



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

Civil Appeal 42 of 1998

BULLION BANK LIMITEDAPPELLANT

AND

FULCHANDMANEK & BROTHERS RESPONDENT

(Appeal from the Ruling and Order of the High Court of Kenya at Nairobi (Hon. Mr. Justice Ringera) dated the 1st day of July, 1996

in

H.C.C.C. NO. 101 OF 1996)

JUDGMENT OF THE COURT

This is an appeal by the unsuccessful defendant from the ruling and Order of the superior court (Ringera, J., as he then was) given on 1 July, 1996 whereby he allowed the plaintiff's application for summary judgment under the provision of **Order XXXV rules 2 and 3** of the Civil Procedure Rules and entered judgment for the plaintiff as prayed in the sum of K.Shs.789,649/= plus costs and interest.

At all material times the respondent firm was the customer of the appellant Bank and maintained a banking account at Nairobi Main Branch of the Bank. On 8 and 13 June 1995 the appellant debited the respondent's account with the Bank against cheque **Nos. 000085864 and 000085853** respectively and dated 8 and 13 June 1998 the respective sums of K.Shs.435,150/= and 350,150/= the said cheques being unknown to the respondent. The appellant also debited the respondent a sum of Shs.800/= for cheque books and Shs.3,549/= interest, thus adding up the respondent's loss to Kshs.789,649/=.

There was no denial by the appellant that the cheques on which the respondent's amount was debited did not belong to the respondent and the learned judge held that the defence filed was a hollow sham in the nature of a red herring. Mr. Ngunjiri for the appellant frankly conceded that there was a forgery.

With respect, we are in full agreement with the learned judge. In the circumstances of this case and as the cheques in question were forged we are satisfied that the appellant had no authority or mandate from the respondent to pay the amount of the said cheques or debit the amount of the said cheques and other charges to the account of the respondent.

The learned judge was plainly right in the conclusion he reached. For this reason the appeal fails. It is

accordingly dismissed with costs.

Dated and delivered at Nairobi this 18th day of February, 1999.

R.O. KWACH

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR