THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT No. 0235 OF 2021

5 **FABRICE BRAD RWALINDA ……………………………………………… PLAINTIFF**

VERSUS

STANBIC BANK LIMITED …………………………………………… DEFENDANT

Before: Hon Justice Stephen Mubiru.

10 **JUDGMENT**

a) The plaintiff's claim;

At all material timer, the plaintiff operated a dollar current account No. 9030009189296 with the defendant bank at its Bugolobi village Mall branch. On or about 11th August, 2017 a sum of US $ 15 73,262.50 was credited onto that account by way of electronic funds transfer from M/s Green Global Corporation. On 31st August, 2017 the defendant reversed that transaction by debiting the account in the same amount and remitted the funds back to the sender. The plaintiff's subsequent attempts to transact on that account were futile since the account was blocked. It is the plaintiff's claim that the defendant breached its banking contract with him when they reversed that transaction 20 without his mandate. Hr seeks recovery of that sum, general damages for breach of contract, interest and costs.

b) The defendant's defence to the claim.

25 By its written statement of defence, the defendant asserts that its actions were justified since the transaction involving the transfer of those funds onto the plaintiff's account was illegal, criminal and fraudulent. On 10th August, 2017 M/s Green Global Corporation deposited a sum of US $ 422,957.50 onto the plaintiff's said bank account. On 11th August, 2017 it deposited an additional sum of US $ 73,262.50 onto the account. The two transfers being inconsistent with ordinary 30 transactions on that account, the defendant classified them as suspicions and on 30th August, 2017 reported them to the Financial Intelligence Authority. By a letter dated 31st August, 2017 the Financial Intelligence Authority directed the defendant to halt all transactions on the account, until the account holder provided an explanation for the source and purpose of the funds. The plaintiff

did not provide the required explanation despite the defendant's request and soon thereafter M/s Green Global Corporation requested for a reversal of the transaction on ground that it had ben remitted pursuant to what it had since discovered to be a fraudulent scam. The defendant accordingly returned the funds to the sender. Police conducted investigations into the transaction
5 that culminated in the prosecution of the plaintiff for offences related to money laundering. It is the defendant's contention that its handling of the transaction was in public interest, for which reason the suit should be dismissed with costs.

c) <u>The plaintiff's reply to the written statement of defence.</u>

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In his reply to the written statement of defence, the plaintiff contends that despite having bene prosecuted, he was never convicted on any of the charges. Reversal of the credit transaction without the plaintiff's instructions constituted a breach of the banking contract between the plaintiff and the defendant. The Financial Intelligence Authority never directed the defendant to
15 reverse the transaction. Of the two deposits onto the account made by M/s Green Global Corporation, the defendant inexplicably reversed only one. Debiting the plaintiff's account without a court order was unlawful. The defendant not only froze the plaintiff's account but it also reversed a transaction thereon without authority.

20 d) <u>The questions for determination;</u>

In the joint scheduling memorandum filed in Court on 26th October, 2021 the following issues were agreed upon by the parties for determination;

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1. Whether the plaintiff's suit or cause of action is maintainable against the defendant.
2. Whether the defendant lawfully debited the plaintiff's account in the sum of US $ 73,262.50.
3. Whether the plaintiff's impugned conduct amounted to money laundering.
4. Whether the plaintiff is entitled to the remedies sought.

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e) <u>The submissions of counsel for the plaintiff;</u>

M/s Bluebell Legal Advocates, Counsel for the plaintiff submitted that whereas the defendant claimed to have become suspicious of the transaction as being tainted by money laundering, it
5 reversed the same on account of being a fraudulent business scam. This does not explain why only one of two similar transactions was reversed. The defendant relied only on the sender's explanation to come to that conclusion. There is no conclusive evidence of fraud established after a thorough investigation. Continuation of the banker-customer relations ship with the plaintiff contradicts the defendant's claim of fraud imputed to the plaintiff. The fraud imputed to the plaintiff was not
10 proved to the required standard. The defendant's contractual obligations were owed to the plaintiff and not to third parties. A bank cannot be permitted to reverse transactions on its customer's account in violation of natural justice.

Although a bank is under a statutory obligation to prevent money laundering, it is equally under
15 an obligation to act honestly. The plaintiff had no right to debit the plaintiff's account without his instruction or court order. The defendant could not reverse the transaction before obtaining proof of the suspected fraud. The law for the prevention of money laundering dos e not authorise banks to reverse transaction; it only requires them to report suspicious transactions. The Financial Intelligence Authority's directive was for freezing the account but not to debit it. Further
20 investigation of the suspected money laundering was crippled. The plaintiff is entitled to restitution in the amount debited from his account, with interest. Being denied access to those funds caused the plaintiff financial embarrassment on account of which he should be awarded general damages and costs.

25 f) <u>The submissions of counsel for the defendant;</u>

M/s Kyagaba & Otatiina Advocates (Dentons), Counsel for the defendant submitted that a Court of law cannot sanction. Condone, ignore or lend its process top blatant illegality, offences or crime. The plaintiff is asking the Court to provide remedies that contravene United Nations Security
30 Sanctions against the M23 rebels operating in the Democratic Republic of Congo. The defendant acted prudently, lawfully, in accordance with established banking practice and in public interest.

When a plaintiff cannot make out his claim without relying on an illegal transaction, the Court cannot offer him a remedy. In his statement to the police during the ensuing police investigations, the plaintiff admitted having bene involved in dealings involving gold mining and the M23 rebels in the Democratic Republic of Congo. The plaintiff admitted having served as an intermediary between an unlicensed gold dealer and the M23 rebels in relation to a transaction for the purchase of gold. He acted as the purchaser's agent. By resolution S/RES/2076(2012) the United Nations Security Council adopted at its 6866th meeting, on 20th November, 2012 acting under Chapter VII of the Charter of the United Nations, condemned the attempts by the M23 to establish an illegitimate parallel administration and to undermine State authority of the Government of the DRC. It sanctioned several members of M23.

At all material time, the plaintiff as agent and M/s Green Global Corporation as the principal knew they were dealing illegally in minerals and indirectly supporting the activities of the sanctioned M23 rebel activities in the DRC. The plaintiff was the pivot upon which the transaction turned. His role was to disguise the transaction as genuine. The transaction, despite being allegedly between corporate entities, is not supported by any documentation. Not even during the trial did the plaintiff produce proof of the source and purpose of the funds. The plaintiff on diverse occasions provided contradicting explanations of the nature of the transaction. Passing off an illegal dealing in gold as a consultancy constitutes money laundering. The bank statement shows that what the plaintiff claimed to be money belonging to M/s Green Global Corporation, he largely spent it on meeting personal needs and the needs of his own children as proceeds of crime.

What happened in this case was a reversal of the credit entry, and not a debit from the plaintiff's account. From the moment the amount was credited onto the plaintiff's account on 10th August, 2017, it was treated as a suspicious transaction. When asked to explain the source and purpose of the funds, the plaintiff said he was traveling and undertook to avail the documentation after its execution. When no explanation was forthcoming after what the defendant considered to be a reasonable period, this prompted the defendant, as required by statute, to report it to the Financial Intelligence Authority on 30th August, 2017. The sending bank requested specifically for the reversal of the transaction for the US $ 73,262.50 remittance. Banks are not required to obtain fool proof evidence of fraud first before taking action. The bank did not act whimsically but on basis

of a well-founded reasonable suspicion. Withdraw of charged against the plaintiff by the Director of Public Prosecutions is not proof of his innocence. All authorities cited by Counsel for the plaintiff fare distinguishable and inapplicable to the case before the Court now. Following the reversal of that credit, the plaintiff's account remained frozen until directed otherwise by a Court order dated 11th December, 2019. The plaintiff has never sought recovery of that sum of money from M/s Green Global Corporation, which is a clear indication of its illicit nature. The plaintiff cannot claim interest inn respect of money he knows the defendant to have sent back. That the plaintiff did not file this suit until four years after the event is another indication of its falsity. The suit should therefore be dismissed with costs to the defendant.

g) The decision;

Generally, the burden is on the plaintiff in the instant suit to show that: (i) there existed at the material time a customer-bank contract; (ii); a failure by the defendant to act as an ordinary honest/reasonable banker in dealing with his account; and (iii) the breach directly caused the plaintiff financial loss. According to Order 15 rule 3 of *The Civil Procedure Rules*, the Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit. It is necessary for purpose of achieving a logical flow in the decision, to re-arrange the issues as farmed by the parties, without amending them. Consequently, they have considered in the re-arranged order as laid out below.

First issue; whether the plaintiff's impugned conduct amounted to money laundering.

Money laundering is the illegal process of concealing the origin, ownership, or destination of funds or other property derived from criminal activity (such as fraud, drugs, or corruption) to make them appear legitimate (see *Uganda v. Sserwamba David Musoke and six others, H.C. Criminal Case No. 0011 of 2015*). It involves knowingly transferring, converting, or disguising illegal proceeds to evade law enforcement. According to section 1 of *The Anti-Money Laundering Act*, "money laundering" is the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or

movement of the proceeds of crime and any activity which constitutes a crime under section 119 of the Act, which acts are specified in section 3 of the Act.

