IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MBAROUK, J.A., MWARIJA, J.A. And LILA, J.A.)

CIVIL APPEAL NO. 94 OF 2012

FBME BANK LIMITED.....APPELLANT

VERSUS

JAET INTERNATIONAL LIMITED.....RESPONDENT

(Appeal from the Judgment and decree of the High Court of Tanzania (Commercial Division, at Dar es Salaam)

(Bukuku, J.)

dated the 31st day of May, 2012

in

Commercial Case No. 98 of 2010

JUDGMENT OF THE COURT

14th February & 23rd March, 2017

MWARIJA, J.A.:

The respondent, JAET International Limited instituted a suit in the High Court (Commercial Division) claiming from the appellant, FBME Bank Limited, a total sum of USD 85,500 plus interest, costs and any other reliefs which the trial court would deem fit to grant.

The facts leading to institution of the suit can be briefly stated as follows: On 3/8/2009, the Managing Director of the respondent, one Elibariki Ndesario Mmari deposited a cheque No. 94997 of USD 88,500 (the cheque) in the respondent's bank account No. 020540, maintained at the appellant

bank, Mwanza branch. The cheque was drawn in favour of the respondent by an American Company, Wild West Domains Inc (the drawer). According to the respondent's manager, the said Eiibariki Ndesario Mmari who testified at the trial as PW1, the amount of USD 88,500 was for payment of 3,000 pairs of shoes in execution of an agreement between the respondent and the drawer in which, the latter was to supply the shoes to a Congolese refugees Camp in Uganda through the drawer's agent, one Frank Morgan who was at the material time based in Uganda.

According to PW1, he was informed by the official of the appellant that it would take a period of 21 days for the cheque to be cleared for payment. After expiration of that period, PW1 was allowed to make withdrawals from the account such that between 22/9/2009 and 28/9/2009, he withdrew a total sum of USD 15,000. Later on however, he was informed that the cheque had been returned unprocessed by the drawer's bank, Deutseche Bank Trust Company Americas New York, NY US. According to the drawer's bank, the cheque could not be processed because of lack of endorsement by the appellant bank.

Following the irregularity which led to the return of the cheque, the appellant required PW1 to re-bank the cheque. He did so on 23/11/2009.

As from that date however, the cheque could not be traced. It was on these facts that the respondent filed the suit claiming for the above stated reliefs. It alleged that by allowing the respondent to withdraw the amount of USD 15,000, the appellant had given a representation that the cheque had been cleared. The respondent contended also that it supplied the shoes and as a result it suffered damages from the appellant's negligence in handling the cheque causing it to be lost.

In its written statement of defence the appellant denied the respondent's claims. It contended firstly, that the cheque was returned unprocessed not because of lack of endorsement by the appellant but because the same did not have a prior endorsement guarantee by the payee. Secondly, that the cheque was not re-banked and thirdly, that by allowing the respondent to withdrawal part of the money, the appellant did not give a representation that the cheque had been cleared. Fourthly, that the appellant was not negligent in handling the cheque. The appellant contended further that the respondent should have procured another cheque from the drawer after the original one had been lost. It contended that the respondent's failure to do so, entails that the claim was fictitious.

In his evidence however, Steven Kangoma (DW1), who was at the material time the Customer Service Manager of the appellant bank, Mwanza branch, admitted that the cheque was re-banked after it had been returned by the drawer's bank. According to his evidence, the cheque which was deposited by PW1 on 3/8/2009, was endorsed by both the appellant bank and the payee. That notwithstanding, he said, after it had been returned on account that the same was not endorsed, it was re-banked and endorsed for the second time and eventually sent to the drawer's bank but it got lost in the process. According to DW1, the respondent was advised to contact the drawer so that it could issue another cheque but failed do so.

Having considered the evidence and the submissions made by the respective counsel for the parties, the trial High Court found that, by allowing the respondent to make withdrawals from its account, the appellant made a representation that the cheque had been cleared. The court relied *inter alia* on the case of **National Bank of Commerce v. Said Yakut** [1989] TLR 119. It found further that the appellant had the duty of endorsing the cheque and that, its failure to comply with that duty resulted into the cheque being returned unprocessed. The trial High Court disagreed with the appellant's defence that, although it allowed withdrawals from the uncleared

cheque, it was protected by s.82 (1) of the Bill of Exchange Act, [Cap. 215 R.E. 2002] (hereinafter "the Act"). It also disagreed with the defence that, what was missing on the cheque was the payee's prior guarantee, not the appellant's endorsement.

