

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT COURT NO. 22
WUSE ZONE 2, ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 25th DAY OF FEBRUARY, 2020
SUIT NO: FCT/HC/CV/0467/17
BETWEEN:**

STEPHEN UGBOMA -----CLAIMANT

AND

MTN NIGERIA COMMUNICATIONS LIMITED -----DEFENDANT

Claimant is in court.

KENECHUKWU OKIDE for the Claimant

*MRS JOY ETIABA Appears with MISS NANCY SHIKAAN ESQ.,MISS THELMA INSANI ESQ.,MISS
BIDEMI AKANDE ESQ.,for the Defendant.*

JUDGEMENT

The Claimant's claim as contained in the writ of summons is for the following:

1. A declaration of the honourable court that the suspension of the Claimant's phone line number 08035869071 by the defendant while the Claimant has paid his January 2017 bill amounts to a breach of contract and negligence.
2. A declaration of this honourable court that the defendant shall not regard the bill of February 2017 due to be paid by the Claimant until after the month of February, 2017.
3. A declaration by this honourable court that the defendant was negligence(sic) of its duty by failing to reconnect the phone line of the Claimant even after the defendant had acknowledged the payment of the sum of **₦15,000** paid by the Claimant.
4. An order of this honourable court directing the defendant to lift the suspension on the Claimant's MTN line number 08035869071 with immediate effect and reconnect the Claimant phone line.
5. An order of this honourable court directing the defendant to pay the sum of **₦500,000,000 (Five Hundred Million Naira)** to the Claimant as a general and punitive damage for breach of contract and negligence.

In the statement of claim the Claimant averred that sometimes in the year 2002 he purchased MTN line number 08035869071 and has been using it as a

business line with a Post Paid tariff plan of monthly limit of **₦20,000 (Twenty Thousand Naira)**. The payments are expected to be paid some days within the

preceding month. He was receiving his bills through email at the initial stage but later the defendant started sending the bill through text message.

He received the bill of January 2017 from the defendant on 2nd February, 2017 and on the 8th of February 2017 at about 7.20pm he received the same bill of **₦13,556.25 (Thirteen Thousand Five Hundred and Fifty six Naira, Twenty Five Kobo)**. He was not disposed to recharge his phone line on that day. However on 9th of February, 2017, the next day, he made a payment of **₦15,000 (Fifteen Thousand Naira)** through airtime which is **₦1,443.74 (One Thousand Four Hundred and Forty Three Naira Seventy Four Kobo)** more than the Claimant's bill for the month of January.

He called the customer care for confirmation at about 12:58pm, the staff confirmed the receipt of the payment of **₦15,000 (Fifteen Thousand Naira)** and promised to send the call to the technical section for reconnection and he immediately received a text message saying; *"Dear Customer, your request with reference No. MTN 1-6014355 has been logged in for resolution."* On the same day he further repeated the call to the customer care at about 15:12pm and got same message that his request has been logged in for resolution. Also on the 10th of February 2017 the Claimant claimed that he called the customer care at about 13:43pm and 18:43pm with reference Number MTN 60349114 and MTN 1-60403915 and on both occasions the defendant sent the usual message that the request has been logged in for resolution and promised that the Claimant's phone line shall be reconnected soonest. The Claimant claimed that he did not receive any other bill through text message from the defendant in connection with the bill or reconnection of his line until 6th April 2017 when the defendant sent a bill for February 2017. He further received another message states; ***"Yello, your outstanding bill is ₦4,200.41 (Four Thousand Two Hundred Naira, Forty One Kobo). Your line is suspended. Please pay your bill via electronic top-up or online thank you."***

Based on the action of the defendant, the Claimant briefed his lawyer to write the defendant for breach of contract. A letter titled; *'Notice of Unlawful Disconnection of MTN Phone Number 08035869071 Belonging to Stephen*

Echezina Ugboma Over Two Months and Demand for Compensation.' dated 8th day of May, 2017 was written to the defendants. A further reminder dated 15th

day of June 2017 was also sent and acknowledged by the defendant and the Nigerian Communication Commission.

The Claimant claimed that as a result of the suspension of his phone line he has lost a lot of contract opportunities with NNPC, NDDC, Nigerian Police and a host of other agencies who could not communicate with him. He also has not been able to operate his email or google account as a result of the fact that his password for the accounts is his phone line. He also suffered difficulties with his bank as he was unable to get or receive alert or other information from his bank and this has affected his finances and business. And also being a hotelier his business has suffered a setback as a result of the suspension of his phone line by the defendant. That the defendant has not made any effort to reconnect the Claimant.

The Claimant maintained that the defendant owes a duty of care which they negligently failed to exercise. The particulars of the breach of contract and negligence were stated by the Claimant on the Statement of Claim.

In proof of the Claimant's case the Claimant adopted his witness statement on oath on the 8th day of May, 2018. The document pleaded by the Claimant were admitted as Exhibit A1-A12 respectively. The Exhibits are:

1. **Exhibit A1** – 10 Original copy of MTN Recharge cards for N1,500 (One Thousand Five Hundred Naira Only).
2. **Exhibit A2** – Original acknowledged copy of Claimant counsel's letter to the MD MTN Nigeria Communications Ltd dated 8/05/17 titled Notice of Unlawful Disconnection of MTN Phone No: 08035869071 belonging to Stephen Echezona Ugboma for over Two Months and Demand for Compensation.
3. **Exhibit A3** - Original acknowledged copy of Claimant counsel's letter to the MD MTN Nigeria Communications Ltd RE: Notice of Reminder of Letter of Unlawful Disconnection of MTN Phone No: 08035869071 belonging to Stephen Echezona Ugboma for over Two Months and Demand for Compensation.
4. **Exhibit A4** – Same as A3. It was tendered twice.

5. **Exhibit A5** - Original acknowledged copy of Letter from MTN Nig Communications Ltd to the Claimant's Counsel dated 16th June, 2017

Titled : Alleged Unlawful disconnection of MSISDN 08035869071 belonging to Stephen Ugboma and Demand for Compensation.

6. **Exhibit A6** – Nigerian Communications Commission (NCC)'s Letter to the claimant's counsel dated 30th June, 2017 Titled: Re: Notice of Unlawful Disconnection of MTN Phone No: 08035869071 belonging to Stephen Echezona Ugboma for over Two Months and Demand for Compensation.
7. **Exhibit A7** - Nigerian Communications Commission (NCC)'s Letter to the claimant's counsel dated 25th July, 2017 Titled: Re: Notice of Unlawful Disconnection of MTN Phone No: 08035869071 belonging to Stephen E. Ugboma for over Two Months and Demand for Compensation.
8. **Exhibit A8** – MTN's letter to the Executive Vice Chairman Notice of Unlawful Disconnection of MTN Phone No: 08035869071 belonging to Stephen E. Ugboma for over Two Months and Demand for Compensation.
9. **Exhibit A9** – Claimant's counsel letter to the Executive Vice Chairman of Notice of Unlawful Disconnection of MTN Phone No: 08035869071 belonging to Stephen E. Ugboma for over Two Months and Demand for Compensation.
10. **Exhibit A10** - Nigerian Communications Commission (NCC)'s Letter to the claimant's counsel dated 16th October, 2017 Titled: Reminder Complaint of Abuse of Legal Rights of Mr. Stephen Ugboma and Unlawful Disconnection of his MTN Line No: 08035869071 By MTN Nig. Communications Ltd.
11. **Exhibit A11** – Photocopy of MTN's Letter to the Executive Vice Chairman Nigerian Communications Commission (NCC) dated 30th August, 2017 Titled: Complaint of Abuse of Legal Rights of Mr. Stephen Ugboma and Unlawful Disconnection of his MTN Line No: 08035869071 By MTN Nig. Communications Ltd.
12. **Exhibit A12** – Photocopy of the Print Out of the Recharge Cards of N1500 dated 1st and 2nd February, 2017.

