**Nile Bank v Translink**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 22 June 2005

**Case Number:** 9/04

**Before:** Odoki CJ, Oder, Karokora, Mulenga and Kanyeihamba JJSC

**Sourced by:** LawAfrica

*[1] Contract – Indemnity – Breach of agreement – Interpretation of terms – Intention to be construed*

*from words used – Whether police report amounted to a conclusive finding – Whether Court of Appeal*

*erred in its interpretation of the agreement – Whether the conditions for the realisation of the indemnity*

*had been fulfilled.*

**Editor’s Summary**

The respondent company operated two bank accounts, one in Ugandan shillings and the other in US dollars, at a branch of the appellant bank. On 23 November 1994, the respondent sent three workers to deposit UShs 30 million in the company’s account. A deposit slip purportedly stamped and signed by the bank was taken back to the company by the workers. Sometime later, the respondent’s Managing Director realised that only UShs 10 million had been credited to the company’s account. Upon taking the matter up with the appellants, the latter asserted that it had only received UShs 10 million. However, in order to resolve the *impasse*, the appellants agreed to credit the company’s account with UShs 20 million on condition that the company agreed to indemnify it if the police investigation proved conclusively that the money had not been received. The respondent accordingly executed the indemnity dated 18 April 1995 and the appellant credited the shilling account with the disputed amount. On 14 August 1996, the respondent notified the bank by letter that it had decided to close the two accounts and demanded that the closing balance be remitted to it. The bank refused to comply and in a letter to the respondent dated 30 August 1996, it pointed out that closure of the account would prejudice its rights under the indemnity. It also requested time to consider the matter further. Some weeks later it wrote to the respondent advising it, *inter alia*, that the police investigation into the matter had concluded that the money had never been deposited and that pursuant to the indemnity, the UShs 20 million would be treated as an overdraft. It also informed the respondent that closing its bank accounts would only realise UShs 8.5 million and as a result, it requested the respondent to settle the outstanding balance. Attached to the letter was a copy of the police report. The respondent’s advocates wrote back denying that the police report was conclusive. They claimed that the bank was in breach of the banker-customer relationship. The respondent then filed a suit in the High Court pleading that the appellant had breached the indemnity agreement by refusing it to operate the accounts and wrongfully closing them. The suit claimed a declaration that it was entitled to operate the accounts, an order that the appellant credits the accounts with the amounts wrongfully debited, damages and costs. The appellant denied the claim and counterclaimed the amount of UShs 11 472 682. The High Court dismissed the respondent’s suit and entered judgment for the appellant on the counterclaim with interest and costs. The respondent appealed to the Court of Appeal which allowed the appeal and ordered that the parties return to the *status quo* that existed on 13 August 1996. It also stated that the bank was entitled to prevent the operation of the accounts until a conclusive report had been issued by the police. The appellant now appealed to the Supreme Court on the grounds that the Court of Appeal erred in holding that the police report, dated 5 September 1996, did not amount to a conclusive finding and that it had failed to properly evaluate the evidence on record which established that the prosecution of the suspects had been concluded. Counsel for the appellant argued that the agreement between the parties provided that the police investigation was meant to establish whether the employees had banked the amount and that the parties were not concerned with the outcome of any court case. In reply, counsel for the respondent argued *inter alia* that the police had not issued a conclusive report within the dictionary meaning of the word.

**Held** – It was a trite rule of interpretation that in construing the intention of the parties to an agreement, the court was obliged to discern the intention from the words used in the document. In this instance, the findings of the Court of Appeal were not in consonance with the parties’ intention as expressed in the deed. The parties had not referred to a final or concluding police report as the basis on which their dispute would be resolved. The stipulated eventuality was conclusive proof from the police that the sum was never deposited in the respondent’s account. The fact that the police report was described as a progress report was immaterial. The police investigation found proof that the workers only banked UShs 10 million and the proof was in the finding of the handwriting expert that the pay-in slip was forged. The Court of Appeal, therefore, erred in holding that the police report did not conclusively prove that the respondent never deposited the disputed amount in its bank account.

Appeal allowed.

**No cases referred to in judgment**