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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY 11TH DECEMBER, 2020

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

JUDGE

SUIT NO.: FCT/HC/CV/2907/2019

BETWEEN:

NICENE TOWERS LIMITED --------- CLAIMANT

AND

DIAMOND BANK PLC --------- DEFENDANT

JUDGMENT

On the 19th day of September, 2019 the Plaintiff Nicene Towers Limited instituted this action against Diamond Bank Plc claiming the following:

(1) A Declaration that the refusal of the Defendant to play CCTV Footage is a breach of fiduciary duty owed the Plaintiff by the Defendant.

(2) An Order mandating the Defendant to restore the sum of Five Thousand Naira (₦5, 000.00) = only being money fraudulently removed from the Claimant's money.

(3) Twenty Million Naira (₦20, 000,000.00) only as General Damages against the Defendant.

(4) Cost of the Suit.

Sometime in 2014 the Plaintiff opened a Current Account with the Defendant – Account Number: 0049305798.

On the 1st of June, 2017 one of her Directors – Barr. Innocent Ezeugo went to the Maitama Branch of the Defendant to deposit Two Hundred and Twenty One Thousand, Three Hundred and Fifty Naira (₦221, 350.00) into the Plaintiff's Account.

He alleged that because the counting machine was squeezing the money, some notes stocked in the machine. This made the people in the bulk room to resort to manual counting. As she was counting the notes some other staff of the Bank came to help with the counting. At the end they told the Director of the Plaintiff that the total money was Two Hundred and Sixteen Thousand, Three Hundred and Fifty Naira (₦216, 350.00) instead of Two Hundred and Twenty One Thousand, Three Hundred and Fifty Naira (₦221, 350.00). That is Five Thousand Naira (₦5, 000.00) less than the amount Innocent Ezeugo claimed was brought before the Bank. Meanwhile the said Innocent Ezeugo sat directly opposite the Bank staff who counted the money.

When he was informed about the shortage of the money he went to the Manager of the bank and demanded to see the CCTV Footage of the counting. The bank manager told him that he will get to the Bank Security staff who are in charge of the CCTV. When it was not possible to view the CCTV Footage the manager asked him to come

back before he could access the CCTV. So he asked the Plaintiff to await his call on that. It never came.

In the course of all this the Plaintiff wrote to the Defendant laying complaint in writing. Director of the Plaintiff caused 3 letters to be written demanding to have access to the CCTV Footage. When all that failed he resorted to take legal action against the Defendant. Nkem Ezeugo and Associate wrote the 3 letters.

The Bank initially responded to the letter absolving the Bank of any wrong doing stating that the CCTV had been played and nothing was found. These letters were written on the 29th of August, 2017; 30th of April, 2018 and 16th of January, 2019.

The parties held a meeting after the initial failure to meet as scheduled. The Defendant agreed to refund the Plaintiff the Five Thousand Naira (₦5, 000.00) which he claimed was short in his money. But Plaintiff wanted Three Hundred and Fifty Thousand Naira (₦350, 000.00). So when the Defendant failed to pay the said Three Hundred and Fifty Thousand Naira (₦350, 000.00) the Plaintiff threatened to sue. He made several visits to the Defendant's office all in a bid to make the Defendant see reason to settle the issue between them. When that failed he instituted this action claiming the reliefs as already stated at the beginning of this case.

The Plaintiff opened her case and tendered 3 documents – which are the letters written to the Defendant.

The Defendant were foreclosed from opening their case after failure to cross-examine the PW1. They however filed a Final Written Address after filing a Memorandum

of Appearance. They did not file any Statement of Defence.

In their Final Address the Defendant raised an Issue for determination which is:

> **"Whether the Claimant has proved its case as to be entitled to her reliefs as contained in the claim in the circumstances of this case?"**

That by the decision in the case of:

Ire Kpita V. Federal Mortgage Bank
(2012) All FWLR (PT.647) 784 @ 797 Para B–D Ratio 1
as well as **S. 133 Evidence Act 2011** it is immaterial that the Defendant has not filed any Defence to this action as the Plaintiff's case cannot succeed in absence of a defence but by credible evidence relevant to this claims and in the reliefs sought which they want the Court to grant.

That it is unnecessary for the Defendant to file any Statement of Defence. That where the Claimant's claim cannot support its reliefs/claims, that the Court is bound to dismiss the case. They referred to the case of:

Iyagba V. Sekibo
(2010) FWLR (PT. 518) 949 @ 968 Para A – B.

