IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 18TH DAY OF SEPTEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/CV/3261/2017

BETWEEN:

BAKHOR CONSULT LIMITED ……CLAIMANT/APPLICANTS

AND

UNITED BANK FOR AFRICA PLC ……..DEFENDANT/RESPONDENT

JUDGEMENT

In this case the Plaintiff Bhakor Consult limited sued the Defendant UBA Plc. The Plaintiff alleged that it is a customer of the Defendant and has its account domiciled in the Ahmadu Bello way Garki 2 branch of the defendant with Account No.:1017523168.

That sometimes in December 2014 it entered into agreement with a company- Integra Renewable Energy services Ltd- herein after call Integra. The contract was for the supply by Plaintiff of 100,000 units of Recharge Gas Portable Stoves for the sum of N934,500,000.00

(Nine Hundred and Thirty Four Million, Five Hundred Thousand Naira) only for by the Plaintiff to be paid the advance sum as agreed it has to secure a surety or guarantor bank to issue an Advance payment Guarantee (APG) made in its favour as requested by Integra. By the APG the defendant bank was to act as surety of Plaintiff guaranteeing the refund or repayment to Integra any amount of money as shown to represent the value of the portion of the contract not carried out by Plaintiff and for which the pay was made. That is what the APG is all about according to the Plaintiff.

The Defendant acted as surety for the Plaintiff being its banker in respect of the contract. The Defendant charged the plaintiff 1% of the total guaranteed sum as consideration for the service it rendered to plaintiff as surety. This the Defendant did by issuing the APG to Integra. That no other entity or party subscribed to or signed ore made the undertaking other than the Defendant-UBA. Plaintiff was not also a party to the APG not withstanding that the APG was issued by her Banker, the Defendant (UBA) to satisfy the condition given by Integra for the payment of the Contract sum to the Plaintiff. The APG was tendered in evidence as Exhibit 3 of the contract sum of N157,500,000.00 was paid to the Plaintiff by Integra into the account of the Plaintiff domiciled with the Defendant. The Defendant only granted the Plaintiff access to N78,850,000.00 not withstanding that the whole of N157,500,000 was credited into the account of the Plaintiff by Integra. The Defendant refused the Plaintiff access to the remaining balance of the money even after Integra intervened and asked the Defendant to grant Plaintiff access to the said monies.

Several correspondences were exchange by the parties all in a bid for the Defendant to allow Plaintiff access. The Defendant refused claiming later that it received a letter from Keystone Bank calling in the sums guaranteed under the APG and that based on that

it will not allow or give the Plaintiff access to the remaining money/fund in her Account. The Plaintiff then instituted this action against the Defendant claiming the following and consequential Orders.

1. **AN DECLARATION** that upon a true and proper **construction of the ADVANCE** PAYMENT GUARANTEE NO 17010 dated 13th day of April,2015, issued by the defendant to Messrs INTEGRA RENEWABLE ENERGY SERVICES LTD, the Guaranteed sum therein could only be called in or demanded by the employer mentioned therein.
2. **A DECLARATION that by the terms of the ADVANCE PAYMENT GUARANTEE NO 17010 dated 13th day of April,2015, issued by the defendant to Messrs INTEGRA RENEWABLE ENERGY SERVICES LTD, the defendant was no longer bound by the terms of same after the 12th day of October, 2015 and was duty bound to release the sum paid to the Plaintiff thereunder after the said date.**
3. **A DECLARATION that the defendant is in breach of the banker-customer relationship/Contract with the Plaintiff when it unilaterally denied the Plaintiff access to her funds in the sum of N78,650,000.00 (Seventy Eight million, six Hundred & Fifty thousand Naira) only, on account of the ADVANCE PAYMENT GUARANTEE dated 13th day of April,2015, which neither cancelled nor called in by the employer which validity period had since expire.**
4. A DECLARATION that the defendant has no jurisdiction whatsoever in refusing, failing, neglecting to pay, or otherwise withholding and denying the Plaintiff access to the sum of N78,650,000.00 (Seventy-Eight Million,six Hundred & fifty Thousand Naira) only, which was duly paid into the plaintiff's

Account No. 1017523168 by her employer INTEGRA RENEWABLE ENERGY SERVICES LTD.

5. A DECLARATION that the refusal of the defendant to pay, release to and/or grant Plaintiff access to the balance contract sum of N78,650,000.00 (Seventy-Eight Million, Six Hundred & Fifty Thousand Naira)only, despite the requests and demands of both the Plaintiff and the employer under the ADVANCE PAYMENT GUARANTEE, constitutes a flagrant breach of the duty owed the Plaintiff by the defendant.

6. AN ORDER of this Hon. Court mandating the defendant to immediately release and pay to the plaintiff the sum of N78,650,000.00 (Seventy-eight million, six hundred & fifty thousand Naira) only,being the balance contract payment made to the Plaintiff by her employer Messrs INTEGRA RENEWABLE ENERGY SERVICES LTD through the plaintiff's Account NO. 1017523168 domiciled at the Ahmadu Bello Way, Garki 2, Abuja, FCT branch of the defendant.

7. AN ORDER mandating the defendant to pay to the plaintiff a sum representing 20% interest per annum, based on applicable banks lending rate, on the above sum of N78,650,000.00 calculated from the 1st day of July,2015 till the date of Judgment.

8. AN ORDER mandating the defendant to pay to the plaintiff the total sum of N159,334,000.00 only, being the loss of business profit incurred by the Plaintiff on account of the breach of the defendant's banking obligations to the plaintiff.

9. The sum of N500,000,000.00 as general and exemplary damages.

10. The sum of N10,000,000.00 as the cost of this action.

11. Interest on the Judgment sum at the rate of 10% per annum from the date of judgment till final liquidation of the Judgment sum.

The Defendant were served. They filed a statement of Defendant denying several paragraphs of the Statement of Claim. The Plaintiff opened its case on the 20/2/19. It called a witness PW1 who testified and tendered several documents admitted and marked as Exhibit 1-13. The Court rejected a document which the Defendant Counsel wanted to tender through the PW1 during or in the course of the cross-examination. The Court gave its reason for doing so which is mainly because the document was not pleaded and not relevant too 11/2/20. The same day the Plaintiff opened and closed its case. The Court reserved the matter for final Address to be adopted on 1/4/20. But due to the Covid-19 pandemic the Court further adjourned the case for 3/6/20.

On the 3/3/20 the Defendant filed a Preliminary objection for an Order to strike the matter out for want of jurisdiction. The Plaintiff responded to the Preliminary objection and incorporated same in their final Address which was served on the Defendant. In his final written address the Defendant raised 5 issues for determination which are:

1. Whether this Court has jurisdiction to entertain this suit in the absence of proper and necessary parties-Integra and keystone bank Ltd.
2. Whether the present claim under the Advance Payment Guarantee is maintainable having been brought after 12th day of October,2015.
3. Whether the parties by conduct have waived strict compliance with respect to the payment of the sum of N157,500,000.00 (30% mobilization of the contract value) and supply of 10,000

unit of the double Burner Portable Gas cooker stove in the 1st batch upon receipt of the mobilization amount aforesaid. Alternatively to issue No.3 above.

4. Whether the Plaintiff has breached the contract by allegedly supplying. Only 8000 units of portable stove instead of the 10,000 units agreed by the parties.
5. Whether the plaintiff proved their claims and is entitled to the several reliefs claimed (sic).

ON ISSUE NO.1

On the Court's jurisdiction to entertain this suit the Defendant submitted that the necessary parties are not in the case and as such their absence will make it difficult for Court to fairly deal with the issue in this suit.

Please note that this Court had earlier dismissed the Preliminary Objection which was predicated on this issue. The Court had held in the Ruling that it has the jurisdiction to entertain and has entertained this suit. The Court hereby adopts the said Ruling as if the same is reproduced here. This Court has jurisdiction to entertain this suit. The absence of Keystone bank and Integra is not necessary. They are not necessary parties to the suit also. So this Court holds. This issue No.1 is answered in the positive.

ON ISSUE NO.2.

On the present claim under APG being maintainable having been brought after 12/10/15, the Defendant submitted that the Court is enjoined to give Ordinary meaning to the words in a contract. That by the agreement of the parties the present claim of the Plaintiff made on 15/1/16 and 27/2/17 and suit concerned in 23/10/17 was ineffective as it was made 2 years after the

expiration of the APG, going by the agreement of the parties. He referred to:

COCACOLA (NIG) LTD Vs AKAINSANYA (2017) 17 NWLR (PT.1593) 74@128 PARA A-F

IBRAHIM Vs BADALE (1996) 9 NWLR (PT.474) 593

He concluded that the present claim is not maintainable under the APG-Exhibit 3.

ON ISSUE NO.3

Whether by the conduct parties have waived strict compliance with respect to the payment of N157, 500,000.00 and the supply of the 10,000 units of the double burner gas stove. Upon receipt of the money aforementioned, the Defendant Counsel submitted. That by the correspondences show the Integra and plaintiff shows that they agreed to vary the contract as contained in the AFG and as such they have waived their right to follow the Agreement in the APG. That the mutual abandonment of the existing rights under the Original Contract (Exhibit 1,2,3) between Integral and the plaintiff is sufficient consideration to support the variation of the contracts vare deemed to have varied the terms of the original contract- Exhibit 1,2& 3 and are deemed to have intentionally decided to give or waive their rights, interest or benefit in the said original contract. He referred and relied on the case of:

NPA Vs IBRAHIM & CO (2018) 12 NWLR (PT.1632) 62@88

NBA Vs OLATUNJI (2015) 5 NWLR (PT.1452) 203@242 PARA D-H

That Plaintiff supplied 8000 units of the Gas stove when the Defendant released the said sum of N78,850,000 that nPW1 also testified that the supply of 8000 units was on the instruction of

Integra. That since the parties have by their mutual consent waived their right and varied strict compliance with the terms of the Exhibit 1,2& 3 the Obligation of the Defendant under the APG-Exhibit 3 has been discharged at law. He urged Court to resolve this issue in favour of the Defendant. But that if the Court overrules the Defendant they make the alternative submission on issue No.4

ON ISSUE NO.4:

Whether plaintiff breached the contract by supplying 8000 units of stove instead of the 10,000 units agreed by the parties, the Defendant Counsel submitted that plaintiff breached the contract by supplying 8000 instead of 10,000 stoves as agreed by the parties in the contract Exhibit 1,2& 3. He cannot therefore benefit from the contract in which it has deliberately breached. He referred to the case of:

ADDEJI Vs OBAJIMI (2018) 16 NWLR (PT.1644) 146 @177

M.T.N (Nig) COMM.Ltd Vs CC INV. LTD (2015) 7 NWLR (PT.1459) 437@ 466

He urged Court to resolve issue No.4 in the Defendant's favour.

