IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT WUSE ZONE II.
ON THE 2ND DAY OF JUNE, 2022
BEFORE HIS LORDSHIPS
HON. JUSTICE A. S. ADEPOJU
HON JUSTICE H. BABANGIDA

APPEAL NO: CVA/744/2021

BETWEEN:

1. **DE-ZOBINSON INTERNATIONAL SERVICE LTD**
2. **MR. CALISTUS NDIBE**

------ APPELLANTS

AND

E-BARCS MIRCOFINANCE BANK LTD ---------- RESPONDENT

JUDE U. IDOKO *for the Appellant*

MARY N. ELIJAH *for the Respondent*

JUDGEMENT

DELIVERED BY HON. JUSTICE A. S. ADEPOJU

This is an appeal against the decision of the Chief District Court II of the Federal Capital Territory sitting at Wuse Zone 2 delivered on the 8th of February, 2021. The appellant complained of the whole judgement. And the grounds of the appeal as set out in the notice of appeal are:

GROUND ONE

The learned trial judge erred when he held that the Plaintiff had proved its case entitled it to the reliefs sought in his statement of claim.

PARTICULARS OF ERROR

i. The claim of the Respondent, then the Plaintiff at the trial court was for interest for loan given to the Appellant, then Defendant. The learned trial Judge place reliance on the evidence of PW1 even though the evidence did not in any way support the Respondent claim for a total sum of **N2,594,599:48** interest on the loan.

ii. The learned trial Judge did not place the appropriate value on the documents tendered by the Respondent (Plaintiff) and admitted in evidences which are of little or no probative value in law in proving interest on loan.

GROUND TWO

The learned trial Judge erred in law when he held that paragraph 1-7 of the Appellant (Defendant) statement of defence amount to admission of liability.

PARTICULARS OF ERROR

i. There was no equivocal admission by the Appellants in the statement of claim relied upon by the learned trial Judge.

ii. The Appellant were not giving opportunity to defend paragraph 1-7 and indeed all parts of their statement of claim as they were not in court because they were not served hearing Notice.

iii. Appellants were subsequently foreclosed from defence even though their absence from court was because they were not served with hearing Notice.

iv. The live issue in the suit was for ascertainment if any, of the interest on the loan collected by the Appellants from the Respondent. No evidence was led to ascertain or arrive at the

amount claimed by the Respondent as its due interest on the loan granted to the Appellants.

GROUND THREE

Appellants were denied fair hearing.

PARTICULARS

i. Appellants were not served with hearing Notice during the trials.

ii. The foreclosure of the appellants when no proper hearing Notice was issued amount to denial of fair hearing.

Wherefore the appellant sought the following reliefs:

a. That the appeal be allowed and the judgement of **His Worship, Mabel T. Segun Bello** of the Chief District Court of the Federal Capital Territory, Abuja delivered on the 8th February, 2021 be set aside.

b. Other consequential order(s).

The appellant in the brief of arguments dated and filed on the 6th of August 2021 gave a brief summary of the appellant case thus: That the 1st

appellant was a customer of the respondent and in the course of the banking relationship applied for an overdraft Facility of **Five Million Naira (₦5,000,000.00)** which was granted in March 2014, and another overdraft facility of **Three Million Naira (₦3,000,000.00)** which was also granted in March 2015. Both the respondents and the appellants agreed that the facility shall attract interest of 4% which was subsequently reviewed downward to $2^1/_2$%. The two facilities were guaranteed by the 2nd appellant. That the sum of **Eight Million Naira (₦8,000,000.00)** being the capital sum has long been fully paid back sometime in 2015.

However in October 2018, the respondent to the amazement of the appellant commenced the suit at the Chief District Court of the FCT sitting at Wuse Zone 2 claiming the sum of **₦2,594,599.48 (Two Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo)** as the sum total of the loan and interest being owed by the appellant. That as at October 2017, when the respondent commenced the suit, the 1st appellant had paid over **₦10,000,000.00 (Ten Million Naira).** For the principal sum and interest on the facilities.

That at the trial, the respondent did not demonstrate in any way how the said loan and interest accrued despite all the repayments made by the appellant. The appellant also claimed that in March 2014 when the respondent was availed the first facility the interest on the loan was stated to be 4% but the percentage on additional facility which was renegotiated and reduced to 2.5% yet the respondent continued to calculate the interest of the said loan based on 4% interest earlier discarded by both parties. And that on the 8th February 2021, despite the failure of the respondent to clearly demonstrate how the said balance on the loan and interest of **₦2,594,599.48 (Two Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo)** was arrived at, the court still held that the appellants were liable as per the claim of the respondent (then plaintiff). That the lower court held that the appellants admitted the respondent's claim even when no such admission as claimed by the respondent (plaintiff) was done by the appellant (defendant) thus this appeal.