Eyo V. Onuoha
(2011) FWLR (PT. 574) 1 @ 23 Para E.

That the issue in this case is not on the non-filing of Statement of Defence but on whether Claimant has put forward material evidence to warrant the grant of the Relief/Claim sought by it. They submitted that Claimant

has not done so in this case with credible evidence and exhibit.

That by the first relief sought that Declaratory Relief were never granted on default of Defence. That Plaintiff has to support his claim by presenting concrete evidence. They referred to the case of:

Jikantoro V. Dantoro
(2004) All FWLR (PT. 216) 390 @ 410

That the Declaratory Relief is on allegation of Duty of Care but that the Plaintiff failed to show how the refusal to play the CCTV Footage amounted to a breach of legal duty or fiduciary duty. That by the decision in the case of:

Niger Mills Co. PLC V. Agube
(2008) FWLR (PT. 427) 87 @ 173 – 174 Para G – B

There is no fiduciary duty owed the Claimant to show to them the CCTV Footage in law. That showing the footage is a moral duty, not obligatory or mandatory. That it is also not a legal duty actionable in law or tort.

That the Plaintiff failed to cite any authority or law that makes it mandatory or a fiduciary duty for the bank to play CCTV Footage on request by a customer of the bank like the Plaintiff. They urged the Court to so hold.

That the case cited by the Plaintiff:

University Teaching Hospital Board V. Nnoli Supra has no bearing to present case. That the Plaintiff has not put any enabling law which makes it mandatory for the Bank (Defendant) to play its CCTV Footage to it as a

customer as burden is on her to do so. That the Defendant is not a public body set up in line with the provision of **S. 169 and 206, 1999 CFRN.**

That the Plaintiff failed to show particulars of the Tort of Negligence by the Defendant to play the CCTV Footage. They did not show the details of a particular Act of negligence specifically spelt out or pleaded so that the Defendant can know exactly where to focus her defence on. Rather the Claimant made a general/vague terms. They referred to the case of:

Ogbivi V. NAOC Limited
(2011) FWLR (PT. 577) 810 @ 820

That Plaintiff failed to particularize her claim which occasioned the alleged fiduciary duty to her.

That the Claimant failed to show that Defendant owes her a duty of care, how the duty was breached and the damages suffered as a result of the breach. They did not show how playing not the CCTV Footage amounted to a breach or how failure to show him the CCTV Footage has caused him loss or injury to warrant the claim for damages of any sort. He urged the Court to so hold.

That Plaintiff failed in and by its pleading to discharge the burden of proving by prepondence of evidence. That Declaratory Relief cannot be granted in default of plea but on prove made by the Claimant.

Sanghai Limited V. UBA (2004)

They submitted that since Plaintiff has failed to prove its claims she is not entitled to the grant of its prayers and as such the claims ought to be dismissed.

On the claim of mandating the Defendant to restore the Five Thousand Naira (₦5, 000.00) = the Defendant submitted that since Plaintiff raised issue of allegation of crime against the staff of the Defendant, it is incumbent on it to prove and establish intention as well as the action itself mense rea and actris reus of the fraud. Such it must prove beyond reasonable doubt. That the Plaintiff ought to have reported the matter to Police for investigation and possible prosecution in a Court of competent jurisdiction for criminal trail, so that Court can pronounce them guilty before Plaintiff can make such allegation in a civil matter.

That failure of the Plaintiff to follow due procedure to establish the ground as alleged shows that they have failed to prove their claim and is therefore entitled to the claim.

That by the oral evidence of the PW1, he did not see who allegedly stole the money and therefore cannot give a good account of the fraudulent removal of the money. That required standard proof in a crime beyond reasonable doubt is not proof by conjunctive or speculation but proof by concrete evidence. He referred to the case of:

Ejezie V. Anuwu
(2008) FWLR (PT. 422) 1005 @ 1041

That Claimant did not call any Witness to corroborate that the money brought to the bank was Two Hundred and Sixteen Thousand, Three Hundred and Fifty Naira (₦216, 350.00) at the time he got to the bank. That since the burden of proof of the fraud did not shift, the

Claimant is stacked with it and such doubt must be resolved in favour of the Defendant. They referred to the case of:

Okechukwu Nweze V. State
(2017) LPELR – 42344 (SC)

That Plaintiff deliberate refusal to tender the letter written to it by the Defendant on the 29th of August, 2017 clearly shows that the Plaintiff knows that the content of the letter in whence the Defendant denied receiving the said amount – Two Hundred and Twenty One Thousand, Three Hundred and Fifty Naira (₦221, 350.00) from the Plaintiff would have implicated them.