ON ISSUE NO.5

Whether Plaintiff has proved its case to be entitled to relief claimed the learned Counsel submitted that Relief 4 a,b,e and f sought by plaintiff are declaratory which deals with proper interpretation of Exhibit 3, the APG Agreement and order to release the sum of N78,850,000 to plaintiff. That the money belongs to 2 persons, the Keystone bank and Integra who are proper and necessary parties but were not joined. That there is no input from the 2 companies on the interpretation of the APG. That

Court has no jurisdiction to grant the relief sought by the plaintiff since they are not parties in this suit. That the exclusion of the 2 companies will occasion a grave miscarriage of justice against the principle of Audi Alteram Patem. He urged the Court not to grant the rel;ief sought in paragraphs listed above. He relied on the provision of Order 13 Rule 18 (1)-(3) FCT H/C Rules

ONYEWUSI Vs OLAGBEMI (2018) 14 NWLR (PT.1639) 207@317

AMUDA Vs AJOBO (1995) 7 NWLR (PT.406) 170@182

FGP LTD Vs DURU (2017) 14 NWLR (PT.1586) 433@516

ON RELIEF 4 (C) & (D) : on Declaration that Defendant is in breach of Banker- Customer relationship for denying plaintiff access to the said sum of N78,850,000.00 the Defendant Counsel submitted that the contract APG upon which the claim is hinged is between 4 persons Plaintiff, Defendant, Integra and that it is only the plaintiff and defendant that are parties in this suit before this Court as others are not joined.

That Defendant has right to deny the plaintiff right to the money as the money was paid for specific purpose. That Defendant as guarantor is right to ensure judicious use of the funds released. That Defendant is not in breach for refusing plaintiff access to the money. Because the money does not belong to the plaintiff but to the 2 companies Integra and Keystone Bank.

The Counsel asked a question thus:

Question: Did the Plaintiff prove absence of any justification for denying plaintiff access to the fund paid in by the 2 beneficiaries Integra and Keystone Bank?

He answered the question thus:

Answer: the plaintiff offered the evidence in proof of these two Declarations.

Note: the above answer as stated by the Defendant settles it. Since the Defendant Counsel had answered his own question in favour of the plaintiff. This Court therefore holds that plaintiff answer the question correctly and as such is entitled to the relief in relief 4.1 c & d. so this Court hold.

ON RELIEF 41(g) (h) (i) &(j) the Defendant Counsel submitted, that the Defendant Counsel submitted, that the plaintiff did not particularize the special damage of N159,334,000. He did not specifically plead same. He did not prove it either. He did not give any evidence of the net profit also. Since the plaintiff did not prove or establish particularly, specially directly and substantially, directly and substantially, he cannot sustain such claims. He referred to:

M.T.N Vs. CC INVESTMENT SUPRA

CHIADI Vs AGGO (2018) 2 NWLR (PT.1603) 175 @ 222-223 PARA H-G

He urged the Court to refuse the head claim.

On N500 Million General and Exemplary damages claimed by plaintiff the Defendant counsel submitted that Exemplary damages are only applicable in case of breach of promise of marriage. That general damages can only occur where Defendant conduct is outrageous, ……punishment where it discloses malice fraud, cruelty, in so have flagrant disregard of the law. That in this case there is nothing to indicate the defendant was actuated by malice or that the defendant was propelled by ill-will to humiliate disgrace or treat the plaintiff badly. That there is no

basis for the claim of N500 Million as general and exemplary damages. He relied on the case of:

FBN PLC Vs A-G FEDERATION (2018) 7 NWLR (PT.1617) 121 @162 PARA D-E

ALLIED BANK NIG.LTD Vs AKABUEZE (1997) 6 NWLR (PT.509) 374 @406 PARA D-E

On the claim of N10, Million as cost of the suit the Defendant Counsel submitted that there is no support of such claim. It did not specify whether the claim covers the Solicitors fee. He urged the Court to refuse the head claim. He referred to:

SPDC LTD Vs OKEH (2018) 17 NWLR (PT.1649) 420 @ 440 PARAS A-B

He urged Court to refuse all the monetary claims as it is only gold digging, unmeritorious and fraudulent.

Upon receipt of the Defendant's final written address the Plaintiff Counsel filed the Plaintiff's final address. In it he adopted the plaintiff's response written address in response to the Preliminary Objection as his response to the Defendant's Final Address as if the same is out here seriatim. He urged the Court to deem the said incorporated written address in opposition to the Preliminary Objection as argued as if it were reproduced here.

The Court hereby grants the application. The Court deemed as reproduced the said response by Plaintiff Counsel as this plaintiff's response to defendant final Address.

In the Final Address the Plaintiff Counsel raised an issue for determination:

“whether in the circumstance of this case, the plaintiff has made out a case for the grant of the Relief sought against the Defendant".

The Plaintiff Counsel submitted that plaintiff has discharged the initial burden which the law places on her in this suit. She called PW 1 who testified and tendered 13 documents marked as exhibit in support of its claim. That testimony of PW1 remains unchallenged and unimpeded under the furnace of cross-examination. that the case of plaintiff is whether there is a breach of the banker-customer relationship by the defendant over her refusal to allow plaintiff access to her fund in the custody of the Defendant as domiciled in her said Bank Account with the Defendant and whether the Defendant is justified by and relying on the terms of the APG to deny the said access.

That having received the said funds in her credit in the said account with Defendant; the Defendant has no justification to refuse her access to it. That the APG did not operate in the circumstance as an excuse for defendant to refuse her access to draw as the said fund.

That as customer the plaintiff is entitled to any amount standing in its account except if the customer is indebted to the bank. He referred to:

ATLANTIC BROS LTD Vs ECOBANK (CA) CA/L/455/12

UMAR BANK Vs NWOYE (1996) 3 NWLR (PT435)135 (SC)

That the reason for refusal of access by Defendant is not justified because the APG is only between Defendant and Integra where Defendant stood and acted as surety for a monetary consideration to guarantee payment of a given sum of money to Integra. When

demanded by Integra upon any failure to perform the contract for which the payment was made.

That the APG created only a liability on the surety to pay the said money but it did not create a lien or a hold on the money paid into the plaintiff' account.

(2) also that where and if there is a lien in such money already paid into plaintiff's account by the APG, such lien or call can only be activated by a demand or call made by no other than the Integra – the employer in the APG. But in this case the Defendant claimed that Keystone Bank was the one that made the call on the money. The said Keystone was neither the designated employer nor the person to whom the surety –(Defendant), is obligation was created or addressed to. In under the APG.

(3) Also that by exhibit 14 tendered by DW1 which is the purported letter of call on the money shows that it does not qualify as a call under the APG. It did not make a call on the guaranteed fund but threaten to make a call if certain steps were not taken.

The said Exhibit 14 does not contain all that were listed in exhibit 3 which any call for the fund should contain like the valuation certificate. More so it was a mere latter or notice of default given by a party who is not even the employer under the APG. It is only employ Integra. That can give such 7 days notice and the letter of call itself.

That by October 12, 2015 the validity of the APC had expunged and it was no longer operational. So whatever lien on the fund of plaintiff in her account was automatically removed in the absence of a valid call on the said fund. So Defendant has no justification

whatsoever to deny plaintiff access to the said fund. He referred Court to Exhibit 1,2,3,14 tendered by Defendant. Which are before the Court.

That DW1 under cross-examination confirmed that the reason for the said refusal was because of the said Exhibit 14. That there was no call made by Keystone Bank because the bank only wrote a Notice of Default and not a call on the guaranteed sum. Again the bank has no mandate to make a call under the APG. So the Defendant would only be acting on her own detriment in countenance, giving effect to or refusing plaintiff access to the funds based on such an illegal mandate.

That the APC is clear as to who can make a call on the APG. So there is no question of disagreement as to who can make the call. Moreover the Integra who had mandate to make a call had by Exhibit 9,10 & 11 written to the defendant to release the …….to the plaintiff. Again in Exhibit 10 the Integra disowns the purported claimed to have been made in Exhibit 14.

On the allegation of breach of contract by plaintiff by supplying only 8000 units instead of 10,000 units as agreed the plaintiff submitted that, that the contract was between plaintiff and Integra and that defendant or Keystone were not parties to same. The Defendant and Keystone has no locus to allege or claim breach of a contract in which they were not parties. The Defendant is only a surety to the employer, Integra on money paid by Integra via Exhibit 3- the APG Defendant therefore has no right to make any claim of breach of the contract. He referred to the case of:

OGUNDARE & ANOR Vs OGUNLOWO & ORS (1997) LPELR-2326(SC)

That it is only Integra that has the right to claim breach but they are not and never claimed or raised any allegation of breach. Because there was no breach of contract between Integra and plaintiff. Again Defendant and Keystone cannot claim breach. He urged court to so hold. He referred to:

REBOLD IND. LTD Vs MAGREOLA & ORS (2015) LPELR-24612 (SC)

That Integra wrote and requested that Defendant release the monies to plaintiff to enable it further execute the contract.

That the argument and submission of the Defendant that refusal to release plaintiff's money/fund cannot avail them.

That Exhibit 15 admitted by the court was made ……..in 2016 several months after the APG had elapsed and ceased to be operational: that it was made in anticipation of this case. That Exhibit 15 is an afterthought as the APG expired in October, 2015 while Exhibit 15 is dated 12/5/16. That DW1 admitted that Exhibit 15 was written 7 months after the APG-Exhibit 3 had expired. She also admitted that defendant would be wrong to deny the plaintiff access to the said fund if the APG was no longer in operation. Where plaintiff had not breached any of the terms and condition in Account opening contract between it and Defendant. She admitted hat plaintiff was not in breach of Account opening contract.