From the three grounds of appeal set out by the appellant in the notice of appeal, two issues were distilled for determination by the court. They are:

1. Whether paragraph 1-7 of the appellant statement of defence at the trial court amount to admission worthy of entering judgement in favour of the respondent (distilled from ground 2).
2. Whether from the evidence placed before the trial court by the respondent, the respondent has clearly demonstrated how it arrived at the outstanding loan and interest claimed against the appellant to entitle it to the relief claimed. (Distilled from ground one).

The appellant argued that the plank upon which the respondent got the judgement at the trial court is based on paragraph 1 – 7 of the statement of defence. The statement is also reproduced for ease of reference:

1. ***"I have paid all the money I borrowed from the plaintiff.***
2. ***I have paid over ₦8,000,000 to the plaintiff.***
3. ***The money the plaintiff is claiming is interest.***
4. ***The plaintiff can waive his interest and allow me to go.***
5. ***My business is down and I cannot pay any huge money now.***
6. ***I don't have any business am doing now.***

7. ***Since the plaintiff is insisting that I must pay the interest, I have begged and the plaintiff is to allow me to be paying ₦25,000 every month until I finished the debt they are claiming."***

The appellant's counsel submitted on the ground rule that facts admitted need no prove, but however that it is not all kind of statement that constitute admission in evidence. He relied on the care of **NARINDBX LTD V NIMB LTD (2001) 4 SCNJ 208 @ 220** where the Supreme Court held:

"Admission must be clear and unequivocal and not based on misapprehension." Per **U. A. Kalgo JSC.**

That the apex court held further that:

"In law, admission per se do not constitute conclusive evidence of the matter admitted. The court in considering the worth of such admission must take into account the circumstance under which they are made and the weight to be attached thereto."

The appellant's counsel further submitted that the reliefs sought by the respondent at the trial court which the court entered judgement in favour of was for a specific amount of **₦2,594,599.48 (Two Million Five**

Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo) being interest and outstanding balance of loan. He posed whether paragraph 1 – 7 of the appellants' statement of defence qualifies to be an admission of the indebtedness of a sum of **₦2,594,599.48 (Two Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo)** being the total loan and interest accrued granted to the defendant by the plaintiff. The learned counsel relied on the case of **ACHIBONG V ITA (2004) AFWLR (PT. 197) 930 – 957** Per **Niki Tobi JSC** where the Supreme Court held:

"An admission in order to be useful to the adverse party must relate to or affect the live issue in the matter."

He submitted that a cursory look at paragraphs 1 – 7 of the statement of defence does not affect the life issue in this matter which bothers on respondent's liability for a specific sum of money being for loan and interest. That the admission is an assertion by the appellant that he had paid more than the loan he collected and that having been put under unjustified pressure to further payment by the respondent, he would be willing to still pay more. That the statement of defence amount to

admission which is merely incidental to the main relief and cannot qualify as basis for entering judgement. He relied on the case of **VICTABIO VENTURES LTD V WVAN PER ZWAW AND ZNB (2000) AFWLR (PT. 490) 756 CA. He also commended to the Court the case of OYETUNJI V AKANNI (1986) 5 NWLR (PT. 42) 461 CA, IMB PLC V CAMRADE CYBER CO. LTD (1998) 11 NWLR (PT. 574) 460, KAMALU V UMMUNNA (1997) 5 NWLR (PT. 505) 321.**

Finally he submitted that the appellant did not admit being indebted to the respondent and urged this court to resolve issue one in favour of the appellant.