The contents of the witness statement on oath are in pari-material with the claimant's pleadings and there is no need reproducing same. However under cross-examination, the Claimant testified as follows:

That as Post Paid customer who defaults in payment and the line barred, he is not aware that he has to pay all outstanding bills before reconnections. He is

also not aware that payment must be made within five (5) days of billing. He does not have any document to show that he pays his bill religiously, the only document he has is the last payment which he submitted in court. He does not know the name of his account officer. He also does not have his monthly bills. He does not have any contract or agreement with MTN as a Post Paid customer. He was however given a form to fill and he attached a copy of his international passport. He confirmed to the court Exhibit A1 as the recharge card he loaded on his phone between 10:53am and 11:00am on 9th February 2017. He further confirmed that the number of the recharge cards were ten (10) in number and the amount was **₦15,000 (Fifteen Thousand Naira)**. He admitted that he paid his January bill in February. He stated that before this case, he had earlier been disconnected. He admitted that in April 2017, he received a notice that he owe the defendant **₦4,241 (Four Thousand Two Hundred Forty One Naira)** and his outgoing call was disconnected but he was receiving calls. He does not have the original copies of defendant's reply to the claimant's letters of 8th May 2017 and 15th June 2017; and is not aware of a request to come with it.

He does not work in the defendant's company and not in a position to monitor its affairs. He confirmed that he is a subscriber to 08096402331. He maintained that there is a contract with MTN to provide him with google and email service. He could not confirm that he owed the defendant **₦2,241 (Two Thousand Two Hundred and Forty One Naira)**. That there is no proof that he is owing them. He could not produce any Certificate of Registration with NDDC, NNPC and the Nigerian Police as a contractor. He also does not have any paper to show that he is a hotelier. He admitted that his line was unblocked but cannot remember the date. He does not have any document with which NCC indicted the defendant with respect to his company. And on this note the Cross-Examination ended. There was no re-examination and the PW1 was discharged.

On the contrary, the defendant in its pleadings dated and filed on the 27th of April 2018 averred to the following facts:

That the claimant is the defendant's Post Paid subscriber with a monthly credit limit of **₦20,000 (Twenty Thousand Naira)**. And payment is expected to be made within the first five days of the following month. That in its normal course of operation, it sends monthly bills to its Post Paid Subscribers through their emails and by phone text messages. That the claimant's bill for January 2017 being **₦14,256.26 (Fourteen Thousand Two Hundred and Fifty Six Naira, Twenty Six Kobo)** was forwarded to the claimant for settlement and no payment was received within the next five (5) days of February 2017. And that notwithstanding that the claimant failed to make payment within the stipulated period, the defendant gave a further grace of additional three (3) days after which the claimant's line was partially suspended (access to make outgoing calls was restricted) and the claimant could only receive calls. The claimant on the 5th of February, 2017 bought a recharge card of **₦700 (Seven Hundred Naira)** which the defendant credited in partial settlement of the debt owed by the claimant. The defendant states that by the time it received the recharge card of **₦700 (Seven Hundred Naira)**, the claimant's account had accrued an additional sum of **₦4,144.15 (Four Thousand One Hundred and Forty Four Naira Fifteen Kobo)** for his usage between the 1st – 8th of February, 2017 and as at the 8th of February, 2017 the claimant had an outstanding bill of **₦17,700.41 (Seventeen Thousand Seven Hundred Naira, Forty One Kobo)**. That on the 9th of February 2017 the claimant recharged his line with **₦13,500 (Thirteen Thousand, Five Hundred Naira)** thereby reducing the outstanding liability to **₦4,200.41 (Four Thousand Two Hundred Naira, Forty One Kobo)** that the defendant received **₦13,500 (Thirteen Thousand, Five Hundred Naira)** through nine (9) recharge cards loaded by the claimant and not **₦15,000 (Fifteen Thousand Naira)** as claimed by the claimant because the claimant loaded an already used recharge card of **₦1,500 (One Thousand Five Hundred Naira)** thereby reducing the outstanding liability to **₦4,200.41 (Four Thousand Two Hundred Naira, Forty One Kobo)**. That the claimant still has an outstanding liability of **₦4,200.41 (Four Thousand Two Hundred Naira, Forty One Kobo)** and his line cannot be reconnected as he has failed to clear his outstanding even after same has been brought to his attention.

