

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS MONDAY 5TH DAY OF JUNE, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2349/2022

BETWEEN:

- 1. CRIBWOX LTD**
- 2. EFGEA LTD**
- 3. TALE ALABI ESQ..... CLAIMANTS**
(On Behalf of Lexquid
Consults & Layoonu Consults)

AND

KEYSTONE BANK LTD.....DEFENDANT

RULING/JUDGMENT

Ruling on the admissibility of the screenshot from the phone of the claimant. The objection is premised on fact that the paragraph 9 of the statement of claim reads as follows “the claimant pleads and shall rely on all the screenshots of the communication with the defendant at the trial of this suit” that what he saw in the said document is between one lucky keystone and that he doesn’t know who else because the name of the claimant isn’t written on the said document. That there is a word of difference between Lucky keystone and the defendant on this suit keystone bank LTD. This submitted that keystone bank is a corporate entity with a distinct legal personality. Thus the defendant has official phone lines and any communication between anybody and the respondent will clearly indicate that the communication is with the person and keystone bank. That beside the defendant, his email address for purposes of communication and the email address on the said document is Toniaobylo@yahoo.com. That this not in any way the email address of the defendant and there is no need or no connection whatsoever has been established by the claimant between Lucky Keystone and Keystone Bank LTD. It is the duty of the witness to satisfy the court whether

the said lucky keystone is either the manager or account officer of the said bank, and going through the said claim no mention some lucky keystone.

Secondly, that this is a computer generated document and that there is no certificate in line with section 84 of the Evidence Act, 2011, that there ought to be a certificate satisfying whether is an android phone or Iphone that the said communication was generated. In line with section 84 of the Evidence Act, the phone is supposed to be specified and also the printout.

Thirdly, that the document is a photocopy of a document and is not primary evidence but a secondary evidence and no foundation was laid. In view of the following urge the court to discountenance this document and not to admit it in evidence.

The claimant counsel on point of law submits that, the foundation for the admissibility of tendering a documentary evidence, is relevancy and once a document passes the test of relevancy, the courts are encouraged to admit such document. On this he referred this court to the case of Yaro V UBN Nig. LTD (2000)5 NWLR (Pt. 651)at 470.

Further submit that, the communication between the witness and the document that is being tendered was between a witness and a staff of the Defendant that create an agent and principal relationship and it suffices to say that the communication was made between the witness and the defendant.

The witness has also complied with section 84 of the Evidence Act, 2011 as he has filed the certificate and such documents, are tendered in the printed form in accordance with section 84.

Finally urged the court to discountenance the objection raised by the defendant counsel and admit the document in evidence.

This court having listened to the counsels to both side, and the argument for and against the admissibility of the document sought to be tendered and the reasons advanced by the defendant counsel are in three folds which this court will dwell on it.

Firstly, on the admissibility of the screenshot, the objection of the defendant premised on the fact that the paragraph 9 of the statement of claim which reads:

“The claimants plead and shall rely on the various screenshot of the communication with the defendants of the trial of this suit”.

On this he submitted that what he saw in the said document is between one lucky keystone and that he doesn't know who else because the name of the

claimant is not on the said document. That there is world of difference between one lucky keystone and the defendant is this suit Keystone Bank. Submits, that Keystone bank is a corporate entity with distinct legal personality, the defendant has official phone lines and any communication between anybody and the defendant will clearly indicate that the communication is with the person and keystone bank. That beside the defendant his email address on the said document for official emails address for purposes of communication is Toniaobylo@yahoo.com that is not in any way the email address of the defendant, and that there is no nexus or connection whatever that has been established by the claimant between lucky keystone and keystone bank LTD.

In response, the claimant counsel submits on point of law that, the communication between the witness and the defendant that is being tendered was between the witness and a staff of the defendant that creates an agent and principal relationship and it suffices to say that the communication was made between the witness and the defendant.

Here it is the law, that the principal agent relationship refers to an arrangement in which one entity legally appoints another to act on it behalf. In a principal agent relationship, the agent acts on behalf of the principal and should not have conflict of interest in carrying out the act. Here in this case there is no denial that the said lucky Keystone is not a staff of keystone Bank LTD, being a staff of Keystone Bank LTD, the dealing or the communication is done on behalf of the Defendant. Hence the argument on this legal issue will fail and it is hereby discountenanced.

