

UGANDA / JUDGMENT

Pearl Engineering Co. Ltd v Magdalene Aguti (Civil Suit No. 991 of 2004) [2009]

UGCommC 28 (14 September 2009)

[2009] UGCommC 28

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

Civil Suit No. 991 of 2004

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incorporated under the laws of Uganda, brought this suit against the defendant, Magdalene

Aguti, by way of plaint for the recovery of Ug. Shs.15,000,000/= (Fifteen million Uganda shillings), general damages for conversion and breach of trust with interests thereon from the date of judgment till payment in full plus costs of the suit.

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\par The case for the plaintiff is that on or about the 9^{\insrsid3475318\charrsid1993551 th} {\insrsid3475318\charrsid1993551

of August 2004 the defendant, who was employed as a cashier by the plaintiff company, was given a cheque No.102016 in her names with instructions to withdraw Ug. Shs.15,000,000/= (Fifteen million Uganda shilling

s) from Standard Chartered Bank (U) Ltd in her capacity as cashier of the plaintiff and distribute it to the officers of the plaintiff company to be used for its business. The defendant later informed the management of the plaintiff company that there wer

the insufficient funds on the plaintiff's Bank Account to cash the cheque but she kept the cheque. On or about the 31st

of August 2004, without the knowledge or consent of the plaintiff company's management, the defendant used the said cheque No.102016 to withdraw Ug. Shs.15,000,000/= from the plaintiff's

bank account which she put to her own use to the plaintiff company's detriment and loss. The defendant later disappeared and absconded from duty. It is the case for the plaintiff that the defendant's acts amounted

to breach of contract, conversion and breach of trust and therefore occasioned great loss to the plaintiff's business.

The defendant in her written statement of defence denies the allegations and avers that on the 9th of August 2004 she was given instructions

to go to Standard Chartered Bank (U) Ltd to cash cheque No.102016 worth Ug. Shs.15,000,000/=. That, at the bank she was informed that the cheque could not be cashed due to lack of sufficient funds. That on that very same day she returned the cheque

to the Managing Director. It was further averred that on the 31st of August 2004, the defendant was given the same cheque by the accountant, her immediate supervisor, who instructed her to go and cash the cheque which she did and she deposited the money

with the cashier Mr. Aloysius Nuwagira and the same was duly recorded in the register. The defendant therefore denies converting the said money or absconding from duty as alleged.

The parties at the pre trial conference agreed to the following facts:-

The defendant was employed by the plaintiff as an Accounts Assistant.

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\par The agreed issues were the following:-

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\insrsid3475318\charrsid1993551 Whether the defendant converted shillings 15,000,000/= withdrawn from the company accounts by herself.

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\insrsid3475318\charrsid1993551 Whether the defendant delivered the money to the company as instructed by the company.

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 {\insrsid3475318\charrsid1993551 What remedies are available to the parties?

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\par {*\bkmkend OLE_LINK1}{*\bkmkend OLE_LINK2}Ms. Joy Ntambirweki appeared for the
 plaintiff while}{\insrsid3475318\charrsid1993551 Mr. Joseph Kasozi }
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appeared for the defendant. The plaintiff called three (3) witness namely}
 {\insrsid3475318\charrsid1993551 Gumisiriza Birantana PW1 the Managing director of }
 {\insrsid3475318\charrsid1993551 Pearl Engineering Company, }{\insrsid3475318\charrsid1993551
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gulu Richard Wanema} the Accountant and Nuwagira Aloysius Cathburt PW3 a cashier at Pearl Engineering Company

. For the defendant, Magdalene Aguti DW1 testified.

For convenience, I will consider issue No.2 first before proceeding to issue No.1.

Issue No. 2:
Whether the defendant delivered the money to the company as instructed by the company.

Counsel for the plaintiff in relying on the testimony of Mr. Gumisiriza Birantana (PW1) submitted that on

the 9th of August 2004, the M^{anaging} D^{irector} of the plaintiff company requisitioned for money to carter for the employees of the plaintiff and carry out other necessary business activities while at the site in Fort Portal. Counsel

for the Plaintiff

submitted that instructions were given to the defendant to go to Standard Chartered Bank (U) Ltd with cheque No.102016 to withdraw money as a bank agent. She however returned and informed the

M^{anaging} D^{irector} of the plaintiff company that the bank had refused

to give her the money due to insufficient funds on the plaintiff company's bank account.

