

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 22 WUSE ZONE 2ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
THIS 28TH DAY OF FEBRUARY, 2020
SUIT NO: CV/0738/2018

BETWEEN:

MISS ONYINYE SYLVIA ONYEKWERE -----PLAINTIFF

AND

ACCESS BANK PLC -----DEFENDANT

Parties absent.

DAVID I. AJABA for the claimant.

NKIRU ARINZE appears with NINA NWAIGHA for the defendant.

JUDGEMENT

This is a banker-customer relationship wherein the claimant claims some deductions from her account which were unauthorized and wrongful. The plaintiff operates a savings account No. 0689985689 with the defendant. This account is meant for her business (Alliance in Motion Global) and personal transactions. She claimed that as at 21/12/17 she had a credit balance of **₦109,600 (One Hundred and Nine Thousand Six Hundred Naira)** in the account and needed to withdraw cash urgently but she could not for 'insufficiency' of funds

in the account. And on checking the balance, to her utmost dismay, she found a debit balance of **₦146,795.30 (One Hundred and Forty Six Thousand Seven Hundred and Ninety Five Naira, Thirty Kobo)**. The plaintiff stated that she went to different branches of the defendant to have the issue resolved. She visited Aminu Kano Branch at Wuse II where the account is domiciled, but she was not properly attended to by the customer care. She demanded to speak with the Branch Manager or Account Officer, the Branch Manager refused to see her but when one of the branch Securities saw her transaction. He took it upon himself, placed call to the Branch Manager via the office landline and informed him of the situation. The Manager spoke very briefly with her sounding like he was been disturbed by the plaintiff and told her that he was very busy and hung up on the plaintiff.

She was eventually availed the statement of account for the period commencing 01/10/2017 and ending on 22/12/2017 that showed various deductions on 21/12/2017 to the total sum of **₦109,600 (One Hundred and Nine Thousand, Six Hundred Naira Only)**. Her attempts to get the explanation for the deductions and have the issue resolved yielded no positive result. She further located the Wuse Market Branch of the defendant where her account officer was said to be but she was also frustrated there. However on her fourth visit to the branch on 12-01-2018, she was informed by a lady staff of the defendant **Miss Ekene Victoria Nwaebina** that the purported

transactions were done sometime in October 2017 and not December as initially reflected on the statement of account given to her. And on being informed that the transactions were in October 2017, she demanded for her statement of account to that effect. She was informed that the statement of account could not be printed at that moment but would be sent to her e-mail which she provided. The statement of account was eventually sent to her email on 15-01 2018 after much pressure. The plaintiff claimed to have been deprived of her only handy cash and prevented from encashment from Alliance in Motion Global Account with the defendant because any money that is paid into the account is debited by the defendant towards satisfying a purported debt. She also claimed she was unable to celebrate the admission of her younger brother into Veritas University as planned and could not pay his school fees.

The plaintiff further averred that the account in question is the only account to which she has an ATM card, makes regular personal transactions as reflected in the statement of account her business transaction has been completely crippled by the action of the defendant. That on 15/01/18 the sum of **₦10,000 (Ten Thousand Naira)** paid into the account same was debited by the defendant leaving the plaintiff with a debit balance of **₦136,795.30 (One Hundred and Thirty Six Thousand, Seven Hundred and Ninety Five Naira Thirty Kobo)**. Due to the activities of the defendant on the plaintiff's account, she instructed her lawyer to write a letter to the

defendant for immediate reversal of the transactions with substantial interest. The letter dated 5-01-2018 was addressed to the Managing Director of the Defendant and copied to the defendant's Aminu Kano Branch. The defendant has refused to heed the demand of the plaintiff as contained in the letter, thus leading to the institution of the instant suit.

The plaintiff is therefore claiming against the defendant as follows:

- a. A declaration that the sum of **₦119, 600 (One hundred and Nineteen Thousand Six Hundred Naira)** from the plaintiff's Access Bank Plc Savings account No: 0689985689 by the defendant is negligent, wrongful, illegal and unlawful.
- b. An Order directing the defendant to immediately reverse the sum of **₦119,600 (One hundred and Nineteen Thousand Six Hundred Naira)** unlawfully debited from the plaintiff's Access Bank Plc Savings account No: 0689985689.
- c. The sum of **₦10,000,000 (Ten Million Naira)** being general, exemplary and punitive damages for negligent, non-challant, and unlawful action and conduct of the defendant which occasioned great inconvenience, embarrassment, deprivation of meaningful life, hardship, loss of time/business/money and trauma to the plaintiff from the 21st of December to date.
- d. 10% interest per annum on the judgement sum from the date of Judgement until final liquidation.

- e. The sum of **₦500,000 (Five Hundred Thousand Naira)** being the cost of this suit.

The plaintiff adopted her witness statement on oath dated 25th January, and 21st March 2018 respectively on the 7th of May, 2018. Documents tendered and admitted as Exhibits on behalf of the plaintiff are:

1. Certificate of compliance, Exhibit A1.
2. Details of Disputed Transactions, Exhibit A2.
3. Offer of admission to the Veritas University Jamb Print-out, Exhibit A3.
4. Letter of Demand for immediate reversal of the sum of **₦109,600 (One Hundred and Nine Thousand Six Hundred Naira)**, Exhibit A4.
5. Plaintiff's statement of account from October, 2017-22nd December, 2017, Exhibit A5.

Under cross-examination, the plaintiff stated that she did not have any other statement of account that reflects the transaction between her and the bank apart from the one tendered in court. To a question she stated that she is a distributor of Alliance in Motion Global and a signatory to her account. She stated that the opening balance in her account as at 1st October 2017 was **₦149,925.71K (One Hundred and Forty Nine Thousand Nine Hundred and Twenty Five Naira, Seventy One Kobo)** and admitted making payments with her P. O. S from 7th October, 2017 to 1st November, 2017. She also

confirmed that the P. O. S. transactions are card present transaction and that there was no time she misplaced her ATM card. The plaintiff further testified when re-examined by her counsel that she is a signatory to her personal account. The plaintiff closed her case on this note.

DEFENCE/COUNTER-CLAIM

The defendant's reaction to the plaintiff's claim is that plaintiff's transaction between 7th October 2017 – 1st November 2017 were not contemporaneously debited in the account of the plaintiff on those dates. The disputed transactions are carried out via POS terminal. The witness to the defendant Basil Uzoh adopted his witness statement on oath on the 3rd of October, 2018. The witness sought to tender the computer-generated copy of the plaintiff's statement of account but was rejected and marked as such for failure to comply with the provision Section 84 (2) of the Evidence Act.

The witness under cross-Examination said he is the account officer of the plaintiff and he is familiar with the account. He started managing the plaintiff's account in 2018. He admitted that during the transaction that led to this suit the claimant was given the name of an account officer and he was not the one. He explained that the bank did a general redeployment and transferred staff to different branches. He was transferred to Aminu Kano Branch. That every customer has a file domiciled in each branch. He knows the plaintiff one on one. He admitted that transactions occurred in a statement

of account. He further testified that the statement of account is system generated by the bank. That it is not correct that the bank or system makes mistake generating the statement of account. The witness was confronted with the statement of account of the plaintiff, Exhibit A5. He read out all the transactions that took place between 7th October 2017 and 1st November 2017. And further confirmed that they are all credit balances.

The witness was re-examined on the closing balance reflected on 10th October 2017 and 1st November, 2017 respectively as **₦106,540.71K (One Hundred and Six Thousand Five Hundred and Forty Naira, Seventy One Kobo)** and **₦310,752.11K (Three Hundred and Ten Thousand Seven Hundred and Fifty Two Naira, Eleven Kobo)**. The defence closed its case.

It is on record that the defendant equally filed a counter-claim wherein the sum of **₦124, 395.80K (One Hundred and Twenty Four Thousand Three Hundred and Ninety Five Naira, Eighty Kobo)** was claimed as special damages being the outstanding sum owed the counter-claimant as a debt by the defendant liquidating the indebtedness to the counter-claimant arising out of the overdraft on the account of the plaintiff. And the interest of 21% from 01/11/2017 until judgement is delivered and thereafter at the rate of 10% until final liquidation and cost against the claimant.

The plaintiff filed a reply and defence to the counter-claim. At the close of the case for the defendant, parties filed and exchanged written addresses.

