

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 0284 OF 2023

VICTORIA CANDLES LIMITED:.....APPLICANT

VERSUS

BANK OF AFRICA UGANDA LIMITED :.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant filed application under section 33 and section 38 of the Judicature Act, section 98 of the Civil Procedure Act, Order 52, rules 1, 2 and 3 of the Civil Procedure Rules seeking the following orders;

- a) An order directing the Respondent to unfreeze applicant's Account;06011480007.*
- b) An order directing the Respondent to pay the applicant all of its money held on Account No. 06011480007.*
- c) General damages.*
- d) Costs of this application.*

The applicant's application is supported by an affidavit of Mr Lubega Ssowed, the Managing Director which sets out the grounds for the application briefly as follows;

1. That the applicant instituted a suit against Government and 3 others; vide HCCS No. 367 of 2019 before this Honourable Court and the Judgement was delivered in its favour.
2. That the applicant was issued with a Certificate of Order against Government by this Honourable Court vide M.A No. 0106 of 2006 wherein the Attorney General on 21st June wrote to the Inspector General of Police directing him to comply with Court Order by paying the applicant.
3. That the applicant waited for the payment from Government but it was taking long overdue and decided to assign its rights and claims in HCCS No. 367 of 2019 & M.A 0106 of 2023 to Ms Molly Katanga through a deed of assignment.
4. That in compliance with the above-mentioned assignment, Ms Molly Katanga instructed M/s Riverwood Logistics Ltd to pay the applicant's money on Account No. 06011480007 held with the respondent Bank.
5. That the respondent froze the applicant's above-mentioned account held with it without any justifiable cause and has since with impunity withheld the applicant's money stalling its businesses and causing great inconvenience.

6. That the applicant provided and or disclosed to the respondent all the information leading to the depositing of money on its above-mentioned account but in vain hence the respondent has breached its banker-customer relationship without any justifiable cause.
7. That the applicant further disclosed to the respondent all its update information with Uganda Registration Services Bureau for transparency purposes but the respondent remained adamant withholding the applicant's money.
8. That the applicant has since suffered great inconvenience and business losses due to lack of finances as its money is illegally held withheld by the respondent without any justifiable cause hence the need for general damages against the respondent.

The respondent filed an affidavit in reply sworn by Nelly T Erongot-Head of Compliance with the respondent Bank contending that;

1. That on the 17th November 2023, funds to a tune UGX 1,750,000,000/= were deposited onto the applicant's bank account from Riverwood Logistics Ltd.
2. That upon being tasked by the respondent to give an explanation about the source and purpose of funds, the applicant provided an assignment deed dated 26th October 2023 between the applicant and a one Molly Katanga.
3. That upon perusal of the documentation, the funds were to come from Molly Katanga as the assignee but the funds in question came from Riverwood Logistics Ltd and there was no documentary

explanation regarding the relation and connection of the assignee with the sender of the funds.

4. Being left with no option, the applicant treated this transaction as suspicious for lack of sufficient information regarding the transaction in question and therefore sent back the funds to the sender, Riverwood Logistics Ltd on 8th December 2023.
5. That the respondent as a duty bearer in combating money laundering, the actions taken were justified and reasonable.

The applicant filed an affidavit in rejoinder stating that;

1. The respondent only asked for information leading to the depositing of money on its account which it availed and the respondent never disclosed to the applicant that they had an issue with a deed of assignment and the depositor of money on the applicant's account is in Uganda but the respondent never inquired anything from it.
2. That the respondent never wanted to pay the applicant's money but instead was taking advantage of it and compelling it to bribe the officials to release the money.
3. That when the respondent received court summons the money was still on account but after that, they illegally reversed it back in bad faith as a sign of impunity.
4. That the respondent illegally reversed the applicant's money to make this application moot, the applicant prays for both aggravated and punitive damages for illegal actions of the respondents.

The applicant was represented by *Mr. Muhwezi James Rwakoojo* and the respondent was represented by *Mr. Mulangira Robert*

ISSUES

- 1. Whether the respondent acts of freezing of the applicant's Account; 0601148007 and withholding its money are lawful?***
- 2. What remedies are available to the applicant?***

The parties filed submissions in this matter which this court has considered in this ruling.

Determination

Whether the respondent acts of freezing of the applicant's Account; 0601148007 and withholding its money are lawful?

The applicant's counsel submitted that the respondent does not in any way have audacity to freeze the applicant's account without any justifiable cause because it will amount to the breach of banker customer relationship which comes with a duty of care not to cause losses to the applicant.

Counsel further contended the powers of Bank of Uganda which is the regulator of all banks in Uganda have been trimmed and they should not freeze peoples accounts without scrutiny of court. In addition, court held that it illegal and irregular for Financial Intelligence Authority to freeze some one's account without satisfactory evidence.

