

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 2, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI ESQ.,¹ TODAY MONDAY, THE 31ST
DAY OF JULY, 2023.

SUIT NO.:PMC/SCC/62/2023.

BETWEEN:

MRS. ANGELINA IGRUBIA

CLAIMANT

AND

UNITED BANK FOR AFRICA (UBA) PLC

DEFENDANT

Case called.

Claimant present.

Defendant absent.

JUDGMENT

The Claimant is a customer of the Defendant Bank. She commenced this case against the Defendant on the 2nd June 2023 and claimed as per the claim attached to the summons as follows:-

1. Amount Claimed - ₦2,699,756.49
2. Damages - ₦2,000,000.00
3. 10% interest rate till liquidation

Total = ₦4,699,756.49

The Defendant was served with the claim and summons personally on the 2nd June 2023 and it filed FORM RSSC 5 on the 21st June 2023 wherein the claim was disputed on the ground that the Defendant did not withdraw the Claimant's fund. The Defendant also challenged the competence of this suit on the ground that the Claimant filed an earlier Suit No.WHC/8/FHR/2023 pending at the High Court.

Plea of not liable was entered for the Defendant and the case proceeded to trial. The Claimant testified as CW1 and called her daughter Mrs. Beatrice Mfon who testified as CW2. The Claimant tendered her Statement of Account from 21/10/2022 to 12/12/2022 (Exhibit A), Letter to the Defendant dated 13/12/2022 (Exhibit B), Demand Letter dated 18/05/2023 (Exhibit C); and Certificate of authentication dated 30/05/2023 (Exhibit D). The Defendant called one Arthur Uneze, the Profit Centre Manager who testified as DW1. The Defendant tendered the Letter dated 09/12/2022 (Exhibit E), High Court of Ibadan Warrant Order dated 22/12/2022 (Exhibit E1), Warrant of Arrest dated 22/12/2022 (Exhibit E2) and High Court of Rivers State

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade 1, and the Presiding Magistrate, Small Claims Court 02, Port Harcourt, Rivers State.

Concurrent Originating Motion in Suit No. WHC/8/FHR/2023 dated dated 16/01/2023 (Exhibit F). The CW1, CW2 and DW1 were fully cross examined by counsel on both sides.

At the close of trial, the learned counsel for the parties filed and exchanged final written addresses as ordered by the Court. The Defendant's final written address is dated and filed on the 18th July 2023 while its reply on points of law is dated and filed on the 20th day of July 2023. The Claimant's final written address on the other hand was filed on the 19th July 2023. The final written addresses were adopted on the 21st July 2023 and the case adjourned for judgment.

The learned counsel for the Defendant, C. M. Nwaka, Esq. raised two issues for determination thus:

- a) *Whether the instant action is competent?*
- b) *Whether the Claimant has established that she is entitled to her reliefs?*

On his part, the learned Claimant counsel, B. A. Bell-gam, Esq. also raised two issues for determination in the Claimant's final written address thus:

1. *Whether this Honourable Court is competent to hear the matter?*
2. *Whether the Claimant have proved their case of breach of contract and breach of trust against the Defendant and entitled to the reliefs sought?*

The issues for determination formulated by counsel on both sides are similar but couched differently. However, the issues formulated by the learned defence counsel is more precise, and I shall adopt and hereby adopt same in the final determination of this case. The issues are thus:

- a) *Whether the instant action is competent?*
- b) *Whether the Claimant has established that she is entitled to her reliefs?*

Issue 1, bothers on the competence of the Suit by the reason of an earlier fundamental human right suit in Suit No. WHC/8/FHR/2023 (Exhibit F) filed by the Claimant on the 19th January 2023. The learned Defence counsel citing a long list of authorities contended that this case is an abuse of court process. The learned Claimant thinks otherwise and prayed the Court to discountenance the preliminary objection. I have carefully perused the High Court Fundamental Human Rights case and the authorities cited by the learned Defence counsel. The cases are inapplicable as the subject matter and the parties herein are substantially different, and therefore cannot sustain any objection hinged on abuse of court process. Issue 1 is resolved against the Defendant.