The defendant in its written address dated and filed on 19th October 2018 formulated three (3) issues for determination to wit:

1. Whether the claimant has successfully proved that the deduction of the sum of **₦119,600 (One Hundred and Nineteen Thousand Six Hundred Naira)** from the claimant's account is negligent, wrongful, illegal and unlawful.
2. Whether the claimant is entitled to the reliefs sought.
3. Whether the defendant proved its counter-claim against the claimant.

The plaintiff on the other hand formulated two (2) issues for determination by the court and they are:

- 1) Whether the defendant/counter-claimant has proved its claim to justify the deductions from the plaintiff's account amidst the denial of the transactions by the plaintiff.
- 2) Whether by the circumstances of this case and the totality of evidence, the plaintiff is entitled to the reliefs sought.

I will adopt the issues formulated by the defendant. The issues formulated by the plaintiff are subsumed in those of the defendant.

RESOLUTION OF ISSUES

ISSUE 1:

On whether the claimant has successfully proved that the deduction of the sum of ~~₦~~**119,600 (One Hundred and Nineteen Thousand Six Hundred Naira)** from the claimant's account is negligent, wrongful, illegal and unlawful. Arguing on the burden of proof, the defendant submitted that the claimant must establish his claim as he who asserts must prove. The defendant's counsel argued that even though the claimant admitted making those transactions, she contended (Sic) the monies representing those transactions between October 7th 2017 and November 1st 2017 totaling the sum of **Two Hundred and Fifty Six Thousand, Four Hundred Naira (₦256,400)** had already been debited. He argued further that in order to succeed the claimant is to show not only that the defendant had earlier debited her or that the debit transaction whether made in her account timeiously or not were not made or authorized by her. That the burden is on the claimant to prove that having admitted making those transactions, that the defendant had earlier debited her at the time of the transaction and the subsequent deductions from her account on 21st December 2017 was wrongful and illegal.

The determination of the plaintiff's case is primarily hinged on documents produced by parties particularly those produced by the plaintiff which are her statement of account and the disputed transactions which on the face of it showed the caption "*Find Below*

details of the disputed transactions for your attention. Note that the customer has a card and pin issued to consummate these transactions.” Exhibit A2 and A5 respectively.

The plaintiff in her pleading and her evidence before the court denied the content of the Exhibit A2 when she pleaded in Paragraph 5 of her reply; *“Plaintiff admits paragraph 10 only to the extent that she made a purchase with her POS between 7/10/2017 and 1/11/2017 but vehemently denies that the monies for the purchase were not debited as alleged by the defendant. Each transaction successfully completed by the plaintiff was debited to that account at those respective dates of the various transactions as shown in the statement of account.”*

She also testified to that effect at paragraph 6 of her further witness statement on oath. Obviously the witness denied the contents of Exhibit A2 and have produced Exhibit A5 (Plaintiffs Statement of Account) as evidence of the transactions she did on those dates. The Exhibit A5 is the document of the defendant duly certified by them and therefore they cannot be allowed to resile from the content of their document. In civil matter generally the legal burden of proof is on the plaintiff. See the provision of Section 133 (1) of the Evidence Act which provides:

“In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgement of the court

would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.”

Subsection (2): *“If the party referred to in Subsection 1 of this Section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgement would be given if no more evidence were adduced and so on successively until all the issues in the pleadings have been dealt with.”*

The Subsection 2 deals with the evidential burden of proof, which is not static, it rotates from one party to another until all the issues in dispute are successfully discharged by any of the parties on whom the burden lies to prove or disprove same as the case may be.

See the case of **ONI V OJOGBOGBO & ORS (2015) LPELR 4174 CA** where the Court of Appeal held on the distinction between legal burden of proof and evidential burden of proof;

“Now the burden of proof in a civil claim, such as this is fixed by Section 131, 132, 133 and 134 of the Evidence Act. It is to the effect that the general or the ultimate burden of proof is on the party who asserts the affirmative of an issue. Generally such burden rests on the plaintiff who makes the positive assertions as the basis of his claim. The law therefore casts the burden of proof on him, as he is the person who would fail in his claim, if no evidence at all were given on either side.