That Claimant failed to prove beyond reasonable doubt that the Five Thousand Naira (₦5, 000.00) = was fraudulently removed from her account and cannot therefore be entitled to refund of the said money. They urged Court to dismiss that claims.

On Issue of payment of Twenty Million Naira (₦20, 000,000.00) damages, the Defendant submitted that Claimant has not been able to prove negligence on the part of the Defendant or any breach of fiduciary duty either. So it is not entitled to any damages. They referred to the case of:

Ogbiri V. NAOC Limited
(2011) FWLR (PT. 577) 810 @ 823

That the Plaintiff has not been able to show how failure to play the CCVT Footage has caused him to loose the Five Thousand Naira (₦5, 000.00) and how he has suffered damages to warrant the payment of Twenty

Million Naira (₦20, 000,000.00) damages or how the alleged theft was the fault of the Defendant. That the Defendant had offered to give the Plaintiff the Five Thousand Naira (₦5, 000.00) just to maintain good customer relationship with the Plaintiff. But the Plaintiff refused and wanted an unjustified enrichment instead by wanting and requesting payment of Three Hundred and Fifty Thousand Naira (₦350, 000.00) and now Twenty Million Naira (₦20, 000,000.00). That there is no evidence to prove the said loss of man hour cast to Plaintiff. The Plaintiff did not present any Statement of Account or any other evidence to prove loss of profit. They referred to the case of:

Oceanic Bank V. Owhor
(2009) All FWLR (PT. 454) 1599 @ 1609

That if at all the Plaintiff is entitled to any damages it should be to the amount allegedly lost and not to the amount sought.

That Plaintiff is not entitled to the cost of the Suit because she failed to particularize and strictly prove how much she expended in prosecution of her case. She failed to plead the cost and failed to exhibit documents and evidence in support of same too.

That Plaintiff failure to particularize the Solicitor's fee which is a special damage as such is not entitled to that claim.

That Plaintiff failed to make any case against the Defendant. They urged Court to dismiss the action with cost.

The Plaintiff called one Witness and tendered three (3) documents – Letters of 30/8/2017, 16/1/19 and Solicitor's receipt by Crown Solicitors.

In their Final Address the Plaintiff raised 2 Issues which are:

(1) "Whether the Claimant has been able to establish and prove her case to warrant Judgment giving in her favour.

(2) **Whether the refusal of the Defendant to attend Court despite knowledge of the matter amount to denial of fair-hearing/trial."**

On Issue No.1, she submitted that she laid evidence in chief through PW1 but the Defendant failed to Cross-examine the PW1 despite being given all the ample opportunity and leverage to do so, as such they did not contradict the evidence of PW1 and such evidence stands uncontroverted. They referred to the case of:

Mil Gov. Lagos V. Adeyiga & Ors
(2012) LPELR – 7836 (SC)

That Plaintiff proved its case and succeeds on the strength of its case too by leading evidence in line with its pleading. They referred to the cases of:

Nwoga Obia & Ors V. Agwu Njoku
(1990) 3 NWLR (PT. 140) 570

Hon. Justice Omo-Agege V. John Oghajafor & 2 Ors
(2011) 3 NWLR (PT. 1234) 341 @ 354

That this matter was raised because of Defendant's failure in its fiduciary duty to the Plaintiff which is its

failure to play the CCTV Footage to ascertain what happened on the missing money. That since the Defendant failed to file a defence it is deemed to have admitted the claims of the Plaintiff. They referred to the case of:

Okoebor V. Police Council
(2003) 12 NWLR (PT. 834) 444
They urged Court to so hold.

On Issue No.2 – whether refusal to attend Court amounts to denial of fair-hearing, the Defendant submitted that Plaintiff complied with condition for proof of service ensuring that Defendant were duly served with the Originating Process and Hearing Notices served at various times.

