

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : SUIT NO: CV/2386/2018**

**DATE: : WEDNESDAY 13<sup>TH</sup> DECEMBER, 2023**

**BETWEEN:**

**BARR. AMAKA EKE ..... CLAIMANT**

**AND**

**UNITY BANK PLC. .... DEFENDANT**

# **JUDGMENT**

The Claimant commenced this action vide Writ of Summons dated 20<sup>th</sup> July, 2018 and filed on same day wherein the Claimant claims the following;

1. A Declaration of this Honourable Court that it is illegal and unlawful for the Defendant to seize the debit card belonging to the Claimant.
2. An Order of this Honourable Court compelling the Defendant to release the Claimant's First Bank Debit Card with Card Number 5399232176125729 which is in its custody.
3. An Order of this Honourable Court mandating the Defendant to pay the Claimant the sum of N5,000,000.00 (Five Million Naira) only as General Damages for the distress and discomfort

suffered by the Claimant over the refusal of the Defendant to release her debit card to her.

4. The sum of N500,000.00 (Five Hundred Thousand Naira) only as the cost of the proceedings.

Upon service of the Writ on the Defendant and after the pleadings were exchanged, the suit was set down for hearing. The case of the Claimant as distilled from the Statement of Claim and Witness Statement of the Claimant is;

That on her way to work around 8am on the 12<sup>th</sup> day of July, 2018, she noticed that she didn't have enough money for the transport fare so she decided to make use of an Automated Teller Machine (ATM) to withdraw some cash.

That she inquired from a security guard she met at the Defendant's gate if any of the 2 ATMs situated therein was working.

That the security guard answered in the affirmative and directed her to a particular machine which he claimed was working.

That she tried to use her First Bank Debit Card and Card Number 5399232176125729 to make a withdrawal from the said ATM.

That although her account was debited for the transaction, however, for some unknown reason, the ATM did not dispense the said money to her.

That in the process of complaining about the fact that her account was debited without receiving any money, she realized that her debit card had equally been unjustifiably withheld by the ATM.

That a staff of the Defendant, who later identified herself as Faith, assured her that the transaction would be reversed and further asked her to wait so that she would go inside the bank and retrieve her debit card which was still on the Defendant's Automated Teller Machine (ATM).

That after a while, the Defendant's staff came out and inform her that the Defendant will not release her debit card because she is not a customer of theirs.

That the said staff told her to go to her bankers (i.e) First Bank of Nigeria Plc., and apply for a new debit card.

That knowing that she will be charged some money if she applies for a replacement from her bankers, she insisted that her debit card should be retrieved

by the Defendant and returned to her because the debit card was unjustifiably withheld by the Defendant's ATM due to no fault of hers.

That moreover, there was no justification for her to apply for a new debit card since the one that is in the custody of the Defendant has not yet expired.

That all the efforts she made for the Defendant's Staff to retrieve her card from the machine and hand over same to her proved abortive, despite the fact that everything happened in their presence.

That on the 13<sup>th</sup> day of July, 2018, she wrote a letter to the Defendant, through the manager of the particular branch where the incident occurred, demanding for the release of her debit card and the letter was equally copied to the office of the Governor of the Central Bank of Nigeria.

That despite being served with and receiving the letter she wrote to it, the Defendant ignored same and refused to return her debit card.

That Defendant's refusal to return her debit card to her have caused her great distress, discomfort and hardship because she finds it very difficult to withdraw money these days and the only way she can have access to her money is to transfer whatever amount she need to a third party who will in turn withdraw the money and hand it over to her.

That up till the date of the filing of this suit, the Defendant is still in custody of her debit card.

Claimant closed its case to pave way for defence.

The case of the Defendants as distilled from the Statement of Defence and Witness Statement on

Oath of Usman Olamide Ganiyat, (a staff of the Defendant) is;

That Defendant denies paragraphs 10, 13 and 18 of the Statement of Claim and puts the Claimant to the strictest proof of all allegations alleged thereof.

