**Onjallah v Kenya Commercial Bank Ltd**

**Division:** Court of Appeal of Kenya at Kisumu

**Date of Judgment:** 9 July 2004

**Case Number:** 259/01

**Before:** Omolo, Githinji JJA and Ringera AJA

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**Summarised by:** A Mwanzia

*[1] Banking – Banker/customer relationship – Debit of customer’s account in favour of third party –*

*Whether bank may debit customer’s account in favour of a third party for money remitted or fraud*

*belonging to the third party.*

**Editor’s Summary**

The appellant was a customer of the respondent bank where he maintained two accounts. Sometime in 1994, the appellants accounts were debited by the respondent for the sum of KShs 402 151-85 on advise from Mumias Outgrowers Company Limited who wrote to the bank claiming the sum as erroneously and fraudulently remitted to the appellant’s accounts from the company. The appellant sued the respondent in the High Court seeking to recover the amounts debited together with damages for breach of duty by the respondent bank not to disclose his account or the State thereof to third parties. The respondent’s defence was that the amounts were remitted to the appellant’s employers Mumias Ougrowers Company Limited after the company discovered that the said money had been sent to the bank fraudulently. Respondent called its branch manager who testified that the bank had received two letters from Mumias Outgrowers Company advising them of the fraud and seeking remittance of the amount. The High Court Judge dismissed the appellant’s case finding that the money deposited in the appellant’s accounts were un-procedurally prepared and therefore erroneous. He also held that if the amounts in those accounts were legitimate, the appellant was obliged to prove so and he had not discharged that duty. The appellant appealed to the Court of Appeal. The issue on appeal was whether a bank could lawfully debit its customer’s account without reference to that customer and pay out all or any of the money credited into that account to a third party who claimed the same on the basis that the remittance into the customer’s account was erroneous for having been made by mistake or as a result of a fraud on the third party by the customer.

**Held** – Money paid by a third person to the bank either directly, or on account of a bank’s customer, is refundable if it is established that it was paid under a mistake of fact and the mistake has been brought to its attention before the bank has either paid it out to the customer, or settled its accounts with the customer in a manner which would amount to payment, or otherwise done something which has so prejudiced its position that it would be inequitable to require a refund. *Kerrison v Glyn, Mills, Currie & Co* [1912] LJ KB 465; *Kleinwort, Sons & Co v Dunlop Rubber Co* (1907-08) 97 LJ 263 adopted. Since the respondent bank did not call an independent witness from Mumias Outgrowers company to show that the company had paid the money to the bank under a mistake of fact, the bank was in breach of its contractual obligation to its customer to pay out any deposit(s) in the customer’s account to the customer or to his order. The appellant had, however, not established his claim for damages for breach of duty by the respondent bank not to disclose his account or state thereof to third parties. Appeal allowed, with costs.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***United Kingdom***

*Kerrison v Glyn, Mills, Currie & Co* [1912] LJ KB 465 – **A**

*Kleinwort Sons & Co v Dunlop Rubber Co* (1907-08) 97 LT 263 – **A**