

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 11TH DAY OF JUNE 2024
SUIT NO: FCT/HC/CV/3343/2020**

BETWEEN:

MR. JUSTIN TSEENEKE _____ CLAIMANT

AND

STERLING BANK PLC _____ DEFENDANT

ODU ONABE for the Claimant.

ISRAEL EKPO for the Defendant.

JUDGEMENT

The Claimant's claim is premised on the delayed disbursement by the Defendant of a **Specta Loan Facility** he applied for. The Claimant stated that he is an employee of **Catholic Caritas Foundation of Nigeria (CCFN)** and a customer of the Defendant. That the Defendant is a Public liability company registered with the Corporate Affairs Commission to carry out the business of commercial banking and other banking services with its headquarters in Lagos and branches spread over all the states of Nigeria and the FCT, Abuja. The Claimant claimed that he operates a current account with the following details: **Number -0073962639; Name-Justin Tseeneke Aondohemba**) with the Defendant and the said account is domiciled at the Sterling Bank Boulevard CDB, Abuja. He opened the account was open in Abuja in August, 2019, when a staff of the Defendant approached him and some of his colleagues at the Claimant's

head office in Abuja. That prior to the opening the account with the Defendant he was operating his salary account with Access Bank Plc but moved his salary account to the Defendant when the Defendant's staff that came for marketing told him that he would be entitled to loan immediately after his account is moved to the Defendant.

The Claimant stated that in the same August, 2019, some of his colleagues accessed the said loan while some others got theirs in the later months but he (Claimant) could not access his on grounds that he was not profiled. That this situation of him not being profiled continued for several months until one of his (Claimant) staff members **Mr. Godwin Ukel** intervened and he was finally profiled in December, 2019. And after he was profiled he discovered that the interest rate was more than **21%** advertised by the Defendant and he immediately reported the issue by way of complaint to the Defendant but was referred to **Specta** where he discussed with staff members who admitted that his claims were correct and advised him to put up his complaint in writing. That he obliged and followed up with three (3) reminders at different dates but to his chagrin and dismay there was no response from the Defendant. And when he discovered that the Defendant has refused to respond to his mails or do anything with respect to his loan application though disillusioned and confused he decided to abandon the loan issue and forged ahead with his life after all the loan was only an offer.

The claimant said that on the 19th August, 2020, after a period of about one (1) year of not responding to his letters the Defendant called him and assured him that everything was alright and that he could access the loan.

That he was persuaded by the Defendant and he reluctantly reapplied for the said loan but the ugly incident of not profiling resurfaced again and the situation continued for weeks with persistent calls and mails which were poorly responded to until the loan was granted and his account credited with the sum of **N1, 992, 851.77 (One Million, Nine Hundred and Ninety-two Thousand, Eight Hundred and Fifty- One Naira, seventy-seven kobo)**, on 17th September, 2020, a period of more than one (1) year after the in initial application. That the granting of the said loan revived his hope though he did not initially make any attempt to withdraw so as to allow the Defendant time to put its house in order. After waiting for about five (5) days he attempted to make a withdrawal from the said loan sum but could not. And that when he could not make any withdrawal he proceeded to Ogui Road Branch of the Defendant in Enugu but was told that there were some restrictions on the account due to non-profiling. That he was then told to produce the documents he used in profiling in 2019 and he immediately obliged and was told that everything has been perfected and that he could make withdrawals from the said loan.

The Claimant stated that the presence of the loan in his account without him being able to access same for withdrawal constitute nuisance to him and to his account. That having received assurance that he could make withdrawals from the said loan sum he engaged the services of a trusted friend **Moses Lokoja** to go to the Lagos from Makurdi, Benue State and pick a Toyota Corolla Car, 2011 Model he had made arrangements to buy in Lagos since the purpose of the loan was for him to buy the said car.

That when his friend arrived Lagos on 21st September, 2020 he (Claimant) attempted to transfer the sum of **N800, 000 (Eight Hundred Thousand Naira)** through his mobile app from the said loan sum to his friend in Lagos for payment of the said car but could not because there were still restrictions on the loan sum. That at this point he had no option than to source for urgent money elsewhere at very high interest rates to complete the transaction so that he could protect his hard earn integrity. That he borrowed the sum of **N800, 000 (Eight Hundred Thousand Naira)** from **Mr. Mathew Izuchukwu** at the interest rate of **80%** i.e **N640, 000 (Six hundred and Forty Thousand Naira)** and the sum of **N500, 000 (Seven Hundred Thousand Naira)** from **Mr. Donald Akpennah** at the interest rate of **50%**, i.e **N350, 000 (Three Hundred and Fifty Thousand Naira)**, respectively. And that he also sold his Toyota Rav4 jeep which he bought in 2018 at the cost of **N2, 750, 000 (Two Million, Seven Hundred and Fifty Thousand Naira)** for a giveaway price of **N1, 200, 000 (One Million, Two Hundred Thousand Naira)** only, to be able to raise money for the said transaction in Lagos.

The claimant also claimed that the Defendant had also deducted the sum of over **N41,351. 68 (Forty-One thousand, three hundred fifty one Naira, Sixty-eight kobo)** in two tranches on 17th September, 2020 and 18th September, 2020, from his account without his consent and for no reason known to him. That in the course of sourcing for the money he was thrown into a state of economic topsy-turvy and financial melancholy that have subjected him to psychological trauma, emotional miasma and physiognomical disparagement all resulting from the gross negligence

and professional incompetence on the part of the Defendant. That when the troubles became too much for him he consulted his lawyer, **Barr. Emmanuel Odu Onabe** to write a letter to the Defendant for amicable resolution of this whole matter and his lawyer did through a letter dated 25th September, 2020 and titled **UNWARRANTED, UNSCRUPULOUS DEDUCTIONS AND OTHER ISSUES CONCERNING ACCOUNT NUMBER 0073962639 (TSEENEKE JUSTIN AONDOHEMBA WITH REGARD TO AN UNSOLICITED LOAN SUM)**. That the Defendant who received the said letter and replied through a mail by one **Blessing Ugo** dated 15th October, 2020, forwarded to his lawyer who forwarded same to him. That after waiting for a period of about two (2) months without any reasonable step by the Defendant to resolve this issue, he again instructed his Lawyer to forward a mail to the defendant which the Lawyer did on the 11th November, 2020, and same was received by the Defendant and the said **Blessing Ugo** replied on the 12th November, 2020. That he is no longer interested in the said loan.