The specified acts include, intentionally; - (a) converting, transferring, transporting or transmitting property, knowing or suspecting such property to be the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions; (b) concealing, disguising or impeding the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or suspecting such property to be the proceeds of crime; (c) acquiring, possessing, using or administering property, knowing, at the time of receipt, that the property is the proceeds of crime; (d) committing acts to avoid the transaction reporting requirements provided in Part III of the Act; (e) assisting another person to benefit from known proceeds of crime; use known proceeds of crime to facilitate the commission of a crime; or (f) participating in, associating with, conspiring to commit, attempting to commit, aid and abet, or facilitate and counsel the commission of any of the acts described in paragraphs (a), (b), (c), (d), (e) and (f).

The process of creating a scheme that aims to conceal the identity, source, and destination of illicitly-obtained money typically goes through three stages, i.e. placement, layering, and integration. Placement involves injecting "dirty" money into the legitimate financial system. Layering involves creating complex layers of financial transactions to hide the audit trail, while integration re-introducing the laundered funds into the economy to appear as legitimate wealth. The objective is to make the money appear legitimate, thereby avoiding detection and prosecution. It is a crime to knowingly use or attempt to conduct a financial transaction that involves illicit funds whether in the financing, transportation, or reporting of the transaction. *The Anti-Money Laundering Act* also makes it a crime to partake in a financial transaction that would knowingly aid in or involve property derived from unlawful activity. Proof of engaging in or attempting to engage in transactions involving property known or suspected to be the proceeds of crime under the Act requires evidence of knowledge or suspicion of the criminal origin of the property, coupled with the act of acquisition, use, possession, or facilitation of its use or control.

i. <u>The funds/property being the proceeds of crime or illegal activities</u>.

In money laundering, a predicate offense that generates funds or assets is required as an entry condition. It is necessary for the persons involved to commit an illegal act or a crime first and make money from it, where after an attempt is made to hide the illegal origin of the funds. These crimes that build the basis for money laundering are called predicate offenses. A predicate crime or offense is a crime that is a component of a larger crime. They are crimes that generate proceeds which are subsequently laundered to make them appear legitimate. Money laundering serves as the mechanism through which the proceeds of predicate offences are concealed, transformed, and integrated into the legitimate financial system. Criminals engage in money laundering to obscure the illicit origins of their funds, making them appear legitimate and avoiding suspicion.

A predicate offence is criminal conduct that either constitutes an offence in Uganda or would constitute an offence in Uganda if it occurred here. It is immaterial who carried out the criminal conduct or who benefited from it. The more common predicate offenses include narcotics trafficking, tax evasion, murder, grievous bodily harm, corruption, fraud, smuggling, human trafficking, illegal wildlife trafficking, and forgery. Red flags can include transactions involving large cash amounts, frequent transfers to high-risk jurisdictions, sudden and unexplained changes in transaction patterns, or attempts to conceal the source of funds. Proving a specific predicate offence is not always necessary to establish substantive money laundering (see *R v. Montila [2004] UKHL 50; [2004] WLR 3141*). It is not a requirement that there was a prior conviction of the antecedent offence.

In a civil trial such as this, it must be proved on a balance of probabilities that the funds or property was derived from conduct of a specific kind that was unlawful. The law though does not require identifying the specific underlying crime that generated the property. It suffices to establish that the property is the result of some criminal activity, even if the exact nature of that activity remains unidentified. Proof may be provided by adducing evidence that the circumstances surrounding the funds or property give rise to an irresistible inference that it could only have derived from crime (see *R v. Otegbola (Olaluwa) and another [2017] EWCA Crim 1147* and *R v. Solanki and another [2020] Lloyd's Rep FC Plus 14; [2020] EWCA Crim 47*)). An irresistible inference means that

there could be no plausible explanation for the circumstances other than a criminal one. Irresistible inferences may be drawn from the nature of the handling of the property (see *R v. Anwar [2008] EWCA Crim 1354*). For instance, large volumes of unexplained transfers and the use of fraudulent documents can lead to an irresistible inference of criminality.

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Money laundering focuses on cleaning "dirty" money (making proceeds of crime look legal). *The Anti-Money Laundering Act* is aimed at various forms of dealing with "dirty money" (or other property). It is not aimed at the use of clean money for the purposes of a criminal offence, which is a matter for the substantive law relating to that offence. The property has to be already criminal
10 before the dealing in question, by virtue of being the proceeds of crime or illegal activities, at the time of the dealing in issue. Property qualifies as proceeds of crime or illegal activities if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly). The property concealed, disguised, converted or transferred, as the case may be, must be criminal property at the time it is concealed, disguised,
15 converted or transferred. It is that pre-existing quality which makes it an offence for a person to deal with the property, or to arrange for it to be dealt with, in any of the prohibited ways. It must be property obtained as a result of or in connection with criminal activity, separate from that which is the subject of the litigation itself.

20 The defendant may rely on evidence such as the plaintiff's lack of legitimate explanation for possessing the funds or property, forensic accounting, unexplained transactions, or circumstantial evidence like a lavish lifestyle unsupported by legitimate income. In short, proving a predicate offence in a claim of money laundering involves demonstrating that the property in question is the proceeds of criminal conduct, either by proving the specific predicate offence or by establishing
25 an inference that the most plausible explanation is that the property was derived from crime. A prior conviction for the predicate offence is not a prerequisite for proving the money laundering. it is sufficient to prove that the property was criminal in origin without proving the specific crime. In *DPP v. Bholah [2011] UKPC 44*, the Privy Council emphasised that requiring proof of a specific offence would defeat the objective of anti-money laundering regimes, which are designed to target
30 handling of proceeds of crime, even when the exact crime is unknown.

Evidence of the circumstances in which cash or property is handled can give rise to the inference that it is most plausibly derived from crime, even without specific findings about the predicate offence. However, such inferences must be based on cogent evidence. The difference between the criminal standard of proof in its application to circumstantial evidence and the civil one is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter one needs only circumstances raising a more probable inference in favour of what is alleged. In criminal trials the proved facts should be such that they exclude every reasonable inference save the one sought. In civil cases if the facts permit more than one inference, the Court must select the most plausible. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise a reasonable and definite inference.

When a party who has the burden of proof relies, not upon direct evidence, but upon circumstantial evidence, such evidence, together with all inferences reasonably deducible therefrom, must, in order to prevail, be adequate to establish the conclusion sought and must so preponderate in favour of that conclusion as to outweigh any other reasonable or possible inference or deduction inconsistent therewith (see *Wagner v. Somerset County Memorial Park, 372 Pa.*; *Polk v. Steel Workers Organizing Committee, 360 Pa. 631, 62 A.2d 850*; *De Reeder v. Travelers Insurance Co., 329 Pa. 328, 198 A. 45*). The defendant needs, as a minimum, to produce sufficient circumstantial evidence or other evidence from which an inference can be drawn, to the required civil standard, that it is more probable than not that the property in question has a criminal origin. In other words, the most plausible reason for the circumstances is a criminal one.

For example, in the case of *R v. Anwoir [2008] EWCA Crim 1354; [2008] Lloyd's Rep FC 554*, the court held that it could be proved that property was derived from crime in two ways: (a) by showing that it derived from conduct of a specific kind or kinds, and that such conduct was unlawful; or (b) by presenting evidence of the circumstances in which the property was handled, which were such as to give rise to the irresistible inference that it could only have been derived from crime. The court noted that the possession of large sums of money without a legitimate explanation, or the handling of money in a highly unusual manner, could lead to such an inference. Similarly, in *R v. Otegbola (Olaluwa) and another [2017] EWCA Crim 1147*, the Court of Appeal

upheld the use of the *Anwoir* principle, where the prosecution demonstrated that substantial funds moving between accounts were inconsistent with the declared income of the defendants. The evidence of unusual handling of funds and inadequate explanations led to the irresistible inference that the money was criminal property. Lastly in *National Crime Agency v. Khan [2016] 1 WLR 3481; [2017] EWHC 27*, the court found that the absence of any identifiable lawful income to explain the respondent's lifestyle, combined with unexplained deposits and unusual financial arrangements, supported the inference that the property was derived from crime.

Evidence that is not sufficient to meet proof beyond reasonable doubt may nevertheless suffice for supporting findings of civil liability. For example, in *The People of the State of California v. Orenthal James Simpson No. BA097211 (Cal. Super. Ct. Oct 3, 1995)*, O.J. Simpson was acquitted of murdering Nicole Brown Simpson and Ronald Goldman in 1995, but in a civil trial based on the same facts (see *Sharon Rufo et. al. v. Simpson, 86 Cal. App. 4th 573 (Cal. Ct. App. 2001*), a civil jury found Simpson committed the killings wilfully and wrongfully, with oppression and malice. He was found liable for their wrongful deaths in a 1997 civil trial, and was ordered to pay US $ 33.5 million. The civil verdict occurred because of a lower burden of proof, "preponderance of evidence" versus "beyond a reasonable doubt."

