

plaintiff had wanted the said deposit to be used to purchase forex to transmitted to Kenya to buy goods. The plaintiff avers that not all the money was sent to Kenya as he had instructed. When the plaintiff inquired from the defendant as to the reason for this short fall he was informed that according to the defendant's other records, the plaintiff had only deposited Ushs.1,111,000/= on the 10th December, 2002 and not Ushs.11,111,000/=. The plaintiff now seeks to recover the difference in the amounts being the said Ushs.10,000,000/=.

The defendants deny that they received Ushs.11,111,000/= from the plaintiff. The following issues were framed for trial;

- 1- Whether the plaintiff deposited Ushs.11,111,000/= or Ushs.1,111,000/= on the 10th December 2002.
- 2- What remedies are available to the parties.

Mr. Kandebe Ntambirweki appeared for the plaintiff while Mr. J. P. Baingana appeared for the defendant.

Issue No. 1: Whether the plaintiff deposited Ushs.11,111,000/= or Ushs.1,111,000/= on the 10th December 2002.

The case for the plaintiff is fairly straight forward. He says that he deposited Ushs.11,111,000/= and he got a receipt for the deposit (Exh. P.34). That receipt in the view of the plaintiff was sufficient evidence to prove that he deposited Ushs.11,111,000/= and not Ushs.1,111,000/=.

Counsel for the defendants submitted that the said receipt Exh. P.34 was a forgery. He submitted that Mr. Mohammad Manji (DW1) the owner of the defendant company testified that the figure of Ushs.11,111,000/= could not be traced through the defendants other accounting books like an exercise book, cash book (Exh. D2), ledger book (Exh. D3) and computer print out record (Exh. D1). Counsel for the defendant submitted that even the cashier who allegedly signed the receipt in question one Justine Namujju when charged with theft before the Magistrates Court but was acquitted because she successfully challenged the authenticity of the said receipt.

Counsel for the plaintiff submitted that the said cashier Ms. Namuju was not called to give evidence and that this was fatal to the defence case because Mr. Manji (DW1) was not present at the counter at the time the plaintiff deposited the money.

Both counsel have asked court to believe their respective client's version of the events that occurred on the 10th December, 2002. Both counsel have addressed me as to how to treat this evidence. Counsel for the plaintiff referred me to Section 60 of the Evidence Act to the effect that a document can be proved by primary or secondary evidence. He submitted that Exh. P.34 was a certified copy of the receipt in question from the Magistrates Court and therefore proved that the original (held by the criminal court) existed.

Counsel for the defendant referred me to the case of

Nsubuga V Kavuma [1978] HCB 307

for the proposition that in civil cases the burden lies on the plaintiff to prove his case on the balance of probabilities. He also referred me to the case of

Sebuliba V Cooperative Bank [1982] HCB 129

for another proposition that the burden of proof in civil cases lies on the person who asserts or alleges, and that the other party can only be called to dispute or rebut what has been proved by the party alleging.

Counsel for the defendant submitted that the plaintiff had failed to discharge this burden.

I have perused the pleadings, the evidence and submissions of both counsel on this issue. Both counsel have come up with technical evidential arguments to guide court in making a decision. Actually I find my task a lot easier in that, of the two witnesses that testified who is it I should believe? Whose testimony is more credible? This is one of those cases where one of the parties is simply being outright dishonest in his business dealings.

I shall begin by making a few comments about this particular transaction.

The defendant is a forex bureau which under the law should be engaged in spot forex exchange transactions. However, the defendant appears to do more than that by actually keeping deposit accounts for his regular customers including the plaintiff. It is not clear in my mind whether there is a legal basis for this. The plaintiff

appears to be comfortable with making these deposits with the plaintiff as a form of “*saving*” to accumulate up to the requisite local currency equivalent sufficient to meet his forex purchases with the defendant. That being the case I shall not inquire no further but simply observe that, it is this lack of clarity of the extra business of “*deposit taking*” that could have potentially led to this dispute.

Whatever it was that transpired between the plaintiff and the defendant, it is clear that this was not a normal forex transaction. The receipt given in the present case Exh. P.34 for example did not evidence the purchase for foreign currency but rather what is written in the receipt as “...*being payment of A/c...*” Whatever that means in standard foreign exchange business. I suppose it means “*payment on account*” with reference to the money being deposited at the forex bureau.

Be that as it may, in such a situation where the parties are not involved in what I would term to be a conventional business transaction, court is enjoined to look at the existence of a course of dealings in order to establish what the true facts are.

Section 15 of the Evidence Act (cap 6) provides

“...when there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact...”

