MAXWELL GOMERA
versus
ZIMBABWE BANKING CORPORATION LIMITED

HIGH COURT OF ZIMBABWE
MAKARAU J
Harare 23, 24 and 25 November 2005 and 15 February 2006.

Civil Trial

Mr *Magwaliba,* for plaintiff
Mr *Mehta* ,for defendant.

MAKARAU J: The plaintiff operates a foreign currency denominated account with the respondent bank at one of its Harare branches. It is common cause that as at 12.00 noon on 24 February 2003, the plaintiff's account reflected a credit balance of US$11 694.11. It is further common cause that on 25 February 2005, the plaintiff instructed the bank to telegraphically transfer to a named beneficiary, the sum of US$11 0000-00. As he was leaving the bank after the transaction, he was approached by an employee of the bank, one Murape, who inquired as to whether he had US$5 000-00 for sale. The plaintiff advised Murape that his account did not have a balance adequate to cover the amount required at that time. At the time, the plaintiff believed that the account stood at US$950 -00. In actual effect, according to a print out of the account adduced into evidence by consent, the plaintiff only had US$694.11 in the bank.

When the plaintiff was intercepted by Murape in the banking hall, he was in the company of a nephew, one Tapiwa Madzimure who heard the tenor of the conversation and saw an opportunity to sell some foreign currency for himself. He, Tapiwa, advised the plaintiff and Murape that he had some foreign currency to sell and could deposit it into the plaintiff's account for sale to the beneficiary identified by Murape. On this understanding, the plaintiff left the banking hall and later on in the day, left for South Africa after advising his wife of the transaction.

In the afternoon of the same day or of the day following, the plaintiff's wife signed a deposit slip and left it with Murape. She did not complete in any other detail on the slip.

As fate would have it, Tapiwa Madzimure failed to deposit into the plaintiff's account the sum of US$5 000-00 or any other amount. Despite the fact that no deposit was made, Murape completed the signed withdrawal slip with the necessary details and used it to withdraw the sum of US$5 000-00 from the plaintiff's account.

When the plaintiff became aware that his wife had given a signed withdrawal slip to Murape, he called the defendant and spoke to one Gibson Muzembe, one of the supervisors at the bank. He asked for the withdrawal slip to be withdrawn. Murape could not be found. At that time, his account did not reveal that a debit had been made against it in the sum of US$5 000-00.

Some time later, Murape was located and he admitted to having withdrawn the amount from the plaintiff's account. He then made arrangements for US$2 600 -00 that was in his account to be transferred into the plaintiff's account, which was now overdrawn. This transfer left the balance at about US$2 400-00 which the plaintiff sued for.

THE CAUSE OF ACTION.

Before I analyse the evidence that was led in this matter, it appears to me necessary that I set out the cause of action upon which the plaintiff sought to hold the defendant liable in this matter so that the evidence can be appreciated in the context of the cause of action.

The plaintiff issued summons on 19 May 2003, claiming the sum of US$2 304 - 79 together with interest thereon at the prevailing interest rates for foreign currency denominated accounts. In drawing up his cause of action, the plaintiff had this to say in paragraph 5 of his declaration:

"5. *The defendant's employee Mr C Murape was acting during the course and scope of his employment with the defendant when he unlawfully caused the debit against the plaintiff's account. Others of the defendant's employees also acted negligently or in complicity with the said C Murape by honouring the withdrawal yet the*

plaintiff's account did not have sufficient funds against which the debit should have been processed."

From the above it is clear that the plaintiff pleaded two different causes of action. Firstly, he sought to hold the defendant liable on the basis that the wrong was done by its employee, Murape. Secondly, he sought to hold the defendant liable on the basis of its own negligence in that its employees honored the withdrawal at Murape's instance when there were insufficient funds in the account.

The causes of action were not pleaded in the alternative. No issue was raised on this manner of pleading by the defendant. I shall deal with this aspect of the pleadings in detail shortly.

THE EVIDENCE.

In support of his claim, the plaintiff gave evidence and called three witnesses. His evidence was mainly to establish the facts that are largely common cause in this trial and are captured in the opening paragraph of this judgment. In my view, the plaintiff gave his evidence well and I have no reason to disbelieve him. After testifying, the plaintiff called his wife Loice. She also confirmed the evidence that is common cause and explained how she left a signed withdrawal slip with Murape after Murape had called her to advise her of the deal with Tapiwa Mudzimure. Loice gave her evidence defensively especially when being cross examined on why she entrusted the signed withdrawal slip to Murape, whom she had not dealt with before. Her evidence was in the main corroborative of the facts that are common cause in this suit and I have no reason to disbelieve her. The same goes for Tapiwa Madzimure's evidence. He testified after Loice and confirmed that he attended upon the bank employee with Loice when they left the withdrawal slip with Murape. His evidence was credible and given in an easy manner.

After Loice testified, the plaintiff called Gibson Muzembe. At the time of testifying he was an Assistant Manager at Genesis Investment Bank. Before joining Genesis Investment Bank, he was with the defendant. At the time he left the defendant he had risen to the position of Assistant Dealer in the Treasury Department. Prior to that, he

was a supervisor in the Foreign Currency Accounts department. It is in that capacity that he became acquainted with the plaintiff.

The witness detailed the process of how a customer of the bank would have a telegraphic transfer of funds processed to a named beneficiary. In brief, the process relevant to the deposal of the dispute before me was as follows:

A customer would initiate the process by presenting a signed mandate in the form of a withdrawal slip to the clerks at the FCA counter. The clerks would then verify the customer's signature and balance in the account. A supervisor in the department would enter the transaction in the payments register, manually. The payments department would thereafter process the payment to the named beneficiary. The whole process between the receipt of the mandate to the dispatch of the telegraphic transfer takes about 48 hours.

Regarding the withdrawal of the $5 000-00 by Murape, Muzembe testified that the balance in the account at the time the mandate was processed should have been reflected on the slip in the left hand corner. It was not. Further, the date stamp used on the slip was not the one normally used by the clerks at the FCA department. The one used on the withdrawal slip was from the reception as one enters the banking hall. The stamp should have been impressed on the slip after the customer's signature and the balance in the account had been verified.

In checking and verifying the balance, the clerk would check for any uncleared deposits in the event that the customer presented a mandate with an amount exceeding the balance. If these were found, they were attached to the withdrawal slip. If not, the transaction would not be processed and the client would be telephonically informed.

Having detailed the above process, the witness professed ignorance as to how the withdrawal by Murape was effected. He testified that there had been significant staff movement in the department and some of the staff was fairly new. In his view, someone with an insight into the system could have manipulated and bypass some of its security check- points.

When the plaintiff telephoned from South Africa requesting for the mandate given to Murape to be withdrawn, he attended to the plaintiff. After checking for a record of the transaction, he assured the plaintiff that the transaction was not yet reflecting and that it

would not go through as it was impossible to overdraw on a foreign currency denominated account.

At the time, the bank's system in the FCA department was not on line real time. In other words, balances on accounts would not immediately reflect after each transaction. Correct balances would reflect at the end of each day or on the following morning. The system was working quite well before this incident. He rated its fool-proof features at 70% and attributed the occurrence of the mishap to staff turnover. He admitted that the system could have been improved but was not that easy to be manipulated.

The witness gave his evidence well and in an easy to follow manner

To defend itself, the defendant called Philda Gwadu. At the time of testifying, she was the manger of the FCA department in the respondent. She has been with the defendant for 20 years and has served in a number of the defendant's departments. She, like Muzembe, took us through the bank's procedure of withdrawing funds from an FCA account. Her evidence corroborated that of Muzembe on all material points. I have no reason to disbelieve her.

THE ISSUES.

In my view, no issues arise from the facts giving rise to the suit.

It was common cause that Murape acted fraudulently and for his own benefit when he manipulated the system that the defendant had in place in the FCA department. The issue that arises from the pleadings is whether in so acting, Murape was acting within the course and scope of his employment such that the defendant becomes vicariously liable.

As indicated above, it is my view that the plaintiff could have pleaded his case with more clarity. By alleging that the defendant was vicariously liable for the wrongful conduct of its employee, the plaintiff implied that the defendant itself was not directly to blame for the loss occasioned by Murape's conduct. That is a necessary implication of the doctrine of vicarious liability that seeks to hold the employer liable, not because of his negligence but because of his financial muscle and because of the public policy

consideration that it does not appear just to look to the employee alone for compensation when the employee negligently injures another while furthering his employers interests.

The plaintiff however also sought to hold the defendant liable for the negligence of its other employees who processed the withdrawal notwithstanding that there were insufficient funds in the plaintiff's account. This then gives rise to the second issue of whether the defendant was negligent as alleged or at all.

I shall deal with the two issues above as if they were pleaded in the alternative as the point was not taken on behalf of the defendant.

VICARIOUS LIABILITY.

"The law on vicarious liability is…easy to state but difficult to apply".[1]

The decisions of the Supreme Court and of this Court on vicarious liability bear testimony to the above observation above by McNally JA.

The general position at law is that an employer is liable for the wrongdoing of his employee where the employee is acting within the scope of his authority and within the course of his employment. Regarding the thieving employee, the liability of the employer was put by Gubbay CJ (as he then was), as follows: [2]

"*Where an employee has committed a theft, the test to be applied is to enquire whether the goods stolen had been entrusted to his care by his employer. If they had not, the theft is outside the scope of his employment and the employer is not liable. The theft is the act of the employer pursuing his own selfish ends- something he has done entirely on his own account. The employer may of course be liable on the ground of his negligence in selecting the employee, or because the theft was induced by his own negligence, or because of the negligence of some other employee to whom the charge of the stolen property had been committed."*

[1]Per MacNally J A in Biti v Minister of State Security 1999(1) ZLR 165 (S).

[2] Fawcett Security Operations P/L v Omar Enterprises P/L 1991 (2) ZLR 291 (S).

Having laid down the test with such clarity, the learned Chief Justice proceed to suggest a different way of testing whether an employer is vicariously liable for the wrongdoing of his employee as follows:

"A somewhat different test to the issue of whether the employer is vicariously liable for the loss caused to a third party by the intentional wrongdoing for his own benefit by the employee, is suggested by Australian Academic, Professor John Flemming, in his acclaimed work The Law of Torts 7 ed at p356. Relying on a passage in the judgment of DIXON J (as he then was) in Deatons (Pvt) Ltd v Flew (1949) 79 CLR 370 at 381, he writes:

'In order to attract vicarious liability, the servant's dishonesty must consist of 'acts to which the ostensible performance of his master's work gives occasion or which are committed under cover of the authority the servant is held out as possessing or the position in which he is placed as a representative of his master'. It is preeminently in this context that the courts have forsaken the "course of employment" test and reduced the employer's responsibility by invoking the agency doctrine of actual or ostensible authority, borrowed from the law of contract."[3]

It was this suggested approach, that BLACKIE J (as he then was) employed to test the employer's vicarious liability in *Rose N.O. v Fawcett Operations (Pvt) Ltd,*[4] a case I shall return to shortly.

In 1995, MALABA J (as he then was), in orbiter that I find most instructive, reiterated the test laid down by GUBBAY CJ in the Fawcett's case that for the employer to be found liable for theft by his guard, it must be proved that it was the duty of the guard to look after the goods stolen by him and not simply that the guard stole during the course of his employment.[5]

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[3] at page 298 F
[4] 1998 (2) ZLR 114(H),
[5] Music Room (Pvt) Ltd v ANZ Grindlays Bank (Zim) Ltd 1995 (2) ZLR 167(H).

Two other decisions were handed down in this court in 1998 on the subject. These were by BLACKIE J and SMITH J respectively. The first one was handed downby BLACKIE J in *Rose N.O. v Fawcett Operations (Pvt) Ltd)* (supra). The learned judge relied on the decision by the Supreme Court in the *Fawcett case* and accepted that an essential element of liability was that the employer must have entrusted the stolen property to the thieving employee. He then proceeded to define the phrases "*the employer .... entrusted the (goods stolen) to the employee*" and "*the goods stolen had been entrusted to his care by his employer"* used by GUBBAY CJ in the earlier decision to include the situation where the employees were entrusted to receive the goods on behalf of the employer. Having held that the employees before him were entrusted to receive the money on behalf of the employer, the learned judge proceeded to invoke the "somewhat different test" that the Chief Justice had referred to in the Fawcett case as emanating from the Australian Professor John Flemming. In invoking the suggestion the learned judge had this to say at p117D:

"From the somewhat different test" referred to, and apparently approved of by the CHIEF JUSTICE in the same judgment at pp298F-299E, the authority of the employee to receive and take care of the goods includes an ostensible authority"

I pause to observe at this stage that while the earlier decisions of both the Supreme Court and this court implied that the duties of the employee or what the employer entrusted to the charge of the employee was essential elements in determining the scope of authority of the employee for the purposes of holding the employer liable, BLACKIE J introduced a new dimension to the test to include an examination of the acts committed under cover of the authority which the employer held out as being granted to the employee. It is not clear whether in deciding to follow the "somewhat different test", the learned Judge was persuaded by the suggestion by Professor Flemming (as cited by the CHIEF JUSTICE), that courts can forsake "the course of employment" test and assess the employer's liability by invoking agency doctrine of actual or ostensible authority. If he was so persuaded, then it would appear to me that the learned judge was radically departing from the approach approved of and applied by the Supreme Court in

this country and in South Africa. If he was not, then the learned judge was modifying the "somewhat different test" to the "course of employment test".