Whereof the Claimant claims against the defendant as follows:

- i. A DECLARATION that the non-remittance of the loan promised the Claimant by the Defendant on time upon the Claimant moving his account from his previous Bank (Access Bank Plc) to the Defendant is a breach of contract.
- ii. A DECLARATION that the acts of the Defendant to credit the Claimant Account with the sum of **N1, 992, 851.77 (One Million, Nine Hundred and Ninety-two Thousand, Eight Hundred and Fifty-One Naira, seventy-seven kobo)** and not allowing him to

withdraw from the said amount is an act that subjected the Claimant to emotional trauma and economic topsy-turvy.

- iii. A DECLARATION that the inability of the Defendant to profile the Claimant when he (Claimant) presented himself for profiling and presented all the required document amounts to gross negligence and professional incompetence.
- iv. A DECLARATION that the decision of the Claimant to enter into a contract of purchase of goods in Lagos was as a result of the said amount of **N1, 992, 851.77 (One Million, Nine Hundred and Ninety-two Thousand, Eight Hundred and Fifty-One Naira, seventy-seven kobo)** credited to his account by defendant.
- v. v. A DECLARATION that the presence of the credit sum of **N1, 992, 851.77 (One Million, Nine Hundred and Ninety-two Thousand, Eight Hundred and Fifty-One Naira, seventy-seven kobo)** in the account of the Claimant without him (Claimant) being able to access same constitutes nuisance to the Claimant.
- vi. A DECLARATION that the decision of the Claimant to sell his Toyota Rav4 jeep at the ridiculous amount of **N1, 200, 000 (One Million, Two Hundred Thousand Naira)** only, is because of his inability to access the sum of **N1, 992, 851.77 (One Million, Nine Hundred and Ninety-two Thousand, Eight Hundred and Fifty-One Naira, seventy-seven kobo)** credit in his account.
- vii. AN ORDER of this Honourable court compelling the Defendant to pay to the Claimant the sum of **N990, 000 (Nine Hundred and ninety Thousand Naira)** only as special damages in interest

incurred by the Claimant in the course of sourcing for money to meet up with his transaction in Lagos.

- viii. AN ORDER of this Honourable court compelling the Defendant to pay to the Claimant the sum of **N41, 351. 68 (Forty-One thousand, three hundred fifty one Naira, Sixty-eight kobo)** only being amount deducted from the Claimant's account without his consent.
- ix. AN ORDER of this Honourable court compelling the Defendant to pay to the Claimant the sum of **N5, 000, 000 (Five Million Naira)** only as damages for gross negligence and professional incompetence that led to the Claimant selling of his Toyota Rav4 jeep at the ridiculous amount of **N1, 200,000 (One Million, Two Hundred Thousand Naira)** only.
- x. AN ORDER of this Honourable court compelling the Defendant to pay to the Claimant the sum of **N5, 000, 000 (Five Million Naira)** only as damages for nuisance.
- xi. AN ORDER of this Honourable court compelling the Defendant to pay to the Claimant the sum of **N50, 000, 000 (Fifty Million Naira)** only as general damages for emotional trauma and economic topsy-turvy suffered by the Claimant in the circumstances of this case.

The claimant adopted his witness statement on oath which is in pari-material with the statement of Claim and tendered documents as exhibits marked as Exhibit A1 –A4respectively and also B1 – B7 respectively. The Claimant was cross-examined by Counsel to the Defendant. Under Cross-

examination, the Claimant agreed that the loan application was done online. And that it was after the online process that the loan was granted. He also agreed that the loan was disbursed on the 17th of September, 2020. When told that there is nothing before the court showing transfer of the loan which he claimed was given to him by other individuals, he answered; *'That is not the only account I have. I don't run my loan through that account.'* He was also asked that the account he claimed to have transferred money to his trusted friend was no before the Court, he answered; *'Yes I did not bring any document on that account.'* And that there is nothing to show for the repayment of the additional loan he took because he did not bring the bank statement from his other account. There was no re-examination.

On the other hand, the Defendant filed an amended statement of defence on 10/6/2022 vide an Order of Court granted on 15/6/2022 wherein the Defendant denies all the Claimant's claim except for paragraphs 11, 13, 28, and 30. The Defendant stated that the **Specta Loan** facility is a self-serviced loan accessed, applied, and disbursed via the Internet. The non- profiling of the Claimant was due to the Claimant's profile details not aligning with his Bank Verification Number (BVN), wherein his last name was mistaken as the first name on the **Specta** platform; this was resolved promptly upon his Complaint. The loan was disbursed into his account on the same day of resolution.

The Defendant further maintains that the restriction on the Claimant's account resulted from an embargo on all **Specta** loans in Abuja due to the high case of fraud being recorded in Abuja at the time. That the

Defendant's position is that upon the Claimant's complaint at the Enugu branch of his inaccessibility to the loan, the Claimant was not given any assurance to go ahead and withdraw the loan; rather, his complaint was noted by an officer of the bank, who transferred the complaint to the appropriate channel to be resolved and with utmost urgency as a special case. That the inability of the Claimant to access the loan was within his knowledge as he wrote to the bank on 22 September 2020 requesting his account be unblocked as a follow-up, and the loan sum was made available for withdrawal by 23 September 2020. That the Defendant took prompt steps to rectify the blocking of the loan sum, and the Claimant, within a 48-hours window (as it is the custom for bank complaints), had access to the loan.

The Defendant's witness **Ejehi Aigbogun**, a Relationship officer of the Bank tendered nine exhibits marked as Exhibit D1 – D9 respectively. She was cross-examined by the Claimant's Counsel wherein she maintained that the loan was disbursed on September 17, 2022 and that deduction commenced October, 2022. At the close of the Defendant's case on 3/5/2023, parties were directed to file and exchange their respective final written address.

In the Defendant's Counsel final written address, three (3) issues were formulated for determination by the Court to wit:

a. Whether the Claimant has been able to prove his case on its strength in order to be entitled to the reliefs sought.

b. Whether the Defendant has fulfilled its contractual obligation to the Claimant regarding the loan agreement entered by both parties.

c. Whether the Claimant's objections to the Exhibits tendered by the Defendant is enough to reduce the weight that this Honourable Court should attach to same.

On issue one Defendant's Counsel answered this question in the negative for three compelling reasons:

a. Inability to discharge the burden of proof: The law places an evidential burden on a party seeking any remedy before it to show why he is entitled to such reliefs. Where a party fails to discharge the burden, such a suit has no leg to lean on anymore and must be thrown out.

b. Weaknesses in the Testimony of the Claimant: That the weakness of the case of the claimant was accentuated by the constant inconsistencies elicited from the claimant's sole witness during cross- examination. The inability of the witness to stick to a certain story has further weakened its case, which was already a shallow one.

c. Failure to present material evidence: That they admit that a party is at liberty to call witnesses or present documents as it deems fit, the law will rightly presume bad faith where a party refuses to give evidence which would be material to its case.

He submitted that it is a well-established principle of law that a claimant must prove before a court that he is entitled to the relief he seeks. He cited the case of **AMOBI v. OGIDI UNION (NIG) & ORS, (2021) LPELR-**

57337 where the apex court, Per AMINA ADAMU AUGIE, JSC (Pp 25-26 Paras A - C) stated as follows:

“It is settled law that a Claimant seeking declaratory reliefs, must succeed on the strength of his case and not on the weakness of the Respondent's case - see EMENIKE V. PDP (2012) 12 NWLR (PT. 1315) 556 AND DUMEZ NIG. LTD. V. NWAKHOBA (2008) 18 NWLR (PT 1119) 361 AT 373-374, wherein this Court held as follows: The law on the requirements of the Plaintiff to plead and prove his claims for declaratory reliefs on the evidence called by him without relying on the evidence called by the Defendant is, indeed, well settled. The burden of proof on the Plaintiff in establishing declaratory reliefs to the satisfaction of the Court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the Defendant, where the Plaintiff fails to establish his entitlement to the declaration by his own evidence. A Claimant must prove to the satisfaction of the Court that he is entitled to the declaratory relief sought.”

That the Claimant has not been able to discharge the burden of proof placed on him by the law to enable his reliefs to be granted. That the eleven documents tendered by the Claimant before this Court, none of them has pointed to any wrongdoing by the Defendant regarding its loan obligations to the claimant. That only two documents emanated from the Defendant in the Claimant's list of witnesses. One is a statement of account while the other is an electronic mail response from the bank to the Claimant assuring him that the bank is looking into a complaint he made to the bank regarding deduction of funds. He stated that the

Claimant, having made grievous allegations against the Defendant, is legally expected to present credible and compelling evidence to substantiate such allegations before he can be entitled to any relief.

Counsel went ahead to list all the allegations by the Claimant with no evidence before that court as follows:

1. Claimant accuses the Defendants of "poorly responding" to him (Paragraph 13 of Amended statement of Claim).
2. Claimant claims his non-profiling was as a result of Negligence by the Defendant (Paragraph 18 of the Amended Statement of Claim).
3. Claimant claims he received assurances from the Defendant upon which he relied on to send his friend to Lagos to pick up the Toyota Corrolla (Paragraph 20 of the Amended Statement of Claim).
4. The Claimant further accuses the Defendant of "gross negligence" which has caused psychological trauma, emotional "physiognomical disparagement" (Paragraph 27 of the Amended Statement of Claim)

He submitted that the above shows that the Claimant has not presented material evidence to show this Honourable how the Defendant has been negligent in its dealings with the Claimant regarding the contractual relationship that existed between both parties. That the legendry **Nikki Tobi (of blessed memory)** had this to say about an allegation of negligence in the case of **OJO V. GHARORO & ORS (2006) LPELR-2383 (SC) (PP 44 - 44 PARAS A - C)**;

"The law therefore places a burden on the plaintiff to prove that the defendant was negligent, and in the circumstances of this case, the act

of leaving the piece or pieces of needle in the abdomen of the appellant (which qualified as the happening event) says it all. In the proof of the act, the plaintiff must satisfy the twin but alternative standards of proof: (a) balance of probability and, (b) preponderance of evidence. In either of these standards, the plaintiff must come out clearly with cogent evidence as to the specific act or acts of the defendant which resulted in the negligence and not merely an agglomeration of act or acts lacking specificity."

That the law is very clear on what will be the effect of the failure of a Claimant to furnish sufficient evidence to proof its case. He cited the court of appeal case of **MTN V. MUNDRA VENTURES (NIG) LTD (2016) LPELR- 40343 - Per BIOBELE ABRAHAM GEORGEWILL, JCA (PP 37-41 PARAS E - F):**

"The converse is thus the case once a Plaintiff fails to establish by credible evidence all or any of these key three ingredients of the tort of negligence, such a claim fails and ought to be dismissed. The Plaintiff must prove that the injury caused him was as a result of the negligence of the Defendant, nothing else or less would be sufficient. See B. J. NGILARI V. MOTHERCAT LTD (1999) 13 NWLR (PT. 636) 626. SEE ALSO OYIDIOBU V. OKECHUKWU (1972) 5 SC 191; ORHUE V. NEPA (1998) 7 NWLR (PT. 557) 187; R. V. TATIMU (1952) 20 WLR 60."

That in the case of **BAKARE v. ACB LTD (1986) LPELR-708**, the apex Court, Per **ANDREWS OTUTU OBASEKI, JSC (Pp 22 - 22 Paras E - F)** equally states

that the onus is on the Claimant to establish by credible evidence that he is entitled to the remedy he seeks. He urged the court to hold that:

a. The Claimant has not proved with credible evidence how the Defendants have been Negligent as outlined in the table in Paragraph 4.7.

b. The Claimant has not been able to tie the damages he seeks to the Defendant.

c. The Claimant has not been able to discharge the burden of proof as required by law.

On the weaknesses in the testimony of the Claimant's witness Defendant's Counsel Submitted that several inconsistencies were elicited from the cross-examination of PW1 during hearing. That this inconsistency casts further doubt on whether this claim is a bona fide claim. He cited the Record of proceedings dated 03/05/2023 showing the cross-examination of PW1 thus:

QUESTION: *You complained to the bank on 21 September 2020, is that correct?*

ANSWER: *Yes*

QUESTION: *Were you informed of the restriction?*

ANSWER: *No*

QUESTION: *I refer you to paragraph 17 of your Witness Statement on Oath (Defendant's counsel reads paragraph 17 of the Witness Statement on Oath to CW1)*

ANSWER: Yes, I was told.

Counsel stated that the PW1 who happens to be the Claimant in this case, stated during cross-examination that he cannot remember the date upon which he took a loan with an interest rate of 40% from **Mr Matthew Ilochukwu**. However, in the previous line of questions, he admitted that he sent his friend, **Moses Lokoja** to Lagos on the 22nd of September 2020 which is the date he got the loan with 40% interest. Counsel submits that if these two events (PW1 sending **Moses Lokoja** to Lagos and obtaining the loan at 40%) happened on the same day, PW1 would have easily recalled same. That the provision of the law states that “*...contradictions in the evidence of witnesses may not be fatal to a case especially when they are minor and do not materially affect the fundamental and crucial issues in the case, Per IBRAHIM SHATA BDLIYA, JCA (Pp 46 46 Paras A - F)*” in the case of **ANAGBADO v. FARUK (2016) LPELR-41634**.

