

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 29TH DAY OF MARCH, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.
SUIT NO.:-FCT/HC/CV/2481/15

BETWEEN:

SALISU NANI ZIGAU:.....CLAIMANT

AND

FIDELITY BANK PLC:.....DEFENDANT

AchileSani with Juliet ChigozieOdoh and Joseph Ndu for the Claimant.
Williams Okwara for the Defendant.

JUDGMENT.

By a Writ of Summons dated and filed the 24th day of July, 2015, the Claimant instituted this action against the Defendant claiming as follows:

1. A declaration that the Defendant, in her dealing with the Claimant in respect of this transaction, acted dishonestly.
2. A declaration that the arbitrary charge made by the Defendant on the Claimant's account throughout the pendency of this transaction is illegal, null and void.
3. A declaration that denying the Claimant access to his salary/funds between January, 2014 and August, 2014, amounts to a breach of the Banker-Customer relationship by the Defendant.
4. An Order directing the Defendant to pay to the Claimant the sum of N413,677.59 (Four Hundred and Thirteen Thousand, Six Hundred and Seventy-Seven Naira, Fifty-

- Nine Kobo) only; being the total loan overpayment illegally charged against the Claimant's account.
5. An Order directing the Defendant to pay to the Claimant, an interest rate 16% per annum, per the agreement, on the following:
 - a. The sum of N8,750,33 from 26th April, 2013 when same was illegally charged as commitment fee to the customer's account.
 - b. The sum of N4,375.66 from 26th April, 2014 when same was illegally charged as commitment fee to the customer's account.
 - c. The sum of N346,761.64 from 5th December, 2014 when same was illegally charged as Default interest to the customer's account.
 - d. The sum of N53,789.96 from 12th April, 2015 when same was illegally charged as Default interest to the customer's account.
 6. The sum of N10,000.00(sic) (Ten Million Naira) only, against the Defendant for breach of Banker-Customer relationship and failure to pay the Claimant on demand.
 7. The sum of N10,000.00(sic) (Ten Million Naira) only, against the Defendant for breach of the Claimant's right to dignify of human person.
 8. The sum of N20,000.00(sic) (Twenty Million Naira) only, against the Defendant as general damages.
 9. Cost of this action.

The case of the Claimant as per his Statement of Claim, is that on the 12th day of April, 2012, he entered into an agreement with the Defendant and secured a loan to enable him embark on a personal project. That the loan was the sum of N5,000,000.00 (Five Million Naira) only, for a tenor of thirty-Six (36) months and an interest rate of 16% per annum. Also, that

the facility was agreed to be repaid within 3 years of securing the loan, with the expected source of repayment clearly stated therein, to wit; the principal loan sum would be charged against the upfront payment paid to the Claimant in January by his employers while the interest on the facility would be drawn from the Claimant's monthly salary.

The Claimant averred that on 5th November, 2013, he received an alert from the Defendant, that N59,452.00 was debited on his current account No. 5330312927 against the agreed sum. He stated that he made several requests both orally to his account officer and branch manager, and in writing to the Defendant to explain the illegal deduction from his account but his requests were ignored by the Defendant. That when the Defendant refused to respond to his letter, he wrote twice to the Governor of the Central Bank of Nigeria, urging him to compel the Defendant to explain why N59,452.00 was deducted from his account instead of the agreed N49,000.00. That it was when the Central Bank of Nigeria intervened in the matter that the Defendant deemed it fit to respond to the Central Bank of Nigeria's mail of 11th August, 2014 and his own letter of 14/07/14. That the Defendant admitted that the Claimant's account was excessively charged and promised to refund him with an excess interest of N6,940.64.

The Claimant averred that the Defendant in her response to the CBN vide a letter dated 10th October, 2014, admitted applying a higher interest rate to wrongfully debit his account, and refunded just N6,940.64, without interest, ten months after the wrongful deduction. He stated that he was not informed by the Defendant, of any change in the interest rate charged and that attempts at getting the Defendant to properly assess the interest and refund the excessive charges, were rebuffed by the Defendant.

The Claimant further averred that by the terms of the loan, the Defendant was required to only charge the principal sum against his upfront payment when same was paid in January by his employer, while the interest on the facility would be drawn from his monthly salary. He stated that his employer paid his upfront for the year 2014 in August instead of in January, but that the Defendant in gross violation of the loan Agreement, resorted to setting-off the principal sum and the interest thereon, against the Claimant's monthly salary. That the sum of N1,720,456.62 was charged as second instalment of the principal amount instead of the agreed N1,666,666.67, which was charged previously.

The Claimant averred that when he discovered that the Defendant has not been honest in her dealings, he obtained his Statement of Account and engaged the services of an independent auditor to audit the said account. He stated that the report of the independent auditor confirmed that the Defendant was dishonest in her dealings with the Claimant and had illegally charged and fraudulently engaged in a series of deductions on the Claimant's account contrary to the Loan Agreement.

He stated that the following illegal deductions were highlighted by the said Audit Report;

- a. That whereas Commitment fee on the offer letter was stated as 0.25% flat, the same was charged annually by the Defendant. Thus, the sum of N8,750.33 was wrongfully charged to the Claimant's account on 26th April, 2013 and the sum of N4,375.66 was equally charged as commitment fee on 26th April, 2014.
- b. That whereas the loan agreement made provision for three annual principal repayments to the tune of

N1,666,666.67; on 25th January, 2013, the sum of N1,666,666.66 was charged to the Claimant's account as first instalment of the principal amount, while the sum of N1,720,456.62 was wrongfully charged as second instalment of the principal sum on 6th January, 2014; but between 16th February and 30th March, 2015, the sum of N1,666,666.68 was taken as final instalment of the principal amount; which shows inconsistency in the treatment of the principal repayment.

- c. That the interest rate per the agreement was put at 16% per annum, but the actual interest rate charged on the facility was an average of 17%.
- d. That the agreement stipulates that in the event of default, the customer shall pay Fidelity bank current default rate at 1% flat per month on the unpaid sum from the date when such payment falls due up to the date of repayment, but the actual charge on default was twice that amount.
- e. That while the offer states that the expected source of repayment would be from yearly upfront payments in January, the payment was taken in January, 2014 before the upfront payment came in August, 2014, thus resulting in default interest charges to the tune of N346,761.64.

The above illegal deductions were also particularized by the Claimant as special damages, in consequence of which the Claimant averred that the Defendant illegally denied him access to his money as follows:

Commitment fee	–	N13,125.99
Default Interest	–	N346,761.64
Excess over principal repayment	–	N53,677.59

Total - N413,677.59.

The Claimant averred that he was never informed at any time by the Defendant, of any change in the interest rate charged, and that on proper scrutiny, he found out that the Defendant was not entitled to extend the debit on the principal sum to his monthly salary, neither was the Defendant legally backed to seize his entire eight months' salary to satisfy the principal loan.

He stated that the Defendant deprived him of his full salary from January, 2014 to August, 2014 when the upfront was paid, thereby leaving him in ruins, penniless and dejected for eight months. That being married with children and dependants; he lost his dignity, was living in abject poverty, became traumatized and was reduced to dependence on family and friends for survival, even though he was employed and being paid by his employers.

In his reply to the Defendant's statement of defence, the Claimant averred that the CBN never came to the conclusion posited by the Defendant in paragraph 9 of its statement of defence. He further stated that he never met any staff of the Defendant in Mamuda Bello's office at CAC Zone 5, and that the said Mamuda Bello was not his manager during the period in question. Also, that he left the Zone 5 Branch of CAC since April, 2012 and could not have met with the Defendant in Zone 5 during the period averred by the Defendant in paragraph 13 of its Statement of Defence.

