



African Cases



UGANDA

CIVIL APPEAL NO. 0010 OF 2015 – BARCLAYS BANK OF UGANDA LIMITED V. ERON KABACHWAMBA (DELIVERED ON 1 APRIL 2026) – A VISA debit cardholder’s negligence in protecting their card and PIN can lead to the cardholder’s liability for losses resulting from unauthorised transactions.

Summary of Facts

Eron Kabachwamba (the Respondent) maintained a current account with Barclays Bank of Uganda Limited (the Appellant), for which she was issued a VISA debit card. On 18 January 2013, she deposited the sum of shs 385,000 into the account, and on the following day made an additional cash deposit of shs 655,000. Shortly thereafter, the Respondent was alarmed when she was notified that, on 18 January 2013, a total sum of shs 8,538,356 had been withdrawn from her account in Nairobi, Kenya, and the transaction had not yet been reflected as debits on her account at the time she received notice. She promptly lodged a formal complaint with the Appellant, denying any knowledge or authorization of the said withdrawals.

Notwithstanding her immediate protest, the Appellant proceeded to debit the disputed sum from her account on 22 January 2013. Following an internal investigation, the Appellant declined liability and refused to refund the sum, asserting that the Respondent had compromised the

security of her debit card while at Emin Pasha Hotel in Kampala, thereby facilitating the fraudulent withdrawals in Nairobi.

Dissatisfied with this position, the Respondent instituted an action against the Appellant. In its judgment, the trial court found in favour of the Respondent, holding that the Appellant, as custodian of the account, bore the duty to safeguard it against unauthorized transactions and had failed in that duty. The court accordingly held the Appellant liable for the loss.

Aggrieved by this decision, the Appellant appealed.

Notable Issue for determination

One of the issues for determination was: *Whether the trial Court came to the right conclusion in attributing liability for the loss, to the appellant.*

Arguments

Learned Counsel for the Appellant contended that the Respondent’s own negligence was the proximate cause of the loss suffered. It was

submitted that the Respondent exposed her debit card to a hotel attendant in circumstances that made it possible for the attendant to duplicate the card. Counsel argued that the evidence demonstrating that the Respondent relinquished possession of her card to the attendant reasonably supports the inference that she must also have disclosed her Personal Identification Number (PIN), as the intended transaction could not have been completed without it.

Counsel further submitted that by entrusting her card to a stranger, the Respondent failed in her duty to exercise due care in safeguarding the security of her card and PIN. It was argued that, but for this negligence, the fraudulent withdrawals would not have occurred. Once the transaction was completed at the point of sale, the Appellant became obligated to honour it, and the fraud was only detected after that obligation had crystallised.

The Appellant maintained that it took all reasonable steps within its capacity to mitigate the fraud, but its efforts were undermined by the Respondent's conduct. In particular, it was noted that the Respondent could not be reached by phone when the suspicious transaction was flagged. Counsel therefore submitted that the Respondent's failure to comply with the terms and conditions governing the use of her VISA debit card was decisive, and that the trial court erred in failing to find her negligent. Accordingly, the Court was urged to allow the appeal.

In response, Learned Counsel for the Respondent denied any negligence on the part of the Respondent. Counsel submitted that, at all material times, the Respondent exercised due caution by shielding her PIN with a sheet of

paper while conducting transactions at the point of sale. It was further argued that there was no credible evidence linking the alleged exposure of the Respondent's debit card at Emin Pasha Hotel in Kampala on 28 December 2012 to the fraudulent withdrawals that occurred in Nairobi, Kenya on 18 January 2013. Counsel emphasized that the Appellant's internal investigations were inconclusive and failed to establish any causal nexus between the Respondent's conduct and the fraud.

Counsel contended that the possibility that the transactions were carried out using a skimmed or cloned card could not, without more, be attributed to any negligence on the part of the Respondent. Moreover, having promptly disputed the transactions on 19 January 2013, the Respondent argued that the Appellant acted unjustifiably in proceeding to debit her account on 22 January 2013.

Decision of the Court

A VISA debit cardholder's negligence in safeguarding their card and PIN may render them liable for losses arising from unauthorised transactions. Ultimately, liability is determined by identifying the party best placed to prevent the fraud, as the duty to protect funds in a bank account is a shared responsibility between the banker and the customer.

