IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 6TH DAY OF DECEMBER, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K.N. OGBONNAYA
JUDGE

SUIT NO: FCT/HC/CV/2286/16

BETWEEN:

MUSTAPHA ISSAH ---------- APPLICANT

AND

FIRST BANK NIGERIA LIMITED ---------- RESPONDENT

JUDGMENT

On the 3rd day of August, 2016 Mustapha Issah filed this action suing through his attorney Efekeremaye G Daniel claiming the Following:

(1) An Order directing the Defendant to transfer the sum of Three Million Naira (N3, 000,000.00) from Plaintiff's Account Number: 3077369807 with the Defendant to the Plaintiff's Solicitor's Account at Ecobank Account Number: 4872018436 as per the Plaintiff's letter of authority dated 29/10/14 addressed to Defendant.

(2) An Order directing the Defendant to pay the sum of Fifty Million Naira (N50, 000,000.00) as aggravated damages for flagrant breech of contractual

obligation which the Defendant owes the Plaintiff pursuant to their Creditor/Debtor relationship.

(3) An Order directing the Defendant to pay the sum of Twenty Million Naira (N20, 000,000.00) as exemplary damages for denying the Plaintiff **Note:** (I guess the Claimant meant the Plaintiff instead of Defendant) access to his fund.

(4) An Order directing the Defendant to pay interest on the Three Million Naira (N3, 000,000.00) it refused to transfer as the Plaintiff instructed from the date of refusal till liquidation of Judgement sum at the prevailing banking rate.

(5) An Order directing Defendant to pay interest on the total Judgement sum from the date Judgement is delivered till final liquidation at the prevailing banking rate.

(6) An Order directing the Defendant to pay cost of this action

The fact of the case was that the Plaintiff who is a customer of the Defendant was arrested and detained by DSS until his Counsel filed for enforcement of his Fundamental Right before Hon. Justice Godwin Kolawole (as he then was) of the Federal High Court Abuja before he and others were reluctantly arraigned in Court in Suit No: FHC/ABJ/CR/117/2014 before Hon. Justice Adeniyi Ademola of the Federal High Court, Abuja and later transfer to Kuje Prison from the

DSS detention camp following the application of the Plaintiff Counsel.

While in detention at Kuje Prison, the Plaintiff wrote a letter of instruction dated 29th day of October, 2014 addressed to the Branch Manager of the Defendant's branch at Kuje through his Counsel that the sum of Three Million Naira (N3, 000,000.00) only be transferred from his savings account No: 3077369807 to the Eco Bank Nigeria Limited account No: 4872018436 belonging to his Solicitor – M/S Efegov & Associates wherein he affixed his passport photograph.

The Plaintiff letter of instruction stated above was delivered to the Defendant's branch at Kuje – Abuja together with another letter written by his Solicitor on same dated 30th October, 2014. The two letter were received and acknowledged on the 6th day of November, 2014 at the Kuje branch of the Defendant.

Upon receipt of the Claimant's letter and that of his Solicitor, the Branch Manager instructed his branch Accountant in person of Sola who accompanied the duos of Efekemaraye G. Daniel and M.D. Owolabi of Counsel to Kuje Prison with a view to confirming the owner of the attached passport photograph and to as well re-confirm the signature of the Claimant. Mr. Sola the branch Accountant of Kuje branch of the Defendant went into the Prison with First Bank Cash Transfer Form which he made the Claimant signed in the presence of the Welfare Officer of Kuje Prison, Barr. M.D. Owolabi, Barr. Efekemaraye G. Daniel and Mr. Sola himself. Mr. Sola in addition to ensuring that the Claimant signed the Transfer Form, he went to the Prison with after he had compared the passport photograph with the person of the Claimant, further requested the Claimant to sign his usual signature on a blank sheet of paper ten (10) times with a view to ascertaining the correctness of the Claimant's signature on the letter of instruction as well as the Cash/Funds Transfer Form he brought into the Prison for the Claimant to execute.

The fact of the visit of Mr. Sola to Kuje Prison together with Barr. M.D. Owolabi and Barr. Efekemaraye can be verified from the visitor's register of the Nigerian Prison Authority at Kuje Prison gate on the 6th November, 2014.

The Mr. Sola availed the two Counsel the photocopies of all that the Claimant executed during his visit to the Prison upon return to his office that has since been tendered in evidence before this Honorable Court.

