

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
SITTING AT SENIOR MAGISTRATE COURT 6 PORT HARCOURT

PMC/SCC/23/2024

BETWEEN

EGBETULE OGHENERO INNOCENT — CLAIMANT

AND

UNITED BANK FOR AFRICA — DEFENDANT

AND

WEMA BANK PLC — THIRD PARTY

JUDGMENT

This suit was instituted via a summons of this court filed on 30-01-24, wherein the Claimant claims against the Defendant is for:

- I. The sum of ₦10,000.00 (Ten Thousand Naira) only being and representing refund of the amount debited from the claimants account by the defendant for a declined transaction.
- II. ₦4,000,000.00 (Four Million Naira) as fees.
- III. ₦100,000.00 (One Hundred Thousand Naira) as cost.

The Defendant in defending this suit via it's counsel disputed the claimant's claim in it's entirety and went on to file Third party notice on 31-5-24 against the Third party on record in this suit, subsequently the Third party via a motion for extension of time within which the Third party may join the suit, filed on 22-5-24 joined this suit.

In prove of his claim the claimant called a sole witness CW1 and relied on Exhibits "A" to "D". The Defendant on it's part called one witness in defence of this suit and relied on Exhibits "E,E1,E2,F, F1" and "F2". The Third party also called a sole witness in defence of liability in this suit and during Cross Examination of the Third party witness by the Defendants counsel Exhibit 'G' was admitted, however having considered the said Exhibit G in cause of this judgement no weight shall be attached to same in this judgement. All the witnesses were Cross-Examined after their respective Examinations-in-chief. On 4-09-24 the counsels argued and adopted their respective final written addresses urging the court to uphold their cases and enter judgement in their favour.

The summery of the facts of this case from the claimants perspective is that on 30-3-23 the Claimant initiated two transactions in the sum of ₦10,000.00 (Ten Thousand Naira)

each, that the first transaction showed declined for which the claimant had to initiate a second transaction which was successful. However to the surprise of the claimant he was debited for the transaction which earlier showed "declined". That despite several demands to the defendant to refund the said ₦10,000.00 (Ten Thousand Naira) the defendant has failed to do so hence this suit.

The Defendant on its part denied liability of all the claimants claims on the ground that it is not the receiving bank for the transaction which the claimant initiated, the defendant also claims that rather it is the Third party that should be held liable for the claimants claims. The Third party denied the allegation of liability by the defendant and maintained that it did not receive any funds from the claimant neither is it the receiving bank for NBA practicing fees. Gleaning from the issues raised by the counsels in their respective final written address I shall raise two issues for determination to wit:

1. ***"Whether the claimant has proved his case and thus entitled to the grant of the reliefs sought in this case ?***
2. ***"Between the defendant and the Third party who is liable to the claims of the claimant if any ?***

ISSUE 1.

"Whether the claimant has proved his case and thus entitled to the grant of the reliefs sought in this case ?.

The Claimant's primary claim is for the sum of ₦10,000.00 (Ten Thousand Naira) representing refund of the amount debited from the claimants UBA account by the defendant for a declined transaction, that he paid the said sum as his NBA practicing fees. he relied on Exhibit "A" being a computer printout of his statement of account. The said Exhibit A shows debit of the sum of ₦10,000.00 (Ten Thousand Naira), with the narration "NBA Bar Practicing..." this evidence was not contradicted by way of cross examination by the defendant or the Third party. The law is that facts admitted need no further proof. See **Section 123 of the Evidence (Amendment) Act 2023.**

The claimant also claims the sum of ₦4,000,000.00 (Four Million Naira) as fees but did not lead any evidence in support of this claim, accordingly same is deemed abandoned as the law is that he who alleges the existence of any fact must prove same. see **AMADI V. AMADI (2017) 7 NWLR (PART 1563) S.C.**

The claimant further claimed the sum of ₦100,000.00 (One Hundred Thousand Naira) as cost, where there is a wrong there is a remedy. In civil cases the standard of proof required of the claimant is a proof on preponderance of evidence, see: **Section 134 of the Evidence (Amendment) Act, 2023.** In the circumstance I find that the claimant has been able to proof prayer one of his reliefs sought before this court on the standard

of the Third party receiving any funds from the claimant or having any communications with the Defendant.

From the evidence adduced in cause of this proceedings and the exhibits relied on, the Defendant has stated that it was in communication with the Third party, the witness of the Third party denied this fact but admitted that Exhibit E is its response to the defendant on the claimant's complaint. This court is bound by its records of proceedings on any matter and takes notice of their contents in arriving at a just decision. See: **AGBAREH V. MIMRA (2008) 2 NWLR (PT. 1071, 378) (SC)**.

Accordingly, the case of **B. O. N. LTD V. AKINYOYE (1991) 12 NWLR (PART 631) 392 at 404** is instructive to the effect that where an issue of fraud, intimidation, illegality, want of due execution or misrepresentation (as in the instant case) has not been proved the court will not accept oral evidence to contradict a written document. The Third party has not been able to discredit the contents of exhibit E or prove same to be a misrepresentation, as such the Third Party shall be bound by the said exhibit.

The law is trite that oral evidence cannot be used to discredit or vary the contents of a written document, see **N I D B V OLALOMI INDUSTRIES LTD (2002) 5 NWLR (PT761) 532 Ratio 7**.

The claimant has instituted this action because of the alleged delay of the defendant to resolve the issue of being debited while the transaction showed "declined". The defendant on its part has proved before this court that it is not liable for the complain of the claimant but that it called on the Third party to respond to offer some explanation to the said claims of the claimant and the third party was yet to respond till the suit was filed by the claimant.

The law is that the burden of proof in civil cases has two distinct facets , the first is the burden of proof as a matter of law and the pleadings, normally termed as "the legal burden of proof", the second is the burden of proof in the sense of adducing evidence usually described as the "evidential burden of proof" (which is what we are concerned with in the circumstances of this case), while legal burden of proof is always static and never shifts, the evidential burden of proof shifts or oscillates consistently as the scale of evidence preponderates. See the case of **APOSTLE PETER EKWEZOR & ORS V. REGISTERED TRUSTEES OF THE SAVIOR APOSTOLIC CHURCH OF NIGERIA (2020) LPLER – 49568 (SC)**

From the evidence before me in the instant case, I am satisfied that the Defendant has discharged the burden of proof required of it to prove that it is not liable to the claim of the claimant.

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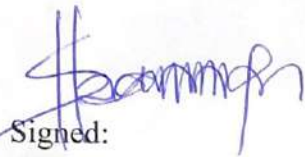
The burden now shifts to the Third party, from the facts available to me in this case the Third party has failed to exculpate itself from liability of the claims of the claimant.

Accordingly, it is adjudged as follows:

1. That the Claimant is entitled against the Third Party in the sum of ₦10,000.00 (Ten Thousand Naira) only being and representing refund of amount debited from the claimants account.
2. The Cost of ₦150,000.00 (One Hundred and Fifty Thousand Naira) is awarded in favour of the Claimant and against the Third Party.

I make no further orders.

Parties are reminded of their rights to appeal.



Signed:

S. S. IBANICHUKA, ESQ.

30/10/2024.

