

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 216 of 1997**

BETWEEN

**SAMISONI TUI BALE** aka **TUIMASI LUTU** trading as  
General Food Fiji Limited.

**PLAINTIFF**

AND

**NATIONAL BANK OF FIJI**

**1<sup>ST</sup> DEFENDANT**

AND

**NBF ASSET MANAGEMENT BANK**

**2<sup>ND</sup> DEFENDANT**

**Counsel** : Mr. K. Maisamoa for the Plaintriff  
Mr. K. Jamnadas with Mr. Baleidrokadroka for the  
Defendant.

**Dates of Hearing** : 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> August, 2018

**Date of Judgment** : 26<sup>th</sup> September, 2018.

## JUDGMENT

- [1] The plaintiff instituted these proceedings against the defendants seeking damages as pleaded in the statement claim which was subsequently amended three times. The last amended statement of claim was filed on 18<sup>th</sup> September, 2017.
- [2] The plaintiff's claims are based on various transactions he had with the 2<sup>nd</sup> defendant bank.
1. Isimeli Drodroveivali a.k.a Isimeli Drodro instructed another employee, Pau Mausio to credit \$250,000.00 to account No. 02-236847-2001-9 and to credit the balance to account No. 02-236847-2001-2.
  2. The defendant failed to inform the plaintiff whereabouts of \$251,940.00 which was sent from the Crown Agents in Singapore on 13<sup>th</sup> September, 1993 and unlawfully diverting that money to account No. 02-276311-2501-9 on instructions of Isimeli Drodroveivali.
  3. The cheques amounting to \$122,216.00 given to Isimeli Drodroveivali to be credited the plaintiff's loan account bearing No. 02-276311-2501-5 was not credited and the defendants and/or their servants of agents failed to explain as why this money did not arrive at the plaintiff's account.
  4. The defendants or their employees have failed to explain why the automatic debits amounting to \$22,457.00 from current account No. 02-236847-2001-2 never arrived at the loan account No. 02-236847-2001-5.
  5. The cheques amounting to \$39,875.82, given to Isimeli Drodroveivali for the payment of plaintiff's bill were converted into his own use.
  6. The plaintiff also claims \$1,430,824.00 as loss of maturity value of the insurance policies he had with Colonial Insurance.



- [3] The defendant while denying the allegations of the plaintiff by way of counter claim, averred that the plaintiff together with Mosese Waqavonovono and Isimeli Drodro wrongfully conspired to defraud and injure the defendants in its business and claimed \$1,540,193.34 from the plaintiff.
- [4] The plaintiff testified that he opened his account with the defendant in 1989 and at that time he was importing rice from Thailand. He said the monies received from Singapore through Westpack Bank was not credited to his account instead that money had been credited to Mosese Wagavonovono's account. The document "P5" contains the instruction given by Isimeli Drodroveivali to Pau Mausio who testified at the trial and confirmed that he received these instructions. According to "P5" he has been instructed to credit \$250,000.00 to the account No. 0-2-276311-2501-9 to clear letter of credit and the balance to account No. 02-236847-2001-2 which is plaintiff's account. The account bearing No. 02-276311-2501-9 belonged to Mosese. The bank statement marked ads "P6" confirms this position. Referring to the document "P9" the plaintiff said that \$250,000.00 belonged to him. Plaintiff said when he realised that the money had not come to his account he inquired from the manager and he informed that there had been an error and it would be credited to his account.
- [5] According to the document marked "P2" the amount sent by the Crown Agents Financial Services Limited was \$251,940.00 and the beneficiary customer is Tui Masi, A/C No. 02 236847 2001 2, General Food Marketing. The learned counsel for the defendants cross-examined the plaintiff and his witnesses to establish that General Food Fiji Limited is a limited liability company and General Food Fiji Limited and General Food Marketing are two different entities.
- [6] There is no evidence that General Food Fiji Limited or General Food Marketing is a company within the meaning of the Companies Act 1983 which was the law that was in existence when the cause of action in this matter arose. In terms of section 2 of the said Act a company means a company formed and registered under the Act or an existing company. There is no evidence that any of these two businesses had been registered as a company. The mere use of the word "limited" does not make a business a company having limited liability. It is also important to note that all the accounts of the plaintiff with the 2<sup>nd</sup> defendant are in his personal name and the 2<sup>nd</sup> defendant has always considered the plaintiff's business as a sole proprietorship which evident by

their own letter dated 20<sup>th</sup> august, 1996 where the 2<sup>nd</sup> defendant has referred the plaintiff as Tuimasi Lutu, T/A General Food Marketing (Fiji) LTD.