That the Defendant denies paragraph 21 of the Statement of Claim in its entirety and avers that the Claimant did not suffer and distress, discomfort or hardship as a result of her debit card been trapped in the Defendant's Automated Teller Machine (ATM) since the Claimant was informed that she could get an instant debit card on her request at any Branch of her Bank as is the case with all Banks.

That the Defendant vehemently denies paragraph 22 of the Statement of Claim and puts the Claimant to the strictest proof thereof.

That the Defendant denies paragraph 22(1-4) of the Statement of Claim and states that the reliefs sought by the Claimant are false and speculative. The Claimant is further put to the strictest proof of the paragraph thereof.

That the Defendant urge this Honourable Court to dismiss this suit in its entirety for being incompetent, misleading, malafide, mischievous, a gold digging exercise and an attempt to arm twist the Defendant.

PW1 tendered the following documents in evidence:

1. Letter dated 13/07/18 marked Exhibit “1”.

PW1 was cross-examined and subsequently discharged. Plaintiff closed its case to pave way for defence.

The Defendant opened its defence and called DW1 (Usman O. Ganiyat), a customer service officer attached to Plot 515A Adetokunbo Ademola Crescent Branch of the Defendant and one of the staff of the Defendant in charge of resolving the complain of the Claimant. The case of the Defendant as distilled from the witness statement on oath of DW1 is as thus;

That Faith Damla could never have promised the Claimant that her card would be retrieved and returned to her as that was not part of the guideline the Defendant received from its regulators, the Central Bank of Nigeria (CBN) who in May 2014 issued a guideline for card issuance and usage in Nigeria to the Defendant and other Banks.

That prior to the receipt of the Claimant's letter dated 13<sup>th</sup> July, 2018; the Defendant had already done the needful as regards the said debit card in compliance with Section 4.5.0 of the Central Bank of Nigeria Guideline for Card Issuance and usage in Nigeria. Moreover, the Defendant would not have acted contrary to the Central Bank of Nigeria Guidelines at the instance of the Claimant who refused to be educated on the Regulation Form the Central Bank of Nigeria. The letter of the Claimant dated 13<sup>th</sup> July, 2018, is hereby produced and attached hereto as Annexure "UB 3".

DW1 tendered the following in evidence;

1. Central Bank of Nigeria Guidelines
2. Letter written by Defendant to First Bank Plc.

All marked Exhibits "D1" and "D2" respectively.

DW1 was cross-examined and subsequently discharged.

In line with law and procedure, Defendant filed written address wherein sole issue was formulated for determination to-wit;

***“Whether the Claimant has proved her case on the balance of probabilities and therefore entitled to the reliefs claimed against the Defendant in the Statement of claim?”***

It is the submission of learned counsel, that while the parties agreed in their evidence that the Claimant’s debit card was trapped or withheld in the Defendant’s ATM, the Claimant did not substantiate her claim that Faith promised to release the trapped debit card to her upon retrieving same from the ATM and that the non-release of the debit card to

her was because she is not a customer of the Defendant. Thus, the Claimant's claim that Faith promised to release the debit card to her and later refused to release the card to her because she is not a customer of the Defendant is false and should, with respect, be discountenanced by the Honourable Court having failed to prove her assertion before the Court.

The law is trite that where a Defendant specifically denies an averment in the statement of claim in her statement of defence and evidence, the Claimant who asserts the fact must prove same.

Learned counsel submits, that the mandatory provision of Section 4.5.0 of the Central Bank of Nigeria Guidelines for Card Issuance and Usage in Nigeria, 2014 prohibit the Defendant from releasing

a trapped debit card in the ATM to the holder of the debit card but to render the trapped card unusable by perforation by the Acquirer and returned to the issuer.

It is further the submission of learned counsel, that the Central Bank of Nigeria is the regulator of commercial Banks including the Defendant and the Defendant is under an obligation to comply with the Regulations and Guidelines of the Central Bank of Nigeria in its operation and relationship with customers of the Defendant. The Defendant therefore, in the instant case, is under obligation or strict obligation pursuant to the Central Bank of Nigeria Guidelines, 2014 under reference, to render the trapped debit credit unusable by perforation and return same to the issuer or the Issuer Bank.

