

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON WEDNESDAY, 21<sup>ST</sup> DAY OF SEPTEMBER, 2022**  
**BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME**

**SUIT NO. FCT/HC/CV/1006/2022**

**BETWEEN**

**UTAZI CHINECHELUM**

**CLAIMANT**

**AND**

**GUARANTY TRUST BANK LTD.**

**DEFENDANT**

**JUDGMENT**

The Applicant commenced this action on 25/3/2022 via Originating Summons seeking determination of the following questions;

- 1. Whether having regard to Section 37 (3) of the Cyber Crime (Prohibition, Prevention etc.) Act 2015, the Defendant who received the Notice of Unauthorized debits of Claimant's Account was bound to reverse same within 72 Hours having failed to explain legal basis for the unauthorized debits.**
  
- 2. Whether the seven deductions/debits of Ten Thousand Two Hundred and Fifteen Naira (N10,215.00) amounting to Seventy-One Thousand, Five Hundred and Five Naira (N71,505.00) deducted by the Defendant from the Claimant's bank account with account No. 0226395835 on the 22nd September, 2021 between the hours of 02:21:5 to 04:52:1 of same day without her consent or authorization is illegal and entitles the Claimant to both reversal of the amount and damages.**

Claimant prayed the court for the following reliefs;

- 1. A DECLARATION that the Defendant, a commercial bank does not have the powers or rights to deduct or debit the funds in the accounts of a customer without his consent and authorization.**
- 2. A Declaration that by Section 37 (3) of the Cyber Crime (Prohibition, Prevention etc.) Act 2015, the Defendant, a Commercial bank who received the Notice of Unauthorized debits of Claimant's Account was bound to reverse same within 72 Hours having failed to explain legal basis for the unauthorized debits.**
- 3. A DECLARATION that the seven deductions/debits of Ten Thousand Two Hundred and Fifteen Naira (N10,215.00) amounting to Seventy-One Thousand, Five Hundred and Five Naira (N71,505.00) deducted by the Defendant from the Claimant's bank account with account No. 0226395835 on the 22nd September, 2021 between the hours of 02:21:5 to 04:52:1 of same day without her consent or authorization is illegal and reckless and gross breach of the Bank/Customer relationship between the Defendant and Claimant.**
- 4. AN ORDER of this Honourable Court directing the Defendant to refund the said total sum of Seventy-One Thousand, Five Hundred and Five Naira (N71,505.00) deducted by the Defendant from the Claimant's bank account with account No. 0226395835 on the 22nd September, 2021 between the hours of 02:21:5 to 04:52:1 of same day without her consent or authorization.**
- 5. An Order of this Honourable Court mandating the Defendant to pay the Claimant the sum of Ten Million Naira (N10,000,000.00) as general and exemplary damages for her illegal, reckless conduct of deducting or debiting the funds in the Claimants account without her consent.**

**6. AND FOR such further or other orders as the court may deem fit to make in the circumstances of this case.**

The claimant filed a 17-paragraph affidavit and Exhibits AA1-AA4, attached therewith; written address of Onyesom Ugochukwu Esq. In opposing the Originating Summons, Nnamdi Ahara, a Legal Practitioner in the Firm of Messrs Ojile, Ojile & Associates, Counsel to the Defendant, filed a counter affidavit of 7 paragraphs on 06/6/2022; attached therewith are Exhibits GT1A to D. Ojile Abah Nathaniel Esq. filed a written address with the counter affidavit. At the hearing of the Originating summons on 27/06/2022, the learned counsel for the parties adopted their respective processes.

In his 17-paragraph affidavit in support of his originating summons, the claimant deposed as follows;

1. That he is a customer of the Defendant with Account No. 0226395835 and which account he has operated over the years.
2. That on 22nd September, 2021 at about 2.00 am, he made a single payment of Ten Thousand Two Hundred and Fifteen Naira (N10,215.00) from the said account using the Remita Platform. After an OTP (One Time Pin) was sent to him and he entered it, the transaction was successful and went through.
3. He received a debit alert for the amount with a corresponding deduction of the funds in the account with the Defendant.
4. That the Defendant continued debiting and deducting his funds with the same amount seven other times after receiving the alert for the first payment without his consent or authorizations.
5. That the Defendant also sent him several electronic mails in respect of these unauthorized deductions and debits. A copy of the electronic mails sent to him via his Email was attached and marked as Exhibit AA1.
6. That to confirm that the Defendant actually made these several deductions on the funds in his account with her. He requested for his Statement of Account on

that day which they sent to him via email. A copy of his Statement of Account showing these deductions was attached as Exhibit AA2.