ISSUE TWO

The learned counsel for the appellant **J. U. Idoko Esq** stated that the main relief sought which judgement was entered in the respondent's favour is outstanding balance for a loan and accrued interest of **₦2,594,599.48 (Two Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo)** . That the law is trite that a claimant should prove his case through credible evidence and

not relying on the weakness of the defendant's case even where the defendant did not lead any evidence. Since a defendant is not duty bound to call evidence. He cited the case of **HEALTH CARE PRODUCTS (NIG) LTD V BAZZA (2004) 3 NWLR (PT. 861) P. 582 @ 605 -606 PARAS H – D.**

He argued that the main assertion which needed to be proved by the respondent at the trial court was that the appellant was indebted to the respondent for a sum of **₦2,594,599.48 (Two Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo)** arising from loan and interest on it. That the trial court misdirected itself through a finding of facts upon which the court relied goes thus:

"It is evident from the plaintiff's case that the defendant was served with the appropriate demand letter and it is the law that once valid demand notices has been served, the plaintiff is entitled to recover the loan, advanced to the defendant. Paragraph 13 of the PW1's witness statement on oath shows that this fact." **(Page 138, Paragraph 3 of the record).**

He submitted that issuance and service of demand letter is not the way required by law to establish specific monetary claim particularly where it is that of loan and interest. He further argued that what a bank laying claim for debt arising from loan and interest must do are stated by the Supreme Court in **UNITY BANK V AHMED (2020) NWLR (PT. 1705) 364, 372 SC:**

"Any bank claiming a sum of money on the basis of the overall debit balance of a statement account must adduce both documentary and oral evidence to show how the overall debit was arrived at. In this case, the appellant failed to present evidence to explain how the interest charges rose to the amount claimed by the appellant" **(WEMA BANL PLC V OSILARU (2008) 10 NWLR 1094 150 FBN V MAMMAN (2001) 3 WRN 58).**

He stated that in the instant case, the respondent did not demonstrate before the trial court how it arrived at the sum claimed as loan and interest. That the trial court was not told how much of the sum claimed represent loan and how much represent interest. That the documents tendered did not in any way show how the sum of **₦2,594,599.48 (Two**

Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo) claimed by the respondent was arrived at. Furthermore the said statement of account was dumped on the court without any oral evidence regarding its content. He commended to the court the case of **YUSUF V ACB (1986) 1- 2 SC, 49**, where the Supreme Court held:

"It was not sufficient for the DW1 to dump the statement of account on the court without explaining clearly the entries therein particularly since the debt is constituted by interest charged after the final demand notice."

He also relied on the case of **WEMA BANK PLC V OSILARU (2007) LPELR – 8960 CA** where the Court of Appeal held:

"It is trite that a bank statement of account is not sufficient explanation of debt and lodgements in customer's account to charge the customers with liability for the overall debit balance shown in the statement of account."

The Counsel also pointed out that the sole witness of the respondent before the trial court only contradicted the evidence before the court on the issue of interest during cross-examination. That the overdraft facility given to the appellant by the respondent was initially at 4% interest, this percentage was later reviewed downward to 2.5% but during cross-examination the witness said the interest on the loan was still 4%. He submitted that the court cannot rely on evidence that is afflicted with material contradiction. He relied on the case of **KAYILI V YILBUK (2015) AFWLR (PT. 775) 347 @ 390 SC** where the court held:

"Where there are material contradictions in the evidence adduced by a party in a civil case the court is enjoined to reject the entire evidence as it cannot pick and choose in which of the conflicting versions to follow."

He submitted that the trial court if it had rejected the evidence of the witness would have arrived at a different conclusion or decision. He urged the court to resolve issue two in favour of the appellant. He concluded that the appellant did not admit to being indebted to the respondent as what the trial court held to be an admission did not relate to the specific sum of money claimed by the respondent. That there was no single

evidence demonstrating how the so called outstanding loan and interest were arrived at. He therefore urged the court to set aside the judgement of the trial court entered for the respondent on the 8th of February 2021.

The respondent on the other hand in its brief of argument formulated a sole issue for determination to wit:

Whether the lower trial court was right to have entered judgement in favour of the respondent vis-à-vis the evidence and facts before the trial court.

The learned counsel for the respondent **Chibuzor C. Ezike**, submitted on the trite principle of law that evidence which is unchallenged or unchallenged or discredited should be acted upon by the court. He relied on the case of **INTERDRILL (NIG.) LIMITED V UNITED BANK FOR AFRICA PLC (2017) 13 NWLR PT. 1581 PG 52 @ 7 PAR. E-F PER RHODES VIVOUR JSC.** The learned counsel referred the court to the proceedings of the court as contained at page 124 of the record of appeal stating that the respondent tendered six (6) documents marked as Exhibit A1-A6 which were never challenged nor questioned by the appellant. He also stated

that the appellant was given opportunity to put their defence. The court he said adjourned severally for the respondent to open their defence for more than a year until their right were foreclosed.