After considering the requirements and the nature of endorsement as provided for under s.32 (1) (a) of the Act, the trial court was of the view that the cheque lacked the required endorsement. On whether or not, it was the duty of the respondent to procure another cheque from the drawer after the original one had been lost, the court found that it was the appellant, on whose hands the cheque was lost, who had that responsibility. In arriving at that finding, the court relied on the decision in the case of **National Bank of Commerce v. Perma Shoe Company** [1988] TLR 244.

The trial High Court found that the appellant exhibited a gross negligence in handling the cheque and in so doing, the same got lost occasioning damages to the respondent. It found further that, the appellant breached its duty by failing to take necessary steps to obtain another cheque from the drawer so that the respondent could eventually be paid the value of the lost cheque. Judgment was accordingly entered for the respondent. It was awarded the unpaid amount of USD 73,500 with interest of 10% from

September, 2009 to the date of judgment and 7% from the date of judgment to the date of full satisfaction of the decree. The respondent was also awarded the costs of the suit.

The appellant was aggrieved by the judgment and the decree of the High Court hence this appeal. In its memorandum of appeal, it raised 10 grounds which can however be consolidated into six as follows:

1. That the trial judge erred in law and in fact in holding that the appellant allowed the respondent to withdraw money from the deposited cheque and that, by so doing the appellant represented to the respondent that the cheque had been cleared.
2. That the trial judge erred in law and in fact in holding that the appellant was duty bound to endorse the cheque.
3. That the trial judge erred in holding that the issue of negligence carries the weight of the whole suit and by finding that the appellant was negligent:-
    (i) In handling the cheque.
    (ii) by failing to procure payment in lieu of the lost cheque

4. That the trial judge erred in law and in fact in holding that the cheque did not reach the drawee's bank and that the same was stale at the time when it was lost.
5. That the trial judge erred in failing to hold that PW1 was not a credible witness.
6. That the trial judge erred in ordering the appellant to pay to the respondent the amount of USD 73,500.

At the hearing of the appeal, the appellant was represented by Mr. Senen Mponda, learned counsel while the respondent had the services of Mr. George Kilindu, learned counsel. Both learned advocates had, before the date of hearing, filed their respective written submissions in compliance with Rule 106(1) and (8) of the Court of Appeal Rules, 2009. When making oral arguments, they adopted their written submissions and proceeded to amplify some of the points which they considered important.

On the 1st and 5th paraphrased grounds above, Mr. Mponda argued that the trial judge was wrong in finding that, by allowing the respondent to make withdrawals from the deposited amount of USD 88,500, the appellant represented to the respondent that the cheque had been cleared. He argued that the case of **National Bank of Commerce v. Said Yakut** (supra)

relied upon by the trial court is distinguishable in that, whereas in that case, the cheque was deposited by the bank's manager who thereafter informed the payee that the same had been cleared, in the case at hand, the position is different. It is the learned counsel's argument that in this case, the appellant bank merely made an assumption based on the 21 days period within which the cheque ought to have been cleared.

The appellant's counsel argued that although the cheque was not cleared, the appellant bank had discretion, depending on the degree of trust it had to the respondent, to allow withdrawal from the uncleared cheque. According to the learned counsel, the fact that the respondent was a trustworthy customer is borne out by the evidence of DW1, that it was a known and creditworthy customer who used to get loan facilities from the appellant. In another stance, Mr. Mponda argued however, that the amount of USD 15,000 which was withdrawn by the respondent was not from the cheque but a soft loan or an overdraft advanced to it by the appellant.

He argued further that there was, in any case, no sufficient evidence proving that the appellant represented to the respondent that the cheque had been cleared. He submitted that PW1's credibility is doubtful because, firstly, he failed to disclose the official of the appellant who, after

communicating with him about the cheque, allowed withdrawal of USD 15,000, secondly, that he refused to procure another cheque from the drawer and thirdly, that he did not establish whether the drawer was a reputable firm or otherwise. The appellant's counsel argued therefore that the evidence of PW1 should not have been acted upon on the ground that it was unreliable.