In the instant case, the plaintiff's bank statement of transactions from 1st January, 2017 to 8th September, 2017 in respect of account No. 9030009189296 (exhibit P. Ex.2) shows that on 13th January, 2017 a deposit of US $ 10,000 was made onto the account, followed by multiple withdrawals in small amounts ranging from US $400 to US $ 5,000 over the next five months. The next credit transaction occurred on 6th August, 2017 in the sum of US $ 100 followed by one point of sale purchase on 9th August, 2017 in the sum of US $ 35. This was followed by a deposit of US $ 422,957.50 on 10th August, 2017. The plaintiff thereafter made two withdrawals in sums of US $ 10,000 and US $ 50,000 on the same day. Another deposit of US $ 73,262.50 was made on 11th August, 2017. The plaintiff made a cash withdrawal of US $ 155,800 on 18th August, 2017. He thereafter made multiple points of sale purchases at the Dubai Duty Free Shop on the same day in sums of US $ 141.55, US $ 1,745.36, US $ 632.47, US $ 234.21, US $ 1,579.83, and a cash withdrawal in the sum of US $ 4,000 on 21st August, 2017. He then paid tuition for Mwiza Rulinda

in the sum of US 22,379.46 on 28th August, 2017 before withdrawing a sum of US $ 2,000 in cash on the same day. This was followed by reversal of the US $ 73,262.50 credit on 31st August, 2017.

It should be noted, in addition, that the civil standard of proof applies in civil recovery proceedings, while the criminal standard applies in money laundering prosecutions; thus the circumstances in civil recovery need only give rise to an inference that is "more likely than not," rather than one that is "irresistible." This standard is lower than the criminal standard of proof, which requires proof beyond a reasonable doubt. The Court must determine whether it is "more probable than not" that the property in question was obtained through unlawful conduct. This assessment involves considering the entirety of the evidence presented, and it is insufficient to rely solely on the fact that the subject's lifestyle is inconsistent with any identified lawful income. The court does not need to identify a specific offence or even a specific class of crime to establish the criminal origin of the property. Instead, the focus is on the evidence that supports the inference of criminal conduct. For instance, unexplained wealth, untruthful explanations for the source of funds, or the handling of property in a manner consistent only with money laundering can lead to the conclusion that the property was acquired as proceeds of crime or illegal activities.

In his plaint filed on 9th April, 2021 the plaintiff offered no explanation of the source nor the purpose for which that sum of US $ 73,262.50 now in issue was credited onto the account. However, when he previously recorded a statement with the police on 2nd September 2017 (exhibit D. Ex.7), he had explained as follows;

> I am doing consultation work and brokerage here in the region…… I know a company known as Green Global Corporation and its directors I also know as Mr. Bismarck. I have known Bismarck for so many years. [A] few months ago he told me that there was in the region, Fan Wu, Mohammed Guled sourcing for gold. Last month August, 2017 a week before [the] Kenyan election, I met Mohammed Guled and Fan Wu in Nairobi and they told me they wanted gold. [They] first wanted to [be] introduced them (sic) to M23 rebels from Congo to do the gold business and secondly they [ineligible] business and identified office space at Plot 9 Yusuf Lule Road…...they insisted they wanted to meet the M23 rebels (people) Fan Wu and Guled asked me to bring the people to Serena. Indeed, I organised and they met at Serena Conference meeting room upstairs. They were two

> people from M23 that is Amani and Mr. Cloud, both of them are Congolese nationals. The next day Fan Wu insisted that he wanted to meet them [ineligible] Nanjing Hotel Lugogo bypass. This time he discussed and agreed to supply them with equipment, medicine, housing and funding (money) to do the work. On the third day they agreed to transfer money through my account then I would withdraw and in turn give the money to the M23 because he was not comfortable dealing directly with the rebels and that being an American by nationality would sound bad. The next day Fan Wu transferred some money, about three hundred thousand US Dollars to my account in Stanbic Bank Forest Mall Branch…… I withdrew the money and dispatched it to its destinations……While in Dubai I got to know that back home in Uganda I am wanted by Police on allegations of defrauding the management of Green Global Corporation which is not true. If given an opportunity, I can help Police to get the two M23 rebels who have been in meetings with Fan Wu and Guled……...

Section 144 of *The Evidence Act* permits the cross-examination of a witness as to previous statements made by him or her in writing or reduced into writing, hence the defendant's reliance on the above statement. In civil proceedings, the rules governing the admissibility of such evidence are distinct from those in criminal cases. The hearsay rule's most important function is to mitigate the threat to adjudicative accuracy arising from the inability to cross-examine a live and present declarant. Generally, the availability of the declarant for cross-examination at the trial renders a prior inconsistent statement, once proven, admissible as substantive evidence, meaning it can be used to prove the truth of the matters stated within it. When there is a meaningful opportunity to cross-examine the witness, a previous inconsistent statement, when proved, can be admitted as evidence of the matters stated within it, rather than solely for the purpose of discrediting the witness. Out-of-court statements of a person who gives evidence and is able to be cross-examined in a proceeding are not hearsay. Cross-examining witnesses on their prior statements at trial gives the Court an adequate basis to assess the statement's truth, accuracy and reliability. The plaintiff had personal knowledge of the facts asserted in that statement.

In paragraphs 19 and 22 of his witness statement filed in Court on 26th October, 2021, the plaintiff stated that "I know that I would have used the debited monies for business…...I used the bank account for all my expenditure and investments including travel, household necessities and also to make school fees payments at my daughter's school……I was unable to meet my financial

obligations at my daughter's school and as a result had to withdraw her and enrol her at another school in [the] middle of a school year." In a letter dated 28th September 2017 (exhibit D. Ex.8), addressed to the State Attorney at Buganda Road Court, challenging the plaintiff's subsequent prosecution for the offence of money laundering, the plaintiff's advocates opined;

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> Uganda has lately been in the spotlight for exporting more gold than she mines, so most gold is illicit. The complainant in trying unsuccessfully to get into this questionable trade should therefore not return to use the resources of the State they tried to defraud and cheat to recover their losses. They are at liberty to resort to civil action to address their losses. Furthermore, this unfortunate witch-hunt has had the effect of freezing our client's accounts, which accounts are largely only our client's funds…….

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While under cross-examination, the plaintiff explained that Green Global Corporation Limited had proposed to partner with him in construction and other businesses. He explained further that;

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> The transaction was about Gold. I was doing brokerage between them and another company called Ecole Francaise Les Grands Lac. That company was selling to Green Global Corporation Limited and another company. The police said Ecole Francaise Les Grands Lac was in M23. I met them during the transaction; I had not known them before. My role was to ensure that Green Global Corporation Limited has local representation……. I had an existing account. I furnished details of my account to them. I knew they would deposit money on my account. They had discussed with me that they would remit for the gold transaction and for other businesses. I was not interested in knowing the source of funds…….. I accepted to be an agent of the buyer. My role was to ensure that the seller receives the payment. I withdrew part of it and then gave them part of my own money. I had received cash from elsewhere and I chose not to bank it. I was looking to a commission…….. I have no documents to show the purpose of the payment. I paid on their behalf but in their presence……… Money laundering covers source of funds, identify and purpose. Green Global was the source, the purpose included the oil deal and many other activities. It was all one transaction. I had many hats; for the gold transaction I was their agent, transport they had invested and they had planned to start a construction company. We agreed that I would be given a commission on the sale in Hong Kong. I was to pay US $ 150,000 to Veolia US $ 450,000. They sent US $ 422,000 we had already paid US $ 185,000 they sent US

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> $ 73,000. I paid US $ 180,000 from personal sources. I had US $ 101,748.68 on the account……… I was arrested by the police on charges of money laundering. They entered a *nolle prosequi* on being cautioned that the matter would be dismissed if they did not produce a witness. US $ 28,476 was on the account. I do not know how much is in the account. Green Global never claimed the amount on the account. I withdrew about US $ 12,000 and have never transacted on it again.

Considering the substance of the evidence on this issue in totality, the plaintiff offered no explanation for the source of the funds. He categorically stated that he was not interested in knowing the source of the funds. As to its purpose, he gave multiple explanations including that it was meant for a transaction of purchase of gold from M23 rebels by M/s Green Global Corporation Limited, for a deal in oil, transport business, starting a construction company and many other business activities, out of which he was to earn a commission, yet he applied his own funds at one point in meeting obligations of M/s Green Global Corporation Limited. This evidence establishes the fact that the funds were handled in a manner that strongly suggests they were derived from criminal conduct, even without identifying the specific predicate offence.

In *R (on the application of Cao) v. Central Criminal Court [2021] EWHC 2594*, the claimant, a Chinese national, was at all material times a student in the United Kingdom. He had received a total deposit into his bank account of £824,393.58 in varying amounts and at various banks throughout the country. On 12th October, 2016 his house was searched by police officers who were concerned in a money laundering investigation. The Officers seized £59,980 in cash, found folded in plastic bags within a metal suitcase. He told the police during the search that this came from his friends, family and his mother. He was connected to a lady named Fen Chen who had previously been arrested and stood trial for money laundering. He had assisted her with bail after her arrest. There was a significant difference in the evidence which he gave in the Magistrates Court about his having the money in his possession for two weeks and his evidence in the appeal that he had held the cash for six months. It was argued on appeal that the suggestion that the funds were criminal property was based on suspicion rather than hard evidence. The Court accepted that the police could not give it an explanation for the source of the cash but it was sure that it represented the proceeds of money laundering. The whole purpose of money laundering was to make its origins impossible to detect. The court found that the claimant's implausible explanations and connections

to individuals involved in criminal conduct supported the conclusion, on the balance of probabilities, that the cash was the proceeds of money laundering.

