

A total sum of Euros 40,000 (Forty thousand only) was on two respective dates 12th December 2017 and 14th April 2018, credited onto Stanbic Bank Account No. 9030013785276 in the name of Christian Rural Eye Sight Promotion and the funds were immediately withdrawn.

ISSUES FOR DETERMINATION

- 1) *Whether the 5th Defendant is liable to the Plaintiff in negligence.*
- 2) *Whether the operation of the above mentioned account was fraudulent and by who or which of the Defendants.*
- 3) *What remedies are available to the parties.*

DETERMINATION OF ISSUES

Counsel for the Plaintiff submitted that the 5th defendant completely failed to do any due diligence in opening up Account No 9030013785276 INO Christian Rural Eye Sight Promotion, the natural result of which was fraud and loss to the plaintiff of Euros 40000. Failing to do a basic due diligence by a banker is ipso facto a gross negligent act. This negligent act becomes actionable by a person who naturally and directly suffers

harm/injury as a result of a banker having failed in that duty of care. In *Halsburys Laws of England 5th Edit (volume 78 (2010))*, negligence is defined as the failure to exercise that care which the circumstances demand. In *HCCS NO. 0048 OF 2014 Busongora Development Association Limited versus Centenary Rural Development Bank Limited* the Hon. Justice Yorokamu Bamwine at page 3 of his Judgement stated.....

“It is a tort, actionable at the suit of a person suffering damage in consequence of the defendant’s breach of duty to take care to refrain from injuring him. In the words of Alderson B, in BLYTH-VS-BIRMINGHAM WATER WORKS CO. (1856) 11 EX, at P. 784, it is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent reasonable man would not do”

The judge further states that *“persons professing a special skill must use such skill as is usual with persons professing such skill.”* In relation to banking business and indeed the case before this court, Lord Warrington in *Lloyd Bank Ltd V E.B. Savory & Co. [1933] A.C. 201*, as to what standard ought to be applied in considering whether the bank acted negligently or not at P221 of that case, 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 man 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.”

Hon. Justice Geoffrey Kiryabwire (as he then was) adopted the same standard when handling *HCCS NO. 742-2004-Obed Tashobya – vs-DFCU Bank Limited at pg. 8.*

Counsel for the Plaintiff further submitted that in this case, the following are the direct aspects of the negligence of the 5th defendant.

Failing to independently verify the KYC of the customer in the face of obvious disparities in address of the customer, the resolution purporting that their client was an NGO and yet the same is purported to be a community Based Organisation registered in Wakiso District.

In opening this account, the 5th Defendant relied among others on documents allegedly submitted by the customer. **Exhibit DE (1) b.....** Letter introducing Nkengero Shaffique to the bank dated 16/8/2017. This document is purported to be authored by a one Mugerwa John. The L.C Chairperson of Mulago who declared that Mr. Nkengero is a resident of that village (Mulago) and has been known for a long time.

Exhibit DE(1) C.....National identity card of Nkengero Shaffique. The National Identity card indicates that Nkengero is a resident of Ndeeba, Rubaga Division.

Exhibit DE(5).....Application to open the account. Shaffique Nkengero declared that he is a resident of Ndeeba Rubaga. On the other hand, the address of the would be customer itself, Christian Rural Eye Sight Promotion is declared to be Lutete Kasangati . There is a letter (Exhibit DE(1)(a) authored by a purported Director Kabanda Julius which bears no address at all.

Plaintiff's counsel submitted that, *DWI*, in his evidence claimed that the Legal department verified authentically of the customer's documentation. No evidence of this verification, who verified or the process undertaken to verify this information was brought to court yet the issue of verification of the documents/identify of customer is material to the case. On the contrary, *DWI* testified that upon receipt of the money, **they noted that the money belonged to Christian Rural Eye sight promotion Lwakhakha Road, Manafwa District** and that the customer explained **that his organization has two branches, one in Wakiso and another in Manafwa**. The statement only shows the recklessness/fraudulent manner in which the transaction was handled for the following reasons.

Opening up and allowing the account to be operated only by a one Nkengero Shafique, contrary to the Constitution of its customer.