In response, the learned counsel for the respondent opposed the argument that it was necessary to disclose the particular official of the appellant so as to establish that it was represented to the respondent that the cheque had been cleared. The learned counsel also countered the argument that the amount of USD 15,000 withdrawn by the respondent was a loan. Relying on Exh. P3, Mr. Kilindu argued that after the respondent had deposited the cheque, the balance in its account as at 1/9/2009 was USD 88,425.15 to which after expiry of the period of 21 days from the date of deposit of the cheque, the respondent started to make withdrawals between 22/9/2009 and 28/11/2009. As a result of the withdrawals, on 11/11/2009, the respondent's account balance stood at USD 73,467.15. It was the learned counsel's argument therefore that the amount of USD 15,000

withdrawn by the respondent was not a loan but that it was the proceeds of the deposited cheque.

Mr. Kilindu went on to argue that, the cheque was returned by the drawer's bank not because it was dishonoured but because it was not properly endorsed. It is for this reason, he argued, the same was re-banked by the respondent and endorsed by the appellant. The learned counsel argued thus that since the cheque was lost while in its custody, the appellant was rightly held responsible for the loss. Relying on the **Said Yakut case** (supra), Mr. Kilindu submitted that since it had allowed the respondent to make withdrawals, the appellant had the duty of requesting the drawer to issue another cheque.

The learned counsel distinguished the High Court decision in the case of **CRDB Bank Limited v. Damas Joseph Mallya** [2003] TLR 165 cited by the appellant's counsel as a persuasive decision in this case. In that case, the High Court (Commercial Division) ordered the payee who withdrew money from an uncleared cheque to refund the money. The court held *inter alia* as follows:

> " *Since the defendant made it impossible for plaintiff to get a duplicate cheque by being totally indifferent*

and uncooperative, justice dictates that the defendant should not escape liability."

Mr. Kilindu argued that in that case, the cheque did not reach the drawee bank and that unlike in this case, the payee refused to corporate with the respondent bank. He stressed that in the present case, the position is different because, as admitted by both DW1 and DW2, the cheque which was re-banked and endorsed by the collecting bank, got lost in the appellant's possession.

Having considered the arguments made by the learned counsel for the parties on the two grounds above, the issue whether or not the amount of USD 15,000 withdrawn by the respondent was a loan need not detain us. From the oral evidence and Exh. P.3, the amount was withdrawn from the deposited cheque. As argued by Mr. Kilindu, this is clear from the fact that, after crediting the respondent's account with USD 88,500, which was the value of the cheque, the balance after withdrawal of USD 15,000 was USD 73,500. Furthermore, as found by the trial court, the appellant did not tender any tangible evidence to support the contention that the amount of USD 15,000 was provided as an overdraft or a loan. We therefore find that the amount of USD 15,000 was withdrawn from the deposited cheque. It

follows from this finding that the amount could not have been withdrawn without the authorization of the appellant. There is no gain saying therefore, that the respondent was allowed to make the withdrawals.

On the issue whether or not by allowing the respondent to withdraw money from the cheque, the appellant represented to the latter that the cheque had been cleared, from the evidence, we agree with the submission of the respondent's counsel that the answer should be in the affirmative. It is trite law that, unless a cheque is dishonoured, the same is payable when it is cleared. In the case of **Jaluma General Supplies Ltd v. Stanbic Bank (T) Ltd**, Civil Appeal No. 11 of 2013 (CA-DSM) (unreported), the Court cited with approval the decision of the High Court of Uganda in the case of **Nanji Khodabhai v. Sohan Singh & Anr.** [1957] 1 EA 291. In that case, the bank accepted the plaintiff's cheque and proceeded to credit its account. The cheque was later dishonoured and as a result, the bank debited the plaintiff's account. Having considered the position of the law stated above, the court found in that case, that acceptance and the crediting of the plaintiff's account did not amount to payment. Taking inspiration from that case, this Court in **Jaluma case** (supra) stated as follows:-

> *misrepresentation when the respondent approved the appellant's requisition for the bankers cheque, but later cancelled it when the deposited cheque had not been cleared.* ***The position would have been different, if the appellant had been allowed to draw cash against an uncleared cheque."***
>
> [Emphasis added].

In the present case, the appellant did not end up crediting the respondent's account. It allowed withdrawals from the cheque.

