

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

HON. JUDGE HIGH COURT NO. 13

COURT CLERKS: T. P. SALLAH & ORS

DATE: 23/03/2020

FCT/HC/CV/1205/15

BETWEEN

1. BENDU PETER SERVICES NIGERIA LIMITED

2. PRINCE CHARLES CHUDI CHUKWUANI

PLAINTIFFS

AND

GUARANTY TRUST BANK PLC

DEFENDANT

JUDGMENT

The instant suit was originally commenced by the Plaintiffs against the Defendant by way of originating summons. However considering the contentions nature of this suit, pleadings was ordered by this Honourable Court to be filed and exchange between the Parties. Thus, by the Statement of Claim dated and filed on 19th December, 2016, the Plaintiffs are seeking the following reliefs against the Defendant:-

- a) A declaration that the actions of the Defendant in freezing, suspending, and refusing to allow cash withdrawal when requested to do so by the Plaintiffs, from the 1st Plaintiff Account No. 0000752238 kept in the custody of the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory

- (FCT), without justification, and without any Order whatsoever of any Court of competent jurisdiction is a contravention of the rights of the Plaintiffs.
- b) A declaration that the Defendant has no right whatsoever to freeze, suspend, and refuse to allow cash withdrawal from the 1stPlaintiff Account No. 0000752238 when requested to do so by the Plaintiffs of the Plaintiffs monies standing credit in the 1stPlaintiff Account No. 0000752238 kept in the custody of the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT), without justification, and without any order whatsoever of any Court of competent jurisdiction.
 - c) A declaration that the actions of the Defendant in freezing, suspending, and refusing to allow cash withdrawal when requested to do so by the Plaintiffs, from the 1stPlaintiff Account No. 0000752238 maintained at the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT), without justification, and without any order whatsoever of any other Court of competent jurisdiction is unconstitutional, null, and void ab-initio and constitutes a breach of contract between the Plaintiffs and the Defendant by the Defendant.
 - d) A declaration that the actions of the Defendant in detaining and locking up the 2ndPlaintiff in the Defendant's Branch Manager's office at the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT), without justification, and without any order whatsoever of any Court of competent jurisdiction is unconstitutional, and constitutes a violent violation of the rights of the 2ndPlaintiff to freedom of movement and association as guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended).
 - e) An order of this Honourable Court directing the Defendant to forthwith defreeze, and lift the suspension, and lift the lien illegally placed by the Defendant on the 1stPlaintiff Account No. 0000752238 kept at the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT).

- f) An order of this Honourable Court directing the Defendant to forthwith allow the Plaintiffs to make cash withdrawal from the 1stPlaintiff Account No. 0000752238 kept at the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT).
- g) An order of injunction restraining the Defendant from freezing, suspending, placing a lien on the Account of the 1stPlaintiff Account No. 0000752238, kept at the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT).
- h) An order of injunction restraining the Defendant from refusing the Plaintiffs to make cash withdrawal from Account No. 0000752238 kept at the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT).
- i) An order of this Honourable Court directing the Defendant to return back to the Plaintiff the sum of N1,620,000.00 (one million, six hundred and twenty thousand naira) that was illegally withheld by the Defendant on the pretext of freezing, suspending or placing a lien and refusing to allow the Plaintiffs make a cash withdrawal from the 1stPlaintiff Account No. 0000752238 kept at the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT).
- j) An order of this Honourable Court directing the Defendant to pay to the Plaintiff interest at the rate of 10% (ten percent) per day compounded daily from the 17th day of December, 2014 till judgement on the principal sum of N1,620,000.00 (one million, six hundred and twenty thousand naira) that was illegally withheld by the Defendant on the pretext of freezing, suspending or placing a lien on the account of the 1stPlaintiff and refusal to allow the Plaintiffs make cash withdrawal from the 1st Plaintiff Account No. 0000752238 kept at the Defendant's Guaranty Trust Bank Plc, Plot 69, Yakubu Gowon Crescent, Asokoro, Abuja, Federal Capital Territory (FCT).

- k) An exemplary damage in the sum of N800,000,000.00 (Eight Hundred Million Naira only) for the malicious, unconstitutional, and illegal acts of infringing on the rights of the Plaintiffs by the Defendant.
- l) The cost of this action at N10,000,000.00 (Ten Million Naira).

Upon being served with the Plaintiffs' Statement of Claim, the Defendant filed and served its Statement of Defence dated 5th January, 2017 to which the Plaintiffs filed a Reply dated 13th January, 2017.

The suit proceeded to trial with four witnesses giving evidence. The 2nd Plaintiff testified as PW1 in support of the Plaintiffs' case. One Agbo Alphonsus also gave evidence as PW2 for the Plaintiffs. The Defendant called one Olusola Ajibade and one Adeola Oluwasegun-Oni who gave evidence in its defence as DW1 and DW2 respectively. The witnesses adopted their respective testimonies on oath as their evidence in this suit. Documents were admitted in evidence as exhibits and marked as follows at the trial:-

1. Exhibit 1:- Certified true copy of the certificate of incorporation of Bendu Peters services Nigeria Limited.
2. Exhibit 1A:- Certified true Copy of the Memorandum and Articles of Association of 1st Plaintiff.
3. Exhibit 2:- Deposit slip of Guaranty Trust Bank
4. Exhibit 2A:- Customers Instructions Form dated 16th December, 2016
5. Exhibit 3:- Guaranty Trust Bank transaction slip dated 21st November, 2014.
6. Exhibit 4:- Certified True copy of the Amended Writ of Summons in Suit No. FHC/ABJ/CS/467/2014
7. Exhibit 5:- Certified True copy of Notice of Appeal filed with Appeal No. CA/A/660/2015.
8. Exhibit 6:- Board Resolution of the 1st Plaintiff dated 22nd November, 2014.

9. Exhibit 7:- Letter to the Branch Manager Guaranty Trust Bank Plc dated 17th December,2014
10. Exhibit 7A:- Letter to the Branch Manager Guaranty Trust Bank Plc dated 22nd November,2014
10. Exhibit 7B:- Letter to the Branch Manager Guaranty Trust Bank Plc dated 17th December,2014.
11. Exhibit 8:- Certified true copy of Particulars of Directors and Changes therein of the 1stPlaintiff
12. Exhibit 9:- Copy of 2ndPlaintiff's passport photograph with theDefendant.
13. Exhibit 10:- Copy of Particulars of Directors and of any changes therein.
14. Exhibit 11:- Photocopy of the certificate of incorporation of the 1stPlaintiff
15. Exhibit 12:- Certified true copy of the special resolution of the 1stPlaintiff registered on 17th March,2000
16. Exhibit 13:-Photocopy of a specimen signature of the 2ndPlaintiff.
17. Exhibit 14:-Letter of the 1stPlaintiff to the Manager Guaranty Trust Bank dated 17th December,2014
18. Exhibit 15:- Photocopy of passport of the 2ndPlaintiff.
19. Exhibit 16:-Letter of the 1stPlaintiff dated 17th December,2014 to the Manager Guaranty Trust Bank.
20. Exhibit 17:- Loan Agreement between Altitude Energy Ltd and the 1stPlaintiff.
21. Exhibit 18:- A letter by solicitors to the 1stPlaintiff to the Managing Director of the Defendant dated 18th December, 2014
22. Exhibit 19:- A letter by Pearl Services to the 1stPlaintiff dated 22nd December,2014.
23. Exhibit 19A:- A letter to Kwo Chambers by the Defendant dated 28th January,2015.
24. Exhibit 20:-Copy of letter to Kwo Chambers by the Defendant dated 30th December,2014.
25. Exhibit 20:- Nigerian Passport of the 2ndPlaintiff.
26. Exhibit 20A:- United States of America Passport of the 2nd Plaintiff.
27. Exhibits21& 21A:- E-tickets of Air France and Delta Air

Lines.

28. Exhibit 22:- Medical Report.
29. Exhibit 23:- Certificate of compliance.
30. Exhibit 24:- Photocopy of receipt for payment of legal fees issued to the 1stPlaintiff.
31. Exhibit 25:-Certified true copy of incorporation documents of Altitude Energy Limited.
32. Exhibit 25A:-Certified true copy of incorporation documents of Bendu Peter Services Nigeria Limited.
33. Exhibit 26:- E-mail from OluwaseunAlade (together with a certificate of compliance).
34. Exhibit 27:- Statement of account of the 1stPlaintiff with theDefendant.
35. Exhibit 28:- Motion on notice for extension of time filed in Appeal No CA/A/660M/2016.
36. Exhibit 29:-Letter from Aluko and Oyebode to the Registrar General, Corporate Affairs Commission dated 3rd March,2017
37. Exhibit 30:- Status Report issued by Corporate Affairs Commission on Pearl Service Nigeria Limited dated 8th March,2017.

At the close of evidence, final written address was ordered. The Defendant's Counsel adopted his written address dated 3rd May,2019 as well as a Reply on Points of law dated and filed on 21stJune,2019. The Plaintiffs' Counsel's final written address is dated 29th May,2019 and filed on 30th May,2019. On the prompting of this Honourable Court, both Counsel to the respective parties filed further address. The further address of the Plaintiff is dated and filed on 6th March, 2020 and that of the Defendant is dated and filed on 4th March, 2020. Both Counsel to the parties adopted their respective further address on 9th March,2020 and the case was adjourned today for judgment.

The Defendant's Counsel formulated 3 issues for determination in his address as follows:-

1. Whether in the light of the provisions of the Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Regulations for Banks and other Financial Institutions, the Defendant Bank was justified in preventing the 2nd Plaintiff from making a withdrawal from the 1st Plaintiff's account in the Defendant Bank.
2. Whether the events of 17 December 2014 constituted a detention of the 2nd Plaintiff and consequently violated his rights to freedom of movement.
3. Whether the Defendant is liable for damages, if any, suffered by the Plaintiffs as a result of the actions of the Defendant.

The Plaintiffs' Counsel for his part distilled 4 issues for determination to wit:-

- a. Whether the Defendant, purportedly acting under the provisions of the Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Regulations for Banks and other Financial Institutions, did in fact verify and carry out Customer Due Diligence/Know Your Customer (CDD/KYC) on the Bank account of the 1st Plaintiff as required by law to justify the Defendant's malicious act of preventing the Plaintiffs' access to their Bank account.
- b. Whether the events of 17th December 2014 constituted a detention of the 2nd Plaintiff and consequently violated his right to freedom of movement.
- c. Whether the Plaintiffs have made out a case for the declaratory reliefs sought.
- d. Whether the Plaintiffs have been unable to show that any injury or damage resulted to it because of the Defendant's decision not to allow the Plaintiffs withdraw money from their bank account.

As can be observed, Plaintiffs' Counsel has distilled very similar issues as those formulated by the Defendant's Counsel. I shall therefore adopt the issues as formulated by the Defendant's

Counsel. I will however address all the three issues together to avoid unnecessary repetitions.

The three issues adopted by this Honourable Court are:-

1. Whether in the light of the provisions of the Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Regulations for Banks and other Financial Institutions, the Defendant Bank was justified in preventing the 2nd Plaintiff from making a withdrawal from the 1st Plaintiff's account in the Defendant Bank.
2. Whether the events of 17 December 2014 constituted a detention of the 2nd Plaintiff and consequently violated his rights to freedom of movement.
3. Whether the Defendant is liable for damages, if any, suffered by the Plaintiffs as a result of the actions of the Defendant.