*However there are times when the defendant may also make some positive assertions in his defence. In such situations the burden of proof would be settled or determined by the pleadings, as the defendant may be called upon to proof any positive assertion pleaded by him. That is what is called the evidential burden See Section 133 (1) (2) of the Evidence Act 2011. See also **G. & INVEST LTD V WILT & BUSH LTD (2011) 8 NWLR (PT. 1250) PG 500, AYORINDE V SOGURIRO (2012) 11 NWLR (PT. 1312) PG 460, PURIFICATION TECHNIQUES NIG LTD V JUBRIL (2012) 18 NWLR (PT. 133) PG 109.***

My Lord Ariwoola JCA (as he then was) put the position graphically in the case of INEC & OR V EZEUGWU J. IFEANYI & OR (2010) 1 NWLR (PT. 1174) PG 98 @ PP 121-122 in the following words;

“The phrase ‘burden of proof’ in civil case has been held to have two distinct and frequently confirmed meanings. Firstly it may mean the burden of proof as a matter of law and the pleadings, usually legal burden or the burden of establishing a case, secondly the burden of proof in the sense of adducing evidence often referred to as the evidential burden. While the burden of proof in the first sense is always stable and static, the burden of proof in the second sense may shift constantly as the scale of evidence or the other preponderances. It therefore means that while the ultimate or general burden of proof is fixed by law as residing throughout on the plaintiff or claimant, the evidential burden oscillates between the plaintiff and the defendant as the proceeding progresses and is determined by the state of the

*pleadings. See also Ogunbiyi JCA (as he then was) in **BABAJIDE OMONIRERE V IYIOLA OMISORE & ORS (2010) 3 NWLR (PT. 1180) PG 58 @ 127*** – Per Tsammani JCA.

See also the case of **UDOM & ORS V PDP & ORS (2015) LPELR 2435 SC, OKOYE & ORS V NWANKWO (2014) LPELR 23172 SC.**

As earlier mentioned, the plaintiff disputed all the transactions in Exhibit A2 and solely relied on her statement of account which captured all the transactions which she claimed she did between 7th of October, 2017 – 1st November, 2017. Under cross-examination, she stated that she had no other document or account apart from Exhibit A5 to back up her claim. The plaintiff having denied the contents of Exhibit A2 and tendered her statement of account which did not reflect the transactions in Exhibit A2 as at the dates shown in the statement of account, the onus shifts to the defendants to proof how and why the contents of Exhibit A2 was imported into the statement of account (Exhibit A5) on the 21st day of December, 2017 which led to the debiting of her account.

It is not in doubt that the defendant has failed to discharge the onus cast on them by the state of the pleadings. It is Interesting to note that Exhibit A2 was said to be generated from the switch by the defendant they pleaded it but did not tender it as Exhibit. This document ought to be the armour of the defendant but unfortunately they never thought it wise to have called a witness to establish and explain Exhibit A2 from Interswitch. The disputed

transactions in Exhibit A2 required some scientific explanation from the defendant. If the defendant had explained how the transactions in Exhibit A2 occurred, the onus would have shifted to the plaintiff to produce a record of her transaction with Alliance in Motion Global. The defendant merely placed reliance on the plaintiff's statement of account (Exhibit A5) and its counsel while cross-examining the plaintiff's witness put the figures to her and suggested to her that she made those transactions on the said dates, which of course were denied by her. All the questions put to the plaintiff under cross-examination and the answers extracted served no useful purpose as they lend no value to the case of the defendant.

In paragraph 11-22 of the statement of defence, the defendant averred that the debit transactions took place on the plaintiff's account without any credible evidence to establish them. An averment in a pleading is not the same as credible evidence which can either be viva voce or documentary. See **NGILLARI V MOTHERCAT (1999) LPELR 1988 SC** where it was held that "*It is trite that pleadings is not evidence. See OBLAMNI BRICKS & STORES NIGERIA LTD V ACB LIMITED (1992) 3 NWLR (PT229) 260 @ PG 293. Thus whereas in the instant case evidence is not led to support the pleadings, evidence thereat goes to no issue. See OLAREWAJU V BAMGBOYE (1987) 3 NWLR (PT. 60) 353 @ 359, EMOGOKWERE V OKADIGBO (1973) 4 SC 113*" Per Onu JSC.