In an attempt to show that the appellant did not represent to the respondent that the cheque had been cleared, the appellant's counsel has challenged the evidence of PW1 arguing that the same is not reliable. We do not, with respect, agree with that argument. The submission that PW1 should have identified the official of the appellant who allowed him to withdraw money from the deposited cheque is, in our view, not a sound reason for doubting PW1's credibility. In the first place, it is neither a rule of practice nor law that a bank's customer must know the particular official of the bank who provided banking services to a customer so as to establish that the customer was allowed to make a withdrawal from his bank account. Secondly, the fact that PW1 deposited the cheque and later, after 21 days

withdrew a total amount of USD 15,000 is evident from Exhibit P.3. The fact that the cheque was credited in the respondent's account who subsequently made withdrawals supports PW1's evidence. We therefore agree with the finding of the trial judge that since PW1's evidence was not controverted, the same is credible. In the whole therefore, the evidence sufficiently established that the appellant gave a representation to the respondent that the cheque had been cleared.

With regard to the 2nd ground, the learned counsel for the appellant submitted that it did not fail to discharge its duty of endorsing the cheque. He contended that the evidence of DW1 proved that he endorsed the cheque but the same was later returned by the drawer's bank on account that it lacked "prior endorsement guarantee." The learned counsel argued further that although DW1 was surprised because he had made the endorsement, he advised the respondent to re-bank the cheque and thereafter re-endorsed and re-sent it to the drawer's bank, only to be returned for the second time for the same reason that it lacked endorsement. In another vein however, Mr. Mponda submitted that endorsement of a cheque is not the function of a collecting bank. This, he said, is because by virtue of s.32 of the Act, endorsement operates as a transfer of right of the cheque to the endorsee.

Relaying on the case of **Daniel Meyer (Export) Ltd v. Makali Cycle Mart** [1956] EA vol. 23, the learned counsel submitted further that an endorsement is sufficient even if it lacks the signature of the endorser. Citing also the provisions of ss. 82-85 of the Act, the learned counsel submitted that a bank cannot be held liable for paying an unendorsed or improperly endorsed cheque. This is more so, he said, in the present case where the cheque was properly endorsed after the same had been returned by the drawer's bank.

Responding to these arguments, the learned counsel for the respondent submitted that the cheque was returned by the drawer's bank because it was not properly endorsed; that it had a faint stamp and without the signature or name of the endorsing official of the appellant bank. He stressed that the appellant agreed that there was an anomaly in the endorsement of the cheque, otherwise it would not have caused the same to be re-banked, endorsed and sent for the second time to the drawer's bank.

This ground can be briefly disposed of. We wish to state at the outset that the contention by the learned counsel for the appellant that the cheque was returned by the drawer's bank in two occasions is not correct. According

to the evidence, the cheque was returned only once vide Exhibit P.4. The fax message which accompanied the letter returning the cheque reads in part as follows:-

> "...CHEQUE NO. 094997, ISSUED ON 08/26/2009 IFO JAET LIMITED AND DRAWN ON WELLS FARGO BANK UNDER OUR REF. NO. ISN 3162800201 IS BEING RETURNED UNPROCESSED BY THE DRAWEE BANK FOR REASON: **PROVIDE PRIOR ENDORSEMENT GUARANTEE FROM FBME BANK LTD.** PLEASE SEND YOUR PRIOR ENDORSEMENT GUARANTEE SPECIFYING DETAILS OF THE CHEQUE VIA MT 199 TO BKTRUS 33 DAD,...."
>
> [Emphasis added]

It was upon the return of the cheque for the above stated reason that the appellant advised the respondent to do a re-banking and thereafter according to the appellant, it endorsed and re-sent it to the drawer's bank. Apart from contending that the cheque was properly endorsed on a first deposit, DW1 did not tender any evidence to substantiate that allegation. We therefore agree with the learned counsel for the respondent that the appellant's act of causing the cheque to be re-banked and re-endorsed

signified the anomaly for which the same was returned by the drawer's bank. We do not therefore find merit in this ground of appeal.

In the 3rd and 4th grounds, the appellant is seeking to fault the finding of the trial judge that the appellant acted negligently in handling the cheque. The appellant's counsel argued that the particulars of negligence were not stated and for that reason, the finding that negligence by the appellant carries the weight of the whole suit is erroneous. The learned counsel submitted that the appellant performed its duty because, according to the evidence, it caused the cheque to be re-banked and eventually re-sent to the drawer's bank in America only to be lost on the way back to Tanzania. He added that, apart from making a follow-up with the drawer's bank after the cheque had been re-sent, the appellant advised the respondent to procure another cheque from the drawer but did not heed to that advise. It was the counsel's submission that the appellant appraised the respondent of each and every step it took to solve the problem and could not therefore have been found to have acted negligently. He cited the case of **Perma Shoe** (supra) to fortify his argument.