Almost three (3) months after the visit to the Prison stated above, the Defendant wrote a letter through his Legal Officer stating that the Claimant's request cannot be accomplished unless he physically appears before the Defendant at its branch.

The Claimant irked the behavior of the Defendant, instructed his attorney to commence a legal action against the Defendant first to perfect his transfer instruction and secondly to make the Court see the injustice the Defendant meted out on him, hence this action that was commenced by Writ of Summons filed on the 16th day of August, 2016.

Angered, disappointed by the action of the Defendant, the Claimant instituted this action against the Defendant on the 16th day of August, 2016 in order to perfect the transfer instruction he gave to the Defendant and to seek redress against the Defendant for breach of Creditor/Debtor relationship.

The Plaintiff opened its case on the 20th day of February, 2017 and closed same on the 28th day of February, 2018 after calling a Witness PW1 who is the attorney of the Plaintiff by name Efekemaraye G. Daniel. He tendered documents EXH 1 – 7.

On their part the Defendant opened its case on the 24th day of April, 2018 called a Witness – DW1 by name Adedeji Abayomi Adedabo. He tendered some documents EXH 8 – 12.

In defence the Defendant stated that it is judicially noticed fact that the Bankers/Customers relationship are contract strictly between Bank and its customer and no one else. That the only basis a bank can act on a customer account in his absence is where there is a valid Court Order and that this is not the case in this matter. Again that the purported Power of Attorney dated 4/2/15 is not a Court Order and thus falls short of the operational standard of the bank for Savings Account. That the Solicitor of the Plaintiff being a former Defendant's employee knows fully well that Savings Account is regulated by Terms and Conditions signed by the Account Holder with the Bank. Again that the Defendant should rely on the said Terms and Conditions signed by the Plaintiff to show that the Bank/Defendant is not duty bound to act on the Power of Attorney given no favour of the Plaintiff's Solicitor as same is below what is required in its extant practice.

That this action is aimed at obtaining justice by mischief intended to getting back at his former employers. They urged the Court to dismiss the Suit with substantial cost.

That the Defendant did not dishonor the Plaintiff's request and that they only gave conditions on which third party transaction can be initiated in a Savings/Personal Account as required by the Defendant Bank.

That the Defendant could not breach its practice Regulations because of Plaintiff's personal condition. As any such transfer to a third party would have been in breach of the customer/banker relationship.

In their Final Address the Defendant raised 3 Issues for determination which are:

(1) Whether this case is competent as it is constituted

(2) Whether Plaintiff has a reasonable cause of action against Defendant.

(3) Whether Plaintiff has validly proved his case that a Personal/Savings Account can be operated by proxy to be entitled to the Reliefs sought/claimed as per his Writ of Summons.

On Issue No:1 the learned Counsel for Defendant Eko Ejembi Eko Esq. countered and submitted as follows:

That a similar matter was filed by Plaintiff before Agbaza J. in Suit No: FCT/HC/CV/1196/15 but was struck out because the Plaintiff did not serve the Defendant with the Process. That the suit Ruling has not been vacated or overruled and as such the Plaintiff is bound by it.

NOTE: It is important to point out that the Defendant never raised this issue in the cause of their defence and never tendered any document showing the said Writ or copy of the Ruling. So this Court dismisses this submission for being unsubstantiated and waste of time and abuse of judicial process by Defendant as this Court does not believe him

This Court therefore holds that this Suit does not lack merit. It is therefore meritorious on that ground and to that extent defence of estoppel cannot stand and it is hereby DISMISSED. This Court does not therefore sit on appeal as alleged by the Defendant. There is no document before this Court to back up what the Defendant Counsel is saying. This Court has the competence to hear this Suit and jurisdiction too. So this Court holds.

On Issue No: 2 – on reasonable Cause of Action against the Defendant the Counsel submitted that Plaintiff has not disclosed any reasonable Cause of Action as there is no act or omission on part of Defendant which would constitute the breach of contract between the Plaintiff & Defendant in this case. He referred to case of:

Hado Nigeria Ltd & Anor V. Chrisbrown Int. Ltd & Anor (2013) LPELR – 21171 (CA).