The transaction in the instant case triggers multiple red flags or alarm bells identified by the Financial Intelligence Authority in its *Guidance Note* of 1st December, 2024 as being common indicators that may point to suspicious or unusual transactions. The following are the one relevant to this case;

a) Client admits or makes statements about involvement in criminal activities;

b) Client starts conducting frequent cash transactions in large amounts when this has not been a normal activity for the client in the past.

d) Account with a large number of small cash deposits and a small number of large cash withdrawals.

d) The transaction involves a country where illicit drug production or exportation might be prevalent, or where anti-money laundering measures are ineffective.

i) Client presents confusing details about the transaction or knows few details about its purpose;

j) Client appears to informally record large volume transactions, using unconventional bookkeeping methods or "off-the-record" books;

j) Client conducts a transaction for an amount that is unusual compared to amounts of past transactions;

n) Client is involved in transactions that are suspicious but seems blind to being involved in money laundering or terrorism financing activities;

p) The size of fund transfers is inconsistent with the client's typical business transactions.

r) Client is involved in activity out-of-keeping for that individual or business;

t) Inconsistencies appear in the client's presentation of the transaction;

u) The transaction does not appear to make sense or is out of keeping with usual or expected activity for the client;

q) Unusually large cash deposits by a client with personal or business links to an area associated with drug trafficking [or other illicit trade];

Similarly, in the case at hand the plaintiff's admission of "wilful blindness," i.e. consciously choosing not to know the source of funds, combined with identifying as participants in the transaction, high-risk, illicit entities (the M23 rebels) and being a complex, large-scale, yet vague

business dealing (in oil, gold, construction, transport) all in one transaction, provides strong circumstantial evidence of money laundering. When a suspect in a case of money laundering states he or she was "not interested" in knowing the source of funds, it is equivalent to turning a blind eye. Courts generally interpret this as having "reasonable grounds to suspect," which meets the
5 knowledge requirement for money laundering. Providing multiple, disparate justifications (gold, oil, construction, transport) for the same funds is a red flag indicating an attempt to disguise the illegal origin of the money. Explicitly linking the funds to an armed group (M23 rebels) when combined with the rest of the factors, provides an inference that it is more probable than not the funds are proceeds of crime.

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The use of legitimate funds to finance a crime does not itself constitute money laundering under *The Anti-Money Laundering Act*. Section 3 (e) of the Act only penalises the "use [of] known proceeds of crime to facilitate the commission of a crime." Wilful blindness is not mere negligence or recklessness, but a deliberate decision not to confirm a suspicion about the criminality of assets.
15 The law deems this "closing one's eyes to the high probability" of a fact equivalent to knowing that fact. Wilful blindness, or "conscious avoidance," serves as a legal doctrine that treats a suspect's deliberate failure to gain knowledge of a fact as the equivalent of actual knowledge. In cases involving the use of proceeds of crime, wilful blindness allows the court to draw an inference that it is more likely than not the plaintiff knew he was using illicit funds, even if he tried to remain
20 ignorant. This inference becomes "irresistible" when the circumstances are so suspicious that no other reasonable conclusion exists, or when the suspect consciously avoids the truth to secure their own deniability. It suffices as knowledge or suspicion that the arrangement he was involved in was to facilitate the acquisition, retention, use, or control of proceeds of crime (the predicate offence) to facilitate the commission of a crime (illegal trade in gold with M23 rebels).

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In the further alternative, even if the money paid into the plaintiff's account was to be considered lawful money before it was paid into the account, its character changed on being paid into the plaintiff's account. It became criminal property in the hands of the plaintiff, by reason of the arrangement made between him and M/s Green Global Corporation to apply it in facilitating illegal
30 activity. Just as a thief is not guilty of acquiring criminal property by his act of stealing it from its lawful owner, but that does not prevent him from being guilty thereafter of an offence under one

or other, or both, of the provisions in *The Penal Code Act* relating to possession, using, concealing, transferring it and so on. Once the money was credited onto the plaintiff's account, it became criminal property. The plaintiff had a grounded, clear, and targeted suspicion regarding the illicit origin of the funds, reasonable means of inquiry were available to him to confirm the truth, but he deliberately refused to pursue those inquiries, preferring to remain ignorant. If a person receives a large sum of money under highly suspicious circumstances (e.g., from a known criminal or through a disguised arrangement) and wilfully avoids checking its source before using or planning to use it to fund a new illegal act, they cannot claim a lack of knowledge.

The material act (*actus reus*) of the crime of money laundering consists in the conversion or transfer or in the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership or in the acquisition, possession or use of property or in the retention without reasonable excuse, of property when such property derived or originated directly or indirectly from criminal activity or from an act(s) of participation in criminal activity. Lawful money paid into a person's account may become criminal property due to its connection with fraudulent or illegal activity (see *R v. Scott Anthony Linegar [2009] EWCA Crim 648; R v. James Onanefe Ibori [2013] EWCA Crim 815 R v. Greaves [2011] 1 Cr. App. R (S) 8* and *R v. Haque (Mohammed) [2019] EWCA Crim 1028; [2020] 1 WLR 2239*). Funds in an account can become criminal property if a person knowingly accepts or allows their account to be used to move money for criminals, often referred to as a "money mule."

The plaintiff as launderer may not be the principal offender in the underlying criminal conduct which generated the relevant funds but was involved in the criminal conduct that is the laundering process itself. A person may engage in money laundering by acquiring, using, or possessing known or suspected proceeds of crime, or by entering into or becoming concerned in an arrangement that facilitates the acquisition, retention, use, or control of that property by another person. This includes the use of one's bank accounts to obscure the source of funds or provide a veil of legitimacy to criminal proceeds.

The March 23 Movement (M23) is a rebel military group operating in the eastern Democratic Republic of Congo (DRC) that is widely recognised as an illegal armed force by international

bodies, including the United Nations Security Council. The United Nations has imposed sanctions against M23 and its leadership, consistently called for the group to disarm, halt their offensive, and withdraw from all occupied areas. Acting under Chapter VII of the Charter of the United Nations, the United Nations Security Council at its 6866th meeting, on 20th November, 2012 adopted resolution S/RES/2076(2012) which provides, *inter alia*, that it;

> 3. Strongly condemns the M23 and all its attacks on the civilian population, MONUSCO peacekeepers and humanitarian actors, as well as its abuses of human rights, including summary executions, sexual and gender based violence and large scale recruitment and use of child soldiers, further condemns the attempts by the M23 to establish an illegitimate parallel administration and to undermine State authority of the Government of the DRC, and reiterates that those responsible for crimes and human rights abuses will be held accountable;
>
> 4. Expresses deep concern at reports indicating that external support continues to be provided to the M23, including through troop reinforcement, tactical advice and the supply of equipment, causing a significant increase of the military abilities of the M23, and demands that any and all outside support to the M23 cease immediately;

The national and international actors fuelling that violence have been driven by the same motives: the financial gains they reap from illicit economies. The engagement of the M23 in the illicit transfer of minerals to neighbouring countries where they are laundered was common knowledge at the time and continues to be so. This is achieved by disguising the minerals among the production and then declaring them as sourced in those neighbouring countries. International and regional networks specialising in money laundering and mining take advantage of the weak control systems around minerals that allow those involved in the conflict to extract revenue. The facts of this case indicate that the armed group is not alone in benefiting from an economic system dominated by transnational organised crime.

This transaction in which the plaintiff was involved when placed under forensic examination does not generally look like normal commercial activity. It is criminal money laundering dressed up to look like normal commercial activity. The purpose of the plaintiff's involvement was to provide a veneer of commercial respectability to the shifting of criminal funds with the motive of making

these funds appear legitimate with the desire that it is viewed by the outside world as an arm's length transaction. The commercial veneer was bent or distorted to accommodate the criminal purpose. The defendant has led strong circumstantial evidence proving that it is more probable than not that the funds in question were obtained through unlawful conduct.

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ii. Knowledge or suspicion that the property is derived from criminal activity.

The material act (*actus reus*) or acts must have been committed with the required specific *mens rea*, i.e. with at least one of two specific intentions, namely, (i) that of concealing or disguising the
10 origin of the property; or (ii) that of assisting any person(s) involved or concerned in criminal activity. The key challenge for the prosecution of money laundering offences is proving that the relevant money or assets were criminal in origin and proving that the offender knew that the money or assets were criminal in origin. Whereas in criminal trials the standard of proof is beyond reasonable doubt, in civil trials typically involving only the recovery of such money, the relevant
15 standard of proof is the less exacting civil standard of balance of probabilities.

In civil proceedings, proof of dishonesty is not required, but only knowledge or suspicion of the criminal origin of the property. There is no requirement for proof that the perpetrator knew the exact crime committed (predicate offense), only that they knew the property was derived from
20 some form of illicit activity. Knowledge or suspicion that the property represents the proceeds of "some" criminal conduct is sufficient; proof of a specific criminal act is not required (see *R v. Montila [2004] UKHL 50; [2004] WLR 3141*). It is not necessary to identify or prove the exact predicate offence, as long as the defendant knew or suspected the property was criminal property. Suspicion is a subjective matter and does not require dishonesty. It is a belief that there is a
25 possibility, more than a fanciful one, that the property is connected to criminal conduct.