I further pause to observe that the above case appears from my limited research, to have been the only instance in this jurisdiction that the doctrine of ostensible authority was employed as the only basis of finding the employer liable. I merely make this observation with the greatest of respect and do not in any way seek to suggest that the learned judge erred in so doing. In another judgment to which I make reference later, GILLESPIE J made passing reference to the doctrine without appearing to base his decision on it.[6]

I also make this point at this stage simply to contrast the approach taken by this court in the *Rose N.O. case* with that taken in one South African case where the doctrine of ostensible authority was applied to hold the employer liable for the wrongdoing of its employee in contract. In *NBS Bank Ltd v Cape Produce Co (Pty) and Others* 2002(1) SA 395, the Bank was held liable for the acts of one of its managers who acted beyond the scope of his express authority and defrauded the banks customers on the basis that the bank had created a façade that made it possible to the employee to defraud it customers.

The point I wish to highlight is that the claim against the bank in this case was brought in contract where the doctrine of ostensible authority is ordinarily housed. To import the doctrine into the law of delict appears to me unnecessary since in our law it is recognized that one can bring a claim in contract, or alternatively, delict, on the same facts as long as the necessary averments to sustain each are made out in the declaration.[7] The wholesale importation of the doctrine into the law of delict may serve not only to shift radically the test for vicarious liability but may also serve to distort the distinctions in pleadings, between the two branches of the law, a distinction that has been respected over the years.

Retuning to the very brief survey of how the Supreme Court and this court have applied the principle of vicarious liability in the past that I have undertaken, I make reference to the decision by SMITH J in *Standard Chartered Finance Zimbabwe Ltd v*

[6] Phillips Central Cellars P/L v Director of Customs and Excise 2000 (1) ZLR 353 (H).
[7] Correira v Berwind 1986 (1) ZLR 192 (HC).

Georgias & Another[8]. This decision was handed down seven months after the decision by BLACKIE J detailed above. No reference was made in it to the earlier judgment nor was an attempt made to examine whether on the facts before the court, ostensible authority could have been inferred on the part of the employee who dealt with the respondent.

In coming to his decision SMITH J appears to have focused on the need for the plaintiff to establish what the actual authority of the employee was and whether the employee was operating within the scope of that authority when he allegedly injured the plaintiff or had sufficiently deviated there from to such an extent that the employer could not be held liable. In his words at p558E:

> "*The crux of the matter is whether or not Trinity has established, prima facie, that Bell was acting in the course or scope of his employment. Whilst it is accepted that Bell was an employee of SC Finance, there is no evidence at as to what his duties were in early 1992 or what position he held."*

Further at p558G-H:

> *"In my opinion, there is nothing before the court which can be regarded as evidence that Bell was acting in the course or scope of his duties.* ***We do not know what those duties were."*** *(The emphasis is mine).*

From the above, it appears to me that SMITH J was engaged in an exercise to establish what charge the employer had actually placed on Bell as the employee and not what aura of authority Bell exuded to the plaintiff, which the defendant held out Bell had.

The Supreme Court had yet another occasion to debate the subject in *Biti v Minister of State Security*[9]. In that case, MCNALLY JA as he then was approved of the deviation from the appointment test and applied it to find on the facts before the court,

[8] 1998 (2) ZLR 547 (H)
[9] 1999(1) ZLR 165 (S)

that there had been no sufficient deviation in time and space to absolve the employer from liability.

The same test was applied by GILLESPIE J in *Phillips Central Cellars P/L v Director of Customs and Excise (supra).* It is in this judgment that oblique reference to ostensible authority was made in the following terms at p358C-E:

> *"Many considerations have been invoked by the courts in an attempt to reach a reasonable conclusion as to whether the employee's behaviour was sufficiently proximate to his appointed function. For instance, whether or not the employer had clothed the employee with powers that were abused, or whether the goods that were stolen by the employee were entrusted to the particular care of the dishonest employee.*
>
> *It appears to me that no such consideration is stated with the intention of laying down a rule applicable to a specific category of wrong. Rather, they are all emphasized as important factors relevant to the overall question of degree of departure from the employer's business. Since the question is a matter of degree, the further removed the misconduct is from the employer's own interests and business, the more important becomes the question of the employer's ostensible authority, general powers and specific duties, (for instance towards the stolen property)."*

Finally, I make reference to *Gwatiringa v Jaravaza* [10](H) where CHATIKOBO J used the same test of deviation from appointed duties to absolve the employer from liability.