Counsel for the Plaintiff submitted that the manner in which the Bank handled the transaction begs the question of **who really was the customer of the bank?** The account operating documents clearly indicate the customer to have been Christian Rural Eye Sight Promotion. See exhibit DE 3(b) – the constitution is the primary document for this transaction. The bank received this document and it is the basis upon which it opened the account. Article 8.2 of the constitution clearly provided that.....

“All funds of the organization receive shall be deposited in the bank decided upon by a committee and shall be drawn by cheque or voucher bearing the signatories of any two persons appointed in that behalf by the resolution of the committee” (emphasis ours)

DW1 acknowledged the above article to be the mandate for the operation of the account and yet claimed that the bank opted to follow the special resolution (**exhibit DE2**).

Assisting and or accepting amendment of specimen signatures to facilitate the theft of UGX 27,638,880/= on the 13th April 2018.

Counsel for the Plaintiff submitted that the testimony of DW1 on exhibit DE4 (Request to Amend Account Details) further explains the deplorable manner under which the transaction was handled. The bank knows very well that its customer was Christian Rural Eye Sight Promotion and yet it proceeded to deal with a one Nkengero Shafique like the account was his personal account. DW1 testified that; a) There was a no resolution of the customer requesting to amend the account details. A very serious irregularity, b) that he DW1, did not even know the reason why the account details were being amended and yet he was a signatory to the document.

Failure to collect any information to justify such a large transaction and the source of funds received by a customer who was a startup;

Plaintiff's counsel submitted that in respect to this transaction, the bank did not only breach normal banking procedures to prevent money laundering, but it also breached S.6 of the Anti- Money Laundering Act when it failed to carry out a property identity of the customer. The Bank received documents and in particular exhibit DE3(b)-the constitution which sets out the objectives of its clients. Apart from indicating that the customer was undertaking community work, DW1 did not know what kind of work /business the customer. DW1 also claimed that when the customer came to withdraw UGX 100,000,000/= he demanded from the customer for the source of the money. This was a lie because money on a customer's account is money of the customer. No further questions can be entertained at that stage.

The Bank is obliged to demand for this information prior to crediting the customer's account, which we believe the Bank never bothered to do. If it did, the Bank would have realized that; a) The transaction proposed was contrary to S.6 (C) of the Anti-Money Laundering Act and in particular that the objectives for which the money was sent had no correlation with the business which their customer was engaged in. the purpose for which the money was remitted could not be proved by the customer of the Bank. b)

That the persons dealing with the bank were not signatories to the primary source documents; the grant Agreement-exhibit PE5. c) That their customer was not the beneficial owner of the funds since the funds were for Christian Rural Eyesight Promotion- Lwakhakha Manafwa and not Christian Rural Eyesight promotion – Wakiso or Nkengero Shaffique. In recent decision of the Supreme court of the United kingdom reacting to fraud of directors of companies in *Singularis Holdings Limited (in liquidation) v Daiwa Capital Markets Europe Limited [2019] UKSC 50 (Internet source)*, The Supreme Court of the United Kingdom upheld the decision of the court of Appeal, which had held that on the facts that the bank had breached the duty to their

customer, and the fact that the fraud was perpetrated by a director of the corporate customer did not preclude the claim by that corporate customer against the bank.

Whether the operation of the above mentioned account was fraudulent and by who or which of the defendants.

Counsel for the Plaintiff submitted that the facts of this case speak for themselves. The entire banking transaction under scrutiny was wrought with fraud. It is not in dispute that the Plaintiff's money in the sum of Euros 40000 was diverted onto Account No.90300013785278 and was immediately withdrawn and the accounts closed. This transaction had the following actors;

- a) *The customer of the bank- Christian Rural Eye Sight Promotion in whose name and benefit the account was opened.*
- b) *Nkengero shaffique who approached the Bank and opened up the account as sole signatory;*
- c) *The Bank in which the accounts were opened up and operated.*

We maintain that the opening up and operation of the account was fraudulent. The fraud was committed against Christian Rural Eye Sight Promotion by Nkengero Shaffique and the Bank itself as indicated below;

The Bank

As already indicated above, the entire fraud was committed on a banking Account NO.90300013785278 held with/ in the Defendant Bank. It is a puzzle to the plaintiff on how the money ended up with the defendant Bank instead of Centenary Bank Limited as indicated in exhibit PE4. Being in a privileged position of financial institution as opposed to the Donor/sender of the money or the Beneficiary, the Bank as a receiving Banker should have properly explained under what circumstances it received the money. Otherwise, the only conclusion is that the plaintiff's information was cloned/intercepted and the funds were diverted to the Defendant Bank onto an account that had been fraudulently opened on the basis of identity theft since the plaintiff had never had any transaction with the Defendant Bank.

