



**Kingdom Bank Limited v Wanjohi (Commercial Appeal E192 of 2023)
[2024] KEHC 2677 (KLR) (Commercial and Tax) (15 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E192 OF 2023**

**A MABEYA, J
MARCH 15, 2024**

BETWEEN

KINGDOM BANK LIMITED APPELLANT

AND

ALICE WANJA WANJOHI RESPONDENT

JUDGMENT

1. This is an appeal arising from the judgment of Hon D.S Aswani adjudicator in the Small Claims Court delivered on 3/8/2023. Being aggrieved by that decision, the appellant lodged an appeal in this Court vide a Memorandum of Appeal dated 21/8/2023.
2. The appeal is premised on 10 grounds of appeal which can be summarized as follows: -
 - a. That the Learned Adjudicator erred in holding that the appellant ought to have debited the client's account without knowledge of the client contrary to the client's instructions.
 - b. That the Learned Adjudicator erred in holding that the appellant had the burden of proof and had to provide time stamps as to when the amount was withdrawn from the client's bank account
 - c. That the Learned Adjudicator erred in holding that the appellant was on a contractual duty to diligently handle the account of a customer.
 - d. That the Learned Adjudicator erred in holding that the appellant owed a duty of care to the respondent despite there being no contractual relationship.
3. This being a first appeal, the Court is bound to re-appraise the evidence afresh, evaluate the same and come to its own independent conclusion. However, the Court must have in mind that it did not have



the advantage of seeing the witnesses testify. See *Selle & Another vs. Associated Motor Boat Company Ltd & Others* [1968] EA 123.

4. The evidence before the trial Court was that on 15/8/2022, the respondent erroneously credited Kshs 50,600/- to an MPESA till number in the name of Josemmah Traders Hardware Merchants an account domiciled at the appellant bank. That upon realization of the erroneous transfer, the respondent sent a notification to Safaricom who advised her to follow up with the appellant bank.
5. The respondent's position was that the appellant failed to act swiftly upon receipt of the alert and later on informed the respondent that the amount had been withdrawn by the customer and could only be recovered by a court order. The respondent filed a claim at the Small Claims Court and on 3/8/2023 whereby judgment was made in favour of the respondent.
6. The parties canvassed the appeal by way of written submissions which I have considered.
7. The appellant submitted that the respondent had not established any cause of action against the bank since the bank could not be held liable for actions that occurred without its knowledge. Counsel submitted that the respondent did not demonstrate how the appellant had been negligent in its actions. That the appellant was innocent and had been made accountable to the mistakes made or done by Safaricom and the respondent.
8. The respondent submitted that the appellant had acted in breach of the duty of care to the respondent for failing to stop a fraudulent transaction and shielding the customer. Counsel submitted that the appellant in the proceedings had failed to enjoin its customer to recover from the decretal sum.
9. I have considered the record of appeal and the submissions before Court. The main issue before court is whether the appellant is liable for the Kshs 50,600/- In the present appeal the appellant's case was that, by the time the respondent made a report of the erroneous payment, the customer had already withdrawn the money in that account. Further, the appellant was of the view that it had a duty of care to the customer and could not debit its customer's account without the customer's consent.
10. The dispute between the parties revolves around the transfer of money which involves four parties that is the bank, the respondent, Safaricom and the customer who received the money. The first question is whether the appellant had a duty of care to the respondent.
11. In *Karak Brothers Company Ltd v Burden* [1972] All ER 1210, it was held that a bank has a duty of care to its customer with relation of carrying out its functions within the contract entered upon by the two parties. The Court observed as follows: -

“A bank has a duty under its contract with its customer to exercise “reasonable care and skill” in carrying out its part with regard to operations within its contract with its customer. The standard of that reasonable care and skill is an objective standard applicable to bankers. Whether or not it has been attained in any particular case has to be decided in the light of all the relevant facts, which can vary almost infinitely.”
12. It is not in dispute that the respondent is not a customer of the appellant and therefore there is no legal relationship between the two. However, money was erroneously transferred from the respondent through Safaricom and found its way to the customer account which is situate in the appellant's bank. The process of electronic money transfer is based on acts of good faith.
13. It is undertaken on the basis that the money transacted will reach its intended destination and vice versa, that is, that the same would be reversed to its origin in case of an error. In the normal cause of



business, the occurrence of erroneous transactions is inevitable and the question is whether the bank acted in good faith with respect to this transaction.

14. I have perused the record and from the messages produced, it is evident that the respondent informed Safaricom of the erroneous transaction. On 16/8/2022, a day after the transaction, Safaricom informed the respondent that the reversal request had been transferred to the appellant for resolution. The appellant has attached a bank statement showing that the customer withdrew the funds on the same day the amount landed in the account. Therefore, by the time the request was received by the bank there was no money held by the appellant on behalf of the customer.
15. In its judgment, the trial court held that money paid by a mistake is repayable. That being the case, the bank was under a duty to demonstrate that it took the necessary steps in recalling the money. However, all that the bank did was to file statements to show how the transaction was undertaken or how the money was withdrawn. There was nothing to show that the bank called for the money from its customer. No evidence of its intention to aid the recovery of the money.
16. While I admit that the bank has a duty to protect its customer's interests, in this case, the customer fraudulently withdrew money that did not belong to it. The bank had a duty to ensure that it did not aid a fraud and it is not enough to state that the account did not have sufficient funds.
17. In the premises, I find no error on the part of the decision appealed against and the appeal is therefore without merit and is dismissed with costs. The decision of the Adjudicator dated 3/8/2023 is hereby upheld.

It is so decreed.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MARCH, 2024.

A. MABEYA, FCI Arb

JUDGE

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