That it was also in evidence that a demand letter was served on the appellant containing the total outstanding indebtedness to the bank and the said letter was replied by the appellants through their counsel wherein they pleaded to suspend the running of the interest in their account and also pleaded to pay the balance of their indebtedness as at 24th August, 2015. See page 21-24 of the Record of Appeal. That the appellant were aware of the interest being charged on the overdraft granted to them but had never challenged same but rather pleaded to suspend same due to hardship. That it is the law that were a customer sees interest charge on an account and acquiesced in the system, a claim on interest by a bank will be justified in law. He referred to the case **GWYN V GODBY (1812) 4 TRAUNT 346, CROSSKILL V BOWER, BOWER V TURNER (1863) 32, BEAR, 856, BARCLAYS BANK DCO V HASSAN (1961) 4 ALL NLR 836** where it was held thus:

"A party will be deemed to have accepted the rate at which interest on bank draft was calculated, if he receives from the bank periodic statements of account in which the interest is charged was shown as a debit and he did not dispute the account as was shown by the statement."

He posited that the appellant in paragraph C page 3, of their prayer in their letter dated 20th September, 2016 through their counsel **Atuegwu C. Okafor of Ikechukwu Ezechukwu SAN & Co.** made reference to the sum of **₦1,873,339.9 (One Million Eight Hundred and Seventy Three Thousand Three Hundred and Thirty Nine Naira Nine Kobo)** as their outstanding indebtedness as at the 14th September 2015. That this was a reply to the final demand notice for his payment of sum of **₦2,546,642.40 (Two Million Five Hundred and Forty Six Thousand Six Hundred and Forty Two Naira Forty Kobo)** by the respondent payment dated 7th September 2016. That the appellant did not question nor dispute to the said sum but rather pleaded to pay the outstanding balance as at 14th September, 2015 and also to suspend interest accrual to the over-draft. That the law is settled without doubt that where the recipient of a

business Letter fails to deny the content thereof, the law deems the letter as admitted. Reference was made to the case of **VASWANI V JOHNSON (2000) 11 NWLR (PT. 627) 582.**

He further referred to pleading filed by the defendants on 1st day of November 2019 which was signed by the 2nd appellant himself at pages 52-53 of the Record of Appeal. He argued that the defendants now appellants did not lead any evidence in support of the pleading but the court of law and justice have a duty to look at the record in order to do substantial justice to the parties. He placed reliance on the case of **FUTO V AMCO & ORS (2019) LPELR 47327 CA.** He argued that a closer look at the said appellants' defence is nothing but an admission of the claim of the respondent with a plea for court to intervene and by the respondents to allow the appellants pay **₦25,000 (Twenty Five Thousand Naira)** every month until the entire debt is liquidated. That the position of law on effect of admission is that where a defendant admits a fact in dispute by his pleadings, the fact is taken as established and forms one of the agreed facts in the case. He relied on the case of **BRITISH INDIA GLOBAL**

INSURANCE CO. NIG LTD V THAWARDS (1978) 3 SC 148, ACB V OGILI (1995) 8 NWLR (PT. 413) 353.

He also submitted that it is trite position of law that pleadings cannot and should not constitute evidence. That a defendant who does not give evidence in support of his pleadings or in challenge of the evidence of the plaintiff is deemed to have accepted and rested his case on the facts adduced by the plaintiff notwithstanding the general transverse. He cited the case of **OKAFOR V DUMEZ (NIG) LTD (1998) 13 NWLR (PT. 580) 88 @ 95.**

He further contended that the case of **NAVINDSX LTD V NIMB LTD (2001) 4 SCNS 208 @ 220** supports the case of the respondent. That the conditions and circumstances of admission is material to the weight to be attached to an admission made by a party. He argued that the appellant wrote several letters to the respondent and also filed a statement of defence and in none of the correspondences did the appellant deny owing the respondent. That the amount indebted to the respondent was consistent through the trial and was never in dispute. He referred to paragraph 17 pages 5 of the Record of Appeal, and submitted that

appellant's indebtedness to the respondent when the interest was last charged on the account as at 30th November 2016 was never denied nor controverted.

The respondent's counsel alluded to the attitude of appellants at page 10 of the brief of argument and stated that the appellants knew from day one that they have no defence but wanted to use the instrumentality of delay tactics to buy more time and frustrate the respondent from reaping the fruit of his success.

