

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, COURT 4, F.C.T., ABUJA.**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK**

**SUIT NO. FCT/HC/CV/2359/2015**

**B E T W E E N:**

**FEMI SHEKONI**

}

**PLAINTIFF**

***AND***

**FIDELITY BANK PLC**

}

**DEFENDANT**

**J U D G M E N T**

The Plaintiff, a customer of the Defendant bank went to the Defendant ATM dispensing unit along 35, off 14 Road, 1<sup>st</sup> Avenue, besides the Danjam Plaza on 23<sup>rd</sup> April, 2015. Plaintiff's consternation one of the Defendant's official, Rabi Mohammed and one Emmanuel Ajada (Defendant's relationship Officer) in the company of two security men assaulted him and forcefully seized his car keys. A Matrix Toyota Car he drove to the Defendant's Branch which belonged to his friend, Prince Abdulrasaq Shaide was seized with several documents and personal items

in the vehicle. The Plaintiff wrote the Defendant a letter of protest dated 29<sup>th</sup> April, 2015 which was not accorded with response.

Aggrieved by the conduct of the Defendant, the Plaintiff has now instituted this suit and he is praying this Court for an order that the detention of the Matrix Toyota vehicle was unlawful as well as for an order for the release of his vehicle, forthwith. Plaintiff is also claiming general damages as well as the cost of proceedings from the Defendant.

At trial, P.W.1, the Plaintiff, testified personally whilst D.W.1, Emanuel Agada, the Defendant's relationship manager testified for the Defendant, P.W.1 adopted his witness statement on oath dated 7<sup>th</sup> July, 2015 as well as his further witness statement on oath dated 10<sup>th</sup> October, 2016.

The facts which are considered salient to the Plaintiff's case in summary are that the Plaintiff obtained a loan facility in September 2013 in the sum of ~~N~~3,000,000.00 (Three Million Naira) from the Defendant. The terms and conditions of the loan was duly accepted by the Plaintiff as contained in a letter dated 13<sup>th</sup> September, 2013 titled "Offer of ~~N~~3,000,000.00 (Three Million Naira) Fidelity Service Advance" were noted in the letter admitted as Exhibit D.W.1B<sup>1-3</sup>. It was noted inter alia that the Plaintiff's salaries will be domiciled in his personal account from which the monthly instalmental payment will be deducted.

P.W.1 disclosed that his entire entitlement paid by his former employers in the sum of ₦1,129,000.00 (One Million One Hundred and Twenty-Nine Thousand Naira) was paid into his account in order to settle his indebtedness to the Defendant. He further disclosed that his loss of job frustrated his loan repayment plan. P.W.1 recounted how to his “greatest surprise and bewilderment” two officials of the Defendant, Rabi Mohammed and Emmanuel Ajada in the company of two plain clothes security men forcefully took the keys of the car he drove to the ATM dispensing unit. P.W.1 tendered Exhibit P.W.1H, a recording of the confrontation by the Defendant in a flash drive, Exhibit P.W.1H.

P.W.1 said he was hit by the butt of the security men’s gun which led to his swollen head injury. He tendered Exhibit P.W.1D,<sup>1-2</sup> picture of P.W.1’s face after the incident. P.W.1 also tendered his Medical Report dated 27<sup>th</sup> May, 2015 issued by the Maitama District Hospital and an undated Karu Hospital Limited report signed by one Dr. Anjugu on the 7<sup>th</sup> May, 2015.

He recounted that personal items were in the Toyota Matrix Car with registration Lagos AAA 777 DB at the time of the incident. P.W.1 also disclosed that he reported the incident at the Gwarinpa Divisional Police station where he was eventually advised to seek redress from the Court.

P.W.1 also asserted that the Toyota Matrix vehicle impounded by the Defendant belongs to his friend. By reason of the detention of the car, P.W.1 contends that it is impossible for him to fulfill the assignments given to him by two companies, hence he has deprived of his remunerations. In conclusion, P.W.1 maintains that the incident has exposed him to pains and ridicule.

In the further Written Statement on Oath of P.W.1, he denied that he detained the Defendant/Counterclaimant's operational tools. P.W.1 also insists that the charges and interest on his account are in accordance with the terms of the facility granted to the Plaintiff.