\par }{\insrsid9324602\charrsid1993551 It was the }{\insrsid11214776\charrsid1993551 testimony Mr. Gumisiriza Birantana (PW1)}{\insrsid9324602\charrsid1993551 that he was the only }{\insrsid11214776\charrsid1993551

officer of the plaintiff company who was authorized to authorize cash withdraws and paymen}{\insrsid9324602\charrsid1993551 ts in the plaintiff company. T}{\insrsid11214776\charrsid1993551

hat he never authorized the defendant to withdraw the money using the cheque apart from the day when he gave instructions to her that is on the 9}{\super\insrsid11214776\charrsid1993551 th}{\insrsid11214776\charrsid1993551 of August 20004. Counsel}{\

\insrsid9324602\charrsid1993551 for the plaintiff }{\insrsid11214776\charrsid1993551 submitte}{\insrsid9324602\charrsid1993551 d that the defendant}{\insrsid11214776\charrsid1993551 admitted to having been given instructions by the }{\

\insrsid1519661\charrsid1993551 M}{\insrsid11214776\charrsid1993551 anaging }{\insrsid1519661\charrsid1993551 D}{\insrsid11214776\charrsid1993551 irector of the plaintiff company on the 9}{\super\insrsid11214776\charrsid1993551 th}{\

\insrsid11214776\charrsid1993551 of August 2004 to withdraw Ug. Shs.15,000,000/= using cheque No. 102016 marked exhibit P.1 which was written in her names. She however alleged that on the 31}{\super\insrsid11214776\charrsid1993551 st}{\

\insrsid11214776\charrsid1993551 of August 2004 she was given instructions to go and cash the cheque and that she gave the money to the cashier, Mr. Nuwagira Aloysius in the presence of the accountant, Mr. Igulu Richard Wanema. Mr. Igulu Richard Wanema}

{\insrsid11214776\charrsid1993551 PW.2 however testified that the cash payments where only made when an order came from the }{\insrsid1519661\charrsid1993551 Managing D}{\insrsid11214776\charrsid1993551 irector of the plaintiff company.

\par

\par Counsel }{\insrsid1519661\charrsid1993551 for the Plaintiff }{\insrsid11214776\charrsid1993551 therefore submitted that this evidence corroborated that of Mr.}{\insrsid11214776\charrsid1993551 Gumisiriza Birantana (PW1)

that he was the only authorized person

in the plaintiff company who can authorize cash payments and withdrawals and any other payments. Counsel emphasized that the accountant Mr. Iguru Pw.2 does not authorize payments as clearly stated by him in the evidence he adduced before court.

\par

\par Further, counsel for the plaintiff submitted that the defendant never delivered the money to the plaintiff}{\insrsid1519661\charrsid1993551 company}{\insrsid11214776\charrsid1993551

. Counsel referred to the testimony of Nuwagira Aloysius Cathburt PW.3 who testified that he only makes payments and receives cash on the instructions of the M{\insrsid1519661\charrsid1993551 anaging }

\insrsid1519661\charrsid1993551 D{\insrsid11214776\charrsid1993551 irector of the plaintiff company. He further denied receiving any money from the defendant on the 31} {\super\insrsid11214776\charrsid1993551 st}{\insrsid11214776\charrsid1993551

August 2004 and he never posted the transaction into the system. Counsel for the plaintiff } {\insrsid1519661\charrsid1993551 submitted}{\insrsid11214776\charrsid1993551 that the fact that the column for vo

ucher number in the cheque register book, Marked Exhibit P.3, is empty confirms that the money was not given to the cashier as alleged by the defendant. Counsel for the plaintiff further submitted that the act of disappearing from the bank by the defendan

t before {\insrsid11214776\charrsid1993551 Mr.}{\insrsid11214776\charrsid1993551 Gumisiriza Birantana (PW1) could discover who had withdrawn the money shows that the defendant knew that she had withdrawn money, had never remitted it to the plaintiff

\rquote s cashier and was therefore running away before she could be arrested.