What then are the course of dealings in this case. The plaintiff and others like him would deposit money in Uganda Shillings with the defendant. In the words of the plaintiff Abubaker Seruwagi (PW1) he called this “banking” (sic). He testified that he had done so far more than 5 years. Mr. Seruwagi further testified and said.

“... I used to bank/deposit and let it accumulate to buy forex which I would send to Nairobi to buy goods...”

He further testified that when he “banked” his money he would get a receipt.

Mr. Mohammad Manji (DW1) the owner of the defendant forex bureau does not in the main, dispute this course of dealings. He testified that he kept an account at the forex bureau for the plaintiff against which he would credit the deposits he made. He further testified that all money received would be recorded in what he called a cash book (Exh. D2) which is balanced at the end of the day. The

entries from the cash book are then posted into a ledger book which has a ledger entry for each customer (Exh. D3). The information is then fed into a computer that can generate a print out of the customers account. Mr. Manji gave interesting evidence to the effect that the money deposited with the defendant forex bureau would be transferred to another company called M/S Hydery Traders Ltd also owned by him. When enough money had accumulated to buy forex it was then transferred back to the defendant company. As to the contentious question of receipts, Mr. Manji testified that as a forex bureau they issued receipts for every forex transaction on the day of the transaction. As to the deposits of money in the defendant company, he testified that this was a question of trust because sometimes a receipt was issued while at other times no receipt was issued. In this particular case he testified that the receipt issued to the plaintiff on the 10th December 2002 was a forgery and that is why his cashier was acquitted in the criminal case.

It would appear to me that the defendant company had put in place a system of checks and balances "*of sorts*" to be able to monitor the deposits made to it. The first line of checks and balances was to

issue a receipt. Indeed the plaintiff produced other receipts of deposits he made in December 2002 namely;

- 1) No. 17475 dated 3rd December 2002 for Ushs.7,200,000/= (Exh P.1)
- 2) No. 16838 dated 4th December 2002 for Ushs.2,300,000/= (Exh. P.2)
- 3) No. 16973 dated 11th December 2002 for Ushs.8,030,000/= (Exh. P.3)
- 4) No. 13713 dated 12th December 2002 for Ushs.8,350,000/= (Exh. P.4)
- 5) No. 13733 dated 13th December 2002 for Ushs.10,950,000/= (Exh. P.5)
- 6) No. 15244 dated 14th December 2002 for Ushs.7,300,000/= (Exh. P.6)
- 7) No. 18555 dated 17th December 2002 for Ushs.11,500,000/= (Exh. P.7)

These are seven nearly consecutive daily deposits made in December 2002 by the plaintiff. The defendant actually accepts all these seven deposits as evidenced by the receipts.

All seven deposits accordingly to my scrutiny can also be traced through the defendants other accounting documents namely the cashbook, ledger and computer print out. Only the entry of 10th December, 2002 has a problem. The receipt shows a deposit of

Ushs11,111,000/= while all the other accounting books show a deposit of Ushs,1,111,000/=. How then should court treat this receipt?

In the case of

Hiraa Traders (U) Ltd V Lt. Col. Steven Mugerwa HCCS No. 588 of 2005 (unreported)

I held that a receipt is prima facie evidence of payment. I further held on the authorities that to constitute a receipt, money must have been given by one person and received by another. A mere entry into an account that does not represent such a transaction does not prove any receipt whatever else it may be worth (per Lord Lindley in **Gresham Life Assurance Society V Bishop** [1902] AC 287 at p. 296 followed).

Earlier in my judgment I posed the question as to whose version of the evidence was more believable; the plaintiff's or the defendant's? I clearly find the story of the defendant to be more believable as demonstrated by its systems of checks and balances. Such a unique business of deposits required such checks and balances to be in place and the defendant had them. Only the receipt of the 10th

December 2002 does not make sense. I also found the evidence given by Mr. Manji (DW1) emphatic and clear as to the course of dealings between the defendant and the plaintiff. As the owner of the defendant forex bureau Mr. Manji was competent to testify about the system of accounting in that company and that he has done to court's satisfaction. The clear evidence before this court is that on the 10th December, 2002 the plaintiff deposited with the defendant the sum of Ushs.1,111,000/= and not Ushs.11,111,000/=. Clearly the extra figure one (1) as reflected in the receipt (Exh. P.34) cannot be justified and I accordingly so find.

Issue No. 2: Remedies.

I find that the plaintiff is not entitled to any remedies and I dismiss the case with costs to the defendant.

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Geoffrey Kiryabwire

JUDGE

Dated: 21/02/08