It was argued further, by the appellant's counsel, that since the cheque was issued on 26/8/2009 and because it got lost while a period of six months

had expired as from the date of issue, the same had become stale. For this reason, he argued, the appellant should not have been held liable. He argued that s.69 (1) of the Act is under the circumstances, not applicable because the cheque was invalid at the time it got lost. He maintained that it was the duty of the respondent to procure a fresh payment or cooperate with the appellant to obtain another cheque but, that despite being so advised, the respondent declined to take either of the two options.

The respondent's counsel countered these arguments. He argued that there was a glaring negligence on the part of the appellant as evidenced by the manner in which it handled the cheque. This, he said, is because the cheque was lost while in the appellant's custody before it reached the drawer's bank, thus amounting to a high degree of professional negligence. For this reason, he argued, the trial court rightly held the appellant liable for the claimed damages. Had it acted on the respondent's letter (Exh. P.6), the learned counsel went on to argue, the cheque would not have become stale before payment.

Another limb of this ground of appeal concerns the particulars of the negligence complained of by the respondent. The appellant's counsel contended at the trial, that the plaint did not disclose the particular acts of

negligence committed by the appellant, the effect of which the respondent suffered damages. Amplifying that defence in this ground of appeal, the appellant is essentially seeking to fault the trial judge for failing to find that the pleading lacked particulars of the negligence complained of by the respondent.

To start with the latter complaint, that the respondent did not disclose the particular acts of negligence in its pleading, it is a correct position of the law as submitted by the learned counsel for the appellant, that in an action based on negligence, particulars of the negligence complained of must be stated. The damages sustained by the plaintiff must also be particularized. That position of the law is stated in **Mogha's Law of Pleadings**, 18th Ed., where at page 79 the learned author states that when the negligence complained of arises out of breach of a contract or duty:

> "*...it is necessary to state the nature of contract broken, the circumstances in which the performance of the contract by one party or the other was expected,* ***the degree of care and attention which, in the ordinary course, was expected to be shown by the parties, the circumstance under which and the reasons for which the failure to show due diligence occurred*** *are*

material particulars which would be relevant before any judicial finding could be given on the plea of negligence."

[Emphasis added]

In our considered view, the requirement of stating the particulars of the negligence complained of was complied with by the respondent. This is by virtue of paragraphs 10, 14 and 16 of the plaint. Whereas the particulars of the negligence are stated in paragraphs 10 and 14, the nature of the damages are stated in paragraph 16. Paragraph 10 reads as follows:-

"10. That subsequently the defendant informed the plaintiff that the cheque in question had been returned to the defendant, allegally because the defendant had not endorsed the cheque as the defendant was required to do..."

As to paragraph 14, the same states as follows:

"14. That failure by the plaintiff to be paid the said sum of USD 88,500 is a result of gross negligence on the part of the defendant in handling the said cheque in that ***the Defendant did not effect the required endorsement as was duty bound to do and exhibited total lack of professionalism in that the Defendant has failed to trace the***

whereabout of the cheque after the plaintiff had re-banked it, to ensure that it is honoured."

[Emphasis added]

It is clear from the two paragraphs of the plaint reproduced above that the particulars of the negligence complained of by the respondent were stated; firstly, that the appellant failed to endorse the cheque as required and secondly, that in the course of transmitting the cheque after it had been re-banked and endorsed, the cheque got lost out of the appellant's failure to take due care and diligence.

On the damages, the respondent states as follows in paragraph 16 of the plaint:

> *"16. That as a result of the Defendant's gross negligence as detailed herein above, and the representation made by the Defendant, the plaintiff has suffered damages in the sum of USD 88,500"*

For the reasons stated above, we do not find merit in the argument that the plaint did not disclose the particulars of the negligence. The respondent properly complied with that requirement.

Having so found, we now turn to consider the issue whether or not the appellant was negligent in handling the cheque. From the evidence and the

submissions made by the learned counsel for the parties, there is no dispute that the cheque was lost while in the appellant's custody. It is an undisputed fact also that the cheque got lost after the same had been re-banked by the respondent. This was after it had been returned by the drawer's bank because of lack of endorsement or improper endorsement.