\par {\b\insrsid11214776\charrsid1993551

\par {\insrsid11214776\charrsid1993551 The defendant during examination in chief testified that on 9}{\super\insrsid11214776\charrsid1993551 th}{\insrsid11214776\charrsid1993551 August} {\insrsid1519661\charrsid1993551 2004}{\insrsid11214776\charrsid1993551

, she was instructed by the Managing Director of Pearl Engineering to write a cheque in her names of Ug. Shs.15,000,000/= to draw it in Standard Chartered Bank. She wrote the payment voucher and the cheque which were duly signed and approved. That on

that same day, she went to the bank where she was told that it was not possible to draw the money. The defendant claims to have returned the cheque to the Managing Director and told him that she was not able to draw the money due to the insufficient funds

on the Plaintiff company account. The plaintiff in her testimony claimed that the Managing Director took the cheque from her.

\par

\par {\insrsid11214776\charrsid1993551 The defendant testified that, on the 31} {\super\insrsid11214776\charrsid1993551 st}{\insrsid11214776\charrsid1993551 August 2004 she cashed the cheque No.102016 and that she did so, on the instructions of the accountant of the plaintiff company, Mr.}{\insrsid11214776\charrsid1993551 Iguru Richard

. She testified that the money withdrawn was deposited with the cashier of the plaintiff company Mr. Nuwagira Aloysius }{\insrsid1519661\charrsid1993551 she }{\insrsid11214776\charrsid1993551 and made an entry in the cheque register marked exhibit P.3

for the 9}{\super\insrsid11214776\charrsid1993551 th}{\insrsid11214776\charrsid1993551 August 2004 which was to the effect that the money was cashed to \93Aloy\94

. The defendant further testified that about a week after the making the withdrawal she was called by the Managing Di

rector of the plaintiff company inquiring whether she had withdrawn the Ug. Shs.15,000,000/= and she told him that she had so they proceeded to the Bank to verify whether it was her who got the money. She testified that while at the bank she was told by }

\insrsid11214776\charrsid1993551 Mr.){\insrsid11214776\charrsid1993551 Iguru Richard the accountant that she was going to Luzira this led to a){\insrsid1519661\charrsid1993551 } {\insrsid11214776\charrsid1993551

rise in her blood pressure which caused her to seek immediate medical attention. She further testified that since she was going on){\insrsid1519661\charrsid1993551 maternity} {\insrsid11214776\charrsid1993551 leave, she notified the accountant that sh

e would return after her leave.

\par

\par }{\insrsid11214776\charrsid1993551 Counsel for the defendant submitted that the move by the Managing Director to go to the bank was calculated to create scare with in t}{\insrsid412992\charrsid1993551 he defendant. T){\insrsid11214776\charrsid1993551

hat the defendant did not disappear because the company had details about her whereabouts and was in touch with the defendant\rqoute

s husband at all material time. Counsel further submitted that the allegation of the money not being received by the company put }{\insrsid1519661\charrsid1993551 the} {\insrsid11214776\charrsid1993551

burden of proof on the plaintiff to prove the assertion. Counsel }{\insrsid1519661\charrsid1993551 for the Defendant }{\insrsid11214776\charrsid1993551 referred me to } {\b\insrsid1519661\charrsid1993551 S){\b\insrsid752631\charrsid1993551

ection 101 (1) of the E){\b\insrsid11214776\charrsid1993551 vidence Act cap 6 } {\insrsid11214776\charrsid1993551 which provides that;

\par }{\insrsid1519661\charrsid1993551

\par }{\pard \qj \li720\ri1440\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\ri1440\lin720\itap0\pararsid1993551 }{\i\insrsid11214776\charrsid1993551 \93

Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he or she asserts must prove that those facts exist.\94

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\tx10080\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid1993551 {\insrsid412992\charrsid1993551 It was counsel}
{\insrsid7164492\charrsid1993551 \rquote }{\insrsid412992\charrsid1993551 s }{

{\insrsid14773704\charrsid1993551 submission}{\insrsid11214776\charrsid1993551 that the cash was deposited with the Cashier Mr. }{\insrsid11214776\charrsid1993551

Nuwagira Aloysius as was the practice and that the defendant entered in the remarks column of the cheque register (exhibit P){\insrsid1519661\charrsid1993551 .}
{\insrsid11214776\charrsid1993551 3) just like other entries not in question that }