He submitted that Plaintiff has no cause of action against Defendant as all that is alleged by Plaintiff does not give him a cause of action against Defendant as no law was transverse neither was any duty, right or obligation in favour of the Plaintiff denied by Defendant in cause of their banker/customer relationship. That Plaintiff's Witness PW1 admitted during cross-examination that he is not the actual owner of the Account as the owner of the Account is incarcerated. That by that the PW1 has admitted that the procedure for giving instruction in regard to a Personal Savings Account which ordinarily necessitated the actual presence of the Account holder/owner in Banking premises to give instructions were never met by him. He referred to the case of:

Ojukwu V. Yar'adua
(2009) 12 NWLR Page 75.

That there is no wrongful act of the Defendant against the Plaintiff in this case which can lead to this action since Plaintiff was neither physically present in the Bank to give instruction on his Account nor did he obtain a Court Order directing the Defendant to pay Plaintiff through his Solicitor – a third party.

He urged the Court to dismiss this Suit as the Plaintiff has no Locus stand since no right or duty owed him was breached by the Defendant, nor does he have any reasonable cause of action as no term of Banker/Customer relationship existing between him and the Defendant was breached.

On Issue No: 3 – on Savings Account being operational by proxy, the learned Counsel opined that the onus is on Plaintiff to prove what the Terms of Bank/Customer contract relationship. That it is his duty to prove what the terms of the contract breached by the Defendant are. That Plaintiff to be entitled to the Reliefs sought he must show through his evidence the Terms of the Contract which has been breached. But that Plaintiff has failed to do so in this case. That all he did is to state the refusal of Defendant to approve the transfer which makes his Solicitor to threaten to withdraw from his case and the Landlord demanding for his rent and throwing his family out of the place of abode as well as the Children of the Plaintiff being thrown out of School for failure to pay their School fees. That the Plaintiff who has alleged these facts is duty bound to prove same but he failed to do so.

That the continued pressure of the same Counsel in the matter insinuates the contrary. That Plaintiff did not present any piece of credible evidence in this Court to support any of his claims/pleadings before this Court.

NOTE COURT:

Contrary to the above the Plaintiff attached letters and correspondence (7 in all) to support his claim.

Chief among the documents is the letter of instruction to Defendant to pay to his Solicitor. That letter has his picture and the Defendant acknowledged the existence and receipt of that.

So the submission of Defendant Counsel above is misleading and misconstrued in that regard.

The Counsel for the Defendant went on to submit by referring to the case of:

Magnusson V. Koiki & Ors
(1993) LPELR – 1818 (SC).

Omoboriowo & Ors V. Ajasin
(1984) LPELR – 2643 (SC).

That all the Plaintiff is trying to do is to lure to the believing that his type of Account in issue can be operated by 3rd party on behalf of the Plaintiff and make Court to deliver into facts which are not before this Court.

That for the Plaintiff to be entitled to damages he must lead evidence to support his claim. That a letter from DSS instructed the Defendant to debit freeze the Plaintiff's Account. Meaning that even a request from the Plaintiff presented in person should not be honoured.

That the said letter was admitted and marked as EXHIBIT. He referred Court to:

Gyang V. Maigadi
(2012) LPELR – 20100 (CA)

Teju Investment & Property Ltd V. Subair
(2016) LPELR – 40087 (CA)

That Plaintiff cannot be allowed through oral testimony and asserted pleadings contradict, assert and vary the content of the document evidence of the DSS letter dated 23/9/16, tendered and admitted in evidence before this Court.

That the action by the PW1, the fact that his Chambers – Messor Etegov & Associates are the Counsel in this Suit as well as the fact that he gave oral testimony as Witness for Plaintiff makes him the Plaintiff, the Counsel and sole unit. That it is against the Rules of professional conduct for Legal Practitioners. He cited the provision of **Order 17 Rule 5 Rules of Professional Conduct for Legal Practitioners 2007. Order 20 Rule 1 (1) – (4).**

He submitted that the Plaintiff is aware that this Suit was initiated by his law firm. He is aware that at point of filing the Suit he will be called upon to testify as a Witness. He gave evidence as Witness and

conducted cross-examination on DW1 himself. That the Plaintiff is in multifarious breach of the extant Rules of Professional Conduct in the course of filing and testifying in this Suit. He referred to the case of:

Senator Bello Sarkin Yaki (Rtd) & Anor V. Senator Abubakar BAgudu & 1 or
(2015) LPELR – 25721

He submitted that the conduct of the Plaintiff in this case is in breach of extant provisions of the said Rules should be admonished and his evidence discountenanced in its entirety by this Court and the case of the Plaintiff dismissed for being fraught with illegality in its conduct.