An issuing bank's ability to halt settlement or reverse a debit in VISA debit card transactions is significantly constrained by the applicable Visa Operating Rules, relevant banking regulations, and the contractual terms governing the relationship between the bank and the cardholder. While such frameworks often provide protection against unauthorised transactions, those protections may

be displaced where the cardholder is guilty of gross negligence, thereby exposing the cardholder to full liability for the resulting loss.

In the final analysis, the Court held that the trial court erred in attributing liability to the Appellant. The Respondent failed to establish any contractual or regulatory basis imposing a duty on the Appellant to refund the disputed sum. On the contrary, the evidence disclosed that the loss arose from the Respondent's gross negligence, which enabled the fraudster to gain access to her account.

Comments

This decision reinforces the fact that the duty to safeguard a bank account is mutual between the bank and the customer, not one-sided. While banks are expected to maintain secure systems and monitor transactions, customers equally bear the responsibility of protecting their cards and PINs from compromise. More importantly, Customers are routinely advised to keep such personal banking information strictly confidential, never sharing it with anyone, including family members or bank staff. They are under a contractual duty to take reasonable steps to prevent unauthorised third-party access to that information.

ZAMBIA

APPLICATION NO. 007/2026 (CAZ/08/616/2025) – NG' ANDU CONSULTING LIMITED & 2ORS V. DAVID MWALE (DELIVERED 1 APPLICANT 2026) – Power of an appellate court to interfere in a matter pending before a lower court.

Summary of Fact

The matter began as a business dispute between shareholders of ALD Plant and Fleet Management Limited and Ng'andu Consulting Limited over who should control the companies. While related cases were already pending in other courts, one party filed a winding-up petition in the High Court at Ndola on 19 November 2025. The next day, the court appointed a provisional liquidator through

an ex parte order, meaning the other side was not heard before the order was made. That order immediately gave the liquidator authority over company affairs, but it did not include a return date for both parties to appear before the court, even though the law requires this. Concerned that the companies' assets and bank accounts could be taken over before their objections were heard, Abel Ng'andu quickly filed urgent applications

to challenge the appointment. When those applications were repeatedly delayed in the High Court, he turned to the Court of Appeal, arguing that urgent intervention was necessary to prevent unfair harm.

Issue for Determination

whether the Court of Appeal could properly exercise jurisdiction to intervene before the High Court had delivered a final decision, where special circumstances showed that a delay in the lower court could cause serious and irreversible harm.

Argument

The applicants argued that the appointment of a provisional liquidator over ALD Plant and Fleet Management Limited and Ng'andu Consulting Limited was unfair and procedurally defective because the ex parte order failed to include a return date for an inter partes hearing as required by law. They contended that despite filing urgent applications in the High Court to challenge the order, their applications were repeatedly delayed while the provisional liquidator continued exercising control over company assets and bank accounts. According to them, this created a serious risk of irreparable harm and justified immediate intervention by the Court of Appeal.

The respondent argued that the Court of Appeal lacked jurisdiction because no substantive ruling had yet been made by the High Court on the pending applications. He maintained that the provisional liquidator's appointment remained a valid court order until set aside and that the applicants should first exhaust remedies in the lower court before approaching the appellate court.

Decision of the Court

The Court of Appeal held that although appellate intervention is normally only allowed after a lower court has made a substantive decision, this case presented exceptional circumstances that justified immediate action. It found that the High Court's ex parte order appointing the provisional liquidator was procedurally defective because it failed to include a return date for an inter partes hearing, contrary to Rule 8(3) of the Companies (Winding-Up) Rules 2004. The Court also observed that the applicants' urgent applications had been repeatedly delayed while the provisional liquidator continued exercising extensive powers over the companies, creating a real risk of irreparable harm. For that reason, it concluded that the single judge had not fully appreciated the seriousness of the circumstances when she discharged the earlier stay. The full Court therefore set aside that ruling, confirmed the stay of the provisional liquidator's appointment, and ordered that the matter be reassigned to another High Court judge for hearing. Costs were left to depend on the outcome in the lower court.

Comment

This decision reflects an important principle of general legal jurisprudence: courts must balance procedural discipline with substantive justice. Although appellate courts usually avoid intervening before lower courts conclude proceedings, strict adherence to procedure cannot override the need to prevent unfairness and possible abuse of judicial process. The ruling shows that where procedural defects and unequal treatment threaten property rights or fair hearing, judicial discretion may properly be exercised to preserve justice and public confidence in the administration of law.

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