{\i\insrsid11214776\charrsid1993551 \93cash to }{\i\insrsid14377759\charrsid1993551 Alloy}
{\i\insrsid1519661\charrsid1993551 \94}{\i\insrsid11214776\charrsid1993551 . }
{\insrsid11214776\charrsid1993551 Counsel }{\insrsid1519661\charrsid1993551

for the Defendant submitted}{\insrsid11214776\charrsid1993551

that this cheque register book was relied upon by the company to trace the movement of cheques and other subsequent payments. That the entries made by the Managing Director and the Accountant where check}{\insrsid1519661\charrsid1993551 and balance}{

\insrsid11214776\charrsid1993551

mechanisms to ascertain transactions that have taken place in the company. Counsel in his submissions averred that the Managing Director of the plaintiff company had received the Ug. Shs.15,000,000/= and that he had confirmed this by ticki

ng against it in the cheque register book, entered it in the computer and reconciled it. He therefore submitted that the money was received by the plaintiff company and that the plaintiff has failed to discharge their burden of proof.

\par

\par Counsel for the plaintiff in reply }{\insrsid412992\charrsid1993551 submitted}
{\insrsid11214776\charrsid1993551

that the allegation that the defendant was instructed by the Accountant is disproved by her own evidence when she testified that she gave the money to the cashier upon returning from the bank yet she had also testified that she rep

orts back to the person who had sent her but with this transaction she reported to the accountant just because he was in the same office}{\insrsid3356863\charrsid1993551 as the cashier. Counsel}
{\insrsid11214776\charrsid1993551

submitted that the cheque register was for tracing cheques and not cash and that the defendant admitted to this. The

that the cheque no.102016 was never recorded again when it was taken out again as was required by the usual company practices. Counsel further submitted that the tick made by the

Managing Director in the register only meant that he had seen

the cheque and that the posting of the cheque was made on the 9th of August 2004 and that posting did not mean reconciliation.

Counsel for the Plaintiff therefore submitted that it is not true that the defendant deposited the money with the cashier. That

if the money had been handed over to the cashier the defendant would have told the Managing Director that she had withdrawn the money and given it to the cashier but she instead denied that she had done so.

From the evidence before court it is not disputed

that defendant was instructed to withdraw Ug. Shs.15,000,000/= (Fifteen million Uganda shillings) from the plaintiff's account using cheque

No.102016, marked Exhibit P.1, drawn on Standard Chartered Bank (U) Ltd in the names of the defendant on the 9th of August 2004. It is also not disputed that on the 31st

of August 2004 the defendant went to standard Chartered bank and withdrew the said sum from the plaintiff company's

account. However the point of dispute arises in regard to whether the money was delivered to the plaintiff company.

Making reference to the evidence before me, Mr. Gumisiriza Birantana (PW1) and Mr. Iguru Richard (PW.2) testified that they never gave instructions to the defendant to withdraw the

Ug. Shs.15,000,000/= (Fifteen million Uganda shillings) from the plaintiff's account using cheque No.102016 on the 31st

of August 2004 as alleged by the defendant. Further, Mr. Nuwagira Aloysius (PW3) claims that he never received the said amount from the plaintiff. However the testimonies of Mr. Gumisiriza (PW.1)

show that it was an established practice in the company that when the money was collected from the bank it always went to the paying cashier and in this case that Mr. Nuwagira Aloysius (PW3) and the defendant show that it was an established practice in the company that when the money was collected from the bank it always went to the paying cashier and in this case that Mr. Nuwagira Aloysius

who would not sign anywhere to show that he had received the money.

It was Mr. Gumisiriza's testimony that when he was reconciling with the account he found a withdrawal of Shs.15,000,000/=. Upon inquiry, he found that it was the defendant that had withdrawn the money. When he went to inquire at the bank together with the defendant and the accountant, the defendant disappeared and was later found by the police in Mulago hospital after she had just given birth to a baby. However the defendant insists that she gave the money to Mr. Nuwagira Aloysius and she claims to have made an entry in the cheque register book marked exhibit P.3 in order to show that the money was given to Mr. Aloysius the cashier. The defendant further testified that the reason for leaving the bank, on the day when she had gone with the Mr. Mwanagala was to get a baby.