The use of the word “shall” in the said Guidelines 2014 makes it compulsory or obligatory for the Defendant to comply with the said provisions of Section 4.5.0.

Learned counsel submits, that on the issue of the undated letter (Exhibit “D2”) that the law is trite that where a date is not stated in a document, the date on which the document was made can be proven or established by oral evidence as in the instant case where the Defendant has established the date letter and/or service/delivery of same to the Issuer Bank by oral evidence as per paragraph 7 of the DW1’s Witness Statement on Oath deposed to on 28<sup>th</sup> February, 2022.

***AMIZU VS. NZERIBE 1989 4 NWLR (Pt. 118) (Page 755) at Page 770 (Paragraph E)*** was cited.

Learned counsel also submits, that the Defendant has returned the trapped Debit Card to the issuer or Claimant's Bank vide the Defendant's letter (Exhibit "D2") to the issuer Bank on the 13<sup>th</sup> July, 2018. The evidence of the Defendant vide the DW1 that the debit card has been returned to the Issuer was not challenged by way of further or additional witness statement on oath by the Claimant or production of document to the contrary from the Issuer Bank before the Honourable Court disputing the return of the debit card to it. The only attempt by the Claimant to challenge the return of the card was her question to the DW1, under cross-examination, that the letter of the return of the card (Exhibit "D2") was undated and the DW1 has evidenced the date of the delivery of the debit card to be 13<sup>th</sup> July, 2018 vide her oral testimony as per her deposition in paragraph 7 of her

witness statement on oath, which fact remained unchallenged by the failure of the Claimant to produce contrary evidence.

It is the submission of learned counsel, that the refusal of the Defendant to release the trapped debit card to the Claimant did not in any way cause any purported distress and discomfort to the Claimant as the Defendant's refusal to release the debit card to the Claimant but instead returned it to the Issuer/Claimant's Bank was in compliance with the mandatory provision of Section 4.5.0 of the Central Bank of Nigeria Guidelines for Card Issuance and Usage in Nigeria 2014 which the Defendant has no alternative or discretion but to obey same. The Defendant could not be made to suffer liability or be held liable for obeying the law.

Learned counsel further submits, that there is no iota of evidence before the Honourable Court of the distress or discomfort suffered by the Claimant as a result of the refusal of the Defendant to release the trapped debit card to her in compliance with the extant Central Bank of Nigeria Guideline, 2014.

***ACCESS BANK PLC. VS. OGBOAJA (Supra) at Page 586, Paragraphs A – B*** was cited.

Learned counsel also submits, that the Claimant is not entitled to cost of proceedings of this suit as the Claimant would only be entitled to cost if she established her case or claim against the Defendant.

***U.B.N LTD. VS. NWAOKOLO 1995 6 NWLR (Pt. 400) (Page 127) at Pages 151 – 152, Paragraphs H – A*** was cited.

Learned counsel concludes by urging this Honourable Court to dismiss the Claimant's claims/reliefs in its entirety for being frivolous and gold digging.

In line with law and procedure, Claimant filed written address wherein sole issue was formulated for determination to-wit;

***“Whether having regard to the circumstances of this case and the totality of the evidence before this Honourable Court, the Claimant has proved her case and is therefore entitled to Judgment in this suit?”***

It is the submission of learned counsel, that it is trite law that for a Claimant to succeed in an action before a Court of law, he/she must proffer credible and quality evidence to entitle him/her to judgment

since the evidential burden of proof is cast upon him/her by the provisions of Sections 135 – 137 of the Evidence Act, 2011.

Learned counsel further submits, that the Claimant has discharged the burden of proof placed on her by law so as to entitle her to the Judgment of this Honourable Court. It is on record that the Claimant testified as the sole witness and gave credible and quality evidence in support of her case and counsel submits that the Claimant's evidence was not shaken at all under cross-examination.

