



**Boniface Ndirangu Njuguna t/a Goods Import and Exports Agencies
v Guaranty Trust Bank of Kenya Limited (Civil Appeal E060 of 2021)
[2024] KEHC 1029 (KLR) (Civ) (9 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1029 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E060 OF 2021

AN ONGERI, J

FEBRUARY 9, 2024

BETWEEN

**BONIFACE NDIRANGU NJUGUNA T/A GOODS IMPORT AND EXPORTS
AGENCIES APPELLANT**

AND

GUARANTY TRUST BANK OF KENYA LIMITED RESPONDENT

*(Being an appeal from the judgment and decree of Hon. D. M. Kivuti
(SRM) in Milimani CMCC no. 7625 of 2016 delivered on 15/1/2021)*

JUDGMENT

1. The appellant sued the respondent bank in Milimani CMCC No. 7625 of 2016 seeking the following remedies;
 - i. Kshs.31,500 together with accrued interest from the date of filing suit.
 - ii. General damages for breach of bank contract between the parties.
 - iii. Aggravated damages for triggering event suspected the appellant to pursue humiliation ridicule and embarrassment.
 - iv. An unequivocal apology in writing
 - v. Costs of the suit.
 - vi. Any other relief.



2. The appellant's case was that he entered into a contract with the respondent bank for an overdraft facility contained in a letter of offer dated 23/3/2015.
3. The appellant met the requirements of insurance but when he issued cheques they were dishonored by the respondent bank.
4. The respondent on their part maintained that the cheques were not issued within the overdraft facility agreement period.
5. Further that the period between July 2015 to 11/2/2016 had no overdraft facility.
6. The trial court found that there was an overdraft facility agreement which was up and running at the time the cheques were dishonored.
7. The trial court only awarded the appellant special damages of kshs.31,500 in respect of bank charges for the dishonored cheques and found the other damages far-fetched.
8. The appellant has appealed against the judgment of the trial court on the following grounds;
 - i. That the learned trial magistrate erred in law and in fact in failing to appreciate the plaintiff's claim as filed and evidence tendered in support thereof.
 - ii. That the learned trial magistrate erred in law and in fact by failing to appreciate the plaintiff's submissions based on the evidence adduced and authorities cited in support thereof.
 - iii. That the learned trial magistrate erred in law and in fact in failing to appreciate that the plaintiff's claim was based on contract that created a reasonable expectation on the plaintiff's part that the defendant would as a matter of practice honour the plaintiff's cheques upon presentation.
 - iv. That the learned trial magistrate erred in law and in fact in failing to appreciate that by awarding prayer number one (i) of the plaintiff's claim in essence that amounted to an admission of error on the defendant's part being refund of bank charges for bounced cheques that had been levied upon the plaintiff.
 - v. That the learned trial magistrate erred in law and in fact in failing to find in favour of the plaintiff, for the claim on general damages for breach of contract as prayed at prayer (iiA) of the plaint which prayer was co-related to prayer (i) of the plaint.
 - vi. That the learned trial magistrate erred in law and in fact in failing to appreciate that the plaintiff's claim for general damages was based on breach of contract hence the same could not be anticipated nor mitigated.
 - vii. That the learned trial magistrate erred in law and in fact in finding in favour of the plaintiff but failing to appreciate the totality of the plaintiff's claim.
 - viii. That the learned trial magistrate erred in law and in fact in failing to consider the plaintiff's submission on the evidence adduced by the defendant who did not deny the existence of contract nor offer any plausible explanation for the bouncing of the plaintiff's cheques and the contradictory manner the plaintiff's account was run and handled.
 - ix. That the learned trial magistrate erred in law and in fact in failing to appreciate that the totality of the defendant's evidence contradicted its defence and witness statement as filed hence the same could not be relied upon as credible.