That Defendant failure to file Statement of Defence or Memorandum of Appearance in Court means it has no defence and had admitted the issues in dispute. It cannot therefore claim breach of fair-hearing. They referred to the following cases:

Achuzia V. Ogbonnah
(2004) FWLR (PT. 227) 568

Ugbodume V. Aiegbe
(1991) 8 NWLR (PT. 209) 261 @ 272

Ikpogette & Anor V. COP Akwa Ibom
(2008) LPELR – 3878

A-G Rivers V. Ude
(2006) 17 NWLR (PT. 1008) 436 @ 456

Ajidahun V. Ajidahun

(2002) 4 NWLR (PT. 654 @ 614

That it is incumbent on the Court not to be bogged down by the antics of the Defendant to hear the case as presented before it within a reasonable time. They referred to Order 10 Rule 2 & 5 FCT High Court Rules.

That where a Defendant fails to appear in Court to defend the Suit, the Plaintiff is entitled to the Judgment of the Court in its favour. They referred to the case of:

Lion Bank PLC V. Amaikom
(2008) All FWLR (PT. 417) 85 @ 113

That Plaintiff is therefore entitled to her claims. They urged the Court to grant all their reliefs as she has carefully and diligently pursued her case and established same.

Upon receipt of the Defendant's Final Address the Plaintiff filed a reply on Points of Law. They submitted that the Defendant failed to file any document in defence of the Suit and did not call evidence. That the Court should discard their Final Address and uphold the case if the Plaintiff since they refused to appear before the Court to defend their case. They are bound by the pleadings of the Claimant. That the Court is urged to confine itself with the issues raised in the pleading.

That Defendant's Final Address goes to no issue. They urged Court to so hold. They referred to **S. 136 Evidence Act 2011 as amended.**

That Plaintiff laid evidence to prove its case in line with her pleading. That the burden shifted to the Defendant who failed to discharge same and its stocked with it. That

Defendant cannot discharge the burden of proof through her Final Address. They referred to the case of:

Hon. Justice Omo-Agege V. John Oghajafor & 2 Ors Supra.

That failure of the Defendant to file pleading and adduce evidence in defence means that the case of the Plaintiff is not disproved and therefore the claims are admitted by Defendant.

That she has no defence to the case of Plaintiff. They relied on the case of:

Jitte V. Okpulor
(2016) 2 NWLR (PT. 1497) 542 @ 567 Para F – G

CBN V. Okojie
(2015) 14 NWLR (PT. 1479) 231 @ 265 Para E – F

That the Written Address of the Defendant cannot take the place of evidence. That Defendant only adduced evidence in her Final Address and it is a misapplication of the law. They referred to the case of:

Oyeyimi V. Owoeye
(2017) 12 NWLR (PT. 1580) 364 @ 403

That there are sequences of litigation and one stage cannot replace another stage. They referred to the case of:

Okuleye V. Adesanya
(2014) 12 NWLR (PT. 1422) 521 @ 539

That award of cost of litigation is at the discretion of the Court which must be exercised judicially and judiciously.

That Court should consider the service of Processes/Hearing Notices on the Defendant, the numerous visits to the Defendant, the series of letters written and the man hour spent together with the cost incurred in prosecuting the case as well as professional fees paid to the Plaintiff Counsel in awarding cost to Plaintiff. That the matter would not have gone to Court if the Defendant had settled the issue with the Plaintiff. That failure to award cost against the Defendant will be a pat on the Plaintiff's back. That awarding cost on the Defendant will serve as deterrent to the Defendant's behavior. They urged Court to uphold their claims and award their reliefs as sought by throwing away the Final Address of the Defendant.

COURT:

Facts admitted, unchallenged and uncontroverted need minimal proof. In law, to submit or to adduce evidence entails the presentation of evidence in a case and to tender legal argument for the decision of the Court. Final submission or Final Address means the total and final presentation of any further evidence in support of the case of a party for or against a case. It is the final legal position of a party in support or defence of a case presented to the Court for its consideration, determination and final decision on the issues in dispute between the parties. Such final submission of the legal argument usually entails reinstating the parties' evidence presented in the course of the proceeding. It is based on the issues in dispute and states or reinstates the parties' stances in a case before a Court of competent jurisdiction. Any issue not touched in the final

submission of address are deemed to be admitted or abandoned.

This means that even where a party failed to call Witnesses or present any evidence in the proceeding once its Written Address tackles the issues in dispute and attacked, controverted or challenged the case of the other party and the evidence presented by that party, it is said that the evidence, if ably challenged, has been controverted or challenged. This means that even if that party failed to file a Statement of Defence or call Witnesses to testify but have ably challenged the case of the Plaintiff in its Final Address and its submission within what is before the Court or the issues in dispute, the Court will hold, where there is merit on such submission, that the case of the other party has been controverted and that it is also challenged.

