

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO 208 OF 2005**

**BAMA BUILDING CONTRACTORS
AND CIVIL ENGINEERING LIMITEDPLAINTIFF**

Versus

STANBIC BANK TANZANIA LIMITED.....DEFENDANT

11/03&0/06/2016

J U D G M E N T

MWANDAMBO, J

This suit is one of the long pending cases in this Registry having been instituted way back in 2005. For reasons some of which will become apparent shortly, the suit could not be concluded early enough until this date. The suit has arisen as a result of the Defendant's alleged unjustified refusal to pay a cheque for USD 735,345 said to have been drawn in favour of the Plaintiff by a third party. The Defendant resists the claim contending that the refusal to pay the cheque was justified because the true owner of the cheque denied having issued such cheque to the plaintiff on the basis of which it (the Defendant) could credit the proceeds thereof to the Plaintiff's account with the same bank. In addition to the written statement of defence, the Defendant has raised a counter-claim for refund of certain sums of money it alleges was paid to the Plaintiff's account by mistake of fact.

The factual background to the suit is fairly and unusually brief. The material paragraphs in the plaint are reproduced thus:

"3. The Plaintiff on 25/11/2002 deposited a cheque NO. 001571 worth USD 735,345 in its bank account NO. 0140008757101, but the Defendant has deliberately refused to credit the said amount and without notice. The said cheque was issued by Group Five Building East (PTY) of Dar es Salaam."

4. *The Plaintiff officials approached the Defendant's Official to enquire about the failure on the part of the Defendant to credit its account with the deposited cheque and opening of the account but in vain. This caused embarrassment to the Plaintiff. Cause of action in Dar es Salaam and the Defendant works for gain in Dar es Salaam, thus this honourable Court has jurisdiction to determine it...."*

By reason of the above averments, the Plaintiff prays for judgment *inter alia*, for an order compelling the Defendant to credit the Plaintiff's account with a sum of USD 735,345, opening of Account No. 0140008757901, general damages in the sum of USD 735,345 and cost of the suit.

As stated earlier, the Defendant claims that it rightfully refused to credit the Plaintiff's Account in the claimed sum because Group Five Building East (PTY) Ltd (hereinafter to be referred to as Group Five) said to have issued the cheque to the Defendant drawer denied having issued any cheques in favour of the Plaintiff on the amount stated or at all. The counter-claims against the Plaintiff and four of its directors namely; **Mohamed Kavuma, Badi Hassani Mruma, Nzaro Badi Mruma and Christopher Ntundu** for a sum of USD 969,630

allegedly paid under a mistake to the Plaintiff on two cheques claimed to have been fraudulently obtained from the said Group Five. According to the averments in the counter claim, the Defendant alleges that the Plaintiff acting through its directors, the 2nd, 3rd, 4th and 5th Defendants in the counter-claim fraudulently obtained two cheques; No. 001584 for a sum of USD 290,650 and cheque No. 0001566 for a sum of USD 678,980 and presented them at to its branch at Arusha and main branch respectively purportedly drawn/issued by the said Group Five who denied having issued any cheques to the Plaintiff on the stated amount or at all. The Defendant claims that the true owner of the fateful cheques demanded refund equivalent to the amount debited from its account and credited to the Plaintiff's account held with the Defendant. It is claimed further that in consequence of the demand from Group Five, the Defendant refunded its customer with an equivalent amount in the two cheques which it claims to have paid to the Plaintiff under a mistake of fact believing that the said cheques were duly issued to the Plaintiff a fact which turned out to be untrue. So much for the facts in the Plaintiff's suit as well as the counter-claim.

After a series of interlocutory rulings on preliminary objections, the suit took off for trial before my brother Mwarija, J (as he then was) who heard the plaintiff's case but could not stay longer to conclude it before he took an oath as a justice of appeal and hence the reassignment to me. Before the commencement of the trial, my predecessor framed the following issues for determination in relation to the main suit namely:

- 1. Whether cheque No 001571 was duly issued to the plaintiff by Ms. Group Five Building East (PTY) Ltd for lawful consideration*
- 2. If the answer to issue No. 1 is in the negative whether the Defendant was justified in refusing to credit the Plaintiff's account with the cheque.*

3. *Whether the Plaintiff suffered any damages as a result of the Defendant's acts.*
4. *What reliefs are the parties entitled to.*

With regard to the counter-claim, the following issues were recorded namely:

1. *Whether the sum of USD 969,630 received by the Plaintiff was unlawful and without consideration*
2. *Whether the Plaintiff is entitled to be refunded the sum of the USD 969,630 deposited in the 1st Defendant's current account vide cheques No. 001584 and 001566.*
3. *What reliefs are the parties entitled to*

The Plaintiff who was represented by a team of several advocates led by Majura Magafu assisted by Duncan Oola produced three witnesses who produced a total of four documentary exhibits and closed its case. The Defendant had the services of IMMA Advocates who later on gave way to Kibuuka Law Chambers had one witness. Owing to its inability to procure more witnesses the Defendant had to close its case with that sole witness.

Zilly Baddy Mruma (PW1) gave his evidence as Operations Director of the Plaintiff having been in that position since the year 2000. This witness started by providing a description of the activities of the Plaintiff as a duly registered Company with Business Registrations and Licensing Agency (BRELA) engaged in a range of activities notably; road construction and minerals dealership having its headquarter at Mwanga, Kilimanjaro region with a branch at Arusha. PW1 produced in evidence a certified copy of the Memorandum and Articles of Association (MEMARTS) of the Plaintiff which was admitted as exh. P1. PW1 told the Court that by reason of the diverse businesses authorized by its MEMARTS, on 14 November 2005, the Plaintiff signed a contract for the supply of 5714.3

carats of Tanzanite gemstone to Group Five in consideration for a sum of USD 2,000,000. The contract was admitted in evidence as ex. P2. It was PW1's testimony that on the basis of the said contract, his company received three cheques from Group Five in consideration for the supply of the agreed quantity of the mineral. However, PW1 did not explain whether there was any supply of the minerals to the said Group Five in exchange for the payments received. According to PW1, Group Five issued a cheque for first installment of USD 290,650 followed by another one for USD 678,980 and the last one was for USD 735,345. The first two cheques drawn on the Defendant were presented for payment with the Defendant and subsequently, the Plaintiff's account No. 0140008757101 was credited with the proceeds of the said cheques on two different dates. As for the last cheque, PW1 told the Court that it was similarly presented for payment with the Defendant on 18 November 2005 and duly accepted but to his surprise and without any explanation, the Defendant refused to credit the proceeds of that cheque to its account. As a result of the said refusal, PW1 made enquiries for the reasons behind the refusal but in vain although he came to learn later that the cheque had been taken to the Defendant's head office. It was PW1's testimony that the Plaintiff could not take any action against the drawer of the cheques because the Defendant did not return the cheque to the payee as a result of which the Plaintiff suffered damages in that it has lost use of the money. Further, PW1 told the Court that the Defendant froze its Company's account and thus it could not access it anymore and that account was still inoperative on the date he gave evidence. By reason of the Defendant's acts, PW1 prayed for an order compelling the Defendant to reopen the Account and credit into it an amount of USD 735,345 with interest at the rate of 20% per annum.

In cross examination by Linda Bosco learned Advocate from IMMA Advocates for the Defendant at that time, PW1 told the Court that he came to know in the process that the cheque was taken to the Defendant's head office because it was suspected to be fraudulent and by that reason, the Defendant could not return it. Otherwise, PW1 stated in his evidence that the Defendant was duty bound to notify the payee of the cheque if the drawer had stopped payment but instead, upon enquiry he was only informed that there was a problem with the cheques.

In re-examination, PW1 stated that he made enquiries on the fate of the cheque in writing but also was not given reasons for nonpayment. PW1 stated further that the Defendant did not plead that the drawer stopped payment in its written statement of defence and that the allegations of fraud came to an end by the Police withdrawing charges against him instituted earlier at the instance of the Defendant.

Johannes Joseph Mugendi (PW2) testified as Document Examiner from the Police Force duly gazetted as such through Government Notice Number 455 of 31 July 1995 pursuant to section 205 of the Criminal Procedure Act (Cap. 20 R.E. 2002). PW2's testimony was to the effect that on 7 August 2006 he received a sealed packet from one Shilogile a Regional Crimes Officer for Arusha region at the material time. The sealed packet contained two sets of exhibits that is to say; one for disputed documents consisting three cheques issued by the Defendant bearing signatures along with accompanying cheques deposit slips and the contract between the Plaintiff and Group Five (exh P2). The other set consisted of undisputed documents which had proper signatures and rubber stamps of the said Group Five. According to PW2, the sealed packet had with it a covering letter instructing him to do examination of the two sets of documents and confirm if

they were signed by the same people in both sets. PW2 told the Court that at the end of the exercise which entailed comparing signatures and rubber stamp used, he concluded that the documents in both sets were signed by the same persons and originated from the same source. This witness tendered in evidence cheque No. 001584 of 11 November, 2005, 001566 of 18 November 2005 and 001571 of 24 November 2005 together with his report. The cheques were admitted as exhibits P3 (1) collectively and the report was admitted as exhibit P 3(2).

The last witness for the Plaintiff was Ngulu Shonga Mabindo (PW3) who was an employee of the Defendant bank at its main Branch housed at Sukari House in Dar es Salaam. PW3 was the Head, Service Support (Accounts) who knew Group Five as one of the Defendant's customers. He was also aware that Frederick Msumari and Patricia Cooper were signatories to the cheques issued by that customer. Similarly, PW3 came to know the Plaintiff as a customer who had an account at Arusha Branch. This witness recalled that on 25 November, 2005 he dealt with a cheque issued by Group Five in favour of the Plaintiff for a sum of over USD 600,000. Upon carrying out the necessary verification including obtaining confirmation from the signatories by phone, he had the proceeds of the cheque credited to the Plaintiff's Account. PW3 recognized two cheques (part of exh. P 3(1)) one for USD 678,980 and the other one for USD 735,345 drawn on the Defendant by the said Group Five bearing signatures of Frederick Msumari and Patricia Cooper as well his own signature. PW3 stated further that the cheque for USD 735,345 dated 24 November 2005 passed through the requisite procedures including obtaining verification from the signatories but before the proceeds were credited to the Plaintiff's Account one Mary Mazula the Branch Manager of the main branch and Manning the internal Auditor intercepted the process by taking it to the Defendant's head office. PW3 wound up his

testimony that he did not know why the cheque was not honoured and proceeds thereof credited to the payee's (Plaintiff) account. With that, the Plaintiff closed its case paving way for the defence case.

As indicated earlier in this judgment, the Defendant fielded Margareth Samson (DW1) as its sole witness. This witness was at one time a Branch Manager of the Defendant at its Arusha branch and in that capacity she came to know the Plaintiff having opened an account at the branch on 25 October 2005. DW1 stated further that on two occasions between 16 and 21 November 2005, the Plaintiff presented two cheques said to have been drawn by Group Five which had an account with the Defendant. The first cheque (No. 001584) for USD 290,650 was deposited with the branch and handled by a Rose Mutafurwa erstwhile employee of the Defendant and proceeds thereof credited to the Plaintiff's account. The second cheque for USD 678,980 (No. 001566) was presented on 21 November, 2005 at the Defendant's main branch and was handled by PW3 and proceeds thereof credited to the relevant account. Subsequently, the Plaintiff presented a third cheque (No. 001571) for USD 735,345 which was processed by PW3. However, upon contacting the second signatory to the cheque, payment was stopped as it transpired out that the said cheque was not issued by the drawer because a cheque leaf bearing the number of the cheque in question went missing from the Group Five's cheque book. According to DW1, Group Five instructed the Defendant to stop payment of the cheque and instead, the cheque was taken by the Branch manager who referred it to forensic department for investigation. DW1 told the Court that later on, Group Five made a demand for refund of the amounts in the two previously paid cheques which it claimed were not issued to the Plaintiff since it had not made any business with her. DW1's attempt to tender a demand letter from Group Five's lawyers hit admissibility hurdle at the successful objection of the Plaintiff's

counsel. All the same, DW1 told the Court that the Defendant refunded the amount already paid into the Plaintiff's account to Group Five but did not tender any document to substantiate that claim. In consequence, the Defendant was now seeking to recover the said amount from the defendant in the counter-claim since the Plaintiff obtained a credit on the said amount by mistake of fact. In cross examination by Mr. Majura Magafu learned Advocate for the Plaintiff, DW1 was candid enough to admit that payment of the two cheques was a result of collusion between Defendant's employees – Rose Mutafurwa and PW3 on the one hand and officers of the Plaintiff on the other. Asked whether the Defendant notified the Plaintiff about the reason for non-payment of the third cheque, DW1's answer was that the Defendant made oral communication to the Plaintiff to that effect. As to whether Group Five made any written instruction to stop payment, DW1 stated that the same was made orally in relation to cheque No. 001571 and since the Defendant convinced itself that the cheques were fraudulently obtained, DW1 reported the matter to the police for criminal investigation and later on frozen the Plaintiff's Account pending such investigation but was unable to tell about the outcome of such investigation. With that evidence and after several adjournments to allow for another witness who nevertheless could not turn up, the court exercised its power under Order XVIII Rule 3 of the Civil Procedure Code, Cap 33 R.E. and marked the Defendant's case closed and so the trial.

