

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 1ST DAY OF MARCH, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/2225/18

BETWEEN:

1) DE-ROPHEKAH PARTNERS NIGERIA LTD
2) ADEDAYO ADEWUMI }
:.....CLAIMANTS

AND

ZENITH BANK PLC:.....DEFENDANT

OkhaiOhimai for the Claimants.
ChidiebereNwachukwu for the Defendant.

JUDGMENT.

By a Writ of Summons dated and filed the 29th day of June, 2018, the Claimants took out this action against the Defendant, claiming as follows:

1. A declaration that the withdrawal of the sum of One Hundred and Three Thousand Naira, One Kobo (NN103,000.01) only, from the Claimants' bank account number 1014914030 with the Defendant, without the express instructions, authority and approval of the Claimants amounts to a breach of contract.
2. A declaration that the placing of the Claimants' bank account number 1014914030, with the Defendant on debit when in actual fact the Claimants were not indebted to the Defendant amounts to a breach of contract by the Defendant.

3. A declaration that the issuance of the Defendant security application bond by the Defendant to the Claimants in respect of:
 - a. Tender Security for Waste Management Services in Citec Adkan 6 & 7 District Lot 29, Abuja Environmental Protection Board (AEPB) for a period of three (3) years (36 months).
 - b. Tender Security for Solid Waste Management Services in Jahi-Katampe District Lot 27, Abuja Environmental Protection Board (AEPB) for a period of three (3) years (36 months), dated the 22nd day of January, 2018 respectively, long after the closing date for contract bid which they were meant for after charging the Claimants, amounts to a breach of contract.
4. An Order of Court mandating/directing the Defendant to reverse back into the Claimants' bank account number 1014914030 with the Defendant, the sum of One Hundred and Three Thousand Naira, One Kobo (N103,000.01) only, unlawfully withdrawn from the Claimants account without authorization and approval by the Claimants.
5. Exemplary Damages against the Defendant in favour of the Claimants in the sum of Ten Million Naira (N10,000,000.00) only, for unlawfully withdrawing the sum of One Hundred and Three Thousand Naira, One Kobo (N103,000.01) only, from the Claimant's bank account with the Defendant without authorization and approval; placing the Claimants' bank account on debit; Presenting the Tender Securities late to the Claimants, and the failure of the Defendant to reverse the illegal withdrawal despite repeated demands.
6. General damages against the Defendant in favour of the Claimants in the sum of Five Million Naira (N5,000,000.00) only.

7. Cost of this suit at Five Hundred Thousand Naira (N500,000.00) only.
8. 10% post judgment sum annually, until judgment sum is liquidated.

The case of the Claimants as per their statement of claim is that in the month of December, 2017, the 2nd Claimant who is the Managing Director of the 1st Claimant, approached the Defendant on the instruction of the 1st Claimant which maintains an account number 1014914030 with the Defendant, for a bond in respect of:

- a. Tender Security for Waste Management Services in CitecAdkan 6 & 7 District Lot 29, Abuja Environmental Protection Board (AEPB) for a period of three (3) years (36 months).
- b. Tender Security for Solid Waste Management Services in Jahi-Katampe District Lot 27, Abuja Environmental Protection Board (AEPB) for a period of three (3) years (36 months).

The Claimants averred that a tender security is one of the pre-conditions for interested companies to submit applications to bid for contract advertised by the Federal Capital Territory Administration, and that they presented all the relevant documents to the Defendant as requested, which expressly spelt out the details of the tender as well as the closing date for the bid. That the Claimants agreed with the Defendant for the sum of N50,000.00 each in respect of the tender security application – totalling N100,000.00 for the two applications.