The above scenario is what happened where a party, the Defendant, for one reason or the other is foreclosed from either cross-examining a Witness called by the other party or foreclosed from presenting its own side of the story by not being allowed to call evidence or open its defence (case) as the case may be. In such a case the Court will always hold that the case of the Plaintiff is challenged. It is a different thing whether the challenge is strong or enough or meritorious. The Court can only hold that a case is not challenged and facts not controverted where the party on the other side of the aisle has failed to file any document to challenge the case of the other party and equally failed to call evidence or file or respond to the Final Address served on it. In that case the Court will

boldly hold that the case of the party is unchallenged and facts therein uncontroverted.

In this case, the Defendant were served with all the Processes filed by the Plaintiff but they did not file any Statement of Defence or even a Preliminary Objection challenging the competency of the case of the Plaintiff.

Presented its defence but they were not prevented from filing its Final Address or responding to the Final Address served on it by the other party.

In this case, the Defendant were served as stated earlier. They were given every opportunity to file a defence to the case of the Plaintiff. They were equally served Hearing Notices informing them of the day the matter is scheduled to be heard. But they failed to enter appearance or file any Statement in defence or even a Counter Affidavit. They were foreclosed from cross-examining the PW1 or opening and closing their defence. They were not foreclosed from filing a Statement of Defence because it is their right. They were only foreclosed from opening their defence if any. They never filed any Statement of Defence. The Court did not foreclose the Defendant from filing a Final Address or respond to Final Address served on them by the Claimant. The Defendant responded to the Final Address served on them by the Claimant. Their response was based on the issue in dispute and it was within the ambits of the Plaintiff's claim and the Reliefs sought. The Claimant adequately replied to such issues raised urging Court to discard the said Final Address and because of the Defendant's failure to file a Statement of Defence and call evidence and cross-examining the Plaintiff's Witness.

To the Plaintiff, their case was not challenge and that she had established its claims and as such had shifted the onus on the Defendant who failed to discharge the onus, and so she is entitled to all its claims.

Giving the scenario presented above complied with the summary of the submissions of the parties, the question is, did the Plaintiff establish its case that Court should enter Judgment in its favour? OR

Going by the submissions of the parties in their respective Final Address, can it be said that the case of the Plaintiff is so established and unchallenged that this Court should enter Judgment in its favour giving the fact that the Defendant failed, refused and deliberately did not file any Statement of Defence or Counter Claim and also failed to Cross-examine the PW1 having been given all the leverage and opportunity to do so, bearing in mind that they entered appearance after the Court foreclosed them from cross-examining the PW1 and opening their case and that they filed and responded to the Final Address served on her by the Claimant, tackling all the issues raised therein by the Claimant in this case and stayed within the issues in dispute as contained in the Plaintiff's claims?

Again should this Court discard the said Final Address filed by the Defendant which is on the Issues raised by the Plaintiff and stated in testimony of the sole Plaintiff's Witness – PW1 and hold that the case of the Plaintiff is unchallenged and therefore grant all its Reliefs holding that uncontroverted facts are deemed established and therefore admitted by the party on the other side who did not file any Statement of Defence?

Again should a Court foreclosing a party from cross-examining the Witness of the opponent party and foreclosing the same party from opening and closing its case/defence as the case may be also means foreclosing the said party from filing a Final Address or discarding the Final Address of that party when such Address is within what is in dispute before the Court, more so where such party filed and adequately responded to those issues as contained in the Final Address of their opponent who gave them all the ample opportunity to challenge their case during hearing.

Put differently, can the filing of a Final Address by a party who did not file a Statement of Defence be held to have admitted the issues raised by the Plaintiff in a case; more so where such a party was foreclosed from cross-examining the PW1 and opening or closing its defence?

Without answering the question seriatim, it is the humble view of this Court that since the Defendant filed a Final Address challenging the Issues raised by the Plaintiff in this case, the case of the Plaintiff is challenged and the facts therein are not and cannot be deemed to be admitted by the Defendant or be held to be unchallenged. So this Court holds. Those facts were by the Final Address of the Defendant challenged. Whether the Defendant meritoriously controverted those facts is a totally different thing which this Court will delve into shortly. The case of the Plaintiff was challenged by the Defendant. So this Court holds.

The Final Address of the parties stands as the final argument in support of a parties' case. It is so much so that parties may raise issues which were not raised

before or neglected or forgotten to be raised during proceeding. They may even reserve or not challenge an aspect of their opponent's case during hearing only to tackle that during or at Final Address.