Under cross examination, P.W.1 reaffirmed that it is correct that he lost a job which would have earned him ~~N~~600,000.00 (Six Hundred Thousand Naira) had his vehicle not been detained. P.W.1 denied that his outstanding balance to the Defendant was not in the sum of ~~N~~2,495,621.19 (Two Million, Four Hundred and Ninety-Five Thousand Six Hundred and Twenty-One Naira, Nineteen Kobo).

P.W.1 also confirmed that he alleged that his account was debited with illegal interests and charge. Though P.W.1 admitted that he had nothing to show that he had several meetings with Rabi Mohammed, P.W.1 maintained that he reported to the Police that he was assaulted and was

forcefully deprived of his vehicle. D.W.1, Emmanuel Agada, the Defendant's relationship Manager deposed to two witness statement respectively dated 9<sup>th</sup> February, 2016 and 5<sup>th</sup> February, 2018.

D.W.1's statements which were adopted as his evidence in chief in summary are that it is incorrect that the indebtedness of the Defendant was frustrated by the repayment plan. Concerning the incident between the Plaintiff and the Defendant's officers he said that the Defendant's Branch Manager politely approached the Plaintiff to ask him about his non performing indebtedness. D.W.1 recounted that it was the Plaintiff who flung his car keys at the Defendant's officers. D.W.1 maintained that the Plaintiff was not forcefully taken away neither was he beaten by the agent of the Defendant. He further disclosed that the tenor of the ~~N~~3,000,000.00 (Three Million Naira) loan advanced to the Plaintiff was for a duration of 24 months with an annual interest rate of 21%, management fee of 0.75%, processing fee of 0.25% 2.5, insurance fee and 1% interest default rate.

D.W.1 also noted that the Plaintiff executed a personal guarantee, Exhibit D.W.1A and tendered Exhibit D.W.1H<sup>1-5</sup>, the Plaintiff's statement of account reflecting a debit balance of ~~N~~2,495,621.19 (Two Million, Four Hundred and Ninety-Five Thousand Six Hundred and Twenty-One Naira, Nineteen Kobo).as at the 29<sup>th</sup> January, 2016.

In addition, a document titled irrevocable letter of authority to debit my account for repayment was duly signed by the Plaintiff. It is dated 17<sup>th</sup> September, 2013 was admitted as Exhibit D.W.1D.

D.W.1 further recounted that the Plaintiff has an unpaid balance of ₦1,568,000.00 (One Million Five Hundred and Sixty-Eight Thousand Naira) from his loan hence he has an outstanding balance of ₦2,495,621.19 (Two Million, Four Hundred and Ninety-Five Thousand Six Hundred and Twenty-One Naira, Nineteen Kobo). All efforts to recover the settlement of the outstanding sum from the Plaintiff according to the D.W.1 has been to no avail.

Under cross examination, D.W.1 admitted that Rabi Mohammed and himself had previously visited the Plaintiff in his residence in order to recover the indebtedness. D.W.1 maintained that the Defendant did not engage any agent or security men to beat the Plaintiff. He insisted that the Plaintiff's vehicle was not detained as they expected the Plaintiff to come to pick back his car. D.W.1 insisted that the Plaintiff's property was not detained but abandoned by the Plaintiff who can always pick up his vehicle at any time.

D.W.1 disclosed that he is unaware of the fact that the Plaintiff lost his job. He said that the insurance on the facility was to cover instances of

death or incapacity. Finally he said that the insurance fee was paid by the Plaintiff upfront.

Both Counsel filed and exchanged Final Written Addresses. Defendant's Counsel Austin Dimonye Esq. in his final written addresses dated 30<sup>th</sup> September, 2019 formulated two issues for determination as follows;

1. Whether by the preponderance of evidence adduced, the Plaintiff has been able to prove his claim of detinue and assault.
2. Whether the Plaintiff is entitled to damages and the cost of proceedings.

Ibrahim T. Hassan Esq., Counsel for the Defendant in his written address dated 13<sup>th</sup> September, 2019 formulated two issues for determination they are;

- a) Whether the Plaintiff has given evidence sufficient enough as proof of detinue and the tort of assault.
- b) Whether on the preponderance of evidence, the Defendant has not failed in proving her counterclaim and thereby calling for the dismissal of the counterclaim.

On issue one, formulated by the Defendants' Counsel, the Plaintiff contends that the standard of proof in civil cases is proof by preponderance

of evidential probabilities. He then commended this Court to Section 132 of the Evidence Act which provides that the burden of proof in a suit or proceedings lies on the person who will fail if no evidence at all were given on either sides.