- [7] On the other hand the advice sent by the Crown Agents have very clearly indicated which account the money should be credited and there is no dispute between the parties that A/C No. 02-236847-2001-2 belonged to the plaintiff. It is within the exclusive knowledge of the defendants why \$250,000.00 out of \$251,940.00 was credited to officer Mosese's account. The defendants sought not to offer an explanation why this money was not credited to the plaintiff's account.
- [8] The plaintiff said in his evidence he had business dealing with the officer Isimeli Drodroveivali. He had also been importing rice to the country and the plaintiff used to buy rice from him but there is no evidence or even a suggestion that the plaintiff had such a relationship with Mosese.
- [9] The bank statement (P6) of Mosese clearly shows that on 17<sup>th</sup> September, 1997, \$250,000.00 has been credited to his account making his debit balance a credit balance. After deducting \$5.00 as stamp duty the balance \$1935.00 has been credited to the plaintiff's account.
- [10] From the above evidence it appears that the plaintiff is entitled to recover the loss of \$250,000.00 from the bank subject of course to the conditions contained in the letter of set-off (D3).
- [11] The witness testified that he had a loan account and the amount due to the bank was \$577,000.00. His monthly loan instalment had been \$7466.00 and this amount was to be deducted from his current account but he had been asked to write a cheque every month for the payment of loan instalments.
- [12] The particulars of the cheques issued by the plaintiff as per paragraph 8 of his amended statement of claim are as follows;

S/No.	DATE	CHEQUE No.	AMOUNT
01	07.04.93	767708	\$7466.00
02	06.05.93	767718	\$7466.00
03	28.05.93	767727	\$7000.00
04	14.07.93	767756	\$7466.00



05	10.08.93	767779	\$7466.00
06	24.09.93	957623	\$7000.00
07	15.07.93	957643	\$7500.00
08	09.11.93	957643	\$7466.00
09	30.11.93	956672	\$7000.00
10	10.12.93	957679	\$7466.00
11	13.01.94	957657	\$5700.00
12	09.02.94	957707	\$7460.00
13	09.02.94	957706	\$500.00
14	02.03.94	957719	\$7460.00
15	07.04.94	957719	\$5900.00
16	22.04.94	957728	\$5900.00
17	31.08.94	957755	\$7,000.00
18	28.10.94	957777	\$4500.00
19	20.12.94	957789	\$4500.00

[13] The plaintiff in his evidence referred to a bundle of cheques which was subsequently tendered in evidence marked as "P13" but none of the cheques referred to above is not there in the bundle.

[14] It is the evidence of the plaintiff that the manager asked him to give signed blank cheques. If a person issues a signed bank cheque he must be prepared to bear the consequences of his act. The bank cannot be held liable for his loss caused due to his own negligence. Since the arrangement with the bank had been to deduct the loan instalment directly from his current account he had no reason to issue signed blank cheques to the manager without proper instructions from the bank.

[15] The plaintiff also alleged that he also had a loan account No. 02-236847-5001-5 and the plaintiff has failed to explain why following amounts were not debited to the loan account.

Serial No.	Date	Amount of Automatic Debits
01	30.09.93	\$7466.00
02	11.11.93	\$7525.00

03	13.09.94	\$7466.00
----	----------	-----------

[16] There is no evidence that any such account existed. The defendant's witness earnest Basilio in his evidence said that there was no such account in the bank. Therefore, the plaintiff's above claim must fail.

[17] The plaintiff claims that he gave the Cheque Nos. 957724, 957727, 95734, 957738, 957741, 957744, 957746, 957747, 957756, 957758, 957773, 957775 and 957782 amounting to \$39,875.82 to Isimeli Drodroveivali for the payment of bills and he converted that amount for his own use.

[18] These are not cheques deposited in the bank or handed over to Isimeli Drodroveivali to credit to the plaintiff's account. This not a transaction with the bank. It is pure a personal transaction between the plaintiff and Isimeli Drodroveivali. The bank cannot be held liable for transactions between the plaintiff and bank officers which are personal in nature. If Isimeli Drodroveivali has misappropriated the plaintiff's money the plaintiff must sue him and not the bank. There is no evidence whatsoever that the bank was benefitted by that money. Therefore, this claim for \$39,875.82 is frivolous and liable to dismissed.