See **OKORO & ORS V WANNOGHO (2015) NWLR CA, ABUJA MARKET MANAGEMENT LTD & ANOR V OSICHUKWU (2016) LPELR 4157 CA**

There is therefore no proof that the claimant carried out the various disputed transactions with her ATM card and that the defendant paid for such transactions without the account of the claimant not contemporaneously debited with the value of the transactions.

The case of **HADYER TRADING MANUFACTURING LTD & ANOR V TROPICAL COMMERCIAL BANK (2013) LPELR 20294 CA** relied on by the defendant is not on all fours with the defendant's case. The pronouncement of Mbaba JCA, which the defendant's counsel relied on in his final written address is therefore not helpful to them. In this case the appellant was granted overdraft facility by the bank (Respondent) which resulted in debit balances, interests and bank charges and as at 13/12/2002 the debit balance in the said account was **~~N~~24,318, 279.30 (Twenty Four Million, Three Hundred and Eighteen Thousand Two Hundred and Seventy Nine Naira, Thirty Kobo)**. The respondents who were plaintiffs at the lower court claimed the above sum with bank interest rate of 29% and 10% per annum till the entire judgement sum is fully liquidated. The respondent called a witness and tendered seven documents to prove its claim while the appellant also called a witness and tendered Exhibit DJ1 to DJ84 and at the end of the trial the High Court held the appellant liable. On appeal the appellant contended that some pages

of the statement of account (Exhibit F) tendered by the respondents were missing, that payments made on Exhibit DJ1-DJ84 are not reflected in Exhibit E. The Court of Appeal noted that the appellants did not plead or lead evidence to show the exact amount they paid to the respondent to defray the debt, apart from pleading settlement of the loan account (No. 400285-300) which the respondent also confirmed. That they rather alleged wrong debits, unconventional charges, excessive interest and charges in Exhibit E which they did not specify or elaborate or lead evidence to prove. The court held amongst others that even if the said pages were missing, and contents of the alleged missing pages were material to swinging the presumption of the court in favour of the appellant, it is their duty to lead evidence to strengthen that the said missing pages carried vital and relevant records of transaction would have reduced or completely liquidated the debit balance in the account (Exhibit E). The court went further;

“It appears appellants just dumped Exhibit DJ1-DJ84 in court and expected the court to do a miracle and make a case for them by sorting the document and conjecture how to apply them. That cannot be done. In a situation like this where a bank has published a statement of account, detailing the debit balance, the customer of the bank to whom the statement relates, if he has reason to fault the figures and claims in the bank statement, has a duty to produce credible evidence in support of the faults he find in the statement of

account and relates same to the bank statement to successfully impeach the bank statement. For instance if the bank omits to include a credit transactions by the customer in the statement to customer's credit or includes a debit or charge not authorized, the customer has to draw the attention of the bank and of the court to same and cause the difference to be ascertained to correct the omission or wrong inclusion or carelessness by the bank."

The appellants were the defendants at the High Court while the respondents are plaintiffs. The Court of Appeal Per Abiru JCA went further to hold that;

"It is settled law that a statement of account cannot on its own amount to sufficient proof to fix liability on the customer for the overall debit balance shown on the account. This position of law is predicated on the provision of Section 35 of the Evidence Act Cap 112, Laws of the Federation 1990, which was the applicable law as at 3rd December, 2004 when the Exhibit E was tendered in court and the Section states that entries in book of account, regularly kept in the course of business are relevant whether they refer to a matter with which a court has to inquire but such statements shall not be sufficient evidence to charge any person with liability.

This provision has been interpreted by the courts to mean that any bank which is claiming a sum of money on the basis of the overall debit balance of a statement of account must adduce both documentary and oral evidence explaining clearly entries therein,

particularly where the debt is constituted largely by interest charges, to show how the overall debit balance was arrived at. The bank cannot just toss and dump before the court the statement of account in proof of the indebtedness of the customer for the overall debit balance therein. It must do more than that. COORPORATIVE BANK LTD V AHIGBE (1980) NCLR 215, YUSUF V AFRICAN CONTINENTAL BANK (1986) 1-2 SC 49, HABIB NIGERIAN BANK LTD V GIFTS UMIGUE NIG LTD (2004) 15 NWLR (PT. 896) 405 AND WEMA BANK PLC V OSILERU (2008)10 NWLR (PT. 184) 150.”