With respect to the case of **UNITY BANK PLC V AHMED Supra** relied on by the appellants, the respondent's counsel argued that in the case at hand the appellant never challenged the debit in the account nor questioned the interest being charged on his account whereas in the case of **UNITY BANK PLC V AHMED Supra** it was **Colonel Bello Mohammed Ahmed (Rtd)** that brought the action against **Unity Bank** challenging amongst other things the interest charged by the **Unity Bank** which according to him was outside the agreed interest rate by the parties. Similarly he argued that the case of **YUSUF V ABC (1986) 1-2 SC, 49 AND WEMA BANK PLC V OSILARU (2007) LPELR – 8960 CA** relied on by the appellants

to state the principle of law that bank statement is not sufficient explanation of debt and lodgement in customers account are not applicable in this case as the facts and circumstances are different from the case at hand. That in these two cases mentioned above, it was the customers that went to court to challenge the charges on their account. That a case is only authority for what it actually decided. He relied on the authority of **EZE V UNIJOS (2021) 2 NWLR (PT. 1760) 208**, **223-224** where the court held that:

"A case is only authority for what it actually decided. For a decision of the Supreme Court to bind it and any lower court, therefore the facts and the law on the subsequent case must be the same or similar to those on which basis the court's earlier decision evolved."

Finally, he submitted that the instant appeal is an attempt to stall the enforcement of the lower court using the instrumentality of courts. He therefore urged the court to dismiss the appeal for lacking in merit and uphold the judgement of the trial court.

I have calmly gone through the Record of Appeal and the embedded Record of Proceedings of the lower court, with all the processes filed at the appeal and in particular the brief of arguments of the respective counsel to the parties. I wish to adopt the issues formulated by the learned counsel to the appellants **J. U. Idoko** which is similar to that of the respondent's counsel, and which resolution thereof shall dispose of the contentions of both parties.

RESOLUTION OF ISSUES

ISSUE 1 is whether paragraph 1-7 of the appellant statement of defence at the trial court amount to admission worthy of entering judgement in favour of the respondent (distilled from ground 2).

Before embarking on the resolution of the issue above, it is necessary to give an eye-bird view of the case at the lower court. The respondent took out a default Summons for recovery of **₦2,594,599.48 (Two Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo)** being owed by the appellants as loan interest thereon. On the 3rd day of March, 2014 the appellant applied for an

overdraft facility for the purpose of stock refinancing for working capital enhancement of the 1st defendant's business. And after due consideration, the respondent approved and granted the first overdraft facility of **Five Million Naira (₦5,000,000.00)** to the appellants with an accruable interest rate of 4% of the loan per month. The loan was given to the appellant with the condition to be repaid within 90 days with all the accruable and accumulated interest therein of 4% per annum.

The 2nd appellant as part of the condition for the grant of the overdraft deposited his title document of Plot Sp 593 measuring about 75m2 situate at Apo Mechanic Village Abuja as collateral for the loan. And after the duration of 90 days given to the appellants to repay the said loan to the plaintiff as agreed, the appellant wrote a letter appealing to the respondent for extension of more 90 days to enable him offset the said overdraft through a letter dated 28th June 2014. The appellant despite his plea for more days to repay also applied for more overdraft and after due consideration was granted additional overdraft of **Three Million Naira (₦3,000,000.00)** on the 24th day of March 2015 at 4% per month to expire September 2015. And after the expiration of the due date for the

repayment of the overdraft in September 2015 at 4% interest per month through an offer letter dated 24th March 2015.

C. Okafor Esq of **Ikechukwu Ezechukwu SAN** replied through a letter dated 20th September 2016. And in the said letter the appellant through their counsel admitted owing the respondent the sum of **₦1,873,339.9 (One Million Eight Hundred and Seventy Three Thousand Three Hundred and Thirty Nine Naira, Nine Kobo)** as at 14th September 2015. The respondent however did not accept the request for the stoppage of the interest on its account as requested by the appellants and the interest continued to accrue as per the terms in the offer letters. That is at 30th November 2016, the defendants were indebted to the plaintiff to the sum of **₦2,594,599.48 (Two Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo)** as contained in the 1st appellant's statement of account.

Documentary evidence Exhibit A1 – A6 was also adduced by the respondent. See page 6 – 26 of the Record of Appeal.

