



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL & TAX DIVISION**

**HCCC NO. 373 OF 2012**

**MAP EXPRESS TRADING (K) LIMITED.....PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA LIMITED.....DEFENDANT**

**JUDGMENT**

1. On 7<sup>th</sup> June 2012 Ali Mohammad Xirsi and Mahamud Ibrahim Jama who are the sole Shareholders and Directors of Map Express Trading (k) Limited (the Plaintiff or Map Express) instructed the Branch Manager of Queensway Branch of Barclays Bank (k) Limited (the Defendant or the Bank) as follows:-

The Branch Manager,

Barclays Queensway

NAIROBI

07/06/2012

REVERSAL OF ENTRIES A/C 2023246689

FUNDS FORM NARRATION WAMUCII I, II, III, IV, V, VI, VII

We have noted that funds were wrongly transferred to our account and suspects to fraudulent from Account Number 0168319266 and Account Number 016-5213068. Kindly but urgently reverse all this transactions.

Yours faithfully

Ali Mohammad Xirsi (Signed)

Mahamud Ibrahim Jama (Signed)

2. If Map Express does not successfully fault that instruction, then its action falters and collapses. This is the story of this dispute.

3. Map Express was at the time material to this suit a customer of the Bank at its Queensway House Branch Nairobi. It held, and I believe still holds, Account No. 2023246689. Map Express states that sometime in May 2012, it agreed to sell and export coffee to its client Ifeany Kenneth Chioma Muchai in Dubai at Kshs.10,000,000/= and the said client deposited the amount in several instalments in the account at Barclays. Its grievance is that, on frivolous grounds and alleging that the account was fraudulent, the Bank refused it to withdraw and/or utilize the funds deposited in the account.

4. In a Plaint dated 8<sup>th</sup> June 2011, Map Express seeks the following orders against the Bank:-

- a. A permanent injunction to restrain the Defendant from reversing, withdrawing or in any way dealing with the money in the Plaintiff's Bank Account No. 2023246689 in a manner adverse to the Plaintiffs interest.
- b. Mandatory injunction to compel the Defendant to release to the Defendant the money deposited in the Bank Account No. 2023246689.
- c. Costs of the suit.
- d. Any other relief that this Honourable Court may deem just and fit to grant.

5. The Bank disputes the claim. It justifies its action on the basis that Seven (7) deposits made into the account of an amount totaling Kshs.10,130,000/= were suspicious. It avers that two (2) signatories to the account in question acknowledged that the money was fraudulent and instructed that transactions be reversed. The Bank states that it allowed Map Express to operate the account save to the extent of the sum of Kshs.10,130,000/= that is the subject of the fraudulent transactions.

6. There is no response to the statement of Defence of the Bank which is dated 3<sup>rd</sup> July 2012 and that is critical.

7. At the hearing of this matter two witnesses testified; Mahamud Ibrahim Jama a director of Map Express and Charles Maina for the Bank.

8. It is needless to rehash their entire evidence. It is common ground that Map Express is the holder of Account No. 2023246689 at the Banks Queensway House Branch. It is not in dispute that Mahamud Ibrahim Jama and Ali Mohammad Xirsi are directors of Map Express and also signatories to the Account.

9. It is also agreed that the two authored the letter that is reproduced in the opening paragraph of this decision.

10. What Map Express now attempts to do is to dispute the contents of the letter and alleges that it was obtained under duress. Mahamud testified as follows:-

“I was informed that they were fraudulent activities involving the account for Kshs.10,130,000/=. I refuse to write an acknowledgement but the Bank made me sign an acknowledgement under duress..... This is the one. This is not my handwriting”.

He was referring to the note of 7<sup>th</sup> June 2012.

11. The Defence of duress cannot be available to Map Express not in the least because it was not pleaded. See the provisions of Order 2 Rule 10(1) of the Civil Procedure Rules which reads:-

“Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing—

a. Particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and;

b. Where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.”

12. Second, it is an allegation that the Bank was engaging in a criminal activity and this needed to be proved on the involved threshold of higher than a balance of probabilities but not as high as beyond reasonable proof. Two people are said to have signed the note, Mahamud and his Co-director Ali. Without corroboration by Ali then the evidence of Mahamud alone is insufficient. Without evidence that the two soon after protested the duress then the story of duress is hardly believable.

13. In a word the Court holds that the note of 7<sup>th</sup> June 2012 was written without duress or coercion. The note is clear, it acknowledges that the funds in entries i, ii, iii, iv, v, vi, vii, made into Account No. 2023246689 was wrongly transferred and suspected to be fraudulent. It instructs the Bank to reverse the transactions.

14. The entries, on addition, totals Kshs.10,130,000/=. They are all of 4<sup>th</sup> June 2012 for the following sums:-

1,500,000.00

1,450,000.00

1,500,000.00

1,500,000.00

1,400,000.00

1,300,000.00

1,480,000.00

15. The Bank was justified in its action and cannot be faulted. The claim by the Plaintiff is without merit and is hereby dismissed with costs.

**Dated, Signed and Delivered in Court at Nairobi this 22<sup>nd</sup> Day of June 2020**

**F. TUIYOTT**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17<sup>th</sup> April 2020, this Judgment has been delivered to the parties through virtual platform.

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

**Ms Nyambura for Plaintiff.**

**Chege for Defendant.**