At the hearing of the case, the Claimant gave evidence as PW1. He adopted his witness statement on oath wherein he affirmed the averments in the statement of claim. He also tendered the following documents:

1. Statement of Account - Exhibit PW1A.

2. Certificate of Compliance - Exhibit PW1A2.
3. Offer of N5m Term Loan Facility - Exhibit PW1B.
4. Financial Fraud, Extortion, Unfair Dealing - Exhibit PW1C.
5. Extortion and Non-Disclosure - Exhibit PW1D.
6. A Reminder Letter - Exhibit PW1E.
7. RE: Petition to CBN on Extortion - Exhibit PW1F.
8. RE: Financial Fraud, Extortion - Exhibit PW1G.
9. RE: Financial Fraud, Extortion - Exhibit PW1H.
10. RE: Petition to CBN on Extortion - Exhibit PW1J.
11. Letter of Redeployment - Exhibit PW1K.

Under cross examination, the PW1 maintained that he was not informed by the Defendant about the increase in the interest rate. He admitted that there was a default in the payment of the upfront after he took the loan, but stated that the default was covered by the default clause under the loan agreement.

When it was put to him that the amount of N1,720,456.62 charged to his account on 6/1/14 comprised of the repayment of the principal loan and the applicable interest, the PW1 stated that he was hearing that for the first time as the Bank never explained that to him.

One Andrew Echono Managing Consultant of Perfect Pitch Consults testified for the Claimant as PW2. He gave evidence as to his review of the Claimant's Statement of Account as contained in the Claimant's statement of claim. He also tendered the report of the said review and same was admitted in evidence as Exhibit PW2A.

Under cross examination, the PW2 told the Court that he is not an independent auditor but an independent contractor. He stated that by profession and training, he has been auditor, but that he cannot put himself forward as an independent auditor-chartered by ICAN. He further stated that he has however

practiced as an internal auditor as a compliance officer at FinBank Plc.

The PW2 stated that in his review, he made reference to the Offer Letter and the Claimant's Statement of Account, and that in both documents, no reference was made to Cash Reserve Ratio.

He further stated that in carrying out his review and the subsequent report, he did not consider the sum of N6,940.64 credited to the account of the Claimant on 29/8/14, being the sum erroneously deducted from the Claimant's account.

On the 5th day of October, 2020, one Mamudu Bello, a principal Manager with the Corporate Affairs Commission appeared on subpoena and gave evidence for the Claimant. He told the Court that he once worked as Zonal Manager in CAC Zone 5. That he knows the Claimant and also knows one ChukwumaMkparu.

Under cross examination, the PW3 stated that he was a beneficiary of the upfront payment by his employer. He stated that the Upfront payment is not fixed for January of each year, that it was paid any time CAC has money, sometimes in February, at other times, in November.

In its defence to the suit, the Defendant filed a statement of defence, dated and filed on 25th January, 2016 wherein it averred that the sum of N59,452.00 was debited on the Claimant's account as a result of the Cash Reserve Ratio (CRR) increase. That the Claimant's account officer, ChukwumaMkparu, who had left the bank, did explain to the Claimant the reason behind the debit but the Claimant refused to accept his explanation. Also, that the Claimant was duly

notified with a letter but he vehemently refused to acknowledge receipt of same after reading the content.

The Defendant further stated that its Regional Manager had also spoken with the Claimant to explain the fact that the Defendant reserved the right to unilaterally alter the pricing rate.

That the Claimant's letter to the CBN Governor was forwarded to the Defendant's Consumer Complainants & Protection Unit, and that after the Unit's investigation, it was discovered that the increase in interest by N10,684.92 was due to erroneous application of higher interest rate from 01/10/2013 to 05/11/2013.

The Defendant stated that the said error was corrected on 12/11/2013 and it showed that the Claimant was entitled to N6,940.64, which was then credited to his account number 5330312927 on August 29, 2014.

The Defendant further averred that it had notified the Claimant of the interest rate increase initially, but that the Claimant refused to accept the letter and that several attempts/efforts to clarify the reason behind the increase was outrightly rejected by the Claimant.

It stated that the Claimant's union as well as the finance & accounts unit of CAC had informed it that the Claimant's employer usually pays their upfront in January; that it was on the strength of that information, the product paper was structured to accommodate upfront payment in January while interest was serviced monthly. That the Claimant's employer defaulted in paying its staff yearly upfront payment in January, while their principal repayment dropped at the end of January thereby throwing their accounts into debit.

