

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.
SITTING AT SMALL CLAIMS COURT 1, ON THE 14th NOVEMBER, 2024

SUIT NO. PMC /SCC/265/2024

MR. JOHN TOCHUKWU

} **CLAIMANT**

AND

ECO BANK NIGERIA LIMITED

} **DEFENDANT**

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 11th October, 2024 is for:

1. An order of this Court compelling the defendant to refund the Claimant, the sum of N60,000 being the principal amount
2. N4,000,000(Four Million Naira) as fees
3. N200,00 as cost

The Defendant also entered a counter claim for the sum of N150,000 as the cost of defending this suit.

In proof of his case, the Claimant called one witness and the defendant also called one witness and a total of Eight (8) exhibits were tendered in the course of the proceeding.

On the 23rd of October, 2024, an application to enter plea of not liable for the defendant by the defendant counsel was granted and the matter was set down for hearing.

On the 29th day of October, 2024, the Claimant was present and the defendant was also present. On this date, the CW1, who is also the Claimant on record, adopted his evidence on oath wherein he deposed that he is the claimant in this suit by virtue of which he is very conversant with the facts of this case. That the Defendant is a company duly incorporated under the laws of the Federal Republic of Nigeria within the jurisdiction of this Court and all its branches over Nigeria. That the Claimant owns and operates ECOBANK account number: 5161007276, Account Name: John Tochukwu domiciled with the Defendant. That the Claimant requested for a one time Paystack payment via USSD to fund Msports betting App belonging to the Claimant and same was not credited to the Msports betting App after the Claimant was debited as follows:

- i. 28/02/2023 twice in the sum of N1000, total = N2,000;



- ii. 1/03/2023 N1,000 once, N5,00 twice, total = N2,000
- iii. 6 /03/2023 N1,000 twice, N5,00 total = N2,500
- iv. 8/03/2023 N1,000 once, N500 once, total =N1,500
- v. 13/03/2023 N1,000 twice, total = N2,000
- vi. 14/03/2023 N1,000 three times, total = N3,000
- vii. 15/03/2023 N1000 once, total= N1,000
- viii. 16/03/2023 N1,000 once, total = N1,000
- ix. 20/03/2023 N1,000 twice, total = N2000
- x. 21/03/2023 N1,000 twice, total = N2,000
- xi. 22/03/2023 N2,000 once, total N2,000
- xii. 28/03/2023 N1,000 once, total = N1,000
- xiii. 31/03/2023 N5,00 three times, total = N1,500
- xiv. 11/04/2023 N1,000 eight times, N2,000 once, total=N10,000
- xv. 25/04/2023 N2,000 twice, total = N4,000
- xvi. 13/06/2023 N1,000 twice, total = N2,000
- xvii. 19/06/2023 N2,500 twice, N1,000 three times, total = N8,000
- xviii. 21/06/2023 N1,000 twice, total = N2,000
- xix. 22/06/2023 N2,000 once, total = N2,000
- xx. 23/06/2023 N1000 twice,total =N2000
- xxi. 2/08/2023 N5,000 twice, total =10,000

The CW1 further testifies that the Claimant was debited by the Defendant 445 times without his consent, the sum of N6.98 from the 9/02/2023 to 19/12/2023 including the dates the Claimant did not initiate any transaction at all, particularly the following dates;

9/02/2023, 11/04/2023, 13/04/2023, 17/04/2023, 25/04/2023
 26/04/2023, 08/05/2023, 10/05/2023,12/05/2023, 18/05/2023
 5/06/2023, 9/06/2023, 13/06/2023, 2/08/2023, 7/08/2023,
 18/08/2023, 25/08/2023, 13/09/2023, 18/09/2023, 4/10/2023,
 5/10/2023, 15/12/2023, 25/10/2023, 1/12/2023, 21/12/2023.

Testifying further, the CW1 testified that on the 31st of July, 2024 the Claimant approached the law office of NNACHI EGWU & ASSOCIATES, and instructed O. J. Ogudu, Esq to write a demand letter to the Defendant and same was delivered to the Defendant.

That the said letter clearly showed the dates, the unauthorized debits occurred marked with pen to enable the defendants easily identify same, that however the defendant till date has failed to reverse the unauthorized debits.

That upon receipt of the Claimant's letter on the 31st of July,2024, the Defendant replied the Claimant's letter and on the 2nd of August, 2024 acknowledging the Claimant's complaint, and assured the Claimant, that it had set up investigation to resolve the complaint.