- x. That the learned trial magistrate erred in law and in fact in taking into consideration factors extraneous to the pleadings and proceedings in arriving at his decision thus misguided himself.
9. The parties filed written submissions in the appeal as follows; the appellant submitted that the trial court failed to appreciate that by awarding the appellant special damages, it was inevitably bound to award general damages in the same as the two were co-related. The appellant contended that by awarding special damages to the appellant, the trial court inevitably confirmed that the respondent was liable for its negligent actions in the aforementioned transaction. Despite the general rule that damages ought not to be awarded for breach of contract, the respondents actions emanated from an act of sheer carelessness and would not benefit any party or the law, it is only fair that liability must attach.
10. In support of his argument the appellant cited Milimani Civil Suit No. 75 of 2012 - *Otieno-Omuga & Ouma Advocates v. CFC Stanbic Bank Limited* [2015] eKLR where the court referred to the *Halsbury's Laws of England*, 4th Edition, Volume 3 in arriving at the same conclusion. More specifically, paragraph 155 of the aforementioned journal states as follows;
- “..... If without justification, a banker dishonors his customer's Cheque, he is liable to the customer in damages for injury of credit... Proof of actual injury to credit is not necessary to secure substantial damages, either for a business customer or for personal customers. The answer on a Cheque dishonored on presentation by a third person may constitute libel, but such cases are rare, in such cases general damages may be awarded...”
11. Similarly, there is no doubt that the respondent wrongfully dishonored the appellant's charged thus subjecting him to humiliation and loss of credit amongst his business partners and customers. The appellant is a businessman by trade as such there is always an expectation that when he issues cheques, the same will go through as expected. In the circumstance this court, be guided by Milimani Civil Suit 586 Of 2009 - *C Mehta & Co Limited v Standard Bank Limited* [2014] eKLR where the Hon. F. Gikonyo J awarded the Plaintiff Kenya Shillings Three Million (Kshs, 3,000,000.00) only as general damages for breach of contract as the Defendant had wrongly dishonored the Plaintiff's Cheques.
12. The respondent alternatively submitted that it is trite law that general damages cannot be awarded in a claim for breach of contract, this was the binding decision of the Court of Appeal in *Securicor Courier (K) Ltd v Benson David Onyango & another* [2008] eKLR, where the Court held that:
- “As for the award of Shs. 25,000/= as general damages for breach of contract, this Court has repeatedly held that general damages are not awardable for breach of contract”
13. The respondent submitted that the assertions that awarding special damages, the trial magistrate was inevitably bound to award the appellant general damages are misdirected, bad in law, cannot be sustained and should therefore be dismissed.
14. Further, that the appellant has already been awarded special damages for the alleged breach of contract and he therefore cannot benefit twice from the same cause of action and purport to seek further unwarranted compensation.
15. On aggravated damages the respondent submitted that it is trite law that parties are bound by their pleadings and new issues cannot be introduced at the submissions stage. The respondent further submitted that the trial court decision not to award aggravated damages to the appellant was merited. A keen perusal of the pleadings in the subordinate court reveals that the reason the appellant's cheques were dishonored was because the bank believed that the appellant had failed to comply with the provisions of the agreement.



16. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses.
17. The issues for determination in this appeal are as follows;
- i. Whether the appellant was entitled to general damages for breach of contract.
 - ii. Whether the appellant is entitled to an apology from the respondent.
 - iii. Whether the Appellant is entitled to aggravated damages.
18. The appellant submitted that the trial court failed to appreciate the evidence that the appellant suffered loss and damage to their reputation as a result of the conduct of the respondent in dishonoring the cheques.
19. I find that the trial court having found that the respondent was in breach of the contract for bank overdraft facility, ought to have compensated the appellant for the loss suffered and damage to reputation.
20. In the case of *Patel vs. National and Grindlays Bank Ltd* (1959) E.A. 76 the Court held as follows;
- “Where a banker dishonours a cheque when the customer’s account is in funds, it is the commercial credit of the customer that is injured and the inference arises that pecuniary loss will necessarily ensue”.
21. In the current case, the trial court found that there was an overdraft facility agreement which was up and running at the time the cheques were dishonored and the appellant suffered loss of credit and in the circumstances, the Trial Court ought to have awarded reasonable compensation.
22. In the case of *Equity Bank Limited & another v Robert Chesang* [2016] eKLR, the court stated as follows;
- “Where the banks decline to honour a customer’s order for the money held in account, without any sufficient explanation, that refusal or failure constitutes a breach of contract for which the banker is liable in damages.”
23. The judge in the case of *Equity Bank Limited & another v Robert Chesang(supra)*, also stated as follows;
- “In Halsbury’s Laws of England 4th Edition VOL 3 paragraphs 155 on wrongful dishonor of a cheque. It is stated as follows;
- “ If without justification , a banker dishonors his customer’s cheque, he is liable to the customer in damages for injury of credit. Proof of actual injury to credit is not necessary to secure substantial damages, either for a business customer or for personal customers. The answer on a cheque dishonored on presentation by a third person may constitute libel, but such cases are rare; in such cases general damages may be awarded.”
24. Further, in the case of *Equity Bank Limited & another v Robert Chesang(supra)*, the court also held that;
- “In T. G Reeday, Law Relating to Banking, 2nd Edition on the Obligations of the Bank in honouring cheques. The author writes thus: -



“.....If a bank dishonours a cheque wrongfully i.e. where funds are available and no legal impediment to payment exists, then this is a breach of contract for which the customer can sue for damages and the measure of the damages is not the amount of the cheque but such sum as is reasonable compensation for the injury to his credit..... However, in the case of a tradesman, and by analogy is that of a professional man or a commercial agent, reasonable compensation can be recovered without proof of special damages.”

25. In the circumstances, I award the appellant ksh.2,000,000 as reasonable compensation for the embarrassment and damage to his business reputation in addition to the bank charges of ksh.31,800.
26. On the issue as to whether the Appellant is entitled to aggravated damages, I find that the answer is in the negative.
27. I agree with finding in *Obonyo & Another v Municipal Council of Kisumu* [1971] EA 91 that;

“...exemplary damages are appropriate in two classes of case: oppressive, arbitrary and unconstitutional action by the servants of government, and conduct by a defendant calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff, and these classes should not be extended”.
28. In the current case, I find that the amount of Ksh.2,000,000 is sufficient compensation and I decline to award aggravated damages.
29. However, I find that the appellant is entitled to an apology and I direct that the respondent writes an equivocal written apology to the appellant within 30 days of this date.
30. I set aside the judgment of the trial court and substitute it with an award of kshs.2,031,800 together with costs and interest from the date of the trial court’s judgment.
31. The respondent is also directed to write an apology to the appellant within 30 days of this date and in default to pay a further ksh.50,000/=.
32. Each party to bear its own costs of this suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2024.

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