ON ISSUE NO. 2 in Defendant Final Address, the Plaintiff Counsel submitted that the submission of the Defendant on that is contrary to the admission of the DW1 and should therefore be discountenanced as it is contradictory and confusing.

Again on Issue No. 3 in the final address of Defendant in paragraph 4.03.15, that since parties Integra & Plaintiff agreed to

vary the terms of contract as to number of stoves to be supplied with the payment made so far, the Defendant became discharged of her obligation created on her by Exhibit 3-the APG.

That the new position of the Defendant that the obligation created on her by the APG has been discharged by reason of the variation of the contract is detrimental to the case of the defendant as it confirms the position of the plaintiff that there was no operative APG to justify the withholding of the plaintiff's funds. If the APC and obligation was discharged there is no right for Defendant to withhold the said funds. That Defendant is liable for withholding the money and are liable as per the plaintiff's claims. That there is a gross breach of the duties by Defendant refusing plaintiff access to the fund. Defendant is therefore liable to pay damages to plaintiff and liable to be ordered to release the sums in issue to plaintiff with interest.

He urged Court to grant the Declaratory reliefs (a)-(e) sought by the plaintiff in this suit. So also to grant relief (f) mandating the Defendant to release and pay plaintiff the said sum of N78,650,000.00 as domiciled at the Ahmadu Bello way Garki 2 Abuja FCT branch of the Defendant.

That on relief (g) plaintiff had established and proved special damages as claimed. That she tendered Exhibit 13 and that the Defendant did not impugned the said evidence, it did not deny or counter same in her pleadings too. That the evidence of PW1 on that was not impugned, challenged or contradicted by Defendant. He referred to the case of:

JOHNNY Vs ADOJA (2007) ALL FWLR (PT.365) 527@544 PARA C-B(CA).

That all the evidence as to the 20% interest on the withheld sum are all deemed admitted by Defendant. That Defendant is bound to return the money withheld with all accrued interest. He referred to the case of:

BMNL Vs ILEMOBOLA LTD (2007) ALL FWLR (PT.379) 1340 @1380 PARA D-E

He urged Court to grant the Relief mandating Defendant to refund the money and pay interest of 20% so also Court to grant Relief No.(h) which is clear on loss of business profit by plaintiff which hindered her from completing the supply of the 70,000 units of the stove. That the Defendant did not specifically deny averment in paragraph 21-26 of the statement of claim which is to that effect. That Defendant did not also lay any evidence to challenge same. That Defendant should bear full responsibility for any loss of business by the plaintiff and Court to grant the Order mandating plaintiff to pay the sum of N154, 334,000.00 which is the amount loss by plaintiff.

On General and Exemplary damages claim, Plaintiff Counsel submitted that Defendant breached the Banker Customer relationship between it and plaintiff. That defendant conducts calls for payment of damages. That in Exhibit 5 shows plaintiff's plea to Defendant to help investigate plaintiff's losses but Defendant refused. That the consignment is rotting and remains unsalvageable. That payment of exemplary damages will certainly serve as a lesson to Defendant while dealing with their customers in future. That it should exercise its discretionary powers to grant general damage in plaintiff's favour. He referred to case of:

SALAJA Vs SALAJA & ORS (2013) LPELR-21967(CA)

That the grant of general damage is a direct and natural consequence of the breach of customer Banker relationship by Defendant.

ONYEMEH & ANOR Vs IWUEZE & ANOR (2013) LPELR-21879 (CA)

He urge Court to grant all the reliefs sought including the cost of the suit as well as post-judgment interest on the Judgment sum. He urged Court to also hold. That plaintiff has established its case and is entitled to all the reliefs sought.

COURT:

It is a common mantra in the business world that parties are bound by the contract they voluntarily entered into. This is captured in the latin maxim Pacta Sunt Servanda. Such party may be 2 or multiple. They may be human persons or corporate persons or a combination of the two. Whatever their nature or there intention, once through their actions or body language or written communication, they agreed and voluntarily legitimately agreed to be bound by their actions and inactions, they are bound forever unless and until they agreed that they are no longer bound or they have fulfilled their respective obligations and duties there under. For as long as the agreement is still “alive” and “breathing”, they are bound by its terms and conditions. This means that any breach of the terms of such agreement, the party in breach will be held “civilly” liable and that attracts some liability in form of damages payable to the offended party. The Court quantifies such damages after hearing from all the parties and after deep and detailed evaluation, determination, and consideration action of all the facts and evidence of all the parties. This applies even in Customer-bank relationship.

In this case the plaintiff alleges that the Defendant had breach its agreement that is the Customer-Banker relationship, in that it refused to allow the plaintiff access to its funds which were deposited in the plaintiff's bank account with the Defendant UBA. The Defendant had denied that allegation stating that its action was legal and not a violation of the said agreement.
That they acted based on the APG and the instruction of the employer, Integra, who, in the first place had paid in the money into the said plaintiff's Account. The Defendant supported these defence with documents- letters from the Employer, Integra and letter from Keystone Bank too.