That the defendant in its operations sends monthly bills to its Post Paid customers through their emails and by phone text messages. That the

defendant sends text messages to the claimant as a subtle reminder in addition to the bills the claimant had been sent. Also the defendant stated that it received the letters from the claimant's solicitors dated 8th May, 2017 and

15th June, 2017 and responded vide a letter dated 18th June 2017, 29th September and 10th October, 2017 respectively.

The defendant denied knowing of any petition written to the Nigerian Communication Commission before it acted. The defendant further stated that it was never indicted by the NCC and that the inability of the claimant to operate his email and google account has nothing to do with the services provided by the defendant because provision of telephone services to the claimant did not cover emails and other applications. That the claimant has not suffered any damages and he is a subscriber of phone number 08096402331, another telecommunication service provider and where he proved to have suffered any damages, it is because he has refused to clear his bill. And as a subscriber of phone number 08096402331, he is able to function effectively and carry on his daily activities hence his decision to abandon his phone line, subject matter of this suit. Also that the defendant showing goodwill restored the services on the line of the claimant on the 29th of November, 2017 and has since granted access to the claimant for all requested services on the network. That the defendant showing good faith wrote-off the debt owed by the claimant. Furthermore, the defendant stated that it has always maintained its duty of care to the claimant being a customer service organisation. That the claimant is seized of the cogent and verifiable reason why his phone was suspended and he never challenged the outstanding bill. And that it is not liable for any alleged loss suffered by the claimant as it has not breached any duty it owes the claimant.

The defendant called as its sole witness one Usman Abdulwahab a staff in the Debt Recovery Unit of the organisation. He adopted his witness statement on oath on the 29th February, 2019 and under cross-examination by the claimant's counsel, he informed the court of the following facts:

He confirmed that they are not supposed to send bills within that month a subscriber is using their service. That the bills are communicated to the subscribers through text messages and email. He confirmed that bill is supposed to be paid within 5 days after which the subscriber is given three (3)

days grace period before the line is suspended from making calls but the subscriber can receive calls. That a customer will be reconnected if he pay the complete bill. He was not sure of the billing of the Claimant for the month of

January 2017. He is however aware that the Claimant paid **₦13,500 (Thirteen Thousand Five Hundred Naira)** through recharge card of **₦1,500** each. He is aware that the Claimant called customer care service severally to connect him but he is not aware that all the time the Claimant called the customer care, they always promised to reconnect him. He was not sure that there was any time the Claimant was told that the amount he paid was not enough. He asserted that the Claimant did not make any payment between 1st - 5th of February, 2017. He confirmed that Claimant repaid the sum of **₦700 (Seven Hundred Naira)** through recharge card. He further confirmed that by the time the defendant received the recharge card of **₦700 (Seven Hundred Naira)** the claimant's account had accrued additional **₦4,144.15 (Four Thousand One Hundred and Forty Four Naira Fifteen Kobo)** for his usage between the 1st – 8th February, 2017 and as at the 8th February 2017 the claimant had a total outstanding bill of **₦17,700.41 (Seventeen Thousand Seven Hundred Naira, Forty One Kobo)**. He confirmed that the claimant's line was suspended because he did not pay the **₦17,700.41 (Seventeen Thousand Seven Hundred Naira, Forty One Kobo)**. He further confirmed that the claimant loaded ten (10) recharge cards and one failed. That the one loaded and failed is recorded in the subscriber's history. He confirmed Exhibit A12 as cards loaded by the Claimant in January and February. That the subscriber loaded nine (9) cards on the 9th of February. That cannot reflect on the Exhibit if any card loaded on the 9th of February failed. He further confirmed paragraph 28 of his statement on oath that the defendant has restored her services on the line of the claimant on 29th of November 2017.

On whether the claimant did not make any other payment before his line was restored, he said it depends on the agreement he had with the defendant because there can be instalmental payment agreement. On whether account officer is assigned to post paid subscribers, he said it depends on the spending limit of the subscriber. He also testified that the Claimant recharged **₦13,500 (Thirteen Thousand Five Hundred Naira)** through recharge card. That the bar

on the claimant line was lifted because Nigerian Communication Company invited their company.