Counsel further relied on the case of **EGBUCHÉ V. EGBUCHÉ (2013) LPELR-22512, PER EMMANUEL AKOMAYE AGIM, JCA (PP 98 - 98 PARAS B - G)**, where the Court of Appeal raised concerns over contradictions that existed in the evidence of a witness when it observed thus:

“But can PW1 whose evidence is clearly equivocal and inconsistent on some material facts be rightly regarded as a witness of truth? I have highlighted the inconsistencies earlier in this Judgment. I do not think that such a witness can rightly be described as a witness of truth. The Supreme Court in EZEMBA V. IBENEME & ANOR (2004) 4 NWLR (Pt 894) 617 held that "no witness who has given on oath inconsistent evidence

of a material fact is entitled to the honour of credibility. Such a witness does not deserve to be treated as a truthful witness."

That it is recognized both by statute and judicial precedents that a witness can be impeached if inconsistencies are found in the evidence of such a witness. He also cited the case of **TURAKI & ANOR V. SANKARA & ORS (2011) LPELR-9203, PER AMINA ADAMU AUGIE, JCA (PP 27-27 PARAS B-G)**, where the Court of Appeal had this to say:

"Section 210 of the same Evidence Act further provides as follows-"The credit of a witness may be impeached in the following ways by any party other than the party calling him or with the consent of the Court by the party who calls him- (a) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit; (b) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence; (c) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

He further submitted that what amounts to material inconsistencies is a matter of fact as stated in the case of **ANAGBADO v. FARUK (supra)**. And urged the Court to consider these inconsistencies alongside the inability of the Claimant to list out material evidence to support his case.

On failure to present material evidence, Learned Defendant's Counsel commended to the Court the provisions of section 167 (d) of the Evidence Act which provides thus:

"167. The Court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular the Court may presume that- (d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."

That the failure of the Claimant to present further important evidence that would have strengthened his case can be presumed against the witness. That this is why the law allows a presumption against a party that refuses or fails to call such evidence. That the material evidence he alludes is as follows:

- a. The Claimant failed to tender the bank statement showing that he received a loan he alleges he received at an interest rate of 40%.
- b. The Claimant failed to tender the bank statement showing that he received a loan he alleges he received at an interest rate of a whopping 80%.
- c. The Claimant admitted in cross-examination that the friend he sent to Lagos (**Moses Lokoja**) is alive but failed to call him to testify for the court to observe his demeanour to know the weight to be attached to evidence of the Claimant as a whole.
- d. The Claimant had nothing to show the court that he had started repaying the loan per the terms of the loan contract,

Learned Counsel submitted that the circumstances of this case warrants that the failure of the Claimant to tender these vital pieces of evidence attracts a presumption that the Claimant have chosen to withhold evidence. He cited the Court of Appeal case in **U.B.A PLC V. OLA-OLUWA AINA WIRE INDUSTRY (NIG) LTD & ANOR (2021) LPELR-58515, PER JAMES GAMBO ABUNDAGA, JCA (PP 47 - 48 PARAS E - C)** which outlined the requirements that must exist for this presumption to be upheld against a party thus:

“The principle under Section 167(d) of the Evidence Act entails that the Court is to presume, without any proof that evidence which could be produced by a person and is not produced by that person but withheld by him would go against that person who withholds such evidence. Thus the Court must be satisfied:- (1) That the evidence exists; (2) That it could be produced; (3) That it has not been produced; and, (4) That it has been withheld by the person who could produce it. Before the Court can get along with such presumptions there must be proof that such evidence existed but was withheld. Merely not producing evidence would not necessarily amount to withholding such evidence. See the case of MUSA & ORS. V. YERIMA & ANOR. (1997) LPELR-1928 (SC), PER OGUNDARE JSC (PAGES 37-39, PARAGRAPHS F-B).”

He argued that the ingredients enunciated above are evident in this suit and highlighted them thus:

a. That the Claimant has admitted in evidence and in cross-examination that the documents and the witness exist.

b. That the Claimant could have obtained the bank statement if he wanted to. This is further accentuated by the fact that the Claimant tendered a bank statement of his account with the Defendant. This shows a case of a witness who is selective with the evidence he tenders. The claimant equally admitted under cross-examination that Moses Lokoja is alive. His evidence would have been very essential, but the claimant failed to call him to testify.

c. That these pieces of evidence have not been produced.

d. That this evidence which would have helped the Claimant's case if produced was withheld by the Claimant as it was within his control to produce same.

That Section 167(d) applies to "evidence" and this covers both oral and documentary evidence as enunciated in the case of **SMART V. THE STATE (2016) LPELR-40827 (SC), PER RHODES-VIVOUR JSC** thus:

"Section 167 (d) of the Evidence Act, 2011 states that: "167. The Court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular the Court may presume that- (d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Learned counsel for the Appellant relied on Section 167 (d) of the Evidence Act to support his argument that not calling investigating Police Officer who took the Appellants confessional statement was fatal to the

Respondents case. Section 167 (d) of the Evidence Act is to the effect that when a party withholds useful evidence the presumption in law is that it would go against the party who withheld it if produced. The presumption created is against the withholding of documentary and oral evidence. The presumption applies generally to failure to lead evidence on pleaded facts, and not failure to call a particular witness. See Babuga v. State (1996) 7 NWLR (Pt.460) p.279 Onwujuba & Ors v. Obienu & Ors (1991) 4 NWLR (Pt.183) p.16 A.G. Adamawa State v Ware (2006) 4 NWLR (pt.970) p.399 Nigerian Airforce v. Obiosa (2003) 4 NWLR (Pt.810) p.233."

He urged the Court to answer issue one in the negative and affirm his argument that the Claimant has not discharged the burden of proof placed on him by law for these three reasons:

- a. Failed to provide credible and compelling evidence to uphold his argument on negligence.
- b. Presented before the court weak and inconsistent evidence.
- c. Failed to dispel the presumption that he is withholding evidence pursuant to section 167 (d) of the Evidence Act.

On issue two; whether the Defendant has breached its contractual obligations to the Claimant; Learned Defendant's Counsel stated that the Defendant has upheld its end of the bargain as far as its contractual obligation is concerned. That the burden of proving that the Defendant has been negligent regarding its obligation is strictly on the Claimant to

prove. That the Claimant has not discharged this burden of proof. That the failure of the Claimant to access the loan after disbursement into his account was due to an internal memorandum to block all **Specta** loans in Abuja at the time as evidenced by EXHIBIT D1. That upon his Complaint on 21 & 22 September 2020, the issue was escalated to the appropriate quarters to be treated as a special case. That the loan was approved for unblocking on the 22nd of September as evidenced by EXHIBIT D2 and accessible on 23 September 2020 as evidenced by EXHIBIT D7.