Defence Counsel has urged this Court to examine Exhibit P.W.1H, the flash drive record of the incident critically to determine whether the Plaintiff was beaten and assaulted by Policeman as alleged by the Plaintiff. Defendants' Counsel went on to submit that he who alleges must prove and commended this Court to the decision in **FAJEMIROKUN v. COMMERCIAL BANK (NIG.) LTD. & ANOR. (2009) 1231 SC** under cross examination. Plaintiff responded that he was attacked by two security men from behind.

Learned Counsel for the Defendant, whilst denying that the Plaintiff was not attacked, contends that there is no evidence to establish that the policeman who attacked the Plaintiff acted at the instance of the Defendant. He commended this court to the decision in **KAFOR & ORS v. EDRO (2011) L.P.E.L.R. 4523 CA page 22 paras. A – D.**

It is noteworthy that the Plaintiff's issue one is almost an all fours with the Defendants. This Court's attention was drawn to Exhibit P.W.1H, the video recording which definitely evidence a scuffle between the Plaintiff and



the Defendants. The confrontation, ultimately ended up with the involuntary seizure of the Plaintiff's Toyota Matrix. The video recording was not so clear and steady enough for this Court to have witnessed aspects of the Plaintiff allegation, particularly the alleged beating by the bank's security personnel however it can be deciphered that the Plaintiff was confronted by the Defendant's official. It is not in doubt that his vehicle was impounded by the Defendants' officials.

Two medical reports were tendered in furtherance of the Plaintiff's claim regarding his allegation of assault, one is a Medical Report by the Maitama District Hospital, Exhibit P.W.1F. It states in part as follows: *"The above named patient presented to our health facility on 8<sup>th</sup> May 2015 with a history of generalized body pains and headaches of 2 weeks duration Patient is said to have been involved in an argument which resulted in a fight. Physical examinations were normal; patient was subsequently placed on congestics and sent home"*

Exhibit P.W.1E is another report issued by the Karu Hospital Limited, the report is as follows;

*"Re: SHEKONI FEMI ABDULRASHEED: ADULT, Above named reported to the Hospital on the 24/4/15 C/o body pains, swollen forehead and abdominal pains"*

Both Exhibit P.W.1E and P.W.1F were not impugned under cross examination. In the circumstance, it can be safely concluded that the Plaintiff was constrained to seek medical treatment arising from his encounter with the Defendants on the 23<sup>rd</sup> April, 2015. Though the Defendant contends that the Plaintiff was “politely” approached by the Defendants’ bank Manager “...to look into his non performing loan...” This Court is inclined to believe the version of the incident related by the Plaintiff in the light of the Medical Report which was not controverted by the Defendants. Plaintiff’s Counsel has noted and quite rightly too that in civil cases the standard of proof for assault in tort is on the balance of probabilities or preponderance of evidence. He commended this Court to **CHIEF ITA OKON AQUA v. ETUBOM i.e. ARCHIBONG & ORS. (2012) L.P.E.L.R. -9293 CA.**

Similarly, the Defendant has not denied the fact that the Plaintiff’s vehicle remained in their custody after the incident. Even though it is contended that the vehicle was left behind by the Plaintiff, I am disinclined to believe this version of the story as elicited by D.W.1. It does not seem to tally with the facts and circumstance of this case.

Here, it must be recounted that there is uncontroverted evidence of the reception of the Plaintiff’s Counsel’s letter dated 7<sup>th</sup> May, 2015, Exhibit

P.W.1G<sup>1-2</sup>. By the letter, the Plaintiff demanded for the immediate release of his Toyota Matrix AAA 777 DB, and the Defendant declined and or neglected to respond to the Plaintiff's request thus giving credence to the Plaintiff's testimony before this Court that the vehicle was involuntarily taken from him, a fact which can also be discerned from the video recording presented at trial, Exhibit P.W.1H.

I am inclined to endorse the submission of the Plaintiff's Counsel that a case of detinue and assault has been established before this Court. See the case of **FIDELITY BANK PLC v. RATES ASSOCIATED INDUSTRIES LTD. (2012) L.P.E.L.R. – 9790 CA** where it was held that in action for detinue, all that the Plaintiff needs to prove is wrongful detention of his chattel by the Defendants and after the demand the refusal to return the chattel. All this has been established in evidence before this Court.