To a question he answered that lines are assigned to human beings, that individual can procure a line and use it for a company, that there must however be a contact person which is a human being. To a question as to

whether if a line used for banking business is suspended, the subscriber would not be able to receive credit and debit alerts and cause inconveniences to the customer, the witness reiterated that the partial suspension but if there is enough data, the services will work but if its hard-suspension, everything will be blocked.

The defendant was re-examined based on paragraph 11 of his witness statement on oath whether he meant bills for January and February together to which he answered in the affirmative. On this note, the defence closed his case.

The documents tendered by the defendant are admitted as Exhibits and marked DW1-DW8 respectively. The documents are Customer Agreement Form and Post Paid Terms and Conditions Exhibits- DW1-DW2, Claimants January/February 2017 monthly bills- Exhibit DW3, Statement of Recharge Cards loaded by the Claimant- Exhibit DW4, Certificate of Compliance- Exhibit DW5, MTN's Letter to Claimant's Counsel dated 16th June, 2017-Exhibit DW6, MTN's letter to Claimant's counsel dated 29th September, 2017- Exhibit DW7, and finally Exhibit DW8, also a letter to the claimant's counsel.

At the close of the case for the parties counsel filed and exchanged written addresses in accordance with the Rules of Court. The defendant in its written address submitted two issues for determination to wit;

- i. Whether the suspension of the claimant's line amount to a breach of contract.
- ii. Whether the claimant has proved his case against the defendant to entitle him to damages.

The Claimant on the other hand formulated five issues for determination and they are:

1. Whether the Claimant loaded a recharge card of **₦15,000 (Fifteen Thousand Naira)** on 9th February, 2017.
2. Whether the defendant is right to demand from the claimant the bill of 1-8 February 2017 even when the month has not ended.
3. Whether the evidence of DW1 can be relied on by this honourable court.

4. Whether the defendant is liable for breach of contract or acted negligently for not reconnecting the claimant phone line after the claimant had paid his January 2017 bill.
5. Whether the claimant suffered damages as a result of disconnection of his phone line by the defendant.

And in further response to the Claimant's final written address the defendant filed a reply on points of law.

Upon a critical consideration of the state of pleadings and the evidence led by both side, I found the issues formulated by the defendant counsel more encompassing, as the determination thereof shall adequately resolve all the issues raised by the Claimant.

Issue 1: Whether there was a breach of contract. It is elementary that the word contract signifies a mutual agreement by the parties. For there to be a valid contract therefore there must coexist offer, acceptance and a legal consideration. See the case of **GREENFINGERS AGRO INDUSTRIES & ENTERPRISES LTD V SAHEL AGRICULTURAL CO. LTD (2014) LPELR 22332 CA** where contract is defined as a legally binding agreement between two or more persons by which rights are acquired by the party in return for acts or forbearance on the part of the other. In effect contract is a bilateral affairs that needs the concurrence of the parties and where there is no such concurrence, a court will find as a matter of law that an agreement or contract was not duly made between the parties – **ORIENT BANK (NIG) PLC V BILANTE INTERNATIONAL LTD (1997) 8 NWLR (PT. 515) 37, ODUTOLA V PAPERSACK NIG LTD (2006) 18 NWLR (PT. 1012) 470**. It is trite that to constitute a contract there must be an unmistakable and precise offer and an unconditional acceptance of the terms mutually agreed upon by the parties thereto – **YARO V AREWA CONSTRUCTION LTD (2007) 17 NWLR (PT. 1063) 333, AMANA SUITS**

HOTEL LTD V PEOPLES DEMOCRATIC PARTY (2007) 6 NWLR (PT. 1031) 453, BEST (NIG) LTD V BLACKWOOD ILODYE NIGERIA LTD (2011) 5 NWLR (PT. 1239) 55.