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\insrsid9258957\charrsid1993551 D}\insrsid11214776\charrsid1993551 irector of the plaintiff company to verify who had withdrawn the money, was because she had got high blood pressure and had therefore gone to seek medical attention.

\par }\insrsid11214776\charrsid1993551 I have addressed my mind to the }
\insrsid11214776\charrsid1993551 cheque register book}\insrsid11214776\charrsid1993551
, Exhibit P.3. It has several entries but the one that is most important to this case is made on the 9}
\super\insrsid11214776\charrsid1993551 th}\insrsid11214776\charrsid1993551
of August 2004. It shows that Ug. Shs.15,000,000/= was withdrawn using cheque No.102016 by }
\insrsid7164492\charrsid1993551 Maggie}\insrsid11214776\charrsid1993551 that is the defendant
and signed by her however the post date and the payment voucher num}
\insrsid7305012\charrsid1993551 ber column were not filled in. T}
\insrsid11214776\charrsid1993551 he remarks column was filled i}
\insrsid7305012\charrsid1993551 n with the}{

\insrsid11214776\charrsid1993551 \93cash To}\insrsid12914559\charrsid1993551 Alloy}
\insrsid11214776\charrsid1993551 \94}\insrsid2177420\charrsid1993551 though the words are
not clear. T}\insrsid12914559\charrsid1993551 here}{

\insrsid11214776\charrsid1993551 is nothing }\insrsid12914559\charrsid1993551 else }
\insrsid11214776\charrsid1993551 to show that the Ug. Shs.15,000,000/= was given to Mr.
Nuwagira Aloysius as claimed by the defendant. Mr. }

\insrsid11214776\charrsid1993551 Nuwagira Aloysius (PW3) testified that it was his duty to post
vouchers in the system after the Managing Director and the Accountant of the plaintiff company
had looked at them but that he did not

post cheques. He also denied ever}\cf13\insrsid11214776\charrsid1993551 }
\insrsid11214776\charrsid1993551

posting the transaction in issue. Another peculiar thing about the entry made in the cheque
register book (Exhibit P3) is in regard to the markings that were supposed to be entered by the
Managing Director and the account

ant. The accountant Mr. Iguru Richard (PW.2) testified that he would enter the Letter \93P\94 in
the cheque register book after a posting had been made in the computer system. He }
\insrsid1331635\charrsid1993551 admitted to having }

\insrsid11214776\charrsid1993551 entered the letter \93P\94 on the entry made on the 9}
\super\insrsid11214776\charrsid1993551 th}\insrsid11214776\charrsid1993551 of August 2004 but
he }\insrsid1331635\charrsid1993551 denied}{

\insrsid11214776\charrsid1993551 do}\insrsid1331635\charrsid1993551 ing}
\insrsid11214776\charrsid1993551 the reconciliation.}\insrsid3433012\charrsid1993551

\par }{\insrsid8410479\charrsid1993551

\par }{\insrsid11214776\charrsid1993551 Mr. Gumisiriza (PW.1) testified that he ticks in the cheque register book in the column for payment of }{\insrsid11214776\charrsid1993551 voucher number,}{\insrsid11214776\charrsid1993551 when he enter}{

\insrsid9258957\charrsid1993551 s}{\insrsid11214776\charrsid1993551 a cheque in his computer for conciliation and that the tick meant that he had seen a cheque that had been issued.}
{\insrsid3433012\charrsid1993551 It was Mr. Gumisiriza testimony that,

he made a tick on the entry made on the 9}{\super\insrsid3433012\charrsid1993551 th}
{\insrsid3433012\charrsid1993551 August 2004 and also added a star with the presumption that the defendant had gone to the bank and withdrawn the money. }

\insrsid11214776\charrsid1993551 He further testified}{\insrsid1331635\charrsid1993551 ,}
{\insrsid11214776\charrsid1993551 during cross examination}{\insrsid1331635\charrsid1993551 ,}
{\insrsid11214776\charrsid1993551

that the cheque register book was meant for purposes of tracing cheques and not cash and that a person receiving the money does not sign in this book }{\insrsid9258957\charrsid1993551 but}
{\insrsid11214776\charrsid1993551 that they do not keep any }