7. That the Defendant deducted and debited the sum of Seventy-One Thousand, Five Hundred and Five Naira (N71,505.00) deducted by the Defendant from his bank account with account No. 0226395835 on the 22nd September, 2021 between the hours of 02:21:5 to 04:52:1 of same day without his consent or authorization.
8. That he instructed his counsel, Mr. Igwe O. Ugochukwu to write a complaint and Demand letter to the Defendant. A copy of the letter dated the 19<sup>th</sup> November, 2021 was attached as Exhibit AA3.
9. That rather than refund the money, the Defendant replied and claimed to be investigating the matter. A copy of their letter dated December 1, 2021 was attached as Exhibit AA4
10. That the Defendant has neither refunded the money even up to the time of filing this suit.

In the defendant's counter affidavit to the claimant's originating summons they deposed as follows;

1. That the originating summons and Affidavit in Support are entirely false and misconceived.
2. That the Defendant denied the facts deposed to in paragraphs; 3,4,5,6,7,8, 9, 10, 11, 12, 13, 14, 15, 16, 17, of the Affidavit in support of the originating summons and put the Claimant to the strictest proof of same.
3. That Defendant never debited the Claimant's account seven (7) other times after the first successful debit as admitted in his paragraph 3 of the affidavit in support.

4. That the seven (7) other debit alerts the claimant claimed to have received are delayed debit alerts from previous transactions earlier carried out by the claimant but was only debited on the 22<sup>nd</sup> September, 2021 when the merchant (Remita) got value for the monies.
5. The alleged seven (7) other debit alerts on Exhibit AA2 attached to the Claimant's originating processes are all carrying different Remita Retrieval Reference (RRR) numbers from each other, signifying that they are for different transactions earlier carried out by the Claimant and not one transaction producing different Remita numbers.
6. The usual practice when payments are made via the Remita platform is that Remita usually and customarily sends receipts for the said payment made. Attached as Exhibit GT1A to 1D are samples of Remita receipts generated from Remita for similar payments (N10,215) and were all also made on same day (particular day 02/06|2021) like that of the Claimant's.
7. That the Claimant failed to clearly pin point or even exhibit the receipt generated from Remita for the first payment which he claimed was successful for the purpose of comparing the RRR number with subsequent ones on Exhibit AAZ.
8. That if the Claimant exhibited the Remita receipt for the "Successful" transaction, it will guide this Honourable Court in the just determination of this matter.
9. That the Defendant never debited the Claimant more than once. The other debit alerts he coincidentally got on the 22<sup>nd</sup> September, 2021, when he did the "successful" transaction were delay debits from earlier transactions he did.
10. That the Defendant denied paragraph 6 of the Claimant's supporting affidavit and stated that she never at any time at all sent the Claimant any electronic mail detailing the "unauthorized and deductions debits", that is

Exhibit AA1. The Defendant denied that Exhibit AA1 emanated from her to the Claimant via email.

11. That the Defendant also denied paragraph 7 of the Claimant's supporting affidavit and in response restates that she never unilaterally debited the Claimant's account. The Defendant however admitted availing the Claimant with his account statement when he requested for it.
12. The Defendant denied deducting the total sum N71,505.00 or any other sum or sums on the 22nd September, 2021 or any other date from the Claimant's account.
13. That contrary to the Claimant's assertions in his paragraphs 14 & 15, the Defendant replied the Claimant's solicitor's letter and in fact informed him on the state of his letter. Also, that the Defendant does not have a refund to make to the Claimant as no money was unilaterally and unlawfully removed from his account by the Defendant.