From the above authorities it appears to me that the test for vicarious liability in this jurisdiction remains in establishing the appointed duties of the employee and then assessing the degree of deviation from these. Where the employee has substantially deviated from his appointed duties and is now on a frolic of his or her own, the employer escapes liability unless in the alternative, the employer was negligent in some other respect.

At the risk of sounding facetious, it appears to me that the funds stolen from the plaintiff's account were not entrusted to Murape by any definition of the term. What was entrusted to Murape was the mandate to transact on the account and that was entrusted to

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[10] *2001(1)* ZLR 383

him by the plaintiff through his wife and not by the defendant. Murape was further not entitled to receive the funds that were stolen from the plaintiff. The funds were in theory in the custody of the defendant and in reality were not in existence as the plaintiff's account was not sufficiently funded.

Regarding the exact nature of Murape's duties at the time of the theft, evidence was led from Gibson Mzembe that Murape was still employed in the FCA department albeit in the swift section which was essentially the dispatch section, having been moved from the section that received and processed mandates from customers. His duties before and after his relocation, did not include intercepting customers and soliciting for their business. Thus, in intercepting the plaintiff and inquiring from him whether he had foreign currency to sell, Murape had clearly deviated from his appointed duties. I refrain at this stage from deciding whether Murape had ostensible authority to intercept the bank's customers as he did as such a determination will not dispose of the matter and was not in any event, the plaintiff's case. The fact that Murape intercepted a bank customer against his appointed duties may however act as further evidence that Murape was clearly acting for his own benefit and outside the scope of his authority.

I find further deviation in the conduct of Murape from his appointed duties in the manner he perpetrated the fraud upon the plaintiff. In my view, the transaction that gave rise to the delict was not a transaction between the plaintiff and the defendant. It was not a transaction involving the funds held in trust by the defendant on behalf of the plaintiff. This was to all intents and purposes, a "deal" between Tapiwa and Murape. It has presented itself clearly to me that, assuming all had gone according to plan, the funds to be sold were to be deposited by Tapiwa Mudzimure. It would have been Tapiwa's money and not the plaintiff's that would have been sold to the unknown beneficiary. It is common cause that at this stage, the plaintiff had no foreign currency to sell. No evidence was led as to how Tapiwa was to receive the proceeds of the sale of his foreign currency but it is clear that it is Tapiwa who would have been entitled to these and not the plaintiff. Thus, the transaction was primarily between Tapiwa and Murape, merely facilitated through the plaintiff's account with the defendant.

It is further common cause that Tapiwa was not a customer of the Bank. The Bank had no business to transact with Tapiwa at any stage. He was a complete stranger to the bank. In that vein, it can hardly be said that Murape was acting within the scope and course of his employment with the bank to enter into the transaction that he did with Tapiwa, a stranger to the bank. No evidence was led to show that Murape was appointed by the defendant to conclude such a transaction on its behalf with complete strangers to the bank. In any event, Tapiwa was not selling his money to the bank but was to sell it to an individual known to Murape, through the bank to avoid openly infringing the foreign exchange regulations.

Even if I were to apply the doctrine of ostensible authority to the facts before me, despite my half hearted reservations to the wholesale importation of the doctrine into the law of delict, I would find no basis for holding that the defendant held out that Murape had authority to sell foreign currency on behalf of non- account holders. I am fortified in this view by the fact all the parties to the transaction were alive to the need to have the funds channeled through an existing account, hence the involvement of the plaintiff and his account. No evidence was led before me that the bank was involved in the illegal transactions such as the one Tapiwa and Murape were clearly on about. In the absence of such evidence, there is no basis for holding that the bank held out that Murape had its authority to act as broker of foreign currency on its behalf.

An analysis of the transaction between Murape and the plaintiff, suggests to me that Murape set himself up as the agent of Tapiwa. He was to sell the foreign currency and account for the proceeds to his principle Tapiwa. All this was to be facilitated through the account of the plaintiff who had voluntarily made it available for the transaction. It is my further view that Murape was taking advantage of his employment with the defendant to act as Tapiwa's agent as detailed above. By accepting to be the agent of another in conflict with his appointed duties with the defendant, it is my view that Murape took himself out of the scope and course of his employment with the defendant for the purposes of this transaction.