[19] The plaintiff also claimed \$1,430,824.00 for the loss of maturity values with terminal bonus of the following three insurance policies he had with Colonial Mutual Life insurance:

Policy No. 28294	-	\$161,284.00
Policy No. 2822945	-	\$634,770.00
Policy No. 2833496	-	\$634,770.00

[20] The plaintiff's insurance policies, according to the documents marked as "P17", had been with The Colonial Mutual Life Assurance Society Limited. These policies had been obtained by the plaintiff, according to his evidence, as security for the loans granted to him by the defendant bank. Insurance is a contract between the insurer and the insured. At maturity the insured must claim all the benefits from the insurer. The fact that the insurance policies were taken as security for the loan does not make the bank liable to pay the value at maturity.



[21] The plaintiff claims that he suffered loss of \$92,000.00 because he was not paid what was due to him on the term deposits. The document "P24" is an audit report according to which the plaintiff has had a term deposit of \$88,000.00. However, the same report says that the plaintiff owed the bank \$1,655,955.00.

[22] The bank relied on the document "D3" which reads as follows:

I/we hereby confirm that all monies from time to time standing to the credit of any account I/we may have with you (whether current, deposit or savings) shall be and remain a security for all monies for the time being owing or remaining unpaid to you by me/us on any account whatsoever and in default of payment by me/us on demand of any balance due or remaining unpaid to you on any such account you may without further notice transfer from any account of mine/ours so much of the balance standing to the credit thereof as shall be necessary in order to satisfy in part or in full the monies then owing by me/us to you on any other account.

[23] The plaintiff has by this letter authorised the bank to debit any of his accounts with them to recover whatever is due to the bank from him. For the reasons given above all what the plaintiff is entitled to recover is \$251,935.00 and \$88,000.00 terms deposit with interest but if the plaintiff has debts with the bank, they are entitled to set off the above amounts against the debts. As I stated earlier it appears from the document relied on by the plaintiff (P24) that he owes the bank \$1,655,955.00 which is very much more than the amount referred to in this paragraph.

[24] The plaintiff argued that the letter of set-off is only in respect of the account the number of which is stated there. Someone has written a number of an account in the letter. There is no evidence that the plaintiff maintained such an account with the bank and in the letter the plaintiff has very clearly authorised the bank to recover whatever is due to it from any of his accounts.

[25] For the reasons aforesaid I am of the view that the plaintiff is not entitled to the claims made in the statement of claim.

[26] The defendant claimed by way of a counter claim \$1,540,193.34 from the plaintiff. This claim is based on the cheques contained in the bundle of cheques tendered in evidence as "D2". It is the position of the defendant that the plaintiff admitted signing

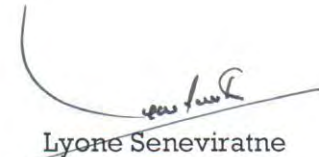
these cheques and also that Mr. Mosese Waqavonovono and Isimeli Drodroveivali assisted him in making sure that the payments were made. The plaintiff has given these cheques to the above named officers for the purpose of paying his loan installments but they have not credited the cheques to the relevant loan account of the plaintiff. As I have stated above these were blank cheques given by the plaintiff and the officers who were responsible in crediting these cheques to the plaintiff's loan account has, as it appears, misappropriated the funds derived from the cheques. The question is whether the plaintiff can be held liable for the acts of the officers of the bank. The plaintiff has not been benefitted by the acts of the officers of the defendant bank. The fact that the officer who swindled the funds was convicted by the High Court does not make the plaintiff liable for the amount. If the amount due on the loan is not paid by the plaintiff the defendant can resort to legal action which they have not done for the last more than twenty years. There is no evidence that the plaintiff had any involvement in the misappropriation of the funds of the bank. Therefore, the defendant's counter claim must necessarily fail.

[27] For the reasons aforementioned the Court makes the following orders.

ORDERS

1. The action of the plaintiff is dismissed.
2. The defendant's counter claim is also dismissed.
3. The plaintiff is ordered to pay the defendant \$10,000.00 as costs (summarily assessed) of this action.



  
Lyone Seneviratne

**JUDGE**

26<sup>th</sup> September, 2018