At the close of the trial, I ordered counsel for the parties to file their written submissions simultaneously. However, it is only the Plaintiff's counsel who complied with the order. I did not have the benefit of submissions from the Defendant's counsel although that has not deterred me from my duty to determine the dispute before me as I shall shortly endeavor to do.

The learned counsel for the Plaintiff have urged the Court to find that their client has proved its case on the required standard and thus it was entitled to judgment as prayed. The learned counsel invited to find that the following facts as proved. One, the Plaintiff received cheque No. 001571 for a lawful consideration as part payment of 5714.3 carats of Tanzanite gemstone pursuant to the contract with Group Five admitted as exhibit P2. Two, the Plaintiff had a valid business for dealing in mineral business which was authorized by its MEMARTS (exh. P1). Three, the Plaintiff discounted all allegations of fraudulent procurement of cheques issued by Group Five on the basis of PW2's testimony notably, the cheques (exh P3(1)) were all signed by the drawer's signatories namely; Frederick Msumari and Patricia Cooper who were also signatories to exhibit P2.

On the other hand, the learned Advocate urged me to find that the Defendant has not only failed to discharge its burden of proof against the suit but also the counter claim in that, firstly, payment of the two cheques to the Plaintiff's Account under mistake of fact and secondly, it has not offered any proof of any instructions from Group Five countermanding payment of cheque No. 001571 which was lawfully issued to it. The learned Advocate submitted generally that the Defendant has not discharged its burden of proof as required under section 110(1)(2) of the Evidence Act, Cap 6 R.E 2002 as articulated in **Kiwi European Holding BV V. Sajadal Limited** [2005] TLR 434 and was thus not entitled to judgment in the counter- claim. I must state at once that that case dealt with burden of proof in trade mark infringement cases which is not the case in this suit. Otherwise, apart from stating the general principle in relation to burden of proof, that case has little relevance to the facts in this suit.

Having examined the evidence on the record, the following matters appear to be undisputed between the parties. One, the existence of the Plaintiff as a

duly registered company dealing in a range of activities per exhibit P1. Two, the opening of an account by the Plaintiff at the Defendant's Arusha branch on 14 October 2005. Three, presentation and acceptance of three cheques (exh.P3 (1)) within a span of ten days and crediting of proceeds to the Plaintiff's account in respect of cheque No 001584 for a sum of USD 290,650 and cheque No. 0001566 for a sum of USD 678,980 totaling USD 939,650. Four, existence of a contract for the supply of 5714.3 carats of Tanzanite worth USD 2,000,000 to Group Five by the Plaintiff per exhibit P2. I will now turn my attention to the examination of the disputed facts in the light of the issues on record.

It is glaringly clear that determination of the suit is dependent on the answer to the first issue which seeks to determine whether cheque No. 001571 was duly issued to the Plaintiff by Ms. Group Five for lawful consideration. This issue has two sides to it that is to say; the issue of the cheque per se on the one hand and the consideration part of it on the other. For a better appreciation of the issues in this suit it may be necessary to understand the context in which some of the terms used in this judgment. Section 2 of the Bills of Exchange Act, [Cap 215 R.E 2002](hereinafter referred to as the Act) defines the word **issue** as the first delivery of a bill complete in form to a person who takes as a holder. On the other hand, delivery is defined to mean transfer of possession actual or constructive from one person to another. Furthermore, in the language of negotiable instruments which includes a cheque, a holder of a negotiable instrument or bill means a payee or indorsee of a bill or note who is in possession of it, or the bearer thereof. Reference to a bill is reference to a bill of exchange which means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer (see

section 3(1) of the Act. A cheque which is a subject matter of the suit means a bill of exchange drawn on a banker payable on demand.