Learned counsel also submits, that the Defendant in its attempt to counter and defend the claims of the Claimant called a sole witness who never met or had any interaction with the Claimant on the day that the incident which gave rise to the Claimant's cause of

action arose. In addition, DW1's admission during cross-examination clearly supports the case of the Claimant. Placing the evidence of both parties in the scale, counsel humbly submits that the evidence proffered by the Claimant is much heavier in quality than that proffered by DW1 and counsel urge this Honourable court to so hold.

Learned counsel submits, that DW1 admitted during her cross-examination that the said CBN guidelines was issued to Banks and other Financial Institutions and that the Defendant did not display the said guidelines in a conspicuous place within the vicinity of the ATM which the Claimant attempted to use on the day her debit credit got trapped. Furthermore, there is unchallenged and uncontroverted evidence before this Honourable Court that the Claimant was

only informed about the so-called guidelines after the trapping of her debit card.

Learned counsel equally submits, that considering the fact that the said CBN Guidelines was addressed to Banks and other Financial Institutions like the Defendant, the onus was on the Defendant to bring the existence of the said guidelines to the attention of the Claimant prior to the Claimant's attempt to make use of the Defendant's ATM service and counsel urge this Honourable Court to so hold.

It is the submission of learned counsel, that DW1 during cross-examination referred to Exhibit "D2" as evidence that the Defendant had purportedly forwarded the Claimant's trapped debit card to First Bank Plc. but it is on record that Exhibit "D2" is an undated letter and counsel humbly submits that there

are plethora of cases on the legal effect of undated documents which is that such documents have no evidential value in law.

***SIFAX (NIG) LTD. VS. PHOENIX CAPITAL LTD. & ANOR (2017) LPELR – 50825 (CA) (Pp. 45 – 45, Paragraphs B – C)*** was cited.

Learned counsel also submits, that it is not the duty of the Claimant to produce any evidence from her bank disputing the alleged forwarding of her debit card to the said Bank but as stated earlier in this submission, it is the duty of the Defendant which claimed that it had forwarded the Claimant's debit card to First Bank of Nigeria Plc. to prove that claim by proffering evidence to that effect that counsel urge this Court to so hold.

Learned counsel further submits, that it could not be compelled to release the Claimant's trapped debit card to the Claimant in view of the alleged unchallenged evidence that it had returned the debit card to the Claimant's Bank in compliance with the extant Central Bank of Nigeria Guidelines for Card Issuance and Usage in Nigeria, 2014, his response to that argument is that firstly, there is nothing before this Honourable Court to prove that the Defendant actually forwarded the Claimant's debit card of First Bank of Nigeria Plc. on the 13<sup>th</sup> day of July, 2018 before the receipt of the Claimant's letter and counsel urge this Court to so hold.

Learned counsel submits, that the contention of the Defendant that it did not cause the Claimant any distress and discomfort is misleading considering the fact that in the aftermath of the event that occurred

on the 12<sup>th</sup> day of July, 2018 and the refusal of the Defendant to retrieve and handover the Claimant's trapped debit card to her, the Claimant was forced to borrow money from her colleagues to pay the cab driver that carried her on the day in question and it is also on record that the only way the Claimant was able to have access to the money in her First Bank Plc. account was by transferring same to a third party who will in turn withdraw and handover the cash to her. It is very clear that the Claimant would not have faced this hurdle if the Defendant had done the legal, lawful and proper thing right from the onset by retrieving and handing over the Claimant's trapped debit card back to her.

Learned counsel contends, that it is very obvious that the Defendant deliberately refuses to either inform users of its ATM services about the existence

of the guidelines for card issuance and usage in Nigeria or display the said guidelines within the vicinity of its ATM in Order to mislead members of the public into using its ATM services and so that it can rely on same anytime a non-customer's card get trapped in the said ATM and counsel urge the Court to so hold.