The fraud of the bank can be inferred from the conduct of its officers from the opening of the account, receipt of the funds, irregular operation of the account by sweeping all the funds and closure of the account including refusal to co-operate with the plaintiff when it complained to the Bank of theft of its funds. Indeed, the bank was in a notice to produce documents dated 6th August 2020 requested to avail Court the details of the investigations report relating to this fraud but declined to do so fear for self-incrimination. From the evidence of DW1, the account was fraudulently opened by the

bank when it accepted a walk-in customer and proceeded to open an account without doing any due diligence in respect of the identity of the customer.

Secondly, whilst the customer of the bank was Christian Rural Eye Sight Promotion, the bank dealt with a one Nkengero Shafique to steal all the funds, irrespective of which of the two Christian Rural Eye Sight Promotion we may take reference to. DW1 informed the Court that they were aware that their customer is a community Based organisation (CBO). They even noted that the money received was on an account of a branch of the CBO which in law, reality and banking practice CBOs cannot have branches. Besides even assuming that view was acceptable, the money was strictly for the branch in Mbale.

It was therefore more than an act of negligence to permit a one Nkengero Shafique to singly operate the account in the manner he did. Particularly contrary to the constitution of the customer. Amending the mandate for the operation of the account of the customer without following the due process are all but proof enough of the fraudulent motivation of officers of the bank, who included DW1 as signatory to the documents. In conclusion, the bank accepted to open and indeed opened a fraudulent account. Received funds on the accounts fraudulently, and proceeded to allow the operation of the account fraudulently. It therefore goes without saying that the bank was not only guilty as the facilitator of fraud but participated in the fraud positively with Nkengero Shafique.

Nkengero Shafique

Other than the Bank which maintains him as a customer and has an opportunity to interface with him, the plaintiff only learnt about his existence from the Bank. Only the bank is in the best position to explain what kind of character he is since it maintains in confidence all the data and information relating to his whereabouts. The suspicion of the Plaintiff is that he was the architect of the fraud.

Counsel for the Respondent submitted that in order for the plaintiff to succeed on the case set out generally and specifically in the foregoing paragraph against the 5th Defendant, the plaintiff has an evidential burden to prove by concrete evidence that the funds in issue were intended to be credited to its account as specified but were intercepted, converted or diverted to account 9030013785278 belonging to another person. The plaintiff must demonstrate this with concrete evidence that; - It submitted the proper account particulars to which the funds were to be credited to the sender of the funds. The sender confirming that the funds were sent to the wrong account, that of the third party and through the action of the third party and through the action of the third party. The plaintiff's witness told court that it provided its account particulars to

the Donor. He did not say whether his communication of the account particulars to the donor was oral or written. However, he did not tender any written evidence that its account particulars on which it asserts the funds should have been credited were submitted or received by the Donor. The evidence however, in annex "G", now Pexh6 (remittance advice) also called a swift message, is that a swift message is a communication between Banks. Court was told that the swift message is sent by the sender's Bank to the recipient Bank on the occasion of sending money. The sender's bank was not stated in the evidence. But the recipient bank is the 5th defendant.

Apparently, the information in the swift message is input by the sender's Bank. The information therein such as the account number is for the person who received the funds. The company Number C028 and the vendor Number 51028155 appearing on the swift message is exactly what is on the purchase order Pexh7. Where did the sender obtain this information? This evidence shows that the Donor who is the sender of the funds provided this information to its bank and in the absence of any evidence where the donor or its bank confirms that the funds went to the account or to a person otherwise than intended, then the plaintiff fails to prove that the funds were intended to come to its account, but were intercepted, diverted or converted. In other words, the evidence in the swift message is not by coincidence. It points to an irresistible conclusion that the sender of the funds in issue intended to send the funds were eventually sent.

