

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 9, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

FCT/HC/CV/51/2016

DATE: 27-11-2024

BETWEEN

ECOBANK NIGERIA LIMITED } CLAIMANT

AND

OMAR ADO - IBRAHIM } DEFENDANT

J U D G M E N T

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Claimant in this case filed this suit vide a Writ of Summons on the undefended list procedure of this Court, then, dated 1st November, 2016.

Upon service of the Originating Summons on the Defendant, the Defendant filed a Notice of Intention to defend.

Consequent to the above, the Honourable Court heard and transferred the suit to the general cause list and ordered parties to file and exchange their pleadings.

Pursuant to the directive of the Honourable Court, parties filed and exchanged their pleadings in the suit.

On the 25th February, 2021 on the application of the Defendant, the Honourable Court granted the Defendant leave to amend his Statement of Defence to plead and frontload the 2013 version of a Central Bank of Nigeria circular on bank charges.

However, the Defendant failed to file the said amended statement of defence in line with the rules of Court, but only filed an amended statement of defence on the 28th June, 2021.

On the 1st July, 2021, the Claimant's witness testified as CW1, tendered several documents which were admitted by the Court as Exhibits A1 – A7 and was duly cross examined by the Defendants' Counsel.

The suit was adjourned to the 2nd November, 2021 for defence upon the closure of the Claimant's case on the 1st July, 2021.

However, neither the Defendant nor his Counsel showed up in Court again to defend this suit. Consequently, after several adjournments by the Court to enable the Defendant enter his defence to the suit, the Honourable Court on the 2nd February, 2023 foreclosed the Defendant's defence and adjourned the suit for adoption of final written address.

The Claimant is a commercial Bank registered in Nigeria and licensed by the Central Bank of Nigeria to carry out commercial banking business and the successor in title to the former Oceanic Bank International Plc.

Sometime in February, 2008, the Defendant then a management staff of the Petroleum Equalization Fund applied to Oceanic Bank International Plc for a Mortgaged facility of N31 million to enable him purchase a property situate at Block 92, Flat 2, OAU, Asokoro, Abuja.

The Defendant's application was granted by the said Oceanic Bank International Plc as evidenced by the loan offer letter dated

February, 21st 2008 and the entry on the Defendant's statement of account on the 11th May, 2008, Exhibit A2 and Exhibit A7 respectively.

The terms and conditions of the loan, including the repayment of principal and interest, the tenor of the loan as well as the contractual and default interest rates were stated in loan offer letter which the Defendant duly accepted and executed.

The Defendant failed to keep to the terms of repayment of the loan hence the loan fell into default.

The Defendant inspite of several engagements with the Claimant, failed, neglected and refused to liquidate the debt hence this suit.

The matter then moved to the next stage which is the address stage. The Claimant's learned counsel submitted a lone issue for determination on this matter. The issue is this:

“Whether having regard to the facts pleaded and evidence adduced before this Honourable Court, by the Claimant, the

Claimant has proved its case before this Court against the Defendant to entitle to judgment.”

While the defendant’s counsel submitted two issues for determination. The issues are as follows:

- 1. Whether the Claimant has adduced sufficient evidence in support of its claim as to be entitled to the reliefs sought in this case?**
- 2. Whether reliance on exhibit A7 (the statement of account) of the defendant without more is sufficient to entitle the Claimant to Judgment in this case?**

The Claimant’s counsel argued that in civil proceedings, the law is settled that he, who asserts, proves. This rule of law is codified by **Sections 131 and 132 of the Evidence Act, 2011**. Thus, it is the Claimant’s initial burden to present by credible evidence both oral and documentary, to establish the facts contained in his pleadings before the Court.

The Claimant generally is required by law to prove his claim before the Court on the balance of probabilities or

preponderance of evidence. This is, on the weight of the evidence placed before the Court.

It is the law that where issues are joined by parties in an action, that is, in the pleadings filed by the parties in the suit, the law requires each party to lead evidence before the Court in proof of the facts it pleaded or it wants the Court to accept as true.

It is the evidence the respective parties lead or present before the Court that the Court would put on the imaginary scale to determine where Judgment in the case would go.

However, where one party in a matter before the Court leads evidence while the other side fails to present any evidence to support its pleadings, its side of the scale would be empty and the burden of proof on the party who lead evidence would be lighter and that party would then only have to present minimal proof of facts asserted in his pleadings.