Furthermore, the Defendant averred as follows:

- a. That what was stated in the offer letter was facility fee while commitment fee was charged annually as claimed.
- b. That the yearly principal repayment was actually N1,666,666.67, but that the sum of N1,720,456.22 was charged the second year 2014, which comprised both principal (N1,666,666.67) and accrued interest (N53,789.95) for that particular month of January, 2014.
- c. That the CBN increased the Cash Reserve Ratio (CRR) at its meeting held on 24th January, 2012, from 1% to 12%, and that a letter to the effect was sent to all the Defendant's customers, including the Claimant, but he refused to accept his own letter of notification.
- d. That the offer letter stated that repayment would be from yearly upfront payment but did not say that in the event that the Commission failed in its responsibility to pay staff entitlements, the Defendant should not debit the Claimant's account in January for the principal repayment.

The Defendant averred that the Claimant's employer had over 500 of its staff enjoying the same facility as the Claimant, and that none of them is contesting the interest rate change or claiming that they weren't informed except the Claimant.

One Cyril Arigbo, who was the Branch Head of the Defendant's CAC, Wuse Zone 5 Branch, Abuja, gave evidence for the Defendant at the hearing of the case. Testifying as DW1, he adopted his witness statement on oath wherein he affirmed the averments in the statement of defence. He also tendered the following documents in evidence:

1. Review of Interest Rate on Your Loan – Exhibit DW1A.
2. Upward Review of Lending Rates - Exhibit DW1B.

3. Offer of N5,000,000.00 Term Loan Facility - Exhibit DW1C.
4. Re: Petition to CBN on Extortion - Exhibit DW1D.
5. Re: Petition to CBN on Extortion - Exhibit DW1E.
6. NaniZigauSalisu Account No. 5330312927 – Petition to CBN on Extortion - Exhibit DW1F.
7. Acceptance of Offer of N5,000,000.00 Loan - Exhibit DW1G.

When asked under cross examination whether the Claimant was excessively charged interest rate; the DW1 stated that the Claimant was erroneously charged N6,940.00 and that same was later refunded to his account.

On why the Bank made deductions of the principal sum from the Claimant's monthly salaries when his employer delayed in paying the upfront payment in January, 2014; the DW1 stated that the Bank has automated system that took the principal repayments at the end of January.

One Ethel UzoechinaEgbe, a member of staff of the Corporate Affairs Commission (CAC), also gave evidence for the Defendant on subpoena.

Testifying as CW1, she stated that she knew the Claimant as a staff of CAC. She stated that she benefited from the Defendant's loan facility and that through a letter addressed to her and delivered to her at her office, she was notified of a review of the interest rate. The said letter was tendered and admitted in evidence as Exhibit CW1A.

Under cross examination, the CW1 stated that she cannot say that Exhibit CW1A was addressed to the Claimant, and that she did not receive same on behalf of the Claimant.

At the close of evidence, the parties filed and exchanged final written addresses.

The learned Defendant's counsel, Dr. Ikennalhezuo, Esq, in his final written address, raised four issues for determination, namely;

1. Whether the present suit discloses any cause of action?
2. Whether the Claimant has discharged his burden of proof to be entitled to the reliefs being sought?
3. Whether the Claimant was duly informed or notified about the increase in interest rate brought about by increase in cash reserve ratio (CRR) by the Central Bank of Nigeria (CBN)?
4. Whether the report of the review of the term loan facility of the Claimant conducted by Mr. Andrew Echono can be relieved (sic) upon by this honourable Court?

Proffering arguments on issue one, learned counsel contended that the case of the Claimant did not disclose any cause of action as the complaint of the Claimant has already been remedied appropriately by the Defendant before the Claimant instituted this suit.

He argued that the Claimant acknowledged refund of monies to his account by the Defendant during cross examination and that he never complained further of any balance left unrefunded. Placing reliance on Section 123 of the Evidence Act, 2011 and the case of **Folorunso&Anor v. Shalows (1994)3 NWLR (Pt.333)413 at 433**, he posited to the effect that the facts of refund of the Claimant's monies are deemed admitted and that the Court ought to accept such evidence in proof of the issue in contest.