Learned Counsel for the Plaintiff, Ibrahim T. Hassan Esq. has rightly submitted that detinue is a continuing cause of action which accrues from the date of the wrongful refusal to deliver up the Plaintiff's good. The wrong continues until delivery of the goods or Judgment is delivered coupled with entitlement of damages for the detention. The case of **ODUMOSU v. AFRICAN CONTINENTAL BANK LTD. (1976) 11 SC** reprint 32 is quite illuminating on this point, it was held that: *“the Plaintiff is*

*entitled to damages for loss arising from his inability to make use of the specific goods and this can be recovered under either head of damage general or special”*

In the light of the foregoing considerations and the evaluation of evidence elicited at trial, this Court’s answer to issue one raised by the Plaintiff’s Counsel is in the affirmative, I hold that the Plaintiff has given sufficient evidence in proof of its claim of detinue and assault. Similarly, the Defendants’ issue one is likewise answered in the affirmative, I hold that the Plaintiff has through a preponderance of evidence proved his claim of detinue and tort of assault against the Defendant.

That said, I now turn to the Plaintiff’s second issue for determination that is whether the Plaintiff is entitled to damages and the cost of proceedings.

Learned Counsel for the Defendant has submitted that the Plaintiff failed to prove his entitlement for the payment of ~~N~~3,000,000.00 (Three Million Naira) representing the cost of proceedings. He posits that this claim is on the same pedestal as special damages which must be strictly proved by the presentation of a receipt or evidence for the amount paid.

It is significant to note that the Plaintiff failed to prove the payment or his entitlement to his money other than raising it as one of the legs of his

relief. I am in agreement with the Defendants' Counsel's submission that this leg of claim must be strictly proved besides, it is wondered what is meant by "cost of proceedings" is it the cost of filing this suit or Court processes filed in Court or could it be Solicitors fees? nonetheless, I will follow the reasoning in the case of **NAUDE & ORS. v. SIMON (2013) L.P.E.L.R. – 20491 (CA) pages 24 paras. A- B** per Akomolade Wilson JCA when she held:

*"The principle of law is that a successful party is entitled charges incurred by the parties in the prosecution of their cases. It is akin to special charges. Once the solicitors fees is pleaded and the amount is not unreasonable and it is provable, usually by receipts such a claim can be maintainable in favour of the claimant"*

Applying the appellate Court reasoning to the facts of this case I am unable to allow this Plaintiff's leg of relief in the absence of pleadings of facts in strict proof that this sum was incurred by the Plaintiff.

I will now proceed to consider the Plaintiff's relief.

Leg one of the Plaintiff's reliefs succeeds.

It is hereby declared that the detention of the Plaintiff's properties, namely; the one cell Latitude DA 30 Computer, Flash Drive (one No.) original receipts and invoices belonging to Rits Halal Nigeria Limited

covering the period January 2012 to December 2014, original receipts and invoices of Aso Ebi Homes Enterprises between January 2012 to December 2014.

Plaintiff's house keys, land documents, pair of shoes, sandals driver's license, money, ID Cards, ATM Cards Bank Tellers and Pay in slips as well as the Toyota Matrix Car with registration number Lagos AAA 777 DB belonging to Abdulrasaq Sheinde is unlawful.

It is further declared that the assault and detinue of the Plaintiff's belonging by the Defendants through its servants, agents and privies of the Defendants on the 23<sup>rd</sup> April 2015 is unlawful.

3<sup>rd</sup> leg of reliefs succeeds.

It is hereby ordered that the Defendant return, forthwith, to the Plaintiff all the Plaintiff's belongings noted in leg one of the Plaintiff's reliefs supra.

The Defendants are hereby ordered to pay the sum of ~~N~~2,000,000.00 (Two Million Naira) general damages for the detinue of the Plaintiff's personal belongings.

The Defendants are also ordered to pay ~~N~~1,000,000.00 (One Million Naira) general damages for assault on the person of the Plaintiff on the 23<sup>rd</sup>

April, 2015 by the Defendants, servants, agents, privies or whatsoever name.

Last leg 6 fails for the reasons hitherto given in this Judgment.

**O. O. Goodluck  
Hon. Judge  
5<sup>th</sup> May, 2020**

### **JUDGMENT IN THE COUNTERCLAIM**

From the onset it must be noted that this Court hereby reiterates all its pronouncements and the evaluation of evidence and findings made in the substantive suit.

It is noted that it is only the Defendant who identified issues for determination on the counterclaim.