In the case of **OGUNJUMO & ORS. VS. ADEMOLU & ORS. (1995) L.P.E.L.R. – 2337 (SC) at pages 23 – 24, paras. E – A**, the Supreme Court re-emphasised this point when it pointed out that:

“It is undisputed that where a Defendant took no part in a proceedings or offered no evidence in his defence, the evidence before the Court goes one way and there would be nothing to put on the other side of the imaginary scale or balance as against the evidence for the Plaintiffs. The onus of proof in such a case is therefore discharged on a minimal proof”

We also refer the Court to the case of **SPDC NIG. LTD. VS. EDAMKUE & ORS.(2009) L.P.E.L.R. – 3048 (SC) pages 41 – 42, paras. G – C.**

In the present case, the Claimant in proof of its case before this Court, called one witness, CW1, one Christian Johnson, a staff of the Claimant.

The said CW1, adopted his witness deposition under Oath before the Court and presented several documents to establish the claims of the Claimant which documents were duly admitted by this Court and same were marked as Exhibit A1 - A7, respectively.

The Counsel to the Defendant also subjected the testimony and evidence presented by the CW1 to cross-examination without any of the pieces of evidence neither tainted nor contradicted.

- a) Exhibit A1: is the Defendant's request made to the Claimant's predecessor in – title, Oceanic Bank International Plc, for a loan of N31,000,000.00 (Thirty-One Million Naira).
- b) Exhibit A2: is the offer letter for the requested loan, with the memorandum of acceptance duly signed by the Defendant and a schedule for the repayment of same.
- c) Exhibit A3: is a document given to the Claimant by the Defendant confirming his (Defendants) employment with the Petroleum Equalization Fund.
- d) Exhibits A4 and A5: are copies of written demand letters by the Claimant, demanding the repayment of the outstanding loan sums as at the dates of the letters which demands the Defendant failed to heed.
- e) Exhibit A6: is a letter from the Defendant, where the Defendant acknowledged receiving the Claimant's demand letter for the payment of the sum of

~~₦~~56,44,200.72 (Fifty-Six Million, Forty-Four Thousand, Two Hundred Naira and Seventy-Two Kobo) being outstanding balance of the loan as at then.

- f) Exhibit A7: is the Defendant's account statement showing the disbursement of the loan to the Defendant, the payments made by the Defendant and the outstanding sum as at September, 2016 prior to the institution of the suit.

He submitted further that, both the written evidence on oath of CW1 as well as the documents tendered in proof of the Claimant's claim were subjected to cross examination by the Defendant's Counsel, at the end of which the said pieces of evidence stood, not discredited nor contradicted.

It is important to stress that the Defendant prior to the filing of this suit in Court, knew about his growing indebtedness to the Claimant, as evidenced by Exhibits A4 and A5 and even Exhibit A6, which emanated from the Defendant.

On the interest charged on the facility, CW1 under cross examination affirmed that the interest charged on the account was both default and compound interest which were lawful and

in line with Central Bank of Nigeria regulation. The piece of evidence, is supported by Exhibit B, tendered through CW1 by the Counsel to the Defendant particularly at page 6 item 2.12.

In **BASAWA VS. UNITY BANK PLC (2015) L.P.E.L.R. – 2591 (CA)**, the Court of Appeal re-affirmed the entitlement of a commercial bank to charge compound interest whether expressly contained in the loan contract or not as a bank customer is taken to impliedly consent to be charged the interest.

He also referred the Court to the case of **CAP VS. VITAL INVESTMENT LTD. (2006) ALL F.W.L.R. (PART 342) page 1502, at page 1526, E – F** where the Court held inter alia:

“The Appellant must also be presumed to know that it is customary for a finance house to charge interest and penalty fees for default in payment”

See the case of **ADETORO VS. UBN PLC (2007) ALL F.W.L.R. (PART 3961) page 590 at pages 634 – 635, paras. G – A.**

Finally, he submitted the interest of 9.5% claimed on the outstanding balance of the loan as per claim (ii) on the statement of claim is as parties agreed.

Reacting to the arguments of the Claimant's Counsel, the learned counsel to the defendant submitted that the law is also well settled that in civil cases, a party who wishes to succeed in obtaining judgment in his favour must adduce such credible evidence, for cases in civil proceedings are decided on preponderance of evidence and balance of probability. See **Sections 131 – 134 of the Evidence Act 2011.**

He submitted that the law is trite that evidence extracted under cross-examination is as potent as evidence given during examination in chief as there is no difference between the two. The fact that evidence was elicited during cross-examination is as good, valid, authentic and potent as evidence in chief. See the cases of **MTC (NIG.) LTD. VS. CORPORATE COMM. INVESTMENT LTD. (2019) 9 N.W.L.R. (PART 1678) 427 (SC); FALOYO VS. FALOYO (2021) 3 N.W.L.R. (PART 1762) 114.**

He said Exhibit A2 which is the offer letter for the facility is very clear and unambiguous as it stipulates the terms and conditions

of the facility and he urged me to give the document its literal meaning. He particularly referred me to “pricing” which stipulates the interest on the facility. It provides thus:

“interest rate at 9.5 percent per annum.” He also particularly referred me to the repayment Clause. It stipulates thus: “debit from salary and allowances Account No. 0101001015399”.

He contended, that the claims of the Claimant in this suit is in the realm of special damages and through-out the pleadings and evidence of the Claimant they did not state nor particularize how they arrived at the sum of ~~N~~58,073,166.75 (Fifty-Eight Million, Seventy-Three Thousand, One Hundred and Sixty Naira, Seventy-Five Kobo) nor did they lead any evidence to show how they arrived at the amount apart from the general statement that the amount on the debit balance in account No. 2202107922 is N58,073,166.75 (Fifty-Eight Million, Seventy-Three Thousand, One Hundred and Sixty-Six Naira, Seventy-Five Kobo). He now argued, that this is very fatal to the case of the Claimant as the burden of proof is on the Claimant to show how they arrived at the amount claimed which they woefully failed to do in this case.

In the instant case, the parties clearly agreed in Exhibit A2 that the interest rate 9.5 percent simple interest per annum. The parties further agreed that the bank reserves the right to review the interest rate in accordance with prevailing money market conditions and shall notify the customer accordingly.

Above response clearly shows that contrary to the agreement of the parties as contained in Exhibit A2, the Claimant did not notify the Defendant of the review of the interest rate and the charging of compound interest based upon which they arrived at the figure in the debit balance of Account No. 2202107922. He urged me to hold that the Claimant has failed to prove that he is entitled to the amount claimed in accordance with the agreement of the parties in this suit.

In a swift reaction, the Claimant's counsel contended in his Reply on point of law that the Counsel for the Defendant did not state which evidence obtained from CW1 that supports which averment in the defence or any fact pleaded in the statement of defence.

Exhibit A6 was a reply by the Defendant to a demand letter sent to him by the Claimant asking for a specific sum which was the outstanding debt as at the period stated in the letter.

“The outstanding debt on my account as stated in your letter stands at N56,144,200.72. This debit balance has continuously increased every month hence the reason I am requesting for a stoppage of debit interest on the account”

The Defendant in the same letter, promising to pay up the outstanding debit of N56,144,200.72 (Fifty-Six Million, One Hundred and Forty-Four Thousand, Two Hundred Naira, Seventy-Two Kobo) as at them further wrote:

“...I am making every effort to ensure the full repayment of my outstanding, but it will require the bank to give me some grace period to do this” (Emphasis ours).

Secondly, he said the undisputed and un-denied facts of this case and evidence before the Court clearly show that this case is

one where the Defendant is not denying his indebtedness to the Claimant, but has by his own letter, Exhibit A6, acknowledged the loan and his indebtedness.

The Defendant in this case, received a demand letter stating that as at the relevant date in the letter, he was indebted to the claimant in the sum of N56,144,200.72 (Fifty-Six Million, One Hundred and Forty-Four Thousand, Two Hundred Naira, Seventy-Two Kobo). The Defendant in his response to the demand letter did not in any form dispute, deny nor challenge the quoted figure. The Defendant rather re-stated the figure and expressed his fear that same would continue to grow if nothing was done to stop the monthly interest.

The Defendant went forward to state in his reply to the demand letter that he was making every effort to ensure FULL REPAYMENT OF “MY OUTSTANDING”, referring to the sum stated in the letter.

Although the amount stated in Exhibit A6 is marginally higher than the sum claimed in this suit (which is explainable by passage of time as the Defendant already knew), the essential and core issue is that the indebtedness of the Defendant to the Claimant

was not denied and indeed was admitted by the Defendant himself. He therefore submitted that Exhibit A7, the Defendant's account statement is not the only basis of the claim of the Claimant in this suit. There are other pieces of evidence that support the claim in this suit.

Thirdly, he said a very critical facts and circumstances of this case, which is lacking in all the authorities cited and relied upon by the Defendant's Counsel in the cited authorities where the Court was considering cases where the Defendant/Bank customer not only filed pleadings denying the amount claimed against them by the bank, they led evidence to contradict the evidence of debt in the bank statements. The Defendant offered no evidence in denial of indebtedness.

In the present case, the Defendant abandoned his statement of defence and did not offer any evidence from his side on the claim of the Claimant.

In civil cases, as the present one, the Claimant is expected to prove his case on the balance of probability or preponderance of evidence. All that the Judge does, who is hearing a civil matter at the end of trial is to put the respective evidence from each side

of the contest on the tray pan of the imaginary scale of justice to see which side the scale will tilt to. If one side has something to put on the scale and the other party chooses to put nothing on the scale, the scale must tilt on the side of he who has put something on the scale, no matter how little he puts on the scale and that is also where the pendulum of justice will swing.

It is still the law of the land that a fact which is admitted needs no further proved. If a party is sued for being indebted to another and the Claimant offers some evidence suggesting that the Defendant is indeed indebted to him and the Defendant refuses to offer any evidence at all in denial of the debt, but raises the legal argument that the evidence of his indebtedness from the Claimant is not sufficient, the Court is still obliged to accept and act on the “insufficient” evidence, because on the scale of justice, insufficient evidence weights heavier than no evidence.

The portions of Exhibit A2, particularly items 2, 3 and 4 under operating conditions cited by the Defendant’ Counsel, relates to review of contractual interest, that is the 9.5% applicable to the contract if the Defendant pays up without default.

In this case, the pleadings and evidence of the Claimant which was solidified by CW1 under cross examination was that the Defendant defaulted in liquidating the facility as agreed hence default interest started compounding. The evidence of CW1 was in line with Clause 13 of Exhibit A2.

Exhibit B clearly provides that the Claimant's Clause 13 on the loan document was proper and approved. He referred the Court to Clause 2.12 page 6 of Exhibit B, paragraph 2 of Exhibits A4 and A5, as well as the 2nd paragraph of Exhibit B. There was no moment the issue of default or compound interest was challenged by the Defendant.

For instance, let us take a look at some paragraphs of statement of defence. Like paragraphs 4, 5 and 7.

Paragraph 4 of the statement of defence says:

“In answer to paragraphs 4, 5, 6, 7 and 8 of the Statement of claim, the Defendant avers that the defunct Oceanic Bank International Plc was acquired by the Plaintiff sometime in 2012 under the supervision of the Central Bank of Nigeria and

the Asset Management Corporation of Nigeria (AMCON)”.

Paragraph 5 says:

“Further to paragraph 4 above, the Defendant avers that before the acquisition of the defunct Oceanic Bank International Plc. by the Plaintiff, the Asset Management Corporation of Nigeria on the instruction/directive of the Central Bank of Nigeria (CBN) wrote off debt owed the Plaintiff by the Defendant as part of Central Bank of Nigeria’s financial measures aimed at strengthening Bank including the Plaintiff from bad Debt/loans.”

Paragraph 7 says:

“Defendant avers that contrary to the averments of the Plaintiff in paragraphs 5, 6, 7, 8 and 9 of their statement of claim, the mortgage facility granted the Defendant by the Plaintiff was re-paid by direct deductions from the Defendant’s salary domiciled then with the defunct Oceanic Bank

International Plc. The Defendant further states that he was a senior staff of the Petroleum Equalization Fund (Management) Board at the time the Mortgage loan was granted and deductions were done from his salary account”.

All these paragraphs and several others are not supported with any evidence either from examination-in-chief nor cross-examination of the Claimant’s evidence upon which the defendant rested his case.

The position of law is crystal clear that averments not supported with evidence go to no issue. **In the case of OMO-AGEGE VS.OGHOJAFOR & ORS. (2010) L.P.E.L.R. – 4775 (CA) the Appellate Court said thus:**

“It must be noted and emphasised that pleadings do not constitute evidence and a party must lead evidence oral or documentary in support of facts stated in his pleading. Averments in pleadings are mere paper tigers and are not evidence. It is therefore wrong for any Court to treat an averment in a pleading without evidence as evidence of

*matters averred therein. However, because what is admitted need no further proof, an averment admitted by an adverse party does not necessitate any proof” See **EKONDO MICROFINANCE BANK LTD. VS. ALBERT & ORS. (2023) L.P.E.L.R. – 60489 (CA).***

Also, in the case of **AEROBELL (NIG.)LTD & ORS VS. FIDELITY BANK (2018) LPELR-45338 (CA)** where it was held thus:

"The correct principle of law with regards to uncontroverted evidence is that same can be regarded as admission by the other party and validly acted upon by the Court.”

The Defendant’s approach to his defence in this instant case is analogous to a situation where a Defendant is resting his case on that of the Claimant which has damn consequences.

See: **INTERDRILL (NIG.) LTD & AMP; ANOR VS.U.B.A. PLC (2017) LPELR-41907 (SC), Pp. 26-27, Paras. F. LAU VS. P.D.P. & AMP; ORS (2017) LPELR-42800(SC); MUSA & AMP; ANOR v. IBRAHIM (2017) LPELR-43101 (CA); and U.B.A. PLC VS. PATKAN VENTURES LTD (2017) LPELR-42392(CA).** Notwithstanding the above, the fact that a Defendant/Respondent in a trial refuses to call any witness or chooses to rest his case of trial does not automatically translate to the fact that judgment must be entered in favour of the Plaintiff/Claimant/Petitioner.

The Supreme Court gave a wholesome representation of the implication of Respondent's act at trial in the case of **THE ADMIN. & AMP; EXEC.OF THE ESTATE OF ABACHA VS.EKE-SPIFF & AMP; ORS. (2009) LPELR-3152(SC) (Pages 59-60, paras. C-D)** where per **OGBUAGU, JSC** held thus:

"...The Appellants rested their case on that of the Plaintiffs/Respondents. So, the evidence of the Respondents remained uncontroverted. It is now settled that the implication where a Defendant rests his case on the Plaintiffs case, it may mean that: (a) that the Defendant is stating that the Plaintiff, has not made out any case for the Defendant to respond to; or (b)

that he admits the facts of the case as stated by the Plaintiff or (c) that he has a complete defence in answer to the Plaintiffs case. See the cases of AKANBI VS. ALAO (1989) 3 NWLR (PART 108) 118; (1989) 5 SCNJ 1 and N.E.P.A. VS.OLAGUNJU & AMP; ANOR.(2007) 3 NWLR (Pt. 913) 603 @ 632 C-A.In the case of AGUOCHA VS.AGUOCHA (2005) 1 NWLR (PART 906) 165 @ 184 citing AKANBI VS.ALAO (supra), it is stated that a situation where a Defendant failed/fails to lead evidence in defence, but rested his case on that of the Plaintiff it is regarded as a legal strategy and not a mistake. If he succeeds, then it enhances his case, but if he fails, that is the end of his case. So it is in this instant case leading to this appeal. They failed woefully, in their strategy - i.e. not to testify or defend. Where a Defendant offers no evidence in support of his pleadings, the evidence before the trial Court, obviously goes one way with no other set of facts or evidence weighing against it. There is nothing in such a situation, to put on the other side of the proverbial or imaginary scale of balance as against the evidence given by or on behalf of the Plaintiff. The onus of proof in such a case, is naturally discharged on a minimal of proof”

See: **OKPOKO COMMUNITY BANK LTD. & ANOR v. IGWE (2012) LPELR-19943(CA); and MAKERA & VS. GALADANCHI & ORS (2011) LPELR-8521 (CA).**

The implication of the above is that a Plaintiff may still fail in his quest to obtain relief from the Court even where the Defendant rests his case on that of the Plaintiff." Per TUKUR,J.C.A in **AEROBELL (NIG) LTD & ORS VS. FIDELITY BANK (2018) LPELR-45338(CA) (Pp. 20-23 paras. D)**

I have considered all the arguments and submissions of both Learned Counsel and I agree with all the submissions of the Claimant's Learned Counsel advanced in support of the sole issue submitted for consideration which I adopted as the only issue germane for consideration in this suit.

Exhibit A6 attested to the fact that the defendant is in the know of the status of his account with the Claimant. I agree entirely with the learned Counsel to the Claimant when he wrote at

paragraphs 2.2 of his reply and 4.3 of his final written address thus:

“Exhibit A6 was a reply by the Defendant to a demand letter sent to him by the claimant asking for a specific sum which was the outstanding debt as at the period stated in the letter.

The Defendant replied the claimant and stated in alia:

“The outstanding debt on my account as stated in your letter stands at N56,144,200.72. This debit balance has continuously increased every month hence the reason I am requesting for a stoppage of debit interest on the account”

The Defendant in the same letter, promising to pay up the outstanding debt of N56,144,200.72 as at them further wrote:

“...I am making every effort to ensure the FULL REPAYMENT OF MY OUTSTANDING, but it will require the bank to give me some grace period to do this (emphasis ours).”

“4.3 It is the evidence the respective parties lead or present before the Court that the Court would put on the imaginary scale to determine where judgment in the case would go.

However, where one party in a matter before the Court leads evidence while the other side fails to present any evidence to support its pleadings, its side of the scale would be empty and the burden of proof on the party who led evidence would be lighter and that party would then only have to present minimal proof of facts asserted in his pleadings.

It is for the above reason, that I grant reliefs 1 and 2 of the Claimant while relief 3 is hereby refused as no evidence is before the Court for its proof.

Signed
S. B. Belgore
(Judge) 27/11/ 2024

APPEARANCES:

Ikechukwu Anyalewechi for the Claimant

Chinedu Onyeukwu for the Defendant