IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CV/2795/12
BETWEEN:

1. MR. MBANEFOR MICHAEL A. N.)
2. ALLUMINIUM CONCEPT & CONSTRUCTION WORKS LTD).PLAINTIFFS

AND

ACCESS BANK PLC……DEFENDANT

JUDGMENT

Mr. Mbanefor Michael A. N. was a customer to the defunct Intercontinental Bank Plc. He maintained account numbers 0002116376001 and 005001000001410 with the Bank. At a point the Defendant Bank went aground and its assets and liabilities were acquired by the Defendant (**Access Bank**).

According to the Plaintiff, he noticed that his accounts were not properly run as he suspected some irregularities in the management of the accounts. He approached the Defendant orally and in writing to be furnished with certain details in respect of the two accounts but this instruction was not complied with by the Defendant.

The Plaintiff is aggrieved by the non compliance of the Defendant with his instruction. He has therefore filed this action on the 22/03/2012 to enforce his right under the contract he entered with the Defendant. In particular, the Plaintiff has sought for the following reliefs as per paragraph 7 of his statement of claim.

(a) A declaration that the Plaintiff has the right to all documents pertaining to his personal accounts vides account numbers 0002116376001 and 005001000001410.

(b) An Order of this Honourable Court for the Defendant to produce the statement of account from the inception of the said account till date, names and particulars of the account officers since the inception of the aforementioned account till date.

(c) An Order of Court for the Defendant to produce copies of all withdrawal regis-cope, copies of our client's signature mandate cards and copies of all deposit/withdrawal instruments from inception of the said account.

(d) An Order of Court for the Defendant to produce all other documents in their file.

(e) N1, 000, 000. 00 (One Million Naira) as cost of action.

The Defendant denied the claims of the Plaintiff and in its 19-paragraphs statement of defence which was filed on the 25/09/2012. It was averred that the Plaintiff's case is caught up by laches and acquiescence on account of unreasonable delay in the presentation of this action to the detriment and prejudice of the Defendant. The Defendant also contended that as at the time it acquired the Intercontinental Bank, there was established incidence of poor and improper record keeping which led to loss of the following;

(a) Historical documentation of customers' transactions from inception to date showing Regis-cope of such transactions, withdrawals and deposits slips, cheques etc.
(b) Historical records of its members of staff from inception till date and;
(c) Other vital information regarding to numerous transactions; and
(d) That the documents sought by the Plaintiff were not passed on to it by the former Bank.

The matter proceeded to trial after protracted delays by the parties, especially the Plaintiff. The Plaintiff testified for himself as PW1 and was cross examined by the learned counsel to the Defendant **Mr. C.**

J. Akunnakwe Esq. The Plaintiff closed his case with the testimony of the PW1 as the sole witness.

The learned counsel to the Defendant submitted to the Court that the Defendant was not calling any witness. The Defendant rested its case on the Plaintiff's case. As a result, the case was closed and parties filed their final written addresses which they adopted before the Court at the plenary.

I have carefully read and taken advantage of the submissions of the learned counsel to the parties in their respective addresses and I like to state that I would make reference to them in the cause of this Judgment as I consider necessary. However, it is imperative for me to observe from the onset that the Defendant having not led any oral evidence through a witness to adopt the sworn evidence of **Abisola Olasesan** before this Court is deemed to have abandoned its pleading. Thus in **AMAECHI Vs INEC & ORS (2007) NO. 3 18 NWLR (PT. 1065) 105** the Supreme Court held:

> **"It is a settled principle of law that he who alleges must prove and that where a party fails to adduce evidence in support of facts pleaded, the pleadings are deemed abandoned."**

Also in **BUHARI Vs INEC & ORS (2008) 19 NWLR (PT. 1120) 246, Tobi JSC** (of blessed memory) had this to say;

"If evidence is not led on a fact pleaded in either the petition or the reply, the pleading will be deemed to have been abandoned unless the fact was admitted by the adverse party. This is because pleadings have no mouth to talk and need human being with mouth and sense to articulate them in Court. This principle of law will not apply where the particular pleading is admitted."

