

STANDARD BANK (ZAMBIA) LTD v AZEEB BUTCHERY (1983) Z.R. 130 (S.C.)

SUPREME COURT
NGULUBE, AG. C.J., GARDNER, AG. D.C.J., AND MUWO J.S.
23RD MARCH, 1983
(S.C.Z. JUDGMENT NO. 7 OF 1983)
APPEAL NO. 15 OF 1982

Flynote

Commercial Law - Banking - Negotiable instrument - Cheque - Banker's duty to control.

Tort - Negligence - Cheque - Liability of owner to general public for negligent loss of - Existence of.

Headnote

The defendant appealed against a judgment of the High Court awarding the sum of K3,080 to the plaintiff, in respect of a forged cheque. The defendant's liability was based on the defendant's negligence in failing to advertise the loss of a customer's cheque book, as a result of which the plaintiff was defrauded. The plaintiff contended that the defendant had a duty to advertise the theft of its cheque books in order to prevent any unauthorised person from using the cheques for the purposes of fraud.

Held:

- (i) There is no law that, as between a bank and the general public, or as between an individual and the general public, there is a duty so to control a cheque book that it cannot be used without connivance of the owner for the purposes of fraud.
- (ii) There is no authority that the owner of a cheque book has a liability to the general public at large for the negligent loss of the cheque book.

For the appellant: D. F. Quirk, Ellis and Co.

For the respondent: A .D. Adam, Solly Patel Hamir and Lawrence.

Judgment

GARDNER, AG. D.C.J.: delivered judgment of the court.

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This is an appeal against a judgment of the High Court. We will refer to the respondent and the appellant as the plaintiff and the defendant respectively. The plaintiff was awarded judgment in the sum of K3,080 in respect of a forged cheque which was found to be the responsibility of the defendant, who, it was alleged, had been negligent in failing to advertise the loss of a customer's cheque book as a result of which it was possible for the plaintiff to be defrauded.

The facts of the case were that a third party approached the plaintiff and ordered a quantity of meat for which a cheque was offered. The plaintiff indicated that it would not be satisfied with anything other than a bank certified cheque. Later, the third party brought a bank certified cheque to the plaintiff and on inspection it appeared to be in order. The meat was supplied to the value referred to in the judgment. When the cheque was presented to the plaintiff's bank it was returned because it was found to be a forgery. Evidence was adduced that one of the defendant's customer's cheque books had been stolen and a cheque therefrom was used to perpetrate the fraud. It was the plaintiff's contention that the defendant, a commercial bank in this country, when it became aware that one of its cheque books had been stolen, had a duty to advertise that fact in order to prevent any unauthorised person from using the cheques for the purpose of fraud.

There is no law whatsoever that, as between, a bank and the general public, or indeed, as between an individual and the general public, there is a duty so to control a cheque book that it cannot be used without the connivance of the owner for the purposes of fraud. To suggest otherwise would be a complete travesty of the law. There is no remedy in this case in tort and there is no remedy in contract. All the cases to which we have been referred relate to circumstances where there was privity of contract between a bank and a customer or a third party; certainly there is no authority for the proposition that the owner of a cheque book has liability to the general public at large for the negligent loss of the cheque book.

In the circumstances, we have no hesitation in saying that this appeal against the judgment of the High Court must succeed. The appeal is allowed, and costs will be awarded against the plaintiff both in this court and in the court below.

Appeal allowed

TIMES NEWSPAPERS ZAMBIA LIMITED v