Before I proceed, let me quickly make some observations for the record. Two different documents appear to have been admitted in evidence through PW1 at trial *and marked Exhibit 20 respectively*. There are therefore two Exhibits 20 before this Court. It would seem this is a slip which ought to be corrected to set the record straight. Consequently, the copy of letter to Kwo Chambers by the Defendant dated 30th December, 2014 ought to be and it is hereby marked Exhibit 19B while the Nigerian Passport of the 2nd Plaintiff remained and marked as Exhibit 20.

It is necessary to note for the records that although the 2nd Plaintiff's original Nigerian Passport and United States of America Passport were tendered and admitted in evidence at trial, pursuant to the Plaintiffs' application, the originals of these documents were released to the 2nd Plaintiff to allow him travel during proceedings. The originals of the passports were replaced with their photocopies with leave of this Court.

Having said the above, the Plaintiffs brief case is presented by their pleadings and evidence of PW1 and PW2. PW1 (2ndPlaintiff) adopted his two witness statements on oath of 19th December,2016 and 6th February,2017 respectively as his oral testimony in support of the Plaintiffs' case. It is the Plaintiffs' case that the 1stPlaintiff is a company duly registered with the Corporate Affairs Commission (CAC) while the 2ndPlaintiff is a majority shareholder and Managing Director of the 1stPlaintiff. Certified True Copy of the 1stPlaintiff's Certificate of Incorporation and Memorandum and Articles of Association were admitted in evidence at trial as Exhibits 1 and 1A respectively. The Defendant on the other hand is a registered commercial bank licensed by the Central Bank of Nigeria to provide banking services in accordance with the law, with registered office in Lagos State and branch offices all over the states of Nigeria including the FCT at Asokoro District Abuja. The 2ndPlaintiff testified that he is a Plaintiff in a law suit at the Federal High Court in Suit No.: FHS/ABJ/CS/467/2014 which is subject of appeal at the Court of Appeal in Appeal No. CA/A/660/2016, the subject matter of which is allegations of stealing, illegal adaptation, illegal performance in public of intellectual property and infringement of copyright against the Defendant. Certified true copies of originating processes in Suit No.FHC/ABJ/CS/467/2014 and Appeal No. CA/A/660/2015 were admitted in evidence as Exhibits 4 and 5 respectively. That in December 2014, the Defendant had through its corporate staff namely one Mr. Ari Obebedo, Eniola and BusayoAkinola of the Defendant's Lagos Head Quarters legal unit, publicly threatened to ruthlessly deal with the 2ndPlaintiff for instituting Suit No. FHS/ABJ/467/2014 against the Defendant.

It is further the 2ndPlaintiff's evidence that the 1stPlaintiff maintains a current bank account with number 0000752238with the Defendant bank into which the Central Security Clearing System paid the sum of N1,620,000 being outstanding dividend payment belonging to the Plaintiffs. Exhibits 2, 2A and 3 were admitted in evidence as proof of

existence of the account and aforementioned payment. That on 16th December, 2014, the 2nd Plaintiff went to the Asokoro District branch (in Abuja-FCT) of the Defendant bank to make some cash withdrawal for payment of the Plaintiffs' suppliers and sub-contractors. He was however denied access to the 1st Plaintiff's bank account maintained with the Defendant for reasons unknown. The 2nd Plaintiff made enquiries from the Defendant's Asokoro Branch Manager, one Mr. Sola Ajibade, who availed the 2nd Plaintiff with the phone number of the Regional Manager i.e. one Ms. Halima Abdulsalam. Upon further enquiries, the said Ms. Halima Abdulsalam asked the 2nd Plaintiff to provide the following documentations to Mr. Sola Ajibade:-

1. Company board resolution,
2. Request for cheque book,
3. Request to reactivate account,
4. Request to transfer from account from Lagos to Abuja,
5. Account signatory passport photograph,
6. CAC issued and certified true copy of form C07,
7. Original certificate of incorporation,
8. CAC issued and certified true copy of the company's Memorandum and Articles of Association,
9. Completed Guarantee Trust Bank specimen signature card,
10. Request for cash withdrawal on company letter head,
11. Copy of biometric data page of international passport of the account signatory.

The 2nd Plaintiff testified that on 17th December, 2014, he provided all the requested documents to Mr. Sola Ajibade of the Defendant Bank at its Asokoro branch, receipt of which the Defendant acknowledged as follows:-

1. Copy of the 1st Plaintiff's company Board Resolution (admitted in evidence at trial as Exhibit 6),
2. Copy of the Plaintiffs' Request for cheque book (Exhibit 7),
3. Copy of the Plaintiffs' Request to Reactivate account (Exhibit 7A),

4. Copy of the Plaintiffs' request to transfer account from Lagos to Abuja (Exhibit 7B),
5. Copy of the Plaintiffs' account signatory passport photograph (Exhibit 9),
6. Copy of the Plaintiffs' CAC issued and certified true copy of Form C07 ((Exhibits 8 and 10),
7. Copy of the Plaintiff's certificate of incorporation (Exhibit 11),
8. Copy of the Plaintiffs' CAC issued and certified true copy of Memorandum and Articles of Association (Exhibit 12),
9. Copy of the Plaintiffs' completed Guarantee Trust Bank specimen signature card (Exhibit 13),
10. Copy of the Plaintiffs' Request for cash withdrawal on the Plaintiffs' company letter head (Exhibit 14), and
11. Copy of the 2ndPlaintiff's international passport Biometric data page (Exhibit 15).

It is the 2ndPlaintiff's further testimony that at about 9:00am on 17th December, 2014, he went with one of the Plaintiffs' subcontractor, Pearl Services, to withdraw cash from the Defendant bank at its Asokoro branch in line with written request admitted in evidence as Exhibit 16 (also marked as Exhibit 14) was denied access to the 1stPlaintiff's account No. 0000752238 by the Defendant for no just reason. Instead, the Defendant willfully and maliciously detained and locked the 2ndPlaintiff up, along with a representative of Pearl Service, in the Defendant's Asokoro Branch Manager's office in a bid to make good its earlier threat of dealing with the 2ndPlaintiff. While waiting in the Branch Manager's office for the cash to be made available by the Defendant, the Defendant's Branch Manager quietly walked out of his office without any explanation to the 2ndPlaintiff and the representative of pearl services. The 2ndPlaintiff testified that the said Branch Manager locked the 2ndPlaintiff and the representative of the Pearl Services inside his office and went away. That it was about 5 minutes after that the 2ndPlaintiff attempted to go out to use the toilet that he discovered he had been locked indoors. He

raised alarm by shouting and banging on the door but no one came to his rescue.

In efforts to free himself from illegal detention, the 2nd Plaintiff testified that he made phone calls to the Defendant's corporate head office in Lagos and its Abuja Legal Office for several hours but was unable to reach them until about 1700 hours when he spoke with one Ms. Sarah (of the Abuja Legal Office) who promised to revert to the 2nd Plaintiff after contacting the officials of the Defendant's Asokoro Branch but failed to do so. At about 1730 hours, the 2nd Plaintiff was able to make phone contact with one Ari Obebedo of the Defendant's Head Office Legal Department who commented thus after recognizing the 2nd Plaintiff's name "aren't you the one suing us for infringement of Lagos fashion week, now you want assistance from the same bank you are suing". At about 1745 hours, the 2nd Plaintiff called one Mr. Solomon Egboh who is an account officer stationed at the Defendant's Victoria Island Lagos Branch and Mr. Solomon Egboh told the 2nd Plaintiff that he had been mandated to verify the identity of all the members of the board of directors of the 1st Plaintiff company before the 2nd Plaintiff could be allowed to make any cash withdrawal from the Plaintiffs' account. The 2nd Plaintiff testified that he informed Mr. Solomon Egboh of the illegality of the Defendant's actions and illegally withholding the Plaintiffs' money for trade in foreign exchange and overnight money lending at profit of over 15% to the Defendant per day compounded daily to the detriment of the Plaintiff. That the said Mr. Solomon Egboh sarcastically retorted that "this is how the bank makes money". The 2nd Plaintiff was eventually able to contact his lawyer, one Agbo O. Alphonsus to whom he had made several futile calls and sent text messages. The said lawyer eventually secured the release of both the 2nd Plaintiff and the representative of Pearl Services from the Defendant's Branch Manager's office at about 1800 hours. It is the Plaintiffs' case that the unlawful detention of both the 2nd Plaintiff and the representative of Pearl Services inside the Defendant's branch manager's office lasted from 1300 hours to 1800 hours. That

one Ms. AbimbolaOladipo, the Assistant Branch Manager of the Defendant's Asokoro Branch had unlocked the door freeing the 2ndPlaintiff and representative of Pearl Services and had informed the 2ndPlaintiff that response was still being awaited from the Lagos office on the 2ndPlaintiff's cash withdrawal request. The 2ndPlaintiff had to therefore proceed to borrow the sum of N1,620,000 from one Altitude Energy Ltd at the rate of 10% per day compounded daily to enable the Plaintiffs pay its service providers/suppliers/subcontractors. Exhibit 17 was admitted in evidence as a loan agreement between Altitude Energy Limited and the 1stPlaintiff.

It is the Plaintiffs' case that they wrote a letter of demand through their solicitors to the Defendant on 18th December,2014 demanding the refund of their N1,620,000 as well as damages for the Defendant's actions against the 2ndPlaintiff. Exhibit 18 was admitted in evidence as a copy of the said letter. That the Plaintiffs received a letter (Exhibit 19) from Pearl Services appreciating the Plaintiffs for making effort to make payment. On 30th December,2014 the Plaintiffs received a letter from the Defendant claiming to have commenced investigation into the allegations made by the Plaintiffs in Exhibit 18. A copy of the Defendant's letter was admitted as Exhibit 20 but is now properly marked as Exhibit 19B. The Plaintiffs yet again received another letter dated 28th January,2015 from the Defendant wherein the Defendant confirmed that it had verified the Plaintiffs' submitted documents and had taken steps to change the 1stPlaintiff's mandate as requested, but denied other allegations. Exhibit 19A was tendered and admitted in proof as a copy of said letter. The Plaintiffs then went to the Defendant-bank's Asokoro Branch on 12th February,2015 to withdraw N1,620,000 to repay their loan but were refused access to their Account No. 0000752238 for undisclosed reason. The 2ndPlaintiff thus lodged a case of criminal conversion of monies belonging to the Plaintiffs against the Defendant with the Police Officer on duty at the Defendant's Asokoro Branch who referred him to the Asokoro Police Station where (after

statements had been taken) parties were advised to seek redress in a civil Court.

In support of the Plaintiffs' claim of criminal conversion of money, the 2nd Plaintiff specifically testified that the Defendant had placed a lien on the Plaintiffs' bank account without reason or justification (or order of Court) and is trading with the Plaintiff's N1,620,000 in that account earning profit at the rate of 15% interest per day compounded daily to the detriment of the Plaintiffs. That the Defendant suspended all banking transactions such as withdrawals by the Plaintiffs except the receipt of funds inflow into the account without just reason or order of Court. That this induced massive stress in the 2nd Plaintiff who became extremely hypertensive. That the 2nd Defendant suffered a massive failure of his right heart on 21st March, 2015 and had excessive blood clotting of his lungs due to the excessive stress caused to him by the Defendant's acts of continuously withholding the Plaintiffs' money held in their account from them. The 2nd Plaintiff testified that on 22nd March, 2015, he was evacuated to Cleveland Clinic in Ohio, United States of America where he underwent a successful 14-day marathon open heart surgery to remove blood clots from his lungs and heart arteries. The 2nd Plaintiff's Nigerian and USA International Passports, Airline e-tickets, Medical Report and certificate of compliance with provisions of the Evidence Act were all admitted in evidence as Exhibits 20, 20A, 21, 21A, 22 and 23 respectively. According to PW1 the Defendant's malicious act has gravely injured the Plaintiffs' business and reputation as the Defendant is denying the Plaintiffs the right to earn profit on their monies, patronage and goodwill having been shunned and avoided by business associates and patrons. That interest on the money borrowed by the Plaintiffs continues to rise and escalate to an astronomical level. The 2nd Plaintiff testified that the cost of prosecuting the instant suit is N10,000,000. Exhibit 24 is a copy of receipt of payment of legal fees.

PW2 also gave sworn testimony at the trial in support of the Plaintiffs' case. PW2 is a legal practitioner and legal adviser to the 2nd Plaintiff. PW2 adopted his written witness statement on oath deposed to on 19th December, 2016 as his oral evidence in support of the Plaintiffs' case. His evidence was that he received some missed calls and text messages on 17th December, 2014 from the 2nd Plaintiff complaining of unlawful detention at the Defendant-bank's Asokoro branch. According to PW2, as he was finishing from the Federal High Court Abuja where he was attending to some cases, he proceeded to the Defendant's aforementioned branch and arrived at about 5:30pm. He could not get information at the branch about the 2nd Plaintiff but was informed that the Branch Manager was out. Upon asking to see his client the 2nd Plaintiff, PW2 was denied access because the Branch Manager had gone out with the key. PW2 testified that he left the branch at about 5:45pm for the Asokoro Police Station where he procured two armed policemen that accompany him to secure the 2nd Plaintiff's release from the Branch Manager's office. Upon his return to the branch at about 6:00pm with the armed policemen, the bank officials quickly unlocked the door to the Branch Manager's office and let out the 2nd Defendant and the lady with him.

In its statement of defence, on the otherhand, the Defendant admits that the 1st Plaintiff maintains Account No. 0000752238 with it and that the sum of N1,620,000.00 was received into the account in November, 2014. It also admitted that it is a Defendant in Suit No: FHC/ABJ/CS/467/2014. The Defendant however denied the Plaintiffs' claim. DW1 testified in support of the Defendant's defence and adopted his written witness statement on oath of 18th May, 2017 as his oral testimony. DW1 is a staff of the Defendant and was the Group Head of its Asokoro branch. He testified that Account No. 0000752238 was opened at the Defendant's Lagos branch by the 1st Plaintiff in November, 1995 with one Bendu Rosetta Browne as sole signatory thereof. That a corporate search conducted by the Defendant at the time showed that the

1stPlaintiff's directors were the aforementioned Bendu Rosetta Browne and one Sotunde Peters Adeola. That prior to the transfer of N1,620,000 on 21st November,2014 to the account, the said account had become dormant as the last transaction on it occurred on 30th November,2010 i.e. 4 years earlier. DW1 testified that he and two of his colleagues in the employ of the Defendant had informed the 2ndPlaintiff (when he tried to withdraw from the account on 16th December,2014) that based on the records, the account was domiciled in Lagos branch and the 2ndPlaintiff was neither signatory to the account nor a director of the 1stPlaintiff. The 2ndPlaintiff was also informed that the account was dormant and would need to be reactivated before any transaction can be carried out on it. He was also informed of the Defendant's requirement for reactivation as follows:-

- i. Customer to present request to the bank for reactivation of account via Board resolution signed by two directors.
- ii. Customer to provide regulatory identification for the two directors who signed the resolution; and
- iii. The bank would perform a Know Your Customer (KYC) procedure including visiting the offices of the 1stPlaintiff and the two said directors.

It is DW1's further testimony that the 2ndPlaintiff left the Defendant's Asokoro branch and returned on 17th December, 2014 with the following documents:-

- i. Letter of request to reactivate account dated 22nd November,2014 and signed by the 2ndPlaintiff and Bendu Rosetta Browne.
- ii. Copy of biometric page of 2ndPlaintiff's international passport.
- iii. Signature mandate signed by the 2ndPlaintiff.
- iv. Letter of request dated 17th December,2014 to transfer account from Lagos to Abuja signed by the 2ndPlaintiff.
- v. Letter of request to withdraw the sum of N500,000 dated 17th December,2014 and signed by the 2ndPlaintiff.

- vi. Copy of Board Resolution dated 22nd November, 2014 signed by the 2nd Plaintiff and Bendu Rosetta Browne by which it was resolved that the former shall replace the latter as the 1st Plaintiff's sole signatory.
- vii. Letter dated 17th December, 2014 signed by the 2nd Plaintiff requesting a cheque book for the account.
- viii. Copy of 1st Plaintiff's resolution passed on 22nd June, 1990 by which the 2nd Plaintiff was appointed director of the 1st Plaintiff company.
- ix. Copy of updated C07 dated 22nd June, 1999 indicating that the directors of the 1st Plaintiff were Bendu Rosetta Browne, Adeola Peters and Chudi Chukwuani.
- x. Copy of resolution dated 17th March, 2000 indicating alteration of the 1st Plaintiff's shares.
- xi. Copy of certificate of incorporation of the 1st Plaintiff.

The Defendant's case is further that the 2nd Plaintiff's purpose for presenting the said documents was to show that he had become a director of the 1st Plaintiff and thus authorized to act. He also wanted a reactivation of the account as well as change of authorized signatory from Bendu Rosetta Browne to himself. His further request was for a cheque book as well as the transfer of the account to Abuja. DW1 testified that the documents showed change in ownership and control of the 1st Plaintiff and as such the Defendant had to perform KYC due diligence in respect of the account. DW1 testified that the Defendant was thus obliged to identify all the directors and signatories of the 1st Plaintiff, identifying and verifying any person who purports to act on its behalf. That this involves request for regulatory means of identification of persons who sign resolutions and mandates in their capacity as directors. That the objective of KYC is to protect the bank customer's deposits and legal use of same as well as prevent identity theft, financial fraud, money laundering and financing of terrorism. It is conducted by banks on new and old customers and is mandated by law pursuant to the Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and their Financial Institutions in

Nigeria) Regulations (also known as the 'AML/CFT Regulations'). DW1 testified that despite communicating to the 2nd Plaintiff the requirement of KYC particularly the production of copies of the regulatory identification of the directors of the 1st Plaintiff, the Plaintiffs failed to provide the regulatory identification of the second director (Bendu Rosetta Browne) that signed the resolution to reactivate the account and change the signatory. That the KYC due diligence was required to confirm that the second director was privy to the resolutions replacing her as signatory and that her signature on the resolution was not forged or acquired by other illegal means. That the Defendant needed to verify the identity of Bendu Rosetta Browne being the person who, purportedly acting on behalf of the 1st Plaintiff, co-signed the board resolutions and documents submitted by the 2nd Plaintiff. That the Defendant thus, verbally and by correspondence, requested the Plaintiffs to supply the regulatory identification of the said Bendu Rosetta Browne, but the Plaintiffs failed to comply. An effort to contact the said Bendu Rosetta Browne since November, 2014 has been unsuccessful. The Defendant could therefore not conclude the due diligence and allow withdrawals from the Plaintiffs' account as it was barred from allowing such withdrawal under the AML/CFT Regulations. That the Defendant's refusal to permit withdrawals from the 1st Plaintiff's account on 17th December, 2014 and 12th February, 2015 was for these legitimate reasons.

The Defendant admits writing letter of 9th February, 2015 confirming its verification of the 1st Plaintiff's documents with the CAC and also taking steps to commence change in mandate as requested by the Plaintiffs. DW1 testified however that the Defendant's inability to complete the KYC procedure was due to the Plaintiffs' refusal to provide the necessary documentation despite requests. Exhibit 26 is an E-mail from one Oluwaseun Alade (together with a certificate of compliance with provisions of Evidence Act). DW1 testified that he is aware that a criminal complaint was made by the 2nd Plaintiff to the Asokoro Police Division but the Police determined that the

complaint were civil matters. That no lien was placed on the 1stPlaintiff's account nor was it frozen. That the Defendant did not trade with the Plaintiff's money or utilize same in any illegal manner. Exhibit 27 was admitted in evidence as the 1stPlaintiff's statement of account.

The Defendant denied that the 2ndPlaintiff was threatened or detained in any way by it through its staff. DW1 testified that he and all other staff of the Defendant's Asokoro branch, with whom the 2ndPlaintiff interacted, treated the 2ndPlaintiff with Courtesy. According to DW1 he invited the 2ndPlaintiff to sit in his office while he the (2ndPlaintiff) was being attended to but he insisted on waiting in the Defendant-bank's premises till he was allowed to withdraw from the 1stPlaintiff's account. DW1 subsequently had to leave for a meeting but allowed the 2ndPlaintiff remain in his office out of respect. DW1 assured 2ndPlaintiff of efforts to contact other directors and mandated AbimbolaOladipo the Operations Manager to continue attending to the 2ndPlaintiff with updates on the Defendant's efforts to conclude the KYC process. DW1 testified that the 2ndDefendant was not detained in any manner nor was his movement hindered in any way as the door to his office was open and AbimbolaOladipo frequently updated the 2ndPlaintiff on the progress of the KYC process. DW1 continued calling AbimbolaOladipo for updates on the situation till the 2ndPlaintiff left the bank. That conversations between the 2ndPlaintiff and the Defendant's staff was only to explain the need to reactivate the account through the statutory laid down procedure.

It is DW1's further testimony that in an Appeal No. CA/A/660M/2016: INTERNATIONAL PAGEANTS & FILMS LTD & ANOR V. GUARANTY TRUST BANK PLC (GTB), the 2ndPlaintiff had (in a motion for extension of time to appeal) stated that he suffered the same medical condition and underwent the same medical procedure as alleged in this case but had given the reason for such as due to excessive stress caused by the infringement of his copyrights. Exhibit 28 was admitted in

evidence as CTC of the said motion on notice in that appeal. DW1 testified that the Defendant's practices and policy are in accordance with the Banks and Other Financial Institutions Act and all the Regulations of the Central Bank. That Altitude Energy is neither a financial institution nor a registered money lender. Exhibit 25 was admitted in evidence as CTC of Memorandum and Articles of Association of Altitude Energy Limited. DW1 testified that the subscribers and directors of both the 1st Plaintiff and Altitude Energy Limited have the same residential address. CTC of the incorporation documents of the 1st Plaintiff were admitted in evidence as Exhibit 25A. It is DW1's testimony that there is no such company registered as Pearl Services or Pearl Services Nigeria Limited to whom the 1st Plaintiff allegedly paid money to. Exhibits 29 and 30 were admitted in evidence as correspondences between the Defendant's Solicitor and the CAC. That the Plaintiffs were aware of the reasons for the Defendant's refusal to permit withdrawal from the account and have consistently ignored efforts by the Defendant to conclude the KYC process and reactivate the account.

DW2 also offered sworn testimony in support of the Defendant's defence and adopted on 29th January, 2019 as her oral evidence. She is the Secretary to the Group Head at the Defendant's Asokoro, Abuja Branch and as such she attends to visitors of DW1 amongst other secretarial duties. She testified that on 17th December, 2014, DW1 i.e. the Group Head at the material time, received the 2nd Plaintiff in his office which is situated directly opposite DW2's office. That she has a clear and direct view of DW1's office through the door way as the door to the said office is always open during office hours. DW2's testimony is that she is aware that DW1 and the then Operations Manager one Mrs. Abimbola Oladipo attended to the 2nd Plaintiff that day until DW1 had to leave for a meeting and left the 2nd Plaintiff with the said Mr. Oladipo and herself. That she saw Mrs. Oladipo periodically go into DW1's office apparently to give the 2nd Plaintiff updates while she (DW2) herself went into her boss' office to ask the 2nd Plaintiff if he

was comfortable and offered him refreshments. That the 2nd Plaintiff had responded that he was fine and declined to take anything. At some point Mrs. Oladipo came down and spoke with the 2nd Plaintiff after which he got up and left the office. He appeared unhappy with the information given to him by Mrs. Oladipo who subsequently informed DW1 that she had told the 2nd Plaintiff that his transaction could not be concluded on that day as the account was dormant and the 2nd Plaintiff did not provide all the documents required to reactivate the account. DW2 testified that throughout the 2nd Plaintiff's stay in DW1's office, the door was open as usual and was not locked at any time. DW2 testified that the 2nd Plaintiff was never locked up but was treated with respect and Courtesy by DW1 Mrs. Oladipo and herself DW2.