Defence counsel further submitted that two additional facts support our conclusion in that the record does not bear any "post fraud" correspondence between the Plaintiff and the donor where the plaintiff complains to the donor of lost funds or the Donor confirming that the funds were sent to the wrong account other than the one to which the funds were sent; the very long time taken to establish that the funds were sent to the wrong account other than the one to which the funds were sent. PW1 only contacted Stanbic Bank about "the lost funds" in June 2018. He could not explain in cross examination in the reasons for such delay neither did he produce correspondence with the Donor to show whether money had been sent or not. Thus, either the money was sent to the proper account or there was a mistake by the sender or its bank or this was an inside job within the plaintiff's establishment.

There is sufficient doubt as to what exactly happened in the case. There is no evidence of the time or stage when the funds were intercepted, converted or diverted. It is submitted that such doubt has to be resolved against the person who bears the burden of proof who is the Plaintiff in this case, by dismissing its conversion case as not proved. The bank had an obligation to confirm that the person they were paying was the actual

owner of the instrument. In the instant case, the Plaintiff has failed to prove that the financial instrument was written in its names or that it was the one intended to be paid.

The grant agreements submitted in evidence are not sufficient proof that the money was intended to be sent to them, just in case they remained mere agreements without being performed. There was need to prove that the account alleged to be the one which the funds were to be sent was the one that the sender had. This could be proved as already submitted by evidence that the account particulars were sent and received by the donor or by evidence of post fraud correspondence where the sender confirms that it sent the money to the wrong account.

Liability in Negligence

Counsel for the Respondent further submitted that the above notwithstanding, in order for the 5th Defendant to be liable in negligence, the plaintiff must show that either the 5th defendant did not keenly adhere to the 'know your Customer' rules (identifying the customer) or that the 5th Defendants account opening and operation procedures are either not adequate or were not allowed. The 5th Defendant's witness and the exhibits tendered in evidence demonstrate that the Bank identified the customer as Christian Rural Eye Sight Promotion (CRESP) OF Wakiso.

Their constitutive documents, identified card and recommendation letter were provided. These were verified at the Wakiso office as existing. When the customer came to withdraw the funds, appropriate procedures and approvals were followed. The source of funds was asked for and the customer brought in Pexh7(the purchase order) whose details matched those in the swift message. The withdrawal of large sums of money at once did not arouse any suspicion on the part of the Bank because at that branch of traders, that is normal. The relevant reports of transactions were filed with the authorities and the same was never questioned. There was no facilitation of fraud as alleged because of allowing the customer to amend his signature. We therefore pray that the suit be dismissed with costs.

Court Analysis

I have evaluated all the evidence adduced by both parties and I agree with the plaintiff's counsel that the 5th respondent failed in its duty as a bank to carry out due diligence in opening an account and later accepting money transferred from a foreign bank.

Failing to independently verify the KYC of the customer in the face of obvious disparities in address of the customer, the resolution purporting that their client was

an NGO and yet the same is purported to be a community Based Organisation registered in Wakiso District.

In opening this account, the 5th Defendant relied among others on documents allegedly submitted by the customer. **Exhibit DE (1) b.....** Letter introducing Nkengero Shaffique to the bank dated 16/8/2017. This document is purported to be authored by a one Mugerwa John. The L.C Chairperson of Mulago who declared that Mr. Nkengero is a resident of that village (Mulago) and has been known for a long time.

Exhibit DE(1) C.....National identity card of Nkengero Shaffique. The National Identity card indicates that Nkengero is a resident of Ndeeba, Rubaga Division.

Exhibit DE(5).....Application to open the account. Shaffique Nkengero declared that he is a resident of Ndeeba Rubaga. On the other hand, the address of the would be customer itself, Christian Rural Eye Sight Promotion is declared to be Lutete Kasangati . There is a letter (Exhibit DE(1)(a) authored by a purported Director Kabanda Julius which bears no address at all.

The Constitution of the organization as presented did not confer any corporate status to sue and its registration at Wakiso as a Community Based Organization did not stop the bank from verification or demand for more or better information about their activities in Wakiso. There is no single letter of introduction from Wakiso District Local Administration or local councils of the area introducing the organization or its membership and especially directors to the bank.