The applicant contended that they gave an explanation and evidence for the source of money which was satisfactory since it was a clear transaction of assignment of the decree duly obtained in HCCS No. 367 of 2019 and HCMA 0106 of 2023 where the AG wrote a letter to Uganda Police directing them to comply with court of paying the applicant. The applicant had assigned her rights in the decree in a deed of assignment with Molly Katanga who in turn

directed Riverwood Logistics Ltd to pay the applicant's money in November.

The respondent's counsel submitted that the deed of assignment was between Molly Katanga but the money was sent by Riverwood Logistics. According to the respondent bank there was no connection between the sender and the assignment deed, therefore applicant failed to satisfy the requirement to support the purpose of the funds.

The respondent further submitted that the applicant failed to give a proper account of the source and purpose of the funds, the transaction was treated as suspicious. The respondent had the funds returned to the sender after the respondent failed to give any justification for the source and purpose. In their view the application was overtaken by events and the funds have been returned.

The applicant's counsel in rejoinder contended that the Anti Money Laundering Act, 2013 puts the obligation in stringent terms on the respondent to report any suspicious transaction to the Financial Intelligence Authority and not the Financial Institution taking the law in its hands to investigate, prosecute and punish the suspect.

It was further contended that the time within which the respondent is supposed to report the suspicious transaction to Financial Intelligence Authority is two working days. The applicant held onto the funds beyond the two days until when they were served with summons and they opted to reverse the transaction.

The applicant further submitted that under the Anti-Money Laundering Act, 2013 no provision gives the respondent any right/obligation to reverse money of suspicious transaction back to the sender/depositor but rather it requires that they report to the Financial Intelligence Authority. The Act empowers the authority to investigate the transaction and apply to court for seizure, freezing and forfeiture of assets in relation to money laundering.

Analysis

The relationship that exists between a banker and a customer is one founded on a banker and customer contract. It involves a species of contract with special usages with particular reference to monetary or commercial transactions. The role of bankers and their predominant business is the receipt of monies on current or deposit accounts and payment of cheques and instruments paid in by customers.

A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regards to the operations within its contract with its customers. The duty to exercise reasonable care and skill extends over the whole range of business within the contract with the customer. See *UBA Plc v G.S Ind (Nig) Ltd (2011) 8 NWLR (pt 1250) p. 590*

The applicant owned and operated a bank account with the respondent and this established a bank-customer relationship between the them. The bank had an obligation to receive payments or proceeds on behalf of the applicant and as well honour any instructions of the applicant as its customer. The actions of the bank to block/freeze the bank account of the applicant had to be justified upon cogent evidence and not whimsically or casually. It would have been prudent that the bank follows proper procedures to satisfy itself as well as the client-applicant that it had a duty to do what it did.

The bank-customer relationship created by opening bank accounts in Uganda could not be subjected to extraneous decisions not supported by law. The respondent as a licensed financial institution must base its decision to freeze within the law with proper evidence. If the respondent was to premise its decision to freeze an account and or reverse a completed transaction like in the present case it was a radical decision which would be thoroughly scrutinized to be sure that it is not an abuse of authority. The applicant expected its banker to honour its obligations after receiving the funds from third parties.

The customer has no right to put upon the banker, and the banker is not bound to accept, any risk or inability not contemplated in or essentially arising out of the ordinary routine of banking business. The respondent acted prudently and reasonably in questioning the transaction of the applicant which involved such huge amount of money and in view of the circumstances. The demand for further and better particulars sought about the transaction was justified since the transfer of 1.750.000.000/= was not a small sum. The applicant after being questioned presented the necessary information or documents which should by any standard have ably answered the source of funds and circumstances that surrounded the cause.

A court of equity has never hesitated and would never hesitate to use the strongest powers to protect and preserve the interests of an individual customer or public against the bank when it is endangered by illegal activities of the bank of freezing the bank account without just cause. It is at the heart and concern of any court of equity to see that a stable banking system properly and efficiently supervised by the Central Bank or Anti-Money Laundering Agency to ensure that suspicious transactions are dealt with or cleaned from the system. This power to question transactions on suspicion of money laundering must strictly be done in accordance with the minimal standards set by the Central Bank and Financial Intelligence Authority within the law. See *Peter Sajjabi & Another v AG & Bank of Uganda Constitutional Petition No. 561 of 2013*

The respondent claimed to have frozen the applicant's account on suspicious transaction but the respondent failed in its duty to the applicant as its customer to carry out the expected due diligence in establishing that the transaction was not questionable. The applicant availed all the necessary court documents upon which the transaction was hinged and it became clear that it was a justified transaction. The respondent allegedly went further to question why the money came from another company-Riverwood Logistics Ltd and not the assignee of the decree- Molly Katanga.

There is no evidence on record to support the respondent's contention that indeed they ever questioned the source of money as being sent or wired from another company. The applicant would still have explained the transaction in which the assignee had instructed another company to honour her obligations with the applicant. The bank would have established in the period of over two weeks whether the transaction from Riverwood Logistics Limited to the applicant was supported by genuine documents and relationship between the assignee and Riverwood Logistics Limited. The respondent overzealousness is not explained except that it could be inferred from the allegation of the applicant that respondent staff were trying to extort some money from the applicant by way of a bribe.