A "vague feeling of unease" is insufficient; it requires a genuinely held recognition of a possibility of criminal conduct that prompts further enquiry (see *R v. Hilda Gonmdwe Da Silva [2006] EWCA Crim 1654; [2007] 1 WLR 303*). While a "vague feeling of unease" is insufficient, the suspicion
30 does not need to be "clear" or "firmly grounded" in specific facts. It simply requires a genuine belief in a non-remote possibility of criminal conduct. While it has to be genuinely held, it does

not have to be reasonably held. It is not necessary for the person holding the suspicion to know the exact nature of the criminal offence or have evidence that money laundering is taking place. The test focuses on what the specific individual actually thought at the time, rather than what a "reasonable person" would have thought. It does not require "reasonable grounds" or "firm evidence" to exist. The person holding the suspicion does not need to be certain or even believe it is "probable." The individual must actually have a thought that there is a possibility that a transaction or activity is connected to criminal conduct. It does not require absolute certainty, but it must be more than imaginary.

The relevant threshold of proof that a suspect of money laundering genuinely held recognition of a possibility of criminal conduct that prompts further enquiry rather than a vague feeling will be reached if the plaintiff either knew or suspected a specific type of criminal conduct had taken place, such as fraud or tax evasion, and that it has generated criminal property. If the defendant can show that the plaintiff was aware of facts which, when considered objectively, would provide reasonable grounds for knowledge or suspicion, that would be enough to subjective suspicion even if the plaintiff did not have actual knowledge. This may be based on the information the plaintiff may have received or his being aware of a series of warning signs which cannot be satisfactorily explained, and which when taken together give the inference that the funds more likely than not to be criminal. When a genuine suspicion is formed, it triggers the obligation to conduct further due diligence and potentially submit a suspicious activity report to the Financial Intelligence Authority.

Proof of suspicion does not need to be based on direct evidence but can be inferred from the circumstances surrounding the case. The wilful blindness standard requires that the plaintiff subjectively believed that a fact was highly probable, and deliberately avoided learning the truth. For example, in *United States v. Jewell, 532 F.2d 697 (9th Cir. 1976)*, the appellant entered the United States driving a car with 110 pounds of Marijuana concealed in a hidden compartment. He had received money to drive the car over the border from a stranger. He had also noticed that the car had a concealed compartment. These facts demonstrated that while he could have not seen the marijuana being loaded into the car, he was in essence trying to remain ignorant but knew that something was wrong. He claimed he did not know drugs were in a secret compartment of his car. The Court ruled that an accused could not allege he was "deliberately ignorant" because this mental

state with respect to this crime was equally culpable as positive knowledge. If an accused has his suspicion aroused but deliberately omits to make further enquiries, he is deemed to have knowledge. To act "knowingly" is not necessarily to act only with positive knowledge, but also to act with an awareness of the high probability of the existence of the fact in question. One may 5 deliberately shut his eyes to avoid knowing what would otherwise by obvious to view. In such cases, the person acts at his peril and is treated as having knowledge of the facts as ultimately discovered to be.

Knowledge goes beyond actual knowledge and includes situations where the facts would be clear 10 to an honest and reasonable person, as well as turning a blind eye. Section 4 of *The Anti–Money Laundering Act* provides that knowledge, intent or purpose may be inferred from objective factual circumstances. A key indicator is when a person disregards "red flags" or, in the course of business, fails to report transactions they suspect are suspicious. The tell-tale signs in this case indicating that the plaintiff genuinely recognised the possibility of criminal conduct that prompts further 15 enquiry in the instant case are that; - there is no evidence to show that the transaction was within the ordinary range of services normally requested of him by M/s Green Global Corporation; it has not been shown to match the client's known profile, business, or financial history; it involved a client who was using a business relationship involving large sums of money for a single transaction or for a very short period of time; routing funds through the plaintiff's account as a third party 20 without an obvious economic reason, followed by a request by the client for onward transmission of the funds through the banking system to an armed rebel group; and moving funds to a high-risk jurisdiction reputed to have weak anti-money laundering controls. The plaintiff must have had the knowledge, or at least the suspicion, that the funds in question originated directly or indirectly from an underlying criminal activity.

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iii. <u>Engaging in, or attempting to engage in, transactions involving these proceeds</u>.

It an offence to enter into or become concerned in an arrangement that facilitates the acquisition, 30 retention, use, or control of criminal property by or on behalf of another person. *The Anti-Money Laundering Act* criminalises attempts, conspiracies, or incitement to commit money laundering

offences, as well as aiding, abetting, counselling, or procuring such offences. According to sections 3 and 119 of the Act, any person who deals with property that he or she believes or has reason to believe was acquired as proceeds of crime, such as holding, receiving or concealing the property, or enters into a transaction in relation to the property or causes such a transaction to be entered into, commits an offence.

Therefore, a person commits an offence when he or she enters into or becomes concerned in an arrangement which he or she knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person which he or she knows or suspects to have been acquired as proceeds of crime. A person benefits from conduct if he obtains property as a result of or in connection with the conduct. In his own admission, the plaintiff testified that he withdrew part of it and then gave the gold sellers part of his own money. Although he had no documents to show the purpose of the payment, he was categorical that he paid on their behalf but in their presence. His bank statement of transactions from 1st January, 2017 to 8th September, 2017 (exhibit P. Ex.2) shows multiple withdrawals for his benefit as well.

iv. An objective of concealing the illicit origin, location, movement, or ownership of the criminal property.

This includes actions such as concealing or disguising its nature, source, location, disposition, movement, or ownership. There is no need to prove that the purpose of the concealment or conversion was to give the property the appearance of legitimate origin.

It need not be demonstrated that the transaction was intentionally designed to hide the illicit origin, location, movement, or ownership of proceeds of crime. Instead, it must be established that the property was criminal and that the accused knew or suspected its criminal origin. This may be proved by showing the placing of assets in the names of third parties, shell companies, or intermediaries, or the creation of fake documents or business records to make illicit funds appear to be from legitimate sources. Simply moving money is not enough; it must be proven that the transportation or transaction itself was designed to conceal. All in all, this issue is answer in the affirmative; the plaintiff's impugned conduct amounted to money laundering.

Second issue; <u>whether the defendant lawfully debited the plaintiff's account in the sum of US $ 73,262.50</u>.

Section 9 of *The Anti-Money Laundering Act* imposes an obligation on all accountable persons to monitor and report suspicious transactions. According to item 7 of the second schedule to the Act, all financial institution as defined in *The Financial Institutions Act*, are accountable persons. Therefore, the defendant at all material time had a legal obligation to monitor and report suspicious transactions on the plaintiff's act. A suspicious transaction is defined in section 1 of the Act as a transaction which is inconsistent with a customer's known legitimate business or personal activities or with the normal business for that type of account or business relationship, or a complex and unusual transaction or complex and unusual pattern of transaction.

i. <u>The duty to report</u>.

Suspicious transactions include any financial activity, whether completed or attempted, that causes reasonable suspicion of being linked to or could constitute or be related to illegal activities, including facilitating the transfer of the proceeds of crime, seeking to avoid the reporting duty under this section, the financing of terrorism, and evasion of the duty to pay any tax or duty. This extends to a transaction which, without plausible reason, results in the intensive use of what was previously a relatively inactive account, such as a customer's account which shows virtually no normal personal or business related activities but is used to receive or disburse unusually large sums which have no obvious purpose or relationship to the customer and/or his business, and those which are incompatible with the financial institution's knowledge and experience of the customer in question or with the purpose of the business relationship.

Banks are legally obligated as soon as is practicable, but in any case not later than forty-eight hours (two working days according to the Financial Intelligence Authority *Guidance Note* of 1st December, 2024) after the occurrence of the suspicious activity or transaction, to report any transaction they suspect or have reasonable grounds to suspect involves proceeds of crime, possible money laundering or terrorism financing, regardless of the value. The exception to those timelines is in respect of Terrorism Financing and Proliferation Financing which must be

prioritized and reported to the Financial Intelligence Authority without delay. Regulation 39 (1) of *The Anti-Money Laundering Regulations*, S.I. 75 of 2015 provides as follows;

> An accountable person shall, upon investigating and being fully satisfied that the transaction or activity is suspicious, notify the Authority of any suspicious activity or transaction which indicates possible money laundering or terrorism financing.

Even where lawful money is transferred to an account and immediately used for purposes that do not match the customer's profile, are unusually large, or are directed toward high-risk, illegal activities, the bank is mandated to report this as a suspicious transaction, regardless of the amount. The bank must report any transaction that is reasonably suspected to involve proceeds of crime or funds related or linked to or to be used for money laundering or terrorism financing. In its *Guidance Note* of 1st December, 2024 the Financial Intelligence Authority has given examples of common indicators that may point to suspicious or unusual transactions, which have previously been highlighted in this judgment.

Financial institutions must monitor transactions for patterns that suggest a criminal purpose, even if the customer's profile suggests the funds are legitimate. The law shifts from investigating the origin (how the money was made) to the destination and intent (how the money is used) once it enters the system, treating its use in crime. While "money laundering" primarily focuses on concealing the origins of "dirty" money, the use of "clean" money for criminal purposes is typically addressed through financing of crime laws such as *The Anti-Terrorism Act*.