In the applicant's written address, Onyeka Ugochukwu Igwe Esq. submitted one issue for determination, to wit:

**"whether the Claimant based on the facts and evidence has established her case of illegal and unauthorized deduction against the Defendant and therefore entitled to the reliefs she seeks from this Honourable Court."**

Ojile Abah Nathaniel Esq. distilled two issues for determination in the Defendant's written address. These are:

**"Issue 1: Whether in the circumstance of this case, the claimant has proven his case as required of him by law.**

**Issue 2: Whether this suit presently constituted, particularly considering paragraphs 8-12 of the Claimant's counter affidavit,**

**is not grossly incompetent thus robbing this Honourable Court of the jurisdiction to precede over same”**

From the affidavit evidence of the parties and the submissions of the learned counsel, the Court adopts the issue formulated by the applicant’s counsel as the issue for determination in this action, which is:

**“Whether the Claimant based on the facts and evidence has established her case of illegal and unauthorized deduction against the Defendant and therefore entitled to the reliefs she seeks from this Honourable Court. ”**

**SUBMISSIONS OF LEARNED COUNSEL FOR THE CLAIMANT:**

Claimant Counsel relied on the case of **NWOSU V ZENITH BANK PLC (2015) NWLR (1464) 314 at 319 ratio 5** and **WEMA BANK PLC V. OSILARU (2008) 10 NWLR (Pt. 1094) 150 at 15 ratio 3**, The customer's monies in the hands of the banker are not in the custody or under the control of the customer. Such monies remain the property in the custody and control of the banker, and payable to the customer when a demand is made. This is so because, if anything happens to the money thereafter e.g., theft of the money, it is the banker and not the customer that bears the loss...'

Counsel to the Claimant submitted that it is not in dispute that the monies in the Claimant's account is under the control of the Defendant and the latter has no right to remove same without authorization by the Claimant. Section 37 (3) of the Cyber Crime (Prohibition, Prevention Etc.) Act 2015 (Cyber Crime Act) provides:

***'Any financial institution that makes an unauthorized debit on a customer's account shall upon written notification by the customer, provide clear legal authorization for such debit to the customer or reverse such debit within 72 hours...'***

The Defendant breached both the Claimant's right under the banker-customer relationship and under the Cyber Crime Act when Defendant debited Claimant's account unauthorized and failed to reverse same within 72 hours after being notified by the Claimant via a letter dated the 19th November, 2021.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE DEFENDANT:**

**On issue 1,** Counsel stated that the law is trite that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. Relying on Section 131 of the Evidence Act 2011. The burden of proof lies with whoever is alleging the existence of a fact and is never discharged until he proves it. Relying on **ARGUNGU & ANOR V. ARGUNGU & ORS (2008) LPELR-4275(CA), KALU v. FRN & ORS (2012) LPELR-9287(CA).**

Counsel submitted that the Claimant has failed to pinpoint the debit alert of the "successful" transaction he carried out and the subsequent seven (7) other debit alerts he asserted that the Defendant unlawfully debited. Furthermore, the purported Exhibit AA1 which the Claimant claimed to be the email extract from the Defendant to him on the other seven (7) debit alert, did not emanate from the Defendant. The said Exhibit AA1 is not only strange to the Defendant, it does not carry any identification of an email extract from the Defendant. It also did not carry the email address of the Defendant neither did it carry the email address of the Claimant. The said Exhibit also failed to show the time, date and name of the sender or the recipient of the mail as the case maybe. Counsel submitted that this Honourable court cannot rely on the said Exhibit AA1 as same is just a worthless piece of paper without any iota of truth or value in it.

The Court was urged to take judicial notice of the Defendant's Exhibit GT1A to 1D which are payment receipts generated from the Remita payment platform pursuant to Section 122 (4) of the Evidence. To show that Exhibit GT1A to 1D are Remita receipts generated for payments made on same day and for same amount (N10,215.00) just like the Claimant's but with different RRR numbers.

The submission of Counsel is that the seven (7) other debit alerts he claimed to have gotten after the initial "successful one" was same, then the RRR should have been the



same with the subsequent seven (7), as Remita whose receipt generating process is automated wouldn't have generated seven (7) different RRR for a particular transaction. Counsel submitted that it can only be inferred from the volume of Remita transactions carried out on the Claimant's statement of account that the claimant simply experienced a case of delayed debits for transactions he had earlier authorized and initiated. As such, he was never debited seven (7) other times for a single transaction. Court was urged to resolve the issue in favour of the Defendant as Claimant has failed to place any positive, cogent and direct evidence before the court to support his bogus assertions.