Now having reviewed the facts and evidence of each party's case on the first issue for determination, learned Counsel to the Defendant submitted in her address that the banker-customer relationship between the Defendant and the 1st Plaintiff is a fiduciary relationship regulated by several legislations including the Central Bank of Nigeria Act (CBN Act), Banks and Other Financial Institutions Act (BOFIA) Cap B3 LFN 2010, Money Laundering (Prohibition) Act (MLPA), the Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Regulations for Banks and other Financial Institutions made pursuant to the BOFIA. She submitted that the AML/CFT Regulations has the force of law. Referring this Honourable Court to Regulation 26 of the AML/CFT Regulations, Counsel submitted that an obligation is placed on financial institutions such as the Defendant to conduct Customer Due Diligence (CDD) and thereto, perform Know Your Customer (KYC) procedures in respect of capturing relevant information about potential or existing customers. She contended that in the instant case, the Plaintiffs sought to reactivate the 1st Plaintiff's account and change the mandate and this situation falls within the circumstances under Section 26(1) & (2) of the AML/CFT Regulations where CDD must be carried out by the Defendant. She also referred to Regulation 14(5) under which

Counsel posits that the persons whose identities must be verified include directors purporting to act on behalf of the company in respect of the company's account. Counsel contended that the 2nd Plaintiff only provided means of his own identification along with other relevant documents but failed to provide means of identification of the other director who executed the letter of request/resolution for reactivation and change of signatory despite requests. She argued that Regulation 55 imposes the duty to identify directors and all signatories to an account while Regulation 49 makes the customer identification process a continuous process throughout the business relationship. She further referred to Regulation 64(1), (3) and (5) and submitted that the Defendant had to comply with the requirements of the AML/CFT Regulations and, as such, could not allow the 2nd Plaintiff to withdraw from the 1st Plaintiff's account having failed to provide valid form of identification for the verification of Bendu Rosetta Brown (the second director that signed the documents). She argued that the Defendant's refusal to allow withdrawal was therefore legal and the Plaintiffs' claim lacks merit. She submitted that the facts and evidence show that there was no malice whatsoever in the actions of the Defendant and all allegations by the 2nd Plaintiff of threats are baseless. She further submitted that the Plaintiffs' allegation of criminal conversion and lien on their monies against the Defendant is false and at variance with evidence before this Court. She posited that such allegations constitute a crime which must be proved beyond reasonable doubt but the Plaintiffs have failed to prove this as their money is still in their account. He contended that the Plaintiffs have further failed to prove their allegations of conversion as a tortious wrong. He cited the case of **C.D.C. NIG. LTD. V. SCOA (NIG.) LTD. (2007) 6 NWLR (PT. 10300 P. 365**. Relying on the case of **AFRIBANK (NIG.) PLC V. A.I. INVESTMENT LTD (2012) 1 BFLR P. 40**, he further submitted that the position of the law regarding conversion of sums held in an account is that money in an account cannot be subject of a claim for conversion. She urged this Court to dismiss the Plaintiffs' claims.

On her second issue, learned Counsel to the Defendant submitted that the evidence presented before this Court does not establish detention at all. She contended that the 2nd Plaintiff's claim of being with a representative of one Pearl Services is false as Exhibit 30 shows that such a company does not exist and the Plaintiffs failed to call such a representative as a witness before this Court. Counsel posited that the Plaintiffs' evidence on the alleged detention is inconsistent as the 2nd Plaintiff had stated in his evidence that he noticed he was locked in after 5 minutes while Exhibit 18 from his lawyers gives the time within which he noticed as over two hours. She contended that the Plaintiffs were unable to provide evidence of interaction between the 2nd Plaintiff and PW2 regarding the alleged detention and PW2's evidence on the detention is unreliable being hearsay evidence. She noted that there is no police report showing that PW2 procured 2 policemen from the Asokoro police station to release the 2nd Plaintiff. He submitted that the Plaintiffs have failed to discharge the burden of proof to establish the allegation of detention considering the nature of the allegation. She submitted that the Plaintiff's Counsel's attempt to discredit DW1 under cross-examination on the issue of police complaint failed. Counsel to the Defendant submitted that there is no credible proof of the allegation of detention and same should be discountenanced.

On her third issue, learned Counsel to the Defendant submitted that the Defendant's action was legal and justifiable in law and as such any claim for damages as a result of the act should fail. She relied on the case of AHMED V. CBN (2013) 2 NWLR PT. 1339 O. 543. She posited that the Plaintiffs' allegation that the Defendant's refusal to allow withdrawal consequently damaged their business is false and unfounded. It is Counsel's contention that the Plaintiffs failed to prove this by credible evidence and even if damages were proved, the Defendant cannot be liable. She submitted that the loan agreement (Exhibit 17) is unreliable as proof that N1,620,000 was borrowed by the Plaintiffs from Altitude Energy Limited.

She contended that Exhibit 25 shows that Altitude Energy Limited is not a money lender or bank authorised to process loan. She contended that corporate documents of both Altitude Energy Limited and the 1stPlaintiff show that both companies have the same registered address while their Directors and subscribers might be related. It is Counsel's argument that the allegation that the Plaintiffs borrowed money to pay one Pearl Services is unsubstantiated as there is no such company in existence as shown by Exhibit 30 from the Corporate Affairs Commission. She posited that instead of providing regulatory means of identification of a director of the 1stPlaintiff as requested by the Defendant, the Plaintiffs claim they went to borrow money at an outrageous interest rate. Counsel submitted that this is solely the prerogative of the Plaintiffs and the Defendant cannot be liable for same. She contended that Exhibit 10 tendered by the Plaintiffs shows that the 2ndPlaintiff had hypertension through hereditary and not as a result of his inability to withdraw from the 1stPlaintiff's account with the Defendant. That the 2ndPlaintiff's claim of having been evacuated to the United States for an open heart surgery as a result of his inability to make withdrawal from the 1stPlaintiff's account is false. Counsel referred this Court to Exhibit 22 which he posits contradicts the 2ndPlaintiff's claim of undergoing the said surgery on 22nd March,2015. That the 2ndPlaintiff even admitted under cross-examination that his surgery was on 3rd August, 2015 and not 22nd March,2015. Counsel drew this Court's attention to Exhibit 28 in which Counsel posited that the 2ndPlaintiff had adduced different reasons for his same ill-health and medical condition. She argued that the 2ndPlaintiff claimed his heart failure occurred on 21st March, 2015 and had to be evacuated to the United States on 22nd March,2015 for surgery yet Exhibit 21 shows that the 2ndPlaintiff's ticket was booked as early as 20th March,2015. Counsel submitted that there is no evidence before this Court showing that the 2ndPlaintiff suffered a heart attack on the date alleged and underwent a surgery for which he was evacuated for. She contended that the claim for cost, interest and exemplary damages are unfounded and baseless.

Counsel to the Defendant finally urged this Court to dismiss this suit in its entirety with substantial costs.

Conversely, on the first issue, learned Counsel to the Plaintiffs submitted that the Defendant failed woefully to adhere to the provisions of the Anti-Money Laundering Regulation (AML/CFT) in verifying the 1stPlaintiff's bank account to justify the Defendant's malicious and unlawful act of preventing the Plaintiffs access to the said account. He conceded that there is a legal duty imposed on the Defendant to obey the methods and procedures prescribed in the said Regulations. He however submitted that the Defendant's witnesses gave contradictory and riotous evidence under cross-examination on whether KYC was carried out on the Plaintiffs' account. He cited Section 3(3) of the Money Laundering (Prohibition) Act 2011 as amended which he said provides for the submission of certificate of incorporation which suffices to satisfy the KYC requirement. He submitted that evidence shows that the Plaintiffs complied with this requirement. He submitted that while the sum of N1,620,000 paid into the 1stPlaintiff's bank account does not qualify as a transaction of significant value to prevent the Plaintiffs' access to the account, it is only the Corporate Affairs Commission (CAC) that is empowered by law to confirm and verify the information set out under items (b), (c) and (d) of Regulation 26(2) of the AML/CFT Regulations. Referring this Court to Regulation 14(5) of the AML/CFT, Counsel is of the position that the Defendant has a legal duty to carry out verification of the 1stPlaintiff at the CAC but there is no evidence before this Court to support the fact that the Defendant did this. He posited that the Defendant's witnesses had admitted under cross-examination that the 1stPlaintiff's corporate documents were verified at the CAC and the 2ndPlaintiff's identity was confirmed. He contended that the Defendant failed to provide any evidence before this Court to show that the Defendant was able to verify from the CAC that one Bendu Rosetta Browne is still a Director of the 1stPlaintiff-company. He referred this Court to Regulation 49 on identification of directors and signatories to an account. He

submitted that the 2nd Plaintiff is a director and sole signatory to the 1st Plaintiff's account and that the only way to identify directors and their signatures is to obtain current relevant certified true copies of incorporation documents, particulars of directors etc. He also referred to Regulation 64 and Article 3(2)(b) & (c) of the AML/CFT Regulations. He contended that the Defendant did not comply with these provisions by obtaining the required information from the CAC. He posited that there is no CAC search report on the 1st Plaintiff before this Court despite deductions for this purpose from the 1st Plaintiff's account. He contended that the Defendant adapted its own procedure outside the guidelines. It is submitted by Counsel that the AML/CFT Regulations prescribed a special method of exercising the statutory power of verification and confirmation of corporate particulars of companies registered in Nigeria and this is by conducting a search at the CAC. He contended that the evidence before this Court shows that Bendu Rosetta Browne has resigned from the 1st Plaintiff-company and is no longer a signatory to the bank account. He posited that the Defendant has woefully failed to justify its refusal to allow the Plaintiffs' withdraw from their account and same was specially designed to cause maximum harm to the business interest of the 1st Plaintiff and the health of the 2nd Plaintiff, hence malice. It is Counsel's further submission that the Defendant criminally converted the Plaintiffs' money under its custody for its own use and referred this Court to Exhibit 27. He contended that DW1 admitted under cross-examination that the Defendant was continually making deductions from the Plaintiffs' money in their custody to pay the Defendant's lawyers legal fees. He contended that it is the rule of evidence that every admitted fact needs no further proof. He relied on the case of **AGBAKOBA V. SSS (1994) 8 NWLR (PT. 351) P. 475**. He posited that the Plaintiffs have been consistently deprived of their money but is being continually deducted from their bank account by the Defendant for use in paying the Defendant's lawyers. It is therefore Counsel's submission that the Defendant deliberately placed a lien on the Plaintiffs' money in order to criminally convert same to its own use and trade with

same in the inter-bank market wherein the Defendant earns interest on the Plaintiffs' money at the rate of 15% per day compounded daily to the detriment of the Plaintiffs.