Having the foregoing in mind, the next question begging for an answer is, did Group Five the named drawer of cheque No. 001571 deliver it in complete form by transfer to the Plaintiff who became the holder (payee) of it?. First of all, the evidence on record shows that the Plaintiff became the payee or holder of the cheque which on the face of it indicates that it was issued by Group Five and presented it for payment to the Defendant's branch. Secondly, there is no dispute that the Defendant accepted the cheque and indeed, according to the totality of the evidence adduced by the Plaintiff's and Defendant's witnesses, the Defendant took necessary steps towards honouring that cheque but for a last minute intervention by one Mary Mazula and Manning who took that cheque to the Defendant's head office for forensic investigation. According to the pleadings and DW1's testimony, the Defendant claims that it came to its knowledge that Group Five did not issue such cheque to the Defendant and that the said cheque and the other two were fraudulently obtained from the said Group Five. By claiming that the Plaintiff fraudulently obtained the cheque from Group Five, the defendant is saying that named drawer did not issue the cheque to the Plaintiff for value. In other words the Defendant is seeking to rebut the presumption under section 30(2) of the Act to the effect that it was *prima facie*, a holder for value of the said cheque. The Defendant's assertion can only be sustained if it succeeds to surmount the hurdle in the light of section 30. Sub-section 2 provides thus:

*'Every holder of a bill is prima facie deemed to be a holder in due course; but if in an action on a bill it is admitted that the **acceptance, issue, or subsequent negotiation of the bill is affected with fraud, or force and fear or illegality, the burden of proof is shifted, unless and until the holder***

proves that subsequent to the alleged fraud or illegality, value has in good faith been given for the bill" (emphasis supplied).

The word **action** used in the subsection section is defined to include a counter-claim and set-off. As can be seen from the foregoing, the burden of proof to rebut the presumption lies in the Defendant who must lead, sufficient evidence to prove that the Plaintiff who, by reason of the provisions of section 2 of the Act was the holder for value in due course had no title to the cheque capable of being accepted and paid by the drawee bank. According to section 27(1) of the Act, valuable consideration means any consideration sufficient to support a simple contract. There is no evidence of any admission in any action that the issue and acceptance of the cheques were affected by fraud as alleged by the Defendant. No such evidence was offered in the main suit let alone in the counter-claim. On the contrary, the Plaintiff has sufficiently proved that cheque No. 001571 along with the other two constituted in exhibit P3 (1) was signed by two authorized signatories of the drawer (Group Five) who were also signatories to exh. P2 bearing a genuine rubber stamp of the said Group Five according to the testimony of PW2. That evidence was not controverted by DW1. In so far as the claim of fraudulent procurement of the cheques was meant to prove that the said cheque was not duly issued and so mistakenly accepted, the Defendant had, in terms of section 115 of the Evidence Act, a burden of proof to succeed in that claim. This is so because fraudulent procurement of the cheques was specially known to the Defendant itself. Section 115 of the Evidence Act provides:

"In Civil proceedings when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him"

The section received a consideration by the Court of Appeal in **Standard Chartered Bank Tanzania Limited V. National Oil Tanzania Limited & Exim Bank Tanzania Limited**, Civil Appeal No. 98 of 2008 (unreported). As stated earlier, the Defendant has not discharged its duty to prove fraudulent procurement not only cheque No 001571 but also the other two cheques the subject of the counter-claim.

As submitted by the learned Advocate for the Plaintiff, the evidence on record by way of exhibit P2 indicates that cheques No. 001571 and the other two per exhibit P3(1) was issued on the basis of discharge of contractual obligation to the Plaintiff. The Defendant who has boldly asserted that the said cheques were fraudulently obtained from the named drawer has not offered any evidence to contradict PW1's evidence in this regard. Not only has the Defendant failed to establish that there has been any admission in any action that the issue of the cheques were affected by fraud but also did not call any witness from Group Five to explain the absence of consideration neither did it seek to join the said Group Five as a third party if indeed the cheque was not issued and without consideration. Put it differently, the Defendant has failed to discharge its general burden of proof as required of her under section 110(1) (2) of the Evidence Act, Cap 6 R.E 2002. It was the Defendant and not anyone else who had a burden to prove that the Plaintiff was not a holder for value of cheque No 001571 (assuming it was entitled to make such enquiry). As stated earlier, the Defendant has not surmounted that hurdle by offering satisfactory evidence to rebut the statutory presumption accorded to the Plaintiff. In the absence of any other evidence to the contrary, I hold that the Plaintiff was a holder for value of cheque No. 001571 and thus issue No. 1 is answered in the affirmative.