Failure to report suspicions of money laundering or terrorist financing through a suspicious activity report can also result in criminal liability under section 125 of *The Anti-Money Laundering Act*, with penalties including imprisonment, fines, or both. An accountable person who intentionally fails, within the prescribed period, to report to the Authority the prescribed information in respect of a suspicious or unusual transaction or series of transactions, commits an offence. Similarly, one who reasonably ought to have known or suspected that acts of money laundering exist, and who negligently fails to report the prescribed information in respect of a suspicious or unusual transaction or a series of transactions or enquiry, commits an offence.

ii. The power to freeze a bank account.

Section 1 of *The Anti-Money Laundering Act* defines "freezing" as temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court. In the case of *Lonsdale v. National Westminster Bank plc [2018] EWHC 1843*, the Court recognised that terms are implied into contracts between banks and their customers, allowing banks to freeze accounts if they suspect the funds are criminal property. The bank must demonstrate that its suspicion is genuine and based on evidence that can be tested in court. If the bank can establish that its employees genuinely suspected money laundering, it may freeze the account in order to prevent the immediate transfer or withdrawal of suspected illicit funds, and would have a reasonable prospect of defending claims of breach of contract. While a bank can act immediately, the freeze is typically a temporary measure while an investigation is conducted or a suspicious activity report is filed.

Similarly, in *Shah v. HSBC Private Bank (UK) Ltd [2012] EWHC 1283 (QB); [2013] 1 All ER (Comm) 72*; *[2010] 3 All ER 477*, HSBC delayed the transfers while seeking consent from the Serious Organised Crime Agency (SOCA) under *The Proceeds of Crime Act, 2002* (POCA). The Zimbabwean-based customers (the Shahs) claimed damages from HSBC for the delayed transfers, which they alleged caused the freeze of their assets in Zimbabwe. The Court held that the POCA struck a precise and workable balance between the conflicting interests of a bank and its customer. In achieving a workable balance between the conflicting interests, the provisions offered a limited interference, in most cases only for a time limit of seven working days, which the court found acceptable. This balance required the implication of a term into the banker/customer contract permitting the bank to refuse to execute payment instructions in the absence of appropriate consent under POCA where it suspects a transaction constitutes money laundering, and that accordingly there was no need for the court to intervene to prevent an informal freeze, given that it could only last for a maximum of thirty-eight days.

The Court in essence implied a term into the contract, in the absence of an express term permitting the bank to refuse to execute a payment instruction. The rationale is that "…a limited interference is to be tolerated in preference to allowing the undoubted evil of money laundering to run rife in

the commercial community" (Per Longmore LJ at paragraph 22, *K Ltd v. National Westminster Bank Plc and others [2007] 1 WLR 311*; *[2006[4 All ER 907*). Where a bank suspects that money in a customer's account is criminal property and makes the appropriate reports, there can be no breach of contract by the bank for refusing to honour its customer's instructions.

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In the case of *Harvey v. Santander UK plc [2023] EWHC 2947 (KB)*, during the year 2022, a large payment into the customer's account created an alert on one of the bank's monitoring systems. Discussions with the claimant and subsequent investigations led to the bank suspect the payments related to fraud or another criminal act because of their origin, stated purpose and amount. The
10 bank concluded that the account ought to be closed and immediately froze the account. The customer discovered that the account had been frozen and asked the bank for an explanation, but was not satisfied with the lack of information provided by the bank. The customer subsequently brought a breach of contract claim against the bank and applied for an interim mandatory injunction to compel the bank to unfreeze their bank account. The bank opposed this application
15 on the basis that it was contractually entitled to act as it did, given its suspicions that the bank account was being used for potential fraud or criminal activity, and the need to guard against any potential regulatory and legal risks.

The customer provided no documentary evidential support to give any assurance that the deposited
20 monies were not the proceeds of crime and that certain proposed transactions were not an attempt to money-launder them. Also, none of the customer's own explanations satisfactorily dealt with the legitimacy of the source of the monies, nor provided any evidential support for it. The Court declined to grant the mandatory injunction stating that a bank must be entitled to rely on its contractual rights to refuse to carry out a transaction if it reasonably suspects it relates to fraud or
25 any other criminal act, or one that places the bank in breach of any legislation or law, or where the bank reasonably suspects it may result in any regulatory action against it. The court was not satisfied that this was a case in which an interlocutory mandatory injunction should be granted because it did not feel a high degree of assurance that the customer would succeed in satisfying a Court at trial that the bank had not been exercising its contractual rights to freeze the account, to
30 close it and to decline to execute the customer's instructions.

Moreover, if the Financial Intelligence Authority (FIA) suspects that legally obtained money is being used to facilitate a crime (e.g., funding a fraudulent scheme), they have the power under section 21 (o) of *The Anti-Money Laundering Act* to freeze accounts and seize funds. When a customer's account has been frozen the customer will of course not know why it has been frozen, as the Bank informing the customer prior to freezing would amount to an offence of tipping off under section 117 of the Act. It is an offence for an employee, officer, director or agent of any accountable person to notify a person, other than a court, competent authority or other person authorised by law, that information has been requested or furnished or reported or submitted to the Financial Intelligence Authority. Banks are required to balance their duty to execute customer instructions with their obligation to comply with statutory provisions is filed with the Financial Intelligence Authority, the bank may be required to block transactions until official consent is received. The implication is that in order to be effective, the Act therefore may infer or imply terms into banking contracts.

An inferred term is a term that a court deems to have been agreed between the parties, even if it was not expressly agreed in writing or in words (the inference is usually drawn from the conduct of the parties and the surrounding circumstances) whereupon obligation are inferred to which the parties can reasonably be presumed to have consented, the same being consistent with the normal and established allocation of risk and responsibility under contracts of the relevant type; while an implied term is one a court decides would have been agreed by the parties, had they turned their minds to it (e.g. because it was necessary to give business efficacy to the contract) where it is "necessary for business efficacy," or "so obvious that it goes without saying," and is not inconsistent with an express term (see *BP Refinery (Westernport) Pty Ltd v. Shire of Hastings [1977] UKPC 13*; *(1977) 180 CLR 266*; *(1977) 16 ALR 363*; *(1977) 52 ALJR 20*).

Terms may be implied by law into all contracts of a particular type, unless the express terms indicate the contrary. Terms implied by statute may or may not be capable of being excluded by express reference. Very clear words though must be used in order to do so. Terms implied by statute reflect a broader legislative intent to regulate contracts in specific contexts, ensuring that minimum standards are upheld regardless of the parties' intentions. These terms are designed to

balance the freedom of contract with the need to protect justified expectations and maintain proper standards of market conduct.

Terms implied by statute in banking contracts include regulatory compliance, designed to ensure banks operate within the legal framework and protect customer interest. Banks are bound by statutory requirements, such as anti-money laundering, "know your customer" (KYC) rules, and other financial regulations that are implicitly part of the banker-customer relationship. It is an implied term of the bank-customer contract that a bank may refuse to execute payment instructions if doing so would result in a breach of these regulatory constraints. These terms are not derived from the parties' agreement but are imposed by law to establish minimum standards and safeguard public policy. A bank cannot be obliged to act unlawfully under its mandate with the customer. In *Philipp v. Barclays Bank UK Plc [2023] UKSC 25*; *[2024] AC 346* the Court noted that the implied limit on a bank's duty to carry out authorised payment instructions is that the bank cannot execute instructions that would result in legal liability, such as breaching anti-money laundering regulations.

The general effect of *The Anti-Money Laundering Act* on ordinary banking transactions is that if a bank forms a suspicion that its customer may be engaged in criminal conduct, it files a suspicious transaction report with the Financial Intelligence Authority. If the Financial Intelligence Authority then consent to the bank thereafter complying with its customer's instructions to pay out money from the account, all well and good; the bank is protected. But if the Financial Intelligence Authority does not consent, the bank is on the horns of a dilemma. On the one hand, it has its customer demanding that it make payment in accordance with the mandate. On the other hand, it has a suspicion that its customer has been engaged in criminal conduct and, if it makes the payment, it will clearly facilitate the retention or control of the money by its customer.

Accordingly, if it were subsequently to transpire that the money in the account was in fact the proceeds of the customer's criminal conduct, the bank would have committed the criminal offence of money laundering under the Act. As the bank does not know at that stage whether the money in the account is in fact the proceeds of criminal conduct, it invariably errs on the side of caution and refuses to make the payment. The result is that the account is informally frozen for so long as

the bank has the relevant suspicion and the Financial Intelligence Authority does not consent. It was thus held in *Shah v. HSBC Private Bank (UK) Ltd (No. 2) [2013] 1 All ER (Comm) 72 at [39]-[45]* that it is an implied term of the contract between the bank and its customer that the bank may refuse to execute a payment instruction if to do so would involve such an offence against money
5 laundering. Upon forming a suspicion, banks can, and often must, temporarily block transactions or freeze accounts to prevent the movement of potentially illicit funds while conducting investigations or awaiting instructions from authorities.