That Plaintiff has not presented anything before this Court by way of oral or document evidence to be entitled to the Reliefs sought.

That his assertions have not been supported by clear and credible document evidence to sustain his case. He urged the Court to discountenance the entire case of Plaintiff with substantial cost as it vexatious, frivolous and intended to extort money from the Defendant by meddle some interloper.

Upon receipt of the Defendant's Final Address, the Plaintiff Counsel filed theirs on the 25th day of November, 2018. In it he raised 3 Issues for determination which are:

(1) Whether there is a contractual relationship between Claimant and Defendant and whether Defendant's act does not amount to a breach of contract.

(2) Whether Defendant's act had not negatively impacted on the Claimant and his family.

(3) Whether Claimant s entitled to compensation from the totality of the evidence led before this Court.

On Issue No: 1 the learned Counsel submitted that the relationship between the parties is to the effect that Plaintiff can at any time instruct Defendant as to what to do with the Claimant's fund in the said Savings Account as far as such instruction did not fall short of the basic requirement of Banker/Customer laid down procedure for such instruction.

That the system of banking now operational is a one Branch banking where a customer can operate its Account from any location in the world. That the Defendant never denied that Claimant is their customer or that the amount sought to be transferred is in excess of the deposit balance in the Plaintiff's Account. That the Defendant sent its officer – Mr. Shola to meet the Plaintiff in the Prison availed him with the Local Fund Transfer Form which the Plaintiff completed and signed in their presence. He referred to ***S. 123 EA 2011 as Amended.***

Uzoma Okereke V. State
(2016) 5 NWLR (PT. 1504) Ratio 3

He submitted that from the correspondences between the parties there existed a contractual relationship between them which foists some obligation on the Defendant as well as the Plaintiff. The Claimant is obliged to fund his Account to accommodate the debit he wants to make from the Account. The Defendant is duty bound to act upon any of the Claimant's instruction whenever made. So failure of the Defendant to act on any of the instruction given by the Plaintiff is a breach of that duty.

More so, when the Defendant had sent his officer to visit the Claimant in Prison witness him complete the Local Transfer of Fund Form, signed his signature with a written instruction already written yet the Defendant refused to honour the instruction is a flagrant breach of the contract between Plaintiff and Defendant by the Defendant. And such action is actionable wrong. He referred the Court to the case of:

Alhaji Mufutau Mohammed Gbadamosi Esuwoye V. Alhaji Jimoh Abodunrin Imam Bosre
(2017) 1 NWLR (PT. 1546) Ratio II

Onyekwusi V. R.T.C.M.Z.C
(2011) 6 NWLR (PT. 1243) 341

He submitted that there was a contract, a subsisting contract which the Defendant breached and there is damages for the breach. He urged Court to rule on Issue No.1 in favour of the Plaintiff.

On Issue No. 2 he submitted that where document evidence supports oral evidence the oral evidence becomes more credible. That the Plaintiff gave instruction for the transfer of the money from his Account to the Account of his Solicitor. That the instruction is not cash transfer. That the Account balance was in excess of the amount involved – Three Million Naira (N3, 000,000.00) as at the 29th day of October, 2014 when the instruction was given over Four (4) years ago. Rather than carrying out the instruction the Defendant introduced archaic, barbaric and otiose rules and regulations after they had gone physically to see the Plaintiff in Prison, identify him, saw him give the instruction in their presence and verified the genuineness of the instruction and his signature.

That the letter from DSS which the Defendant presented was brought to the Claimant's knowledge when the trial was long been on. That the letter cannot take the place of a Court Order. That it is an Order of Court that can stop the operation of an Account and not

a mere instruction based on the letter from the DSS. He referred Court to the case of:

Jukok International Ltd V. Diamond Bank
(2016) 6 NWLR (PT. 1507) 105 Paragraph C

S. 6 of the 1999 Constitution as Amended

Felicia Akinbisade V. State
(2006) 17 NWLR (PT. 188) 70 @ 188.

He urged the Court to resolve the Issue No.2 in Plaintiff's favour.