The 5th defendant failed in its duty of KYC and this later perpetrated a fraud on the plaintiff when its funds ended up in wrong hands of the 1st-4th defendants. The decision of the Supreme Court of Uganda in *Bank of Baroda (U) Limited –vs –Wilson Kamugunda [2006] 1 EA 11* is very instructive in this case.

The Supreme court held that: -

“The bank had a duty not to disregard the interest of the true owner of the funds/ cheque. It therefore had a duty to make inquiries if there was anything to arouse suspicion that the cheque was being wrongfully dealt with.”

The Justices of Appeal at page 20 of their judgment held.....

“By ordinary values, the amount of money involved was reasonable big. As opined by the learned Justice of Appeal, it is a notorious practice in Banks in this country for a new customer to be introduced by customers already known in the bank. The tendency is to require at least two referees. The referees should be reliable and respectable customers. From the bank’s averment in

its written defence, the two men were introduced by David Mukasa before the account was opened. That implies that the men were strangers in the bank. They did not operate or have an existing account with the bank. A government Bank of Uganda cheque was involved. Surely the defendant should have inquired how the depositors were entitled to the money, who they were and from where they came. The defendant bore the responsibility of establishing whether the bearers of the cheque were the genuine payees or not before allowing them to deposit the cheque and draw its proceeds" (emphasis ours)

DWI testified that *upon receipt of the money, they noted that the money belonged to Christian Rural Eye sight promotion Lwakhakha Road, Manafwa District and that the customer explained that his organization has two branches, one in Wakiso and another in Manafwa.*

The *"DOCTRINE of Clear Last Chance"* –The disparity in the name, account number or address of the beneficiary of the money is in normal banking practice ground to reject the transaction for nonconformity. A bank that proceeds to process such a transaction is liable for the loss/stolen funds. Unlike unique payment where the drawee Bank has an opportunity to re-examine the instruments before clearing the payments, in wire transfers, the sending bank electronically transmits a swift message processed by a number of personnel. Disparities in the transaction information occasioned either by mistake or fraud may not be detected. On the other hand, and in line with the doctrine of clear last chance, the receiving bank operates the account into which the funds are deposited. It is in the best position to compare account names with account numbers and top detect discrepancies or fraud as opposed to the sending bank. (See *Cornell International Law Journal 1989-Page 109-110*). A similar position has also been codified in Sec. 6(h)iv of the Anti – Money Laundering Act obliging an accountable person to ensure that information provided by corresponding banks is accurate. This M/s Stanbic Bank failed to do.

Secondly, unlike an NGO, it is common knowledge that a Community Based Organisation is tied to a localized community' It operates only at a village and sub-county level and cannot have branches. By his position DW1 knows this fact very well. (See Sec 3 of the NGO Act – definition of CBO). If after he interacted with the customer and established for a fact as he claims to have done, the transaction should not have been processed. Besides, apart from the disparities noted above in the addresses, it was apparent to the bank that the funds belonged to Christian Rural Eye Sight Promotion of Lwakhakha, and not their customer. It should have aroused enough suspicion to decline the transaction for having a CBO in WAKISO and another in Mbale. Notwithstanding the theft of identity of the Plaintiff, the remitter's information noting the beneficiary as Christian Rural Eye Sight Promotion Lwakhakha road, Manafwa

District and not Christian Rural Eye Sight Promotion Wakiso would still make the 5th Defendant liable for misappropriation/application of the funds.

The account operating documents clearly indicate the customer to have been Christian Rural Eye Sight Promotion. See exhibit DE 3(b) – the Constitution is the primary document for this transaction. The bank received this document and it is the basis upon which it opened the account. Article 8.2 of the constitution clearly provided that.....

“All funds of the organization receive shall be deposited in the bank decided upon by a committee and shall be drawn by cheque or voucher bearing the signatories of any two persons appointed in that behalf by the resolution of the committee” (emphasis ours)

DW1 acknowledged the above article to be the mandate for the operation of the account and yet claimed that the bank opted to follow the special resolution (**exhibit DE2**). It is inexplicable.

