

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
18TH DAY OF NOVEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/2909/2019

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

DAVID I. AJABA CLAIMANT

AND

1. GUARANTY TRUST BANK PLC }DEFENDANTS
2. WEMA BANK PLC }

JUDGMENT

The Claimant's Writ of Summons and Statement of Claim is dated 13th day of September, 2019 but amended by an Order of Court vide an Amended Statement of Claim dated and filed on the 29th day of May, 2020.

The reliefs claimed are:

- (1) A Declaration that neither the Defendants nor any of their customers have the authority to recall or reverse the transaction of 22/05/2019 made by the 2nd Defendant to

the Claimant's account with the 1st Defendant, same having been done pursuant to a valid and subsisting Court Order.

- (2) A Declaration that the purported recall of the transaction of 22/05/2019 by the 2nd Defendant is in bad faith, wrongful, tortuous and unlawful.
- (3) A Declaration that the restriction of the Claimant's account number 0116227954 by the 1st Defendant is negligent, wrongful, tortuous, breach of contract, in bad faith and unlawful.
- (4) A Declaration that the purported recall of the transaction of 22/05/2019 by the 2nd Defendant and restriction of his account by the 1st Defendant is contempt of Court.
- (5) A Declaration that the recall of the transaction of 22/05/2019 by the 2nd Defendant, restriction of Claimant's account by the 1st Defendant and inability of Aella Financial Solutions Ltd to debit or charge the account due to the restriction is defamation of the Claimant's character.
- (6) A Declaration that the e-mail dated 23/05/2019 from the 2nd Defendant to the 1st Defendant alleging fraud in the transaction of 22/05/2019 is baseless and a defamation of Claimant's character.

- (7) A Declaration that the acts of the Defendants in causing and effecting the restriction of the Claimant's account number 0116227954 frustrated Claimant's credit facility contract with Aella Financial Solutions Ltd.
- (8) An Order directing the 1st Defendant to immediately lift the restriction placed on Claimant's account number 0116227954.
- (9) (~~₦~~50,000,000) Fifty Million Naira only being special damages for the tortuous and unlawful recall of the transaction of 22/05/2019 and restriction of his account by the 1st and 2nd Defendants resulting in the deprivation of his lawful and hard earned income, meaningful life and frustration of his contract with Aella Financial Solutions Ltd.
- (10) (~~₦~~50,000,000) Fifty Million Naira only as general, exemplary, aggravated and punitive damages for reckless and unlawful acts of the Defendants recalling the transaction of 22/05/2019 and restricting the account of the Claimant in contempt of a valid and subsisting Order of Court, which acts occasioned distress, trauma and great hardship to the Claimant.

(11) (~~₦~~100,000,000) One Hundred Million only for defamation of character and loss of credit worthiness.

(12) (~~₦~~1,000,000) One Million Naira as cost of the suit.

The Claimant gave evidence in proof of his case as PW1. He deposed to a Witness Statement on Oath on the 13/09/2019 and a Further Witness Statement on 1/11/2019. He adopted same as his oral testimony on oath.

Succinctly, the Claimant's case is that he maintains account number 0116227954 with the 1st Defendant. That on 26/05/2019, he went to the ATM terminal of the 1st Defendant's Jabi Branch to make withdrawals but the transaction was declined. He tried another ATM four times but was declined. That all failed due to the restriction of his account by the 1st Defendant.

That he also made use of 1st Defendant's mobile platform to make transfer. He was informed by screen prompt from the 1st Defendant that all his accounts were restricted. He felt embarrassed, ridiculed and frustrated. He contacted 1st Defendant's customer service office via its Live Chat platform about the situation and was informed that his account was restricted due to the recall of a transaction of ~~₦~~95,617.63 made on 22/05/2019 by the 2nd Defendant. He requested a lift of the restriction but 1st Defendant declined to do so.

The communication from the 2nd Defendant to the 1st Defendant which initiated the restriction was an e-mail dated 23/05/2019 with the subject "NAPS FRAUD ALERT".

That the subject transaction being the transfer of the sum of ~~₦~~95,617.63 by the 2nd Defendant to his account with the 1st Defendant was made pursuant to a Garnishee Order Absolute in Suit No. M/61/2019 dated 10/05/2019, made by His Worship Ahmed B. Ndajiwo.

That he brought an action against five Defendants and Judgment was entered in his favour and he initiated garnishee proceedings. That it was in compliance with the said Court Order dated 10/05/2019 and served on 1st and 2nd Defendants on 13/05/2019 that the 2nd Defendant effected a transfer of the sum of ~~₦~~95,617.63 to his account.

That 2nd Defendant clearly described the transaction of 22/05/2019 as made pursuant to a Court Order. That the action of the 1st and 2nd Defendants in recalling the transaction of 22/05/2019 and restricting his account is deliberate and done in bad faith.

That he runs a profile building credit facility to the knowledge of the 1st Defendant with Aella Financial Solutions Ltd. That Aella Credit tried to debit his account but failed due to the restriction. That Aella sent him a text to that effect. He received several demand notices from

Aella and he was greatly embarrassed. He became a defaulter due to the inability to charge the account by virtue of the restriction placed on the account by the 1st Defendant.

That on 12/09/2019, Aella Credit threatened him with legal action. That his character was assassinated and that his credit profile was effectively destroyed and his contract with Aella frustrated.

That he filed this suit at the cost of ₦1 Million which includes time and costs of procuring relevant documents, processing, printing, photocopying, filing and service of preparing, etc. That the acts of the Defendants ridiculed and embarrassed him.

I have also read the Claimant's Further Witness Statement on Oath dated 1st of November, 2019. The Claimant tendered:

- (1) Copy of the screen prompt restricting account.
- (2) Copies of transcript of chat with Claimant.
- (3) Garnishee Order Nisi dated 18/04/2019.
- (4) Affidavit to Show Cause by the 1st Defendant.
- (5) Garnishee Order Nisi dated 10/05/2019.
- (6) Affidavit to Show Cause by the 2nd Defendant.
- (7) E-mail from Claimant to Aella Credit.
- (8) Certificate of Compliance are Exhibits A – A7.

The 1st Defendant gave evidence via DW1, Sarah Ugama. On 23/10/2019, she made a Written Statement on Oath. She adopted same as her oral testimony.

She is a Senior Banking Officer in the Legal Department of the 1st Defendant. She is aware that Claimant contacted the 1st Defendant's Customer's Service via Live Chat platform where he was told that his account was restricted as requested by the 2nd Defendant.

On 23/05/2019, an e-mail was received from the 2nd Defendant in respect of the subject matter. The 1st Defendant till date did not oblige the 2nd Defendant's request to recall the value of the subject transaction of ~~₦~~95,617.63k as a way of protecting the Claimant despite the fact that the account was funded to the tune of ~~₦~~210,347.10k.

She admits an Order Nisi was served on the 1st Defendant. That the subject transaction was a transfer of ~~₦~~95,617.63k through NIBSS automated payment system on 22/05/2019 between two individual customers. That having been discharged in the garnishee proceedings, the 1st Defendant had no duty and or obligation against the Claimant.

That the subject transaction of ~~₦~~95,617.63k was flagged by the 2nd Defendant as fraudulent with a request to place restriction on the account, which the 1st Defendant is under duty to oblige pursuant to Central Bank of Nigeria (CBN) Fraud Desk Regulation.

That 1st Defendant is not aware of any purported profile building credit facility between the Claimant and Aella Financial Solutions Ltd. That 1st Defendant only responded swiftly to interbank flagging of suspicious transactions. That 1st Defendant is not privy to or has any link to the fraud alert. That 1st Defendant is not liable neither does it cause Claimant any form of hardship, ridicule, embarrassment or trauma. That once an e-mail is received from another commercial bank requesting for a restriction of a particular account flagged as fraudulent, the receiving bank ought to place a restriction.

That the origin of the transaction emanates from the 2nd Defendant. The Claimant's suit is gold-digging, frivolous and unmeritorious, and should be dismissed.

The DW1 tendered:

- (1) CBN Circular dated June 11, 2015.
- (2) E-mail Printout Communication of 2nd Defendant to 1st Defendant from 22/05/2019 – 23/05/2019.
- (3) Claimant's Statement of Account from 21st May, 2019 – 1st October, 2019.
- (4) Certificate of Compliance are Exhibits B, B1, B2 and B3.

The 2nd Defendant also adopted its written deposition vide DW2, Rigwan Abdulwahab. He is a Senior Officer working in the Legal Department of the 2nd Defendant.

That 2nd Defendant reported the transaction of 22/05/2019 of ₦95,617.63k to be fraudulent based on the information it received from one of its customers named Oluwagbenga. It communicated same to the 1st Defendant by e-mail through Abigail Anuslem in line with banking practice.

That 1st Defendant in response informed the 2nd Defendant that a 72-hour lien has been placed on the beneficiary's account but that funds had been fully drawn. They ask for details to enable them extend the lien beyond 72 hours. That the 2nd Defendant's communication to the 1st Defendant was in line with Central Bank of Nigeria Fraud Desk Regulations. The 2nd Defendant did not get back to the 1st Defendant as per its request to enable it extend the lien for more than 72 hours after investigating the complaint of its customer.

That they confirmed the report of their customer not to be true. That the 2nd Defendant is not liable. He urges the Court to dismiss the claim.

Under Cross-Examination, the DW2 said they conducted their investigation and that the outcome of the investigation is that the funds debited from the account of Oluwagbenga is in compliance with an Order of Garnishee Absolute hence 1st Defendant (GTB) was communicated by the 2nd Defendant to relax the lien. He could not provide a copy of the communication.

He further stated under Cross-Examination that the transaction of 22/05/2019 was made by the 2nd Defendant to the Claimant's GTB account pursuant to the Order Absolute. That it was after the compliant, i.e. e-mail was sent to 1st Defendant to restrict the Claimant's account, that investigation was conducted.

The witness further stated under Cross-Examination that the said e-mail to the 1st Defendant ought not to have been sent. That the 2nd Defendant labeled the transaction fraudulent.

The 1st Defendant's Written Address is dated 17/06/2021 but filed on the 18th. He adopted same as his oral final argument.

The 2nd Defendant's Written Address is dated 25/06/2021 but filed on 28/06/2021. Learned Counsel also adopted same as his final oral argument.

The Claimant's Final Written Argument on the other hand is dated 2/07/2021. Learned Counsel adopted same as his final oral argument.

The issues for determination in my view are captured by all the parties in their Final Written Addresses. They are:

- (1) Whether the 1st and 2nd Defendants are negligent in restricting the account of the Claimant.
- (2) Whether the Claimant was in any way defamed.

Issue 1 is whether the 1st and 2nd Defendants were negligent in restricting the account of the Claimant.

It is now trite that negligence is the failure to take reasonable care where there is a duty and it is attributable to the person whose failure to take reasonable care has resulted in damages to another. It is the omission or failure to do something which a reasonable man under similar circumstance would do or the doing of something which a reasonable and prudent man would not do.

See: **U.T.B (NIG.) vs. OZOEMENA (2007) 3 NWLR (PT. 1022) P. 488 SC.**
ODINAKA vs. MOGHALU (1992) 4 NWLR (PT. 233) 1 SC.

It is complete and actionable when three conditions are satisfied.

- (1) The Defendant owed a duty of care to the Claimant.
- (2) The duty of care was breached.
- (3) The Claimant suffered damage arising from the breach.

See **DONOGUE vs. STEVENSON (1932) AC 562.**
AGBONMAGBE BANA LTD vs. CFAO (1966) 1 ANLR 140.

The burden of proof of negligence falls upon the Claimant who alleges negligence. It is a question of fact and not law.

The concise case of the Claimant is that he is the 1st Defendant's customer. He opened and operates account No. 0116227954 with the 1st Defendant.

That by the transaction of 22/05/2019, the sum of ₦95,617.63k was transferred from the account of one Oluwagbenga in the 2nd Defendant to his account with the 1st Defendant. The Defendants knew that the said transfer was sequel to a Court Order.

The 2nd Defendant raised an alarm informing the 1st Defendant vide fraud alert asking for restriction of Claimant's account, which 1st Defendant obliged. The account remains restricted till date.

The 1st Defendant relied on Exhibits B and B1 as the reason why the Claimant's account was restricted.

The 2nd Defendant's evidence is that it received information from its customer that there was a fraud in the account which led to its communication with the 1st Defendant to restrict the account.

Exhibits B and B1 are photocopies of a letter from the Central Bank of Nigeria to all Deposit Money Banks including the Defendants.

The Claimant's Counsel argued that the said document was wrongly admitted. That it is not an original but a copy.

In a considered Ruling delivered on 4/03/2020, the Court held that a Certified True Copy (CTC) of a public document needs no certification and admitted the said document.

The document is a photocopy of a CTC. I have taken a second look at the said document. No payment of legal fees is endorsed on the said document as required by Section 104(1) of the Evidence Act. In the circumstance, I hold that Exhibit B was wrongly admitted. It is accordingly discountenanced.

For a Claimant to succeed in an action for negligence, he must plead sufficient particulars of the negligence alleged. The Claimant must also adduce credible evidence to show the duty of care owed by the Defendant, the breach of that duty by the Defendant and the damage suffered by the Claimant as a result of the Defendant's failure to take care, except the Defendant admits negligence.

See **ORHUE vs. NEPA (1998) 7 NWLR (PT. 557) 187 SC.**

The Claimant has pleaded sufficient facts to show that the 1st Defendant restricted his account and disallowed him from operating same.

By paragraphs 2 and 3, the Claimant's pleadings and oath, he deposed to the relationship between the Claimant and the Defendants as that of banker/customer. The 1st Defendant owed the Claimant a duty to allow him access to his account.

In paragraphs 6 and 8 of the Pleadings and paragraph 9 of the Statement on Oath, he stated that he made several failed attempts to withdraw money but could not, as a result of the restriction. The above is to the effect that duty of care was breached.

In paragraph 9 of the Pleadings and paragraph 10 of the deposition on oath, he said he felt embarrassed, ridiculed and seriously frustrated by the restriction.

In paragraph 22, he stated that he was brandished a defaulter by Aella Credit. Paragraphs 10 and 22 of his Oath contain the evidence in that respect.

The above in my view show the damages suffered. The Claimant need not be chronological in so far as the particulars are in the Pleadings.

The 2nd Defendant in its evidence elicited during Cross-Examination admitted that the outcome of its investigation shows that there was no fraud and that the funds were transferred in compliance with the Order of Court. That they told the 1st Defendant to lift the lien but could not avail the Court that communication.

The 2nd Defendant further said there was no fraudulent activity in that account. That 2nd Defendant made a mistake. That they would not have sent the e-mail seeking a restriction of the account by 1st Defendant.

The 1st Defendant who by mail stated that the restriction would be for 72 hours refused, failed or neglected to lift the restriction till now. They did not investigate before placing the restriction and failed to lift the restriction after investigation even when the transaction has no iota of fraud. The 1st and 2nd Defendants from the evidence were aware of the origin of the transaction but feigned ignorance.

It is my considered view and I so hold that the 1st and 2nd Defendants are liable for negligence.

However, the Claimant's Relief (i) is special damages. The law is trite that special damages are specifically pleaded and proved.

See **GARI vs. SEIRAFINA NIG. LTD (2008) 2 NWLR (PT. 1070) P.1**

They are the pecuniary losses which have crystallised in terms of **cash** and value before the trial. They must be particularized in a manner **clear** enough to enable the Defendants know the origin or **nature**.

See **ODUMOSU vs. ACB LTD (1973) 11 SC P.55**

The Claimant did not specifically plead the said special damages neither did he strictly prove same. Relief (i) therefore fails and it is refused.

General damages – Relief (j), on the other hand are damages the law implies in every breach such as this, and every violation of a legal right. It is the loss which flows naturally from the Defendant's act and its quantum needs not be proved as it is generally presumed. I shall rely on what could be the opinion and judgment of a reasonable person in that circumstance.

On **Issue 2**, which is defamation, it suffices to state that defamation is concerned with injury to reputation resulting from words spoken by others. It is a statement that tends to lower the Claimant in the estimation of right thinking members of the society or such that would expose him to hatred, contempt or ridicule and such that will injure his financial credit.

See **SIM vs. STRECH (1936) ALL ER 1234**

ALAWUJE vs. OGUNSANYA (2004) 4 NWLR (PT. 864) P.8
AYENI vs. ADESANYA (2007) AFWLR (PT. 370) 1451.

The test to establish defamatory meaning is that the words should be given the natural and ordinary meaning that will be conveyed to the ordinary reader.

The Claimant in an action for defamation must prove six co-terminus ingredients.

- (1) Publication of the offending words.
- (2) That the words complained of refer to the Claimant.
- (3) That the words are defamatory of the Claimant.
- (4) That the words were published to third parties.
- (5) Falsity or lack of accuracy of the words complained of.
- (6) There are no justifiable legal grounds for the publication of the words.

See **ILOABACHIE vs. ILOABACHIE (2005) 13 NWLR (PT. 943) 695**
GUARDIAN NEWSPAPER LTD vs. AJEH (2005) 12 NWLR (PT. 938) 205.

The e-mail that triggered this action of which defamation is a part is the e-mail of 23/05/2019. It reads:

"Please the transaction below was reported fraudulent by one of our customers as benefited by your customer, Ajaba David Ilifu 0116227954.

Naps transfer to Ajaba for ~~₦~~95,617.63.

Kindly place restriction fraud alert on the beneficiary's account and avail us the salvaged balance and BVN for purpose of recovery and investigation.

Please, we will appreciate your prompt response.

Regards."

There is no doubt this words were published by the 2nd Defendant. The 2nd Defendant believed the information of its customer and triggered this statement which led to the restriction of Claimant's account by the 1st Defendant.

Words are said to be defamatory if in their ordinary meaning they render the person about whom they are spoken to odium, shame and disgrace.

See **ADEYEMO vs. AKINTOLA (2004) 12 NWLR (PT. 887) 390.**

The Claimant's account was restricted. The impression is that he must have engaged in a fraud. The words or e-mail was published to the 1st Defendant. The e-mail refers to the Claimant. His name and account number are on it.

The words are defamatory. The 2nd Defendant admitted under Cross-Examination that there was no fraud in the said transaction. That the

e-mail should not have been sent, which means that the publication was false.

There are no justifiable legal grounds for the publication of the words. The 2nd Defendant injured the financial credit of the Claimant. The 2nd Defendant in my humble view is liable for defamation against the Claimant and I so hold.

As it relates to the 1st Defendant, there is no evidence to suggest that it made a publication of the alleged fraud to Aella. The alleged defamatory words to Aella if any is not before the Court.

The Claimant's argument in paragraph 4.51 are unfounded. There is no evidence of communication between the 1st Defendant and Aella which necessitated the use of the word, "defaulter". The said words were not published by the 1st Defendant.

In the circumstance, the 1st Defendant in my view is not liable for defamation and I so hold.

From the totality of reasons given, Judgment is entered in favour of the Claimant against the Defendants as follows:

- (1) The Defendants shall pay to the Claimant the sum of ₦2,000,000 (Two Million Naira) only as general damages for the negligent

and reckless acts in restricting the account of the Claimant for no just cause.

- (2) The 2nd Defendant is further ordered to pay ~~₦~~2,000,000 (Two Million Naira) for defaming the character of the Claimant.
- (3) Cost of ~~₦~~200,000 (Two Hundred Thousand Naira) is awarded as cost of action pursuant to Order 56 of the Rules of Court.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
18/11/2021

Parties absent.

A. M. Aliu, Esq. for the 1st Defendant.

Monday Okpe, Esq. for the 2nd Defendant.

David I. Ajaba, Esq. for the Claimant.

COURT: Judgment delivered.

(Signed)

Hon. Judge

18/11/2021