



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS

CIVIL CASE NO. 2525 OF 1995.

KENYA INDUSTRIAL RESEARCH

AND DEVELOPMENT

INSTITUTE.....PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA

LTD.....DEFENDANT

J U D G M E N T

The Plaintiff claims from the Defendant a sum of Shs.836,148.50 together with interest and costs thereon in respect of a cheque honoured by the Defendant (the Bank) and debited to the account of the Plaintiff although the signatures on the cheque had been forged.

That the cheque was forged the Defendant denied liability and that it had not been negligent and further that on the contrary that the Plaintiff was negligent in accordance with the particulars pleaded.

In support of its claim the Plaintiff called Mrs. Dorothy Mwanzia Nganga (P.W.1) who was the Plaintiff Administrative Officer.

The cheque in question was presented to the Bank for payment on the 14 December 1992 and was returned to the clearing house as the signature of P.W.1 was said to differ from that in the specimen card which the Bank kept and which was adduced in evidence as Exhibit 1.

P.W.1 denied that either the original signature on the cheque or a second signature which was in the cheque after it was represented for payment on the 21st December 1992 was hers. P.W. 1 signed her signatures again on Exhibit 2 at the request of Mr. Kangethe for the Bank and she agreed that the signatures looked similar to her signature. She also said the signature purporting to be that of Mr. Amunga looked like his signature. P.W. 1 had signed as a second signatory and the mandate to the Bank prescribed P.W. 1 to be first signatory on cheques upto Shs.50,000/- and thereafter she was a second signatory.

According to the procedures each cheque for payment is accompanied by a schedule of payments (Exh. 5) on which there are placed security stamps. The stamps on the cheque in question looked like the Plaintiff's security stamps. These were kept by someone in the accounts department but a person different from the person who kept the cheque forms which are locked up and in the charge of the accountant. Mr. Adere P.W. 2 was the accountant and stated that the cheques were kept securely in a locked draw. He was

not the custodian but the custodian should know how many cheque forms there were.

P.W. 1 was shown a confirmation letter Exhibit 5 which accompanied the schedule Exhibit 3. This was signed by Mr. Amunga and P.W. 1. She denied that the signatures on it was hers. I found P.W. 1 to be witness of truth and accept that the signature on the cheque Exhibit 2 and on Exhibit 5 were not hers. The Bank even did not accept the first signature on the cheque when it was presented for payment as being that of P.W. 1. The Bank in my view should have queried the signature on Exhibit 5 which accompanied the cheque when it came for payment. Exhibit 5 was in fact received by the bank on the 11.12.92 as appears from the "Received" Stamp.

The Bank 's case was that the Plaintiff was negligent in

- (1) Failing to keep the cheques securely and
- (2) Failing to report the loss of the cheque promptly.

P.W. 2 said that the cheque forms were kept in a locked draw and that when he received a Bank Statement on the 5.1.93 he went through the cheque book and found that the cheque form was missing. He then went to the Bank on the same day and informed the Bank that the cheque had not been issued by the Plaintiff. He then wrote Exhibit 6 on the 6.1.93 stating that a number of cheque forms set out had been stolen and that cheque No.854259 (Exhibit 2) had been stolen and was paid under "special clearance".

After Exhibit 2 had been first presented for payment and before it was honoured on the 21.12.92 Exhibit 9 was written. This confirmed that the second signature of P.W. 1 had been signed in the presence of Mr. Aringa and Mr. Odipo who was also an authorised signatory. P.W. 2 said the letter looked like the Plaintiff's letter but he first saw it on 5.1.93 and was not a letter normally written as the Plaintiff did not confirm payment of cheques and that even if it did he would have expected it to be signed by the signatories to the cheques.

I am satisfied that the documents in support of Exhibit 2 namely Exhibit 3, 5 and 4 were all forgeries. In fact an employee of the Plaintiff was convicted of stealing the cheque forms and forging the signatures.

The Law is stated in Paget's Law of Banking 8th Edition at page 420 where it is stated that a cheque to which a drawers signature is forged is a mere piece of paper and is not a cheque at all unless it be adopted by the drawer or becomes valid by estoppel.

In this case there was no question of the Plaintiff adopting the cheque in fact at very first moment that it discovered the forgery on the 4.1.93 P.W. 2 went immediately to the bank to inform the Bank of the position. With regard to estoppel Paget states at page 421 "mere carelessness in keeping the cheque book is, of course, no use and in a passage quoted from Scholfield in Londesborough (Earl) 1896 A.C. page 531 Lord Halisbury said

"If, to use Lord Cranworth's phraseology, the customer, by any act of his has induced the banker to act upon the document by his act or neglect of some act usual in the course of dealing between them. It is quite intelligible that he should not be permitted to set up his own act or neglect to the prejudice of the banker whom he has thus misled or permitted by neglect to be misled"

The Learned author further states at page 422 "What amounts to inducement sufficient to relieve a banker from the consequences of payment on the forged signature of his customer is a question of fact.

I find that the Defendant has not proved negligence on the part of the Plaintiff. The cheque forms were kept in a locked draw and as has been said earlier mere carelessness in keeping the cheque book is of no use . In fact I hold that the Plaintiff did what was prudent in keeping the cheques and the fact that a dishonest employee stole them is not negligence on their part. With regard to reporting the matter at the earliest time they could have been done was when the forgery was discovered on the 4.1.93 and as has been seen P.W. 2 immediately informed the Bank.

In the result, I give judgment to the Plaintiff for the sum claimed plus interest at court rates from the date of filing the Plaintiff until payment in full and the costs of the suit.

Dated and delivered at Nairobi this 22nd day of June, 2000.

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE.