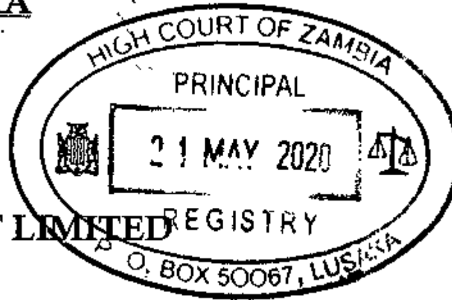
IN THE HIGH COURT FOR ZAMBIA **2017/HP/1325**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



BETWEEN

ZAMPRO CONNECT LIMITED **PLAINTIFF**

AND

FIRST NATIONAL BANK LIMITED **DEFENDANT**

Before the Honorable Lady Justice C. Lombe Phiri in Chambers

For the Plaintiff: Mr. D. K. Kasote – Messrs Chifumu Banda & Associates

For the Defendant: Mr. M. Moonga- In House Counsel –FNB

JUDGMENT

CASES REFERRED TO:

1. **Bank of Zambia v Attorney General (1974) ZR 24.**
2. **Barclays Bank of Zambia Ltd v Sky FM Limited and Another (2006) ZR 51**
3. **Bank of Ireland v Evans Trustees 10 ER 950 HL 389**
4. **Bank of Zambia V Vaglian Brothers (1891-4) ALL ER 93**
5. **Anderson Kambela Mazoka v Levy Patrick Mwanawasa and Others (2005) SCZ**

6. **Shadreck Chate v Gersom Chungu (2014) ZR Vol 2 211**
7. **Stanbic Bank Limited v A.S.& Others (2008) Z.R. Vol 2 211**
8. **Savenda Management Services v Stanbic Bank Zambia Limited SCZ 10 of 2018**
9. **Indo Zambia Bank Limited v Lusaka Chemist Limited (2003) ZR 86**
10. **Shreeji Investment v Zambia National Commercial Bank Limited (2015) ZR1**
11. **Inutu Etambuyu Suba v Indo Zambia Bank**
12. **Chilufya Kusensele v Astridah Mvula (2014) ZRVol 1 16**
13. **Tai Hing Cotton Mill Ltd v. Liu Chong Hing Bank Ltd (1986) AC 880**
14. **London Joint Stock Bank v Macmillan (1918) AC 777**
15. **Greenwood v Martins Bank Ltd (1933) AC 51**
16. **Imperial Bank of Canada v Hamilton (1903) AC 49, PC**
17. **National Westminister Bank Ltd v Barclays Bank International Ltd**

LEGISLATION AND OTHER MATERIALS REFERRED TO:

1. **Bankers Association of Zambia Code of Banking Practice in Zambia.**
2. **Pagets Law of Banking at page 340.**
3. **Ross Cranston in the book Principles of Banking Law 1st Edition (1997) Clarendon Press Oxford.**

This is a matter where the Plaintiff took out a Writ of Summons and Statement of Claim wherein, he claimed for:

i. *Payment of the sum of K505, 794.90 being compensation for the loss suffered by the Plaintiff as a result of the Defendant's negligence in failing to detect the fraud perpetuated on the Plaintiff's account;*

ii. *Additional interest at the prevailing bank lending rate from 8th May 2017 until full and final payment; and*

iii. *Any other relief that the court may see fit.*

In the Statement of Claim filed on 9th August 2017 the Plaintiff stated that on 22nd February 2012 it opened a business account with the Defendant whose signatories were Mr. Sanjai Chaturvedi and Mr. Emmanuel Mwalitela It was further averred that on unknown dates but between March 2012 and August 2013, Mr Mwalitela, with intent to defraud, forged Mr Chaturvedi's signature on 64 cheques which were honored by the Defendant without reference to Mr Chatuverdi. The Plaintiff also averred that upon noticing the anomaly in its records, Mr Chatuverdi contacted the Defendant and an investigation was conducted subsequent to which Mr Mwalitela was tried and convicted for criminal charges.

It was further stated that the Plaintiff has on several occasions communicated with the Defendant and has even attended some meetings with them in an effort to try and resolve the issue of how this fraud went undetected by the Defendants, but that the Defendant has been unresponsive and offered no feedback regarding the issues raised by the

Plaintiff. It was further stated that the Plaintiff has suffered significant financial loss as a result of the fraud perpetuated on its account and is currently unable to meet its obligations to its creditors.

It was averred in Defence that the Plaintiff held a Zambian Kwacha Account No. 62347721749 at the Defendant's Commercial Branch, situate at Acacia Park, Lusaka. On the issue of how the fraud went undetected by the Defendant, it was averred that the Defendant was presented with cheques for payment by the Plaintiff and on the face of it, the cheques appeared properly executed by the Plaintiff's appointed and authorized signatories on the aforementioned account. It was further stated that the Defendant accepted the instructions and paid the cheques as they appeared regularly issued and could not have been detected by the Defendant's tellers in the ordinary course of discharging their duties as they are not experts on detection of forgeries. The Defendant further stated that it had no obligation to consult a signatory on an account before paying a checque that appeared on the face of it, to have been properly issued by the authorized signatories on the account. The Defendant indicated that that Mr. Emmanuel Mwalitela was a duly appointed and authorized signatory on the Plaintiff's account and that the Plaintiff has knowledge of the person behind the alleged fraud and forgery of the cheques. It was argued that in the course of managing its financial matters diligently, the Plaintiff ought to have detected the alleged fraudulent payments earlier and in the process taken action to mitigate the loss suffered at the instance of Mr. Mwalitela. The Defendant denied having been unresponsive and offered no feedback as alleged by the Plaintiff in paragraph 7 of the Statement of Claim. It was further stated that by a letter dated 30th May, 2017 and received by the Plaintiff's Advocates on 31st December, 2017, the Defendant in response to

a Demand letter issued by the Plaintiff indicated, inter alia, that it would not be acceding to the Plaintiff's demands to settle the sums paid from the Plaintiff's account. The Defendant further denied the allegations of negligence by the Plaintiff and stated that the money alleged to have been fraudulently paid out of the Plaintiffs account was paid to a known person, Mr Emmanuel Mwalitela, an appointed agent of the Plaintiff. It was further contended by the Defendant that the Plaintiff has no reasonable cause of action against the Defendant and is not entitled to any of the reliefs claimed against the Defendant.

At the trial of the matter the only witness for the Plaintiff was Mr Sanjai Chatuverdi hereinafter called **PW1**. In his sworn testimony he told the court that in the year 2012 he opened a company called Zampro Connect having it's office in Lusaka. He further stated that he was the main partner and chairman of the said company while Mr Mwitelela was a co- director and handled the day to day activities of the company. It also testified that upon the advice of Mr Mwalitela they opened the company account with First National Bank at Commercial Branch in Lusaka, Arcades. He further stated that the bank account was jointly managed by **PW1** and Mr Emmanuel Mwitelela and they were the signatories for the account. He testified that most of the times he was out of the country for his other businesses but whenever they had a meeting with Mr. Mwitelela, he would give him the bank statement and inform him the requirements for the company.

As regards the issue of forgery, **PW1** testified that he issued a cheque of K3,000 to a real estate agent for purchase of land for their offices after which he travelled abroad. To his surprise he received a call from the estate

agent informing him that the cheque bounced. He tried to contact Mr. Mwitelela when he was back in the country but he was not picking up his phone. He further testified that he took the cheque to FNB and asked the manager why the cheque bounced. The Manager explained to him that there was no money in the Plaintiff's account. He further testified that upon being issued with a bank statement it was discovered that the bank statement that he was given by Mr Mwitelela showing that there was cash in the account was not issued by the bank. While at the bank he was informed that Mr Mwitelelela had just cashed a cheque in the amount of K500. When the cheque was brought to his attention, he discovered that the signature on the cheque purported to be his was not his. He then called for the specimen signatures in the mandate file. Upon seeing the specimen, the bank official he was dealing with immediately stated that the purported signature for **PW1** on the cheque was different from the specimen signature at the bank. **PW1** also stated that he was shown a letter that was taken by Mr Mwitelela to the Bank purporting to have been written by PW1 auhorising the Bank to directly deal with Mr Mwitelela. He testified that when the bank official looked at the signature and compared it to the specimen signature, and the bank officer observed that it was different. He further stated that he discovered that about 60 cheques were forged by Mr Mwitelela. They later requested the Defendant to clear the amount stolen from the company with accrued interest but the Defendant has not done so.

In cross examination he stated that it was in February 2012 when the account was opened. He also stated that when the account was opened he was the sole signatory and Mr Mwitelela was added as a signatory to the said account. He also stated that Mr Mwitelela's salary was paid by cheque which he would encash over the counter. He also said that Mr Mwitelela

would report to him over the status of the account once a months if he was in the country and after longer periods if he was out of the country. It was further stated that he expected the bank to verify his signature before paying out any money because it collected specimen signatures from him.

The Defendant called one witness, Everson Chifuka, a banker from the Risk and Compliance Department of the Defendant herein after referred to as **DW1**. He testified that on 7th September, 2013 he was called to the Commercial Branch as the Plaintiff disputed the balance on its account. He looked at the cheque presented by the Plaintiff to the manager at Commercial Branch and all appeared well. He called for the account opening forms for the Plaintiff and the signature specimen cards. He stated that his observation was that the signatories on the cards were the same as the ones on the cheques and the signing arrangement looked in order. He then advised that the matter be reported to the police for expert opinion. Upon the Police taking over the matter, the Defendant received a warrant requesting for bank statements, cheques and account mandate form for the Plaintiff's account. The documents were submitted to the Police. He further testified that he followed up the matter with the experts until he was availed the Report. The Report stated that a number of cheques were forged. He further testified that the said cheques were tendered in evidence in the criminal matter at the Subordinate Court.

In cross examination he stated that when he looked at the cheques and the specimen cards, he could not see any difference. He also indicated that if the cheque was not made in accordance with the specimen the payment could not have been made. As regards the meaning of forgery he indicated

that forgery means tampering with a document such as changing or rubbing names or tampering with the signature.

The case was closed and the parties filed into Court their submissions.

It was submitted by the Plaintiff that it is common knowledge that the bank tellers have to ascertain that the signature on a cheque is the same as the one in the Bank System. The Court was referred to the case of **Bank of Zambia v Attorney General (1974) ZR 24**[1] where it was held *inter alia* that:

(i) "the basis of a Bank's liability where it has paid on a forged instrument is not negligence but because money has been paid away without the authority of the customer.

(ii).........

....

(iii) Even gross carelessness by the customer in the case of its cheque forms and stamps is too remote to find a defence of estoppel on the basis of conduct inducing the Bank to pay.

(iv) There is no obligation on a customer to examine the paid cheques returned to him by the Bank in order to discover whether there have been any forgeries."

A further reference was made to the case of **Barclays Bank of Zambia Ltd v Sky FM Limited and Another (2006) ZR 51**[2] where the Court echoed the principle above. Further, the Court was referred to the case of **Bank of Ireland v Evans Trustees 10 ER 950 HL 389**[3] where it was held that:

"if there was negligence in the custody of the seal, it was very remotely connected with the act of transfer. The transfer was not the necessary or ordinary or likely result of that negligence. It never would have been but for the occurrence of a very extraordinary event, that persons should be either so dishonest or so careless, as to testify on the face of the instrument that they had seen duly affixed. It is quiet impossible that the Banker could have maintained an action for the negligence of the Trustees and recovered the damages they had sustained of their having made the transfer."

A further reference was made to the case of **Bank of Zambia v Vaglian Brothers (1891-4) ALL ER 93**[4] where the court held that:

"In order to make these authorities in these cases, it would be necessary to assume that the Plaintiffs in those cases had by some voluntary act of their own given credit and the appearance of genuineness on the particular powers of attorney which were forged in those cases, and, if they had, I very much doubt whether the decision would have been what it was, but no such fact appeared; all that the parties, whose negligence was relied on, had done was to leave their seal carelessly in custody of the person who abused the trust"

It was also submitted that in the case in casu, the Plaintiff, had confidence in the person he had employed and had made him managing partner. Therefore, he could not be said to have neglected his duties by not inspecting what his partner was doing on a daily basis.

The Defendant on the other had submitted that the Plaintiff's claim is for a liquidated sum of money and yet there is nowhere in the pleadings where the Plaintiff has stated how it arrived at the said amount. It was further submitted that the Plaintiff has not properly pleaded its case as the evidence to establish the claims has been left to the Court to assume contrary to the provisions and practice of the law. The Court was referred to the case of **Anderson Kambela Mazoka v Levy Patrick Mwanawasa and others (2005) SCZ**[(5)] where it was held that:

> ***"the function of pleadings is to give fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in order to determine the matters in dispute between the parties. Once the pleadings have ben closed, the parties are bound by their pleadings and the court has to take them as such"***

The Court was further referred to the case of **Shadreck Chate v Gersom Chungu (2014) ZR Vol 2 211**[(6)] where it was stated that:

> ***"The species of the tort of "negligence", it is clear that it was not the defendant who was driving the said motor vehicle at the time and therefore could not have been negligent nor careless. Not only that but more importantly, it is a fundamental rule of civil procedure that where an allegation of negligence has been made, the plaintiff must plead and set out the particulars of the defendants alleged negligent conduct or omission. In addition, the particulars of the resultant damage caused as a result of such***

negligence must be pleaded. These particulars are the facts that the Plaintiff proves by evidence at trial of the matter. Regrettably, there are no such particulars pleaded in this matter. Any text book on civil procedure provides a precedent of how a negligence claim ought to be pleaded."

It was further submitted that the pleadings by the Plaintiff in the case in casu lack detail of the alleged negligent acts or omissions and the resultant damage to establish an allegation of negligence at law. Further that the pleadings and evidence adduced by the Plaintiff have not established the duty owed by the Defendant to the Plaintiff, whose breach should be the basis for the claim for damages herein. On the issue of damages under the tort of negligence, the Defendant contended that the Plaintiff has failed to establish any of the ingredients of the tort of negligence and is therefore not entitled to judgement in its favour here in.

As regards Mandates, the Court was referred to **clause 7.1.1 of the Bankers Association of Zambia Code of Banking Practice in Zambia** where it states that:

"We will adhere to the written mandate given by you at the time of opening the account and/or changed subsequently by you. You can change your mandate any time by providing us, in writing, with the new authorized signatories and /or mode of operations. Any such change should be supported by appropriate documentation duly signed as per the mandate and/or as required under the laws of Zambia. In such cases you will also need to provide us with appropriate identification documents for

the new signatories and /or authority. Our adhering to any mandate that you give us will be on the condition that the mandate is within the scope of the terms and conditions applicable to the account and is not inconsistent with any applicable bank operating procedure. We will advise you when we are unable to adhere to the mandate."

The Court was also referred to **<u>Pagets Law of Banking at page 340</u>** where it states that:

> ***"the mandate embodies an agreement which authorises the bank to pay if given instructions in accordance with its terms ...(A) bank which acts in accordance with the mandate is duly authorized. But it does not follow that a bank which acts contrary to the mandate is bound to be unauthorized"***

A further reference was made to **<u>Pagets Law of Banking at page 483,</u>** where the authors observed as below;

> ***"a bank which acts in accordance with its mandate is duly authorized to debit its customer's account"***

It was submitted that in the case in casu the Defendant cannot be said to have acted in a negligent manner as it paid based on the mandate and on instructions which appeared properly issued by the authorized persons.

The Court was further referred to the case of **Stanbic Bank Limited v A.S.& Others (2008) Z.R. Vol 2 211**[7] where it was observed as below regarding a banker's statutory duty to its customer.

> ***"A banker is under a statutory duty to act in good faith and without negligence and exercise such care and skill as would be exercised by a reasonable banker."***
>
> ***The test of negligence is whether the transaction of paying ... coupled with circumstances antecedent and present, was so out of ordinary course that it ought to have aroused doubts in the bankers mind an caused them to make an enquiry"***

A further refence on the same principle was made to the cases of **Savender Management Services v Stanbic Bank Zambia Limited SCZ 10 of 2018**[8], **Indo Zambia Bank Limited v Lusaka Chemist Limited (2003) ZR 86**[9] and **Shreeji Investment v Zambia National Commercial Bank Limited (2015) ZR1**[10]

It was further argued that the standard expected of an ordinary teller in the ordinary course of discharging their duties is not that of a forensic expert, but that of an ordinary person in his position. It was further contended that there was no negligence on the part of the bank tellers paying on the forged cheques herein as they discharged their duties in good faith. A further reference was made to the case of **Inutu Etambuyu Suba v Indo Zambia Bank Selected Judgment No. 52 of 2017**[11] regarding the obligation to

prevent unauthorized transactions on a customers account where the Court stated that:

> ***"quite aside from the preceding discourse, and without prejudice to discount counsel for the respondents valid objection to counsel for the appellants arguments pointing to fraud, we would call to mind the observation by Penn, Shea and Arora, the learned authors of the Law Relating to Domestic Banking, who have noted that it is the responsibility of both the customer and their banker to avoid loss through fraud by taking steps to prevent or deter fraud even by the customer or banker's employees or agents. In this regard, Penn, Shea and Arora's observation, in the context of a bank and its employees, that .... "The bank will be responsible for the fraudulent conduct of its employees"***

It was submitted that had the Plaintiff's Directors acted diligently, they would have prevented the alleged fraud on the account held with the Defendant. Further that as the fraud was perpetrated by the Plaintiff's duly appointed agent, it would have been detected in its infancy had the Plaintiff been properly supervising its agent. Further that the Plaintiff left the fraud undetected for a considerably long time.

As regards the law of agency it was stated that the Defendant cannot be held liable for the fraudulent actions of the Plaintiff's appointed agent. The Plaintiff must persue its agent for the fraud and not the Defendant Bank.

It was further submitted that the amount claimed of K505, 794.90 was the amount of money that was actually withdrawn from the Plaintiffs account in the alleged fraudulent withdrawals. The Court was referred to pages 19,

20, 21 and 22 of the Plaintiff's Bundle of Documents where the amount reflecting on the documents as allegedly withdrawn was only K118, 980.

The Defendant contended that it was the responsibility of the Court to award interest on any amounts found due, if any. A reference was made to the case of **Chilufya Kusensele v Astridah Mvula (2014) ZRVol 1 16**(12) on the principle of awarding interest where it was held that:

> ***"with respect to Ground 3 of this appeal which attacks the award of interest, the thrust of the appellant's argument is that interest so awarded should not have been effective from the date of the accident but from date of Writ and that the same was contrary to the judgements Act and various legal precedents. We have considered the above arguments. It is our considered view that there is merit in Ground 3 of this appeal in that the interest rate of 12 percent per annum awarded should have been effective from date of Writ up to judgement date and thereafter, at Bank of Zamia recommended lending rate to date of full and final payment. Therefore, Ground 3 partially succeeds only to the extent reflected above."***

I have considered all the evidence and arguments in the submissions from both parties. It is not in dispute that the Plaintiff on 17th February, 2012 opened an account with the Defendant situate at Commercial Branch. According to a compilation of forged cheque payments by the Plaintiff 61 cheques were paid by the Defendant on the Plaintiff's account to a total of K118, 980.00. It is also not in dispute that the 61 cheques paid out by the Defendant on the Plaintiffs account were forged. **DW1** confirmed that upon referring the matter to the police he followed up on the results from

the experts where the report from the experts reviewed that the cheques were forged. The identity of the person who committed the fraud is also not in dispute.

However, the contention by the Plaintiff is that the Defendant was negligent by not verifying the forged signature. The Defendant denies the allegations of negligence by its employees. It has been contended by the Defendant that the Defendant's employees cannot be said to have acted in a negligent manner as they paid out the cheques based on the mandate and on instructions which appeared properly issued by the authorised persons.

The court was moved to determine this matter on a tort of negligence. The Plaintiff's claim is for payment of the sum of K505,794.90 being compensation for the loss suffered by the Plaintiff as a result of the Defendant's negligence in failing to detect the fraud perpetuated on the Plaintiff's account.

According to **Ross Cranston in the book Principles of Banking Law 1st Edition (1997) Clarendon Press Oxford**:

> *" a strict approach to mandate protects customers. So, too, does the recognition in English Law that there are some limits on a bank 's entitlement to treat a mandate as absolute. Thus a bank receiving a valid order from a customer, properly authenticated, is generally bound to execute it. But if the bank knows it to be dishonestly given, if it shuts its eyes to the obvious fact of dishonesty or if it acts recklessly in failing to*

make such enquiries as to an honest and reasonable bank would make, then it will be liable for the customers loss as a result of it so acting".

The situations in which a bank must not act, even if the instructions conform with its mandate with its mandate, will be unusual. The test is, however, whether any reasonable banker would suspect fraud. Whether a bank is 'put on inquiry' is a matter of fact. Apart from the clear indicia of fraud, matters to be taken into account in determining the factual issue seem to include the banks course of dealing with the customer, the amount involved, the need (or otherwise) for prompt action, the status of any person purporting to act as the customer's representative, the relative ease I making inquiries, and any unusual features."

The test alluded to above relates to fraud activities in general. The test as stated above is whether any reasonable banker would suspect fraud. In the case of **Shadreck Chate v Gersom Chungu** cited above, the court highlighted that where an allegation of negligence has been made, the Plaintiff must plead and set out the particulars of the defendants alleged negligent conduct or omission and the particulars of the resultant damage caused as a result of such negligence must be pleaded. These particulars are the facts that the Plaintiff is required to prove by evidence at trial of the matter.

In the case in casu the only fact alleged for the Defendant's negligence is the verification of the signature. For the Defendant to be liable for negligence on the strength of verification of the signature, the Plaintiff ought to adduce

evidence to the effect that any person in the ordinary course of business would have held the signature to be suspicious. But in this case, that has not been established as **DW1** stated that when he examined the signatures on the cheques, he did not observe anything unusual.

It is, however, acknowledged by the by both parties that money was paid out by the Defendant on forged cheques. In the case of **Bank of Zambia v Attorney General** above, the court clearly stated that the basis of a Bank's liability, where it has paid on a forged instrument is not negligence but because money has been paid away without the authority of the customer.

On the argument by the Defendant, that had the Plaintiff been careful, the fraud could have been prevented, courts seem to be against the notion of relying on customers implied duties of taking precautions or checking bank statements to escape liability where a forged cheque has been paid by the bank. In the case of **Tai Hing Cotton Mill Ltd v. Liu Chong Hing Bank Ltd (1986) AC 80**[14]**.**

> *"There the banks argued that the account relationship gave rise to a contractual or tortious duty on the part of the customer to exercise reasonable internal controls to prevent forged cheques being presented to the bank, or at least to check its periodic bank statements to uncover unauthorized items. The Privy Counsel held that the customer had no such duties. To have held otherwise would have been inconsistent with principle. In the absence of express terms, English courts will imply terms in a contract only if previous decisions so demand, if there is some*

compelling reason (business efficacy), or because of custom or usage. In the present case, previous cases were against the implied duties suggested, <u>that cutomers take precautions or check bank statements".</u>

Precedent quite specifically limits the implied duties by customers to exercising reasonable care in executing written orders, such as cheques, so as not to misled the bank or to facilitate forgery as stated in **<u>London Joint Stock Bank v Macmillan (1918) AC 777[14].</u>** In the case of **<u>Greenwood v Martins Bank Ltd (1933) AC 51[15]</u>** the duty identified by a customer was to notify the bank of forgeries of which they became aware. In the instant case it noted from the evidence that immediately the Plaintiff became aware of the suspected fraud, **PW1** confronted the bank.

As already stated in the above cited cases, in **<u>Imperial Bank of Canada v Hamilton (1903) AC 49,PC[16]</u>** it was held that:

> ***"A document in cheque form on which the customer's name as drawer has been forged or placed without authority is not a cheque but a nullity; and, unless the banker can establish adoption or estoppel, he may not debit the customer with any payment made on it".***

As regards the alleged duty for the bank to verify signatures on the forged cheques in this matter, in **<u>National Westminister Bank Ltd v Barclays Bank International Ltd (1975) QB 654 at 666[17]</u>** it was held that:

> ***"The common aphorism that a banker is under a duty to know his customer's signature is in fact incorrect, even as between the banker and his customer; the principle is simply that a banker may not debit his***

customers account on the basis of a forged signature, since he has in that event no mandate from the customer for doing so"

(iv) Even gross carelessness by the customer in the care of its cheque forms and stamps is too remote to found a defence of estoppel on the basis of conduct inducing the bank to pay.

(v) There is no obligation on a customer to examine the paid cheques returned to him by his bank in order to discover whether there have been any forgeries".

The basis of a bank's liability where it has paid on a forged instrument is not negligence but because money has been paid away without the authority of the customer. While there was a forgery, which questioned the authority upon which the cheques were paid it cannot be said that there was negligence.

With regard the claim for interest by the Plaintiff a perusal of the case of **Chilufya Kusensela** as well as the **JUDGMENT ACT,** on the principles goveming the awarded of interest, I agree with the Defendants submission that interest is from the date of the Writ and thereafter. This claim fails. The date of interest can only be computed from the date of Writ.

As regards the Defence that the pleadings are unclear regarding the liquidated amount, it is not in dispute that there were 61 cheques forged. The witness for the Defendant stated in his testimony that the said cheques were used as exhibits in the lower court and that after collecting them he had never met with the Plaintiff until Court hearing. It is therefore clear that the said cheques are in the hands of the Defendants. It is also clear that the

total amount of money paid from the 61 cheques according to page 21 of the Plaintiff's bundle of documents is K118, 794.90. Therefore, that is the amount that the Defendant would be liable for, if so found.

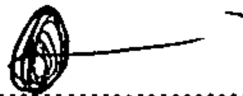
In view of the foregoing authorities and on a balance of probabilities, the Plaintiff's claim fails on the ground that the court was moved under a claim for negligence. It is clear from the evidence that the negligence has not been proved. It has not been demonstrated what duty was owed and subsequently breached. The Defendant has demonstrated that its employees acted with due diligence as required by the ordinary and reasonable standard of Banker.

The claim is accordingly dismissed in its entirety.

Costs are ordered for the Defendants to be taxed in default of agreement.

Leave to Appeal granted.

Delivered at Lusaka this 21st day of May, 2020.



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C. LOMBE PHIRI
JUDGE