Furthermore a party who alleges a breach of contract must state the terms of the contract and go further to prove the breach thereof. I agree with the defendant's counsel submission that for a claimant to succeed in an action for a breach of contract, he must establish that there was fundamentally in

existence an enforceable contract which was breached. Where the contract by parties is oral or reduced into writing, the term and condition are binding on the parties in the absence of any fraud, mistake or misrepresentation. See **EMUEJEREROWLO V ECOBANK (2018) LPELR 45322 CA.**

There is no gainsaying the fact that the status of the parties in this case is a simple contractual relationship regulated by Exhibit DW1, the Contract Agreement Form and Exhibit DW2, the Post Paid Terms and Conditions. As rightly stated in the defendant's Counsel written address, the claimant signed the declaration in Exhibit DW1 wherein it stated; *"I/We have read and understood and agreed to be bound by the terms and conditions printed overleaf and declare that the information given is true and correct."* The document signed and dated 31-03-08. Also attached to the Customer agreement Form is a migration request which was also duly signed by the claimant.

In paragraph 3 of the claimant's witness statement on oath and he averred; *"That I purchased MTN line Number 0803569071 sometime in the year 2012 and has been using the line as a business line or post paid tariff plan with a monthly limit of N20,000 and payment are expected to be made some days within the preceding month."*

The question that need to be resolved or answered is when is the claimant expected to pay his bill within the preceding month as contained in the agreement form? The answer can be found in Clause 4(7) of Exhibit DW2 the Post Paid Terms and Conditions;

"When MTN may by email or text message provide the subscriber the subscribers monthly statement (bills). These bills shall be sent to the subscriber's email or MSISDN which is provided by the subscriber at the point of

activation. MTN shall not be liable for any delay or delivery or non-delivery of any such statement(s) (bill) to the subscriber. It shall be the duty of the subscriber to check the both in order to ensure that the contents thereof are correct and to settle all bill(s) promptly. Unless a query is raised in respect of the contents of the bill within 8 days from the date of the content shall be deemed to be correct.”

From the above provisions bills are communicated to the post-paid subscriber either through text or email or according to DW1, the customer can also do by checking his balance. Furthermore after 5 days of the receipt of the bill by the post paid subscriber the bill is deemed as correct. See Clause 12 of the Terms and Condition of the Post Paid Subscriber (Exhibit DW2). The January 2017 bill Exhibit DW3 as sent to the claimant had in its content **₦13, 577.39 (Thirteen Thousand Five Hundred and Seventy Seven Naira, Thirty Nine Kobo)** with VAT of 5% valued at **₦678.87**. The claimant averred in paragraph 8 of his witness statement on oath; “That I received January 2017 bill of **₦13,556.25** from the defendant on 2nd February, 2017 and on the 8th of February, 2017 at about 7:20pm, I received the same bill and at that time, the Claimant is not disposed to recharge(sic) his phone but on the next day being 9th February 2017 the Claimant made a payment of **₦15,000** airtime which is **₦1,4439** then the bill for month of January 2017.” It is very clear that recharging or making a payment with **₦15,000 (Fifteen Thousand Naira)** airtime on the 9th day of February 2017 was not in tandem with the contract the plaintiff had with the defendant to recharge within 5 days of the preceding month. The Learned Counsel to the Claimant argued that the 10 recharge cards Exhibit A2 with which the claimant recharged his line was not denied by the defendant. The Learned Counsel missed the point entirely; and that is the point whether the recharge was done in line with the agreement of the parties or not.

Still on the contention of the Learned Claimant’s Counsel that the claimant recharged with **₦15,000** call credit, it is evident that the claimant did not dispute the recharge activities as shown in Exhibit A12. The analysis of which showed that out of the 10 cards loaded by the claimant with Serial Number 63299004970054549 has different Number with recharge card number 6009369388081947. This is also buttressed by explanation that only 9 cards were loaded, a fact not denied by the claimant. It is obvious from the testimony of the defendant witness that as at the time the claimant loaded the 9 recharge cards, his line was already on hard suspension. He could not receive

nor make calls. In line with the provision of Clause 7A (1) of the Terms and Conditions of the Post Paid Subscribers provides thus:

“Provisions of the Network Services may be interrupted or suspended by MTN at any time inter alia sub (3) “where there is an outstanding debt payable by you for calls or activities made on your MSISDN”. Or

10 “The subscriber fails to pay for the credit limit that MTN with his consent has assigned to him”

It is worthy of note that after the recharge made by the claimant it still had a balance of N56.25. The provision of Clause 7A (1) of the Terms and Condition of the Post Paid Subscriber states in Paragraph 4:

“Where the subscriber is indebted for calls or activities made on his MSISDN and subsequently recharge his account, any loaded airtime will be used to upset any outstanding liabilities until the indebtedness is extinguished.”