That the Claimant had suffered emotional and psychological damages thinking about the whole situation, especially the false hope the Defendant gave the claimant every time he was given permission from his place of work to sort out his issue with the defendant about the unauthorized debits and all to no avail. That the only way the Claimant can recover all these monies the Defendant debited from his bank account without his consent and refused and/or neglected to reverse same is through the help of this Honorable Court.

WHEREOF the Claimant claims against the Defendant as follows; The sum of N60, 000 .00 (sixty thousand naira) as the principal cumulative unauthorized debits from Claimant's account without his consent.

The sum of N200, 000 .00 (two hundred thousand) only as the cost of prosecuting this suit.
The sum of N4, 000 .000 .00 (four million naira) only as general damages caused by the Defendant

The CW1 identifies the demand letter dated the 31st of July, 2024, demand letter for reversal and remittance dated the 2nd August, 2024, Letter dated 2nd August, 2024, Official receipt dated 11th October and 2024; Statement of Account dated 29/10/24 which were all admitted in evidence and is marked as Exhibit A.

On the 30th of October, 2024, the Claimant was cross-examined and he states that the account number with the defendant is 5161007276 with Account Name; John Tochukwu. That he used an ITEL phone and that the phone is not with him in Court. That his phone number is 08155812882 and his USSD transactions are done on his mobile phone. That the phone number he used for the transaction is 07030990893 and that he did not deliberately keep the Phone number away from the Court

At this point, the defendant's counsel applies that the CW1 to produce the number.

The Claimant's counsel protest that the phone number is not in issue.

The Court in her ruling held that what is in issue is the USSD transaction that is linked more to a particular number. That it is important that the witness produce it or the presumption of withholding evidence will be raised against the Claimant. The application was hence granted and the matter was adjourned to the subsisting date of 30th of October, 2024 for continuation of hearing.

On the next adjourned date, the CW1 continues his cross-examination and states that he has the phone and the phone number in Court. That the phone is outdated and is not old. It is functional. That he cannot remember the code and he cannot remember the USD code offhead. The Defendant's counsel assist the Claimant's counsel with the USSD code and the CW1 states that the code is X2326#

The CW1 initiates it and says that the message says welcome to Ecobankonline banking and he outlines the outcomes. That he usually use transfers and the CW1 is asked to choose the transfer option and he reads that the feedback is in connection problem or invalid MMI Code

That he does not agree that it is the usual feedback he gets when he does transfer. That as at yesterday, when he checked his balance .That it is not true that he is not a witness of truth and that is why he did not see the usual message of the charge of N6.96 Kobo to reject or to accept.



That each time, he does a transfer, this is the message he gets. That he does not know if Missport is different from the bank and he does not also know if the betting application is different from the bank application. That he downloaded the betting application without the prompting of the defendant. That he does not know if Paystack is different from the defendant.

The defendant Counsel asks for Exhibit B and asked the defendant to show the Court where on the 22nd of March, that his account was deducted N2,000

Testifying further, the CWI stated that on the 28th of March, 2024, he didn't file anything because he didn't report the failed transaction at that date. That he is not aware that there is a directive from CBN and the NCC to deduct the sum of N6,098 for every USSD transaction initiated by the customer. That he is not also aware that the amount is paid to the telecommunication company, that he is using.

That he is aware that Paystack being an independent company can charge him extra for the services, and he is also aware that each time, he went to bet, he will be charged something. That all his betting prompting involving paystack and Msport does not involve prompting from his bank. That he bets on his own volition knowing that charges will be applied.

Testifying further, the CWI states that his lawyer wrote to the defendant via Exhibit A and the bank responded via Exhibit B. That is not true that he is fishing in this matter. That he has suffered huge financial cost and emotional cost and psychological cost and have visited a lot of the branches of the defendant because of the issue.

Sometimes, he made the USSD transaction and they fail and sometimes they succeed without prompting to record and he will still be charged.

At the close of the evidence of CWI, the defence opened his case on the 25th October, 2024 and DWI, the defendant on record, adopted a written deposition on oath and stated that she is an employee of the Defendant in this suit by virtue of which she is conversant with the fact of this matter. That The allegations contained in the Claimant's summons and depositions are not true as presented. The Claimant is the operator of account number 5161007276 domiciled with the Defendant.