On his second issue Counsel submitted that the 2nd Plaintiff was indeed detained by the Defendant on 17th December, 2014 as shown by the credible evidence of the 2nd Plaintiff and PW2. Counsel posited that allegations of violation and infringement of fundamental human rights does not involve proof beyond reasonable doubt. He argued that there is no conflict in the 2nd Plaintiff's statement and Exhibit 18. He contended that PW2 painted a graphic picture of the role he played on 17th December, 2014 and his evidence cannot be described as hearsay. It is Counsel's position that DW1's testimony is unreliable as he admitted that it is hearsay. He stated that the Defendant's witnesses admitted that DW1 left the 2nd Plaintiff seated in his (DW1's) office and left for a meeting from which he did not return till the following day. That the Defendant's contradictory evidence under cross-examination corroborated the Plaintiffs' witnesses' evidence that the 2nd Plaintiff was locked up in the office of the Defendant's branch manager. Counsel urged this Court to hold that the Plaintiffs have proved the issue of unlawful detention on the balance of probability and is therefore entitled to the reliefs sought.

On his third issue, it is Counsel to the Plaintiffs' submission that the Plaintiffs have made out a very strong case for the declaratory reliefs sought as the totality of evidence led by the Plaintiffs is heavier in weight, on the imaginary scale, than the contradictory and riotous evidence adduced by the Defendant.

On his fourth issue for determination, Counsel to the Plaintiffs argued that the Plaintiffs suffered great injuries as a result of the deliberate and malicious acts of the Defendant who for no just reason refused to allow the Plaintiffs access their bank account to enable the Plaintiffs make cash withdrawals for the use of paying their subcontractors and for the running of their daily businesses. Counsel contended that the Defendant

detained the 2nd Plaintiff for several hours and caused the Plaintiffs to borrow money at an interest rate of 10% per day compounded daily. He submitted that the Plaintiffs have been able to prove that the Defendant committed a wrong against the Plaintiffs and have also proved evidence of future loss of earnings or earning capacity in addition to loss of amenities, pain and suffering, loss of expectations of life and future expenses. He submitted that DW1 and DW2 admitted under cross-examination that the Defendant denied the Plaintiffs access to the money in their bank account with the Defendant and this amounts to an admission against the Defendant's interest. He posited that Exhibit 22 is clear that the 2nd Plaintiff had open heart surgery at Cleveland Clinic on 3rd August, 2015 and was admitted into the hospital/clinic on or about 23rd March, 2015. He urged this Court to grant the general damages sought as well as all the reliefs of the Plaintiffs.

In his reply on points of law, learned Counsel to the Defendant posited to the effect that by the Money Laundering (Prohibition) Act 2011 (as amended) further amended by Money Laundering (Prohibition) Act 2012. She posited that Certificate of Incorporation alone cannot suffice for the purposes of CDD/KYC.

Now as I said earlier, on the 9th March, 2020, both the Defendant's Counsel and that of the Plaintiffs adopted their respective further address on the points they were invited by the Honourable Court to address it. I will therefore consider the further addresses of both Counsel in the course of the resolution of the issues raised in the instant suit.

To now resolve the contending issues in this suit as I said earlier, I will and had adopted the issues nominated for determination by the Defendant's Counsel. Thus, as a starting point it is trite position of the law that the general burden of proof in civil cases lies on the party against whom judgment would be entered if no evidence was adduced by either party. See the cases of ***EZINWA V. AGU (2004) 3 NWLR PT. 861 P. 431 AT P. 449 paragraph B*** and ***UZOKWE V. DENSY***

IND. (NIG.) LTD. (2002) 2 NWLR (PT. 752) P. 528 at P. 544 paragraph C. The general burden of proof principally therefore lies on the Plaintiff as the initiator of a claim. In the case of **IZE-IYAMU V. ALONGE (2007) 6 NWLR (PT.1029) P.84 at PP. 119–120 paragraphs H-A** (per Ogunbiyi JCA), said it is also elementary principle of law that he who asserts must prove. See **R.E.A.N. PLC V. ANUMNU (2003) 6 NWLR (PT. 815) P. 52 at P. 99 paragraphs G-H and S.B.N. PLC. V. CROWN STAR & CO. LTD. (2003) 6 NWLR (PT. 815) P. 1 at P. 19 paragraphs C-D.**

Having stated the position of law as a burden of proof, it must be noted that the principal reliefs sought by the Plaintiffs in their Statement of Claim are declaratory reliefs. The position of the law is that a party seeking a declaratory relief must succeed on the strength of his own case and not on the weakness of the defence as a declaratory relief is not to be granted to a party on the admission or default of defence of the other party. – see the cases of **MRS. OLORUNSHOLA GRACE & ORS V. OMOLOLA HOSPITAL & ANOR (2014) LPELR-22777(CA), ADU V. GBADAMOSI (2009) 6 NWLR (PT. 1136) P. 110 and ALAO V. AKANO (2005) 11 NWLR (PT. 935) P. 160.** In other words, the Plaintiffs must prove their entitlement to the declaratory reliefs sought by cogent and satisfactory evidence.

On the first issue for determination, it is not in dispute that the 1st Plaintiff-company maintains a bank account No. 0000752238 with the Defendant-bank. It is not in dispute that the 2nd Plaintiff attempted to withdraw cash from the said account on 16th December, 2014 but could not do so and was requested by the Defendant to provide certain documents. It is not in dispute that after providing documents to the Defendant on 17th December, 2014 the 2nd Plaintiff could still not withdraw cash from the 1st Plaintiff's account as well as on 12th February, 2015.

The relation or position of a banker to its customer has been described as that of an agent and principal and as that of debtor and a creditor. A bank is thus a debtor to its customer in the sum standing to the credit of that customer in his account maintained with the bank. It follows that a bank/banker is under a duty to honour written instructions (usually, but not limited, to cheques drawn) for payment by its customer who has sufficient funds with the bank to cover the amount endorsed on the written instruction. Failure or refusal by the bank to honour such written instruction amounts to a breach of contract and would render the bank liable to the customer in damages. – see the cases of **AFRICAN CONTINENTAL BANK V. YESUFU (1978) 2 SC, U.B.N V. NWOYE (1990) 2 NWLR (PT. 1300) P. 69, S.T.B. LTD V. ANUMNU(2007) LPELR-7749(CA) and GTB V. OGBOJI (2019) LPELR-47642(CA)**. In the case of **GUARANTY TRUST BANK PLC V ALIYU M GARBA, (2015)LPELR 41656**, the Court of Appeal held thus:-

“It is clear from the pleadings of the parties that the Respondent was a customer of the Appellant, a banking institution in Nigeria with branches all over Nigeria including Gombe branch where the account of the Defendant was domiciled and the law is well settled that the relationship between a bank and its customer is that of a debtor and creditor as well as principal and agent and this is so because once a customer pays money into his account with the bank, and this includes money credited to the customer from facility granted to him by the bank, the bank becomes his debtor while the customer becomes the creditor to the bank. A bank is thus under law bound to carry out the instructions of its customer within the ambit of the law that governs their banker- customer relationship. This duty, which I say emphatically is one that carries with it a high degree of duty of care and must be diligently exercised by the bank, since in all the predominant business of banking in the main consist of receipt of money on accounts, current or deposit and the payment of cheques drawn on it as well as the collection of cheques paid in by its customers.”

See also **STANDARD TRUST BANK LTD V ANUMNU, (2008) 14 NWLR (Pt 1106) page 150 at 151.**

It is also important to note and that is the position of law that a bank has a duty, in carrying out its statutory responsibilities, to exercise reasonable care and skill in its banking business in relation to its customer. And it is also the law that a bank owed a customer a duty to reply and attend to its request promptly having in mind the time frame provided for that transaction.

See **MAINSREET BANK LTD V JUUMANWIN NIGERIA LTD, (2013) LPELR 21855 (CA) AGBANELO V UBN, (2000) 4 SC (pt1) page 243.**

In the case of **ODULATE V. FIRST BANK NIG. LTD (2019) LPELR-47353(CA)** the Court of Appeal held as follows:-

*"It is true in law and in fact to state that Banks owe their customers a duty of care. Banks are professional and commercial keepers of money who have represented that they would keep in safe custody any money or other valuables their customers may keep with them. The law holds them to that promise and also expects Banks to promptly comply with lawful instructions of their customers with regards to money kept in the Banks custody. The Apex Court in the case of **UBN PLC v. CHIMAEZE (2014) LPELR-22699(SC) (Pp.40-41, paragraphs G-A)** Per Ariwoola J.S.C; The Apex Court in the case of **UBN PLC V. CHIMAEZE (2014) LPELR-22699(SC) (Pp. 40-41) paragraphs G-A)** Per Ariwoola J.S.C;*

"...The Appellant is a fiduciary to the respondent. It owes the respondent a duty to exercise a high standard of care in managing the respondent's money. Therefore, for dishonouring his cheque when his account was in credit to accommodate the amount on the cheque, the appellant had breached the fiduciary relationship between them, to which the respondent was entitled to compensation by way of damages."

The onus is thus on the Defendant to show that there was lawful justification for not honouring the Plaintiffs' request for

payment of sums out of the amount standing to the 1stPlaintiff's credit in its account held with the Defendant.

The Defendant's defence to the Plaintiffs' claim of breach of contract is that the 1stPlaintiff's account with it had become for a long time dormant and the 2ndPlaintiff who presented the instruction was not a signatory to the account at the time the request for payment was first made. That relevant documents would be required to change the signatories to the account and reactivate the account. That based on documents presented by the 2ndPlaintiff to the Defendant, it (the Defendant) was obliged under the relevant laws to conduct KYC due diligence in respect of the account and identify all the directors and signatories of the 1stPlaintiff which involves identification of persons who sign resolutions and mandates in their capacity as directors.

Now from the oral and documentary evidence before the Court, the Defendant's defence is that one Bendu Rosetta Browne and not the 2ndPlaintiff is the signatory to the 1stPlaintiff's account from the Defendant's mandate records. This fact seems not in-dispute by the Plaintiffs. In fact at paragraph 10 of the statement of claim and supported by paragraph 8 of PW1's witness statement on oath, the 2ndPlaintiff on 16th December, 2014 presented himself at the Defendant's branch at plot 69 Yakubu Gowon Crescent, Asokoro Abuja to make cash withdrawal. The Defendant at paragraphs 13 (a) and (d) of its statement of defence and supported by the testimony of its witness stated clearly the events that occurred on 16th December, 2014 at its Branch at Asokoro when the 2ndPlaintiff presented himself in order to make cash withdrawal. The refusal of the Defendant to allow the 2ndPlaintiff withdraw from the 1stPlaintiff's account is supported by the evidence of PW1, the 2ndPlaintiff himself under cross examination where he stated thus:-

"The corporate account was open in 1995. I was not a signatory of the account when it was opened and i was also not a director."

Thus, from the elicited evidence above, it is crystal clear that on the 16th December, 2014 when the 2ndPlaintiff presented himself to the Defendant and attempted to make cash withdrawal, the 2ndPlaintiff is neither a signatory to the 1stPlaintiff's account nor a director of the 1stPlaintiff. And i therefore entirely agree with the submissions of the Defendant's Counsel at paragraphs 6.8-6.10 of the final written address to the effect that allowing the 2ndPlaintiff make withdrawal from the 1stPlaintiff's account would certainly be in breach of the extant laws especially Regulation 26(2) (b),(c) and (d) of AML/CFT Regulations.

Thus, by the evidence before me and the relevant extant laws or regulations, the instructions of the Plaintiffs to the Defendant on 16th December, 2014 for cash withdrawal from the 1stPlaintiff's account was an unlawful instruction and i hold the view that the Defendant was right to have refused, failed and neglected to honour the request of cash withdrawal by the 2ndPlaintiff from the 1stPlaintiff's account and i so hold.