Counsel concludes by urging this Honourable Court to hold that having regard to the circumstances of this case and the totality of the evidence before this Honourable Court, the Claimant has proved her case and is therefore entitled to Judgment in this suit.

Upon service, Defendant filed reply on point of law to the Claimant's Written Address.

It is the submission of learned counsel, that contrary to the erroneous submission by the Claimant's

counsel in paragraphs 4.1.8, 4.19, 4.1.10, 4.11 and 4.1.12 of her address, the evidence of the DW1 is not hearsay evidence simply because she was not the staff of the Defendant that had direct contact or interaction with her on the day of the incident.

The law is trite that a staff of a corporate body who was not directly involved in a transaction or in an incident can testify or give evidence in respect of same on behalf of the company since a corporate body acts through its agents and servants.

***INTERDRILL (NIG.) LTD. VS. U.B.A PLC. 2017 13 NWLR (Pt. 1581) Page 52 at Page 67 Paragraphs E – H, A – D 69, Paragraphs C – H, 79, Paragraphs A – D*** was cited.

Learned counsel further submits, that they urge the Honourable Court to discountenance the submission

of the Claimant's counsel in paragraph 4.1.21 of her address that the Defendant did not prove its assertion that it submitted the card to the issuer (First Bank Nig. Ltd.) on the 13<sup>th</sup> day of July, 2018 as the Defendant has established its assertion by production of Exhibit "D2" which is evidenced clearly on the face of it, the receipt of the letter and debit card by the Issuer Bank vide its stamp and signature of its official on the letter. A fact that the Claimant did not dispute with any contrary evidence vide further/additional witness statement on oath other than mere denial of same.

It is submission of learned counsel, that the CBN Guidelines for Card Issuance and Usage in Nigeria, 2014 (Exhibit "D1") is a mere guideline that is not binding as it is not a law. Counsel urge the Court to discountenance the Claimant's submission that stand

the law on its head as the Supreme Court has held clearly in the case of *ACCESS BANK PLC. VS. OGBOAJA (Supra)* cited by the Defence counsel in paragraph 4.3.18 of his address that CBN Regulations or Rules and Guidelines is a subsidiary legislation having the force of law and the Court must take judicial notice of same. Thus, the instant Guidelines under consideration is a law which is binding not only on the banks but also on members of the public including the Claimant herein.

### **COURT:-**

I have read and assimilated the case of the Claimant as testified by PW1 and the documents tendered on one part, and the case of the Defendant and equally the documents tendered on the other part.

It is pertinent to note that relief 1 claimed by Claimant is declaratory in nature, and the law with respect to declaratory relief is clear. Such reliefs shall succeed on the evidence adduced and not on admission or lack of defence.

See *AGBAJE VS FASHOLA & ORS (2008) 6 NWLR (Pt. 1082)*.

Indeed, judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence.

*MOTUWASE VS. SORUNGBE (1988) NWLR (Pt. 92) 90.*

Where a Court is called upon to make a declaration of right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the Court by evidence and not the admission in pleadings.

**See *SAMESI VS. IGBE & ORS (2011) LPELR 4412.***

I shall therefore beam my search light on the evidence before the Court to ascertain who has the support of the law bearing in mind that the kernel of the Claimant's case is predicated on negligence.

It is the law, through a long line of decided authorities and statutes that whoever desires a court to give it judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts indeed exist. See section 131 (1) Evidence Act, 2011.

I now gravitate to the claim of Claimant which is predicated on negligence... what then is negligence in law?

The Black's Law Dictionary defines negligence to mean the failure to exercise the standard of care that a reasonable person would have exercised in a similar situation, any conduct that falls below the legal standard established to protect others against an unreasonable risk of harm, except for conduct that intentionally, wantonly, or willfully disregards the rights of others.

An omission or failure to do something which a reasonable man under similar circumstances would do or doing of something which a reasonable and prudent person would not do.