If this term were not to be implied, then the bank may face regulatory and/or criminal sanctions
10 and/or potential actions from third parties who might claim the funds were misapplied. This power protects the customer as well in case where something out of the ordinary occurs on the customer's account suggesting it may have been hacked. By freezing the account no more transactions are allowed until the customer contacts them to confirm whether he or she did authorise that transaction or not. While there are several sorts of activities that can trigger the automatic freezing
15 of an account, the affected customer contacting the bank usually clears the issue. The bank does not need to lay down much evidence to entertain a suspicion of money laundering. The bank is deemed to have a suspicion if it thought that there was a possibility, which was more than fanciful, that relevant facts existed, subject to the further requirement that the suspicion so formed should be of a settled nature. There is no requirement that the suspicion should be clear or firmly grounded
20 and targeted on specific facts or based upon reasonable grounds.

Banks operate in a heavily regulated legal environment, which recognises the balance that has to be struck between the need for payments to be facilitated at speed and the desirability of increasing protections against fraud and money laundering. Banks must conduct ongoing due diligence,
25 scrutinising transactions to ensure they align with the customer's risk profile. Unusual patterns, such as high-value, complex, or rapid transactions with no clear economic purpose, can trigger a unilateral freeze. In the circumstances, the bank's power to temporarily freeze a customer's account on grounds of a reasonable suspicion of money laundering, until such a time as the customer furnishes a satisfactory explanation as to the source and purpose of the funds, or until
30 otherwise directed by the Financial Investment Authority or by Court, is a term compelled by reasons of business efficacy to be implied into all banking contracts. The obligation to comply

with provisions of *The Anti-Money Laundering Act* renders such a term necessary for business efficacy.

iii. <u>The authority or power to reverse transactions</u>.

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The difference between reversing a credit and debiting a customer's account lies in the nature of the transaction and the circumstances under which the bank acts. Reversing a credit typically occurs when a bank has mistakenly credited a customer's account. In such cases, the bank has the right to correct the error by reversing the credit, provided the customer has not changed their 10 position in reliance on the erroneous credit. Reversals fix mistakes, while debits represent active spending or outflows. A reversed credit restores the account to its previous state before the error. A debit reduces the current available balance.

Reversing a credit is a corrective action taken by the bank to rectify an error, subject to certain 15 limitations such as the customer's reliance on the credit. A bank may lawfully reverse a credit on a customer's account without instructions from the customer in certain circumstances. One such situation arises when the credit is made in error or is a wrongful credit. In these cases, the bank retains the right to correct the position by reversing the credit, provided the customer has not altered their position in reliance on the mistaken credit. If the customer has changed their position 20 based on the erroneous credit, the bank may be estopped from reversing the credit, as the customer's reliance becomes significant over time. However, in the absence of such reliance, the bank may rectify the mistake within a reasonable time. Transactions initiated erroneously or unintentionally may be reversed if certain procedural requirements are met, including timely written requests and compliance with specified conditions. Banks are strictly prohibited from 25 informing customers that a suspicious transaction report has been submitted, meaning a transaction may be reversed or an account frozen without immediate explanation to the account holder.

In specific scenarios like the Society for Worldwide Interbank Financial Telecommunication (SWIFT) payment transactions, a receiving bank might "unwind" a credit, but this is usually a 30 technical correction rather than a decision to return funds due to suspicions of money or when it receives a mandatory cancellation request via SWIFT message (MT192) before the funds have

officially settled in the beneficiary account. In SWIFT payments, a receiving bank might "unwind" a credit to a beneficiary's account when a payment is processed in anticipation of funds that never arrive (see *Malayan Banking Berhad v. Barclays Bank PLC [2019] SGHC (I) 04*). An implied contract arises, binding the sending bank to reimburse the receiving bank once the beneficiary is paid. Therefore, the receiving bank is not obliged to wait for a corresponding MT 202 COV (cover payment) before acting on the MT 103 STP. If a receiving bank acts upon an MT 103 STP (customer payment) and credits the customer's account before receiving the corresponding funds (via an MT 202 COV), if the expected MT 202 COV, which settles the interbank obligation, fails to materialise, the receiving bank may "unwind" the initial credit, effectively reversing the deposit into the beneficiary's account. The recourse for the receiving bank in such cases is to reverse the credit to its customer, rather than trying to recover the funds from the sending bank.

In summary, a bank may lawfully reverse a credit without customer instructions in cases of mistaken or wrongful credits, or under specific regulatory provisions, provided the relevant conditions are satisfied and the customer has not altered their position in reliance on the credit. Reversing a Credit has as its purpose to correct a mistake or cancel a temporary (provisional) credit that was previously added to the account. It removes funds that should not have been credited.

On the other hand, debiting a customer's account involves the bank deducting funds from the account, typically in accordance with the customer's instructions or as authorised under the terms of the banking contract. The bank's duty to comply with the customer's mandate is strict, and it cannot debit the account for unauthorised payments. If the bank acts outside the mandate, it may be liable for breach of contract. Conversely, if the customer provides a valid instruction, the bank is obligated to execute the payment promptly, provided the account is in credit and the instruction does not require the bank to act unlawfully. Debiting an account, therefore, is a routine transaction performed in accordance with the customer's instructions and the contractual terms governing the account. Debiting a customer's account is an active transaction that reduces their available funds. The purpose of a debit is to record an expense, withdrawal, or payment, which reduces the bank's liability to the customer.

As a general principle, once funds are credited to a customer's account, a bank cannot unilaterally return the money to the remitter on the basis of money laundering concerns (see *Tayeb v. HSBC Bank Plc and another [2004] EWHC 1529 (Comm)* and *R v. Da Silva [2006] EWCA Crim 1654*). Doing so would amount to cancelling a debt owed by the bank to the customer, and the bank would remain liable to repay the customer in such cases. The bank does not retain an overriding discretion to re-transfer funds already credited to an account without the customer's consent, unless there is strong evidence of a practice that would justify such an action or a legal obligation imposed by due process of law (see *Westpac New Zealand Ltd v MAP & Associates Ltd [2011] NZSC 89; [2012] 2 LRC 389* and *Philipp v. Barclays Bank UK plc [2023] UKSC 25; [2024] AC 346; [2023] 3 WLR 284*). The bank cannot unilaterally act as a court to determine the legitimacy of the funds, nor can it return them to the remitter just because of anti-money laundering concerns. If a bank suspects funds are linked to money laundering (e.g., rapid withdrawal, unexpected high-volume transfers), the bank typically does not return the money to the sender. Instead, they will freeze or block the account and place the funds in a suspense account.

While banks are required to comply with anti-money laundering regulations, including conducting due diligence and investigating suspicious transactions, these obligations do not override the fundamental principle that a bank cannot unilaterally reverse a credit to a customer's account. Instead, banks must follow proper legal procedures, such as reporting suspicious transactions to the relevant authorities, rather than taking unilateral action to return funds.

iv. Whether the defendant failed to act as an ordinary honest/reasonable banker in the circumstances.

Generally, the bank as a professional financial service provider, owes a duty of care to its account holders to act with reasonable care, skill, and diligence in managing account transactions, safeguarding funds, and adhering to security protocols. This duty arises both from the contractual relationship between the bank and its customer and from common law principles of negligence. When acting as a collecting bank, it acts as an agent of its customer to receive payment on a cheque for a customer. In that role it bears primary duties to exercise reasonable care, diligence, and

accuracy to protect its customer, and the key duties include presenting cheques promptly, verifying endorsements, ensuring proper crossing, and notifying customers of dishonour.

The bank's duty is to execute the customer's instructions in accordance with the mandate
5 governing the account, and this duty is strict. The bank is not required to inquire into the purpose of the transaction or the wisdom of the customer's decisions, as established in *Bodenham v. Hoskins [1843-60] All ER Rep 692 at p 694*. The courts have clarified that the bank's duty to its customer does not extend to protecting the customer against fraud by third parties or ensuring the prudence of the customer's transactions.

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The *Quincecare* duty, which is an implied negative duty in the banker-customer relationship, requires banks to refrain from executing payment instructions if they have reasonable grounds to believe that the instruction is an attempt to misappropriate the customer's funds. However, this duty is specific to situations where the bank is put on inquiry, such as when an agent of the
15 customer is suspected of fraud, and does not extend to the underlying contract between the customer and a third party (see *Barclays Bank plc v. Quincecare Ltd and another [1992] 4 All ER 363*). The courts have consistently held that it is not the bank's role to assess the wisdom or risks of the customer's transactions, nor to protect the customer from third-party fraud unless specific circumstances, such as the *Quincecare* duty, apply (see for example *Barclays Bank Ltd v. W. J*
20 *Simms Son & Cooke (Southern) Ltd. and another [1980] Q.B. 677*).

A bank may refuse to execute payment instructions or reverse transactions where it has genuine suspicions of money laundering (see *Shah and another v. HSBC Private Bank (UK) Ltd [2012] All ER (D) 155*). A bank's contractual duty to comply with payment instructions is not absolute
25 and includes an implied term allowing the bank to refuse execution or reverse transactions in such circumstances. This is contingent upon the bank making a Suspicious Activity Report (SAR) and obtaining appropriate consent from the Financial Intelligence Authority (FIA).