Now after several adjournments, the appellants filed a Notice of Intention to defend dated 8th March 2018 with an affidavit disclosing a defence deposed to by the 2nd appellant, wherein he averred that the summation of the indebtedness stated in the Exhibit G (Statement of Account) there was a mix-up in the figure. He further averred that there were some payments made to the respondent that were not captured in the statement of account. And that the charges agreed with on the offer letter does not reflect the charges which the respondent applied in the statement of account. He therefore denied that the respondent is entitled to **₦2,594,599.48 (Two Million Five Hundred And Ninety Four Thousand Five Hundred And Ninety Nine Naira Forty Eight Kobo).**

In addition to the affidavit disclosing a defence, the appellants equally filed what it termed ***"Defendants Defence"*** wherein it was stated thus:

"My defence in this case are:

1. *I have paid all the money I borrowed from the plaintiff.*
2. *I have paid over **₦8,000,000 (Eight Million Naira)** to the plaintiff.*
3. *The money the plaintiff is claiming is interest.*

4. *The Plaintiff can waive this interest and allow me to go.*
5. *My business is down and I cannot pay any huge money now.*
6. *I don't have any business am doing now.*
7. *Since the plaintiff is insisting that I must pay the interest, I have begged the plaintiff to allow me to be paying* ***₦25,000 (Twenty Five Thousand Naira)*** *every month until I finish the debt they are claiming.*
8. *I submitted my appeal letter to the plaintiff since July 2019 but up till now they have not told me anything, attached is my letter to the bank.*
9. *I am appealing to the court to help me beg the plaintiff to have mercy on me so I can continue with my struggle in life and be paying the plaintiff* ***₦25,000 (Twenty Five Thousand Naira)*** *every month until I finish the debt.*
10. *My family is seriously suffering now and I don't have what to do."*

It is based on the above *"Defence"* of the appellant that the lower court entered its judgement as follows:

"The plaintiff has tendered 6 exhibits in support of their case, and even though the defendant neglected to enter with their defence, they indeed filed a statement of defence which to all intents and purposes, primarily stands as an admission of the plaintiff's claim. Paragraphs 1-7 reads as follows:

1. *I have paid all the money I borrowed from the plaintiff.*
2. *I have paid over ₦8,000,000 (Eight Million Naira) to the plaintiff.*
3. *The money the plaintiff is claiming is interest.*
4. *The Plaintiff can waive this interest and allow me to go.*
5. *My business is down and I cannot pay any huge money now.*
6. *I don't have any business am doing now.*
7. *Since the plaintiff is insisting that I must pay the interest, I have begged the plaintiff to allow me to be paying ₦25,000 (Twenty Five Thousand Naira) every month until I finish the debt they are claiming.*

There is no significant way or manner in which the defendant actuary contradicted the claims of the plaintiff and the evidences produced by the plaintiff. And our laws are clear as touching situations of his kind.

However the plaintiff has a burden to proof his case on the balance of probability and this is because the plaintiff must succeed upon the strength of his own case and not upon the weakness of the defendant's case.

Once the plaintiff discharges this onus of proof, the burden shifts to the defendants where the defendants however, fails to lead evidence in support of material facts in this case, the court is left with no option but to make a reasonable and legitimate inference that the plaintiff's version is more probable.

It is evident from the plaintiff's case that the defendant was served with the appropriate demand letter and it is the law that once valid demand notices has been served, the plaintiff is entitled to recover the loan, advanced to the defendant, paragraph 13 of the PW1's witness statement on oath shows this fact.

In my opinion, the evidence so far preferred by the plaintiff witness is one, not in any way brought with any legal inhibitions and same not lacking in merit. Therefore this court shall hold the facts as presented to

be true and credible, the defendant haven been given adequate opportunity to challenge the facts but failed to so do."

Flowing from the above opinion of the lower court, the poser is; whether the appellants' defence as stated above is an admission? What then is an admission of facts? I will start by considering the provision of Section 123 of the Evidence Act which states:

"No facts needs to be proved in any civil proceeding which the parties to the proceeding or their agents agree to admit at hearing or which before that hearing, they agree to admit by any writing under their hands or which by any rule or pleadings in force at the time they are deemed to have admitted by their pleadings provided that the court may in its discretion require facts admitted to be proved otherwise than by such admission."

See **U. D. F. U. V KRAUS (2001) 24 WRN 78 @ PG 91** where the court held:

"The law is unequivocal that a fact admitted by the defendant in his pleading must be taken by a court of law as established and should

therefore be treated as one of the agreed fact between the parties to the suit. Indeed these facts are directly admitted as in the instant case or deemed admitted as provided for in the rule of court dealing with pleadings, such averments do not need to be prescribed in court. The judgement of the court is delivered on 17/2/97 based on the admission cannot be faulted."