Now to Issue 2, the case of the Claimant as put forward by the CW1 and CW2 is that the Claimant is a current account holder and customer of the Defendant Bank at its Elenwo, GRA Branch, Port Harcourt. The Claimant testified that she is the sole signatory to the account and usually transacts in the account with her Cheque Book and nothing else. The Claimant went to the Defendant bank on the 12/12/2022 for

transaction but was asked to go as the money would be transferred to the named beneficiary. On the next date 13/12/2022 the beneficiary called the Claimant to say that the transfer was not received; leading to the Claimant sending her daughter (CW2) to the Defendant to know what the issue was. The CW2 was then asked to bring the Claimant, but when she got there, she was informed that there was no money in her account. The Claimant was further informed that the withdrawals were done at the Defendant's branch in Ibadan, Oyo State. The Claimant was asked to return after 10 days which she did repeatedly until the 06/01/2023 when Police men acting on tip-off by the Defendant and arrest warrant from Ibadan High Court, Oyo State arrested the Claimant and detained her at the Sani Abacha Road, GRA Division, Port Harcourt from 6th January 2023 to 7th January 2023.

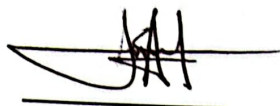
The DW1 acknowledged that the Claimant is their customer but denied that the Defendant had hand in what he described as fraudulent withdrawals by persons whose names appeared in the Statement of Account (Exhibit B).

By the clear provision of Article 2 (1) (d) of the Rivers State Small Claims Practice Direction 2023, the Court entertains claims for simple liquidated money demand not exceeding ₦5,000,000.00 including costs. A liquidated money demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any other or further investigation. See the case of *Maja v Samouris [2002] LPELR-1822(SC)*. The Claimant had a total balance of ₦2,563,756.49 as at 21/10/2022 in her current account number 1016346153 with the Defendant as shown in Exhibit A. The said balance in the account is shown to have been withdrawn by persons not authorised by the Claimant whose only mode of account operation is counter withdrawal or transfer with the use of cheque leaf. The Claimant does not have ATM card and is not subscribed to any internet banking as to suggest that her log in details was compromised. The Claimant is in Port Harcourt with her cheque book and phone intact; but the various pay-in and withdrawals in her said account were done at the Defendant's Ibadan, Oyo State branch through mobile banking which strongly suggests insider collusion. The law is that the money of a customer in the bank are not in custody or under the control of the customer. Such money remains the property in the custody and control of the banker and payable to the customer when a demand is made. This is because if anything happens to the money thereafter e.g Theft of the money, it is the banker and not the customer that bears the loss. See *UBA v Osok [2016] LPELR-40110 (CA)*. The Claimant has made demand for her money but the Defendant failed to release the money but has alleged fraudulent withdrawals which are not pinned to the Claimant. I hold that the Defendant is liable to pay the Claimant money in her account upon demand. Issue 2, is resolved in favour of the Claimant.

Judgment is hereby entered for the Claimant as follows:-

1. The Defendant is hereby ordered to pay the sum of ₦2,699,756.49 (Two Million, Six Hundred and Ninety-Nine Thousand, Seven Hundred and Fifty-Six Naira, Forty-Nine Kobo) only to the Claimant forthwith.

2. The Defendant is also ordered to pay the sum of ₦200,000.00 (Two Hundred Thousand Naira) only as cost to the Claimant forthwith.
3. The Defendant is ordered to pay the Claimant post judgment interest of ten (10) percent on the judgment sum from today till the judgment sum is fully liquidated.



C. G. Ali Esq.
Chief Magistrate Grade 1
31/07/2023

LEGAL REPRESENTATIONS:

1. B. E. Adetuji, Esq. With Dick Emmanuel, Esq. for the Claimant.
2. C. M. Nwaka, Esq. for the Defendant.