The plaintiff had claimed that the obligation of the Defendant under the APG had expired as at the time it refused plaintiff access to the said funds. They also claimed that the Defendant had used the said fund in its coffers to do lending business and should therefore account for the profits it made using their money for lending among other claims.

The question before this Court are:

1. Going by the testimony of the plaintiff witness vis a vis that of the defendant together with the documents tendered in evidence for and against, can it be said that the plaintiff has established the fact that the Defendant were actually in breach of their customer-banker relationship and as such the Court should hold them "civilly" in breach/liable and therefore grant the claims of the plaintiff?
2. Put different can it be said that the Defendant were in breach of the Banker-Customer relationship which it has with the plaintiff in this case.

3. Or can it be said that the Defendant has been able to rebut and controvert that allegation of breach of the Banker-Customer relationship so much so that the claim of the plaintiff should NOT be granted as prayed.

   Without answering the question seriatim it is the humble view of this Court that the Defendant breach the Banker-Customer relationship it has with the plaintiff by denying the plaintiff access to its fund particularly so when their obligation under the APG had expired. Denying plaintiff access to the said fund is a breach of the agreement, Banker-Customer relationship. This is because the denial came even after the Guarantee had expired. That breach is fundamental and the Defendant knows it.

   To start with there is no denial about the existence of the APG. There is no point repeating the story of the APG and the role played by all the parties thereon.

   It is important to state that the issue before this Court is whether or not Banker-Customer relationship was breached and if so what damages are applicable. This Court will equally not go into the details of what qualifies as banker-customer relationship because the parties have exhausted that in their submission in the proceedings and in their respective final written addresses and the Court had done Justice to that by doing a detailed summary on the 2 Final Addresses.

   To start with the APG was signed on the 13/4/15.

   It has a life span of about 6 months and by 12/10/15 it has expired. The obligation of the Defendant as surety also expired the day the APG expired. That means that upon the expiration the Defendant has no right to place a lien on the money denying plaintiff access to the money after that day

12/10/15. Defendant doing so is a breach of the Banker-Customer relationship. So this Court holds.

It is imperative to state that there is no how this Court can determine the issue in dispute in this case which allegation of breach of Banker-Customer relationship without delving into, or at least taking a deep peep into the APG, the Addendum, and the contract, all of which heralded the relationship between the plaintiff and defendant. This means that the Banker-Customer relationship and the alleged breach thereof cannot be isolated from the issues where the journey started from. Without the contract and Addendum the APG would not have come up and the defendant would not have acted as surety and also there would not have been any Banker-Customer relationship between the parties in this case. A look at the exhibit 2 –Addendum, the plaintiff had agreed to deliver the goods within 3 weeks upon payment of the 30%. A look at the APG, the defendant agreed and actually guaranteed the money as agreed. That is the 30% of the total amount. This money was credited as agreed- (N157, 500,000.00). The Defendant gave the guarantee as agreed to pay the employer the said N157,500,000.00 and the employer credited the money to the account of the Plaintiff in the Defendant's Bank. By the APG which is the binding document between the parties in this suit, the obligation of the defendant started from the day of the APG, which is 13/4/15. It was to last latest till 12/10/15, after which the defendant obligation ended. The APG stated that the beneficiary can jointly call on the money if the plaintiff failed to fulfil its obligation of supplying the goods as agreed. The same APG stated that unless the call is properly made in writing the Defendant should not honour say. Again in the APC, it was stated that "the Defendant gaves

the irrevocable Guarantee that payment of the advanced fund, (in the event of any default) will be made when there is a written Demand by the Employer. This is stated in paragraph 3 of the APG. That employer is Integra and not Keystone Bank.
It is important to note that the employer as described by the APG is Integra Renewable Energy Services Limited. From the letter of the APG, Keystone Bank is not a party to the main contract or even the addendum. It is only a co-beneficiary to the APG Agreement. The whole APG concerns mainly the plaintiff and Integra save the beneficial side of the agreement.

Again a look at the letter written by the plaintiff to the Integra dated 17/6/15 Exhibit 8 shows that there was demand for money to enable the plaintiff pay for the goods. In paragraph I the plaintiff wrote:

"…we will like to use this medium to formerly request for additional payment for the stoves already manufactured and ready for delivery."

This letter was written to the employer. Based on that the employer wrote to the Defendant confirming delivery of the goods in their letter of 18/6/15. They pointed out that the items has been delivered and were in storage at the designated facility at National Stadium at the Velodrome in Abuja. The letter has in its last paragraph stated thus in Exhibit 9 paragraph 3.

" kindly accord Bhakor all necessary assistance and release MORE FUNDS to them to enable them fulfil the terms of their APG and deliver the outstanding 22,000 units of the …portable stoves."

In exhibit 10 –a letter dated 30/6/15, written while the guarantee and APG was still subsisting shows and states:

“we want to state that Bhakor Consult is not in Default of Delivery.”

This is a response of Integra –Employer to the alleged letter written by Keystone alleging default by the plaintiff as at 17/5/15. It was not a letter to recall as Defendant’s claims. The Employer also confirmed that:

“The quantity of the double burner gas cooker … due to us is 30,000 units … is currently housed in the government designated storage facility”.