He also submitted that upon the Claimant's Complaint, the Defendant took all necessary steps to ensure the Claimant had access to the loan despite the impending general racket on all **Specta** loans, and his case was treated as a special case. That there was no breach of contract. That the Defendant performed its duties by ensuring that the Claimant was disbursed the loan sum agreed into his account on 17 September 2020 and, the Defendant rectified the issue which could have prevented the Claimant from enjoying the said loan timeously within 48hrs of the Claimant's Complaint on the 21st and 22nd of September 2020 and as such the Defendant was not negligent in performing its duties; this is evidenced in EXHIBIT D2 and EXHIBIT D7.

Counsel submitted that it is trite in law that a party who has performed the contract according to its terms cannot be said to be in breach of the contract. He cited the case of **ECOSOLAR INTL LTD & ANOR V RIVERBAN CAPITAL LTD (2020) LPELR-49594(CA)** where the Court held that:

“A breach of contract connotes that the party in breach had acted contrary to the terms of the contract either by non-performance or by performing the contract not in accordance with its terms or by a wrongful repudiation of the contract. A party who had performed the contract in consonance with its terms cannot be said to have been in breach thereof.”

He commended to the Court the following legal; **JOS FLOUR MILLS LTD & ANOR V. GIWA & ORS (2020) LPELR- 51452(CA), PAN BISBILDER (NIGERIA) LTD VS. FIRST BANK OF NIG LTD (2000) LPELR (2900), HAIDO VS. USMAN (2004) 3 NWLR (PT 859) 65, NWAOLISAH V NWABUFOH (2011) LPELR – 2115** and urged the Court to find that the Defendant has not breached its contractual obligations to the Claimant in this case.

On Issue three, **Chinenye U. Onyemaizu Esq** stated that Counsel to the Claimant, while cross-examining the Defendant's witness (DW1) raised some objections to some of the documents tendered by the DW1. He submitted that learned counsel for the Claimant, most respectfully, misconceived these objections as the documents he objected to were in compliance with the rules of admissibility of evidence before this Honourable Court. That the objections raised against these pieces of evidence are misconceived by the learned counsel for the Claimant. He submitted that the pieces of evidence tendered by the Defendant are proper before this Honourable Court. The objections raised by the Claimant's Counsel are, respectfully, misconceived. That this is because the documents are all pleaded and authenticated accordingly.

On the place of signature of the witness statement on Oath, he stated that during cross-examination, the Defendant's witness mistakenly stated that she signed her Witness Statement on Oath at her lawyers' office. That it is judicially noticed that Witness Statements on Oath are usually signed at the Court Registry. That this is always the case as the Deponent has to sign in the presence of the Commissioner for Oaths. He affirmed that the Defence Witness, signed her witness statement on Oath at the Court Registry. The stamp of the Commissioner for Oaths (**Maureen Okonkwo**) is attached to the said witness statement on oath. He submitted that the Claimant's Counsel intends to use his knowledge of court procedures at the expense of the Defendant's witness who is not a lawyer. The Witness Statement of Oath clearly states that the Statement was "Sworn to at the FCT High Court Registry, Abuja". That the presumption of regularity covers any judicial or official act shown to have been carried out properly. He relied on the case of **TORRI V. NATIONAL PARK SERVICE OF NIGERIA (2011) LPELR-8142, PER IBRAHIM TANKO MUHAMMAD, JSC (PP 18 - 19 PARAS D - B)**, where the Apex Court had this to say regarding section 150(1) of the Evidence Act:

"Section 150(1) of the Evidence Act which states as follows. 'When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.' [...]On the face of the record, it was also carried out in a manner which was substantially regular in the circumstances. I think the well-established legal maxim, Omnia praesumuntur rite et solemniter ess acta donec probetur in contrarium, upon which ground

there is a presumption of law that judicial and official acts have been done rightly and regularly until the contrary is proved seems to me fully applicable in the present case." See further: OLABODE v. THE STATE (2007) All FWLR (part 389) 1301."

That the above provision outlines a presumption of regularity in favour of the Defendant's Witness. He urged the Court to discountenance the cheap short taken in the Statement on Oath of the Defendant's witness by the Claimant's Counsel.

Learned Counsel to the Defendant stated further that Claimant's Counsel also sought to establish that the Defendants are in the habit deducting money "*unscrupulously*" from the account of the Claimant. He submitted that this is not the true position of the facts in this case. That deductions made from the Claimant's account are only amounts taken as repayment for the loan sum given to the Claimant. That as explained by the Defendant's Witness during cross-examination, the system of the loan deduction is automated. That that is why the deduction happens at the same time of the month once it is due. That as it is in the manner of bank transactions, wherever there is any automated deduction that is undue, such reductions will be refunded once a complaint is lodged. That it is on this basis that he submits that the evidence of the Defendant's Witness remains uncontroverted. That the Claimant who has the initial burden of proof failed to discharge same. Thus, the burden of proof did not even lie on the Defendant in this matter.

Finally, he urged the Court to find that this suit lacks merit and should be thrown out based on three compelling stated as follows:

a. The Claimant has not discharged the burden of proof placed on him by law to show that the Defendant breached any duty.

b. Regardless of the above paragraph a, the Defendant has gone ahead to substantially defend the allegations of the Claimant which lacks substantial evidence to sell its veracity.

c. This Claimant does not merit the relief it is seeking from this Honourable Court.

The Claimant's final written address settled by Emmanuel Odu Onabe Esq who formulated a sole issue for determination by the court to wit:

“Whether the claimant has proved his case to be entitled to the reliefs sought.”

This issue formulated by the claimant's Counsel also embodies all the three issues formulated for determination by the defendant's Counsel. Also the court shall reframe the issue for determination within a narrow compass of; whether the claimant have proved his claim based on the preponderance of evidence adduced and of balance of probabilities.

The learning counsel for the claimant stated that one of the reliefs sought by the claimant is; *“A declaration that the non-remittance of the loan promised to the claimant by the defendant on time upon the claimant moving his salary account from his previous bank (Access Bank Plc) to the*

defendant is a breach of contract.” That the claimant stated in paragraph 5 of his amended statement of claim thus; *“The claimant also averred that prior to opening of the said account with the defendant he was operating a salary account with Access Bank and he had not (sic) but he moved his said salary account to the defendant when the defendant’s staff that came from marketing told him that he would be entitled to loan immediately after his salary account is moved to the defendant.”* Counsel posited that this averment was not challenged by the defendant and that the law is trite that facts not challenge are admitted. He relied on the authority of **ALIYU V STATE (2022) AWLR (PT. 1129) 49 @ 436 PAR A, OSAGIE V THE PEOPLE OF LAGOS STATE (2020) AFWLR (PT. 1048) 275 @ 337.**

He argue that it is safe to say that the simple contract between the claimant and the defendant is that the claimant would be entitled to loan immediately after his salary is moved to the defendant. Counsel went ahead to define the word ‘immediately’ according to the Black Law’s Dictionary 11th edition by **Bryan Garner** as follows; “occurring without delay and instant.” That from this definition the defendant could not be said to have made the loan available to the claimant as promised because the claimant move his salary account to the defendant in August 2019 and the loan was disbursed to him on 17th September 2020 as shown in the claimant’s statement of account, (Exhibit A).

In my view the position of the Learned counsel to the claimant is a complete deviation from the trite principle of law of evidence that he

who asserts must prove. See Section 131 of the Evidence Act. The assertion of the Claimant that his account would be credited with the loan sum immediately he moved his said salary account to the defendant is not supported by an iota of evidence. The argument of Learned Counsel can be likened to building a case for the claimant as pleaded in paragraph five of the statement of claim it devoid of material fact such as the name of the officer who promised the claimant the immediate disbursement of loan and when it was promised, if there was any promise at all. It is bare and does not lend any weight to the claim of the claimant. The argument and submission of learned counsel in respect thereof therefore is a mere hypothesis and an academic exercise. An address of counsel no matter how beautifully couched cannot take the place of evidence.

Furthermore it is important to note that the claimant in paragraph 8 - 11 of his witness statement on oath and 6 -8 of his statement of claim averred that he was not profiled along with his colleagues for several months until one of the staff one intervene before he was finally profiled in December 2019 and even after his profiling he discovered that the interest rate was more than 21% advertised and he was advised to complain to the defendant who referred him to **Specta** where it was discussed and advised to put his complaint in writing. He put up about three reminders at different times but there was no response until August 2020 when the defendant called him and assured him that everything was alright and could access the loan. It is obvious that there would not have been any immediate disbursement of the loan with all the hitches pointed out by the Claimant in his evidence.

The claimant's contract or agreement for the loan did not crystallize until about one year after when he was called upon to access the loan in August 2020 and his account credited on 17th September, 2020. Between December 2019 when he was profiled and 17th September, 2020 when his account was credited with the loan, there is no proof or any evidence that the claimant suffered any loss or damages.

The submission of learned counsel that the non-remittance of the loan immediately upon the claimants moving his account from his previous bank and a claim of award of general damages for breach of contract is in the imagination of the claimant and his counsel. Damages whether special, general or exemplary are not awarded or sentiments. The burden is on the claimant to adduce cogent and convincing evidence in proof of his case for damages. On the guiding principles on award of damages the court held in the case of **ABDULAZIZ & ANOR V HONORABLE ATTORNEY GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE & ORS (2013) LPELR 22128 CA** thus:

“An award of damages is not given as a matter of course but on sound and solid legal principles, and not on speculation or sentiment. It is not awarded out of sympathy born out of extraneous considerations but rather on legal evidence or probative value adduced for the establishment of an actionable wrong or injury. See EFIONG V ATA ISI SUPPLIES & SERVICES LTD (2011) 6 NWLR (PT. 1243) PG 266. Furthermore the basis for the award must be demonstrated. See united

bank for AFRICA PLC V SAMBA PETROLEUM CO. LTD (2002) 16 NWLR (PT. 793) PG 361.”

See also **NEW NIGERIA BANK PLC V DENCLAG LTD & ANOR (2004) LPELR 5942 CA.**

Going further on the plaintiff's claim for negligence and professional incompetence on the part of the defendant. To succeed in an action for negligence a claimant must plead the particulars of negligence and prove same by credible evidence. On the meaning of negligence, the court in the case of **MAINSTREET BANK PLC V DIZENGOLF (WEST AFRICA LTD) (2014) LPELR 24193 CA** held:

“Black on Dictionary 6th Edition @ pages 1062 - 1063 set out twenty eight (28) types or categories of negligence. It also defines negligence generally as the failure to exercise standard of care that a reasonably prudent person would have exercised in a similar situation, any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully in disregard of others rights.” Per Salau JCA.

See **MOBIL OIL V BARBADOS CARS LTD (2016) LPELR 41603 CA** where the Court held:

“This takes us to the next condition of negligence, whether the appellant breach the duty of Care. Now negligence is a question of fact and not law so each case must be decided in the light of the facts pleaded and proved. So as a general rule, a claimant in an action in

negligence is required to state or give particulars of negligence alleged and it is not sufficient for a claimant to make a blanket allegation of negligence against a defendant in a claim of negligence without giving full particulars of the items of negligence relied on... ..” – Per Asiru JCA.

I agree with the defendant’s counsel that the claimant was unable to prove the allegation of gross negligence on the part of the defendant and as rightly argued by the defendant’s counsel part of the reliefs sought by the claimant are declaratory in nature. See paragraphs a-f of the reliefs sought. The claimant’s complaints arose as a result of his inability to withdraw or make use of the loan credited to his account within five days of the money hitting his account and the alleged deduction by the defendant from the said account. The law places a burden on the claimant who seeks declaratory relief to establish his entitlement to the relief on balance of probabilities and preponderance of evidence. The claimant must establish that he is entitled to the declaratory relief sought. See **WOME V NIGER DELTA PETROLEUM RESOURCES LTD (2022) LPELR 58556 CA, SPDC V THE SPEAKER HOUSE OF REPRESENTATIVES & ANOR (2023) LPELR 59844 CA, ONWUSOR V MAINA (2021) LPELR 53368 CA.**

Testifying on his inability to withdraw from his own account, the claimant stated in paragraph 15 - 22 of his witness statement on oath that; *“That the granting of the said loan revived my hope though I did not initially make any attempt to withdraw so as to allow the defendant time to put*

*his house in order. That after waiting for five days I attempted to make a withdraw from the said loan I could not. That when I could not make any withdraw from the said loan sum I proceeded to the Ogui road branch of the defendant in Enugu but was told that there were restriction on the account due (sic) non-profiling. That I then (sic) told to produce the documents used in profiling in 2019 and I immediately obliged and was told that everything was perfect and that I could make withdrawals from the loan sum of **N1,992,851.77 (One Million, Nine Hundred and Ninety Two Thousand Eight Hundred and Fifty One Naira, Seventy Seven Kobo).**”*

The Claimant averred; *“That the presence of the credit some of **N1,992,851.77 (One Million, Nine Hundred and Ninety Two Thousand Eight Hundred and Fifty One Naira, Seventy Seven Kobo)** in his account without him being able to assess same for withdrawal constitute nuisance to him and to his account. That having received assurance that I could make withdrawal from the said loan sum, I engage the services of a trusted friend (**Moses Lokoja**) to go to Lagos form Makurdi, Benue State and pick a Toyota Corolla 2011 model. That I had made arrangement to buy in Lagos. That when my said trusted friend arrived Lagos on 21st September 2020, I attempted to transfer the sum of N800,000 (Eight Hundred Thousand Naira) through my mobile app from the said loan sum to my friend in Lagos for payment for the said car but could not because there were still restriction on the loan sum.”*

In denial of the above testimony the defendant's witness stated that the claimants was not given any assurance to make withdraw, rather the claimants complaint was taken down by the officer of the bank and the complaint was transferred to the appropriate channel to attend to with utmost urgency. The defendant relied on exhibits D2 referred to as exhibit B in the pleadings. Furthermore exhibit D3 is also an e-mail from the claimants requesting to unblock his account. From exhibit D2 dated 21st day of September 2020 to the 22nd day of September 2020, it is apparent that the claimant realized that his account was restricted before the 21st day of September 2020 an under cross examination he admitted that he complained to the bank on the 21st day of September 2020 about the restriction. It is therefore unbelievable that the claimant would engage his friend to buy a car for him from Lagos knowing the state of his account on the same 21st day of September 2020, and at the same time asking that the account be unblocked for the 22nd day of September. The testimony of the claimant in paragraph 20-25 of his witness statement on oath is not and cannot be correct, they do not have any probative value.

Furthermore the claimant did not furnish the court with proof of money borrowed from his friend either by production of his statement of account, or by calling the friend(s) from whom he claimed he borrowed money as witnesses. The testimonies of the claimant was well discredited under cross examination by counsel for the defendant when he was asked if there was anything showing the transfer of the loan between him and the individuals he claimed he borrowed money from and he answered; *"That is not the only account I have, I don't run my loans*

through that account.” He admitted under cross examination that he did not have anything before the court to show that the repayment of the said loan he claim he took from his friend was from was from October 2020. The pieces of evidence are not reliable to sustain the claim of the claimant containing paragraphs f, g, and n. The Claimant also failed to prove how the loan he secured constituted nuisance in his account. The testimonies fall short of the standard of proof required in declaratory reliefs sought by the claimant in paragraph a-g and I so hold. Paragraphs a-g are unproven and are therefore dismissed accordingly.

Now to the issue of deductions made from the account of the claimant by the defendant. The contract for the loan is embodied in exhibit D4 (the Loan Offer). It is the argument of the claimant’s Counsel that evidence from both parties points to the fact that the contract was brutally and unscrupulously breached by the defendant on the grounds that the said loan that was granted to take effect on the 17th September, 2021 could not be assessed by the claimant even after several correspondences between both parties. The Counsel went ahead to state the terms of the loan as contained in the exhibit.

- a. Loan amount N1,992,851.77.
- b. Monthly repayment is 75,080.85
- c. Interest rate 21%
- d. 10% management fee N19,928.52K
- e. 10% insurance fee N19,928.52K
- f. Tenor - Thirty Six (36) months.

Learned Counsel went further in paragraph 4.23 of his address to delve into according to him statistics and calculus to expose the fraud embedded in the loan scam by the defendants. He did the calculation and came up with another figure as what he said was the accurate figure the claimant was expected to pay as deductions from his account. The claimant however failed to demonstrate how he arrived at the figure computed by his counsel in his written address. It appears the learned counsel has forgotten that he is not a witness in this case. It is inappropriate for a counsel to turn himself into a witness in his written address by trying to fabricate evidence which ordinarily ought to have come from an independent witness or experts to prove facts in issue. It is not also the duty of Court to undertake the role of a figure analyst on behalf of any of the parties.

Going forward on the issue of the contended deductions and interest rate charged; in my view it is better and I so hold and direct that the parties and the counsel meet to resolve amicably this contentious rather than inundating the court with it. The claim of the claimant's counsel that the loan was a monumental fraud and calculated to cheat was not born out of the evidence before the court. Where a party this alleging criminality in a civil matter, the criminal allegation have to be proved beyond reasonable doubt.

The claimant's counsel also contended that the defendant's witness under cross examination testified that she did not sign the witness statement on oath before a commissioner for oaths. The Learned Counsel

relying on the provision of Section 13 of the Oath Act which provides that; ***“It shall be lawful for every Commissioner for Oaths, Notary Public or any other person authorized by this Act to administer an oath, to take and receive the declaration of any person voluntarily making the same before him in the form set out in the first schedule to this Act”*** argued that the defendant did not comply with the said provision and urged the court to strike out the witness statement on oath. Counsel relied on the authorities of **ACCESS BANK V MODALCOL (NIG) LTD (2022) LPELR and HAMUDU & ANOR V KADUNA ELECTRICITY DISTRIBUTION PLC & ANOR (2019) LPELR 48281 @ PG 21.**

Finally the Claimant’s counsel urged that judgement be given in favour of the claimant to at least caution the defendant and other financial institutions from making arbitrary deductions from their customer and also treating their customers’ accounts the way they like. Replying on points of law, the defendant’s counsel argued that it was obvious on the face of the witness statement on oath that it was signed at the FTC High Court Registry on 10th of June, 2022 before the Commissioner for Oaths **Maureen Okonkwo I.** He submitted that this is backed up by the presumption of regularity pursuant to section 168(1) of the Evidence Act which states that; ***“When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.”*** Counsel also relied on the case of **ADEBAYO V FEDERAL REPUBLIC OF NIGERIA (2022) LPELR 567-25 CA PG 9-11,** - Per **Umar JCA** where the court held:

“In the case that presumption of regularity of judicial act is rebutted only by contrary evidence. The onus is therefore on the party alleging the contrary to rebut this presumption of regularity which enurs in favour of the act in question with cogent evidence.”

Learned Counsel further submitted that from the face of the witness statement, it is clear that same was signed in the court registry before the Commissioner for Oath. That this regularity brings presumption which can only be disproved by material evidence pursuant to the above judicial authority. He argued that the witness who is not a lawyer has obviously attended more client meetings at lawyer’s office compared with the number of time she has been to court registry. And that the counsel for the claimant tried to mislead the defendant witness in order to disparage their statement before the court. That Learned counsel for the claimant cannot substitute this for material evidence which the law requires him to furnish before the court in order for the presumption of regularity to be successfully discharged. The defendant’s counsel also commended to the court the provision of Section 4(2) of the Oaths Act which states as follows:

“No irregularity in the form in which an oath or affirmation is administered or taken shall

(a) invalidates the performance of official duty or

(b) invalidate proceedings in any course or

(c) render inadmissible evidence in or in respect of which an irregularity took place in any proceeding.”

That this section further buttress the fact that assuming without conceding that there an regularity in the oath taking process, it does not in any way render the witness statement of the defendant’s witness in admissible in this case.

I have read the authority of **ACCESS BANK V MODALCOL (NIG) LTD Supra** cited by the learning counsel for the claimant. In the case, the lower court relied on the provision of section 13 of the Oath Act and held that a witness statement or an affidavit which does not conform with the said provision is rendered incompetent. The lower court reasoned that the witness statement on oath did not conform with the schedule which states that the declaration at the end of the statement shall be in the form set-out in the 1st schedule to the said Act. The Court of Appeal however disagreed with the decision of the lower court and held that once there is a substantial compliance with the form, courts of law will not disapprove. The court also relied on the provision of Section 4(2), (3) of the Oath Act as watering down the effect of non-compliance with the provision of Section 13 of the Oath Act. The authority cited by the claimant’s counsel therefore is not relevant to the witness statement on oath adopted by the defendant’s witness. In fact the court said the issue in section 13 of the Oath Act does not relate to the person who took or received or authenticated the statement on oath of a witness but to the

form set-out the first schedule to the Act. In the same vein, the court also held:

“I am solidly fortified by the decision of the apex court in SOLOLA V STATE (2005) LPELR 3101 SC and ANATOGU & ORS V IWEKA II & ORS (1995) LPELR 484 SC in these two cases the Supreme Court interpreted Sub-Section 3 of Section 4 of the Oath Act, to the effect that an omission to administer or affirm or affirmation should be seen as an irregularity, such that it cannot affect the competence of the oath or disturb in any way the jurisdiction of the court. I hold the considered view that the provision of section 4(3) of the Oath Act has neutralized the effect of any provision of the same Act that appears mandatory such that any irregularity in the form of an oath, an affidavit or witness statement on oath will not have a fatal consequence.” – Sirajo JCA.

Let me also reiterate that a witness statement on oath is not same thing as an affidavit evidence that can be adopted without administration of oath. While a witness statement on oath is akin to an evidence in chief that is adopted in court upon the affirmation or oath of a witness any regularity in the witness statement on oath is cured upon the administration of oath in court before it is adopted. Witness statement unlike an affidavit evidence is governed by the rules of court while the latter is by the Evidence Act. A witness statement on oath therefore is not stricto sensu an affidavit deposition of which can be called out for non-compliance with section 115 the Evidence Act. See **COUNTRY INTERNATIONAL NIGERIA LIMITED V REYNOLDS CONSTRUCTION**

COMPANY NIG LIMITED (2023) LPELR 59536 CA, AKEREDOLU V THE REGISTERED TRUSTEES OF THE GOSPEL FAITH MISSION INTERNATIONAL & ORS (2022) LPELR 57840 CA.

See **ADEDIBU & ORS V RASAK LAWAL & ORS (2022) LPELR 57360 CA** in this case the court held that there is a presumption of regularity of the witness statement both on the face of it. See Section 168(1) of the Evidence Act. The court further opined in this case:

“If the appellant wanted to make it an issue, it should have challenged the pleading. Issues were not joined on where and before whom the statement on oath of the 1st respondent was sworn to so the answer given under cross-examination goes to no issue because it cannot support any paragraph of the appellant’s pleadings and therefore it is worthless.”

I agree with the position of learned counsel for the defendant that the defendant’s witness statement on oath is presumed regular and admissible by virtue of section 68 of the Evidence Act and Section 4(2) of the Oath Act. On the face of the witness statement on oath it is first stated to be taken before the Commissioner for Oaths with the stamp and signature of the Commissioner for Oaths apparent on the face of the witness statement on oath of the defendant’s witness. The objection of the claimant’s counsel is discountenanced in the circumstance and I so hold.

On the claim of the claimant for the deductions made from his account it is my finding however that the claimants did not utilize the loan granted to him by the defendant but deductions were made from this account and this appeared to me to be the crux of the claimant's case. He tendered his statement of accounting, Exhibit A, text messages and alerts from the defendant indicating the deductions made from his account as Exhibits A1, A2 and A3 respectively. From the offer letter the repayment date is on 24th of every month. The claimant averred in his pleading and testified to the effect that deductions of **N77,948.13 (Seventy Seven Thousand Nine Hundred and Fourteen Eight Naira Thirteen Kobo)** were deducted from his account on 24th December 2020 after he had informed the defendant through his lawyer in a letter dated 25th September 2020. Other deductions made where from his January 2021 salary, 25th February 2021, 25th March 2021 and 21st April 2021, where he received the debit alert of **N1,681,039.25 (One Million Six Hundred and Eighty One Thousand and Thirty Nine Naira Twenty Five Kobo)** The Defendant's witness did not deny that deductions were made but his evidence were that there were reversals of the deductions upon the complaint of the claimant is not supported by any evidence in proof of same. The statement of account submitted to the court by the defendant was just dumped on the court by the defendant. Before the courts can align the oral evidence of a witness with the documentary evidence tendered, the witness must have led admissible evidence tying or linking the documents to the facts pleaded. See the case of **MINISTRY OF LAND**

**AND SURVEY NASARAWA STATE V NWAFOR & ORS (2021) LPELR 56254
CA:**

“I agree with the appellant that oral evidence is needed to link or tie the documents to the pleaded facts as held in the case of ALAO V AKANO Supra Where the Supreme Court held that documents admitted in evidence, no matter how useful they could be would not be of much assistance to the court in the absence of admissible oral evidence who can explain their purport.”

Relationship between oral and documentary evidence was reiterated in the case of **NIT & ANOR V SHITTU (2015) LPELR 25926 CA** as follows:

“It is also an established principle of law that documentary evidence cannot serve any useful purpose in a trial where there is no oral evidence led by any of the parties explaining its essence. ADIKE V OBIARERI (2002) NWLR (PT. 758) 537, EGBA V APPAH (2005) 10 NWLR (PT. 934) 464. The Court of Appeal stated that; “Documents are not objects that can be cross-examined and that therefore oral evidence must be called in support thereof.” – Per Asiru JCA.

From the statement of accounts of the claimant tendered by the defendant I hold that there were no reversals of the deductions proved. And in consequence thereof the claimant is entitled to the reliefs for reversal sought in paragraphs j, k and m of his claim and any other deductions from the accounts of the claimant in pursuance of the unutilized loan granted to the claimant with 10% interest on the entire

judgment sum until it is finally liquidated effective from today. Items j and i for the claim of 21% on the sum is not proven and hereby dismissed.

I have earlier held that the claimant is not entitled to damages either general or special, all his attempt to prove that he suffered emotional trauma, economic topsy turvy because he could not pay his children's school fees or spend the Christmas holiday as he would have loved to are bare assertions. On the whole, the claim of the claimant succeeds in parts.

Signed

**Hon. Judge
11/6/2024**