\insrsid9258957\charrsid1993551 other }{\insrsid11214776\charrsid1993551 documentation to show that money ha}{\insrsid9258957\charrsid1993551 d}{\insrsid11214776\charrsid1993551 come into the company but rather it }{\insrsid9258957\charrsid1993551

would generally}{\insrsid11214776\charrsid1993551 be noticed by everyone when the money }
{\insrsid9258957\charrsid1993551 had been}{\insrsid11214776\charrsid1993551 brought into the company. }{\insrsid3433012\charrsid1993551

\par

\par These facts clear}{\insrsid2646004\charrsid1993551 ly}{\insrsid3433012\charrsid1993551 show that the company did not have a good system of accounts and that there was no system established to show

a systematic movement of documents and money in the company. The company accounts seemed to be run on the basis of good faith and trust of all its employees.}
{\insrsid4004585\charrsid1993551

\par

\par }{\insrsid11214776\charrsid1993551 It would appear to me therefore, basing on the facts of the case and all the evidence adduced}{\cf13\insrsid11214776\charrsid1993551 }
{\insrsid11214776\charrsid1993551 bef

ore court that the defendant withdrew Ug. Shs.15,000,000/= }{\insrsid1970201\charrsid1993551 with}{\insrsid11214776\charrsid1993551 instruc}{\insrsid1970201\charrsid1993551 tions from the accountant}{\insrsid11214776\charrsid1993551

using cheque No.102016 (Marked Exhibit P3) }{\insrsid1970201\charrsid1993551 and} {\insrsid11214776\charrsid1993551 delivered the said amount to Mr. Nuwagira Aloysius the cashier of the plaintiff company}{\insrsid4208192\charrsid1993551

as was the established }{\insrsid9258957\charrsid1993551 practice} {\insrsid4208192\charrsid1993551 in the company and went ahead to make a} {\insrsid13959169\charrsid1993551 n entry }{\insrsid4208192\charrsid1993551 in the cheque register book tha}{

\insrsid13959169\charrsid1993551 t }{\i\insrsid6126084\charrsid1993551 \'93cash To Alloy\'94} {\insrsid11214776\charrsid1993551 .

\par }{\insrsid9258957\charrsid1993551 No other document other than the cheque register book was adduced in evidence to show the contrary. Mr. Nuwagira, Mr. Iguru and the Managing Director M

r. Gumisiriza all testified that they all do some kind of posting, some of them do so on computer but none of them attempted to show court their own records beside the said register. If they were so confident of their own records why did they not show them to court? I find that to have been odd.

\par }{\insrsid11214776\charrsid1993551

\par It is therefore my }{\insrsid1970201\charrsid1993551 finding that the } {\insrsid13959169\charrsid1993551 defendant delivered}{\insrsid11214776\charrsid1993551 the Ug. Shs.15,000,000/= }{\insrsid11214776\charrsid1993551 (Fifteen million Uganda shillings) } {\insrsid11214776\charrsid1993551 to the plaintiff. }{\insrsid11214776\charrsid1993551

\par }{\pard \ql \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid1993551 }{\b\ul\insrsid11214776\charrsid1993551

\par }{\pard \qj \fi-2160\li2160\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin2160\itap0\pararsid1993551 }{\b\insrsid3475318\charrsid1993551 Issue No. 1: \tab } {\b\ul\insrsid3475318\charrsid1993551

Whether the defendant converted shillings 15,000,000/= withdrawn from the company accounts by herself.

\par }{\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid1993551 }{\insrsid13786757\charrsid1993551

The facts surrounding this issue are similar to those of the previous issue so that being the case, I shall not restate. Instead I shall now address the law relating to conversion.

Conversion is an act of deliberate dealing with a chattel or goods in a manner inconsistent with another's right to its possession. As it is stated in

Clerk & Lindsell on Torts, 13

super th Edition, P.1079,

Anyone who without authority takes possession of another man's

goods with the intention of asserting some right or dominion over them is prima facie guilty

of

conversion.

According to

Paget's Law of Banking, 12

super th

Edition

it is generally agreed, in stating the requisite for a plaintiff in conversion, that the plaintiff must have been entitled to immediate possession of the chattel at the date of conversion.