Having said the above, it is the case of the Plaintiffs that the Defendant's Regional Manager, one Ms Halima Abdulsalam asked the 2ndPlaintiff to provide documentations to the Defendant's manager, Mr. Sola Ajibade as averred at paragraphs 10 and 11 of the statement of claim and supported by the evidence of PW1 at paragraphs 10 and 11 of his sworn testimonies.

In otherwords, by the case of the Plaintiffs, the Plaintiffs on 17th December, 2014 submitted to the Defendant all necessary documentation for the reactivation of the dormant account of the 1stPlaintiff as well as for change of signatory to the 1stPlaintiff's account. I have equally once again perused the statement of defence of the Defendant and the evidence in support especially paragraph 13 (f) of the statement of defence and supported by the evidence of DW1.

Now by the pleadings and evidence of parties in this suit before the Court, there is need to distinguish the events that occurred on 16th December, 2014 and subsequent events that occurred on 17th December, 2014 and that of 12th February, 2015. I had already held that by the undisputed evidence

before me, as at 16th December, 2014 when the 2nd Plaintiff presented himself to the Defendant with an attempt to make cash withdrawal from the 1st Plaintiff's account, the 2nd Plaintiff was not a signatory to the 1st Plaintiff's account. However, by the evidence of both parties and there seems to be no dispute that for the 2nd Plaintiff to withdraw cash from the 1st Plaintiff's account, certain procedures are needed or required to be conducted to reactivate the account and to change signatories to the 1st Plaintiff's account. Thus, the 2nd Plaintiff, by his evidence before this Honourable Court, presented to the Defendant documents for the reactivation, change of signature etc of the 1st Plaintiff to enable the 2nd Plaintiff effect cash withdrawal from the 1st Plaintiff's account.

I have seen the arguments of both Counsel in their respective final written addresses as to whether the Plaintiffs have satisfied the conditions prescribed by law/Regulation to enable the reactivation and change of 1st Plaintiff's signatory with the Defendant and to effect withdrawal from the 1st Plaintiff's account by the 2nd Plaintiff.

By the Central Bank of Nigeria (anti- money laundering and combating the financing of terrorism in banks and other Financial Institutions in Nigeria) regulations, 2013, part I deals with the objectives, scope and applications while part II deals with the Anti- money laundering and combating the financing of terrorism referred to as AML/CFT.

Now i have perused part II of AML/CFT in particular regulations 14 (5) 26, 49 and 64 of the regulations. I have also referred to Article 3(2) (b) and (c) of AML/CFT Regulation 14 (5) and 26 which provides:-

14 (5) Where the customer is a legal or a legal arrangement, the financial institution shall:-

- (a) Identify any person purporting to have been authorized to act on behalf of that customer by obtaining evidence of the customer's identity and verifying the identity of the authorized person; and
- (b) Identity and verify the legal status of the legal person or legal arrangement by obtaining proof of incorporation from the Corporate Affairs Commission (CAC) or similar

evidence of establishment or existence and any other relevant information.”

Regulation 26 of AML/CFT provides:-

26 (1) A financial institution shall apply CDD requirements to existing customers on the basis of materiality and risk and continue to conduct Due diligence on such existing relationships at appropriate times.

(2) The appropriate time to conduct CDD by financial Institutions is where:-

(a) A transaction of significant value takes place;

(b) A customer documentation standards change substantially;

(c) There is a material change in the way that account is operated; or

(d) The institution becomes aware that it lacks sufficient information about an existing customer.

(3) A financial institution shall properly identify the customers in accordance with the criteria contained in these regulations and the customers identification records shall be made available to the AML/CFT compliance officer, other appropriate staff and competent authorities.”

Pursuant to the above provisions cited above, i have painstakingly gone through the evidence of DW1 in their defence especially their explanation of the requirement of CDD/KYC; i have also perused the final address of the Defendant’s Counsel particularly pages 12-19 and her understanding of regulations 14(5), 26,49, 55 and 64 of AML/CFT.

I think there is the need for me to put the records in its proper perspective as they were in the instant case and the evidence in support. Although the evidence in support of the events that occurred on 16th December, 2014, 17th December,2014 and 12th February, 2015 are inter-connected or inter-related, as i said in the course of this judgment, the evidence before the Court of the events of 16th December, 2014 was quite clear and the Defendant was right in refusing the instructions of the Plaintiffs to make cash withdrawal. The reason was simple:-

2nd Plaintiff admitted that he was not a signatory to the account nor a director of the 1st Plaintiff.

Then the evidence also before the Court is that the Defendant informed the 2nd Plaintiff to present to it certain documentation to reactivate the 1st Plaintiff's account and change of signatory as the 2nd Plaintiff's was hitherto, not a signatory to the account of the 1st Plaintiff with the Defendant.

Thus, by the evidence of both parties in the instant case, the refusal of the Defendant on 16th December, 2014 to allow cash withdrawal from the 1st Plaintiff's account was in compliance with regulation 26(1) and (2) of the AML/CFT because:-

- (a) A transaction of significant value takes place,
- (b) A customer documentation standard change substantially;
- (c) There is a material change in the way that the account is operated; or
- (d) The institution becomes aware that it lacks sufficient information about an existing customer.

In the instant case, the events of 16th December, 2014 would certainly raised a red alert or ignite an alarm that call for CDD/KYC in respect of the 1st Plaintiff's account with the Defendant.

Further, by the evidence of both parties in this suit, the 2nd Plaintiff presented to the Defendant documents on 17th December, 2014 as requested by the Defendant which documents were received in evidence and marked accordingly.

Now it appears the borne of contention of the Defendant as deposed to by DW1 at paragraph 8 of his witness statement on oath is that the 2nd Plaintiff, as part of the KYC due diligence, has failed to produce copies of the regulatory identification of the Directors of the 1st Plaintiff especially the regulatory identification of the second Director Bendu Rosetta Browne that signed the resolution to reactivate the account and change the signatory. This piece of evidence of DW1 was earlier conveyed to the Plaintiffs Counsel vide exhibit 26 which states:-
"As has been communicated to your client through various means, the bank requires the regulation identity of a second

director of Bendu peter services Nigeria Limited before the account can be reactivated.”

The question that requires an answer in the instant case is whose responsibility is it to provide the information envisage by regulation 26 and 55 of AML/CFT Regulations?

In answer to the above question, let me firstly refer to exhibit 26 of the Defendant in which she relied on regulation 55 of AML/CFT Regulation. For the purposes of clarity Regulations 55 states:-

A financial institution shall identify directors and all the signatories to an account.” (Underlined is mine for emphasis)

The duty imposed by regulation 55 of AMF/CFT regulation is on financial institution in this case, the Defendant and not the 2nd Plaintiff or the 1st Plaintiff.

In the instant case, regulation 55 of AML/CFT regulation, by the use of the word “shall” is denoting a command and it does not give room for deviation or option. It requires strict compliance since it is obligatory. See the cases of **OLATAYO BABATOPE V MR. A. O SIDIKU & ORS, (2017) LPELR 41966(CA) UGWU AN ANOR V ARA RUME & ANOR (2007) 6 SC (Pt 1) page 80 at 88.**

Further, by the combine provisions of regulations 14(5) and 26(1) and (2) of AML/CFT Regulations, the CDD/KYC requirements of the Plaintiffs in the instant case shall be in accordance with regulation 14 (5).

Regulations 14 (5) of AML/CFT regulations also makes it mandatory for the financial institution (in this case the Defendant) to conduct the CDD/KYC by obtaining proof of incorporation and other relevant information from Corporate Affairs commission.

In the instant case, under cross examination by the Plaintiffs Counsel, DW1 testified as follows:-

“I know of the existence of Corporate Affairs Commission. The Defendant went to corporate Affairs commission at the instant of this case to verify the particulars of directors of the 1st Plaintiff, certificate of incorporation and company mandate.”

DW1 testified further under cross examination thus:-

"The 1stPlaintiff is registered with Corporate Affairs Commission. It is correct we are in this Court because the Defendant refused to allow the 2ndPlaintiff to operate the 1stPlaintiff's account because he is not the signatory or a director of the 1stPlaintiff."

DW1 under cross examination further states:-

"The 1stPlaintiff's account has been dormant for a long time and therefore needed to be reactivated. The KYC is not to reactivate the dormant account."

On further questions put to DW1 by the PlaintiffsCounsel under cross examination, DW1 testified thus:-

"It is part of the requirement of KYC to reactivate a dormant account. The 1stPlaintiff is a company and we cannot reach its directors to close its account."

Then after DW1 has testified that the 1stPlaintiff is a company and that they cannot reach its directors, DW1 testified again under cross examination as follows:-

"The Directors of the 1stPlaintiffwere verified with the corporate Affairs commission."

Finally, on the 11th October, 2018, DW1 under cross examination by the PlaintiffsCounsel avers thus:-

"The 2ndPlaintiff submitted documents for change of ownership of the 1stPlaintiff but not all the corporate documents. The Corporate Affairs Commission main documents not submitted is a letter from sole Directors of the 1stPlaintiff as at that time and the identity card of proof of identity card that the Director is the sole signatory of the 1stPlaintiff's account we did asked for the submission of the these two documents when the 2ndPlaintiff came to the Defendant and we also wrote."

Now from the elicited evidence from DW1 under cross examination, though there appears to be contradiction in DW1's evidence in-chief and the elicited evidence under cross examination, i am of the humble view that such contradiction is not material to affect the credibility of DW1 as regards the role of the Defendant in complying with extant regulations on

CDD/KYC. In other words, by the evidence of DW1 and the extant regulations, the Defendant failed to conduct due diligence on the Plaintiffs after the 2nd Plaintiff has submitted to the Defendant documentations to effect the reactivation of the dormant account and change of signatory of the 1st Plaintiff's account with the Defendant to enable the Plaintiffs make cash withdrawal. My position is strengthened with the evidence of DW2 under cross examination when she stated:-

"Our bank has dormant account policy. By the policy of the bank, the account that has been dormant, we require a board resolution letter signed by two directors of the company with the company's seal affixed. We also require valid identification cards of the directors as well as forms C07 and C02."

By the evidence of DW2 and the documentary evidence before the Court i.e exhibits 6,7 (a), 8, 9,10 and 11 are exhibits relevant to what DW2 stated as being required as per the Defendant's policy.

Now as testified by DW2 the requirement to reactivate; exhibit 6 is the 1st Plaintiff's Board Resolution dated 22 November, 2014 appointing the 2nd Plaintiff as sole signatory to the 1st Plaintiff's account with the Defendant thereby replacing Bendu R Browne. The Board Resolution was signed by the 1st Plaintiff's Chairman and Bendu R. Browne signed as secretary. Exhibit 7 (a) is 1st Plaintiff's request for reactivation of its account with the Defendant. The request was signed by two directors of the 1st Plaintiff i.e the 2nd Plaintiff and Bendu R. Browne. Both exhibits 6 and 7 (a) are on official letter heads of the 1st Plaintiff. Exhibit 9 is the 2nd Plaintiff's passport photograph; Exhibit 10 are particulars of directors of the 1st Plaintiff showing the 2nd Plaintiff as a director of the 1st Plaintiff and exhibit 10 form C07, certified true copies, attached with 1st Plaintiff resolution appointing the 2nd Plaintiff as a director on 22nd June, 1999 and attached also to exhibit 10 is a certified true copy of Memorandum of Association of the 1st Plaintiff wherein the 2nd Plaintiff has majority shares of 1,950,000 while the other directors have 40,000 and 10,000 shares respectively.