Placing further reliance on **Nigeria Ports PLC v. Songhai Energy Services Ltd (2016) 17 NWLR (Pt.514) 208** and **Yusuf v. Co-operative Bank Ltd (1994) 7 NWLR (Pt.359)676 at 692**, he contended to the effect that there is no justice being sought by the Claimant that requires judicial redress or remedy when the justice, redress and remedy have been done already by the Defendant based and relying on the terms and conditions or contents and ingredients of the Agreement (Offer Letter).

He argued that there is no reasonable cause of action in this suit, because there is no remedy to address again, same having already been done by the Defendant.

On issue two, learned counsel submitted that suspicion and speculation are not and cannot be substitutes for evidence and basis for finding facts.

He contended that the available evidence before this Court as adduced by the Claimant, is bereft of proof of his claims on the balance of probabilities.

He argued that the Claimant has failed to prove the allegation or claims of financial fraud, extortion, unfair dealing and non-disclosure of financial information alleged against the Defendant in his pleadings and his mails to the CBN, Exhibits PWD, PW1E and PW1G.

Also, that the Defendant failed to prove that he had no knowledge or was not notified by the Defendant of the increase or upward review of the interest rate.

He contended that the above issues are the crux of the Claimant's case and that the Claimant's failure to prove them, makes his case bogus.

He submitted that it is settled law, that a party claiming a declaratory relief has the burden to establish such relief to the satisfaction of the Court. Also, that a declaratory relief is not granted even on admission by the Defendant, where the Claimant as in the instant case, fails to establish his entitlement to the declaration by his own evidence.

He referred to **Omisore v. Aregbesola (2015) 15 NWLR (Pt.1482)297-208; Ucha v. Elechi (2008) 13 NWLR (Pt.1317)230.**

On issue three on whether the Claimant was duly notified of the increase in the interest rate, learned counsel argued that the Claimant was duly notified and that he was not happy about it and then sought clarification from the CBN.

He referred to Section 29 of Banks and Other Financial Institutions Act (BOFIA) 2020, and posited that the CBN is the official regulator and supervisor of financial institutions in which category the Defendant belongs and is thus, bound by its policies and directives; particularly with regards to the Cash Reserve Ratio (CRR).

He argued that the CBN having raised the Cash Reserve Ratio on the 24th of July, 2012, to 12%, the Defendant consequently on its own, reviewed upwardly, the repayment interest of the loan. That having done that, they formally put the Claimant on notice through Exhibit DW1A. That when the CBN effected further increment from 12% to 50% the following year 2013, the Defendant again reviewed upward the interest on the facility from 17% to 19 and duly notified the Claimant through Exhibit DW1B which the Claimant refused to acknowledge after reading same.

He further argued to the effect that one of the members of staff of the Claimant's employer who benefited from the same facility at the same time as the Claimant, testified as CW1 and tendered Exhibit CW1A in proof of the fact that she received the letter of notification on the upward review of interests on the loan facilities. He contended that the Defendant could not have singled out the Claimant for punishment by neglecting to deliver Exhibit DW1A to him when it delivered similar letters to other members of staff at the same office as the Claimant.

Learned counsel argued that the Defendant not only controverted the allegation of non-service of the notice in its statement of defence, but also proved by admitted documentary evidence, that the Claimant was served the said letter of notification on the upward review of the interest rate.

He urged the Court to resolve issue three in favour of the Defendant, having proved adequately that it served the Claimant.

On issue four, learned counsel contended that Exhibit PW2A should not be relied upon by this Court as the maker thereof is neither an expert nor a certified auditor to practice in Nigeria. That he is also, not an independent auditor as alleged, but rather an independent contractor.

He argued that the maker of the report, PW2, was not availed all the necessary reliable documents or information that governed the transactions between the parties, and that as such, the report was poorly done, leading to inaccurate result or conclusion.

He urged the Court to attach no probative value to exhibit PW2A and to discountenance the evidence of PW2, being not

an expert witness and Exhibit PW2A having been discredited during cross examination.

He urged the Court in conclusion, to dismiss this case with reasonable cost and to enter judgment in favour of the Defendant.