That financial transactions on such independent merchant platforms can only be consummated when the owner of the phone number that activated the transaction receives a one-time password (OTP) by way of a Short Message Services (SMS) or electronic (e-mail) authorizing or authenticating the transaction. That the Unstructured Supplementary Service Data (USSD) is a global system mobile connection that is transmitted through Short Message Services (SMS) through GSM Network Provider usually a telecommunication company (Telco) to a transacting customer. That since 2021, Central Bank of Nigeria (CBN) in conjunction with the Nigerian Communication Commission (NCC) approved a flat rate of N6.98 (Six Naira Ninety-eight kobo) for every USSD transaction paid to the Telco, whether or not the transaction

is successful, This was widely reported in print and electronic media as depicted in the at website TV Channels on found report online: <https://mw.channelstv.com/202103/16cbn-imposes-%e24632%a66-98-fecor-Musdl-transactions/>.

Testifying further, the CWI testified that upon commencing a transaction on a Bank's USSD short code, a customer such as the Claimant will receive a prompt on his mobile phone via SMS informing him of this flat rate of N6.98 (Six Naira Ninety-eight kobo) that will be charged to his bank account.

That the deductions claimed by the Claimant in paragraph 4 and 5 of his Witness deposition are not true to the extent that they did not occur as claim (as borne out of his statement of account) or where they occurred, the deductions were in line with the said 2021 CBN/NCC statement and arose from transactions initiated by the Claimant.

That it is not true that the Claimant visited several branches of the Defendant. The Claimant only visited the Defendant's Trans-Amadi Industrial Layout branch sometime in July 2024. That the internal policy of the Defendant requires cumbersome approvals for System access for reversal of transactions after 6 months and before the defendant could conclude its investigations into the Claimant's complaints, the Claimant instituted this matter. The Defendant will rely on its Preliminary Investigation Report and the Statement of Claimant's account from 1st January 2023 to 31st December 2025.

As a result of this instant suit, the Defendant was forced to instruct its Counsel, Blue crest Solicitors and Advocates to enter a defence on its behalf and paid its Counsel's professional fees of N150, 000.00 (One hundred and fifty thousand Naira)

That it is not true that the Claimant suffered any financial losses whatsoever, neither did he suffer emotional or psychological damages but resorted to this suit as a result of his impatience to await the Defendant conclusion of its' investigation.

That the Claimant has no valid claims against the Defendant and that he urges this Court to dismiss this matter and award against the Claimant, the sum of N150, 000 as the cost of defending the claim.

The DWI identifies statements of account from the defendant dated 1/12/2023 to 31/12/2023 and the preliminary report from the defendant and the professional fee note were admitted in evidence as Exhibits F, G and H respectively.

Testifying under cross-examination on the same date, the DWI testified that he never stated in Paragraph 11 of his deposition that reversal of unauthorized deduction is after 6 months. That she said reversal of unauthorized debit after 6 months takes a tedious process for the bank to resolve, That she does not have that internal policy as exhibit before the Court, That a team of investigators looked into the Claimant's matter and prepared the report as in Exhibit G.

That yes, Vivian Pender is part of the team that investigated and produced Exhibit G, That Exhibit G was not fabricated.

In the banking system, every transaction is identified by a reference code. The DWI is shown Exhibit F and is referred to 13th February, 2023 on the Exhibit F.

Yes, that the Claimant engaged paystack as an independent agreement. That she said so in her deposition. That she does not have any document before the Court to show that Paystack is an independent. That the debit by pay stack is on Exhibit F. That Paystack cannot debit the account of the Claimant without the consent of the Claimant.

That it is correct that the defendant is already reversing some of the unauthorized debits because the case is still under investigation. That the first reversal occurred on the 29th of September, 2023 after the Claimant made the complaint and the Claimant still filed the case of N10, 000 reversals as part of the unauthorized debit. That N5000 was reversed on the 29th of September, 2023 ie N10, 000. That is all the reversal.

That on the 28th October, 2024, they reversed some amounts because those were failed transactions.

That the bank reversed the sum after they admitted the sum of the unauthorised debit That paystack and the defendant operates independently. That she will not be surprised to see a document that shows that paystack and the defendant does not operate independently That they briefed their lawyer in writing and such brief includes the particular fees to be paid that the written instruction is before the Court

That the charges of N6,98 naira are not made on the completion of the transaction

That on the 28th of October, 2024 ,The defendant reversed the following:

N1,000 1st

N1,000 2nd

N1000 3RD

N600 5th

N2000

N300

N200

N2000

The DW1 stated that this is because the matter is still under investigation.