The letter equally stated that:

“…the 22,000 units which we have confirmed has been manufactured and are ready for delivery to Nigeria pending shipment.”

The above is self explanatory. There is no need to elucidate on that.

In a letter of 9/7/15 written also while the APG was still subsisting Integra confirm receipt of the 8000 units of the product. In the last paragraph, the company authorised release of fund thus: Exhibit 11 states:-

“…we hereby authorised the further release of N40,000,000 to them (Bhakor the plaintiff) to enable them promptly fulfil their term s of the APG and deliver the outstanding 22,000 units of the …….stove”.

A look at exhibit 14- letter written by Keystone Bank on the 17/6/15 advising the Defendant that Plaintiff failed to deliver the 10,000 Gas stoves, was only a notice and note a recall. In the letter exhibit 14 paragraph 4 it states.

“…please take notice that unless you take steps to remedy the failure within 7 days of this letter, we shall be constrained to formally call in the APG you issued as security for the advance

payment we made to your customer in respect of the contract".

The above is only a notice to recall and not a Recall as contained in the APG. Meanwhile Keystone bank never recalled the money. Again in the letter the same Keystone pointed out in paragraph 3 that the contract is between the plaintiff and Integra-the Employer

"…your customer failed to deliver the 100,000 stove as stipulated in the contract dated 4th March, 2014 between your customer (plaintiff) and Integra…."

Also worthy of mention is the letter of Integra dated to 12/5/16. It is exhibit 15. In the letter Integra among other things, pointed out that plaintiff failed to deliver and decided to make a call on the money by instructing that the Defendant restrict further access to funds by placing a lien on the money. It is unfortunate that the employer wrote this letter after the expiration of the guarantee because as at that time the Guarantee has expired and the Defendant's right to place lien on the money has expired too.

Worthy of mention is the letter marked "Rejected" which the Defendants sought to tender which was referred to in the letter written to the Integra by the plaintiff on the 18/6/15, where the MD of Bhakor referring to the confirmation of delivery letter presented to UBA on behalf of Bhakor. That letter was rejected because it has nothing to "add" or "subtract" in this case which concerns the alleged breach of Banker- Customer relationship between the parties in this suit. There is also the celebrated letter from keystone bank Exhibit 14 dated 17/6/15, notifying the defendant that the plaintiff has failed to deliver the 100,000 gas cookers. The Bank also threatened to formally call in the APG but never did. This

document was meant to be a notification of default to deliver and not a call on the money. But it stated that plaintiff failed to deliver 100,000 of the stove. At that point the Defendant had only released money for 30,000 and not for 100,000 units as keystone Bank erroneously state.

Most importantly in the APG the parties agreed that any notification for a recall can only be legitimate if it is jointly done by Integra and keystone and not keystone alone. To that extend the letter has no evidential weight. Moreover it has almost little or nothing to offer in the issue before me in this case. So the Defendant anchoring on it as their reason to breach their Banker-Customer relationship is wrong, misconceived, fundamentally and grossly erroneous.
Exhibit 15 the letter of 12/5/16 by Integra addressed to the Defendant complaining that they were yet to receive any consignment of the Gas stove from plaintiff is contradictory. The same Integra had earlier in a letter Exhibit 9, where the same Integra had confirmed delivery of 8000 units of the product. They further had stated that the items have been delivered and are at the Government storage facility in Abuja. They even stated that more funds should be released to the plaintiff to enable them fulfil the APG and deliver the outstanding 22,000 units. Exhibit 9 was written a day, (on 18/5/19) after the letter from Keystone. The present letter complaining about not receiving the consignment was written on 12/5/16. As at that day the Defendant's right /obligation at the APG has expired. The Defendant had no power in the APG, the guarantee expire and they no longer have power to place a lien on the money going by paragraph 6 page 3 of the APG which states- Exhibit 3 –APG

"This Guarantee shall come into effect from the date the total advance payment sum of N157,500,000=(…) is received as advance payment by the surety into the contractor's Account No. 1017523168 domiciled at the UBA…and shall remains in force until advance payment sum has been fully utilized for the purpose of the contract or until a period not later than 6 (six) months from the date of execution of this Guarantee, whichever is earlier, But not beyond the 12th October, 2015 after which date our obligation SHALL cease and this guarantee SHALL stand automatically cancelled whether or not it is returned to us for cancellation and claim for settlement received after expiry shall be ineffective."

The above shows that the Defendants deal or concern in the APG had expired on or before 12/10/15. From that date they have no power to do anything on the issue pertaining to the APG. They have no power to place a lien on the money in the account of the plaintiff because their obligation has ceased. This means that the Defendant refusal to allow the plaintiff access to the money in their custody in Account No. 1017523168, belonging to the plaintiff, is a fundamental breach of the Banker- Customer relationship. As at the time the plaintiff wanted access to the money the power of the Defendant in the APG has expired. There was no joint notification of Default or a joint call of the money as agreed in the APG.

Yes keystone Bank attempted to make a notification while the APG was still effective, that notification of Default was incomplete and one sided. It was at best a partial notification because the Employer- Integra was not a party to it as agreed. It was only a notification and not a call. So this Court holds.