The DW1 was asked under cross-examination by the claimant’s counsel that if a customer after partial suspension pays bill, he would be reconnected? The witness answered; *“That is if he pays complete bill. If he pays without one kobo remaining in his bill will be connected.”*

On whether it was because the claimant had not paid the bill for February which the Learned Counsel argued was not due for payment and had his line disconnected because of that. The law is trite that he who asserts must prove. There is no evidence in proof of this assertion. The claimant did not lead any credible evidence showing that such bill for the month of February was sent to him. It is therefore a mere figment of his imagination.

On whether there was contradiction on the testimony of the DW1 as argued in paragraph 1.3 and 1.4 of the claimant’s final address. The Learned Counsel to the claimant argued that the DW1 during cross-examination said that the claimant only loaded Nine (9) recharge cards which contradicts the defendant’s evidence especially paragraph 13 of the Witness Statement on Oath where the defendant said that the claimant loaded 10 recharge cards of **₦1,500** each but one of the cards failed. To me there is no difference between what the DW1 said in his Evidence in Chief and during cross-examination. And if there is any

contradiction at all it is not so material as to affect the case of the defendant. All arguments proffered by the Learned Counsel are irrelevant and not material whether there was any breach of contract between the parties. one would have expected solid argument that are consistent with the Terms and Conditions of the contract between the parties rather than frolicking on a voyage of issues that leads to fruitful direction as embarked on in the claimant's final written address. all the actions taken by the defendants are in consonance with the spirit and letter of the agreement contained in the Exhibit DW4 and DW2 respectively. And I so hold. I therefore resolve Issue 1 in favour of the defendant.

RESOLUTION OF ISSUE NO.2

It is trite that civil matters are decided on balance of probabilities and on preponderance of evidence. The evidential burden is on he who asserts and the onus does not shift until the party who asserts is able to discharge the onus placed on him. See 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 introduced on either side, regard being had to any presumption that may arise on the pleadings."

Section 134: *"The burden of proof shall be discharged on the balance of probabilities in all civil proceedings."*

See the case of **OSAIRE & ANOR V IDOHEN (2014) LPELR 23335 30 (CA)**

"It is trite that the onus therefore is on the plaintiff who asserts in civil proceedings to plead both the facts he brought to prove, and also lead cogent and credible evidence in proof of those facts on the balance of probabilities before judgement could be given in his favour."

See **OLUSAYA V OSINLEYE (2013) 7 NWLR (PT. 1367) 148 @ 171. See also BAMISHIGBAN & ORS V ORIARE & ORS (2009) LPELR 733 SC, PRIFICATION TECHNIQUE NIG LTD V JUBRIL & ORS (2012) LPELR 5727(SC)**

There is no platform upon which the court could hold that there was a breach of contract or negligence on the part of the defendant. Negligence is a breach of duty of care. And to prove same the party who alleges must set out the particulars of negligence; prove them with cogent and credible evidence.

Although the claimant appeared to have stated the particulars of the breach in of duty in the paragraphs of his pleading, he has failed to prove them. Pleadings cannot take the place of credible evidence. See **K. O. ANYAH V IMO CONCORD HOTEL LIMITED & 2ORS (2002) 12 SC** where the Supreme Court stated thus:

*“A blanket allegation of negligence in the pleadings is not sufficient and quite apart from giving explicit evidence of negligence, for the appellant to succeed he must also show the duty of care owed to him and its breach by the respondent. By the case of **KOYA V UBA (1997) 1 NWLR (PT. 481) 251 @ 291**. This court had this say: It is not sufficient for a plaintiff to make a blanket allegation of negligence against a defendant in a claim on negligence without giving full particulars of the items of negligence relied on as well as the duty of care owed to him by the defendant. See **MACHINE UMIDIJE & OR V SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD (1975) 9-11 SC 155 @166-167**. It also added. Accordingly in an action on negligence a plaintiff to succeed must in addition to pleading and establishing the particulars negligence relied on, he must also state and establish the duty of care owed to him by the defendant, the facts upon which that duty founded and the breach of that duty by the defendant. By establishing the particulars of negligence or the duty of care owed it’s meant that evidence must be given in support of both, for a plaintiff to succeed in a negligence case.”*

The Claimant’s claims is for declaratory reliefs: A claim for declaratory relief is not granted as matter of grace. Even where the case of the defendant is weak, the Claimant must still go ahead to prove that he is entitled to the declarations sought. He must therefore place before the court cogent and convincing evidence to establish his entitlement to the relief sought. See **AKINBORI & ORS V AKINLOPE & ORS (2016) LPELR 40184 CA** where the Court of Appeal held:

*“Declaratory reliefs are not granted as a matter of course and on a platter of gold. They are only granted when credible evidence has been led by the plaintiff or person seeking the declaratory relief. See **COL NICHOLAS ANYAWU (RTD) V MANDILAS LTD (2007) 4 SCNJ 388 (2007) 10 NWLR (PT. 1045) 463 @ 477-478**.”*

Still on the reliefs sought by the claimant, the claimant seeks for a lifting of the suspension of his line by the defendant. This claim as rightly argued by the defendant's counsel has been overtaken by events as the line has been reconnected. When asked under cross-examination by the defendant's counsel if his line has been unbarred in November 2017, he answered; *"Yes I can remember but I cannot remember the date it was unbarred."*

Also with respect to the Claimant's claim for **₦50,000,000 (Fifty Million Naira)** for general and punitive damages. The Claimant failed woefully to establish this claim. Punitive or exemplary damages are awarded where the conduct of the defendant is reckless, cruel, and insolent. See **ODIBA V AZEGE 1988 SC (1988) LPELR 2215 (SC)** the court held:

"Exemplary damages in particular, also known as punitive or vindictive damages can apply only where the conduct of the defendant merits punishment, and this may be considered to be so where such conduct is wanton as where it discloses fraud, malice, cruelty, insolence or the like, or where he acts in contumelious disregard of the plaintiff's rights."

The Claimant has not made a case against the defendant to warrant a grant of exemplary damages. Damages for breach of contract are awarded based on the principle of restituo integrum that is the restoring the Claimant back into the position he would have been in so far as money can do if the breach did not occur. See **EL-SALEM (NIG) LTD V ODEH & ANOR (2018) LPELR 44450 CA.**

The claimant alleged loss of business opportunities with some organisations such as NNPC, NDDC, Nigerian Police and others running into billions as a result of the suspension of his line. Under cross-examination. He testified when asked if he had certificate of registration with the organisations named, he stated that he has some papers. When asked further:

QUESTION: Why did you not bring them?

ANSWER: You did not ask me to bring them.

QUESTION: What is the name of your company?

ANSWER: Wills project Nig Ltd.

QUESTION: Do you have any evidence of contract done with NNPC and NDDC?

ANSWER: Yes.

QUESTION: Do you have any document to show that you are a contractor?

ANSWER: I have some appointment letter to that effect.

This is all that the claimant had to say with respect to his claim for loss and business opportunities. A claim for breach of contract is in the realm of special damages. Special damages must be specifically pleaded with particulars and credible evidence led in proof of the pleaded particulars. See the case of **REGISTERED TRUSTEES OF MESTORS RESIL MINISTRIES (NIG) INCORPORATED V EMENIKE & ORS (2017) LPELR 42836 CA.**

The claim of the Claimant to damages are assertions and therefore the court does not act on speculations and neither is it a Father Christmas. The burden on the claimant will only shift after he has by preponderance of credible evidence establish his claim to damages sought.

In totality having carefully considered the evidence of the Claimant and the documents tendered, it is my conclusion that the claimant has failed woefully to establish his claim against the defendant. Consequently the action failed and is hereby dismissed.

Sign

Hon. Judge

DATE ____/____/2020