The Claimant in their final address posits one issue for determination and that is whether the Claimant had established his case on the balance of probability as required in civil cases. The Claimant submits that from the totality of evidence and oral testimonies adduced

during the hearing of this suit, the Claimant had proved his case as required in section 134 of the Evidence Act 2011. They submit that the Defendant made series of unauthorized debits on the claimant's bank account in failed transactions as detailed in paragraph four and five of the Claimant's witness written deposition and indicated in EXHIBIT E. That During cross examination of CW1, he reiterated this position, including the sums of monies stated in paragraph 4 and 5 of the Claimant's witness written deposition. The DW1 further admitted that the Claimant's bank account was debited the sum of N6.98 in failed transactions and they referred the Court to CENTRAL BANK OF NIGERIA GUIDELINE TITLED: GUIDELINES ON OPERATIONS OF ELECTRONIC PAYMENT CHANNELS IN NIGERIA (CBN) which the Defendant is subject to, wherein is clearly provided by the apex bank in FIG 4.9 and sanction provided in FIG4.10 of the said guideline, that reversal of every failed transaction via electronic money transfer, which the failed USSD transaction the Claimant was debited is part of, shall be reversed within 48 hours and a penalty attached therein. We further referred the court to CBN Circular dated Sept.13, 2018, section 11 thereof.



The Claimants submit, with greatest respect, that the partial reversal of these unauthorized debits complained of by the Defendant on the 28/10/2024, while this matter is pending in this Court, amount to admission of liability of all the Claimant's claims, that it is trite that facts or acts admitted need no further proof.

Furthermore, in their final addresses. The Claimant contend that the DW1 is not witness of truth because the DW1 contradicted various paragraphs of her written deposition during cross examination. DW1 neither tendered the said internal policy mentioned in paragraph 11 of her deposition nor disclosed same to the Claimant at anytime, including the time EXHIBIT B was made. Assuming without conceding such rule ever existed, this internal policy is contrary to the provisions of CBN GUIDELINE and CIRCULAR referred above. Urges the court not to attach any probative value on the entire evidence of the DW1. He further contends that EXHIBIT G, is concocted for the purpose of this suit. That Exhibit G is not signed by the team nor dated or names of the team members who prepared same, nor does it bear the stamp of the defendant as seen on the face of Exhibit E and F. Furthermore, the Claimants contend that EXHIBIT G was made during the pendency of this matter and same offended the provisions of Evidence Act 2011, section 8.

Furthermore, the Claimant submits that it is pertinent to draw the court's attention to non compliance with section 84 sub.2. EVIDENCE ACT 2011 in making Exhibit H.

The said Exhibit H is a computer printout in A4 paper, and it is a trite requirement of the law of evidence that a computer printout must be accompanied with a certificate of compliance fulfilling all the conditions enumerated in sub.2 of section 84 Evidence Act, 2011. We humbly

That the unauthorized debits stated in the paragraph 4 and particularly, paragraph 5 of the Claimant's witness written deposition had different transaction reference codes not link to any main transaction at all in the Claimant's account. Those that this lack of nexus in reference codes in the main transferred amount and charges imply that these are unauthorized debits made on the claimant's bank account in failed transactions. Refers the Court to similar transaction on the 8th day of May, 2023 on EXHIBIT F & E. and the affirmation of DW1 during cross examination that every transaction in the bank is linked to a reference code for identification.

The defendant also filed a written final address wherein they formulated two issues for determination and that is whether

1. The Claimant has proved his claim that the Defendant, being a Banker, unlawfully debited his account in the amount claimed?
2. Whether given the circumstances of this case, the Defendant acted in good faith so as ameliorate any liabilities against it arising from the Claimant's claim as constituted?

On issue 1, the defendant submits that the defendant submits that the onus of proof lies with the Claimant who asserts that he was debited with USSD charges for transactions he



did not initiate and that his account was not credited for payment transactions on Paystack for which he was debited. That the Claimant, in paragraphs 4 and 5 of his Deposition made specific reference to dates and amounts for which he was wrongfully debited. That one of those dates was 28th March 2023 (28/03/23) as stated on Paragraph 4(xii) of the Claimant Witness' Deposition.