I have reviewed the submissions on this issue and looked at the

evidence on record. It is not contested that Ug. Shs.15,000,000/=

was withdrawn by the defendant

on the 31st

August, 2004.

he defendant herself admits to having withdrawn the amount on the 31st

August 2004 and that she made an entry in the cheque register book that she gave the said money to Mr. Aloysius a cashier at the plaintiff company though \insrsid1447750\charrsid1993551 the entry in the register

is not very clear. Evidence before court also shows that \insrsid10167456\charrsid1993551 it was the \insrsid1447750\charrsid1993551 actice \insrsid10167456\charrsid1993551 in the company for \insrsid10167456\charrsid1993551

Mr. Aloysius not to sign for monies he had received. \insrsid1447750\charrsid1993551 I need not emphasize that this is a critical accounting weakness. \insrsid3475318\charrsid1993551

\par \insrsid10167456\charrsid1993551

\par In considering the law on conversion \insrsid15363419\charrsid1993551 , \insrsid10167456\charrsid1993551 one must have taken possession of another man's goods \insrsid10167456\charrsid1993551

without authority and with the intention of asserting some right or dominion over them. Looking at the facts of the instant case the cheque was drawn in the names of Magdalene \insrsid10167456\charrsid1993551 Aguti. This basically mean

s that she was the \insrsid14691757\charrsid1993551 payee \insrsid10167456\charrsid1993551 holder of the cheque and therefore the \insrsid1447750\charrsid1993551

authorized person trusted the company to collect the money. She had done so before and after the 31st \insrsid1447750\charrsid1993551 August 2004 as the register clearly shows. \insrsid341477\charrsid1993551

It would therefore be absurd to assert that she converted the \insrsid14486567\charrsid1993551 said \insrsid341477\charrsid1993551 money \insrsid14486567\charrsid1993551 since the cheque was drawn in her names and not the plaintiff company's

\insrsid12941429\charrsid1993551 s name. \insrsid1447750\charrsid1993551 How does conversion arise here? \insrsid12941429\charrsid1993551 Further \insrsid14691757\charrsid1993551 I have already \insrsid12941429\charrsid1993551

found under issue No.2 above that the \insrsid12941429\charrsid1993551 Ug. Shs.15,000,000/= was delivered by the defendant to the plaintiff company. \insrsid3475318\charrsid1993551

There is therefore no doubt in my mind that by reason of the above the defendant \insrsid12274055\charrsid1993551 did not convert \insrsid5405444\charrsid1993551 the Uganda shillings 15,000,000/= with \insrsid3475318\charrsid1993551

thdrawn from the company Account \insrsid12941429\charrsid1993551 by herself. \insrsid3475318\charrsid1993551

\par \cf13\insrsid3103457\charrsid1993551

\par {\insrsid3475318\charrsid1993551 In answer therefore to the }
{\insrsid10772483\charrsid1993551 issue No. 1}{\insrsid3475318\charrsid1993551 I find that the
defendant {\insrsid11485880\charrsid1993551 did not {\insrsid3475318\charrsid1993551
convert the Ug. Shs.15,000,000/= (Fifteen million Uganda){\insrsid16129337\charrsid1993551
shillings) that she withdrew}{\insrsid3475318\charrsid1993551 from the plaintiff company\rq
s Account on the 31}{\super\insrsid3475318\charrsid1993551 st}{
\insrsid3475318\charrsid1993551 of August 2004.}{\insrsid3475318\charrsid1993551

\par {\b\ul\insrsid3475318\charrsid1993551 Issue No. 3:}{\insrsid3475318\charrsid1993551 \tab }
{\b\ul\insrsid3475318\charrsid1993551 What remedies are available to the parties?

\par {\insrsid3475318\charrsid1993551

\par The plaintiff has prayed for th

e recovery of Ug. Shs.15,000,000/= (Fifteen million Uganda shillings), general damages for
conversion and breach of trust with interests thereon at the rate of 28% Per annum from the date
of judgment till payment in full plus costs of the suit.