On Issue No. 3 the learned Counsel submitted that the claim that Ekeremaraye is the Plaintiff Counsel and sole Witness is langliable as it is not true. That he was not the Counsel that conducted this case. That he did not examine himself and cross-examine himself. That the trial was conducted by Ekpo Philip Ekpo Esq. going by Court Records. That the submission of the Defendant in that regard is grossly misleading and false. He referred to these cases:

Smith Beecham PLC V. Farmex Ltd
(2009) 5 WRN 94 @ 101

Chief S.I. Agu V. General Oil Ltd
(2015) 17 NWLR (PT. 1488) Ratio 5.

He urged Court to award General and Special damages since it was specifically pleaded. He referred to the case of:

Mainstreet Bank Reg. V. Anukem Anselem
(2015) 16 NWLR (PT. 1486) Ratio 1

GTB V. Chukwumezie Ekemezie
(2016) 2 NWLR (PT. 1497) Ratio 10

NOTE:

The learned Counsel for the Plaintiff quoted in full what he called the Averment in paragraph 16 of the Plaintiff Statement of Claim thus at page 11 Plaintiff's Final Address paragraph 3.09:

> "The Plaintiff aver that he instructed the Defendant to transfer the sum of Three Million Naira (N3, 000,000.00) only to his Solicitor's Account to enable him discharge his indebtedness to his Solicitor, pay his Children School Fees, pay his house Rent and discharge his financial obligations to his dependants including his aged mother and parent-in-law."

I have searched the length and breadth of both the Statement of Claim, the Statement on Oath of the PW1 and the Record of Proceedings in this Suit to see if there was any resemblance of the above alleged paragraph 16 of the Statement of Claim as the lying Counsel had quoted

I have not seen anything like that. I know that by the Record of Proceeding there was no application to amend any paragraph of the Statement of Claim or additional Oath of the PW1. What I have in the Statement of Claim paragraph 16 as filed by the Plaintiff is this:

> "The Plaintiff avers that the Defendant on the 10th day of October, 2014 that is almost Three (3) months after the instruction of the Plaintiff wrote to his Solicitors of his inability to carry out the instruction of its customers unless the Plaintiff is physically present in the bank even when the Defendant is fully aware of the current location of the Plaintiff (Kuje Prison) and all necessary transfer instrument have been executed. The said letter is pleaded and shall be relied upon at trial of the case."

The above is exactly same with the paragraph 16 of Statement on Oath by PW1.

This Court is utterly disappointed that a Counsel of the learned profession should blatantly lie to the Court by "inserting" a ficticous paragraph or should I say referring to a non-existent ficticous paragraph in their Final Address just because he want to win the case of his client at all cost by weeping up sentiment that is non-existence forgetting that justice is not based on emotional sentiment but on raw cogent facts and very credible evidence which has withstood the grilling and scotching heat of cross-examination from the other side of the aisle.

This behavior is shocking, utterly disgusting, outrageous and vexing unbecoming of a supposed learned gentleman of the noble profession. Nonsense!

The Counsel urged the Court to prove that the Court is the hope of the common man by entering Judgement in favour of the Plaintiff.

COURT:

From all the above, the question before this Court is, is the refusal to honour the application to transfer Three Million Naira (N3, 000,000.00) to the Plaintiff's Solicitor a breach of the Banker/Customer relationship in trial bearing in mind that the DSS has placed Debit Freeze on the Account of the Plaintiff, before the trial in that the Defendant should be held liable for a breach of contract?

Again, the Defendant put such a defence that this Court should dismiss the case of the Plaintiff and hold that there was no breach of contract and that the Attorney to Plaintiff should not have any stood for him and testified before this Court by virtue of Rule 17 of the Rules of Professional Conduct for Legal Practitioner.

Again, has the Plaintiff been able to establish that the Defendant was in breach and as such the Court should deservingly grant his claims in this Suit.

To start with, this case is not on libel as the Defendant stated in paragraph 2 of the background facts in their Final Address.

It is a common secret that in any bank/customer relationship the customer can at any time upon notice/instruction to the Bank as at what to do with its fund in the custody of the Bank once such instruction falls within the normal basic requirements as provided by the procedure for such instruction.

It has been a trench in Nigeria and global that there is a one bank branch for all customers of the Bank more so with the coming into force of the Bank Verification Number (BVN) in Nigeria. The implication is that a customer can raise a cheque anywhere or give instruction from anywhere to his bank and his bank will honour such instruction in the ordinary cause of business without delay. So a customer can operate his Account in any bank branch within Nigeria.

