

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA –ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 24
CASE NUMBER: SUIT NO. FCT/HC/CV/2676/2021
DATE: 12/7/2023

BETWEEN:

UGOCHUKWU JUDE DURU.....CLAIMANT

AND

GUARANTY TRUST BANK PLC.....DEFENDANT

JUDGMENT

APPEARANCES:

C.R. Onyema Esq Holding brief of Uche Amulu Esq for the Claimant.
Elo O. Azaino Esq with Chidinma Okafor Esq for the Defendant.

The Claimant instituted this suit via a Writ of Summons dated 22nd of October, 2021 claiming against the Defendant as follows:-

- “(1). A declaration that the Claimant is entitled to refund by the Defendant of his N4, 700.00 (Four Thousand Seven Hundred Naira only) and N3, 900.00 (Three Thousand Nine Hundred Naira only) which the Defendant wrongly debited from his account.***

- (2). A declaration that the non-refund to the Claimant of his N4, 700.00 (Four Thousand Seven Hundred Naira only) and N3, 900.00 (Three Thousand Nine Hundred Naira only) which the Defendant wrongly debited from his account, the***

from the Claimant's account is unconscionable, injurious and unlawful.

- (3). A declaration that the Claimant is entitled to punitive damages for the troubles occasioned to him on account of the Defendant's unrepentant debiting of his account and refusal to credit same even after the Claimant has made repeated requests for same.**
- (4). An Order of this Honourable Court mandating the Defendant to immediately refund the Claimant's N4, 700.00 (Four Thousand Seven Hundred Naira only) and N3, 900.00 (Three Thousand Nine Hundred Naira only) which the Defendant wrongly debited from his account.**
- (5). An Order of this Honourable Court mandating the Defendant to pay compensation to the Claimant in the tune of N5, 000, 000.00 (Five Million Naira only) as general damages for the losses and stresses occasioned the Claimant on account of the Defendant's breach of contract, unconscionable withholding of his money and willful non provision of competent banking services to him.**
- (6). Interest at the rate of 10% on the judgment sum from the day of judgment till final liquidation.**
- (7). The sum of N500, 000 (Five Hundred Thousand Naira only) as cost of prosecuting this suit.**

On the other hand, the Defendant upon being served with the originating processes, filed their Statement of Defence on the 4th January, 2022.

Trial commenced in this suit with the Claimant opening its case on 27th September, 2022 by calling its sole witness, Ugochukwu Duru, who testified as Pw1, adopted his Witness Statement on Oath filed on 4th January, 2022 and tendered the following documents in evidence which were admitted and marked as follows:-

- (1). A GTB customer's Statement of Account dated 22nd September, 2021 as Exhibit A.

- (2). A 7 page GTB Statement of Account as Exhibit B.
- (3). A print out of 2 text messages as Exhibit C.

Pw1 was accordingly cross-examined by the defence Counsel.

On the other hand, the Defendant opened their case on 24th day of November, 2022 by calling their sole witness Matthew Solomon Oluwaseyi a staff of the Defendant who testified as Dw1, adopted his Witness Statement on Oath and tendered one document in evidence which was admitted and marked as follows:-

- (1). A receipt issued by Rosenut Solicitors dated 10th of December, 2021 marked as Exhibit D.

Evidence having concluded on both sides, the matter was then adjourned for adoption of final Written Addresses as stipulated by Order 33 of the Rules of High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018.

The Defendant's final Written Address is dated 16th day of December, 2022 and filed on same day. The Defendant equally filed a Reply on points of law dated and filed on the 10th day of February, 2023.

The Claimant on the other hand, filed his final Written Address dated and filed on the 19th day of December, 2022.

In the said final Written Address, learned Counsel to the Defendant Elo O. Azaino Esq, formulated two issues for determination to wit:-

- “(1). Whether the Claimant has proved his case to be entitled to the grant of the reliefs sought in the Statement of Claim.***
- (2). Whether the Defendant/Counter Claimant has proved its Counter Claim to be entitled to the relief sought in the Counter Claim.”***

On issue one, learned Counsel submitted that the Claimant has not proved his case on acceptable standard of proof to be entitled to the reliefs sought in the Statement of Claim as the law is firmly settled that the burden of proof in civil cases equally lies on the Claimant as he is the party who

makes a claim and if no evidence is adduced, the claim is bound to fail and it is only where the Claimant has adduced satisfactory evidence in support of his claim, the onus shifts to the Defendant to rebut the evidence. Reliance was placed on Sections 131, 132, 133 of the Evidence Act 2011 and the case of **BLACKSTONE CRUSHING CO LTD VS SAMOBA (NIG) LTD (2020) LPELR-51129 (CA)**.

Counsel further submitted that there is an interplay between the burden of proof and standard of proof as such interplay exists to the extent that the burden on a Claimant is to be discharged on the balance of probabilities and in deciding a civil suit on the balance of probabilities, the trial Court is expected to place the evidence of each of the parties on an imaginary scale and after this placement on the scale has been done, the cast is to give judgment in favour of the party for whom the scale tilts as the review of the evidence led in this case will reveal the Claimant has failed to discharge the burden of proof on him. In this respect, Counsel cited the cases of **OWENA MASS TRANSPORTION CO LTD VS OKONOGBO (2018) LPELR-45221 (CA)** and **OLONADE VS SOWEMIMO (2014) LPELR-22914 (CA)** at 27,

In another submission, Counsel stated that the Claimant has failed to discharge the burden of proving that the Defendant wrongly debited his account and the evidence of the Claimant in this case which was substantially countered during cross examination that he received a debit alert on 22nd September, 2021 for the sum of N4, 7000.00 (Four Thousand Seven Hundred Naira only) and N3, 900.00 (Three Thousand Nine Hundred Naira Only) which the Claimant claimed he did not initiate any transaction on the said date of 22nd September, 2021 as the Claimant alleged that the debit were fraudulent especially because the description of the transaction in the debit alert he received on his phone is different from the description of the transaction on his Statement of Account and the Defendant in its defence has pleaded and led evidence that the debits on the account of the Claimant.

On 22nd September, 2021 were delayed web payments of an online transaction consummated by the Claimant on the 4th August, 2021 as this piece of evidence was not contradicted by the Claimant during cross examination of the witness of the Defendant and during cross-examination the Claimant admitted that he is used to carrying on online transfer and paying for the transaction online with his card as he admitted that he is conversant with the security authorization protocols required to

consummate an online transaction as the phone and token he uses for his online transaction were in his possession and the Defendant does not have access to these and the admissions of the Claimant clearly removes the Defendant from the picture as the admission supports the case of Defendant and the law is trite that evidence elicited during cross examination can be relied upon by the party. Cross-examining, can be acted upon by the Court and constitute admission against his own interest. In this respect, reliance was placed on the cases of **ISMAILA VS MATTHEW (2017) ALL FWLR (Pt.891) Pg. 828 RATIO 5; ADEBOYE VS BAGE (2016) LPELR-40578 (CA), ONYEGA VS EBERE (2004) 13 NWLR (Pt.899) Pg.20 and OKUWADE VS OLAWALE (2014) LPELR-22139 (CA).**

Moreso, Counsel submitted that the expert opinion of the Defendant's witness stands firm and is not contradicted as the Claimant failed to call any expert to give a contradictory evidence and thus the testimony of the Defendant's witness as regard web payment and delayed web payment ought to be accepted and acted upon by the Court as the expert opinion of the Defendant's witness ought to be preferred to the evidence of the Claimant who testified on his behalf. Counsel cited the case of **GEORGESTONE VS NYA (2022) LPELR-57280 (CA).**

Submitting further, Counsel submitted that the remainders of the Claimant's reliefs are dependent on the grant or otherwise of the principal relief seeking for a declaration that the Defendant wrongly debited the account of the Claimant and once principal relief sought by the Claimant is refused. The rest of his reliefs fail like a pack of cards. In this respect, reliance was placed on the case of **AWONIYI & ORS VS THE REG. TRUSTEES OF AMORC (NIG) (2000) LPELR-655 (SC).**

In another submission, learned Counsel submitted that the Defendant did not act fraudulently or unlawfully in debiting the Claimant's account as this Honourable Court will consequently refuse the Claimant's Claim for punitive damages, general damages and post judgment interest as these heads of claim are dependent on whether the Defendant is liable for the alleged unauthorized and unlawful debit in question.

Counsel finally submitted that cost is ordinarily awardable in favour of a party that succeeds in an action and where this Honourable Court discharges the Defendant of any liability, then the Claim of the Claimant for

cost fail as the Claimant becomes exposed to liability to pay cost to the Defendant.

To this extent, Counsel urged the Court to resolve issue one in favour of the Defendant.

On issue two, Counsel submitted that it is trite law that a Counter Claim is a separate and independent action different from the main claim as such the onus is on the Counter Claimant to adduce sufficient evidence in order to be entitled to the grant of his Counter Claim and in the instant case the Defendant/Counter Claimant has specifically pleaded that it paid the sum of seven Hundred and Fifty Thousand Naira (N750, 000.00) to the law firm of Rosenut Solicitors to defend this action and the Defendant also pleaded that it could not have expended the said sum but for the action of Claimant as it went ahead to adduce sufficient evidence by tendering receipt issued to it confirming payment of professional fees by the law firm of Rosenut Solicitors. Reliance was placed on the case of ***KURO VS GAZE (2021) LPELR-84882 (CA)***.

Learned Counsel further submitted that the law is settled that claims for solicitors fees falls within the realm of special damages which must be specifically pleaded and strictly prayed. Counsel cited the case of ***AJIBOLA V ANISERE & ANOR (2019) LPELR-48204 (CA)***.

To this end, Counsel urged the Court to award the Counter Claim of the Defendant/Counter Claimant.

Finally, Counsel urged the Court to hold that the weight of the Defendant's evidence will make the scale tilt to the side of the Defendant.