The respondent tried to justify their actions by citing some provisions of the law on Anti-Money Laundering Act which empower them to look into any transactions that are considered suspicious. The same law and regulations which empower the respondent also create a duty on the bank to report such suspicious transaction to Financial Intelligence Authority. The respondent never reported to Financial Intelligence Authority within 48 hours.

Section 9 of the Anti-Money Laundering (Amendment) Act, 2017 is in respect of -Reporting of suspicious transactions.

- 1. An accountable person shall report to the Authority if it suspects or has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime or funds related or linked to or to be used for money laundering or terrorism financing, regardless of the value of the transaction.*
- 2. An accountable person shall make the report under section (1) without delay but not later than two working days from the date the suspicion was formed.*
- 8) Where a supervisory authority or an auditor of an accountable person suspects or has reasonable grounds to suspect that information in its possession concerning any transaction or attempted transaction may be —*
 - a) related to the commission of any offence under this Act or the offence of terrorism financing;*

- b) *relevant to an act preparatory to the offence of financing of terrorism;*
- c) *an indication of money laundering or the financing of terrorism, the supervisory authority or the auditor shall, as soon as practicable after forming that suspicion or receiving the information, but not later than two working days, report the transaction or attempted transaction to the Authority.*

Regulation 39 of the Anti-Money Laundering (Regulations), 2015 is in respect of accountable person to report suspicious activities and certain cash transactions.

1. *An accountable person shall, upon investigating and being fully satisfied that the transaction or activity is suspicious, notify the Authority of any suspicious activity or transaction which indicates possible money laundering or terrorism financing.*
2. *The notification under sub regulation (1) shall be made as soon as is practicable but in any case, not later than forty-eight hours after the occurrence of the suspicious activity or transaction, using Form B in the Schedule.*

The respondent failed to comply with the above provisions and never made any report to the Bank of Uganda or specifically to Financial Intelligence Authority. It is my humble view that the respondent attempted to justify their illegal actions by citing the law they never complied with in the first place. The respondent held onto the money of the applicant longer than the period stipulated under the law which required them in respect of suspicious transactions.

In addition, the decision of the respondent to reverse the transaction and send the money back to the sending banker was an act done in bad faith. The bank held on the money since 17th November 2023 and it was returned on 8th December 2023 for three weeks. There is no justification why the bank decided to return the money to ABSA Bank after it had been duly served with the Notice of Motion due to hearing on 11th December 2023. It would appear the bank acted in panic after breaching the law in order to make the

flimsy argument that the application is overtaken by events because they had illegally returned the money.

The actions of the bank were in total breach of the law and the bank-customer relationship. The bank made baseless efforts to sanitize their illegal actions by claiming that the transaction was questionable whereas there was nothing suspicious about the transaction. The respondent was given all the necessary documentation and any questions or queries from the sending bank which is in Uganda could be established without causing the applicant the continued hardship of being denied access to the funds already deposited on his account on a clear transaction.

The action of the respondent to send back the money of a suspicious transaction would be contrary to law and spirit of the law on checking money laundering. The respondent should have held onto the money as the suspicious transaction was being investigated. There was no basis to send the money back to sending bank and the respondent is liable for the inconvenience which the applicant suffered. The court must intervene to curb prima facie acts of illegality committed by the respondent bank which does not stem from the contractual relationship or appear to be excessive exercise of power. See *World Islamic Call Society v Tropical Bank Ltd HCCS No. 214 of 2021*

The decision to freeze an account often happens with no warning or explanation. Customers suddenly find they have no access to cash: direct debits and standing orders are suspended. The customer suffers distress and inconvenience because they cannot access banking facilities. The bank after getting clarity on the applicant's transaction ought to have lifted the freeze instead of continuing to insist on holding on to the money without any justification for over three weeks and later returning the money to the sending bank unfairly because the applicant had dragged them to court.

The actions of the respondent are in total breach of contract between the plaintiff and defendant rotating around bank-customer relationship. The

bank is entitled to close/freeze the bank account but they ought to treat the customer fairly by ensuring that the freeze was justified and ensure that the freeze is quickly lifted instead of making it appear indefinite or to continue withholding onto the money illegally. Therefore, no prudent banker faced with the same circumstances would regard the course of action taken on the facts to be justifiable.

The respondent is in breach of the contract and the continued freeze of the applicant's account No. 06011480007 and withholding of the applicant's money is unjustified and thus illegal.

What remedies are available to the plaintiff?

1. The court issues a declaratory Order that the freezing of the applicant's account was illegal and a breach of contract.
2. The respondent action of withholding of the applicant's money or funds on the bank account and later sending it bank to Absa Bank was illegal and done in bad faith.
3. This court did not find it fit to determine the issue of general damages for the wrongful continues freeze of the applicant's Account. The applicant is at liberty to file a substantive suit to prove the general damages or inconvenience suffered with proper evidence.
4. The applicant is awarded costs of the application.

I so order.

SSEKAANA MUSA

JUDGE

19th December 2023