### **On Issue 2:**

That this Honourable Court has been robbed of its jurisdiction to hear and determine this suit as same was not initiated by the **due process and procedure of the law**, relying on the case of **MADUKOLU V. NKEMDILIM (1962) 1 ALL N.L.R. 587**. Looking at **paragraphs 8 to 12** of the Claimant's affidavit in support of his originating summons. It is a wrong and fatal procedure of the law to depose in an affidavit what the law said should be produced by a certificate of compliance according to **section 84(4)** of the **Evidence Act**. Counsel submitted that law is sacrosanct and is meant to be obeyed strictly. Relying on **Dariye vs FRN (2010) LPELR 4022 (CA)**. Court was urged to discountenance Claimants prayers as paragraphs 8-12 of the affidavit in support of the originating process is not only strange but a gross violation of Section 84 (4) of the Evidence Act.

### **DECISION OF THE COURT**

Before I proceed to determine this suit, Counsel to the Claimant Igwe Ugochukwu at adoption stage, relying on **Order 17 Rule 16 of the High court of the FCT Civil Procedure Rules 2018(FCT Rules)** raised the point that the Defendants were served with the originating processes on 20/4/2022 and they were to file their response within 21 days from the time they were served according to the rules of the court. The law is trite that any process filed out of time without leave should be treated as if it is not in

existence relying on the case of **EMERALD ENERGY LTD V SIGNET ADVISORS LTD 2021 8 NWLR PART 1779 @ PAGE 579 RATIO 27**. The court was urged to discountenance the counter affidavit as if it never existed. The counsel to the Defendant P.O Uleyo urged court to discountenance the application as the Claimant Counsel has waived his right having moved his application and the rules of court allow for extension of time if the court decides they are out of time.

This court acknowledges that **Order 17 rule 6** provides for filing within 21 days of receipt of the originating processes, a counter affidavit in opposition. However, according to **Order 5 Rule 2 of the FCT Rules**, this court can set aside any irregularity in the course of the proceedings upon an application by a party.

It is important to point out that **Form 3 of the General Form of Originating Summons** provides that the Defendant shall within 42 days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application of the Claimant...

Looking at the originating summons before me, there is no date stated which is at variance with the requirements of the rules of this court. He who comes to equity must come with clean hands **JACK V. A.G & COMMISSIONER FOR JUSTICE, RIVERS STATE & ORS (2013) LPELR-22867(CA) (Pp. 32 paras. A-A)**. The Defendant has no way of knowing when to come before this court and I so hold. The counter affidavit is properly before me.

Counsel to the Defendant raised a preliminary objection in his Issue 2 to his address in support of his counter affidavit.

**“Whether this suit presently constituted, particularly considering paragraphs 8-12 of the Claimant's counter affidavit, is not grossly incompetent thus robbing this Honourable Court of the jurisdiction to precede over same”**

There are conditions which must be satisfied before this court can exercise jurisdiction.

In the recent decision of **PEOPLES DEMOCRATIC PARTY v. CHIEF NDUKA EDEDE & ANOR (2022) LPELR-57480(CA) (Pp. 28-29, paras. E-B)**, court held;

**"I also agree with the learned counsel, that going by the parameters set by Madukolu vs. Nkemdilim (1962) SCNLR 341, and followed in Salati vs. Shehu (1986) INWLR (pt. 15) 198 @ 218, that a Court of law can only have and properly exercise its jurisdiction to hear and to determine a case before it where it is satisfied that: (i.) The proper parties are before the Court. (ii.) The Court's properly constituted as to its membership and qualification. (iii.) Where the subject matter of the case is within the jurisdiction and there are no features in the case which prevent the court from exercising jurisdiction. iv. Where the case comes before the Court initiated by due process of the law, and upon fulfillment of any condition precedent to the assumption of jurisdiction."**

The grouse of Defendant counsel is that the suit was not initiated by due process and procedure of law as paragraphs 8 to 12 of the Claimant's affidavit in support of his originating summons has robbed the court of jurisdiction to entertain the suit. As the said paragraphs are not what was contemplated by **section 84(4)** of the **evidence act** which requires a certificate of compliance rather than an affidavit deposition.