See ***PROGRESS MORNING STAR TRANSPORT & TRADE CO. LTD. & ANOR VS OGHOR (2018) LPELR 46274 (CA).***

Indeed for a Plaintiff to succeed in his claim for negligence, he must establish the following essential-elements:-

- i. That the Defendant owed the Plaintiff a duty of care of the subject matter.
- ii. That the Defendant breached that duty.
- iii. That the breach resulted in or caused the injury suffered by the Plaintiff.
- iv. That the Plaintiff suffered monetary losses.

***BRAWAL SHIPPING NIG.LTD. VS.  
OMETRACO INTERNATIONAL LTD. (2011)  
LPELR 9258 (CA).***

Having mentioned the four elements of negligence above; I shall peruse the evidence before the Court

to ascertain whether the Defendant owes the Claimant a duty of care.

The issue of duty of care is synonymous with a claim in negligence. It is one of the constituent elements to be established in a case predicated on negligence.

***UBA PLC. VS. COMRADE CYCLE LTD. & ANOR (2013) LPELR (20737) (CA).***

What amounts to a duty of care and when it can be presumed can never be exhausted. It can be remote or proximate. It depends on the circumstances of the case but it must always be reasonably inferred. In some cases, the Courts have even held that a Defendant may still owe a duty of care to the Plaintiff even when there is no direct relationship or contract between them.

***AGBON MAGBE BANK NIG. LTD. VS. C.F.A.O  
(1996) ANLR SC. 130.***

I will like to note at this point that an ATM card has in it imbued Personal Identification Number (PIN) known only to the holder of the card. The burden therefore, as always, rests on the Claimant to show that she correctly imputed the PIN on the machine in the course of trying to use the said ATM which eventually swallowed her ATM card and which has crystalized into the present action.

I say this in view of the provision of Section 133 of the Evidence Act, 2011 which is unassimilable.

It is not in doubt that Claimant said she interfaced with one Faith of the Defendant's Bank who undertook to release the trapped ATM Card to her upon retrieving same from the ATM Machine..

It clearly Claimant's words against that of the said Faith whom Claimant did not take steps to call before the court.

Claimant clearly did not substantiate her claim that one Faith (who is a staff of the Defendant) promised to release the trapped debit card to her upon retrieving same from the ATM.

The Defendant on their part insisted, that non-release of the debit card to her was because she is not a customer of the Defendant. That the mandatory provision of Section 4.5.0 of the Central Bank of Nigeria Guidelines for Card Issuance and Usage in Nigeria, 2014 prohibits the Defendant from releasing a trapped debit card in the ATM to the holder of the debit card but to render the trapped card unusable by

perforation by the Acquirer and returned to the issuer.

For the avoidance of doubt, I herein reproduce the said **Section 4.5.0 of the Central Bank of Nigeria (CBN) Guidelines for Card Issuance and usage in Nigeria**, which was tendered as Exhibit “D1”

*“Any trapped card in the ATM shall be rendered unusable (by perforation) by the Acquirer and returned to the Issuer on the next working day.”*

Where a bank holds itself to be professionally competent and skilled to carry out certain obligations involved in a transaction, if it shirks from that responsibility, it is negligent prima facie in that it owed the customer a duty of care which it shirked.

***NEKA VS. ACB (2004) 3 MJSC 118 (Pt. 152).***

Claimant maintained the fact that the said Central Bank of Nigeria (CBN) Guidelines Defendant mentioned and tendered ought to have been pasted on the said machine for all intending ATM users to see and that having not done that, Defendant cannot now rely on the said Central Bank of Nigeria (CBN) Guidelines to shy away from their responsibility.

I am inclined on the strength of the evidence before the Court to ask Claimant the following questions:-

Would Claimant have still instituted the instant action had the Bank pasted the said Central Bank of Nigeria (CBN) Guideline on a conspicuous place for all ATM users to see and her card is swallowed!

How has the non-pasting of the Guidelines breached the alleged duty of care owed Claimant by the

Defendant arising from the fact that her ATM card got swallowed by the said ATM!