See the case of **THE ADMIN AND EXECUTOR OF THE ESTATE OF ABACHA (DECEASED) Vs DIETTE SPIFF & ORS (2009) 7 NWLR (PT. 1139) 97.**

Being abandoned, the effect is for the Court to strike out the statement of defence filed by the Defendant. See also the case of **KAYDEE VENTURES LTD Vs HON. MINISTER OF FCT (2010) 7 NWLR (PT. 11920 171.**

Accordingly the statement of defence filed by the Defendant is hereby struck out as a matter of law.

It is also a well settled principle of law that where the Defendant has elected not to call evidence and decides to rest his case on the Plaintiff's case, he must be taken to:

(a) Have admitted the facts of the case as presented by the Plaintiff; or

(b) That the Plaintiff has not made out any case for the Defendant to respond to; or

(c) That he has a complete defence in answer to the Plaintiff's case.

See the following cases **AKANBI & ORS Vs ALAO & ANOR (1989) 3 NWLR (PT. 108) 118; TANDOH Vs C F A O OF ACCRA & ANOR (1944) 10 WACA 186; ATUGBUE Vs CHIME (1963) 1 ALL NLR 208 ; NEPA Vs OLAGUNJU & ANOR (2005) 3 NWLR (PT. 913) 603 at 632; and AGUOCHA Vs AGUOCHA (2005) 1 NWLR (PT. 906) 165 at 184.**

The position therefore is that now that the Defendant offers no evidence in support of its pleading the evidence before the Court obviously goes one way with no other set of facts or evidence to weigh against it. There is nothing in this situation to put on the other side of the proverbial or imaginary scale of balance as against the evidence given by or on behalf of the Plaintiff. In such a situation, the onus of proof is naturally discharged on a minimal of proof. See the cases of **NWABUKO Vs OTT (1961) 1 ANLR 487 at 490; OGWUMA ASSOCIATED COMPANIES NIG LTD Vs IBWA (1988) 1 NWLR (PT. 73) 653 at 687; BALOGUN Vs UBA LTD (1992) 6 NWLR (PT. 247) 336 at 354; and CHIEF DUROSARO Vs AYORINDE (2005) 3-4 SC 14** just to mention a few.

The evidence of the 1st Plaintiff before this Court as the only witness in this case is to the effect that he maintains two accounts with the Defendant, i.e. account numbers 0002116376001 and 0055001000001410. That upon his discovering grave irregularities in the management of the accounts, he approached the Defendant orally and in writing through his lawyer who wrote the Defendant to request for some documents as contained in paragraphs 1, 2, 3, 4, 5 and 6 of the said letter to be supplied to him. That the Defendant has failed to comply with the instruction/request, he decided to institute this action. This piece of evidence was not contradicted or challenged by the learned counsel to the Defendant in the course of cross examination. In such a situation, the Court is free to accept the story as told by the witness.

Thus in **ODULAJA Vs HADDAD (1973) 1 ALLNLR 191** the Court stated the principle thus:

> **"Where evidence is given by a party to a proceeding and such evidence is not challenged by another party who had opportunity to do so, the evidence should ordinarily be believed and accorded credibility."**

Now the relationship between the Banker and customer is contractual. The banker as the agent of the customer has a duty to carryout instructions of the customer relating to the operation of his accounts with the Bank. There is an implied duty by the banker to

furnish the customer with information relating to the account upon demand by the customer. On this score, I do not have problem with the 1st relief sought by the Plaintiff which is for a declaration that he has a right to all the documents pertaining to his personal accounts with the Defendant. This reasoning is supported by the fact that the Defendant in its final address did not make an issue out of this head of claim. I therefore hold that the 1st head of Plaintiff's claim has merit and it is hereby granted.

