

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA, ABUJA**  
**BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU**  
**ON 14<sup>th</sup> DAY OF JULY, 2021**

**SUIT NO: FCT/HC/CV/3235/2020**

**BETWEEN:**

**ALOZIE NMERENGWA.....CLAIMANT**

**AND**

**ACCESS BANK PLC..... DEFENDANT**

**JUDGMENT**

On the 23/11/2020, the Claimant commenced the instant action against the Defendant. In the Statement of Claim filed along with Writ of Summons, the Claimant seeks for the following reliefs against the Defendant: -

- (a) A DECLARATION that, the defendant being the bankers of the claimant owes him a duty of care to prevent him from losing any amount he deposited in his bank account as their relationship is one of utmost good faith (uberrima fidei)
- (b) A DECLARATION that, it is illegal for the defendant to deduct any amount of money from the claimants account where there was no loan due and payable by the claimant or any corresponding unpaid service

rendered by the defendant to warrant any such deductions.

- (c) An Order of court commanding the defendant to return all monies illegally deducted from the claimant account from the time she took over from the defunct Diamond Bank till date; particularly the sum of ₦30,000.00 (thirty thousand Naira) only deducted on 14<sup>th</sup>, October, 2020
- (d) The sum of ₦20,000,000.00 (twenty Million Naira) only as general damages for the breach of the duty of care owed the claimant.
- (e) The cost of this suit
- (f) Ten percent (10%) post judgment interest until the final liquidation of the final judgment sum.

The Statement of Claim was filed along with the Claimants' witness Statements on Oath and list of documents to be relied on in evidence.

In response, the Defendant filed their memorandum of appearance along with Statement of Defence and witness Statement on Oath on the 27/1/2021.

On 5/2/2021, the Claimant filed a Reply to the Defendants' Statement of Defence.

Pleadings having been completed, trial commenced on 10/02/2021 with the Claimant testifying for himself in support of his case as PW1 by adopting his Witness Statements on Oath deposed to on 23/11/2020 as his evidence.

He testified inter alia that, he maintained a current account with the defunct Diamond Bank which was inherited by the defendant (Access Bank Plc). That, the said account was classified as “Diamond Exclusive” where in, the holder of the account has some incentives such as not queuing at the Banking hall, entitled to use Diamond Bank Lounges at designated Airports, having access to forex at government rates etc. He further testified that his relationship with the Diamond Bank went smoothly from both sides as the economy was then robust and he was enjoying their facility without any qualms.

That following the takeover of Diamond Bank by the defendant some times in 2018 which crystalized by April, 2019, he stopped operating the Account and enjoying any of the services as the Nigerian Economy had gone bad then. That he never operated the Bank account from sometimes in 2018 until On the 14<sup>th</sup> October, 2020 when his client paid in the sum of ₦30, 000.00 (thirty thousand Naira) only into the account. He continue to say that, he went to the Bank to obtain an ATM Card at the defendant branch at Utako but was shocked by the defendant’s customer care officer, when he showed him that, not only did the Bank deduct the whole some but that his account was also in debt to the tune of

₦45,000.00 (forty five thousand Naira) yet to be paid. The applicant then wrote a letter to the defendant expressing his displeasure. The Defendant thereafter replied to his letter wherein they (Defendant) stated that they were investigating the matter.

The witness then claims in the terms of the statement of claims. He thereafter tendered the following documents in evidence and also marked as follows.

1. Exhibit P1 (Statement of Account from 20<sup>th</sup> September, 2016 to 18<sup>th</sup> October, 2019).
2. Exhibit P2 (Claimant Letter of Demand dated 20/10/2020)
3. Exhibit P3 (reply letter from the Defendant dated 23/10/2020)

The witness was crossed examine by the learned defendant counsel and in the absence of any question in re-examination, discharged. Reference will be made to his testimony made under cross examination as the need arises in this judgment.

With this, the Claimant closed his case.

In defence, the Defendant called Mrs. Oluwatayo George Taylor who works with Access Bank who testified as DW1 by

adopting her witness Statement on Oath deposed to on 27/1/2021 as her evidence in Chief.

