**Waiguru v National Bank of Kenya**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 4 February 1971

**Case Number:** 1579/1969 (73/74)

**Before:** Harris J

**Sourced by:** LawAfrica

*[1] Banking – Banker and customer – Negligence – Failure to credit account – Whether negligence.*

*[2] Damages – Contract – Breach of – Failure by banker to credit customer’s account – Nominal*

*Damages.*

**Editor’s Summary**

The plaintiff opened an account with the defendant bank and was given an account number. He gave a mandate to his employer to credit his salary direct to his account, but gave an incorrect number on it.

Credits would normally be made to the employees’ accounts on the 27th of the month. Neither the plaintiff’s name nor his number appeared properly on the list and the salary was not credited until four days later. In the meantime two cheques had been presented for payment and returned marked “refer to drawer”.

The plaintiff sued the defendant in contract alleging that it was negligent in failing to credit his account, and in defamation, but did not plead special damages.

**Held** –

(i) On the facts the defendant had not been negligent;

( ii) had the defendant been negligent, nominal damages would have been awarded;

(iii) Had general damages been awarded, these would have been Shs. 1,500/ – .

Case dismissed.

**Cases referred to Judgment:**

(1) *Marzetti v. Williams*, 1 B. & Ad. 415; 109 E.R. 842; [1824-34] All E.R. Rep. 150.

(2) *Banks v. Bank of New Zealand* (1902), 22 N.Z.L.R. 572.

(3) *Flach v. London & South-Western Bank* (1915), 31 T.L.R. 334.

(4) *London Joint Stock Bank v. Macmillan*, [1918] A.C. 777.

(5) *Gibbons v. Westminster Bank Ltd*., [1939] 2 K.B. 882.

(6) *Dogra v. Barclays Bank*, [1974] E.A., Part IV, post.