That is why the Court usually consider and deliberate fully on what the parties pen down in their Final Address than in the details of the testimony. It is in the Final Address that parties project in great details the fact upon which their claim and defence is predicated and the arguments made in support of their respective stances. That is why nothing else is considered by the Court aside from what the parties have presented in their Final Address. So Final Address is the parties' last say in their case for and against in a case. That is why this Court holds that the case of the Plaintiff was challenged by virtue of the Final Address filed by the Defendant notwithstanding that the Defendant did not file any formal Statement of Defence in his case.

This Court cannot therefore discard the said Final Address as Plaintiff sought. This Court did not foreclose the Defendant from filing or responding to Final Address filed and served on it by Plaintiff. Doing so would have been denying the Defendant their right to be heard. The Final Address filed by the Defendant is their only and final argument in defence of this Suit. That document is proper before this Court. So this Court holds. It challenged the issues in dispute. It challenged the case of the Plaintiff too. It challenged the evidence of the PW1 though there was no cross-examination.

The Plaintiff filed reply on issues raised by the Defendant in the said Final Address too.

In the spirit of frontloading the action of the Defendant is legal. The Plaintiff had presented letters written to Defendant complaining about the issue of the Five Thousand Naira (₦5, 000.00) = shortage in its money, and the numerous visits and meetings with the Defendant. Most importantly the Claimant complained of the failure to release the CCTV Footage to him which is the main claim and also restoration of the Five Thousand Naira (₦5, 000.00) allegedly removed from the Claimant's money.

Given the evidence presented by the Plaintiff can it be said that the Defendant has breached the fiduciary duty it has with the Plaintiff by its failure to disclose the CCTV Footage to the Plaintiff?

It is the humble view of this Court that the fiduciary duty of the Defendant does not extend to disclosing the CCTV Footage to the customer of the bank like the Plaintiff. So the Defendant not disclosing the CCTV Footage is NOT A BREACH OF FIDUCIARY DUTY to the CLAIMANT. The Defendant has no such fiduciary obligation to the Claimant. The fiduciary obligation or duty of the Defendant to the Plaintiff and other similar customer of the bank does not extend to the disclosure of the CCTV Footage.

To start with, the CCTV Cameras of any organization is a very private security gadget of the organization or even of an individual as the case may be. Its recording and consumption of its footage is for exclusive private usage of the owner of the CCTV Camera. It is not a public gadget and should not be readily available and accessible to the public or customer of the bank like the Claimant

in this case. CCTV Camera and its footage recordings are for internal use of the Bank. The Claimant has no right to command the Defendant to disclose the footage of the CCTV Camera. Refusal to disclose the said footage is not a breach of fiduciary duty of the Defendant. So this Court holds.

There is no implied or explicit provision in the banker-customer relationship that provides that a bank like the Defendant in this case has the fiduciary obligation to do as the Claimant wants in this case. Most importantly the Claimant had in his description stated that he, on that fateful day 1st of June, 2017 Mrs. Chiamaka Ezeugo counted the money first before Innocent Ezeugo counted same and then took the money to bank. He did not call the said Chiamaka Ezeugo as a Witness to testify that she actually counted the money before it was handed over to the Innocent Ezeugo. The failure to call the lady as a Witness to corroborate the amount casts doubt in the evidence of the PW1.

The PW1 had equally stated that there were other customers of the bank at the Bulk room who came to do some lodgments too that day. He had stated that he handed over the notes to the note counter, sat on the chair. That between him and the note counter was a desk with a computer and that a counting machine was inside where the Counter sat. He had reported that the counting machine was "stocking, squeezing and seizing" the money being counted and the banker resorted to manual counting of the notes. From this it must have been that the money was in such a deplorable and scruffy state that it could not go through the machine

smoothly. Again, because of the quantity of the money and in order to serve the Plaintiff better and timeously and also to ensure that other customers were served too, there was another staff who came to join in the manual counting of the money. All in order to expediously serve the Plaintiff.