It is trite that where the employee merely takes advantage, for his own illicit gain, of an opportunity for dishonesty presented by his employment, the employer cannot

be held vicariously liable for the ensuing loss. Vicarious liability is not synonymous with strict liability.

It is my view that the doctrine of vicarious liability should not be viewed only from the point of view of the injured party. While it should not be limited too jealously to prevent recompense to the injured party, it should also not be flexed to unjustly expose employers to damages for the wrongdoing of employees who abandon their duties and seek to injure both the third party and the employer by taking advantage of their employment. The principle should be applied even handedly and maintain a balance between the conflicting principles that lie in its foundations.

NEGLIGENCE.

I must now decide whether the defendant was negligent in any way in the matter. In so doing, I am handicapped by the paucity of particulars of negligence in the plaintiff's declaration. As indicated elsewhere above, the plaintiff pleaded that other employees also acted negligently or in complicity with the said C Murape by honouring the withdrawal yet the plaintiff's account did not have sufficient funds against which the debit should have been processed. The request for further particulars that was filed by the defendant did not ask for the alleged negligence to be particularized.

It is trite that to establish negligence, the plaintiff had to show that the defendant failed to observe that degree of care which a reasonable man would have observed in the circumstances. The criterion of liability for negligence is reasonable foreseeability. The issue that then falls for determination in this suit is whether it was reasonably foreseeable that an employee of the defendant would take advantage of his or her employment in the bank to defraud the banks customers. To my mind, the answer is of course, hence the bank had a system in place to detect fraud at various stages.

The next issue that naturally arises is whether the defendant having foreseen the possibility of fraud by its employees, took reasonable steps to avert the occurrence of the foreseen harm.

Evidence was led from Gibson Muzembe that at the time, the defendant had in place a system whose fool-proof he rated at 70%. He testified that the system was working well although, like all systems, it could be improved upon.

It is thus common cause that the bank took some steps to avert the foreseen danger. It has not been shown that the system that it had in place was full of holes. If anything, the plaintiff's own witness rated the system quite highly. It is thus my view that the defendant took all reasonable steps in the circumstances. In reaching this conclusion, I am guided by the remarks of Holmes JA in *S v Burgher*[11] which I find inspired :

> *"One does not expect of a diligens paterfamilias any extremes such as Solomonic wisdom, prophetic foresight, chameleonic caution, headlong haste, nervous timidity, or the trained reflexes of a racing driver. In short, a diligens paterfamilias treads life's pathways with moderation and prudent common sense."*

One does not expect a bank in the position of the defendant to have a system that is 100% fool proof to avoid liability under this head.

During the trial much was made by the plaintiff that the withdrawal slip used by Murape to effect the fraud did not reflect in the left hand corner, the balance that was in the account. It was suggested that for any bank employee to have effected the withdrawal in the absence of such endorsement was negligence.

Ms Gwadu for the defendant conceded that it was negligent for any bank employee to have proceeded with the transaction in the absence of the endorsement reflecting the balance in the account. The inquiry does not end there. It is trite that it is only causative negligence that gives rise o liability. Our law has since accepted as settled that the test for causation is the sine qua non test. The test inquires into whether but for the negligent act, the harm to the plaintiff would not have occurred.[12]

The hypothetical inquiry that I must now embark on is whether the loss to the plaintiff would have been prevented if the balance of the account was endorsed on the withdrawal slip. No evidence was led before me that it was because the balance was not endorsed on the withdrawal slip that the transaction was honoured. The evidence led

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[11] 1975 (4) SA 877 (A)

[12] See Minister of Police v Skosana 1977 (1) SA 31 (A)

before me was to the effect that the transaction was honoured notwithstanding the number of defects on the withdrawal slip because Murape was manipulating the system and taking advantage of new staff in the department.

On the basis of the foregoing, it is my view that the plaintiff has failed to show that the defendant did not have an adequate system in place or that the absence of the balance in the account on the withdrawal slip was causative of the loss to the defendant.

In the result, I make the following order:

1. The plaintiff's claim is dismissed
2. The plaintiff shall bear the defendant's costs.

Magwaliba Matutu & Kwirira, plaintiff's legal practitioners.

Gill Godlonton & Gerrans, defendant's legal practitioners.