Finally on this issue, I agree with the submission of learned counsel to the plaintiff that the defendant have failed to lead credible evidence in support of their assertion. I also endorse his submission that the plaintiff having pleaded the documents which showed transactions she did on that day, (Exhibit A5), the statement of account and transaction notifications and which excluded alleged disputed transactions, the burden has shifted to the defendant to proof why, when and how debits were incurred and posted to the plaintiff's account. Consequently, I resolve the above issue in favour of the plaintiff and hold that the deductions made on the plaintiff's account by the defendants was wrongful and unlawful.

ISSUE 2:

On whether the claimant is entitled to the reliefs sought. Without much ado, and flowing from the analysis of the evidence of the plaintiff and that of the defendants, the plaintiff is entitled to the

reliefs sought. Particularly reliefs 1 and 2. Let me also repeat that the defendant did not tender any document in support of its case, even though it frontloaded the statement of account of the plaintiff and extract of transaction from the settlement report as received from interswitch and another document titled '*Demand for immediate reversal of the sum of ~~N~~109,600 (One Hundred and Nine Thousand Six Hundred Naira) illegally debited to Access Bank Plc Savings Account No. 0689985689 in the name of Onyinye Silvia Onyekwere.*'

These documents were however tendered by the plaintiff as exhibits. The court will only act on the contents of documents presented and explained before it by a party and not speculative. In the case of Heidyer Trading Manufacturing Ltd Supra the Court of Appeal held: "*It is elementary law that a court can and must only act on the evidence placed before it by the parties and it must not speculate on the contents of documents not presented to it by parties.*"

The defendant did not make out a case under cross-examination of the plaintiff that she admitted making the transactions not debited on her account on the dates, nor did she admit making any transaction on 14-10-2017 of ~~N~~35,700 (Thirty Five Thousand Seven Hundred Naira) and on 21-10-2017 of the sum of ~~N~~30,750 (Thirty Thousand Seven Hundred and Fifty Naira) and ~~N~~39,650 (Thirty Nine Thousand Six Hundred and Fifty Naira) sums which were not credited to her account. And contrarily under cross-examination of the defendant witness, he admitted to the following facts:

QUESTION: (*Showed him Exhibit A5*) Open to 7th October, 2017. Can you tell the court the credit balance on that account on that day?

ANSWER: There is no transaction on that 7th of October, 2017.

QUESTION: Go to 10th October; tell the court the closing balance?

ANSWER: ₦104,540.71K (One Hundred and Four Thousand Five Hundred and Forty Naira Seventy One Kobo).

QUESTION: Open to 14th of October, 2017, what was the closing balance?

ANSWER: No transaction on the 14th of October.

QUESTION: 16th of October, 2017 ?

ANSWER: ₦68,840.71K (Sixty Eight Thousand Eight Hundred and Forty Naira, Seventy One Kobo).

QUESTION: 19th of October, 2017?

ANSWER: ₦219,290.71K (Two Hundred and Nineteen Thousand Two Hundred and Ninety Naira, Seventy One Kobo).

QUESTION: 21st of October, 2017?

ANSWER: No transaction on 21st October.

QUESTION: 24th of October, 2017?

ANSWER: ₦325,240.71K (Three Hundred and Twenty Five Thousand Two Hundred and Forty Naira, Seventy One Kobo).

QUESTION: 26th of October, 2017?

ANSWER: ₦340,740.71K (Three Hundred and Forty Thousand Seven Hundred and Forty Naira, Seventy One Kobo).

QUESTION: 1st of November, 2017?

ANSWER: ~~₦~~347,302.01K (Three Hundred and Forty Seven Thousand Three Hundred and Two Naira, Zero One Kobo).

QUESTION: Confirm to the court that all these figures are credit balances.

ANSWER: They are all credit balances.

The defendant has not successfully explained why the account of the plaintiff was not debited with the alleged transaction of the said dates despite that the account of the plaintiff had credit balances. The defendant stated under cross-examination that it is not correct that bank or system makes mistake in generating statement of account. I therefore find the Defendants liable for wrongful debiting of the account of the plaintiff with the sums stated in the writ of summons. Issue number 2 is resolved in favour of the plaintiff.