In this case it is well established that the Plaintiff is the customer of the Defendant. It is also established that the Plaintiff is the owner of the money in that Account. There is also no allegation that the money in the Account or the Account in itself is in red. The Account as far as the money in Issue is concerned, is well funded.

The letters dated 30/10/14 and 18/11/14 from Efegov Associates to the Defendant is not in doubt as per the content therein.

Again, facts which are not challenged are deemed established, in that such facts need no proof.

Uzoma Okereke V. State (No.2)
(2016) 5 NWLR (PT. 1504) Ratio 3

MTN V. Aquaculture Co-operative Society Ltd
(2016) 1 NWLR (PT. 1493) Ratio 14

Here the Court held that uncontroverted or unchallenged evidence should be accepted by the Court as credible evidence on any issue on which the Court is called upon to determine.

By S. 75 EA 2011 where facts are admitted, they are deemed proved. But Court is duty bound to still analyze such facts, evaluate same and be satisfied before it see so as credible and sufficient to system the claim upon which such facts is based. That is the Court decision in the following cases:

Kayili V. Yilbuk
(2015) 7 NWLR (PT. 1457) Ratio 3

Alhaji Shuaibu Gbadamosi V. Abiodun Tolani
(2011) 5 NWLR (PT. 1240)

From the document tendered in this case it is not in doubt that the parties have a banker/customer relationship with the owner of the Account in issue who id the Plaintiff in this case. The said letter was tendered and admitted in evidence. The letter was written by the Plaintiff to the Defendant as an instruction to transfer the amount in issue – Three Million Naira (N3, 000,000.00) to 3077369807 the Account of his Attorney – Efegov & Associates in Ecobank PLC. In the letter dated 29/10/14 the Plaintiff had stated what he wants to use the money for.

> "I have a problem and I want to solve it. Help me transfer to my Lawyer account the sum of Three Million Naira (N3, 000,000.00) only. I want to pay my lawyer. I am in Kuje Prison."

A look at the signature page of the Account opening document shows that both the signature in the document and in the letter are same. The name same and the handwriting also same. Rhis document was received by the Defendant on the 6th day of November, 2017 in the forenoon.

In the said letter the Plaintiff attached his passport picture to remove any doubt as to whether he is the owner of the money. The letter

bears his address which is known to the bank. He equally stated that he has a problem and that he is in Kuje Prison and has a problem and want the money to be paid to his lawyer most probably because his lawyer is standing for him in the case he had and the money is for legal fees and sundry expenses.

The lawyer whom the money is to be paid also on his own, heralded the letter with his own letter in his official Chamber letter head. He confirmed he is the Counsel for the Plaintiff in the matter FHC/ABJ/CR/117/14 between FRN V. Mustapha Issah. He also confirmed that the Plaintiff is in Prison too and that the money is for his professional fees for legal services rendered or to be rendered to the Plaintiff. Counsel also promised to provide any information and render assistance the bank may consider necessary in that regard.

It is important to point out that the money is to be paid into an Account and not to be paid by cash. This further shows that there is nothing to be hidden or suspicious on the instruction. The bank acknowledged the said letters.

The Attorney and Counsel to the Plaintiff went further to report to the Regional Office of the Defendant that the Dei Dei branch who had gone to the Kuje Prison to ensure that the Defendant actually gave the instruction, refused the act on the instruction 14 days after the bank sent their Branch Staff to go to Kuje Prison.

The Counsel had ended that letter dated **18/11/14** with a notice to take legal action against the Defendant if it fails to honour the Plaintiff's instruction. The Defendant refused and the Plaintiff's Attorney instituted the present action. The Defendant acknowledged the receipt of this letter on the 19th day of November, 2014. The letter was admitted in evidence and was not controverted just like the other 2 letters of the 29th and 30th October, 2014.

In a letter dated 1/12/14 the Attorney and Counsel to the Plaintiff wrote to the bank – addressed it to the Manager Legal of the Bank, informing them that they have the instruction of the Plaintiff to take

legal action against the Defendant and to claim substantial damages if the Defendant fail, refuse and continue to refuse and neglect to carry out the Plaintiff's instruction on or before the 2nd day of December, 2014. The Abuja Area Legal Manager received the letter on the 1st day of December, 2014 the same day the letter was written.

Meanwhile, the same Plaintiff had on the 4th day of January, 2015 executed or donated an irrevocable Power of Attorney in favour of the same Counsel who is also representing him in the case. The same Power of Attorney was duly signed and notarized by Olutunde Abegunde.