They averred that contrary to the clear, unambiguous and express instructions given to the Defendant, the Defendant processed the tender security application in error, only to charge the Claimants twice:- first for doing the right thing, and

second, for her error. That the Defendant further charged the Claimants the sum of N3,360.01 as bank charges. The Claimants stated that they were surprised when a business partner paid in the sum of Three Million Naira (N3,000,000.00) only, into the 1st Claimant's account number 1014914030 domiciled with the Defendant for prompt execution of a project, the sum of Fifty Thousand Naira (N50,000.00) was debited twice, totalling N100,000.00, in addition to a further sum of N3,360.01; which is an indication that the Claimant's bank account with the Defendant was placed on debit. That in addition to the cumulative illegal withdrawal of N103,360.01 from the Claimants' account, with the Defendant placing the Claimants' account on debit when as a fact, the Claimants were not indebted to the Defendant, the Defendant presented the tender security to the Claimants on the 22nd day of January, 2018 long after the expiration of the closing date for submission of applications.

The Claimants averred that in March, 2018 they instructed their solicitors who severally wrote to the Defendant requesting a reversal of the sum illegally deducted from the Claimants account without approval or authorization by the Claimants, but the Defendant expressly ignored the said letters, which therefore necessitated this suit.

Replying to the Defendant's Statement of Defence, the Claimant averred that the Defendant instructed the Claimants to produce two plain but signed letter head papers of the 1st Claimant (each to be used separately for the two different applications) and all other relevant documents relating to the bid application. That the Defendant informed the Claimants that they usually do not allow applicants to type the application as they have a standard format, and that errors are usually detected if the applicants type by themselves.

The Claimants stated that they complied with the said instructions by supplying the Defendant with two undated, plain, but signed letter head of the 1st Claimant and two copies of national dailies publication for the purpose of guiding the Defendant in processing the applications. They averred that the letter of application for 2% Bid Bond dated 15th December, 2017 and attached to the Defendant's Statement of Defence was forged and fraudulently obtained. On the particulars of fraud, the Claimants stated that the date on the said document was altered and that the counter signature thereon is different from the 2nd Claimant's real signature above his name on the document.

The Claimants further averred that at all material time to the transaction, the Defendant was informed of the expiry date for the bid application which was boldly written on the newspaper publications presented to the Defendant, giving rise to the application for bid bond from the Defendant. That the Claimants never at any point during the subsistence of the application for bid bond, authored the letter titled "Rejection of Offer Letter/Application For Correction dated 18th January, 2018. That the 2nd Defendant could not have authored the said letter, same having been written 8 days after the due date for submission of the contract bid had expired. Also, that the Claimants did not sign the Offer of Bid Bonds dated January, 22, 2018 because the Claimants had already informed the Defendant that there was no need to proceed with the application since the due date for submission of the contract bid had expired. That even though the 2nd Claimant acknowledged receipt of the original copy of the Tender Security dated January, 22, 2018, he expressly informed the Defendant that the Claimants would not pay twice for the bid bond on grounds amongst which are that the closing date had expired

and that the error was from the Defendant and not the Claimants.

At the hearing of the case, the 2nd Claimant gave evidence on behalf of the Claimants. Testifying as PW1, he adopted his witness statement on oaths wherein he affirmed all the averments in the statement of claim and Reply to the statement of defence. He also tendered the following exhibits:

1. Zenith Bank PLC's Letter to FCTA with Ref. No: ZB/UCCD – N/BB/151/01/2018 – Exhibits PW1A.
2. Zenith Bank PLC's Letter to FCTA with Ref. No: ZB/UCCD – N/BB/152/01/2018 – Exhibits PW1B.
3. CTC of The Nation Newspaper of Oct. 30, 2017 –Exhibit PW1C.
4. CTC of The Nation Newspaper of Nov. 30, 2017 – Exhibit PW1D.
5. Payment Receipt of National Library of Nigeria – Exhibit PW1E.
6. Account Statement of 1st Claimant –Exhibit PW1F-F1.
7. Letter of Complaint on “Unjustified Deduction of N100,000.00” – Exhibits PW1G.
8. Letter of Complaint on “Unjustified Deduction of N103,000.00.

Under cross examination by the Defendant, the PW1 stated that he did not sign the application for bid bond. That same was prepared and signed by the Defendant, but that he gave the Defendant two pre-signed letter head papers before travelling out of the country. He admitted receiving on 2/1/208, the Offer of 2% Bid Bond made by the Defendant on 27/12/2017.

The Defendant in defence of the Claimants' suit averred in its Statement of Defence dated 4th September, 2018 and filed on 7th September, 2018 that on 15th December, 2017, the 2nd

Claimant came to the Future View Branch of the Defendant and presented a written request for issuance of 2% Bid Bonds in favour of the Secretary, FCT Tender Board, for the following contracts:

- a. Execution of the Solid Waste Collection and Management Services in NCAEPB29 Citec – ADKAN – 6 & 7 – contract sum N8,870,625.00.
- b. Execution of the Solid Waste Collection and Management Services in NCAEPB27Jahi–katampe, contract sum N5,776,875.00.

It stated that upon receipt of the said request, the Bank on December 27th, 2017, issued an offer letter to the 1st Claimant, which offer letter was received by the 2nd Claimant on 2nd January, 2018 upon his return from overseas trip.

The Defendant averred that at all material times relevant to the issues giving rise to this proceeding, the Claimants neither informed the Defendant about the exigency of the application nor the closing date for submission of the tender security. That upon the acceptance of the offer by the Claimants, the Bank on January, 3, 2018 issued the 2% Bid Bonds to the FCT Tender Board strictly in terms of the Claimants' letter of request of 15th December, 2017, and that the 2nd Claimant immediately noted an error in the second bid sum of N155,537.50. That the bid sum was supposed to be N115,537.50 which is 2% of N5,770,875.00, and not the N155,537.50 indicated in the Bid Bond and offer letter; and that as a result of the observed error, charges were not taken for the Bid Bond.

The Defendant further averred that on the 16th January, 2018, the error was corrected and a revised offer was prepared to reflect the Bid sum of N115,537.50; and that the fees of N100,000.00 was debited to the Claimants' account on 17th

January, 2018, while the 2nd Claimant signed the revised offer letter on 18th January, 2018. That on the 18th January, 2018, the 2nd Claimant observed that the figures he earlier gave to the Defendant were wrong, thus he wrote to the Defendant and requested for the correction of the Bid Bonds as follows:

S/N	Purpose	Contract Sum	Bid Sum (2% of Contract Sum)
1.	Execution of the Waste Collection and Management Services in NCAEPB29 Citec – 6 & 7	N443,531,023.74	N8,870,625.00
2.	Execution of the Solid Waste Collection and Management Services in NCAEPB27Jahi – Katampe	N288,843,666.30	N5,776,875.00

That as a result of the above request, the Defendant amended the Bid Bonds, issued a revised offer of Bid Bonds to the Claimants as well as issued a revised 2% bid bonds to the FCT Tender Board which were duly received and acknowledged by the 2nd Claimant on 23rd January, 2018.

The Defendant stated that N50,000.00 flat fee per Bond (totalling N100,000.00) were also debited to the Claimants' account on 29th January, 2018 for the amended Bid Bond in line with the revised offer letter issued to the Claimants since the error resulting to the re-issuance of the Bid Bonds originated from the 2nd Claimant and not from the Defendant; and that on 31st January, 2018, the Claimants' account was debited for the normal monthly account maintenance charges of N3,360,01, bringing to a total sum of N103,000.01 which the Claimants are seeking to be reversed.

The Defendant averred that the delay in issuing the Bid Bonds was occasioned by the mistakes of the Claimants themselves.

One JordeAmadi, a Relationship Manager of the Defendant, gave evidence for the Defendant. Testifying as DW1, he adopted his witness statement on oath wherein he affirmed all the averments in the statement of defence. He also tendered the following documents in evidence.

1. Application for 2% Bid Bond, dated 15th December, 2017 – Exhibit DW1A.
2. Offer of Bid Bonds, dated December, 27, 2017 – Exhibit DW1B.
3. Offer of Bid Bonds, dated January, 16, 2018 – Exhibit DW1C.
4. Rejection of Offer Letter/Application for Correction dated 18th January, 2018 – Exhibit DW1D.
5. Offer of Bid Bonds dated January, 22, 2018 – Exhibit DW1E.
6. Certificate of Compliance – Exhibit DW1F.
7. Cash Receipt – Exhibit DW1G.

Under cross examination, the DW1 admitted that there was no written application from the Claimants in respect of Exhibit DW1C, as the Customer was not available to write, but that he acknowledged the Bid Bond. He stated that the Claimants had written for the earlier Bid Bond; that Exhibit DW1C was a correction of the earlier one. The DW1 admitted that Exhibits DW1B and DW1E were addressed to the Claimants and that upon receipt of same, the Claimants were expected to sign them and not to pick and choose which document to sign.

At the close of evidence, the parties filed and exchanged their respective final written addresses. Learned counsel for the Defendant, ChidiebereNwachukwu, Esq, in his final written address dated and filed on 4th day of August, 2020, raised a sole issue for determination, namely;

“Whether the Claimants have made out their case upon the balance of probabilities and entitled to the reliefs sought?”

In arguing the issue so raised, the learned counsel contended that the Claimants have not been able to establish their case against the Defendant. Relying on Section 131(1) of the Evidence Act, 2011 and **Isegbkun v. Adelaki (2003) 2 NWLR (Pt. 1337) 165**, he posited that it is settled law that he who asserts must prove in order to succeed in his claim.

Learned counsel further posited that proving facts must be by credible evidence and nothing more. That a credible evidence is one which is worthy of belief, and that for evidence to be worthy of belief and credit, it must not only proceed from credible source, but must be credible in itself, in the sense that it must be natural, reasonable and probable in view of the transaction which it describes or to which it relates, to make it easy to believe. He referred to **Aqbi v. Ogbah (2005) 25 WRN 38**. He argued that the Claimants witness is not credible regarding his assertion that he submitted blank or empty letter headed paper duly signed by the 2nd Claimant for the Defendant to prepare the application. He further contended that the Claimants have been unable to discharge the burden of proof placed on them, and that they cannot in the instant case, be permitted or allowed to deny being the maker of Exhibit DW1A nor any error originating there from.

Referring to **Madu v. Madu (2008) 6 NWLR (Pt. 1083) 296 at 324** on the point that oral evidence cannot be used to contradict documentary evidence, learned counsel argued that any oral evidence by the Claimants to show that Exhibit DW1A was made by the Defendant is inadmissible as it amounts to using oral evidence to contradict documentary evidence which this case shows that the 2nd Claimant is the maker of DW1A.

Relying on **Udeora v. Nwakonobi (2003)4 NWLR (Pt. 811) 643 at 674**, he posited that more weight and value is to be accorded documentary evidence than oral testimony as oral testimony could be deceptive and misleading whereas documentary evidence cannot.

On the allegation of fraud by the Claimants in their reply to the Statement of Defence, learned counsel argued that in order to be able to rely or found an action on fraud, the party is not only expected to plead fraud with particularity but to also establish same in evidence beyond reasonable doubt. He contended that the Claimants have not established with facts as presently constituted any cause of action against the Defendant.

He argued that the debits made to the Claimants' account because of the errors resulting to the re-issuance of the Bid Bonds, which errors originated from the Claimants, do not give the Claimants any cause of action, and that the Claimants have failed to disclose any wrong doing whatsoever by the Defendant in this suit as presently constituted.

Learned counsel further contended that the Claimants have failed to prove any damage they have suffered as a result of the Defendant's actions, which actions have been at all times material to this suit, in strict adherence to the terms and conditions as contained in the Offer of Bid Bonds, and that as such, the claims against the Defendant for breach of contract must therefore fail.

Placing reliance on **Bong v. Gov. Adamawa State (2013) 2 NWLR (pt. 1339) 403 @ 409**, he posited that a pleading without evidence is deemed abandoned. He argued that in the instant case, there was no evidence to prove that the PW1 gave a signed but blank letter headed paper to Joel, the Security personnel of the Defendant, or that Exhibit DW1A was

made by the Defendant. Also, that there was no evidence to prove beyond reasonable doubt that Exhibits DW1A and DW1D were forged and fraudulently obtained.

He urged the Court to hold that the Claimants have failed to prove their case, and to dismiss the action in its entirety for being vexatious, malicious and gold digging, and to award the Defendant the cost of this action.

Also in his reply on points of law to the Claimants' final written address, learned Defendant's counsel referred the Court to Section 131 to 133 of the Evidence Act, 2011 and submitted that although evidential burden is not static, that same is always on the party who will fail when further evidence is not adduced. He argued that it would have been better if evidence was led by the Claimants to disprove that the 2nd Claimant is the maker of Exhibit DW1A than to state via final written address that there is contradiction where none exists.

While arguing that Exhibit DW1A speaks for itself and needs no further proof, he contended that any attempt by the Claimants to contradict the DW1 and mislead the Court via their final written address must be rejected by the Court. He referred to **Nig. Arab Bank Ltd vs. Femi Kane (1995) 4 NWLR (Pt. 387).**

Learned counsel further referred to **Obasuyi v. Business Ventures Ltd (2000) 5 NWLR (Pt.658) 668 at 690** on the point that the address of counsel is supposed to deal only with the evidence before the Court, and that the mere mention of a matter in the course of address cannot substitute for evidence that has not been led, nor can it supplement the inadequacy of the evidence already given at trial.

The learned Claimants' counsel, Okhai U. Ohimai, Esq, in his own final written address, adopted the sole issue for

determination raised by the Defendant in its final written address; namely;

“Whether the Claimants herein have made out their case upon the balance of probabilities and entitled to the reliefs sought?”

In arguing the said issue, learned counsel posited with reliance on **Grei (V.L) Containers PLC v. OPN & Ind. Ltd (2015) 8 NWLR (Pt 1416) 201-398**, that the Claimants have discharged the legal obligation placed on them regarding the standard of proof required in civil cases, sufficient enough to warrant the grant of the reliefs sought by the Claimants against the Defendant in this suit.

He argued that the Claimants’ assertion of not authoring Exhibit DW1A, on which the transaction leading to this suit was founded, was not contradicted or disproved by the Defendant during cross examination when the Defendant had the opportunity to do so. He referred **U.B.A. PLC v. G.S. Ind. (Nig) Ltd (2011) 8 NWLR (pt.1250) pg. 427 at 642** on the point that one of the aims or objects of cross examination is to destroy or damage the case of the adversary.

Learned counsel contended that the assertion of the 2nd Claimant that he was asked to produce two empty, but signed letter headed papers is further strengthened by the fact that he was never given an acknowledgment copy, and that he could not have been given an acknowledgment copy of an empty letter headed paper as being speculated by the Defendant’s counsel. He conceded that documents speak for themselves and argued that there was no attempt whatsoever by the Claimants to contradict documentary evidence by oral evidence. He further contended that there were inconsistencies in the testimony of DW1 under cross examination regarding the

making of the documents tendered by the Defendant, and that the said inconsistencies lend credence to the claims of the Claimant.

Learned counsel argued further that even though the DW1 admitted that every offer for bid bond is usually accompanied by an application, the offer for Bid Bond, Exhibit DW1C was issued by the Defendant without an accompanying written application by the Claimants. He posited that one cannot put something on nothing and expect it to stand, and argued that Exhibit DW1C has no foundation upon which it stands.

He further argued that Exhibit DW1D could not have been made by the Claimant, same having been made 8 days after the expiration of the submission date for the bids. He argued that the fact that the Claimants did not sign Exhibit DW1E is an indication that the Claimants did not at any point in time agree to the issuance of another offer for bid bond when as a fact, the Defendant had made an error which it refused, failed and ignored to acknowledge, and also when the date for submission had closed.

He referred to **B.B. Landmark Reality Ltd v. Fidelity Bank PLC (2015) 1 NWLR (Pt. 1441) 411-630**, on the point that parties must reach a consensus ad idem for any contract to be regarded as binding and enforceable. He contended that it cannot be said that there was a valid and binding contract in the absence of the Claimants signing Exhibit DW1E, to warrant the illegal deductions made from the Claimants' bank account by the Defendant.

Learned counsel contended that after debiting the Claimant's account for the second time, the Defendant placed the Claimants' account on debit on 17/01/2018 when in actual fact, the Claimants were not indebted to the Defendant. He urged

the Court to hold that the action of placing the Claimants' account on debit by the Defendant amounts to a breach of contract. He referred to **Cameroon Airlines v. Otutuizu (2011) 4 NWLR (Pt 1238) 429 at 638** on the point that where a breach of contract is established, damages follows.

He further referred to **A.I. Inv. Ltd v. AfriBank (Nig) PLC (2013) 9 NWLR S.C. 300 at 386** on the principle that Courts are duty bound to respect the terms of contract entered into by parties.

Arguing further, learned counsel placed reliance on **Seven-up Bottling Co. v. Akinwale (2011) 15 NWLR (Pt 1270) 217 at 321** to posit that to determine whether or not the Claimants have cause of action entitling them to the reliefs sought in this suit the Court is duty bound to look at the Writ of Summons and Statement of Claim of the Claimants.

He further relied on **Emmanuel Ukpai v. Mrs Florence Omoregie&Ors (2019) LPELR-47206 (CA)** to contend that the injury suffered by the Claimants in this suit as a result of the oppressive conduct of the Defendant in making illegal deductions from the Claimants' bank account is one that is worthy of attracting exemplary/punitive damages against the Defendant to serve as deterrent.

He also urged the Court, with reliance on **British Airways v. Atoyebi (2014) 13 NWLR (pt.1424) 253,** to exercise its discretion judiciously and judicially in the award of general damages in favour of the Claimants.

He urged the Court in conclusion, to grant the reliefs sought by the Claimants in this suit, while dismissing the spurious claim by the Defendant.

The claims of the Claimants in this suit is founded on the alleged breach of contract between the parties by the Defendant. The particulars of the alleged breach of contract are the double charges on the Claimants' account for the issuance of the Bid Bonds, placing of the Claimants' account in debit, as well as the late issuance of the said Bid Bond.

In the determination of this suit therefore, I will address my mind to the issue of whether the Claimants have established their case by credible evidence as to be entitled to the reliefs sought.

The law is settled on a long line of judicial authorities that for a contract to be valid and enforceable, five elements must be present, to wit; offer, acceptance, consideration, intention to create legal relationship and capacity to contract. See **Jegade v. Mayor Engineering Company Limited (2013) LPELR-20284 (CA)**.

In **Abba v. Shell Petroleum Development Company of Nigeria Limited (2013) LPELR-20338 (SC)**, the apex Court, per Rhodes-Vivours, JSC held that:

Before there is a contract there must be a definite offer by the Offeror (the appellant) and a definite acceptance by the Offeree (the respondent), and contracts are enforceable when there is consideration.....

An offer must be accepted before there is a valid contract."

From the pieces of evidence before this Court in this case and from the pleadings of the parties, the Claimants demonstrated their intention to create legal relationship with the Defendant by approaching the Defendant for a bond in respect of tender

securities to enable them bid for Waste Management Services contract with the Abuja Environmental Protection Board. (See paragraph 6 of the SOC). Given that the Defendant is an artificial entity, I believe the evidence of the Defendant that the said Claimants' intention was communicated to the Defendant vide Exhibit DW1A.

The Defendant in turn, made an offer to the Claimants (Exhibit DW1B) which was duly accepted by the Claimants by endorsing on same as required by the Offeror (the Defendant herein) in the Offer letter.

The parties agreed on a consideration of N50,000.00 each for the two Bid Bonds required by the Claimants, which the Defendant deducted from the Claimants' account.

Given that all the parties are deemed to possess the capacity to contract, all the elements of a valid contract were therefore, present.

However, in the course of performance (issuance of the Bid Bond) by the Defendant, the parties agreed that an error (in the contract figure) was committed by the Defendant in one of the Bid Bonds but each blames the other for being the cause of the error.

The Claimants in their pleadings were silent on whether or not they applied to the Defendant to correct the identified error, but the Claimants wrote to the Defendant rejecting the previous offer letter and applying for corrections to be effected in the Bid Bonds.

The law is trite that documents speak for themselves (see **AtikaseOtito v. KunleOdidi&Ors (2010) LPELR-9020 (CA)**), and that oral evidence cannot be allowed to add to, vary or

contradict the contents of a document (see **Anyanwu&Ors v. Uzowuaka&Ors (2009) LPELR-515 (SC)**).

The Claimants alleged fraud on the part of the Defendant in the making of Exhibit DW1D but they failed to prove the alleged fraud against the Defendants. I therefore, accept as true, the evidence of the Defendant that the Claimants made Exhibit DW1D.

It is however crystal clear from the said Exhibit DW1D that what the Claimants requested was not ANOTHER or ADDITIONAL Bid Bonds as to warrant another or additional charges. The Claimants merely requested for correction on the SAME Bid Bond, the subject of the contract the parties entered into ab initio. Since the Claimants had already offered consideration for the said Bid Bond vide the deduction made on their bank account on the 17th day of January, 2018, there is no justification for another or additional deduction or charges on the same contract when it was not provided for in the contract that correction would attract another or additional charges.

But supposing, without conceding that Exhibit DW1D initiated an entirely new and different contract distinct from the one initiated by Exhibit DW1A, the law remains trite that there must be a definite acceptance of an offer, before same can translate into a valid contract. The Defendant averred in paragraph 12 of its Statement of Defence that following the receipt of Exhibit DW1D, it amended the Bid Bonds and issued a revised offer of the Bid Bonds to the Claimants.

Firstly, it is clear from the Defendants averment that the “new” Bid Bonds were only an amendment to the ones rejected by the Claimants.

Secondly, a look at the said revised offer of Bid Bonds, Exhibit DW1E, clearly shows that same was not accepted by the

Claimants. Again, it is the law that oral evidence cannot be allowed to add to, vary, or contradict the contents of a document. The offer, Exhibit DW1E, states without equivocation, that the form of acceptance of same is by endorsing or signing on same. This was not done by the Claimants, and the oral evidence by the DW1 that the acknowledgment by the 2nd Claimant of receipt of the revised Bid Bonds issued to the FCT Tender Board is an acceptance of the offer in Exhibit DW1E, cannot be allowed to vary or contradict the contents of the said Exhibit DW1E which clearly provided for how same can be accepted.

Now, notwithstanding the fact that the Claimants did not accept the offer made by the Defendant, the Defendant nevertheless proceeded to deduct additional N100,000.00 from the Claimants and thereby threw the Claimants account into debit.

I consider the action of the Defendant in debiting the bank account of the Claimants with additional N100,000.00 as very unconscionable. The Claimants merely applied for correction in the subsisting contract and the contract did not state that corrections would attract additional charges. And even if as portrayed by the Defendant, the parties were entering into an entirely new contract, the offer made by the Defendant was not accepted by the Claimants.

Therefore, from whichever angle it is viewed, the additional deduction of the sum of N100,000.00 from the Claimants' account by the Defendant on the 29th day of February, 2015 is unjustified and therefore, illegal.

Contrary to the contention of the learned defence counsel, the Claimants evidently have a cause to complain against the Defendant and I am satisfied by the evidence adduced in this case that the Claimants have established part of their claims

against the Defendant as to be entitled to the reliefs sought in this case.

Going through Exhibit PW1F, it is obvious that the amount of N3,360.01 also claimed by the Claimant in this suit was deducted by the Defendant as account maintenance fee plus VAT. The said Exhibit shows that on 31st December, 2017, the Claimants were charged the sum of N9,980.51 as account maintenance fee plus VAT. Also, on 28th February, 2018, the Claimants were charged the sum of N7,613.05 for the same purpose. From the said Exhibit, similar charges were also made at the end of the months of March and April, 2018. The law has been well established to the effect that banks are bound to comply with the Central Bank of Nigeria guides and principles in charges for maintenance and VAT. The Claimant had failed to that the charge of N3,360,01 was disapproved by Central Bank of Nigeria. In this wise, such charges are binding on customers.

The Claimants tendered Exhibits PW1C and PW1D to prove that the Defendant was in the know of the closing date for the bid but failed to issue the bond until after the closing date. There is however, nothing in the said exhibits to show that the Defendant was in receipt of same. It is the finding of this Court that the Claimants failed to prove that they delivered the newspapers, Exhibits PW1C and PW1D to the Defendant or that they informed the Defendant about the particular closing date for the bid.

On the claim for exemplary damages, the Court of Appeal in **Obinwav. C.O.P. (2007) 11 NWLR (Pt 1045) 411 at 426-427**, held, per Owoade J.C.A. that:

“Exemplary damages will be awarded against a defendant in three instances. These are:

- (a) Where there is an express authorisation by statute.**
- (b) In the case of oppressive, arbitrary or unconstitutional action by the servants of the government.**
- (c) Where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff.**

In order to succeed, a plaintiff must be able to prove any of the three conditions. He needs not prove all the three conditions to succeed. Once any of the three conditions is proved, a Court of law will award exemplary damages.”

In the instant case, the action of the Defendant in illegally debiting the Claimants' account with additional sum of N100,000.00 cannot be for any purpose other than for making profit for itself. Accordingly, the Claimants will be entitled to an award of exemplary damages.

From the totality of the foregoing, the Claimants' case succeeds in part, and this Court accordingly enters judgment for the Claimants as follows:

1. It is declared that the withdrawal of the sum of One Hundred Thousand Naira (N100,000.00) only from the Claimants' bank account number 1014914030 with the Defendant, without the express instructions, authority and approval of the Claimants amounts to a breach of contract.
2. It is declared that the placing of the Claimants' bank account number 1014914030 with the Defendant, on debit when in actual fact, the Claimants were not indebted to

the Defendant, amounts to a breach of contract by the Defendant.

3. Relief (3) fails for want of proof.
4. This Court makes an order mandating/directing the Defendant to reverse back into the Claimants' bank account number 1014914030 with the Defendant, the sum of One Hundred Thousand Naira (N100,000.00) only, unlawfully withdrawn from the Claimants' account without authorization and approval by the Claimants.
5. The sum of N1,000,000.00 (One Million Naira) is ordered against the Defendant and in favour of the Claimants as exemplary damages for unlawfully withdrawing the sum of One Hundred Thousand Naira (N100,000.00) from the Claimants bank account with the Defendant without authorization and approval and for placing the Claimants' bank account on debit.
6. The sum of N500,000.00 (Five Hundred Thousand Naira) as general damages against the defendant and in favour of the Claimants.
7. The cost of this suit at N500,000.00 was not proved, and same is accordingly dismissed.
8. 10% post judgment sum is ordered until judgment sum is liquidated.

HON. JUSTICE A. O. OTALUKA
1/3/2021.