The 2nd Plaintiff in order to satisfied the Defendant with information about himself also submitted to the Defendant his data page of his International Passport ,i.e exhibit 15.

The Plaintiffs having presented the necessary documentation for the reactivation and change of signatory of their account with the Defendant as requested by the Defendant bank, the Defendant on 17th December,2014 and 12th February, 2015 still refused, or failed to allow the Plaintiffs have access to their account with the Defendant despite the fact that the account of the 1st Plaintiff is funded. And it is because of the refusal of the Defendant to allow the Plaintiffs have access to their account with the Defendant and the requirement of CDD/KYC visa- vis the evidence before me that i invited both Counsel to further address me on KYC/CDD as it affects the 1st Plaintiff and whose duty it is to provide the KYC/CDD documents.

The Plaintiffs Counsel break down the issue for consideration as:-

- (1) At what point do KYC/CDD apply?
- (2) How does KYC apply to legal entity and individuals?
- (3) Whether the Defendant Carried out KYC on the Plaintiffs in this instant case.

The Defendant's Counsel on the otherhand itemised the issues as follows:-

- (i) Whether CDD/KYC occurs only at the point of account opening?
- (ii) Whose duty is it to provide the CDD/KYC document.
- (iii) What is the difference between the CDD/KYC for Corporate entities and for individuals?
- (iv) In the case of corporate bodies where a new signatory is appointed, whether all that will be required for a CDD/KYC is the verification of the newly appointed signatory?

Now i have gone through the further addresses of both Counsel adopted on the 9th March, 2020 as their further oral arguments in this case. By the pleadings and evidence before me in this case, three events that occurred between the Plaintiffs and Defendant in relation to the transaction in the 1st Plaintiff's account with the Defendant are crucial and

important to determine the CDD/KYC in the instant case. I have already stated and hold the view that the events of 16th December, 2014 when the 2nd Plaintiff attempted to withdraw from the 1st Plaintiff's account with the Defendant, the Defendant was right to have refused such withdrawal in line with regulation 26 of the AML/CFT regulation. However, was the Defendant right to have refused the 2nd Plaintiff to have access and withdraw from the 1st Plaintiff's account with the Defendant on 17th December, 2014 and 12th February, 2015 despite the documentation presented to it (i.e the Defendant)?

Firstly, the account in question of the 1st Plaintiff with the Defendant bank is for a legal entity and not an individual account. The term "KYC" means "know your customer" while "CDD" means "customer due diligence".

I have seen the arguments of the Defendant's Counsel at paragraphs 3.1- 3.3 of the further address filed on 4th March, 2020 and i entirely agreed with her position that regulation 26 of the Anti- money-laundering and Combating Financing of Terrorism in Banks and other Financial Institutions in Nigeria regulation 2013 of AML/CFT place an obligation on Financial Institution (such as the Defendant bank) to conduct customer due diligence (CDD/KYC) at appropriate times. Now by the evidence before me in this case, on 17th December, 2014, the documents requested by the Defendant staff from the Plaintiffs were made available to the Defendant to trigger CDD/KYC. Regulation 26 (2) of AML/CFT 2013 states:-

"The appropriate times to conduct CDD by financial institution is when:-

- (a) a transaction of significant value takes place;*
- (b) a customer documentation standards change substantially;*
- (c) There is a material change in the way that the account is operated; or*
- (d) The institution becomes aware that it lacks sufficient information about an existing customer."*

In the instant case, the events of 16th December, 2014 and the subsequent presentation of documentation as advised by the Defendant, by regulation 26 (2), the Defendant must conduct CDD/KYC on the 1st Plaintiff and i agree with the position of the Plaintiffs Counsel at paragraphs 4.00 of his further address. Thus, the 1st Plaintiff, being a legal entity or a corporate body, regulations 14(5), 49, 55, 64 and section (3) of the Act cap M18 LFN 2010 are relevant in the instant case. Regulation 14(5) states:-

"Where the customer is a legal person or a legal arrangement, the financial institution shall:-

- (a) Identify any person purporting to have been authorized to act on behalf of that customer by obtaining evidence of the customer's identity and verifying the identity of the authorized person; and
- (b) Identify and verify the legal status of the legal person or legal arrangement by obtaining proof of incorporation from the Corporate Affairs Commission (CAC) or similar evidence of establishment or existence and any other relevant information."

Regulation 55 provides also:-

"A financial institution shall identify directors and all the signatories to an account." states:-

Regulation 46 (1) "A financial institution shall ensure that it is dealing with a real person or organization whether natural, corporate or legal, by obtaining sufficient identification evidence."

Then section 5 (3) of the Act says:-

"A body corporate shall be required to provide proof of its identity by presenting its certificate of incorporation and other valid official documents attesting the existence of the body corporate."

By the above regulations, the extant laws placed the obligation on the financial institution (in this case the Defendant) to conduct CDD/KYC on the 1st Plaintiff immediately the Plaintiffs forwarded to it the said documents for reactivation and change of its signatory mandate. And this documentation submitted by the Plaintiffs are clearly admitted by the Defendant at its

paragraph 13 (f) (i)- (xi) of its statement of defence. These documents admitted by the Defendant as having been presented, the question now is did the Defendant verify these documents from the Corporate Affairs Commission in respect of the 1st Plaintiff as part of its obligation in line with the extant regulations?

Now i have perused exhibits 18 of the Plaintiffs solicitor dated 18th December, 2014 and the responses of the Defendant dated 30th December, 2014 and 28th January, 2015 marked exhibits 19 (b) and 19 (a) respectively. The effect of exhibits 18,19 (a) and 19 (b) is that as at 16th December, 2014 as per paragraph 1 or item 1 of exhibit 19 (a), the 2nd Plaintiff was not a director or a signatory of the 1st Plaintiff. This is perfectly correct based on the documents before the Defendant at the time of account opening package of the 1st Plaintiff with the Defendant. And that was why the Defendant did not allow draw down by the 2nd Plaintiff on 16th December, 2014.

Thus, in order to reactivate and change the signatory of the mandate of the 1st Plaintiff with the Defendant, DWs1 and 2 as well as those mentioned in item 4 of exhibit 19 (a) informed the 2nd Plaintiff the documentation required by the Defendant to effect the request and by item 7 of exhibit 19 (a), the Defendant says:-

"That the bank has taken steps to change the mandate of the customer as requested by your client and supported by the customers board resolution having confirmed from the file of the customer at the Corporate Affairs Commission."

Thus, by exhibit 19 (a) and in particular item 7, the Defendant had conducted CDD/KYC on the 1st Plaintiff in line with the relevant extant laws or regulations and has confirmed the authenticity of the documents presented to it as per its paragraph 13(f) (i)- (xi) of its statement of defence. And it is on the basis and strength of exhibit 19 (a) of the Defendant that the 2nd Plaintiff was at the Defendant's branch on 12th February, 2015 to make withdrawals in order to meet his business concerns.

However, the Defendant on 12th February, 2015 refused or failed to honour the Plaintiffs request to withdraw money from the 1stPlaintiff's account with the Defendant. However, the Defendant in a volt-face letter dated 17th February, 2015 received in evidence as exhibit 26, 2nd paragraph says:-

"As has been communicated to your client through various means, the bank requires the regulatory identity card of a second director of Bendu Peter Services Nigeria Limited before the account can be re-activated. This is a requirement of the Central Bank of Nigeria (AML/CFT) regulation and an extract of the Federal Republic of Nigeria official gazette, section 55 on Central Bank of Nigeria (AML/CFT); a financial institution shall identify directors and all the signatories to an account' is attached"

I have perused the evidence of Plaintiffs and that of the Defendant's witnesses as well as the exhibits especially exhibits 6,8,9,13,15,19 (a),19(b) and 26, i have also severally gone through the relevant extant laws/regulations applicable in the instant case, apart from the admission of the Defendant in exhibit 19 (a) item 7 that they has confirmed from the file of the customer (1stPlaintiff) at the Corporate Affairs Commission of the Documents referred to by the Defendant in their paragraph 13 (F) (i)- (xi) of its statement of defence, there is nothing before the Court that the Defendant had indeed conducted CDD/KYC of the 1stPlaintiff with the Corporate Affairs Commission as required by the extant regulations. Assuming that the Defendant by exhibit 19(a) item 7 did conduct CDD/KYC on the 1stPlaintiff's file with the Corporate Affairs Commission, the Defendant failed to tender in evidence the search report issued by Corporate Affairs Commission or any documentary evidence issued by Corporate Affairs Commission. The failure of the Defendant to therefore tender the search report or any documentary evidence of their search of the 1stPlaintiff's with Corporate Affairs Commission amount to withholding of evidence. In the case of **GUARANTY TRUST BANK PLC V ALIYU M. GARBA, (2015) LPELR 41656,** *the* Court of Appeal held:-

"The Appellant which had copiously placed that the mandate for the operation of the Respondent account and the agreement for the facility of N12,000,000.00 granted to the Respondent stipulates that all instructions should be in writing was under a duty, if it is to succeed to establish this fact to produce before the Court below the vital document containing this term of agreement between the parties, a duty which it failed to discharge by its failure to produce any such agreement containing such term in evidence. This failure will in addition to showing lack of proof of the fact asserted by the Appellant also appropriately bring into play the presumption in section 167 (d) of the Evidence Act, 2011 against the Appellant and i so hold."

See also ***UKPO V IMOKE, (2009) 1 NWLR (pt.1121)page 90 AT 150 and OKPOKO COMM, BANK LTD V DR. P.C IGWE (2012) LPELR 19932 (CA).***

In the instant case, by the Admission of the Defendant at paragraph 13 F (i)- (xi) of her statement of defence as having received the various documents from the Plaintiffs to reactivate and change the signature mandate of the 1stPlaintiff, (a corporate entity), regulations, 14 (5) (a) and (b), 26, 49, 55 and indeed 5 (3) requires the Defendant to conduct CDD/KYC of the 1stPlaintiff with Corporate Affairs Commission. If the Defendant had conducted the CDD/KYC of the 1stPlaintiff with the Corporate Affairs Commission, information regarding the Directors of the 1stPlaintiff would have been supplied to the Defendant. This the Defendant negligently refused, failed or neglected to do and therefore the fragrant disregard of the Plaintiffs instructions on the 12th February, 2015 i hold the view that it amounts to breach of contract and i so hold. Accordingly therefore, by the avalanche of both oral and documentary evidence adduced by the Plaintiffs i hold the view that the Plaintiffs are entitled to the declaration and i so hold. Reliefs (A),(b) and (c) of paragraph 39 of the statement of claim are hereby granted as prayed. The first issue for determination is therefore resolve in favour of the Plaintiffs and against the Defendant.

On the second issue which is whether the events of 17th December, 2014 constituted a detention of the 2nd Plaintiff and a violation of his right to freedom of movement. It is not in dispute that the 2nd Plaintiff was at the premises of the Defendant-bank's branch at Asokoro Abuja on the 17th December 2014 as regards the 1st Plaintiff's account with the Defendant. Parties however differ on the facts surrounding the 2nd Plaintiff's stay at the Defendant's Asokoro branch office on that day. While the Plaintiffs claim that the Defendant, through its staff, locked the 2nd Plaintiff up in the Defendant's Asokoro Branch Manager's (DW1) office on that day, the Defendant denies this and says the said office was never locked during the 2nd Plaintiff's visit. The Defendant thus denies the Plaintiffs' allegation and claim of unlawful detention.

In Nigeria, the fundamental right of freedom of movement is guaranteed by the Constitution and any unlawful curtailment of a person's freedom of movement or personal liberty may lead to an action for breach of fundamental right or false imprisonment. See the case of **OKECHUKWU & ANOR V. NWOSU & ANOR (2018) LPELR-44893(CA)**.