However, under cross-examination the Claimant denied reporting any failed transactions" That a community reading of both paragraphs 4 and 5 of the Claimant's Witness reveals that the debits specifically pleaded do not add up to the amount claimed i.e. N60,000.

A simply multiplication of N6.98 by 445 (i.e. number of times Claimant alleged his account was wrongfully debited for USSD transactions) amounts to a paltry N3,106.10k.

Also, the Claimant under cross-examination did not contradict the fact that the deduction was as directed by the Central Bank of Nigeria and the Nigerian N6.98 for USSD transactions Communications Commission and that these applied whether the USSD transactions were successful or not.

Further, Claimant admitted that he made USSD transactions and transactions on the Paystack Platform of his own volition.

Further, the defendant submits that the Claimant had sought to make heavy weather of reversals made to his bank account subsequent to the commencement of this suit, However, that the Claimant brought no evidence connecting such specific reversals to the amount claimed in this suit.

For instance, there was no evidence of reversals of N6.98 to the Claimant's account to warrant that the conclusion that said reversals arose from wrongful deductions as claimed by the Claimant in this matter. That assuming but not conceding that that was the case, we submit that the Defendant should not be made to suffer double jeopardy.

On issue two(2) raised by the defendant counsel, they submit that had it not been for the Claimant's impatience, Exhibit G would have clarified the appropriate steps to take when the veracity or otherwise of the Claimant's had been confirmed.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and the counterclaim and have also taken cognizance of the evidence before the court. I have couched a lone issue for determination and that is: **Whether The Claimant Has Proved His Case To entitle him to an order of this Court compelling the defendant to refund the Claimant, the sum of N60,000 being the principal amount, N4,000,000(Four Million Naira) as fees and N200,00 as cost**

The CW1 in his evidence before the Court have testified that the Claimant requested for a one time Paystack payment via USSD to fund Msports betting App belonging to the Claimant and same was not credited to the Msports betting App after the Claimant was debited as follows:

- i. 28/02/2023 twice in the sum of N1000, total = N2,000;
- ii. 1/03/2023 N1,000 once, N5,00 twice, total = N2,000
- iii. 6 /03/2023 N1,000 twice, N5,00 total = N2,500



- iv. 8/03/2023 N1,000 once, N500 once, total =N1,500
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- xvii. 19/06/2023 N2,500 twice, N1,000 three times, total = N8,000
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The CW1 further testifies that the Claimant was debited by the Defendant 445 times without his consent, the sum of N6.98 from the 9/02/2023 to 19/12/2023 including the dates the Claimant did not initiate any transaction at all, particularly the following dates;

9/02/2023, 11/04/2023, 13/04/2023, 17/04/2023, 25/04/2023
 26/04/2023, 08/05/2023, 10/05/2023, 12/05/2023, 18/05/2023
 5/06/2023, 9/06/2023, 13/06/2023, 2/08/2023, 7/08/2023,
 18/08/2023, 25/08/2023, 13/09/2023, 18/09/2023, 4/10/2023,
 5/10/2023, 15/12/2023, 25/10/2023, 1/12/2023, 21/12/2023.

I have carefully calculated the sums on Paragraphs 4i –4xxi and also calculated N6.98 multiply by 445 as in paragraph 5(i) of the Claimant's deposition on oath.

Sums on Paragraphs 4i-4xxi on the Claimants written deposition on oath amounts to the sum of N63,500 and the sum of N6.95 multiplied by 445 amounts to the sum of N3,092.75

The total sums calculated from the aforesaid paragraphs is the sum of N63,500 and N3,092,75 is equals to the total principal sum of N66,592,75. The claimants claim as in the

complaint form as in RSSC3 and his deposition on oath is for the sum of N60,000

Is the Claimant forfeiting some of his claims? why is the Claimants transaction details is not adding up to his claims before the Court?

It is trite that he who asserts must prove. The general principle of law is that he who asserts must prove, coined from the old maxim incumbit probation qui dicit non qui negat which means that the burden of proving as fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) p. 217. See also, Section 131 and (2)



Evidence act 2011, and *Agwaramgbo v. I Dumogu* (2008) 5 NWLR (Pt. 1081) p. 564 at 572.