ISSUE 3:

Whether the defendant is entitled to the counter-claim.

The defendant's counsel submitted that the defendant has proved its counter-claim and adopted its submissions on issue 1. The court was urged to look at the opening balance in the statement of account on 1st day of October, 2017 which stood at ~~₦~~**149,925.71 (One Hundred and Forty Nine Thousand Nine Hundred and Twenty Five Naira, Seventy One Kobo)** and also the admission of the plaintiff that she made the transactions totaling ~~₦~~**256,400.00 (Two Hundred and Fifty Six Thousand Four Hundred Naira)**. The counsel submitted that the counter-claimant led unchallenged evidence with respect to the

said sum and the plaintiff's admission in paragraph 19 of its reply to the statement of defence. That by mere arithmetical calculation, the subtraction of the sum of **₦109,604 (One Hundred and Nine Thousand Six Hundred and Four Naira)** which is the closing balance of the plaintiff's account and subsequent credit transaction on the plaintiff's account will stand at the sum of **₦124,325.30 (One Hundred and Twenty Four Thousand Three Hundred and Twenty Five Naira, Thirty Kobo)** representing the outstanding indebtedness of the plaintiff (defendant to the counter-claim).

The testimony of the defendant's witness that the account of the plaintiff was on credit on the disputed dates, because the plaintiff's account was not sufficiently funded on those dates it alleged the plaintiff made the transactions was a false hood. It is also important to note that the plaintiff in paragraphs 6 of her reply to the statement of defence and counter-claim averred that "the figure reflected on the statement of account in paragraphs 11 is not correct. The balance of **₦149,925.72 (One Hundred Forty Nine Thousand Nine Hundred and Twenty Five Naira, Seventy Two Kobo)** is the usual manipulation of the defendants. The actual credit balance on that account on 1/10/17 was **₦100,500.71 (One Hundred Thousand Five Hundred Naira, Seventy One Kobo)** out of which the plaintiff made a debit transaction of **₦100,000 (One Hundred Thousand Naira)** leaving a balance of **₦500.00 (Five Hundred Naira)** credit balance that reflects on 2/10/2017 with debit transaction of

~~₦350,00~~ **(Three Hundred and Fifty Naira)** for e-Topup closing with credit balance of ~~₦150.00~~ **(One Hundred and Fifty Naira)** on that day.”

The plaintiff gave evidence to that effect in paragraph 7 of her witness statement on oath. However in paragraph 11 of the defendant’s pleadings it was averred that claimant statement of account showing opening balance on October 1st 2017 before withdrawal was made from his account was ~~₦149,925.71~~ **(One Hundred Forty Nine Thousand, Nine Hundred and Twenty Five Naira, Seventy One Kobo)**. The defendant’s witness also averred to this fact in paragraph 13 of his witness statement on oath. A cursory look at the statement of account (Exhibit A5) clearly reveals that the sum of ~~₦149,925.71~~ **(One Hundred Forty Nine Thousand, Nine Hundred and Twenty Five Naira, Seventy One Kobo)** as the opening balance, however it beats my imagination that after a withdrawal of ~~₦100,000~~ **(One Hundred Thousand Naira)** on the 3rd of October, 2017, the closing balance was ~~₦500.71K~~ **(Five Hundred Naira, Seventy One Kobo)** as against ~~₦49, 925.71~~ **(Forty Nine Thousand Nine Hundred and Twenty Five Naira, Seventy One Kobo)** balance which ought to be reflected on the account. This obviously is a patent manipulation on the account of the plaintiff.

I agree with the submission of the plaintiff’s counsel that the defendant have failed to prove their entitlement to the counter-claim. On how to prove the indebtedness of customer, the case of

HADYER TRADING MANUFACTURING Supra Per Abiru JCA is apt. The Learned Counsel also relied on the authorities of **BILANTE INTERNATIONAL LTD V NIGERIA DEPOSIT INSURANCE CORPORATION (2011) 15 NWLR (PT.407) 430 PAR A-F, NASEBU & CO (NIG) LTD V UNITY BANK PLC (2014) 7 NWLR (PT. 1405) 42 @ 84 E-G CA.**

I also resolve issue 3 in favour of the plaintiff. The counter-claim fails and it is dismissed accordingly for lack of proof.