Again by the time Integra notified the Defendant about the plaintiff alleged default and when they made a call on the money the Defendant Guarantee in the APG has expired. It was no longer in existence having expired since 12/10/15. The Defendant had no right to withhold access to the fund. That fund is just like any other money in the Account of the plaintiff. This is because the APG had expired and no longer effective and alive for Defendant to take any justifiable legal action. Denying the plaintiff access to the money is a Gross Breach of Banker-Customer relationship. So this Court holds.

It is a fundamental responsibility of a Bank to allow their Customer access to its fund unless there is a Court Order restraining them from doing so. In this case there is no known Order of any Court which the Defendant relied on to restrict the plaintiff access to their fund in the said account. The action of the Defendant in that regard is an actionable wrong and the Defendant knows it. It is a breach of that fundamental policy in Banker-Customer relationship. Going by the content of Exhibit 5 letter written by plaintiff to the Defendant dated Friday 15th of January, 2016 about 3 months after the expiration of the Guarantee, the plaintiff explained to the Defendant the difficulty they were facing and the issue of demurrage giving the Defendant the option of clearing the goods from the port in order to help salvage situation so as to deliver the goods etc.

Worthy of mention is Exhibit 6- Letter of demand for release of the fund in the Account in issue written to the Defendant by the attorneys of the plaintiff. This letter seals the deal on the claim of the Defendants refusal to allow plaintiff access to her funds in the said account. This letter was written on 27/2/17, over one year and a month after the plaintiff had solicited for help the Defendant.

Exhibit 7 puts no one in doubt and further confirmed that the Defendant blatantly REFUSED to allow the plaintiff access to their fund claiming that keystone made a call on the fund and conflicting directive by Integra. But in actuality keystone did not make a call, they only made complained of default it only made to perform and nothing more. It is the employer that can call the fund. It never made any call and could not have done so, call can only be done by the Employer. The Defendant anchoring on the fact that as at 23/3/17 keystone had not withdrawn or advised withdrawal of the call (notification) before expiration as reason for refusal to allow the plaintiff access to their fund is misleading and misconceived because keystone never made any call on the said fund going by content of Exhibit 14. They only gave a notice and not a call. Exhibit 14 state:-

"TAKE NOTICE that unless you take steps to remedy this failure … we shall be constrained to formally call in the APG you issued as security for the advance payment. We made to your customer in respect of the Contract."

The above say it all. There was no call by keystone. So the Defendant having that as reason to deny Plaintiff access to its fund is a BREACH of Banker-Customer relationship period, so this Court HOLDS.

Ibi Jus Ibi Remedium. Is a principle that applies where there is a wrong. This principle applies in this case because the Defendant are in breach. They are liable to that. The plaintiff is entitled to damages for the breach. So this Court holds.

Exhibit 4- the Profoma Invoice, clearly show that the details of the transaction. It confirms the contract, the quantity of the goods, the unit price as well as the total amount of the goods. This document was signed by the manufacturers. In

business, time is money, and in shipment delay incurs demurrage. The plaintiff had clearly cried out about the demurrage they are incurred because of the delay and subsequent refusal to release fund. They stated this in Exhibit 5. They equally referred to same problem in Exhibit 6. The denial of access made them suffer more demurrage. It equally made them loose the goods which was laying waste at the port because Defendant stifled them their funds.

The allegation of the Defendant using the money to trade is true. The Defendant could not constructively rebut or deny that allegation. This Court believed the plaintiff and hold that it suffered losses and deserve damages.

Exhibit 12 & 13 together with the certificate of conformity are there for all to see. Those documents contains the authentic CBN heading rate in all Deposit money Banks as at the time the APG was still subsisting and beyond. It clearly stated the exchange rate of US Dollars to Naira. It also contain interest Rates bank like the Defendant charges on loan and advances, reflecting cost of Borrowings including all cheques and commissions.

Having analysed the Evidence/Exhibit tendered in this case by both parties it is very clear that there was a breach by the Defendant. The plaintiff was able to establish this breach through the testimony of their witness and documents tendered as exhibits. The defendant was not able to Counter or controvert this issues and facts and evidence. The feeble attempts they made to do so was not strong enough to sawed this court to hold that they were not in breach.

This Court has no reason not to enter judgment in favour of the plaintiff since they have established there claims against the defendant in this case.

This Court therefore hold as follows:

1. Claim No. 1,2,3,4,5,6 granted
2. 10% from the 12/10/15 till date of this Judgment
3. Defendant should allow Plaintiff access to their Account without further delay.
4. Defendant shall pay the plaintiff N25 million as damages for loss of profit incurred by plaintiff for the said breach of Banker-Customer relationship.
5. Defendant to release the outstanding N78,650,000 to plaintiff without further delay.
6. Defendant to pay to the Plaintiff the sum of N5 million as general damages
7. Defendant to pay to Plaintiff the sum of N1.5 million as cost of this suit.
8. The Defendant to pay interest on the judgment sum at the prevailing government rate as at the Day of Judgment until Final Liquidation.

This is the Judgment of this Court delivered today by me. The ……..day of ……2020

…….

K.N.OGBONNAYA

HON.JUDGE.