In his final written address, learned Claimant's counsel, E.A. Sani, Esq, raised a sole issue for determination, to wit;

“Whether from the totality of evidence before the Honourable Court, the Claimant has proved his case to be entitled to the grant of his claim?”

Proffering arguments on the issue so raised, learned counsel posited that the Claimant has satisfied this Court from evidence adduced, that he is entitled to the reliefs as stated on his statement of claim. He argued that the Claimant led evidence to show that monies were taken from his account by the Defendant, without his consent, as interest which was fixed for a specific amount, and commitment fee which is supposed to be a one-off charge.

He contended that deducting money from the Claimant's account without notifying him, even after various letters of protest were written to the Defendant, is a breach of the contractual duty between the parties.

Relying on **A.T. (Nig) Ltd v. U.B.N. PLC (2010) 1 NWLR (Pt.1175) 360 at 383**, he submitted that it is trite law that where agreement between parties is contractual in nature, they are bound by it.

He argued that where, as in the instant case, it was expressly contained in the agreement that the Claimant is to be notified of any change in circumstance, and the commitment fee was fixed

at 25% flat; that the increment of the interest rate by the Defendant and deduction of commitment fee annually, without first putting the Claimant on notice of the said charges, is a breach of the agreement as contained in exhibit PW1B.

Learned counsel posited that the Defendant's letter of 29th August, 2014 – Exhibit PW1F, constitute a tacit acceptance of the fact that she was excessively charging the account of the Claimant, and that as such, same needs no further proof.

He further submitted that the burden of proving the existence of a fact is not static as it shifts from one person to another. On this point, he referred to Section 136(1) of the Evidence Act, 2011; **Agbi v. Ogbe (2006)26 NSCQR P.1257 at 1277 and pp. 1305-1306.**

He argued that having pleaded the fact of serving the Claimant with a letter of increment in the interest rate which he allegedly refused to collect, which fact is the crux of the Defendant's defence; that the onus was on the Defendant to prove the existence of such fact. He referred to **A.T. (Nig) Ltd v. U.B.N. PLC (supra).**

He posited that the Defendant's failure to establish the above claim is detrimental to her case, as it is a trite principle of law that one cannot place something on nothing and expect it to stand.

Learned counsel posited further, that the focal point of the Claimant's case is hinged on the fact that the Defendant increased his interest rate without communicating same to him, and that his account was excessively being charged, which the Defendant admitted vide Exhibit PW1F.

He argued that while the case of the Defendant is that Exhibit PW1B categorically stated that the bank's prime lending rate is

determined by market forces and therefore, subject to fluctuation, and that the Cash Reserve Ratio (CRR) was increased by the CBN, which was beyond her control; that no document was pleaded or tendered by the Defendant to prove the fact that CBN truly did increase the said Ratio/Interest rates as claimed by the Defendant. He referred to **F.U.T.A. v. Ajidahun (2012)14 NWLR (Pt. 1321)583 at 611-612.**

He contended that the Claimant has successfully proved his case to be entitled to the reliefs sought, and that the Claimant is accordingly entitled to damages for loss suffered as a result of the Defendant's illegal deductions. He referred to **Rivers Vegetable Oil Co. Ltd v. Egbukolo (2010)All FWLR (Pt.144)11 at 127.**

He urged the Court to grant the claims of the Claimant based on the foregoing arguments.

In the determination of this suit, the question that calls for consideration is; whether the Claimant has established his claims by credible evidence?

The summary of the Claimant's grouse against the Defendant is that the Defendant deviated from the terms of the loan agreement between them and dealt dishonestly with the Claimant in respect of the loan transaction. In that connection, the Claimant alleged that contrary to the terms of their agreement in Exhibit PW1B, the Defendant illegally charged commitment and default fees on his account. That contrary to their agreement that the repayment of the principal loan sum would be sourced vide the yearly upfront payments from the Claimant's employer, the Defendant resorted to setting off the 2014 principal repayment against his monthly salary thereby denying him of his monthly salaries from January to August, 2014 when the upfront payment was eventually paid by his

employer. That the Defendant charged arbitrary interests on the loan without notifying him of increases on the interest rate.