In a reply the bank had written to the Counsel to Plaintiff – Efegov & Associates that the Bank requires the presence of the Plaintiff in the bank because it can consummate the transaction in accordance with the requirement in the operation of a Savings Account. Meanwhile, the Plaintiff Attorney had informed the bank about the journey to Kuje Prison by the Staff of the Bank at Kuje where the Shola had gone, seen the Plaintiff, obtained his signature, sample signed into ten (10) places and received the form completed by the Plaintiff yet the Defendant now insists to see the Plaintiff in the bank physically before they can honour instruction he had given in writing and confirmed in person at the Prison at Kuje.

The Plaintiff had attached a Local Currency Form which was completed by the Plaintiff in his own hand and in the presence of the Staff of the Kuje branch of the Defendant at the Kuje Prison on the 6th day of November, 2014.

In the said Power of Attorney which was duly donated and signed by the Plaintiff it states in 4 paragraphs that the Power is irrevocable, the donee to hand his case in the present case and in an issue of the remittance of the Three Million Naira (N3, 000,000.00) into the Doness act to be used to pay the house rent, his Children School fees, allowance to his aged mother and legal fees. This document as

well as the other letters was tendered by the Attorney to the Plaintiff.

In the accounting opening form attached by the Defendant as A-E, all the documents were marked “for official use only” even the column for customer I.D is marked “for official use only” which means that those documents and content therein are fished by the Bank and not the customer. But the column for personal information was completed by the Plaintiff in the same hand writing as show in the Local Currency Transfer Form and in the letter of instruction to the Bank to remit the money to his lawyer as well as the signature sample.

Even the signature page sealed with a stamp shows that the signature of the Plaintiff was consisted. All these put no one in doubt that there exists and still subsists a Banker/Customer relationship between the Plaintiff and Defendant.

In the terms and conditions attached the Bank is to carry out the instruction of the customer and the customer shall bear any loss that resulted from that instruction. At no time was it stipulated that Savings Account customer like the Plaintiff must be in the bank physically before his instruction can be effect.

In both the terms and conditions manual banking service clause 1 – 12 and in the terms and conditions in Electronic Banking Service the bank is under obligation to:

> **“carry out the customer’s instruction promptly except save for reason of force majeure or any other circumstance beyond its control.”**

In clause No.11 the customer agreed that neither the bank nor its staff shall be liable for any loss which is as a result of the instruction given by the customer to the bank.

From the totality of the terms and conditions as tendered by the Bank, it is evident that the bank is bound to carry out the instruction given by a customer to it once such instruction is shown to actually come from the customer.

In this case it is not in doubt that the customer – Plaintiff gave the instruction in writing not orally for the bank to transfer money – Three Million Naira (N3, 000,000.00) to the account of the Efegov & Associate the Attorney of the Plaintiff who also is his Counsel in this Suit. The Bank refused to carry out such instruction not because there was inadequate fund in the account or that they doubted that the instruction is not from the Plaintiff. They believed it was from the Plaintiff yet they refused to honour it. That singular protracted action of the Defendant violated the Banker – Customer relationship and the terms thereof.

Same action also affected the Plaintiff and obviously caused him trauma, losses and hardship especially as he is unable to meet his responsibility and obligation to his family and his aged mother. The bank was wrong in refusing to honour the instruction. More so when the instruction was for money transfer electronically to his Counsel a qualified lawyer who was appointed as his Attorney in a notarized Power of Attorney donated to that lawyer. All these documents speak for itself. The Power of Attorney as well as all the other correspondences are more than good and sufficient enough to make the bank see reason to obey his instruction. After all if the Defendant comes out to cry wolf later the Bank is protected by the clause in the terms and conditions under which the same Plaintiff – customer is barred to hold the bank responsible for loss of fund under terms and conditions set out in the document attached by the Defendant.

Though the Court had rejected the document, the signature sample where the Plaintiff wrote his name and signed his signature, the Court hereby in exercise of the discretionary power it has to ensure that justice is done, accepts the said documents. The reasoning is

because the said document shows more vividly the signature of the Plaintiff and his hand writing. It further confirmed that there is consistency in the signature of the Plaintiff and shows that the same Plaintiff signed the signature in all the bank documents. Admitting these documents had helped the Court in determining the issue in dispute.