- a) How the Bank could have accepted a purported resolution of a CBO which is not a legal entity as opposed to following the conventional process of minutes of the executive Committee.
- b) The resolution is purported to be of an NGO yet the Certificate of Registration **exhibit DE3(a)** is a CBO registered in Wakiso;
- c) The resolution opening the account purports to appoint Nkengero Shafique, to be a sole signatory to the account contrary to the mandate in the constitution which requires a **minimum of two members of the executive committee to operate the Bank account.**
- d) Lastly, while aware that the funds on account belong to an organization, no prudent banker would have permitted a sole signatory sweeping an account in such a rush and reckless manner. The evidence of DW1 that it is common for customers to withdraw such money is not acceptable in the circumstances given that this money was donor money tied to execution of a project which required detailed accountability for the money received which the Bank was much aware of since DW1 claims to have also received the grant agreement.

The testimony of DW1 on exhibit DE4 (Request to Amend Account Details) further explains the deplorable manner under which the transaction was handled. The bank knows very well that its customer was Christian Rural Eye Sight Promotion and yet it proceeded to deal with a one Nkengero Shafique like the account was his personal

account. DW1 testified that; a) There was a no resolution of the customer requesting to amend the account details. A very serious irregularity, b) that he DW1, did not even know the reason why the account details were being amended and yet he was a signatory to the document. The testimony of DW1 can only lead to the conclusion that the Bank was not only acting with or for Nkengero Shaffique, It was acting for itself through a manipulation of its documents to facility the theft and conversion of the Plaintiff's funds. A Banker is always liable if it permits/ allows anyone signatory in abuse of his/her mandate to operate the account contrary to the general mandate of the customer. *See S. 116(e) Anti Money Laundering Act.* See also *Barclays Bank Plc v Quincecare Ltd and another (1992)4 ALL ER 363*. It was held.....

"If the bank executed the order knowing it to be dishonestly given, or shut its eyes to the obvious fact of the dishonestly, or acted recklessly in failing to make such inquiries as an honest and reasonable man would make, the bank would plainly be liable. Furthermore, a banker was under a duty to refrain from executing an order if and for as long as he was put on inquiry in the sense that he had reasonable grounds (although not necessarily proof) for believing that the order was an attempt to misappropriate funds"

It would appear that the 5th defendant did not verify the source of the money upon hitting the account whether it was real intended to said beneficiary. This act of verification would have established the arrangement between the 1st -4th respondent who were trading at Christian Rural Eye Sight Promotion Wakiso and the sender and probably a Grant Agreement would have been shared at this stage. The 5th defendant was negligent in opening a bank account and later allowing a sum of 40.000 euros to be deposited and later fraudulently withdrawn by 1st -4th respondent trading as Christian Rural Eye Sight Promotion Wakiso.

What remedies are available to the parties?

The Plaintiff brought this suit and severally against the Defendants for conversion of its funds in the sum of Euros 40,000. The Plaintiff further sought a declaration that the 5th Defendant acted with negligence in consequence at which the 5th Defendant facilitated the fraud to be committed. The plaintiff therefore sought special damages, general and aggravated damages.

i) Special Damages

According to **Black's Law Dictionary 7th Edition.....** "Every breach gives rise to a claim for damages, and may give rise to other remedies. Even if the injured party sustains no pecuniary loss or is unable to show such loss with sufficient certainty, he has at least a claim for normal damages"

The plaintiff has availed sufficient documentation to establish entitlement to the money deposited with the 5th Defendant. This information is contained in the plaintiff's exhibits PE1-PE6. The plaintiff is awarded Euros 40,000

Interest

An award of interest is in the discretionary of the Court and is generally based on the principle that the defendant has kept the plaintiff out of use of his money and so to the plaintiff ought to be compensated for this deprivation (*See Begumisa Financial Services Ltd v General Moldings Ltd & Another [2007] 1 EA 28.*) Given that the 5th Defendant is a commercial bank; The plaintiff special damages shall attract an interest of 8% per annum from the date of filing the suit until payment in full.

General damages

The plaintiff has not proved the general damages or Aggravated damages, therefore this court declines to make any award.

The plaintiff is awarded costs of the suit.

I so order.

Ssekaana Musa

Judge

11th April 2022