GENERAL DAMAGES

It is gross negligence on the part of the defendant not to have debited the plaintiff's account immediately they claimed that the transaction took place. The defendant was also negligent to have debited the account of the plaintiff as at the dates it claimed it did without authorization and proper notification to the plaintiff. The banks hold a fiduciary relationship with their customers and should exhibit maximum care and skill in dealing with the customers' account. There is no doubt that there is a breach of duty of care owed the plaintiff by the defendant. See the case of **UBN PLC V EMOLE (2001) LPELR 3392 SC** where the Supreme Court **Per Ogundare JSC** held:

"In my view I find that where a bank debits the account of its customer as in this case with amounts arising from calculations committed by the bank, it would be inferred that the bank had acted in breach of the duty it owed the customer to keep proper record and

accurate account for the customer. As the case may be this breach may result in violation of the contractual relationship between the bank and the customer or in violation of the duty of care which the bank owed the customer.”

See **UBA PLC V UZOCHUKWU (2017) LPELR 42787 CA, ECO BANK V EKPERIKPE (2013) LPELR 20327 CA.**

Negligence is defined as the failure to take reasonable care where there is a duty and it is attributable to a person whose failure to take reasonable care has resulted in damages of another. See **ABDULRAHAMAN V KADIRI (2012) LPELR 800 CA.**

The plaintiff alleged that tampering with her account by the defendant resulted in her inability to pay her dependant's school fees and could not celebrate the boy's admission to Veritas University. She Exhibited the admission letter from the school. She was also thrown into confusion and hardship; moving from one branch of the defendant to another trying to resolve the issue, thus causing her trauma. She further alleged that on 8/02/2018 one Idris Jamilu Salisu paid the sum of **₦22,700.00 (Twenty Two Thousand Seven Hundred Naira)** into her account and on the 22/03/2018 the sum of **₦22.20 (Twenty Two Naira, Twenty Kobo)** was also paid into her account both sum were debited by the defendants on these respective days. These deductions the learned counsel to the plaintiff argued were flagrant disobedience to the Order of Court which was duly served on the defendant before these days.

On measure of damage in an action for breach of contract the Supreme Court held;

*“It has been held by this court that in an action for breach of contract, the measure of damages is the loss flowing naturally from the breach. See **GONZEE NIG LTD V NERDC (2005) 22 NSCQR 735.**”*

On whether general damages can be claimed in an action for breach of contract the Supreme Court in the case of **KUSFA V UNITED BAWO CONSTRUCTION COMPANY LTD (1994) LPELR 1721 SC** held;

*“I agree with the learned counsel for the plaintiff that it is not the law that general damages could not be claimed in an action for breach of contract. This is explained by **Atkebon J. in AERIAL ADVERTISING COMPANY V BATCHELORS PEAS LTD (MANCHESTER)** Supra in these words;*

*“I come then to the claim of general damages in respect of pecuniary loss and Mr. Roskill says that I cannot give general damages for pecuniary loss in respect of breach of contract and that I can give damages only by way of special damage for a breach of contract. For that argument Mr. Roskill relies upon *Groom V Crocker (1)* I fail to see myself to see any difference in principle between claim for special damage and a claim for general damage. One of course has to be proved as completely as does the other. The only difference is that where one is claiming special damages, the circumstances are such that one is able to put one’s finger on a particular item and say; ‘I can prove that I lost so much there’, whereas a claim for general*

damages means thus: We cannot prove particular items but we can prove beyond all possible doubt that there has been pecuniary loss Once that has been proved, I cannot myself see any difference in principle between special damages and general damages” Per Ogundare JSC.

There is no doubt that the acts of the defendant must have caused some inconveniences, psychological breakdown, trauma and disappointments, loss of time and money to the plaintiff. She deserves to be compensated. I hereby award **₦5,000,000 (Five Million Naira)** as general damages. 10% interest on the Judgement sum is also awarded with effect until the entire sum is finally liquidated.

SIGN

**HON JUDGE
28/2/2020**