On the other hand, the learned Counsel to the Claimant Uche Amulu Esq, formulated three issues for determination to wit:-

- “(1). Did the Claimant prove his case against the Defendant in this suit on the preponderance of evidence.***
- (2). Did the Defendant show any justification for the repeated debits on the Claimant's account.***
- (3). Is the Defendant's Counter Claim in this case cognizable in law.”***

On issue one, Counsel submitted that the law is settled that he who assert must prove in order to succeed in his claim. Counsel cited Sections 131 - 132 of the Evidence Act 2011, and the case of ***ISEOGBUKUN & ANOR VS ADELAKUN & ORS (2013) ALL FWLR (Pt.664) P. 168 at 188 PARAS D – E.***

In another submission Counsel stated that the law is further settled that admitted facts need no further proof and that best proof of fact in issue is the documentary evidence that tends to establish the facts alleged as documentary evidence is the yardstick or hanger for assessing the veracity of oral evidence of its admissibility and the Claimant tendered Exhibits A, B and C being the documents that emanated from the Defendant and sent to the Claimant in proof of the wrongful debits on his account by the fraudulent Defendant and the Claimant is unshaken and maintained under the torrent of Mr. Azaino's cross examination that he neither initiated nor authorized the said debit. Counsel cited the cases of ***ADEBIYI VS UMAR (2013) ALL FWLR (Pt.683) Pg. 2000 @ 2012-2013, OKEREKE VS EJOFOR (1996) 3 NWLR (Pt.434) P.10, JEGEDE & ANOR VS FRN (2013) ALL FWLR (Pt.666) Pg. 594 @ 603-604, PARAS H – A and AREGBESOLA VS OYINLOLA (2011) ALL FWLR (Pt.570) Pg. 1292 @ 1389 Paras G – H.***

Consequently, learned Counsel contended that the authorities of ***ADEBOYE VS BAJE (2016) LPELR-40578 (CA) AND ISMAILA VS MATTHEW (2017) ALL FWLR P.891 P. 828 RATIO 5*** with the reproduced dicta therein, do not apply in this situation as no such admission against interest ever occurred in this proceedings as far as the Claimant is concerned.

Finally on issue one, Counsel urged the Court to hold that accumulation of the Claimant's evidence in chief coupled with his firmness under cross examination, and Exhibits tendered in proof of his case and Defendant's agreement that the said monies were indeed debited from the Claimant's account. The Claimant has established his case against the Defendant and the burden of proof now shifts to the Defendant.

On issue two which is did the Defendant show any justification for the repeated debits on the Claimant's account. Counsel submitted that the Defendant did not show any justification for the repeated debits as the circumstances warranting the repeated debits are facts within the

Defendant's specific knowledge and the Defendant is duty bound to proof same in line with the provision of Section 140 of the Evidence Act 2011.

In addition learned Counsel submitted that the Defendant alleged that one time password (OTP) was sent to the Claimant and that the Claimant followed due authentication protocol in consummating the transaction and they also asserted that the Claimant paid a merchant for a product he bought on Jumia online shop and that the debit were for transactions the Claimant made on 4th August, 2021 but they could not show which OTP they sent the Claimant to authenticate the transaction, which product the Claimant purchased on Jumia online shop, which merchant the Claimant purchased from, which destination/receivers account, as well as the STAN number which Dw1 admitted under cross examination that it is in his possession to track the destination/receivers account. Counsel cited the case of **OMISORE VS AREGBESOLA SUPRA at Pages 272-273 PARAS G –D.**

Counsel further submitted that the Defendant did not tendered any document in proof of its false assertion that the Claimant inter alia, authorized and consummated the debits contrary to the Claimant who tendered Exhibits A, B and C in proof of the Defendant's wrongful and fraudulent debits. In this respect, reliance was placed on the cases of **BFIGROUP CORP VS BUREAU OF PUBLIC ENTERPRISES (2013) ALL FWLR (PT.76) P. 444 at 467 PARAS E-F and JEGEDE & ANOR VS FRN (2013) ALL FWLR (PT.666) P.G 594 at 603-604, PARAS H – A.**

Moreso, Counsel submitted that the Defendant's sole witness Matthew Solomon, an acclaimed expert witness is not a witness of truth and his entire evidence shall be taken with a procedural tooth corn and adjudged worthless as the law is trite that where a party gives contradictory evidence, a Court is duty bound to treat same as unreliable. Counsel cited the cases of **OSADIM VS TAIWO (2010) 6 NWLR (Pt.1189) 155 and BAC ELELCTRICAL CO LTD VS ADESINA (2020) 14 NWLR (Pt.1745) P.235.**

Finally on issue two, Counsel urged the Court to hold that the Defendant has not preferred any explanation, let alone a satisfactory one, warranting the repeated wrongful and fraudulent debits on the Claimant's account domiciled with it.

On issue three, which is, is the Defendant's Counter Claim in this case cognizable in law, Counsel submitted that the Defendant's Counter Claim is

not supportable in law as the 1st Defendant Counter Claims against the Claimant for the sum of N750, 000.00 (Seven Hundred and Fifty Thousand Naira Only) being fees charged on it by its Solicitors which does not form part of or any manner bear from the cause of action in this suit.

Counsel further submitted that a Counter Claim can only be considered assuming the main claim fails.

consequently, learned argued that if things were to be as claimed by the Defendant, then it means that the Claimant would have included his cost of briefing the law firm of Uche Amulu legal to institute this suit against the Defendant as it will therefore be highly unconscionable for the said party (the Defendant) to made the receiver their solicitors fees from their adversary, the Claimant herein who they stole his money, thereby adding salt to his injury. Counsel cited the case of ***IBE & ANOR VS BONUM (NIG) LTD (2019) LPELR-46452 (CA) and MICHAEL VS ACCESS BANK (2017) LPELR-41981 (CA)***.

Finally on issue three, Counsel urged the Court to dismiss the Defendant's Counter Claim for being without basis and lacking in merit.