The issues were formulated by the Defendant/Counterclaimant's Counsel, Austin Dimonye Esq.;

1. Whether by the preponderance of evidence adduced, the Defendant/Counterclaimant has proved her case against the Plaintiff.
2. Whether the Defendants/Counterclaimant is entitled to the reliefs claimed on the first issue.

The Defendant/Counterclaimant reiterated Section 131(1) of the Evidence Act which provides thus: *“whoever desires any Court to give Judgment as to any legal right or liability dependant on the evidence of facts which he desires shall prove those facts exists”*

As already noted in the substantive Judgment, parties are consensual that the Defendant advance a credit facility of ₦3,000,000.00 (Three Million Naira) to the Plaintiff. The Defendants tendered the Plaintiff’s statement of account Exhibit D.W.1H<sup>1-5</sup> which was not impugned under cross examination. Exhibit D.W.1H<sup>1-5</sup> clearly reflects that the Plaintiff had an outstanding unpaid indebtedness of ₦2,495,621.19 (Two Million, Four Hundred and Ninety-Five Thousand Six Hundred and Twenty-One Naira, Nineteen Kobo).

Plaintiff did not dispute his indebtedness to the Defendant, indeed in his paragraph 14 of his witness statement on oath in reply to the statement of defence and defence to counterclaim he asserted that: *“I further state in response to paragraph 17 of the counterclaim that it was the illegal seizure and detention of my operational tools that frustrated the full payment of the facility at the agreed period”*

The foregoing is an admission against interest. Plaintiff having asserted the existence of a loan advanced by the Defendant. The



Defendant Counterclaimant's Counsel has rightly drawn the attention of this Court to the decision in **OSENI & ORS. v. DAURODU & ORS. (1994) L.P.E.L.R. 2795 SC page 27 paras. B – C** per Igeh JCA, when he held;

*“A fact which is admitted by the Defendant in his pleadings need not be proved anymore by the Plaintiff but in law should be regarded as established at the trial see **OKPARUEKE v. ODIDIKE EGBUONWU (1941) 7 W.A.C.A. 53 at 55”***

Though the Plaintiff asserts that the outstanding sum is illegal charges and deductions, the onus lies on the Plaintiff to lead credible and plausible evidence, particularly as the allegation of illegal charges borders on fraud.

No evidence was led in proof of these assertions by the Plaintiff, consequently, this Court will deem the Plaintiff's allegations as abandoned and same will be discountenanced by this Court.

Learned Counsel for the Counterclaimant recounted that the Plaintiff ascribed his default in the expected monthly repayment to the loss of his job. As rightly submitted by the Defendants, such loss is no excuse for the Plaintiff's failure to discharge his contractual obligations to the Defendants. A. Dimonye Esq. rightly relied on the case of **NWAOLISAH v. NWABUFOH (2011) L.P.E.L.R. – 2115 SC pages 35 – 36** per Adekeye

JSC paras. D – C. I am in allusion with Counsel's submission that failure to pay upon indebtedness on account of job loss is not defence in an action for debt recovery.

In the light of the foregoing considerations, the Defendant/Counterclaim's case succeeds.

I will now proceed to examine the reliefs sought by the Defendant/Counterclaimant.

Leg one succeeds. The Plaintiff is hereby ordered to pay the sum of ₦2,495,621.19 (Two Million, Four Hundred and Ninety-Five Thousand, Six Hundred and Twenty-One Naira, Nineteen Kobo) representing the outstanding balance on the loan facility advance to him by the Defendant/Counterclaimant.

The Defendant/Counterclaimant having failed to state the effective date the 21% interest rate and 1% interest rate is to commence for purposes of computation as well as the principal account payable, this Court cannot make an order that cannot be compiled with.

It is not for the Court to conjecture facts for a party in an action hence this Court will discountenance this leg of the Counterclaimant's relief for being vague and ambiguous.

It is however ordered that the Defendant/Counterclaimant shall pay interest at the rate of 10% per annum on the Judgment sum from the date hereof until the entire sum is fully paid.

Again, the counterclaimant last reliefs for “cost of the proceedings” will also be discountenance for the same reasons given in the substantive suit. The counterclaimant did not plead any fact in support of this leg of its claim, accordingly it is discountenanced by this Court.

**O. O. Goodluck**  
**Hon. Judge**  
**5<sup>th</sup> May, 2020**

**Appearances**

**Plaintiff is in Court**

**Ibrahim T. Hassan Esq.: For the Plaintiff**

**Austin Dimonye Esq.: For the Defendant**