The Claimant has thus sought a declaration of this Court that the foregoing alleged conducts and acts of the Defendant were dishonest, illegal, null and void, and constitute a breach of their Banker-Customer relationship, and further prayed the Court for consequential orders.

In **Ikuma v. Civil Service Commission, Benue state &ors (2012) LPELR-8621 (CA)**, the Court of Appeal, per Tsamiya, J.C.A. held that:

“Declaratory reliefs are not granted as a matter of course, but on credible evidence led. This is so even where the other party admits the claims.”

The law thus requires the Claimant to prove his claims by credible evidence before he can be entitled to the reliefs sought.

From the evidence led before this Court, with particular reference to the offer letter, Exhibit PW1B, it was established that the facility granted the Claimant by the Defendant was to be repaid within three years in three instalments. It was also established that the expected source of repayment of the principal sum would be from the yearly “upfront” payments made by the Claimant’s employer to her employees, including the Claimant, in January of every year, while interests on the facility would be serviced from the Claimant’s monthly salary.

The evidence also established that only management fee, and interest were to be charged per annum, while other charges were to be one-off-charges.

A critical examination of the Agreement (Offer), Exhibit PW1B, reveals that same did not provide for “commitment fee”. However, exhibit PW1A shows that the Defendant charged “Commitment fee” on the Claimant’s account three times: N13,125.00 on 27th April, 2012 (Inclusive of Vat); N8,750.33 (VAT inclusive) on 26th April, 2013, and N4,375.66 (VAT inclusive) on 26th April, 2014. These charges, being contrary to the terms of the Agreement between the parties, are therefore, in breach of same.

Exhibit PW1B corroborating the claim of the Claimant, which was duly admitted by the Defendant, shows that the Claimant’s employer paid the “upfront payment” for 2014 on 14th August, 2014 rather than in January, 2014. The Defendant however charged on the salary of the Defendant the repayment of the principal instalment for the year 2014 in January, 2014 thereby throwing the Claimant’s account in debit as well as imposing default charges. As a result, the Claimant’s salaries from January – August 2014 went into servicing of the loan contrary to the agreement.

From the terms of the agreement as contained in Exhibit PW1B, I am of the considered view that the non-payment of the “upfront payment” by the Claimant’s employer in January, 2014, did not constitute a default on the part of the Claimant. It would have constituted a default if the said payment was made by the Claimant’s employer and the Claimant diverted it to other uses rather than using same to service his loan in line with the agreement. Accordingly, the Defendant was not entitled to impose a default charge on the Claimant let alone resort to channelling the Claimant’s monthly salaries to the repayment at the principal instalment without any agreement.

Assuming, without conceding however, that the Claimant's employer's failure to make the "upfront payment" in January, 2014 constituted a default on the part of the Claimant, the Agreement Exhibit PW1B only permits the Defendant to charge a default fee of 1% flat per month until the date of repayment.

Nowhere did Exhibit PW1B permit or empower the Defendant to resort to the Claimant's monthly salary for the repayment of the principal instalments.

The Claimant also claimed by evidence that the Defendant charged arbitrary interests on the loan.

The Claimant in relief 5 (c)(d) claimed that N346,761.64 was illegally charged as default alert and another N53,789.96, from 5/12/14 and 12/4/15 respectively. In proof Claimant tendered PW1A –(Statement of Account) and PW2A audit report. The Claimant failed to point out in Exh PW1A and PW2A where the default interest was charged. The Court was only able to discover that relief 5(a) and (b) in respect of N8,750.33 and N4,375.66 reflected on Statement of Account Exh PW1A. It is obvious that the Claimant failed to point out in the Exh PW1A and PW2A where the defaults payments were made. Therefore, I consider this as dumping of document on the Court.

It is also an established fact that the Defendant was eventually compelled by the Regulator, the CBN to refund excess charges to the Claimant where upon the Defendant refunded the sum of N6,940.64 to the Claimant's account on the 29th day of August, 2014. Reference to Exh PW1D and PW1G being communications and complaints of Claimant to Central Bank of Nigeria of the Defendants fraudulent withdrawals. Exh PW1F and PW1J are responses from Defendant to central Bank of

Nigeria admitting some excess charges made on Claimant's account and refunded.