She testified inter alia, that she is an employee of the defendant as an Assistant branch service, office by virtue of which she is conversant with the fact of this case. That the claimant is the holder of Account Number 0082632985 and the said account was classified as Diamond exclusive account now called Xclusive Plus by the defendant. That, the defendant opens and operated different Bank accounts with different benefits for the account holder as well as different obligations on the part of the parties to the banker-customer relationship.

The DW 1 further stated that, the terms and conditions of Diamond Exclusive Account as contained in the brochure are incorporated by reference in the account opening package.

She continued to averred that, the Diamond Exclusive Account guarantees the holder a banking experience, designated to give him/her special privileges and exceptional service which entitles the holder to some incentives. She further narrated that, as part of the terms and conditions for maintaining the Diamond exclusive account as well as enjoying benefits of the account, the holder of the account like (the claimant) agrees that, the defendant would deduct a fee of ₦5,000.00 (five thousand Naira) only, per month from his account, except if the customer leaves a minimum balance of ₦1,000,000.00 (one million Naira) only in the account. That where a customer or

holder of the account (Diamond exclusive) fails to leave the minimum balance of ₦1, 000,000.00 in the account, the defendant (the Bank) shall be entitle to deduct the sum of ₦5,000.00 per month from the account, even if the account is classified as dormant after six months. That while a dormant account affects the right of an account holder to withdraw money from his account, it does not affect the post of deposits into the account or the right of the defendant to deduct lawful charges from the account during the period of dormancy. All the money debited from the claimants account were lawfully in line with the terms and conditions of a minimum balance of ₦1,000,000.00 (one million Naira) in the account. The defendant has the right to charge interest on such deduction from the account where the account holder does not have enough funds to cover the deduction, as the deductions below a zero balance on an account will be automatically treated as an overdraft facility.

The defendant has not breached any obligation or terms agreed to with the Claimant, neither has it been fraudulent in her dealings with the claimants account. The defendant is therefore not liable to refund any monies to the claimant, but indeed, the claimant is indebted to the defendant for the outstanding sum due and payable on his account occasioned by his failure, refusal and or negligence to comply with the terms and condition of the account by leaving a minimum balance of ₦1,000,000.00 (one million Naira) only in the account. She urged the court to dismiss the claimant actions as same amount to gold-digging, is vexatious and has failed

to disclose a reasonable course of action against the Defendant.

The witness tendered the following documents and admitted in evidence as follows;

1. Exhibit D1 (Diamond Bank Exclusive form)
2. Exhibit D2 (Exclusive Plan Brochure of Access Bank with the Certificate of compliance)

The witness was cross examined by the Learned Claimants' Counsel and in the absence of question in re-examination, discharged.

With this, the Defendant closed his case. Reference will be made to the evidence of the witness under cross examination as the need arises, too.

The parties thereafter filed and exchanged final Written Addresses as directed by the Court. They, and through their respected Counsels adopted the Addresses in Court on 28/06/2021 and Judgment was then reserved for today.

I have carefully read and digested the said Final Written Addresses of Counsel for the parties. I have also given due consideration to the evidence adduced by the parties in support of their respective cases. The cardinal issue that calls for determination is whether or not the Claimant

has made out a case to justify a grant of the reliefs sought in the Statement of Claim.

The Defendant in its Final Address formulated a sole issue for determination of the Court, to wit.

“Has/Whether the Claimant placed any credible evidence before this Honourable Court to entitle him to the Reliefs claimed in this suit?

The Claimant on the other hand also formulates a sole issue for the determination of the Court; to wit

“Whether or not from the peculiar circumstance of the case the Claimant had established that the Defendant breached the duty she owed him and thereby entitling the Claimant to all his heads of claim.”

From the evidences of the parties and submissions of their Learned Counsels, it is apparent, the parties are settled and agreed on the following facts.

- (1) The Claimant opened and maintained a Diamond Exclusive account with defunct Diamond Bank which became Access Bank PLC (the Defendant).



- (2) The Diamond Bank Exclusive Account guaranteed the holder some special privilege and some obligations.
- (3) Where the Account has a balance less than ₦1,000,000.00 (One Million Naira) the Bank shall be entitled to deduct the sum of ₦5,000.00 (Five Thousand Naira) each month from the account.
- (4) The Claimant has not applied for the closure of the account. The parties are however not agreed on the justification of the Defendant continuing to deduct ₦5,000.00 after the Claimant stopped using the account for a long period (he describe as dormancy).

For purpose of clarity, I wish to reproduce paragraph 4.3 of the Final Address of Claimant to wit.

“Parties are adidem that they maintain a banking relationship which comes with certain rights and obligations on both sides. The Claimant on his part did not deny his obligations to the Defendant bank and the bank’s right to make certain deductions in his account.”When the account is operational.”

However, the point of disagreement is at what point, the bank is entitled to continue with such deductions and at what point it ought to terminate. This is the crux of the case of the Claimant that now requires adjudication.”

It continued in paragraph 4.6

“----- Where the account had been inactive for a continuous period of 6 months when it actually ought to have entered dormancy. That the deductions continued for about two years after the customer had stopped operating the account is not only unconscionable but is highly malicious, callous, wicked and runs contrary to the fiduciaries duties of the bank.”

The Learned Counsel submitted that in line with authority in JUKOK INT’L LTD V. DIAMOND BANK (2016) 6 NWLR (Pt.1507) Pg 55 at III, that Banker customer relationship is predicated solidly on mutual trust. And urge the Court to hold that the bank has failed and/or neglected to inform the Claimant that his account is not capable of entering into dormancy and as such deductions of ₦5,000.00 monthly will persist even when he has not used the account for over six months.

In the other hand it is the submission of Counsel for the Defendant that the Defendant's right to deduct the sum of ₦5,000.00 from the Claimants Account will not be attached by the account being classified dormant, as Account dormancy only affects the right of account holder to withdraw money from his account, but does not affect the post of deposit into the account or the right of the Defendant bank to deduct agreed/lawful charges from the Account.

At this point, the Court holds that a Court of law must regard the sanctity of the agreement reached by the parties. The Court cannot make a contract for them or rewrite the one they have already made for themselves. See:- OWONIBOYS TECH SERVICES LTD V. UBN LTD (2003) 15 NWLR (Pt.844)p.545.

The terms of the contract reached in Exhibit D1 which is not contracted by parties is well known to parties.

The question that readily come to mine is, whether the Defendant had an obligation to inform the Claimant that ₦5,000.00 was being deducted from his account that he has not put to use for a long period.

The Claimant had assumed, because he has not relied on any evidence, that since he was not operating the account, the benefit which accrued to the bank in the form of ₦5,000.00

every month would cease especially since the bank had not informed him of the true situation of this.

In this case like in any civil matter the Claimant had a duty to adduce evidence to support the reliefs sought. And where, as in this case, the Claimant seek a declaration of this Court he must proof on preponderance of evidences that he is entitled to the said declaration.

The 1<sup>st</sup> relief sought by the Claimant is:

“A Declaration that the Defendant being the Bankers of the Claimant owes him a duty of care to prevent him from losing any amount he deposited in his bank account as their relationship is one of utmost good faith (uberrima fidei).

I do not agree that the bank owes the Claimant a duty here when the deductions are part of benefits created by a contract enter into by parties.

The Defendant has not in any way prevented the Claimant from enjoying the privileges attached to the contract and the Claimant has not terminated the contract by closing the account thus enabling the Defendant the full benefit in the contract.

This Court holds that the Account cannot be inactive or Dormant in relation to rights of the Defendant without the termination of the contract.

Accordingly, I find that the deductions were not arbitrary or illegal as contracted by the Defendants.

By reason of all the findings above, I resolve the issue raised above against the Claimant and in favour of the Defendant.

In consequences, the Claimants claim fails and it is accordingly dismissed.

SIGNED.  
HON. JUDGE  
14/07/2021.

### Legal representations

1. Tony Ihemere, Esq, for the Defendant.
2. Susan Mabolaji, Esq, holding the brief of Sanni Abass Esq, for the Defendant.