I am however not oblivious of the fact that Claimant's plight would have been different if indeed the said ATM Machine was that of her Bank in view of the fact that the duty to exercise diligence, reasonable care and still in carrying instructions of a Bank's Customer, extends over a whole range of banking business including ATM transaction.

See ***DIAMOND BANK PLC. VS. PARTNERSHIP INV. COMM. LTD. (2009)12 SCNJ 322;***

***AGBANELO VS. U.B.N. LTD. (2009) LPELR – 234.***

From the available evidence, the issuing Bank is First Bank of Nigeria Plc., whereas the ATM Claimant sought to use was that of Unity Bank Plc.

Now that Defendant's ATM Machine swallowed the said ATM Card and Defendant whose activities are regulated by the Central Bank of Nigeria (CBN), can the Defendant i.e Unity Bank who relied on the Guidelines repeatedly mentioned in the preceding part of this Judgment as the reason for failure to release the said ATM Card be held accountable in law?

There is similarly no evidence to show that Claimant's card was not returned to the issuing Bank i.e First Bank Plc.

The Court in the evaluation of the evidence on negligence is duty bound to evaluate and consider the totality of the evidence led by each party. The Court should therein place it on the imaginary scale

of justice to see which side of the two weighs more credible than the other.

The scale of justice though imaginary is still the scale of justice; and the scale of truth. Such a scale will automatically repel and expel any and all false evidence. What ought to go into that imaginary scale should therefore be no other than credible evidence. What is therefore necessary in deciding what goes into the imaginary scale is the value, credibility and quality as well as the probative essence of the evidence.

See *ONWUKA VS. EDIALA (1989)1 NWLR (Pt. 96) 183 at 208 – 209.*

Notwithstanding the above, the Defendant acted well within its rights and could not have been expected to act in violation of the mandatory provision of

Section 4.5.0 of the Central Bank of Nigeria Guidelines for Card Issuance and Usage in Nigeria 2014, which the Defendant has no alternative or discretion but to obey same.

If the Claimant has a right she must of necessity have the means to vindicate it; and a remedy, if she is injured in the enjoyment or exercise of it; and indeed, it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal.

The maxim *ubi jus ibi remedium* is simply the latin rendition of the above principle.

Claimant has not been injured in law arising from alleged illegal and unlawful seizure of debit card belonging to her, which was trapped in the Defendant's ATM.

As stated in the preceding part of this Judgment, Claimant is under an obligation to establish her entitlement to the declaratory reliefs claimed as same cannot be granted as a matter of course, but by evidence that is credible.

Having failed to lead any credible evidence in line with the established principle of law as it relates to declaratory relief, said Relief no. 1 shall not be granted. It is refused and dismissed.

Similarly, for the reasons advanced, the Claimant's relief for an Order of this Honourable Court compelling the Defendant to release the Claimant's First Bank Debit Card with Card Number 5399232176125729 which is in its custody is hereby refused. The Claimant has failed to prove that said

debit card is still in custody of the Defendant. This relief is similarly refused and dismissed.

Next is the issue of Damages.

General damages means such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct and proximate result without reference to the special character or circumstances of the Claimant.

This is what the Judge can give without pointing out any measures by which they are assessed, except the opinion of a reasonable man.

Claimant has not suffered on account of the Defendant's conduct and is not entitled to be assuaged in damages. I so hold.

Consequently, relief for an Order of this Honourable Court mandating the Defendant to pay the Claimant the sum of **N5,000,000.00 (Five Million Naira)** only as General Damages for the distress and discomfort suffered by the Claimant over the refusal of the Defendant to release her debit card to her is hereby refused and dismissed.

I also make no Order as to cost.

Bereft of any legal substance, Claimant's case on the whole falls flat. It is accordingly dismissed.

*Justice Y. Halilu*  
*Hon. Judge*  
*13<sup>th</sup> December, 2023*

## **APPEARANCES**

Ashi M. Ashi, Esq. holding the brief for Amaka Eke, Esq. – for the Claimant.

Josquine O. Thompson, Esq. – for the Defendant.