The Defendant had contended that the Court lack jurisdiction to determine this Suit based on the ground that the Plaintiff had filed a similar case before Agbaza J. and that Agbaza J. struck it out because the Defendant were not served. That presenting this case is an abuse of Court Process.

It is important to point out that striking out a matter require refilling the matter which the Plaintiff did in this case. It is important to note that the High Court of FCT is one Court with different Judges manning the various Courts. This case is not caught up by estoppel. This Court is not sitting on appeal in this case.

Contrary to what the Defendant said the Plaintiff has disclosed a reasonable cause of action which is that Defendant had failed to live up to the customer/banker relationship when they failed to honour the Plaintiff's instruction to transfer the money – Three Million Naira (N3, 000,000.00) to the Efegov & Associates thereby occasioning and causing the Plaintiff some damages. Challenging the Defendant for failing to keep their customer/banker relationship is a good cause of action. The Court refers to the claims of the Plaintiff in this Suit and the Reliefs sought.

The Defendant's failure to obey the instruction after the Plaintiff was met in the Prison by the Staff of the Defendant, signed his signature, wrote letter to the Plaintiff donated Power of Attorney to his lawyer, completed and signed the fund transfer form after he had written the letter, are all gross violation and breach of the Banker/customer relationship terms and conditions. After all the Plaintiff is still their customer and the account is funded well. This Court holds

that there is a cause of action against the Defendant.

Insisting that the Plaintiff should be in the bank in person cannot suffice because the Plaintiff had in the letter told the bank that he is in the Prison custody.

Again, the bank had sent Shola to meet the Plaintiff in the Prison and confirm first hand whether he gave the instruction in writing. He also completed the Local Fund Transfer Form and signed his signature in all these documents. Those signature tallied and is consistent with the signature he signed in the Account Opening Form and signature page.

The Plaintiff has with the air tight testimony of the Plaintiff Witness as well as superb document evidence establish his case that and proved that the Account operated by him at the Defendant's place can be operated even when someone is not physically present by the Power of Attorney he gave to the same Counsel, his Attorney and the person he had instructed the Defendant to transfer the money – Three Million Naira (N3, 000,000.00) to. It should have been a different thing if his Attorney is different from Efegov & Associates. But it is the same Efegov & Associates that is standing for Plaintiff in this Suit as his Counsel.

The letter from the DSS which the Defendant Counsel claims freeze the Plaintiff's account is an alter through because the Plaintiff would have referred to the document as at the time they responded and wanted the Plaintiff to be in the bank in person. After all they would have paid the Plaintiff if he had come in person and again the Plaintiff had told them beforehand that he was in Prison custody and would not be available in person.

If that letter was actually and ready available to the Defendant then, they would have stated so. They would not have taken the pains to

send Shola to go to the Kuje Prison to meet the Plaintiff in the first place.

From all indication this Court answer the question it had posed in the Affirmative by stating that it is the considered view of this Court that the Plaintiff had established and proved its case and as such **this Court should and hereby grants his claims.**

The court holds that there is a contractual relationship between the Plaintiff and Defendant and action of the Defendant amounts to a breach of the contract – Banker/Customer relationship.

The action of the Defendant had negatively impacted on the Claimant and that of his family – Children and his aged mother. The Plaintiff is entitled to compensation having ably proved his case. So this Court holds. The Court therefore grants the claims of the Plaintiff and Orders as follows:

(1) Defendant is hereby directed to transfer the sum of Three Million Naira (N3, 000,000.00) as contained in the Relief No.1.

(2) The Defendant to pay the Plaintiff the sum of Five Million Naira (N5, 000,000.00) only as aggravated damages for the flagrant breach of the contractual obligation which the Defendant owes the Plaintiff pursuant to their Banker-customer/Creditor-debtor relationship.

(3) The Defendant is to pay to the Plaintiff the sum of N2.5million as exemplary damages for denying his access to his money in the Defendant's custody.

(4) Defendant to pay the Plaintiff interest at the prevailing banking rate on the Three Million Naira (N3, 000,000.00) it refused to transfer as per the Plaintiff's written instruction of the 29th day of October, 2014 from date of refusal till date of this Judgement.

(5) Relief No.5 is NOT GRANTED.

(6) The Defendant is to pay One Million Naira (N1, 000,000.00) as cost of this action.

This is the Judgement of this Court.

Delivered today the ------- day of ------- 2020 by me.

K.N. OGBONNAYA
HON. JUDGE