The Claimant's Director and PW1 was there and he saw when the second person came in to lend a helping hand. He equally saw clearly when the first counter pushed the money to the second counter – going by the averment in paragraph 9 of the Statement of Claim. But instead of first asking and ensuring that the Counters go through the machine to see if there were some cash stocked in the machine while the money was being counted as he claimed, the PW1, as he puts it in paragraph 11 of his Statement of Oath:

> **"...immediately approached the management requesting that the CCTV be played there and then to ascertain what actually transpired as per the alleged missing Five Thousand Naira (₦5, 000.00)".**

PW1/Plaintiff requested for that while the business of the day was still going on. The management of the bank telling the Plaintiff that he should give them time to them to contact the people in charge is the right thing to do. This is because it is a known secret that the CCTV as a Security gadget of the Bank is operated by either a Consulted Security outside the Bank. Getting any recording from CCTV is not a one off run on a mill. It requires due notification decoding and information giving reason why its footage of a segment in a branch of a

bank and in a unit of that branch in a given day should be accessed. Such CCTV Cameras are usually operated at a central point, usually at the Security Head office of the bank which is often at the secret location in the strategy office of the bank. It is not like the CCTV installed in the Chambers of a Law office which the Head of the Chamber can access. Even at that, to access such Chamber CCTV must be done with the permission of the Head of the Chamber given reason. CCTV of a bank is not meant for the public or customer of the Bank. It is a very very private Security gadget of the Bank with its complicated comments and extensive intricate network.

Banking business is a very serious business. Undue tampering of its CCTV network can greatly jeopardize the security of the Bank and can cause loss of the money of the people in their custody. The Plaintiff has no right to order them to disclose the recording of the CCTV Footage. To do so requires the use of experts. The Bank has no fiduciary duty/obligation to disclose the CCTV Footage as CCTV recording is for its internal consumption.

Apologizing to the Plaintiff PW1 was enough for him for the time wasted, for the Bank's inability to get the CCTV Operatives to act on the recording that day or ever.

It is clear that the manager has no power to just access such CCTV recording without permission and due notification from the appropriate quarters. Not inviting the PW1 must be because the manager has not gotten clearance to do so as such decision requires management approval going by the Universal Banking Policy.

The Plaintiff and PW1 sometime visiting the Bank Branch with some of his colleagues and friends – Mr. Austine Ebireri and Bukky Ibrahim and Mr. Obi Duruzo, George Ihejirika and Mr. E.C. Chukwu for an incident that happened between the PW1 and the Bank all goes to show that the Plaintiff and or the PW1 was out to foment trouble for the Bank, for an issue of allegation of missing Five Thousand Naira (₦5, 000.00). Strangely he never called any of these people as Witness to the case, at least to state that they were in the Bank one of the days that the Plaintiff/PW1 went to wait or was invited by the Bank or to corroborate his fact.

It is equally very strange that it took the PW1/Plaintiff several months to write to the Defendant formally complaining of the incidence. He was quick to request for the CCTV Footage recordings but was not quick to put the complaint in writing to make same formal. He was only interested in viewing the CCTV Footage for reason best known to him.

He was not bold enough to attach the letter written to it by the Defendant, most probably because he knows that the content of the letter may very likely jeopardize his claims. Not calling other persons as Witnesses and not attaching the said letter from Defendant is fatal to the case and claim of the Plaintiff. It cast doubt as to the main purpose of and intendment of the Plaintiff in this case.

The Plaintiff did not attach the 3rd letter referred to in their letter of 16th January, 2019. The Plaintiff/PW1 was not interested in the investigation. He was only interested

in viewing the CCTV Footage for the reason only known to him alone.

He had alleged fraudulent shorting of Five Thousand Naira (₦5, 000.00) from the said money he intended to lodge but he was not kin on involving Security Agencies to help him investigate the allegation of fraud. He did not also lead evidence to establish fraud but was bent on getting damages awarded to it by Defendant for the time he spent waiting in the banking hall to view the CCTV.

He was not bold enough to attach the 3 letters he wrote to the Defendant and the Defendant's responses to same. But he is keen on claiming Twenty Million Naira (₦20, 000,000.00) for the Defendant refusing him to view the CCTV recording. He also wants the Defendant to pay him One Million Naira (₦1, 000,000.00) for cost of the Suit without showing evidence of the payment of the said legal fees or part thereof to his lawyer who from all indications going by the common surname is either the relative to the PW1 or his wife. Meanwhile all the letters were signed by the PW1.

The Crown Solicitors whIich purportedly issued the receipt evidencing payment of the legal fee did not sign any of the letters written to the Defendant including the letter where the Plaintiff threatened to take the matter to Court.