On the whole, Counsel urged the Court to hold that the Claimant has proved his case against the Defendant on the balance of probabilities and that the Defendant has wrongfully failed to explain the circumstances warranting the repeated wrongful and fraudulent debits of the Claimant's account with the Defendant and grant all the reliefs sought by the Claimant in this suit.

In further response, the Defendant filed a Reply on points of law to the Claimant's Final Written Address where the Defendant stated that arguments will be canvassed in this reply by responding to the paragraphs in the Written Address of the Claimant where arguments were raised.

Counsel submitted that a one time password (OTP) is automatically generated and sent only to a party who wants to consummate an online transaction as it is only such party that receives the OTP which he uses to authenticate the transaction as not even the Defendant has access to the OTP. The Defendant as other financial institution offers only payment solutions and are not involved in the private life of its customers by monitoring products that they purchase online.

Counsel further submitted that the issue of receivers account, it is the payment gateway company that is privy to the account of the receiver as when a party wants to pay online. There are usually payment gateway such as pay stack, flutterwave etc.

In another submission, Counsel stated that the designation of the Defendant's witness in the present suit is not material to the live issue before this Honourable Court as the law is trite that it is not every contradiction or discrepancies in the evidence of a witness that is fatal to the case of the party calling him. Counsel cited the cases of ***UGWU VS STATE (2013) LPELR 022572 (CA) and MAIDABO VS STATE (2020) LPELR-52225 (CA).***

Submitting further, learned Counsel stated that the Counsel to the Claimant argued that the Defendant ought not to Counter Claim against the Claimant for the sum it paid to its solicitors reasoned since the Claimant did not claim solicitors fees against the Defendant and the Defendant cannot claim Solicitors fees against the Claimant.

In addition, Counsel submitted that this argument has no basis in law as the basis for the claim for solicitors fee by a Defendant is premised on the fact that a Defendant could not have expended such fee but for the act of the Claimant commencing an action against him and once the claims of the Claimant fails, the Defendant ought ordinarily to be awarded the sum he paid as solicitors fee at the instance of the Claimant's action. In this respect, reliance was placed on Order 56 Rule 3 of the FCT High Court (Civil Procedure) Rules 2018 and the case of ***COPYTECH DESIGN AND PRINT (NIG) LTD VS FIRST BANK (2021) LPELR-53521 (CA).***

On the whole, Counsel urged the Court to dismissing the claims of the Claimant and enter judgment as per the Defendant's Counter Claim.

I have carefully perused the Writ of Summons, the Statement of Claim and the reliefs sought. I have equally gone through the Statement of Defence and the Counter Claim as well as the reply to same. I have evaluated the entire evidence adduced before the Court by the parties both oral and documentary in proof of their case. In the same vein, I have studied extensively the final Written Addresses of the parties and the reply on points of law.

Having done all these, it is therefore, my humble view that the issues that call for determination in this suit are as follows:-

- “(1). Whether the Claimant has proved his case on the preponderance of evidence to be entitled to the reliefs sought.**
- “(2). Whether the Defendant/Counter Claimant has proved its Counter Claim as required by law to be entitled to grant of same.”**

On issue one which is whether the Claimant has proved his case on the preponderance of evidence to be entitled to the reliefs sought.

It is necessary to begin by stating that it is the case of the Claimant as distilled from the Writ of Summons and Statement of Claim briefly that, the Claimant is a customer and account holder with the Defendant with the account particulars, **Duru Jude Ugochukwu, Account Number: 0039008788** which account was opened by the Claimant a long time ago and same has been of optimum functionality ever since, save for the Defendant’s unconscionable debits of funds from same even when there was no such transactions authorized or carried out by the Claimant.

That the Claimant has been having one problem or the other with the Defendant following what the Defendant usually termed technical problems since he started running the account with the Defendant which usually resulted in unauthorized and uninitiated debits.

That the Claimant avers that on 22nd September, 2021 at 5:14am he received sms alert of the debits of the sum of N4, 700.00 (Four Thousand, Seven Hundred Naira Only) and N3, 900.00 (Three Thousand Nine Hundred Naira Only) from his account entitled “DESC.....ECART INTERNET SERVICE IKEJA NGSTAN 9999299440” and DESC.....ECART INTERNET SERVICE IKEJA NGSTAN 9999314896” respectively.

The Claimant states that when he printed his account statement from the Defendant, the said transactions were described as “POS/WEB PURCHASE TRANSACTION-299440-510670-ECART INTERNET SERVICE IKEJA NIG” and POS/WEB PURCHASE TRANSACTION-314896-343122-ECART INTERNET SERVICE IKEJA NIG” respectively.

The Claimant avers that the Defendant had perpetrated a similar fraudulent debit on his account in time past, sometime in 2017, when he was made to part with over N11, 000.00 Naira without explanation.

The Claimant avers that he quickly ran into the Defendant's office at Plot 211 Adetokunbo Ademola Crescent, Cadastral Zone, Wuse 2 AP Plaza, Abuja where he filled in forms after explaining the fraudulent debit on his account and he was assured by the customer service attendant who told him that the situation would be investigated by the bank and that he would be communicated of the outcome of same within three weeks and that his monies would be returned to his account, further averred that the forms filled by the Claimant are in the custody of the Defendant and the Claimant further avers that he immediately intimated the customer service attendant of his willingness to pursue a claim in Court against the fraudulent transaction within the said three weeks.

The Claimant states that when he returned to the Defendant's Wuse 2 Office for further inquiry, he was directed to call GTCONNECT, the Defendant's online customer care assistance line on 08039003900 which he did using his MTN mobile number 07030603708, all to no avail, in fact, the Claimant further states that upon his insistence in the Defendant's Wuse 2 Office that his money must be given to him, one of the Defendant's staff a lady whom the Claimant referred to, told him that the money involved were meager sums of money which did not warrant all the troubles, and it became clear to him that the Defendant's staff actually knew what they were doing.

That, as at the time of filing this suit, the Defendant has not refunded his N4, 7000.00 (Four Thousand Seven Hundred Naira only) and N3, 900.00 (Three Thousand Nine Hundred Naira Only) way after the expiration of the three weeks period and without any explanation whatsoever.

Having stated briefly the case of the Claimant, it is trite law that the burden of proof lies on the party who asserts. To put in other words, he who asserts must prove with credible and admissible evidence. In this respect, see Section 131 of the Evidence Act 2011 which provides thus:-

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts shall prove that those facts exists.”

See also the case of **NDULU VS WAYO (2018) 16 NWLR (Pt.1616) PP. 586-567, Paras C – D, Para G per KEKERE EKU JSC** where it was held thus:-

“The general rule is that he who asserts must prove. Therefore the burden is on the Plaintiff to first adduce prima facie evidence in support of his case....”

Similarly, it was held in the case of **DAGACI OF DERE VS DAGACI OF EBWA (2006) 7 NWLR (Pt.979) P.449, Paras B –D per TOBI JSC** that:-

“The burden of proof is on the party who alleges the affirmative. The burden of proof is on the party who will fail if no evidence is led in the case. In most cases he is the Plaintiff.”

In this case, from the totality of testimony of Pw1 and the documentary evidence tendered, it is clear and not in dispute that the Claimant is a customer of the Defendant and maintains and operate an account with the Defendant with particulars as follows:-

“DURU JUDE UGOCHUKWU and account number 0039008788.”

However what appears to be in dispute is that on 22nd September, 2021 at 5:41am the Claimant received sms debit alert of the sum of N4, 700.00 (Four Thousand Seven Hundred Naira Only) and N3, 900.00 (Three Thousand Nine Hundred Naira Only) which the Claimant alleged he did not authorize the wrongful debit of his account.

At this juncture, it is important to determine the relationship that exists between the Claimant and the Defendant. Let me refer to the case of **ACCESS BANK PLC VS OKPU (2021) 6 NWLR (Pt.1773) PP. 587, 588-587, Paras E – H per OGAKWU J.C.A** where it was held that:-

“The relationship of banker/customer is contractual in the course of carrying on business a bank enters into several contractual relationships and performs various roles which include:

- (a). The relationship of Creditor and Debtor that arises in regard to the customers funds in the hands of the bank.***

- (b). The relationship of Creditor and Debtor that arises when the bank loans to the customer or allows him to overdraw on his account.**
- (c). The relationship that arises from the role of the bank as a collecting bank of cheques drawn on other banks or branches of the same bank by a third person; and**
- (d). The possible role of the bank as a holder for value of a negotiable instrument.”**

Similarly, it was held by the Supreme Court in the case of **HASTONE (NIG) LTD V A.C.B PLC (2002) 10 NWLR (Pt.782) P. 646, Paras B – C per OGUDARE JSC** that:

“A Banker/Customer relationship is contractual in nature. It is that of Debtor and Creditor or principal and agent. Also the bank owes its customers a duty of care.”

In the instant case, the Claimant operates and maintains an account with account number 0039008788 with the Defendant, depositing sum amount of money in the said account as well as giving instructions to the bank (the Defendant), it is my considered opinion that there exists a Banker and Customer relationship between the Claimant and the Defendant which is contractual in nature. I so hold.

However, as stated earlier that what appears to be in dispute is the wrongful debit of the account of the Claimant on 22nd September, 2021. Pw1 was asked under cross examination inter alia thus:-

Question: Refer to your paragraph xii, please can you cite-only instance of such recurrence.

Answer: On the 29th of September, 2017, I was travelling to bury my maternal uncle, I turned off my phone all day I didn't want to communicate with any one that day. He was buried very early, the next morning, I turned on my phone and I received fifteen debit alerts each for five hundred Naira for transactions I never carried out, I was in the village so apparently there was no Guarantee Trust Bank. My mother is from Imo so I had to

make a stop at a town in Ujera, in Delta State. There was no Guaranty Trust Bank there. I was there for a week and thereafter proceeded to Lagos State. I got to FESTAC in Lagos and went to the GT Bank at 4th Avenue and laid complaints of how I was debited without carrying out transactions. I filled all forms. I attended there made calls. I was told I would get my money back. I was also advised to block my ATM Card and apply for a new one. I did as I was instructed to do as advised and I was promised I will get my money back and that something like this will never happen again only for me to turn on my phone on 22nd of September, 2021 and the same thing happened. I am very confident I didn't make those transactions. And I approached the GT Bank in Wuse 2 near AP Plaza. I was given another complaint form to fill and I was told that it would be resolved within these three weeks and someone would call and talk to me about it. This is over one year now. I am still waiting for the call."

Question: So, how much was debited from your account that resulted in this suit pertaining to your claim?

Answer: At first instance, N4, 700.00 at the 2nd instance, N3, 900.00.

Question: So I will be correct to say it is a total of N8, 600.00.

Answer: Yes.

Question: So, at the time you got the said alerts your ATM was in your possession.

Answer: Yes.

Question: The token or phone registered to get one time password was in your possession.

Answer: Yes.

Question: And transaction that were deducted from your account that you said you did not carry out on 22nd September, 20221 was in the sum of N8, 600.00.

Answer: Yes.

Moreso, during his evidence in chief Pw1 tendered two of his Bank Statements and print out of two text messages which were admitted in evidence to prove the wrongful debits that occurred in his account.

From the above testimonies both in-chief and under cross examination vis-à-vis an x-ray of Exhibits A and C (A GTB customer's Statement of Accounts dated 22nd September, 2021 and A printout out of two text messages) will show that there was a debit on the account of the Claimant to the tune of N4, 700 and N3, 900 on 22nd September, 2021.

To this extent, it is trite law that documents speak for themselves. In support of this I refer to the case of **AIKI VS IDOWU (2006) 9 NWLR (Pt.984) 47 at 65, Paras A –C** where it was held thus:-

“Documents when tendered and admitted in case are like words uttered and do speak for themselves. They are even 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.”

See also the case of **U.B.N (NIG) PLC VS EMOLE (2001) 18 NWLR (Pt.745) P. 579-520 PARAS F – G** where it was held that:-

“A person who claims that his account in a bank has been debited by the bank needs to prove the assertion by tendering debit notes covering the sum or his statement of account which would be binding on the bank.”

At this juncture, it should be reinstated that the law is settled that the burden of proof in civil cases is not static it shifts from side to side depending on the evidence led. in this respect, see the case of **MOHAMMED VS SOKOTO (2021) 4 NWLR (Pt.1766) P.222 PARAS C-D per ADEFOPE –OKOJIE J.C.A** where it was held thus:-

“The general burden of proof in civil cases lies on the Plaintiff. the burden is not as static as in criminal cases, but may oscillate, shifting to the Defendant to call evidence in proof or rebuttal of some particular point which may arise in the case.”

From the foregoing, I am of the considered opinion that the burden of proof in this case has shifted from the Claimant to the Defendant to prove that the account of the Claimant was not wrongly debited.

Moreso, a print out of two text messages was also admitted and marked as Exhibit C, all indicating that a debit occurred on the account of the Claimant.

Consequently, Dw1 was asked under cross-examination inter alia thus:-

Question: In paragraphs 8 – 13 of your Statement of Oath you insist that the Claimant initiated these transactions?

Answer: Yes.

Question: As a banker, you understand the procedure for web and online payment.

Answer: Yes.

Question: In web payments there's an account where the payment is leaving and where payment is received as well?

Answer: Yes.

Question: In the same web payment, there is a pay gate correct?

Answer: Yes.

Question: It is the duty of the bank to send an OTP to the customer to validate the payment

Answer: Yes.

Question: And if the wrong OTP is sent or keyed in the transaction will not go through?

Answer: Yes.

Question: Tell the Court where is the destination account and who the pay gate is?

Answer: Payment was sent to the merchant Jumia online, no account details.

Question: So Jumia does not have an account online?

Answer: It is a web payment, and how web payment works is there's a platform when a customer wants to make payment for goods or services, customer is meant to key in his/her card details which includes the PAN, CVV and Expiry date which is the first level of authentication, after which an OTP will be sent to the customer's registered mobile number to the bank to give a 2nd level of authentication in compliance with CBN's guidelines on web payment after which payment can now be made. However, there are possibilities for delayed debit for the customer's account whereby such amount will be blocked in the customer's account pending reconciliation between the bank and the merchant.

Question: And when it is reconciled, it is dropped into the merchants account.

Answer: Yes and into the customer's account.

Question: What do you have to show that the money left the Claimant's account for the merchants account through the bank?

Answer: The customer's Statement of Account will reflect this.

Question: Kindly read out the portion in the transaction. These two transactions do they reflect any destination accounts in Exhibit A?

Answer: Yes it does.

Question: What is the receivers account?

Answer: There's a destination account. The account number cannot be stated here on the Statement of Account. The unique

identification number for all online or IOCB payment is the STAN Number Indicated here.

Question: It is only your bank that can trace the account where the money went into?

Answer: Yes.

Question: Where is the account number?

Did you trace the account through the STAN?

Answer: There was no reason to do that no, we did not trace the account.

In the light of the above, it is my considered opinion that the Defendant has failed to adduce any credible evidence to prove that they did not wrongfully debit the account of the Claimant. They did not tender any document indicating that the Claimant initiated the said transaction that led to the debit in his account as no account number of either the Claimant or the destination account is provided in Exhibit A (GTB Account Statement). In other words, apart from the testimonies of the Defendant both in chief and under cross examination, the Defendant had not taken any step further to place before the Court any evidence to back up their assertions that the debit on the Claimant's account did not occur wrongfully. I so hold. In this respect, I refer to the case of **GBEDU VS ILLE (2020) 3 NWLR (Pt.1710) PP. 130, PARAS B – E PER RHODE VIVOUR JSC** that:-

“When documentary evidence supports oral evidence, oral evidence becomes more credible. This is because documentary evidence serves as a hanger from which to assess oral testimony.”

Similarly, it was held in the case of **BELLO VS GOV OF GOMBE STATE (2016) 8 NWLR (Pt.1514) PP.278-279 PARAS F – D PER GEORGEWILL J.C.A** that:-

“The law asserts a measure of primacy to documentary evidence as against oral evidence. This being so because most of the documentary evidence being in a permanent form is less susceptible to afterthoughts and thus more reliable than oral evidence. It is for this reason that in law whenever documentary

evidence is available in addition to oral evidence, it is used as hangers on which the veracity or credibility of oral evidence is tested or assessed by the Courts.”

See: ***SUMMIT FINANCE CO LTD VS IRON BABA & SONS LTD (2003) 17 NWLR (Pt.848) P. 123, PARAS E – F.***

See also Section 131(1) of the Evidence Act, 2011 as amended.

At this juncture, it should be emphasized that the standard of proof in civil cases is on the balance of probability. On that note see the case of ***MOHAMMED VS SOKOTO (2021) 4 NWLR (Pt.1766) PP.221-222, PARAS G – D PER ADEFOPE-OKOJIE J.C.A.*** where it was held thus:-

“The standard of proof in civil cases is on the balance of probabilities. A trial Court is bound to carefully consider the competing evidence of the parties to determine in whose favour the evidence preponderates unless a Claimants case is so patently incredible and unreasonable. In other words, the totality of the evidence is considered in order to determine which sets of fact is preferable, the trial Court places the two sets of facts on an imaginary scale, weighs one against the other, then decide upon preponderance of credible evidence, which weighs more and accepts it in preference to the other. It means that in civil proceedings, judgment is given to the party with the greater weight of stronger evidence...”

See also: ***NNADI & ANOR VS ODIKA & ORS (2017) LPELR-43448 (CA).***

On the whole, and without necessarily repeating myself it is my considered opinion that the Claimant has proved his case as required by law. I so hold.

In this case, the Claimant has pleaded in his Statement of Claim particularly paragraphs 13, 14 and 17 that he suffered a lot of losses, stress and expended a lot of resources.

In the light of the foregoing, their relationship being that of banker and customer, the Defendant ought to exercise a duty of reasonable care and skill in its relationship with the Claimant and such duty has been breached

by the Defendant which in my opinion the award of general damages will inevitably and unavoidably flow.

See: **CONOIL PLC & 1 OR VS SOLOMON (2017) 3 NWLR (Pt.1551) P. 474, Paras G – E.**

General damages are awarded by Court on sound legal principles and not on speculation, sentiments, or as Father Christmas. Before damages can be awarded there must be a wrong committed as the main purpose of awarding damages is to compensate the aggrieved party for the loss, injury or damages suffered by him. The guiding principle in the award of damages is restitution in integrum.

Furthermore, in the award of damages, there is need for the Court to take into consideration all minute aspects of the case, the custom of trade, the law applicable to do the contract, the vagaries of life etc. See **VITAL IND LTD VS CAP PLC (2022) 4 NWLR (Pt.1820) Pg. 257; BORISHADE VS N.B.N LTD (2007) 1 NWLR (Pt.1015) PP. 246 – 247 and UBA PLC VS SCPOK (NIG) LTD (1998).**

As printed out earlier that the Claimant has pleaded in his Statement of Claim that he suffered a lot of losses, stress and expended a lot of resources. It is my considered opinion that such act of Defendant entitled the Claimant to be compensated with the award of damages. I so hold.

On claim for the award of punitive damages, the law is settled that punitive damages when claimed are usually awarded when the Defendant's conduct is sufficiently outrageous to merit punishment. This position of law was more elaborated by the Court of Appeal in the case of **KABO AIR LTD VS MOHAMMED (2015) 5 NWLR (Pt.1451) PP. 78-79, P. 80 Paras H-B, C-D PER ABIRU JCA** where it was held thus:-

“Punitive damages are intended to punish and deter blame worthy conduct and thereby prevent the occurrence of the same act in the future. They are awarded whenever the conduct of the Defendant is sufficiently outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence or flagrant disregard of the law.”

In the instant case, the action of the Defendant by wrongfully debiting the account of Claimant without his authorization is outrageous as the Claimant

insisted that his money must be given to him at the Defendant's Wuse 2 office but one of the Defendant's staff a lady whom the Claimant referred to, told him that the money involved were meager sums of money which did not warrant all the troubles. The Defendant did not deny such assertion made by the Claimant which amounts to admission as such attitude of the Defendant occasioned troubles on the Claimant by debiting of his account and refusal to credit same even after the Claimant had made repeated demands for same, amounts to selfishness, cruelty and flagrant disregard of the law which conduct in my view deserves punishment by award of punitive damages. I so hold.

On the Claimant's claim for N5, 000, 000.00 (Five Million Naira Only) as cost of prosecuting this suit, the Claimant pleaded this in paragraph 18 of his Statement of Claim, even though he did not tender any documentary evidence in prove of same. But, the Court has taken judicial notice that he has incurred expenses in engaging the service of a legal practitioner to prosecute his case and it is settled law that a successful party is to be indemnified for cost of litigation. See **NADUE & ORS V SIMON (2013) LPELR -29491 (CA) Pages 24-28, Paras A.**

In the circumstances therefore, the Claimant having pleaded and proved the claim for cost of prosecuting this suit, in my opinion he is entitled to grant of same. I so hold.

On the claim for interest at the rate of 10% such award is done at the discretion of the Court and need not to be specifically pleaded. It is awarded in order to preserve the benefit of judgment until such a time it is complied with. This position of law was re-echoed by the Apex Court in the case of an OVERSEAS AGENCY NIG LTD VS BROWNVIEW ENERGY TRADING LTD & 2 ORS (2021) 11 NWLR (Pt.1842) PP.524-525 PARAS G-D PER PETER ODILI JSC where it was held thus:-

“After judgment, payment may be delayed by the Judgment Debtor. For that reason the Courts are to preserve the benefit of the judgment until such a time as it is complied with. One of such processes is the award of post judgment interest which serve as to compensate the successful party for the loss of use of money from the period of the Court's judgment until the time the judgment debt is actually paid, including the periods which appeals are pending. Post judgment interest compensates the successful party for the delay in receiving the judgment owed. It

is within the exercise of the Court's discretionary powers to award interest in respect of a judgment in favour of the successful party. Thus post judgment interest needs not to be specifically pleaded. The award is at the discretion of the Court and it is regulated by rules and operating statutes."

See also the case of ***FEDERAL MINISTRY OF HEALTH VS DASCON NIG LTD (2019) 3 NWLR (Pt. 1658) P.142 Paras F –H.***

In the light of the above, it is my considered opinion that Claimant deserves to be awarded interest at the discretion of the Court. I so hold.

On the whole and without further, I hereby resolve issue one in favour of the Claimant against the Defendant and hold very strongly that the Claimant based on the evidence adduced has proved his case on the preponderance of evidence.

That takes me to issue two which is whether the Defendant/Counter Claimant has proved it's Counter Claim as required by law to be entitled to grant of same.

It is trite law that a Counter Claim is to all intents and purposes a separate action. It is an independent and separate action triable with the main claim for reason of convenience. See the cases of ***USMAN VS GARKE (2003) LPELR-3431 (SC), ODUBAWO VS FSDH SEC LTD (2020) 8 NWLR (Pt.1725) P. 34 PARAS D – H (CA).***

The onus of proof which lies on the Claimant to prove averments in his claim and it is also on the Defendant to prove the averments in his Counter Claim before it can succeed. The Counter Claimant can only succeed on the strength of his case and not on the weakness of the defence. See ***ACCESS BANK PLC VS OGBONA (2022) 1 NWLR (Pt.1812) Pg. 581, UNOKAN ENT LTD VS OMUWIE (2005) 1 NWLR (Pt.907) Pg. 293, GARBA VS KUR (2003) 1 NWLR (Pt.831) Pg. 280.***

Before I proceed, it is germane to state at the onset that a careful study of the Counter Claim before the Court will show inter alia that the Counter Claimant is seeking for an Order directing the Claimant to pay the sum of Seven Hundred and Fifty Thousand Naira Only (N750, 000.00) being the sum expended by the Counter Claimant as professional fees.

Having said this, it is important to state that issue one having been resolved against the Defendant/Counter Claimant in favour of the Claimant/Defendant to Counter Claim, the question that comes to mind is, is it proper to award solicitors fee to an unsuccessful party?

It is settled law that a successful party is to indemnified for cost of litigation which includes charges incurred by the parties in the prosecution of their case and once the solicitors fee is pleaded and the amount is not unreasonable. See the case of **NAUDE & ORS VS SIMON SUPRA**.

In the light of the above, it is my considered opinion that Defendant/Counter Claimant is not entitled to be indemnified the sum of N750, 000.00 as the amount expended as professional fee which in my opinion is awarded to a successful party, and since the Counter Claim has not been proved, the Counter Claimant is not entitled to the grant of same. I so hold.

Therefore, issue two is hereby resolved against the Counter Claimant in favour of the Defendant to Counter Claim. The Counter Claim is accordingly dismissed.

In the final analysis and based on the totality of evidence before the Court as well as the interest of justice, I hereby enter judgment in favour of the Claimant against the Defendant and order as follows:-

- (1). That the Claimant is entitled to the refund by the Defendant of his N4, 700.00 (Four Thousand Seven Naira Only) and N3, 900.00 (Three Thousand, Nine Hundred Naira Only) which the Defendant wrongly debited from his account.
- (2). That the non-refund to the Claimant of his N4, 700.00 (Four Thousand Seven Naira Only) and N3, 900.00 (Three Thousand, Nine Hundred Naira Only) which the Defendant wrongly debited from the Claimant's account is unconscionable, injurious and unlawful.
- (3). That the Claimant is entitled to N1, 000, 000.00 (One Million Naira Only) as punitive damages for the troubles occasioned to him on account of the Defendant's unrepented debiting of his account and refusal to credit same even after the Claimant has made repeated requests for same.
- (4). That the Defendant is mandated to immediately refund the Claimant's N4, 700.00 (Four Thousand Seven Naira Only) and N3, 900.00

(Three Thousand, Nine Hundred Naira Only) which the Defendant wrongly debited from the Claimant's account.

- (5). That the Defendant shall pay the sum of N1, 000, 000.00 (One Million Naira Only) as general damages.
- (6). That interest at the rate of 5% is awarded on the judgment sum from the date of judgment until final liquidation.
- (7). That the sum of N250, 000.00 (Two Hundred and Fifty Thousand Naira Only) is awarded in favour of the Claimant as the cost of prosecuting this suit.

Signed:

Hon. Justice S. U. Bature
12/7/2023.