For the Defendant to have charged arbitrary and excessive interest in the first place, constitutes a breach of the agreement, whether or not the increase in the interest rates were communicated to the Claimant or not.

From the foregoing therefore, and with particular reference to the Claimant's claim, it is my finding that the Claimant by credible evidence, has established that Defendant acted dishonestly in its dealings with the Claimant. The Claimant also established the imposition of arbitrary charges by the Defendant and the fact that he was wrongly deprived of his monthly salaries for January – August, 2014 by the Defendant contrary to their agreement. Reference to paragraphs 16 and 19(b) of the statement of defence whereby Defendant admitted paragraphs 17 and 19(b) statement of claim of the Claimant.

On the Claimant's claim for the repayment of the sum of N413,677.59 by the Defendant, only the sum of N13,125.99 comprising the illegal charges of commitment fee of N8,750.33 charged on 26th April, 2013 and N4,375.66 charged on 26th April, 2014, were proved.

The alleged default charges of N346,761.64 from 5th December, 2014 and N53,789.96 from 12th April, 2015 were not distinctly proved as to the Claimant dumped the Exh PW1A and PW2A on the Court. See **Ucha&anor v. Elechi&ors (2012)13 NWLR (Pt.1317) 330 @369** *When a party decides to rely on documents to prove his case, there must be a link between the document and the specific area(s) of the petition ... it cannot be over emphasised that a party must relate each document to specific area of his case. Without such link no Court will act on such dumped documents."*

The Claimant having established a breach of the banker-customer relationship between the parties by the Defendant, the law imposes a liability on the Defendant for so doing. Thus in **Standard Trust Bank Limited v. Anumnu(2007)LPELR-7749(CA)**, the Court of Appeal, per Adekeye, J.C.A. held that;

“The legal relationship between a bank and a customer based on contract is that of creditor and debtor, or principal and agent. The creditor/principal being the customer and debtor/agent being the bank. The contractual relationship imposes a duty of care on the bank the breach of which will impose on the bank a liability for negligence.”

From the totality of the foregoing, it is the finding of this Court that the Claimant has partly proved his claims. Accordingly, judgment is entered for the Claimant in part as follows:

1. It is declared that the Defendant, in her dealing with the Claimant in respect of this transaction, acted dishonestly.
2. It is declared that the arbitrary charges made by the Defendant on the Claimant's account throughout the pendency of this transaction is illegal, null and void.
3. It is declared that denying the Claimant access to his salary/funds between January, 2014 and August, 2014, amounts to a breach of the Banker-Customer relationship by the Defendant.
4. The Defendant is ordered to pay to the Claimant the sum of N13,125.99 (Thirteen Thousand, One Hundred and Twenty-Five Naira, Ninety-Nine Kobo) being the proven total loan overpayment illegally charged against the Claimant's account.

5. The Defendant is ordered to pay to the Claimant, an interest rate of 16% per annum as per the agreement, on the following:
 - a. The sum of N8,750.33 from 26th April, 2013, when same was illegally charged as commitment fee to the Claimant's account.
 - b. The sum of N4,375.66 from 26th April, 2014 when same was illegally charged as commitment fee to the Claimant's account.

Relief 5(c) and (d) are not proved and are therefore refused and dismissed.

6. The sum of N2,000,000.00 (Two Million Naira) is ordered against the Defendant for breach Banker-Customer relationship and for failure to pay the Claimant on demand.
7. With respect to relief 7, the Claimant's claim for breach of right to dignity forms an ancillary claim to the main suit and is therefore grantable. Therefore the sum of N1,000,000.00 (One Million Naira) is ordered against the Defendant for breach of the Claimant's right to dignity of human person.
8. General damages in the sum of N2,000,000.00 (Two Million Naira).
9. Cost of this action access in the sum of N500,000.00 (Five Hundred Thousand Naira).

HON. JUSTICE A. O. OTALUKA
29/3/2022.