Detention or imprisonment means the restraint of a man's liberty whether it be in the open field, or in a cage or in the street, or in a man's own house, or in the common jail. All places the party so restrained is said to be a prisoner so long as he has no liberty to freely go (at all times) to all places where he would willfully like to go. The prisoner may be confined within a definite space by being put under lock and key or his movements may simply be constrained by the will of another. See the cases of **AGBALUGO & ANOR V. IZUAKOR (2017) LPELR-43289(CA)** and **ARAB CONTRACTORS (O.A.O.) NIG. LTD V. UMANAH (2012) LPELR-7927(CA)**.

Unlawful detention or false imprisonment is thus the complete deprivation of liberty for anytime however short without lawful cause. See **AGBALUGO & ANOR V. IZUAKOR (supra)**.

In the instant case the Plaintiffs' alleged at paragraphs 15,16,17 and 22 of their statement of claim facts of detention of the 2ndPlaintiff by the Defendant. The Defendant denied the allegations at paragraph 15 of its statement of defence. The onus therefore rests on the Plaintiffs to satisfactorily prove that the 2ndPlaintiff was indeed detained by the Defendant at its Asokoro Branch on 17th December,2014 as alleged. It is only after this is proved that the onus shifts to the Defendant to justify the detention/imprisonment of the 2ndPlaintiff. See the case of **SHELL PETROLEUM DEVELOPMENT COMPANY & ANOR V. DANIEL PESSU(2014) LPELR-23325(CA)** where the Court of Appeal held that although it is trite law that the burden of proving that a detention is legal is on the party who effected the detention, this burden will only arise where the person alleging unlawful detention has adduced prima facie evidence of detention.

I have perused the evidence on record adduced by both parties for and against the alleged unlawful false imprisonment in this case.

Firstly, PW2, AgboAlphonsus, PW1's Counsel and lawyer stated under cross examination that he did not enter the Defendant bank's Asokoro branch on the 17th December, 2014. By PW2's testimony he did not appear to have actually witnessed the 2ndPlaintiff's incarceration or unlawful detention. PW2, under cross examination further states:-

"The security agents were only recognized people I met. By paragraph 6 of my witness statement on oath it was the security that told me that the manager had left with the key. The statement at paragraph 6 was what the security people told me."

Then PW1, the 2ndPlaintiff testifies and gave oral evidence that he discovered the door to the office of the Defendant's Asokoro branch Manager (DW1) was locked while he (the 2ndPlaintiff) was in his office on that fateful day. According to the 2ndPlaintiff (PW1) that he was locked from inside the office of DW1 along with the representative of Pearl Service although

the Plaintiffs did not call the said representative of Pearl Services to testify in this case.

On the otherhand DW1 testified that the 2ndPlaintiff was waiting in his office in respect of documents which he had brought and was being attended to. His evidence is that the 2ndPlaintiff was not detained and the door to his (DW1's) office was not locked. His evidence both in his examination in chief and cross-examination is however that he left the 2ndPlaintiff in his office and went for a meeting from which he did not return for the rest of the day. It is therefore clear that DW1 was not present for the entire period the 2ndPlaintiff was in his office. He stated under cross-examination that the staff of the Defendant would not restrict the 2ndPlaintiff's movement as it is not the Defendant's practice but admitted that he wouldn't know as a fact if after he left for the meeting the 2ndPlaintiff was actually restricted. DW1's evidence is nonetheless relevant as it counters the 2nd Plaintiff's oral testimony that he (DW1) was the one that locked him in his office and left.

DW2, who was also present on that day, gave a clear description of her view of DW1's office and her interaction with the 2ndPlaintiff while he was waiting there. She testified that the door to DW1's office (i.e. her boss' office) was not locked while the 2ndPlaintiff was inside. There is nowhere that DW2's testimony on this matter was impeached under cross-examination.

Although PW2 may not have witnessed the 2ndPlaintiff's actual incarceration, his testimony is to the effect that he got information over the phone from the 2ndPlaintiff that he (2ndPlaintiff) was being detained at the Defendant's Asokoro branch. He eventually got two armed Policemen from the Asokoro Police station to accompany him to secure the release of the 2ndPlaintiff. When he got to the Defendant's Asokoro branch with the policemen, the 2ndPlaintiff was let out of the premises.

Now, on a proper review of the evidence for unlawful detention/false imprisonment under the circumstances as claimed by the 2nd Plaintiff the allegation is both a criminal offence and a tort. It is therefore curious that the 2nd Plaintiff who claims to have been released from the unlawful detention of the Defendant with the effort of PW2 and armed policemen from the Asokoro Police Station did not adduce anything to show that such detention actually occurred except for his own oral testimony. There is no Police incident report showing that a complaint of the alleged detention/imprisonment by the Defendant was ever made before or after the alleged release of the 2nd Plaintiff with the assistance of armed policemen obtained from the Asokoro Police station by PW2.

While answering questions put to him particularly on the alleged detention, DW1 had stated under cross-examination that he was not aware that the 2nd Plaintiff's lawyer had reported a criminal complaint at the police station. His attention was then drawn to paragraph 17 of his written statement on oath where he had stated that he is aware that a criminal complaint was made by the 2nd Plaintiff to the Asokoro Police Division but the Police determined that the complaint were civil matters. This piece of evidence is in support of Paragraph 19 of the Defendant's Statement of Defence where the fact was pleaded. Paragraph 19 of the Statement of Defence on the other hand is in response to facts pleaded in paragraph 28 of the Statement of Claim wherein the Plaintiffs had specifically alleged that the 2nd Plaintiff lodged a case of *criminal conversion of monies belonging to the Plaintiffs* against the Defendant which was referred to the Asokoro Police Station where parties were advised to seek redress in a civil Court. DW1's seeming admission of criminal complaint made by the 2nd Plaintiff to the police is therefore not in respect of allegations of unlawful detention but allegations of criminal conversion of money. This position is confirmed under re-examination of DW1 where he stated that the criminal complaint he referred to was in respect of funds held by the

Defendant and not a criminal complaint in respect of detention of the 2nd Plaintiff.

There is therefore no admission whatsoever by DW1 (or the Defendant) of any purported complaint by the 2nd Plaintiff or his Counsel to the Police that he was unlawfully detained by the Defendant.

The Plaintiffs appear to be trying to build their case of unlawful detention/false imprisonment on the weakness of the Defendant's case. That cannot be. This is because one of the main reliefs sought by the Plaintiffs is one declaring the actions of the Defendant in detaining and locking up the 2nd Plaintiff as unlawful and a breach of his constitutional rights. The Plaintiffs can only succeed in obtaining such declaratory relief on the strength of their own case and not on the weakness of the Defendant's case or even its admission. See **MRS. OLORUNSHOLA GRACE & ORS v. OMOLOLA HOSPITAL & ANOR (supra)**.

I have considered the evidence before this Court, both oral and documentary. The 2nd Plaintiff's and DW2's oral evidence are of particular note as persons who were present at the time the 2nd Plaintiff was in the Defendant's Asokoro Branch on 17th December, 2014. The 2nd Plaintiff's oral evidence was that the door to DW1's office was locked with himself inside. The Defendant however also called oral evidence in rebuttal particularly through DW2. DW2's oral evidence is that the said door was open and not locked. With these pieces of evidence before this Court giving two different plausible accounts of the events concerning the 2nd Plaintiff's stay in DW1's office, I must say that the evidence does not preponderate in favour of the Plaintiffs. In order to succeed in their claim of unlawful detention however, the weight of evidence MUST tilt in favour of the Plaintiffs when put on the imaginary scale. In this case, it does not. The law is that the *onus probandi* rests on the party who would fail if no evidence at all, **or no more evidence**, as the case may be, were given on either side. See

the Supreme Court's decision in **YUSUF V. ADEGOKE (2007) 11 NWLR (PT. 1045) P. 332**. In the instant case, the onus rests on the Plaintiffs to show that DW1's office was indeed locked with the 2ndPlaintiff inside as alleged by them. There is however no such compelling evidence before this Court to convince this Court that such is the case. The Plaintiffs failed to call the representative of Pearl Services whom the 2ndPlaintiff alleged they were together in DW1's office. Secondly, PW1, AgboAlphonsus is not an eye witness and his evidence is hearsay and therefore inadmissible in law. Thirdly, the police men that came to rescue the 2ndPlaintiff were equally not called to state the events reported to them on 17th December,2014.

It follows that the Plaintiffs have failed to discharge the onus on them of proving that the Defendant indeed locked the 2ndPlaintiff up in DW1's office on 17th December,2014. The Plaintiffs have thus failed to prove their allegation of unlawful detention of the 2ndPlaintiff by the Defendant through adduction of compelling and satisfactory evidence.

The second issue for determination must therefore be resolved against the Plaintiffs and in favour of the Defendant. According relief (D) of paragraph 39 of the statement of claim is hereby dismissed.

The third and finally issue for determination is whether the Defendant is liable for damages if any, suffered by the Plaintiffs as a result of the actions of the Defendants.

The Plaintiffs in the instant case having proved the main claims or reliefs (A),(B) and (c) of paragraph 39 of the statement of claim, it is trite law that where a bank refuses to pay a customerscheque such refusal, failure or neglect by the banker to honourcheques in such circumstances Constitutes breach of duty for which the bank will be liable in damages. The extant or nature of damages is that actually resulting from the breach of contract. See **STANDARD TRUST BANK LTD V BARRISTER EZENWA ANUMNU (2007) LPELR 7749 (CA) AFRICAN CONTINENTAL BANK LTD V DIKE, (2000) 5**

NNLR (pt 675) page 441 and ACCESS BANK PLC V M.F.C.C.S (2005) 3 NWLR (pt913) page 460.

In the case of **UBA PLC V SUNDAY UDUSIP (2014) LPELR 23198**, the Court of Appeal held:-

“The law is that once a breach of contract is established, damages flows”

In the instant case, by the established evidence before me by the Plaintiffs of the events of 17th December, 2014 and 12th February, 2015, the 1st Plaintiff being a business concern and by exhibits 3 and 27, it clearly shows that the account of the 1st Plaintiff with the Defendant is well funded and the Defendant failed to observe its obligations in accordance with the extant laws/regulations and reactivate and effect change in the 1st Plaintiff's mandate with the Defendant, hence, resulting to disallowing the Plaintiffs withdraw funds from the 1st Plaintiff's account, I hold the view that the Plaintiffs are entitled to damages and I so hold.

However, before the award of damages, the Plaintiff's seeks for consequential orders in their statement of claim which borders on defreezing the account and allowing the Plaintiffs to withdraw from the 1st Plaintiff's account. Accordingly, reliefs (f) and (h) are hereby granted. Reliefs (e), (g), (i) and (j) are hereby refused as there is no evidence to establish the fact that the Defendant has placed a lien on the account of the 1st Plaintiff or that the fund in the 1st Plaintiff's account has been moved out from the account that requires an order of this Court returning same.

In conclusion, the sum of N20,000,000.00 is hereby awarded to the Plaintiffs against the Defendant as damages for breach of contract and that is the judgment of this Honourable Court.

**HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
23/03/2020**

Parties:- Absent.

Helen O.Okoh:-For the Plaintiffs.

OlujokeAliu:-With me is MobayonleOgunwamuju for the Defendant.

Sign
Judge
23/03/2020

AMENDED 16TH DAY OF JULY, 2020 PURSUANT TO THE ORDER OFHONOURABLE JUSTICE D.Z SENCHI DATED 16TH JULY, 2020.