The respondent's counsel countered Mr. Mponda's arguments by submitting that there was a glaring negligence in the manner in which the appellant handled the cheque. According to the respondent's counsel, the cheque was lost in the appellant's hands before it reached the drawer's bank and for this reason, he argued, the trial court rightly held the appellant liable for the claimed damages. He said that the appellant's omission to endorse by signing and dating the cheque amounted to a professional negligence adding that the degree of that negligence was even higher because the cheque was lost while in the appellant's custody.

As a starting point in determining this issue, we agree with the trial judge that the position of the law as stated in the case of **Barclays Bank Plc and others v. Bank of England** [1985], All ER 385, is that a collecting bank has a duty to take reasonable steps to ensure that the payee of a cheque is paid. The obligations include that of endorsing and sending the

cheque to the drawer's bank for clearance. In this case therefore, the appellant was enjoined to take the requisite steps to ensure compliance with that duty. In so doing, it was required to take reasonable care to ensure that the cheque is not lost in the process. By failing to observe that duty of care, the result of which the respondent's cheque was lost, the appellant acted negligently. We therefore answer the issue affirmatively.

In his submission, the appellant's counsel had sought to shift the blame on the respondent. He argued that apart from its efforts to trace the cheque and the advise it offered, the respondent refused to obtain another cheque from the drawer. We do not, with respect, agree with the arguments made is support of those contentions. This is for two reasons; firstly, according to the evidence, it was not until 13/1/2010 after the respondent had written a letter dated 4/1/2010 (Exh. P.6), that the appellant communicated with the drawer's bank, through a fax message, inquiring about the cheque. Secondly, it was in law the duty of the appellant, not the respondent, to procure another cheque from the drawer. The reason is that the appellant was the holder thereof. Under s.2 of the Act, the term "holder" is defined to mean:

"... the person or indorsee of a bill of or note who is in possession of it, or the bearer thereof."

The holder is not therefore, necessarily the payee of a cheque. It also covers the person who is in actual possession thereof. In the book, **Tannan's Banking Law**, 1st Ed., Lexis Nexis at page 51, the learned author states as follows on the definition of the term "holder."

" The 'holder' is used in section 20 [of the Indian's Negotiable Instruments Act] in the literal sense of the word, namely, a ***person who actually holds the document..."***

[Emphasis added]

Now, according to the **Perma Shoe Company Case** (supra), in which a similar argument was raised for a cheque which was lost while in the bank's custody, the Court observed as follows:

" We are therefore unable to uphold Mr. Rutabingwa's submission that the respondent was to blame for failing or neglecting to take steps under section 69 [of the Act] to require the drawer of the cheque to issue a new cheque. Like the trial judge ***we find that the bank, and not the respondent, was the holder of the cheque at the time when***

the cheque was reported lost. As such the respondent could not, in terms of section 69, require the drawer of the cheque to issue a fresh cheque."

[Emphasis added]

The learned counsel for the appellant has submitted that at the time when it got lost, the cheque had become stale due to the respondent's failure to take steps to obtain a fresh one from the drawer. We have found above, that in law it was the appellant who had the duty of requiring the drawer to issue another cheque. That notwithstanding, the period of six months described by the appellant as the validity time of the cheque had not expired at the time when it was re-banked. This is because, whereas the cheque was issued on 26/8/2009, the re-banking was done on 23/11/2009. It was from the date of re-banking that the cheque vanished.

With regard to the stage at which the cheque got lost, whether or not it was before or after it had been returned by the drawer's bank, that would not exempt the appellant from liability. The fact remains that the cheque was lost in its custody. It is for these reasons that the trial court found that negligence was at the centre of the whole suit. We agree with that finding.

On the basis of the foregoing, we do not find merit in the 3rd and 4th paraphrased grounds of appeal. From this finding the 6th ground is, as a consequence, devoid of merit. Having found that the appellant was negligent in handling the cheque resulting into the respondent's failure to be paid the proceeds thereof, the trial court rightly held the appellant liable to pay the sum of USD 73,500 which was outstanding from the cheque.

In the event, we find that this appeal has been brought without sufficient grounds. The same is hereby dismissed in its entirety with costs.

DATED at **DAR ES SALAAM** this 21st day of March, 2017

M.S. MBAROUK
JUSTICE OF APPEAL

A.G. MWARIJA
JUSTICE OF APPEAL

S.A. LILA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL