

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
31ST DAY OF MARCH, 2022**

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

SUIT NO. FCT/HC/CV/192/2014

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

MR. OKOYE DONATUS NKEM **CLAIMANT**

AND

1. FIRST BANK OF NIGERIA PLC
DEFENDANTS }

2. MR. EPHRAIM T. GBATSE

JUDGMENT

The Claimant's Writ of Summons and Statement of Claim against the Defendants is dated 12th December 2013. It is for the following:

- 1) A DECLARATION that it is not safe to transact at the Dei-Dei, Abuja, FCT

regional market branch of the 1st Defendant.

- 2) AN ORDER of Court compelling the 1st Defendant to pay the Claimant the sum of One Million, Five Hundred Thousand Naira only (~~₦~~1,500,000).
- 3) General damages in the sum of ~~₦~~10,000,000 (Ten Million Naira) only.
- 4) Interest at the rate of ~~₦~~30,000 (Thirty Thousand Naira) monthly on the sum of ~~₦~~1.5 Million from 07/01/2013 till Judgment.
- 5) ~~₦~~500,000 (Five Hundred Thousand Naira) as cost of Solicitor's fees.

The Defendants were served with the Writ of Summons and all other originating processes. The

1st Defendant's Statement of Defence is dated 25/02/2014 but filed on 19/03/2014.

The said Statement of Defence was further amended vide 1st Defendant's Amended Statement of Defence dated 12/03/2018 and filed the same date.

The 2nd Defendant failed, refused and or neglected to enter appearance or file a defence.

The Claimant opened his case and gave evidence for himself. I shall summarize the said evidence.

The 1st Defendant operates a branch office in Dei-Dei Market. The Claimant opened a Savings Account in the aforesaid branch. The 2nd Defendant is the Relationship Manager of the 1st Defendant's branch.

That he was cajoled and or deceived into opening a fixed deposit account with the 1st Defendant in the

sum of ₦1.5M to be debited from his Savings Account.

That he was issued with a fixed deposit account receipt dated 7/12/2012. That 2nd Defendant informed him that the aforesaid fixed deposit will yield a monthly interest of ₦30,000 only for a period of six months. He did not receive any alert of the debit from his Savings Account on that fateful date.

That upon maturity, the staff of the 1st Defendant asked him to return the original copy of the account receipt as indicated at the foot of the receipt. He returned same and it was acknowledged by a staff of the branch.

He was dumbfounded that the said ₦1.5M fixed deposit which ought to be credited to his Savings Account did not reflect in his saving account credit balance. He reported to the management and Mrs. Bose, Head of Business who disclosed that the 2nd

Defendant perpetrated massive fraud on the accounts of eleven customers of the bank which was being investigated. That the Head Office will resolve same.

However, he contacted his Solicitors who wrote on his behalf. He paid his Solicitors ₦500,000 in two instalments. He copied the Head Office.

The 1st Defendant's reply is dated 06/11/2013 stating they want to investigate. They wrote a second letter denying the claims. It is dated 13/11/2013.

That he did not make any fund transfer to anybody or company on 7/12/2012, 10/12/2013 except the debiting of his account in respect of the fixed deposit.

That he traced the address of the said two beneficiaries of the alleged questionable fund transfer. He made a report at Gwagwa Divisional

Police Station on 23/11/2013 and 04/12/2013 against the Managers of **Samweb** Interiors Furniture, Dei-Dei and Mr. Andrew Kahbo and Manager of **Megarice** Nig. Ltd, Pastor Harry **Austine** Agbenu. They were arrested. They made useful statements.

That **witness**' Solicitor also wrote to the above companies demanding restitution of the various amounts aforesaid fraudulently transferred to their corporate bank accounts by the Defendants from his Savings Account.

That 2nd Defendant was arrested and detained at Gwagwa Police Station. That he was alleged to have jumped bail. The surety of the 2nd Defendant faced trial to forfeit the bond.

The PW1 tendered the following exhibits:

- 1) Letters from Claimant's Counsel dated 10/10/2013 and the two replies – Exhibits A, B & C.
- 2) Exhibit D – Back or cover and second page of withdrawal booklet issued by the 1st Defendant in respect of Savings Account No. 3054613055.
- 3) Exhibit E – Fixed deposit receipt.
- 4) Exhibit F – Legal service agreement.
- 5) Exhibits G & G1 – Receipts of payment of legal fees
- 6) Exhibit H – Claimant's Solicitor's Letter of Complaint to Dei-Dei branch of the 1st Defendant.
- 7) Exhibit I – Receipt of delivery of documents by **EPS**.

- 8) Exhibits J & J1 – Letter written by Claimant’s Counsel to **Samweb** Furniture and its reply.
- 9) Exhibit K – Letter written to **Megarice**.

The witness urges the Court to help him collect his money.

Under cross-examination, the witness denied transferring any money or ₦1.5M to Samweb & another. He also denied executing a local transfer form. That as at 7/12/2012, a fixed deposit receipt was issued to him. The 2nd Defendant issued the receipt. He was the Relationship Officer of 1st Defendant. It was issued to him in the bank and not in the house. He denied authorizing any transfer. He also denied signing any paper.

The above is the case of the Claimant.

The 1st Defendant opened its defence and called one witness. She is Ukedolo Faith Ali (Mrs.), the Relationship Manager of the 1st Defendant's branch at Dei-Dei.

She states that on 6/12/2012, Claimant had a balance of ₦1,505,793.14 in his account with the 1st Defendant. That Claimant applied to transfer ₦500,000 to Samweb Interior Furniture twice on 7/12/2012. That Claimant and 2nd Defendant connived to shortchange the 1st Defendant by issuing a certain First Bank Fixed Deposit Receipt for ₦1.5M after executing a local currency transfer forms 4083250 and 4083251 to Samweb Interior Furniture and one Megarice Nig. Ltd. knowingly or negligently without perusing the forms properly.

That no money moved to a fixed deposit account with the 1st Defendant. That the Claimant and 2nd Defendant intended to perpetrate fraud against the 1st Defendant. That the Claimant who is literate

must have read and understood the local currency transfer forms before executing same.

That no fixed deposits were made. That the fixed deposit receipt does not contain any interest rate. That Samweb and Megarice admitted receiving the money transferred out of the Claimant's account.

That 1st Defendant had to report to the Nigeria Police Force in order to help the 1st Defendant further investigate the matter. That Mr. Francis Nwachukwu is facing bail estreat proceedings of the bond of ₦1,000,000 in respect of 2nd Defendant.

The 1st Defendant's witness tendered Exhibits L & L1 – the Claimant's Statement of Account from 7/12/2012 – 25/10/2013.

Under cross-examination, witness said she did not see Claimant fill any local transfer form. That the

said local transfer form is not before the Court. That she also did not produce the CCTV recording of the event of 7/12/2012. She was not sure the bank was served to produce same.

That the 2nd Defendant was a Relationship Manager of the 1st Defendant at the time of the incident. That the 2nd Defendant did not represent the interest of the 1st Defendant in that transaction.

In an answer to a question, she answered that she is not aware that Claimant was reported to the Police by the 1st Defendant for conniving to defraud 1st Defendant.

In further answer to a question, she answered that she was briefed by the Legal Team to say that the Claimant connived with the 2nd Defendant.

The above is the 1st Defendant's defence.

The 2nd Defendant failed to appear to enter his defence. He was therefore foreclosed.

Parties filed and exchanged their Final Written Addresses. I have read and considered the Final Written Addresses of Counsel. I shall deal with a preliminary issue raised by the Claimant's Counsel in his Final Written Address in that the Defendant's Written Statement on Oath is invalid having not been sworn before a Commissioner for Oath.

I have gone through the records. The 1st Defendant's witness did not say that the deposition was made before her Legal Practitioner. The requirement of a Written Statement on Oath is procedural and it is governed by the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018.

A Written Statement on Oath is not an Affidavit *strictor sensu*. It is a written statement or evidence of the witness on oath. The essence is to ensure

speedy delivery or dispensation of justice against the hitherto laborious record taken of oral evidence on long hand.

Order 2 (2) (2) of the Rules of this Court requires that in all civil proceedings commenced by as in this case by a Writ of Summons, the Writ shall be accompanied by (c) written Statements on Oath of the witness except a subpoenaed witness.

The DW1 adopted her Written Statement on Oath before this Court. It is sworn before the Commissioner of Oath. The only allusion made by the witness under cross-examination by Claimant's Counsel is that she was briefed by her legal team to say that Claimant connived with the 2nd Defendant.

In my view and I so hold, the DW1's Written Statement on Oath is validly sworn. Even if it is not properly sworn, by Order 5 of the Rules, non-

compliance in form does not vitiate or nullify steps that have been taken.

I shall now proceed to the issue canvassed by parties for determination, which is:

Whether or not the Claimant has proven his case on the balance of probability to be entitled to the reliefs sought.

By Section 131, 132 and 133 of the Evidence Act, in civil proceedings, the burden of proof is on the party who asserts a fact to prove same, for he who asserts must prove. The standard of proof required is on a preponderance of evidence and balance of probability.

See MANI vs. SHANONO (2006) 4 NWLR (PT. 969) p. 969.

In proof of his case, Claimant tendered several documents amongst which is Exhibit E – an

acknowledgment copy of the Fixed Deposit Receipt dated 07/12/2012 to be due on 07/06/2013.

The Claimant's case is that he was cajoled by the 2nd Defendant, the Relationship Manager to open a fixed deposit account with ₦30,000 interest from 07/12/2012 – 07/06/2013. Exhibit E is the receipt.

The uncontroverted evidence and pleadings is that the 2nd Defendant is the employee of the 1st Defendant. That **much** was admitted by the 1st Defendant's witness.

The evidence of the Claimant is that he was issued with Exhibit E, the fixed deposit receipt. The 1st Defendant did not deny that it was their receipt but said the Claimant connived with the 2nd Defendant to forge the said receipt, Exhibit L.

I have carefully perused Exhibit L and the Claimant's Savings Account. There is no doubt the

Claimant had ₦1.5M in his account on 7/12/2012 which he agreed to transfer to a fixed deposit account but was surreptitiously transferred to two companies in Dei-Dei Market without his consent.

Exhibit J1, the letter written by 2nd Defendant's Counsel in reply to Claimant's Counsel's letter has it that the 2nd Defendant transferred the said sum as payment for the furniture jobs the company executed for 2nd Defendant. The second beneficiary did not deny that they received the said money from the account of the Claimant.

It is obvious that the money was transferred by the same 2nd Defendant who is the employee and more specifically the Relationship Manager of the 1st Defendant.

The doctrine of vicarious liability is to the effect that where the relationship of master servant, employer/employee exists, the master is liable for the wrongful or tortious acts of the servant so long

as they are committed in the course of the servant's employment.

See **ODEBUNMI vs. ABDULLAHI (1997) 2 NWLR (PT. 489) 526 at 529 SC. JAMES vs. MIDWEST MOTORS NIG. LTD (1978) 11-12 SC 31 at 51.**

There is no doubt that the 2nd Defendant committed the infractions in the 1st Defendant's branch at Dei-Dei Market where he was a Relationship Manager of the 1st Defendant.

The law is that even where the employer expressly forbids the act, he may still be vicariously liable if it can be shown that the act was nonetheless done in the scope of the employment or the purpose of the employer's business.

In the instant case, the Claimant has shown that the act done was within the scope of the 2nd

Defendant's employment, although the transfer to the other companies was for personal **issues**.

The fact that the employee diverted the Claimant's funds to his personal undertaking in the Dei-Dei Market will not necessarily take his acts outside the course of his employment.

In the instant case, the incident arose from the 2nd Defendant's employment. The alleged opening of the fixed deposit account was for the benefit of the 1st Defendant while the alleged transfer of the funds for another business concern may not be for the benefit of the Claimant, the 1st Defendant is nevertheless liable and I so hold.

It is clear from the evidence that the Claimant has established the relationship between the 1st and 2nd Defendants. He also established that the 2nd Defendant is liable for the wrongful act.

The 1st Defendant's defence is that the Claimant executed local currency transfer forms amounting to ~~₦~~1 Million in favour of Samweb Interior Furniture and another ~~₦~~500,000 to one Megarice.

That the Claimant connived with the 2nd Defendant who was at the material time not acting in the interest of the 1st Defendant but outside the scope of his authority and procured the fixed deposit receipt.

Under cross-examination, she said it is the 1st Defendant's legal team that briefed her to say so. She was not in the 1st Defendant's branch when the incident happened. She did not tender the records on which her evidence was based.

The 1st Defendant's witness did not tender the fund transfer forms filled and signed by the Claimant transferring the said ~~₦~~1.5 Million to third parties.

The 1st Defendant's witness's evidence is a sham and a farce. It is basically what she was tutored to say. The evidence is not **credible**.

The Claimant was put into engaging a Solicitor to write letters and conduct this case. Exhibit F is the legal services agreement while Exhibits G & G1 are the receipts of payment of Solicitor's fees for litigation. It would have been avoided if the 1st Defendant has exercised due diligence.

General damages are those damages which the law implies in every breach 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 pleaded or proved as it is generally presumed by law.

The Claimant's ~~N~~1.5 Million was transferred to third parties by the 1st and 2nd Defendants since 2013. The Claimant had no access to the said fund for about 9 years now.

I shall rely on what could be the opinion of a reasonable man to determine the quantum of damages in the light of the evidence before me.

I find as follows:

- 1) The Claimant maintained a Savings Account with the Dei-Dei Branch of the 1st Defendant.
- 2) The 2nd Defendant was the Relationship Manager of the 1st Defendant.
- 3) The 2nd Defendant persuaded the Claimant to open a fixed deposit account which he did.
- 4) The 2nd Defendant gave the Claimant a receipt which is Exhibit E.

- 5) The interest rate is ~~₦~~30,000 per month for six (6) months, i.e. from 07/12/2012 – 07/06/2013.
- 6) The 2nd Defendant on the same date transferred the funds to third parties without the knowledge and or consent of the Claimant.

In totality, it is my view and I so hold that the Claimant has proved his case against the Defendants on the preponderance of evidence and balance of probability hence the Claimant is entitled to Judgment.

Judgment is entered in favour of the Claimant against the Defendants as follows:

1. The Defendants are hereby ordered to pay to the Claimant the sum of ~~₦~~1,500,000.00 (One Million, Five Hundred Thousand Naira)

being the fixed deposit and interest at the rate of ₦30,000.00 (Thirty Thousand Naira) per month from 07/12/2012 to 07/06/2013 period covered by the fixed deposit receipt.

2. The Defendants shall further pay to the Claimant ₦500,000.00 (Five Hundred Thousand Naira) as cost of Solicitor's fees.

3. Ten Million Naira (₦10,000,000.00) as general damages.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
31/03/2022

Claimant present.

Defendants present.

James Agu, Esq. holding the brief of Uche O. Uche,
Esq. of the Claimant.

Mustapha Abdulkadiri, Esq. with Adiola Akinwale,
Esq. for the Defendants.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

31/03/2022