\par {\insrsid1404914\charrsid1993551

\par {\cf1\insrsid12913600\charrsid1993551 Based on my findings }
{\insrsid6051174\charrsid1993551 in issue No.2, }{\insrsid11485880\charrsid1993551 that the
defendant delivered}{\insrsid6693218\charrsid1993551 the Ug. Shs.15,000,000/=to the plaintiff}{
\insrsid6051174\charrsid1993551 ,}{\insrsid11825794\charrsid1993551 I decline to award the sum
prayed for by the plaintiff.}{\insrsid11485880\charrsid1993551

\par {\insrsid1404914\charrsid1993551

\par {\cf1\insrsid1404914\charrsid1993551 As regards general damages, interest and costs,}
{\cf1\insrsid11485880\charrsid1993551 I note that the plaintiff has failed to prove conversion by
the defendant of the}{\cf13\insrsid11485880\charrsid1993551 }{

\insrsid11485880\charrsid1993551 Ug. Shs.15,000,000/= (Fifteen million Uganda shillings) that she
withdrew from the plaintiff company\rq
{\super\insrsid11485880\charrsid1993551 st}{\insrsid11485880\charrsid1993551 of August 2004.}{

\insrsid11485880\charrsid1993551 }{\cf1\insrsid11485880\charrsid1993551 I}
{\cf1\insrsid1404914\charrsid1993551 n the circumstances }{\cf1\insrsid11485880\charrsid1993551
therefore,}{\cf1\insrsid1404914\charrsid1993551

I have seen no justification for an award of general damages, interest or costs to the plaintiff. I
therefore }{\cf1\insrsid10114810\charrsid1993551 decline to award the general }
{\cf1\insrsid1404914\charrsid1993551 damages or interest and I order that

the plaintiff bears the costs of this suit.}{\insrsid3475318\charrsid1993551

\par {\cf1\insrsid11485880\charrsid1993551

\par {\cf1\insrsid13110044\charrsid1993551 I shall now address my mind to the prayers of the defendant.

\par {\insrsid11485880\charrsid1993551 The defendant {\insrsid9206891\charrsid1993551 counsel {\insrsid11485880\charrsid1993551 in {\insrsid13110044\charrsid1993551 the} {\insrsid11485880\charrsid1993551 submi

ssion prayed for, general damages of Ug. Shs.5,000,000/= {\insrsid9860255\charrsid1993551 (Five million Uganda shillings), {\insrsid11485880\charrsid1993551 special damages} {\insrsid16280772\charrsid1993551 for salary arrears}{

\insrsid9860255\charrsid1993551 and costs for the suit}{\insrsid16280772\charrsid1993551 .} {\insrsid9860255\charrsid1993551 However}{\insrsid1447750\charrsid1993551 , the Defendant did not file a counter-claim and so this is a departure from the {

\insrsid9206891\charrsid1993551 Plea}{\insrsid1447750\charrsid1993551 dings which is no} {\insrsid11103948\charrsid1993551 t acceptable. I therefore {\insrsid6051174\charrsid1993551 decline to award}{\insrsid10114810\charrsid1993551

the special damages as prayed for by the defendant.

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\par {\insrsid1404914\charrsid1993551 I accordingly dismiss} {\cf1\insrsid1404914\charrsid1993551 the plaintiff\rsquotes suit as against the defendant} {\insrsid6642608\charrsid1993551 with}{\insrsid1404914\charrsid1993551

an order that the plaintiff bears the}{\insrsid6642608\charrsid1993551 costs} {\insrsid11485880\charrsid1993551 of this suit}{\insrsid6642608\charrsid1993551 .} {\insrsid3475318\charrsid1993551

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\par Geoffrey Kiryabwire

\par JUDGE

\par {\b\insrsid11103948\charrsid1993551

\par {\b\insrsid3475318\charrsid1993551 Date}{\b\insrsid11103948\charrsid1993551 : }
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uto\adjustright\rin0\lin1080\itap0\pararsid1993551 {\i0\f0\insrsid9206891\charrsid1993551 - G.
Kandeebe for Plaintiff

\par - J. Kasozi for Defendant

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\par Geoffrey Kiryabwire

\par }{\b\i0\f0\insrsid9206891\charrsid1993551 JUDGE

\par }{\b\i0\f0\insrsid9206891\charrsid1993551 Date: 15/09/2009

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