In the Writ the Plaintiff had listed that they will call a subpoenaed Witness – Mr. George Ihejirika. They never did. The said Ihejirika is one of the persons the PW1 claimed went to the Bank with him in one occasion when he wanted the Defendant to allow him access to the

CCTV recording. The same Ihejirika was never subpoenaed and no mention was made of him and no reason given for the Plaintiff changing his mind. The PW1 never told Court whether Ihejirika was a staff of the Bank or one of the Directors of the Plaintiff or whether he counted the money or was privy to the lodgment on the 1st of July, 2017.

The letters from Nkechi Ezeugo were all signed by the PW1 who went to lodge the money on the 1st of July, 2017 and who also claimed that Chiamaka Ezeugo counted the money before handling same over to the PW1 – who is also Spokesperson of the Plaintiff.

There was no corroboration of the fact that Mrs. Kindness Rajis asked to refund the Plaintiff the Five Thousand Naira (₦5, 000.00). He did not lead evidence to that.

It is the right of the Plaintiff to make claims as they did in this case to claim return of the Five Thousand Naira (₦5, 000.00) she alleged was fraudulently taken from the Plaintiff. What is the reasonableness in spending One Million Naira (₦1, 000,000.00) as Solicitor's fees and spending endless hours in the Bank waiting to view the CCTV Footage of the transaction in which she was short changed Five Thousand Naira (₦5, 000.00)? It is a case of using a heavy sledge hammer to kill an ant. Even the Three Hundred and Fifty Thousand Naira (₦350, 000.00) as initially claimed is far less than the One Million Naira (₦1, 000,000.00) paid to the lawyer for this case.

The claim of the manager, Kindness Rajis, accepting to pay him the sum of Three Hundred and Fifty Thousand

Naira (₦350, 000.00) = was not substantiated as Ms. Rajis was never called as a Witness and she never tendered any document to show that Defendant agreed to pay Plaintiff the said Three Hundred and Fifty Thousand Naira (₦350, 000.00). There is no corroboration of those facts. This Court holds those facts as hearsay. After all unsubstantiated facts have no evidential weight and value. No bank can agree to pay any customer any "damages" without putting same in writing and given due notification too.

Plaintiff did not field Duruzo, Ihejirika, Mrs. E.C. Chukwu to confirm or corroborate the visit where PW1 claimed Ms. Rajis agreed to give the PW1 only Fifty Thousand Naira (₦5, 000.00) only – stating that any money above Five Thousand Naira (₦5, 000.00) = is above her approval capacity. So the fact that Ms. Rajis was standing for the money, are all hearsay and unsubstantiated.

The Plaintiff failed to establish how and to what extent she as a company suffered the so called:

> **"Imponderable humiliation, maltreatment psychological and emotional trauma from the Defendant ..."**

From the tone of the above it is very clear that the whole gamut of the submission and claim of the Plaintiff is not really from the Plaintiff as a company parse but from the ambitious and greedy intentions and plan of the Mr. Innocent Ezeugo. Nicene Towers Limited, a company limited by share cannot suffer any trauma and psychological and emotional intimidation from the action

of the Defendant who refused to allow the company's representative (-Director) access to the Defendant's CCTV Footage. It is evidently clear that there is no one man Limited Liability Company. There are some other Directors of the company. Again the only work by the Plaintiff is not going to wait in the banking hall of the branch of the Defendant waiting to access CCTV Footage of a transaction where it was alleged that the Defendant's Staff "short changed" or "short counted" Five Thousand Naira (₦5, 000.00) = from the money of the Plaintiff on the 1st of July, 2017.

Not showing evidence of the payment of the One Million Naira (N1, 000,000.00) from its other bank account or other source of fund or evidence of lodgment of the said money in the account of the Law Firm, all shows the unsubstantiated level/nom-establishment of the case of the Plaintiff. Not attaching the letter from bank is equally bad for the case of the Plaintiff.

From the above, it is evidently clear that the Plaintiff was not able to establish its case. The Defendant on their Final Address were able to controvert the fact upon which the case of the Plaintiff stood. The onus shifted to the Plaintiff but they could not discharge that even in their Reply to the Defendant's Final Address.

Damages are earned based on water tight evidence and not on emotional sentiments.

The Plaintiff is not entitled to any award of damages.

This Court held that the Plaintiff's case is not established and it lacks merit. It is therefore DISMISSED.

This is the Judgment of the Court.

Delivered today the ___ day of _____ 2020 by me.

_____

K.N. OGBONNAYA
HON. JUDGE