D.W.1 Mr. Kiwanuka Simon Mark, Manager of the defendant's Bugoloobi village Mall Branch at
30 the material time, testified that the plaintiff opened the bank account in issue on 2nd June, 2014 with an initial deposit of US $ 1,400 made on 5th June, 2014. Two deposits in the sums of US $

422,295.50 and US $ 73,262.50 were remitted onto that account from Citi Bank on behalf of M/s Green Global Corporation on 10th August, 2017. Out of that remittance, the plaintiff met multiple personal expenses while in Dubai and the USA and eventually on 28th August, 2017 he transferred US $ 22,379.46 to M/s Ecole Francais Des Grande Lacs (a French International School in Kampala). The defendant subsequently received notification and a request for reversal, from the sending bank, Citi Bank, flagging the remittance in the sum of US $ 73,262.50 as having been sent on account of a fraud in investment scam committed against M/s Green Global Corporation by the plaintiff (exhibit D. Ex.2). In compliance with that request, the defendant on 30th August, 2017 (SWIFT payment annexure "C" to the written statement of defence) reversed the credit and returned the sum of US $ 73,262.50 to Citi Bank. The transaction became the subject of a police investigation during which the plaintiff never furnished any documentary proof of the source or purpose of the funds in issue whether to the bank or to the police. By established bank practice, credit entries may be reversed if made in error, under compulsion of law or in public interest.

D.W.2 Ms. Barbara Dokoria explained why the defendant considered this to be a suspicious transaction of money laundering. He said it was "out of run" of the account (meaning it deviated significantly from the typical, established pattern of that specific account holder, or did not fit the historical "run" or trend of behaviour previously observed on that account). The defendant looked at the remittance in light of the previous transaction history. When the amount was credited, it was immediately withdrawn in cash by the client. That sparked off the need for further investigation and analysis. The defendant concluded its internal money laundering investigations which ended with a reporting to the Financial Intelligence Authority 30th August, 2017 (exhibit D. Ex.3) after it was dissatisfied with the explanation given to it by the plaintiff. The reports states as follows;

> The client cooperates 2 accounts in Stanbic Bank, one UGA and the other USD. His USD Account 9030009189296 was opened on 2nd June, 2014 and on 10th August, 2017 he received USD 422,957 on his account and indicated that funds were from Green Global Consultants for a contract he had with them. When he was asked to produce proof of payment, he said that he had not yet signed the official contract. This is therefore suspicious because the client has failed to provide proof of payment.

She testified under cross-examination that although the report references only the sum of US $ 422,957, it was an error of omission not to have included the sum of US $ 73,262 which was reversed back to M/s Green Global Corporation. In a response dated 31st August, 2017 (exhibit D. Ex.4) the Financial Intelligence Authority directed the defendant to "halt all withdrawals" from that account "in order to compel the account holders to provide proof of the source and purpose of [the] fund deposited into the bank account." Upon the plaintiff's subsequent discharge by way of *Nolle Prosequi* from the resultant criminal prosecution at the Anti-Corruption Division of the High Court in Criminal Sessions Case No. 006 of 2018 on 11th December, 2019 the order freezing his account was vacated (exhibit P. Ex.3).

From the defence version, it turns out that on 10th August, 2017 two deposits in the sums of US $ 422,295.50 and US $ 73,262.50 respectively were credited onto the plaintiff's dollar account, as remittances from M/s Green Global Corporation through Citi Bank. They were flagged as unusual transactions on or sometime after 11th August, 2017 triggering an internal money laundering investigation in accordance with the defendant's internal *Anti-Fraud Policy* (exhibit D. Ex.11) during which the plaintiff was asked to produce documentary proof that the funds had been remitted as payment due to him under a contract he had with M/s Green Global Corporation as claimed. A transaction that appears unusual is not necessarily suspicious. Unusual activity may simply warrant further enquiry, and suspicion may arise later based on additional information or judgment. Even customers with predictable transaction patterns may occasionally engage in unusual activities for legitimate reasons. In this case however, when the plaintiff failed to produce documentary proof of the unusual transactions on his account, coupled with the request from Citi Bank recalling the funds by reason of an alleged investment scam (exhibit D. Ex.2), the defendant on or about 30th August, 2017 formed a settled view that it was suspicious transaction, leading to its filing a suspicious transactions report to that effect with the Financial Intelligence Authority.

Suspicion needs a reasonable ground, i.e. an objective circumstance or at least an actual basis which can support it. The question, whether the suspicion is reasonable or not, is dependent on the factual circumstances and if the circumstances offers support to it. Suspicion may legitimately arise from factors such as unclear source and/or intended purpose, unusual sums, or failure or refusal to provide proof of identity or satisfactory explanation regarding source and/or intended

purpose. Forming a "settled view" that a transaction is suspicious requires a subjective assessment that there are reasonable grounds to suspect that funds are linked to criminal activity, money laundering, or terrorist financing. This threshold does not require proof of a specific crime, but rather a "possibility that is more than fanciful" that illicit activity is involved. Suspicion does not require certainty or proof of the underlying criminal activity but must be more than mere speculation. It involves a subjective assessment based on the circumstances of the transaction and the information available at the time. The Court is satisfied in the instant case that the defendant acted as an ordinary honest/reasonable banker in the circumstances, in the manner in which it dealt with the unusual, later turned suspicious, transactions up to that stage.

Once the suspicion meets the threshold standard of "reasonable suspicion," the bank is protected for its actions to disclose information related to the account as well as the temporary freezing of the funds, such that the path for the suffering customer to make legal claims due to a breach of confidentiality or the duty to honour his instructions, and the resultant delayed or missed business opportunities, is very limited. The customer may have recourse perhaps in circumstance where the suspicions might have been allayed if the bank had examined the source of the funds, or where action was taken out of the excessive zeal of its untrained officers on basis of suspicion that does not meet the threshold level, which is not the case here.

However, the defence version reveals as well that although the funds had been credited to the plaintiff's account on 10th August, 2017 on basis of a Citi Bank MT103 payment order with a value date of 10th August, 2017, by a subsequent MT199 ("Free Format Message" used between financial institutions to send queries, clarifications, or amendments regarding previous transactions) flagging the remittance of US $ 73,262, the defendant, without the plaintiff's instructions or Court order, debited the plaintiff's account in the sum of US $ 73,262 which was remitted back to M/s Green Global Corporation though Citi bank on 20th August, 2017; twenty days or so after it had been credited to the plaintiff's account. This action was not within the permitted power od reversal of erroneous entries but rather, an unlawful debiting of the plaintiff's account. A bank's power in circumstances like this is protective and temporary, aimed at reporting. Final confiscation of assets requires a court order or action by the Financial Intelligence Authority. There is no evidence to show that it is an established banking practice to do so as claimed by D.W.2. In this regard, the

defendant failed in its duty to act as an ordinary honest/reasonable banker in the circumstances, constituting a breach of its banking contract with the plaintiff.

Third issue; whether the plaintiff's suit or cause of action is maintainable against the defendant.
Fourth issue; whether the plaintiff is entitled to the remedies sought.

For a claim in tort for pure economic loss, common law requires a wrongful act on the part of the defendant, a financial loss by the plaintiff, a causal relationship between the injurious act, as well as fault on the part of the defendant. The existence of a contractual relationship does not automatically create a concurrent tortious duty of care; a tortious duty must be established independently based on an assumption of responsibility rather than merely arising from the existence of the contract. A contractual obligation does not inherently carry with it a parallel tortious duty to the same effect. The law of tort imposes a distinct and more limited duty to take reasonable care, which does not extend to liability in negligence for pure economic loss unless there is an assumption of responsibility. The recovery of such loss is limited to specific circumstances, such as negligent misstatements or professional advice, or where there is an assumption of responsibility. The existence of a concurrent tortious duty depends on the relationship between the parties, the factual and contractual matrix, and whether there has been an assumption of responsibility by the defendant. A professional's assumption of responsibility, such as that of a banker, could give rise to a duty of care in tort for economic loss.

That notwithstanding, it is considered a violation of public policy for a court to enforce a contract for payment involving money laundering, as such agreements are generally deemed illegal, unethical, and against public interest. *The Anti-Money Laundering Act* criminalises the acquisition, possession, or transfer of criminal property, prohibiting courts from enforcing transactions that allow criminals to profit from their crimes. The Act prohibits the acquisition, use, or possession of such property, as well as arrangements facilitating its control or transfer. Any contract or agreement designed to move, conceal, or convert "tainted" property (proceeds of crime) is invalid. Courts will not enforce contracts that are based on corruption or illegal acts. The legal maxim "*ex turpi causa non oritur actio*" (from a dishonourable cause an action does not arise), intervenes to prohibit a party from enforcing rights obtained via an illegal act. Contracts intended to facilitate

illegal acts, including money laundering, bribery, or corruption, are null and void because they violate public policy.

Agreements that fall under the scope of money laundering are considered to have an illegal
5 objective, making them unenforceable. Enforcing such contracts would be contrary to public policy and harmful to the integrity of the legal system. Therefore, the plaintiff can neither maintain an action against the defendant nor is he entitled to the remedies sought. The suit is accordingly dismissed with costs to the defendant.

10 Delivered electronically this 16th day of March, 2026

……Stephen Mubiru……………..
Stephen Mubiru
Judge,
16th March, 2026