The 2nd relief sought is for an Order of the Court for the Defendant to produce the statement of accounts from inception of the said accounts till date, names and particulars of all the accounts officers. The evidence of the Plaintiff as PW1 in respect of this relief is that he made demands through his lawyer sometimes on 02/03/2012 and personal telephone calls to the Defendant requesting for paragraphs 1, 2, 3, 4, 5 and 6 of the request which was written in his lawyer's letter head to the Defendant. No effort was made by the witness to state what he requested from the Defendant. Unfortunately, the letter his lawyer wrote which he made reference to, is not part of the evidence before this Court. The result is that the Plaintiff has not made conscious effort to lead evidence to state what documents he wanted from the Defendant. The pleading filed by the Plaintiff did not fare better. The position of the law is that where a party seeks a

specific relief from the Court, he must lead cogent evidence to state so. He must plead facts relating to the relief. In this case, the fact pleaded by the Plaintiff is deficient and does not support the relief sought.

I think that it is necessary to remind the learned counsel to the Plaintiff that in pleading, reliefs sought are not reckoned with as facts pleaded. The mistake made in not pleading facts relating to this claim has robbed also on the evidence of PW1. There is just no evidence on what the Plaintiff seeks in this relief. For me, the testimony of the PW1 is vage and does not disclose relevant facts with which the onus of prove placed on the Plaintiff would be discharged. The law is settled that when the evidence of a witness is hazy or deficient or utterly hollow or shallow it would prove nothing.

See the case of **NEKA BBB MANUFACTURING COMPANY LIMITED VS A. C. B LIMITED (2004) 2 NWLR (PT. 858) 521** where the Supreme Court stated thus;

> **"When the evidence of a witness is hazy and deficient or utterly hollow, skimpy or shallow, it would prove nothing and in the case of specific claims such weak evidence would be so wanting in its substantiality that it may be regarded as a mere effusion of an incompetent witness."**

At it is now, the general position of the law that uncontradicted evidence should be believed cannot help the Plaintiff's case because even if it is believed the evidence led does not assist the Court in proving or establishing the claim sought, it is just nowhere. For a moment I may want to ask why the Plaintiff who seeks reliefs from the Court should choose to refer the Court to a nonexistent document to extract facts. For me, it does not take anything to plead facts of what he seeks and lead evidence in support. The end result of this scanty pleading and poor evidence is that relief two is not proved and it is refused and dismissed.

The reason derives from the fact that it is he who assert that has onus of prove. It would appear that all the other reliefs i.e. reliefs 3 to 5 suffer the same fate with relief two as there is no evidence to support them. They are therefore refused and dismissed.

Learned counsel to the Plaintiff is correct when he submitted that the testimony of the Plaintiff as PW1 was not controverted. He is also correct when he submitted on the legal effect of that. However, it is not true that there is any evidence to suggest what he demanded from the Defendant. He merely testified that his demand from the Defendant was as disclosed or itemized in his letter to the Defendant dated 02/03/2012. That letter not being before the Court, I am left to speculate on what the demands were.

The point therefore is that all the submission of counsel that sufficient evidence was led in support of the claims is not borne out by the record of the Court. Although the burden of prove placed on the Plaintiff in the circumstances of this case is minimal, it appears to me that the minimal burden has not been discharged.

See the case of **OGBONNA YOUNG VS CHEVRON NIGERIA LIMTED (2014) ALL FWLR (PT. 747) 639** at 642 ably cited by counsel to the Defendant.

In rounding up, I must remark that while it is true that the Plaintiff did not succeed in proving his claims, it is not correct as argued by counsel to the Defendant that there was a duty on the Plaintiff to establish that the Defendant owed him a duty of care, that it was breached and the Plaintiff suffered damages. The position of the law clearly, is that the relationship of banker/customer imposes a duty of care on the Defendant automatically. There is therefore no burden on the Plaintiff to lead any evidence to demonstrate the obligation.

The learned counsel to the Defendant was utterly wrong when he proceeded on a wrong and misconceived principle of law to assert that the Plaintiff had not proved breach and damages as if the Plaintiff is suing to claim any damages for the breach.

At the end of this case, the case of the Plaintiff succeeds on the 1st relief for a declaration of right and it is granted. Reliefs two to five are unsuccessful for want of evidence. They are refused and dismissed.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
25/06/2020