See further **SOLANA V OLUSANYA & ORS (1975) 6 SC 55, OLUBADIN V OYESINA & ORS (1977) 5 SC 79, UNIC INSURANCE V NDIC (2018) LPELR 45571 CA.**

To decide whether the defence of the appellant amounts to an admission, it is important to review the facts contained in the affidavit in support of the default summons particularly paragraphs 29-31 thereof wherein the deponent, one **Helen Ajayi** averred:

"That on 14th September the defendant wrote a letter of appeal dated 14th September 2015, for stoppage of interest in its account in respect of the overdraft of ***₦5,000,000 (Five Million Naira)*** *and* ***₦3,000,000 (Three Million Naira)*** *respectively. That in the said letter the defendant admitted*

being indebted to the plaintiff in the sum of ***₦1,873,339.9 (One Million Eight Hundred and Seventy Three Thousand Three Hundred and Thirty Nine Naira, Nine Kobo)*** *a copy of the said application dated 14th September 2015 is hereby attached and marked as Exhibit D.*

Paragraph 30: That upon the receipt of the letter by my employer, the appeal was considered and the interest rate was reduced from 4% to 2.5%, 1% management fee and the balance was extended to 90 days on 5th day of November 2015.

Paragraph 31: The said extension expired on the 3rd day of February 2016 with debit balance of ***₦1,977,694.30 (One Million Nine Hundred and Seventy Seven Thousand Six Hundred and Ninety Four Naira, Thirty Kobo)*** *unpaid."*

When these averments in the affidavit are juxtaposed with the entire testimony on oath of the Branch Manager of the respondent, one would see that there is nothing in the evidence of the witness to proof how the debit balance of **₦1,977,694.30 (One Million Nine Hundred and Seventy Seven Thousand Six Hundred and Ninety Four Naira, Thirty Kobo)** was

arrived at by the respondents. It is not in doubt that what is in contention between the parties is the balance of the loan and the accrued interest. It is trite that the claim of interest on a loan transaction is in the realm of unliquidated monetary demand, and unless it is expressly agreed on by the parties a bank or any financial institution claiming interest on loan must as of necessity adduce evidence in proof thereof. In other words the interest must be proved by exact mathematical calculations especially where it fluctuates and subject to variations. It is not enough for a party claiming interest on a loan to dump the statement of account of the borrower on the court. There must be an official of the bank or the lending institution who is familiar with the account of the customer to explain how the debit in the account came about. See the case of **BILANTE INT'L LTD V NDIC (2011) 15 NWLR (PT. 1270) P1** where the court held:

"In order for a claim for debt outstanding in a customer's account with its bank to succeed, the banker has to prove how the debt balance claimed from the customer was arrived at. The plaintiff bank has to

demonstrate through oral evidence given by an official who is familiar with the accounts how the debit balance was arrived at."

See further **ANYAKWO V A. C. B. LTD (1976) 2 SC 41.**

Other questions for the respondent are; what was the interest charged after the expiration of the extension on 3rd day of February 2016? Was it 4%, or 2.5%? How did the respondents arrive at the debit balance of **₦2,546,642.40 (Two Million Five Hundred and Forty Six Thousand Six Hundred and Forty Two Naira Forty Kobo)** contained in the letter of final demand? In my humble view the letter of demand which the lower court relied on was not explicit on how the sum owed was arrived at, and neither was it made clear nor supported the oral evidence of the witness to the respondent during trial. An admission of fact must be unequivocal and direct and must relate to the live issue in contention. Furthermore the letter of the appellant's counsel dated 20th September 2016 cannot be construed as an admission of the appellants' indebtedness of the interest to the respondent's bank. See page 24 of the Record of Appeal sub-headed "**Our prayer"**, item (b):

"That the unwarranted interest accrual resulting from Mr. James Uka's wrongful interception and unethical demands after our client's appeal letter of 14th September 2016 be waived."

This paragraph clearly evinced a denial of the interest charged by the respondent. I therefore endorse the submission of Learned Counsel to the appellant that the issuance and service of demand letter is not the requirement by law to establish specific monetary claim particularly where it relates to loan and interest. I further endorse the Counsel's argument that the trial court was not told how much of the sum claimed represented loan and how much represented interest, and the documents tendered did not show how the figures were arrived at either.