Furthermore, during the cross examination of DW1, she stated that the first reversal of N10,000 occurred on the 29th of September, 2024 and the Claimant still filed the case of N10,000 as part of the unauthorized debit.

Please take note that this matter was filed on the 5th of October 2024 Why was the first reversal still reflecting as part of the sums as to be refunded to the Court?

It is the conclusion of this Court that the Claimants transaction detail and first reversal details of N10,000 which has not been denied by the defendant is not adding up to his claims before the Court.

Why is the Claimants transaction details is not adding up to his claims before the Court?
He who asserts must prove.

In their final written address, the Claimant counsel had made copious submission on the weaknesses of the defendant's case; as to lack of evidential value of the Exhibit G and H tendered by the defendant and contradictions in the evidence of the DWI before the Court.

I have refrained from analyzing the genuineness or otherwise of the Claimants submissions of his perceived weaknesses of the defendant case because the evidential burden placed by the law on the Claimant to prove his claim has not been discharged and so that burden of proof have not moved to the defendant. This is because, it is a long established principle of law that the Claimant is not allowed to succeed based on the weakness of the defendant's case. *Ferdinand George v. UBA Ltd* (1972) 8-9 Sc. 4 at 280; *Carlen (Nig) Ltd v. UniJos* (1994) 1 NWLR (Pt. 323) 631 at 668; *Siesmographic Ltd. v. Ogbeni* (1976) 4 Sc. 85 at 101 and *Overseas Construction C Ltd. v. Creek Enterprises Ltd.* (1985) 3 NWLR (Pt 13) 407." **A. I. C. LIMITED v. NIGERIAN NATIONAL PETROLEUM CORPORATION**(2005) LPELR-6(SC) Per Edozie, JSC. (Pp. 35-36, paras. G-C)

It is the party that will necessarily loose in a particular case that ought to adduce evidence to support his case, thus it is on whoever is asserting to prove his case if his assertion is to be taken into consideration or the force of law. Evidential burden has been described as the obligation "to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue. *Adake vs. Akun*(2003) 7 SC 26

The Claimant, have in the opinion of this Court, failed to discharge the evidential burden placed on him as he has failed to adduce sufficient evidence as to the existence of the N60,000 claim before the Court.

Flowing from the above, this Court hereby holds that the Claimant have failed on the preponderance of evidence and balance of probability to show that he is entitled to the N60,000 claim before the Court .

On The Claim For General Damages And Cost Of Litigation: The main claim for the recovery of the principal sum having failed, the Claimant's ancillary claims for general



damages and cost of litigation also fails. For it is not possible to place something on nothing

The Claimants Claim is hereby dismissed.

On The Defendant's Counterclaim For N150,000 As Litigation Cost.

Again, he who asserts must prove. It appears that the defendant's claim for professional fees suffered some hits from the Claimants counsel during cross-examination when the DW1 stated that they briefed their lawyer in writing and such brief includes the particular fees to be paid. The written instruction is not before the Court

The Appellate Courts have reiterated times without number that the claim for cost of litigation or professional fees is in the class of special damages that must be strictly proven. The keyword is strictly. Please refer to the case of Lonestar Drilling Nig. Ltd v. New Genesis Executive Security Ltd [2011] LPELR – 4437 CA
Naude v Simon [2014] ALL FWLR [Pt. 753] CA 1878. per Akomolafe- Wilson JCA
International Offshore Construction Ltd & 3 Ors. v Shoreline Lifeboats Nig. Ltd [2003] 16 NWLR [Pt. 845] p. 157

To satisfy the standard of proof required for special damages, the defendant/counterclaimant in this case ought to have tendered the said letter of instruction engaging the legal counsel to defend this suit; this is made especially necessary after the DW1 has testified to the existence of the said document which was never tendered before the Court.

The receipt tendered by the counterclaimant is now insufficient on its own to prove the claim for cost of litigation, this is in the light of the knowledge of the source document, the letter of instruction which precedes the receipt Exhibit H, which exist but was not produced in Court. A bank statement evidencing transfer, in the absence of the source document would have been, in the opinion of the court a satisfactory alternative corroboration of the receipt, the Exhibit H.

In the absence of sufficient proof of the special claim for cost of defending this suit, the counter claim for cost of defending this claim hereby fails and is dismissed.

There is no order as to cost.

GIFT C. AMADI ESQ
CHIEF MAGISTRATE
G.D.I
SIGN.....DATE.....

G.CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I