Having answered the first and the most crucial issue in the affirmative, the second issue must follow suit. The issue is framed thus: *If the answer to the first*

issue is in the negative whether the Defendant was justified in refusing to credit the Plaintiff's account with the cheque. On a careful examination of the pleadings, I think the word negative is potentially irreconcilable with the first issue. I would thus exercise my power under Order XIV Rule 5(1) of the CPC by amending that issue to read: If the answer to issue No. 1 is in the affirmative, whether the Defendant was justified in refusing to credit the Plaintiff's account with the proceeds of the cheque.

Submitting on this issue, the learned Advocate for the Plaintiff has urged the Court to answer it in the negative. I understood the learned counsel to be saying that the Defendant had no legal basis to refuse to credit the Plaintiff's account with the proceeds of the cheque which was duly issued to it more so according to PW3's evidence, the signatories to it had confirmed its genuineness to him. Otherwise, had there been any reason not to pay the cheque, the Defendant ought to have promptly returned that cheque or notified the Plaintiff of its decision. The learned Advocate submitted further the fact that the Plaintiff was not notified of the reason for not crediting the proceeds of the cheque in question or returning the cheque, denied her of its right to claim from the drawer of the said cheque. There is no gainsaying that the Plaintiff was a holder for value of the cheque which ought to have been paid on presentation of it unless the drawer had countermanded payment in which case the Defendant could not honour such cheque per section 75(1) of the Act. According to the evidence of DW1, the Defendant refused to credit the proceeds of the cheque on the basis of instructions from Group Five not to pay it. I may pause to ask at this moment, if there was such instruction what prevented the Defendant from returning the cheque to the Plaintiff or notify her as required by sections 46 and 47 of the Act? As rightly submitted by the learned counsel for the Plaintiff, not only did the Defendant retain the unpaid cheque but also it failed to notify the Plaintiff

reasons for not crediting the proceeds of the cheque to the Plaintiff's account. The claim that Group Five countermanded payment was not known to the Plaintiff but to the Defendant itself. Worse still, the Defendant did not provide any evidence of instructions to countermand payment during the trial. In simple terms, the Defendant has not discharged its burden of proof of a fact which was especially within its knowledge as required by section 115 of the Evidence Act. The fact that no such evidence was adduced can only mean that no such instruction to countermand payment existed at the time the Defendant refused to credit the Plaintiff's account with the proceeds of cheque No. 001571. Under such circumstances, it cannot be disputed that the refusal to pay the cheque had no justification whatsoever. Consequently, the second issue is answered in the negative. Next on the third issue which is dedicated to damages.

Having answered the first two issues against the Defendant, I think it can hardly be disputed that the refusal by the Defendant to credit the Plaintiff's account with the proceeds of the cheque in question subjected the Plaintiff to damage. PW1 testified that the Plaintiff lost use of the money which it was entitled to but did not go further to explain the magnitude of such damage. Generally, the measure of damages in a case like the instant one appears to be governed by section 57(a) of the Act that is to say; by way of interest on the amount claimed. However, apart from a casual reference to interest payable by PW1 at the rate of 20% per annum, there is no evidence to substantiate how that rate has been arrived at. I also take note that the account was not an interest earning which makes it even more difficult to justify the rate claimed. In the absence of any basis to justify the rate of interest claimed, I would not award damages in favour of the Plaintiff by reference to section 57(1) of the Act. Instead, having regard to all circumstances of the case including the Defendant's unjustifiable closure of the Plaintiff's account which had the effect of denying the

- Plaintiff access to her account which, according to PW1's evidence had a balance of about 130,000,000/= taking as long a period extending beyond the termination of criminal proceedings involving the said account, I would award general damages in the sum of Tshs 30,000,000/=.

As to issue No 4 regarding reliefs it is plain that having proved the case to the required standard, judgment is entered for the Plaintiff for payment of a sum of USD 735,345 plus Tshs 30,000,000/= as general damages. Further, the Defendant is ordered to reopen the Plaintiff's account as prayed. The Plaintiff shall have her costs of the suit.

With regard to the counterclaim, having regard to the findings made in the main suit and the fact that the Defendant has not sought to prosecute it by adducing evidence to be entitled to judgment therein, same cannot be sustained and I accordingly dismiss it with costs. Order accordingly

L.J.S MWANDAMBO

JUDGE

10/06/2016

Delivered in court in the presence of Zilly Mruma Principal Officer of the Plaintiff and Paul Kibuuka learned counsel for the Defendant this 10th day of June 2016.

L.J.S Mwandambo

JUDGE