

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA – ABUJA

DATED THIS TUESDAY 2ND MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/660/2022

BETWEEN:

ENWONGO-ABASI NSE INYANG.....CLAIMANT

AND

- 1. FIRST CITY MONUMENT BANK PLC**
- 2. GUARANTY TRUST BANK PLC..... DEFENDANTS**

JUDGEMENT

The claimant by way of a writ of summons caused a writ to be issued against the defendants dated the 1st-December, 2022 claiming the following reliefs.

- 1. A declaration that the defendant's failure to within 48 hours as stipulated by the central Bank of Nigeria reverse/refund the sum of N13,5000.00 (thirty Thousand Five Hundred Naira) only debited from the claimants account Number, 0344538778 domiciled with the 2nd Defendants after a failed P. O. S. (point of sale) transaction carried out by the claimant on the 6th day of May, 2022 is illegal provocative vexation, inordinate and condemnable.**
- 2. A declaration that the 1st Defendant's act of effecting the reverse/refund of the sum of N13,500.00 (thirty Thousand Five Hundred Naira) only on the 7th day of September, 2022 for (4) months after the failed POS (point of sale) transaction carried out by the claimant on the 6th day of May, 2022 is illegal, wrongful, provocative, vexation, inordinate, condemnable and a breach of the claimant relationship.**

- 3. A declaration that the defendants' failure to give the claimant timely notice of the 4 months' delay in effecting the reversal/refund of the sum of N13,500.00 (thirty Thousand Five Hundred Naira) only debited from the claimant account No: 0344538778 after a failed POS (point of sale) transaction carried out the claimants on the 6th day of May, 2022 is illegal, wrongful, provocative, vexations, inordinate, condemnable and a breach of the claimant right as a consumer in Nigeria.**
- 4. A declaration that the refusal by the defendants to address the claimant's complaints and demands is an act of negligence and a breach of the duty owed by the defendant to the claimant for which the claimant is entitle to damages.**
- 5. An order of this Honourable Court that the 1st and 2nd defendant are liable to compensate the claimant monetarily for the untold hardship, embarrassment, unnecessary expenses and inconvenience suffered by the claimant during the four months' delay in the reversal/refund of the claimant's money.**
- 6. An order of this Honourable court compelling the 1st and 2nd defendants to pay to the claimant the sum of N9,000.000 (Nine Million Naira only) being several damages and exemplary damages for the wrongful and unlawful acts of the defendants.**
- 7. An order of this Honourable court that the defendants shall pay to the claimant the sum of N1,000,000.00 (One Million Naira only) being cost of prosecution of this suit.**

Attached to the writ are the statement of claim of 6 pages, witness statement on oath deposed to by EnwongoAbasiNseInyang of 37 paragraph, with list of documents to be relied upon at trial, claimant list of witness, certificate of pre-action counselling and same document exhibited which are as follows:

- 1. Copy of the POS Transaction receipt as exhibit A.**

2. A screenshot of the said message from Guaranty Trust Bank as exhibit B.

This matter was assigned to the court by the Honourable Chief Judge to court 49 dated the 12-12-2023 received by the Registrar of this court dated the 16-12-2022 and mentioned on the 26-1-2022.

On the date set down for mention the claimant counsel one I. N. Inyang was in court while the defendants counsel was not in court. The claimant counsel made it known to the court that all the defendants have been served and hence applied that the matter be set down for hearing and be deemed mentioned. The prayers of the claimant counsel were granted and the matter was deemed mentioned and adjourned to 21-2-2022 for hearing.

On the 21-February 2023 the defendant counsel one Gabriel Ogene was in court while the claimants counsel sent a message to the court that his Car broke down hence the, matter was adjourned to the 22-3-2-2023 for hearing.

On the 22-3-2023, both counsel were in court I. N. Inyang for the claimant and Gabriel Ogene for the 1st defendant and no representative from the 2nd defendant. On this date the defendant counsel approached this court to explore means of settlement and to report back to the court. Thus the claimant counsel did not oppose to this application.

This court acting under order 26 of the High court of the Federal Capital Territory Abuja civil procedures Rules 2018 which provides thus:

“when a matter comes before the court for the first time, the judge shall in circumstance where it is appropriate, grant to the parties time, not more than 30 days within which parties may explore possibilities for settlement of the disputes.

Based on the above provisions of the law, this court adjourned this matter to the 27- April, 2023 for report of settlement or possible adoption of terms of settlement.

On the 27-4-2023 both counsel were in court and the claimant counsel informed the court that they have filed the said terms of settlement as agreed by the parties and both parties have appended their signature and urged this court to adopt the terms so filed as the consent judgment of this court.

The terms of settlement dated the 27-4-2023 filed the same date of 3 pages having been adopted by both counsel this court will adopt same as the consent judgement of this court.

Before proceeding to adopt same I shall highlight what a consent judgement is:

In *Woluchem V Wokomo* (1974) ALL NLR. 543 (SC), the supreme court of Nigeria held that in order to have a consent judgement, the parties must be free and voluntary, and the terms of settlement must be filed in court.

Also settled, is that an agreement is binding only on the parties thereto and not on third parties, see the case of *W.D. N. LTD V OYIL* (1992) 5 NWLR (PT. 239) 77 at 100-101 CA. thus if and where there is or are the terms or terms of an agreement on any particular point, the authentic and legal sources of information for the purpose of resolving the disagreement is of course the written agreement executed by the parties. See *Union Bank of Nigeria Ltd V Sax (Nig.) Ltd & ors* (1994) 9 SCNJ. 1 at 12 and *Mrs Layode V Panalpina World Transport Nig. Ltd* (1996) 7 SCNJ 1 at 14-15.

The words of the consent judgement clearly speak for themselves, it is not for the court to alter or vary them even in the light of disputations before it, it is thought that the parties might have intended something other than what was recorded in the consent judgement.

It is trite that in the construction of document, the cardinal principles is that the parties are presumed to intend what they have in fact said or written down.

Accordingly, the words employed by them will be construed and be given their ordinary and plain meaning unless, of course, circumstances, such as trade usage or the likes dictate that particular construction ought to be give effect to the particular intention envisaged by the parties. See *Adoad& Another V Kessrawans* (1956) FSC 35 AG KADUNA STATE & others V Atta & others(1996) 4 NWLR (pt. 38) 785. As a general rule therefore, words would be given their ordinary and plain meaning and additional words or clauses ought not to be imported into a written agreement or document unless it is impossible to understand the agreement or document in the absence of such additional words or clauses. See *SolicitorGeneral, western Nigeria V Adebajo* (1971) 1 ALL N.L.R 178.

In view of the above I shall adopt the terms of settlement filed and dated on the 27-4-2023 and adopted on the 2-5-2023 as the consent judgment of the court as follows:

- 1. That the 1st defendant shall pay the claimant the sum of N150,000, 00 (One Hundred and Fifty Thousand Naira) only one month from the date of service of the certified true copy of the consent judgement on the 1st defendant.**

2. That the payment of the above sum shall be in full and final satisfaction of all issues regarding this suit as it relates to the defendants.
3. The payment in paragraph i above, shall be made by the 1st defendant through a draft raised in favour of the claimant in full and final satisfaction of all issues regarding this suit as it relates to the defendants.
4. This terms of settlement having emanated from the parties is binding agreeable and satisfactory to the parties in this suit and shall be full and final settlement of all issues in this suit and cannot be revisited by any party. The defendants shall be totally discharged of all liability or obligation. The claimant hereby relinquishes any further right of action against the defendants in this suit or any claim related thereto whether now or in future.

This is my judgment.

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HON. JUSTICE ALIYU Y. SHAFI

APPEARANCE:

1. I. N. Inyang for the claimant.
2. Gabriel Ogene for the 1st Defendant.