Furthermore, I am also in agreement with the learned appellants' Counsel that there was contradiction in the testimony of the witness to the respondent under cross examination when he testified that the *"interest rate for the facility was 4% and would be surprised if it is not because it was not reviewed."* While in the affidavit it was clearly averred that the interest rate was reviewed from 4% to 2.5% based on the appeal of the appellant. I therefore hold that from a calm review of the totality of the

facts before this court, paragraph 1-7 of the appellants' defence does not constitute an admission of its total indebtedness to the respondent.

Issue No. 1 is therefore resolved in favour of the appellant. In the same vein issue No. 2 is also resolved in favour of the appellant. There was no satisfactory proof on how the total debit balance was arrived at by the respondent, not even from the statement of account of the appellant admitted by the lower court. It is not the duty of the court to link a document to the oral evidence before it to ascertain or proof any fact before it. See **ACN V NYAKO (2012) 52 (PT. 2) NSCQR 560 @ 612 PER OGUNBIYI JSC**. The respondent failed to establish a nexus between the statement of account tendered and the oral evidence of its witness. I is trite that documentary evidence is said to be the hanger upon which to assess oral evidence. See **NYAKO V MUHAMMED (2016) 11 NWLR (PT. 1009) 655.**

With respect to the submission of the respondent's the arguments of the learned Counsel which apparently is focused on the attitude of the appellant at the lower court, the series of adjournments at the instance of the appellant and show of lack of seriousness to prosecute its defence,

learned Counsel to the respondent argued that the evidence of the respondent was not challenged or discredited by the appellants who was given the opportunity to put up their defence but failed to do so. He referred the court to the record of proceedings at the lower court as contained in the record of appeal.

While it is true that the appellant did not call evidence in proof of the facts contained in the affidavit and what he termed *"Defence"* attached to the affidavit, however the appellant's counsel cross-examined the sole witness to the respondent and the witness was in turn re-examined by the respondent's counsel. See page 129-130 of the record of appeal. It is a notorious fact that the purpose of cross-examination is to test the veracity of a witness, and to challenge the evidence adduced during examination in chief. Such evidence extracted during cross-examination and if credible stands to support the case of the party who conducts the cross-examination and can be used by the court. It is therefore not correct to state that the evidence of the respondent was not challenged by the appellant at the lower court.

Also the respondent's counsel **Chibuzor C. Ezike** argued further that the appellants were aware of the interest being charged on the overdraft granted to them but they never challenged same but rather pleaded to suspend same due to hardship. He relied on the authority of **BARCLAYS BANK D. C. O V HASSAN Supra.** This authority is not helpful to the case of the respondent, in the said authority; the court held that a party will be deemed to have accepted the rate at which interest on a bank draft was calculated, if he receives from the bank periodic statement of account in which interest charged was shown as a debtor and did not dispute the account as shown by the statement. In the case at hand, there is nothing to show that the appellants were served with periodic statement of account by the respondent. This is a flaw in the case of the respondent. The law is well settled and elementary that parties are bound by their pleadings and the plaintiff or claimant must succeed on the strength of his own case composing both pleadings and evidence and not rely on the weakness of the defence in proof of her claim.

It is evident that the appellants took so much time requesting for adjournment to settle amicably out of court and eventually ended up not

adopting its defence. This notwithstanding, the standard of proof in civil cases is on the party who asserts. See the case **LONG V CBN (2006) 3 NWLR (PT. 967) 228, HARUNA V AKPATUMA (2000) 75 (PT. 11) 24** where the court held:

"It is law that in civil cases the proof of a case is on the party who asserts a fact. He has to prove same and the standard of proof is on a preponderance of evidence or on a balance of probabilities."

See further the provision of Section 131 of the Evidence Act. The fact that the appellant did not call evidence did not absolve the respondent of the responsibility of proving their claim to the satisfaction of the court with cogent and compelling evidence. The court in the case of **UNITY BANK PLC V BELLO (Supra)** held:

"Where a bank claiming interest on loan it must be able to adduce evidence how such is calculated."

On the whole we agree with the appellants' counsel that the respondent have failed to prove its case against the appellant. Consequently the judgement of the trial court entered for the respondent on the 8th of

February, 2021 is hereby set aside. The file is to be remitted to the Deputy Chief Registrar (Magistrate) for trial before another District Judge.

Signed **Signed**

HON JUSTICE A. S. ADEPOJU
Presiding Judge
2/6/2022

HON JUSTICE H. BABANGIDA
Hon. Judge
2/6/2022