On the second argument on objection of the defendant, that the document sought to be tendered is a computer generated evidence and therefore there is need for certification in compliance with section 84 of the evidence Act. In response, it is the submission of the claimant counsel that the witness has complied with section 84 Of the evidence Act,2022, he has filed the certificate and such documents are tendered in the printed form in accordance with section 84 of the evidence Act 2011.

It is, I wish to state that, Documentary evidence is a hanger upon which to base other pieces of evidence. Documents when tendered and admitted in court are like words uttered and do speak for themselves. They are more reliable and authentic than words from the vocal cord of man because they are neither transient nor subject to distortion and misinterpretation but remain permanent and indelible through the ages. Documents bear eloquent testimony to what happened, see *Oluwa V Building Stock LTD* (2018) 1 NWLR (Pt. 1601) 343 S.C. Section 83(1) Of the evidence Act provides that any civil proceeding where

direct oral evidence of a fact would be admissible, any statement made by a person in a document tendering to establish that fact shall, on production of the original document be admissible evidence of that fact if the maker of the statement is called as a witness in the proceedings. See *Abolarin V Ogundele* (2012) 10 NWLR (Pt. 1308) P. 253

In admissibility of a document we have four main criteria, these are:

- i. Is the document pleaded?**
- ii. Is it relevant to the enquiry being tried by the court?**
- iii. Is it admissible in law? On this see *Okonji v Njokanma* (199) 14 NWLR (Pt638) P.250. Therefore, the test for admissibility is relevancy, the source by which the document has been obtained is immaterial.**

A document is admissible in evidence if it is relevant to the facts in issue and admissible in Law. See *Fawehinmi V NBA* (1989)2 NWLR (Pt. 105) 558.

On this instant case the claimant having complied with section 84 of the Evidence Act, 2011 by the production of the certificate hold that the document sought to be tendered is admissible. In view of the above, the argument of the defendant counsel is hereby knocked off.

On the third argument proffered by the Defendant counsel, that the document sought to be tendered is a photocopy of a document and is not primary evidence but secondary evidence and that no foundation was laid.

On this it is trite law, that a person who proposes to tender a document, must lay proper foundation for its admissibility and failure to lay proper foundation is crucial to admissibility.

Section 83(1) goes further that:

- a. If the maker of the statement either**
 - i. Had personal knowledge of the matter dealt with by the statement or**
 - ii. Where the document in question, is or forms part of a record purporting to be a continuous record made, the statement (in so far as the matters dealt with by it are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had or might reasonably be supposed to have personal knowledge of those matters**
- b. If the maker of the statement is called as a witness in the proceeding.**

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied when dead, or unfit, by reason of his bodily or mental condition to attend as a witness, or if it is outside Nigeria and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

83(4) provides that for the purpose of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hands or was signed or initiated by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible.

It is certainly the law that the proper person through whom a document is tendered is the maker of such document. In the instant case PW1 who initialled the documents i.e. WhatsApp message, send to one lucky Keystone, being the maker of the document, who tendered same as being the originator of the document is enough evidence. The fact that the document sought to be tendered is a photocopy, the court is of the opinion that, the argument as to the relevance of the document will work against the argument canvassed by the defendant. The claimant or the PW1 informed the court that the document sought to be tendered is a communication between himself and the staff of the defendant who is an agent to the Defendant, is enough for the court to admit the said document in evidence as proper foundation has been laid by the witness PW1. Accordingly, the argument canvassed by the defendant counsel on this point is equally thrown off and knocked off. Hence, the document sought to be tendered is admissible having passed the criteria in this ruling.

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HON JUSTICE A. Y. SHAFI

APPEARANCE:

1. Igho Ogedegbe for the Claimant

JUDGEMENT

The claimants by a writ of summons dated the 13th day of July 2022 and filed the same date, claims the following reliefs:

- 1. A Declaration that the defendant failed in her duty of care towards the claimant.**
- 2. A Declaration that the defendant has denied the claimant the right to use and enjoy the use of funds in their accounts with the defendant especially between 22nd and 28th June, and from 10th July, 2022 to the date of filing this suit.**
- 3. An order directing the defendant to pay the sum of N15,000,000.00(Fifteen Million Naira) in damages for the embarrassments, inconveniences, and frustration the denial of access to and usage of the funds in her accounts at the various times between 22nd and 28th June and from 10th July 2022 to the date of filing this suit.**
- 4. An order of the court directing the defendant to pay to the claimant the sum of N5,000,000.00(Five Million Naira) as aggravated and punitive damages for the breach of trust of the claimant by the defendant.**

Attached to the claim is the statement of claim and witness statement on oath of Yale Alabi Esq and printed communication between the claimant and the defendant and a pre-action counselling certificate dated the same date the 13th July, 2022.

Upon the filing of this suit, the defendant was served in accordance with the rules of the court proof of service acknowledged by one FatimaAbubakar A. of keystone Bank Gwagwalada, customer service dated the 4/10/2022 Base on the serviceof the process of service on the defendant, filed a motion for extension of time attached with an affidavit dated 22ndnov, 2022 with a written address. The said motion was moved and granted.

On the 8th February, 2023 the defendant filed a motion, substituting Michael Ilogbode with Lucky Isibor.

Upon the exchange of pleadings, the matter was set down for hearing.

This court summarising the evidence of the claimant's witness and that of the defendant witness thus;

PW1 one Tale Alabi a legal practitioner with suit No: A30 Abraham plaza Utako FCT Abuja.

In his evidence testified that he made a deposition in this case dated the 13/7/2022 the said deposition which he identified through the passport photograph and his signature, and wants the court to adopt it as his evidence in support of his case. The said deposition which was adopted by the court.

In paragraph 9 of the statement of claim he made reference to WhatsApp communication between himself and the defendant, the said communication which he identified through the screenshot from his phone and the content he was familiar with that the communication was made between himself and a staff of the defendant who's in his contact as lucky keystone in front of it.

The said statement on the point of tendering by the claimant counsel was opposed to by the defendant and ruling reserved to be delivered together with the Judgement.

In view of the going i shall admit the document in evidence. Accordingly, the said photocopy of the WhatsApp communication between the witness and the agent of the defendant Lucky keystone is hereby admitted in evidence and marked exhibit A.

Under cross-examination by the Defendant counsel:

“That apart from him nobody is privy to the pin number of the account and that it is only him that operates the account based on the biometric but he wouldn't know whether any official of the bank do operate the biometric. That he came to the conclusion that the pin was tampered by the defendant, because he mentioned that he uses biometric. That the moment he held his phone having logged into the app provided by the defendant, but on that faithful day his phone did not respond and going further he remembered he signed an agreement with a form provided that his transaction should be #10 Million and not #10,000.00. That when he realised that what he was limited to do was just #10,000.00 he knew something has happened with the setting which is being hosted by the defendant and there was no one that has control over it. That it was when he remembered that his transaction limit was #10million was when he remembered that someone has tempered with his account or pin. That immediately he realised that he could not transfer his first point of call was the same Lucky Isibor whom he stores as lucky keystone who is the only person that relates with him in the keystone as he was the one that opened the account for him. That

the said lucky confirmed to him that the setting has been affected and apologized that he will contact the keystone head office and thus happened for the whole week.

That he is not aware that the defendant is an artificial personality. He knows that the defendant not being a human being with flesh and blood can operate through a human being and that is why he operates through lucky keystone and Lucky Isibor who is a staff he relates with. In paragraph 7 of his witness statement on oath, is the details of his conversation between him and lucky. He is aware that tempering with someone's account is a criminal offence. In paragraph 7 of his witness statement on oath, he operates with biometrics and not pin. The last time he operates this account is last months and at the date of filling this suit, his daily transaction has not been restored. That between June 22 and 28th he was unable to do anything on the app, but on the 29th around midnight he got a call from Lucky that it has been rectified. Around one week in July when he went to make transaction to a client, he realised the same problem was there up to the 13th July when the suit was filed. No re-examination.

DW1, one Lucky Isibor a banker with Keystone Bank Plc as a marketer he knows the claimant in this suit. The claimant is the customer to the bank, that he deposed to a witness statement on oath as his oral evidence before the court and that he went to court to testify in case because the bank has done nothing wrong. Under cross-examination by the claimant counsel:

He knows the claimant and knows that he is a lawyer by profession. He knows his relationship with the three claimants as he is the signatory to the account of Cribwox LTD and a sole signatory. He was the one that opened the account for him and the claimant in respect of Cribwox Ltd, Efgea Ltd and Business name.

In the course of operating the account they do exchange chat messages on WhatsApp. He came to court because he sued the bank for his mobile banking. That he is aware that the claimant had issues with the mobile banking but might not get the data correctly.

On the document before the court he is the same person as Lucky Keystone and from the picture he is the one on the said document.

No re-examination.

On the close of the evidence the parties filed their final written address.

The defendant filed its final written address dated the 27-2-2023 filed on the same date. In it he formulated two issues distilled for determination to wit:

- 1. Whether this suit and claims therein were substantiated by the claimants with credible evidence.**
- 2. Whether the claims are meritorious and worth of grant or ought to be dismissed with punitive cost.**

On the other hand, the claimant counsel file its final written address dated the 8th March, 2023 file the same date, where in its final written address formulated a sole issue for determination to wit.

“Whether the claimants have proved their case sufficiently to deserve the grant of their reliefs sought against the Defendant?”

The issues so formulated will be looked into in accordance with the reliefs claimed by the claimant. On the first declaration that the Defendant failed in her duty of care towards the claimant.

On this i wish to state that the “Duty of care” refers to the obligation placed on people to act towards others in a certain way in accordance with certain standards. The term can have a different meaning depending on the legal context in which it is being used. The Oxford Dictionary defined the word “Duty of care” to mean, the obligation to avoid negligence, particularly to take reasonable care not to cause physical, economic, or emotional loss or harm to others. In essence, breach of duty occurs when a person’s conduct fails to meet an applicable standard of care. It is one of the four (4) elements of negligence. If the defendants’ conduct fails to meet the fair standard of care, they are said to have breached that duty. Under the banking sector, one example of the duties owed by the bank to its customers, is “the duty to give notice before closing accounts”. Therefore, the “Duty of care” here describes a situation where the banker or the agent of a banker have a responsibility to maintain the safety and wellbeing of others and can include such issues as providing safe working conditions and offering constructive feedback to its customers.

Having said so, now to the evidence brought forward by the plaintiff/cross-claimant and that of the Defendants, as to know whether the duty imposed on the defendant to the claimant has been breached.

On this it is the submission of the claimant in its written address where its stated from the pleadings and evidence before the court that the case of the claimant is that arising from a breach of contract and duty of care in that the claimant was unable to access and use the funds in their account, At the behest of the defendant at various times.

That claimant who testified and tendered a printed copy of the WhatsApp communication with one Lucky Isibor, the defendant's relationship officer for the claimant account. Pw1 informed the court that he had always been communicating with Mr. Lucky Isibor (whose contact he stored as lucky Keystone on his contact list) and it was the same Lucky Isibor who had opened the claimants account with the defendant. Pw1 also narrated the narrowing experience he passed through within the period that the defendants' infractions lasted, as these he has related to Lucky Isibor via WhatsApp message.

PW1, in his evidence in Chief, and under cross-examination told this court that he is aware of these issues with the claimant account especially the inability to access and transact of the defendants' mobile app from 22nd June to 28th June, 2022 and between 10th July, 2022 to the date of filing the instant suit, and under cross-examination, he admitted that he was constantly in touch with the 3rd claimant mainly through WhatsApp messages, this he admitted under cross-examination that he recognised the printed copy of his WhatsApp messages exchanged with the 3rd claimant in reference to the issues which remained unresolved.

The claimant set forth in their joint statement of claims paragraphs 1-11 and paragraphs 1-14 of their witness statement on oaths, the circumstance and extent and nature of the breach of duty owed by the defendant to the claimant on this submits that, the defendant neglected the duty he owed the claimant which duty is sacrosanct to the contract binding on both parties. Hereferred this court to the case of Agbonmagba Bank LTD V C.F.A.O (1966)1 ALL NCR 140 at 145 where the court outlined three requirements needed for a claimant to substantiate a claim of negligence, the appellate court held thus:

1. **That the defendant owed him a duty of care**
2. **That the duty of care was breached by the defendant.**
3. **The claimant suffered damages arising from the breach.**

On this i refer the court to paragraph 5-15 of the defendant statement of Defence, where the defendant stated thus in paragraph 5.

“The defendant contends that on the said date, to wit, 22nd June to 28th June 2022 and 10th to 13th July 2022, the claimant's transaction that could not go through was as a result of inadvertent occurrence of technical glitch which was outside its contract.”

This statement which the claimant counsel submits that the above clearly corroborates the claimant's assertion and therefore qualifies as an admission against interest which by Law requires no further proof.

Further submits, that, the defendant never informed the claimants as is the usual practice with the banking industry, that she had any technical glitch that might affect the claimant from accessing their accounts and/or make successful transactions at the period the claimant herein expressed. That failure to issue prior notification of any technical glitch is an act of negligence. The claimant further submits that the defendant did not tender any strand of evidence, before this court to show that she was not negligent in handling the complaint lodged by the claimant about the inability to transact on the mobile app.

As i stated before in this judgment, it is the duty of the defendant to give notice to the claimant of the malfunction of its system. A bank has a duty, under its contract with its customers to exercise reasonable care and skills in carrying out its part with regard to the expiration within its contract with its customer. This duty to exercise reasonable care and skills extends over the whole large of business within the contract with the customer. See, UBA Plc V. G.S Ind. (Nig.) LTD (2011)8 NWLR (Pt. 1250) and also S.T.B Ltd V Anumnu (2008)14 NWLR (Pt. 1106)125. Consequently, this duty applies interpreting, ascertaining and acting in accordance with the instruction of the customer. See First Bank Nig. LTD V African Petroleum Ltd (1996) 4 WLR (PT.443) 438.

The duty of care also extends to where the banker presents itself as being professionally competent and skilled to fulfil certain obligations inherent in a transaction, but eventually shirks that responsibility, this will constitute a prima facie act of negligence, having failed in the duty of care it primarily owed its customers. See S.G.B.N Ltd. V Eleganza Industries Ltd (2004)8 NWLR (Pt.875) 432.

The defendant in its written address tried to establish that, it is not its fault where he relied on the issue of transaction pin. He stated that, the claimant suit and claims are based on the averment and allegation contained in paragraph 6 and 10 of the claimant's statement of claim and paragraph 6,7 and 9 of the witness statement on oath thus quote:

“...The transaction limits and pin (Personal/Identification Number) were tampered with by the defendant”

He stated that the only witness of the claimants Tale Alabi Esq disowned the allegation and averment that the pin Personal Identification Number was tampered with during cross examination and that in a strength twist the said witness specifically stated that, the account in issue did not have pin (Personal Identification Number) contrary to the claimant's averment in paragraph 6 and 10 of the statement of claim and paragraphs 6, 7 and 9 of their witness statement on oath. Submits that the legal effect of Pw1's statement under cross-

examination that the accounts in issue have no pin (Personal Identification Number) is that the averments in paragraph 6 and 10 of the claimant's statement of claim and paragraph 6, 7 and 9 of their witness statement on oath have been abandoned. Further that, pw1's statement that the accounts had no PIN amounts to reprobation of the approbations in paragraphs 6 and 10 of the claimant's statement of claim and paragraph 6, 7 and 9 of the witness statement on oath that the PIN of the accounts was tempered with by the Defendant. It is trite law, that a party cannot approbate and reprobate at the same time. He referred this court to the case of Clifford Osuji V Nkemjika Okeocha(2009) Vol 39 NSCQR. 523 at 578 where Niki Tobi JSC of blessed Memory held:

“I see from the reliefs that the appellant tries to blow hot and cold air at the same time, the law does not allow him to do so. He cannot ask for relief in a matter before the court and take an opposite position at the trial. Our adjectival law does not allow or permit such a somersault”.

It is the submission of the claimant's counsel that the evidence of the 3rd claimant(PW1) is concise and direct that he does not use pin but biometrics to open and transact on the defendants Mobile App. That the idea of PIN cropped up in the conversation with Lucky Isibor on Thursday 23rd June, 2022. In the chats Lucky asked if the 3rd claimant had been contacted by the defendants, to which the third claimant replied that the new login details sent to effect the reset logs was working but showing an (Individual Pin) error message.

The defendant counsel submitted that the account had no PIN also amounts to a monumental contradiction of the averments and allegation in the statement of claim and witness statement on oath and the legal effect is that the claimants case must fail. This he referred the court to the case of Ayorinde V Kuforgi (2022)12 NWLR (Pt. 1843)43 at 80-81 para U-A, the Supreme Court held:

“When there are material contradictions in the case of a party, the court cannot without credible explanation by evidence pick and choose which pieces of evidence not to believe. It is not for the court to provide explanations for inconsistencies in a party's case. That burden falls squarely on the party who will fail without explanation in the circumstance.

It is the submission of the claimant's counsel that could there be said to be any material inconsistencies in the claims and case of the claimant viz a vis the material evidence before the court? The use of the word 'PIN' was encouraged as a default colloquial word by the Defendant. This is evident in the WhatsApp messages as the screenshots of the error messages connotes invalid(PIN) personal Identification Number. This fact could have been debunked with

concrete evidence by the defendant. The defendant having failed to do so, cannot rely on counsel's argument to supplant evidence. The defendant counsel cited the case of *Osuji V Ekeocha* (supra). He submitted that, the principle of law in the cited authority relates to a claim of declaratory title to a parcel of land and as such is not relevant or related to the instant case.

The 3rd claimant raised the issue of the breach of the claimant's data and privacy by causing an unsolicited reset to the Mobile Application login details. The defendant did not object, but referred the court to the proceedings of Thursday 23rd June, 2022 where Dw1 asked the 3rd claimant if he had got some advice from the defendant for the Mobile reset, the claimant replied that the defendant did send two sets of login details but kept returning 'invalid pin' error message. On this he submitted that, it is rather a misgiving for counsel to the defendant that the use of the words "Biometric" and 'PIN' are inconsistent. That this is pure mischief as he ought to know "PIN" is the general term the defendant uses for any form of login details. Therefore, submitted that the claimant's claims and reliefs are consistent as the claims leading to the reliefs sought has been largely admitted and or uncontroverted in any way by the defendant to this end, submitted that the case of *Osuji V Okeocha* and *Ayorinde V Koforji*, albeit good laws are not relevant to the instant case.

Accordingly, the argument and submission as brought forward i found it difficult to agree with the Defendants submission and reasoning as it is clearly stated in this judgment, that failure of the defendant to notify the claimants of the malfunction of its facility is the failure of the defendant for not exercising good care and skill.

Accordingly hold that the claimant has proved the first claim and the 2nd claim of the reliefs sought therein.

On the 3rd and 4th claim being claim for damages, for the embarrassment in convenience and frustration the inability of access to and usage of the funds in her account at various times between 22nd and 28th June, 2022 and from 10th July, 2022 to the date of filing this suit the sum of #15,000.00 (Fifteen Million Naira) and the claim of the sum of #5,000,000.00 (Five Million Naira) as aggravated and punitive damages for the breach of trust of the claimant by the Defendant shall be discussed as one head of claim as it speaks the same language i.e. Damages; damages from this instant case mean the pecuniary compensation obtainable in an action for a wrong which is a breach of contract.

The purpose for and award of damages is to compensate the claimant for damages suffered. The guiding principle in the award of damages is 'Restitutio in "integrum" that is, a party who has been demnified by the act which is in

issue must be put in the position in which he would have been if he had not suffered the damage which is in issue. See the case of Ihusfa V UBC LTD (1994)4 NWLR (PT. 336)1.

The first claim being compensatory damages while the second is the general damages, which are all the same, being damages awarded in payment for actual economic loss which does not include punitive damages. It is a sum of money awarded in a civil action by account to indemnity a person for the particular, detriment or injury suffered as a result of the unlawful conduct of another. See British Airways v Atoyabi (2014) 13 NWLR (PT.1424)253.

In support of the claim for damages, it is the submission of the claimant's counsel that as a result of the inability of the claimants to use and transact on the defendants Mobile App on Sunday 26th June, 2022, the 3rd claimant suffered an untold hardship and embarrassment occasioned by the defendant.

On damages, the Defendant counsel did not address it in its written address before this court. Notwithstanding, in the award of general damages, a wide spread power is given to the court comparable to the exercise of discretion of the court. The measure of general damages is awarded to assuage such loss, which blows naturally from the defendant's act.

It is trite law that where, a claimant pleads and gives evidence in support of his claim for damages and his evidence is uncontradicted, the trial court is bound to accept the evidence unless there is something inherent in the evidence which disproves it. See MTN (NIG.) Comm. LtdV Corporate Comm. Inv. LTD (2019) 9 NWLR (PT.1678)427 SC.

In view of the foregoing, i shall use my discretion to award damages to the claimant against the Defendant in this case.

In the final analysis, it is the judgment of this court that the claimant has proved its case, I therefore grant the reliefs 1 and 2 while relief 3 & 4 I award the sum of **#5,000,000.00 (Five Million Naira)** in favour of the claimant.

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HON JUSTICE A. Y. SHAFI

APPEARANCE:

1. Igho Ogedegbe for the Claimant