Paragraphs 8 to 12 are reproduced below;

In the case of **Brila Energy LTD V FRN (2018) LPLER-43926 Pp 62-64, paras E-B**, wherein it was held that oral evidence is acceptable as an alternative to a certificate of authentication. **"Where such certificate is not produced, it has been held that oral evidence of a person familiar with the operation of the computer can be given of its reliability and functionality and that such a person need not be a computer expert. This condition was satisfied by the testimony of PW17 on oath when he explained the process of how he scanned the emails forwarding the report to him from a Saybolt Concremat Brazil, printed them in color and sent to EFCC."**

This court will not sacrifice justice at the altar of technicality. This court will not do technical justice. The grouse of Defendant counsel is that a certificate of authentication was not filed but there is the affidavit in support of the originating summons which reveals the process of printing the exhibits from the computer this will suffice as the affidavit is on oath. If you can say it on oath it complies with **section 84(4) of evidence act**. I refuse the issue 2 as being vexatious and I so hold.

This suit borders on banker-customer relationship strictosensu, the duty of a banker to its customer.

In the case of **NWOSU V ZENITH BANK PLC 2015, 9 NWLR, PART 1464 P. 333-334 PARAS. H-C, Orji-Abadua JCA** stated thus;

**“The true position of the law on banker and customer relationship were as enunciated in Balogun v. National Bank Nig. Ltd. (supra); Agbonmagbe v. CFAO (1966) 1 SCNLR 367; FBN Plc v. Associated Motors Co. Ltd. (1998) 10 NWLR (Pt. 570) 441 and Agbanelo v. Union Bank of Nig. Plc (2000) 7 NWLR (Pt. 666) 534.**

**It is well established that bankers of course owe their customers duties; to receive money, cheques and other withdrawal authorities properly drawn by the customer during banking hours at the branch where the account is kept or elsewhere as agreed, to maintain secrecy concerning the customer’s account and other affairs, to give reasonable notice to a customer before closing his account, to pay agreed interest on deposit and to ensure that the customer’s money is safe, to avoid wrongful dishonor of its customer’s cheque, to render statements or account to the customer periodically or upon request, to exercise proper care and skill in carrying out the business he has agreed to transact for his customer. See the case of Ekeorele v. Union Bank of Nig. Plc (2000) 2 CLAR P. 229 at 242-243, para. H-A, per Moni Fatiade J.C.A.”**

In **UBA PLC V. VERTEX AGRO LTD. (2020) 17 NWLR PART 1754 P. 500 PARA. F;**

**"In light of the foregoing, I uphold the decision of the trial court that the appellant was negligent in the maintenance of the respondent's current account with it. It clearly breached its duty of care to the respondent to ensure that the respondent's monies in its custody and control were safe and secure with it. It negligently allowed the unauthorized withdrawal of the respondent's money in its custody. The appellant failed to rebut the case established by the respondent.**

In **P. 516-517 PARAs. H-D, Agim JCA (as he then was)** stated;

**"By virtue of S.37(3) of the Cybercrimes (Prohibition Prevention) Act 2015, the appellant was bound to provide clear legal authorization debits or reverse the unauthorized debits within 72 hours after it was informed by the Managing Director of the respondent on 21-10-2016 or it received the formal letter from the respondent on 24-10-2016 complaining about the unauthorized debits of 21-10-2016.**

**The exact text of S.37(3) of the Cybercrimes (Prohibition Prevention) Act 2015 reads thusly-**

**"A financial institution that makes unauthorized debit on customers account shall, upon written notification by the customer, provide clear legal authorization for such debit to the customer or reverse such debit within 72 hours and any financial institution that fails to reverse such debit within 72 hours, commits an offence and is liable on conviction and restitution of the debit and a fine of N5,000,000.00."**

**The appellant did not provide any clear authorization of the debits within 72 hours of receipt of letter from the respondent on 24-10-2016 complaining about the unauthorized debits. It was bound to reverse the debits within the same 72 hours."**

I have taken time to bring to the fore the duty of the banker to its customers under the law.

It is trite that the Banker has no right to move the monies in the customer's account without their consent/authorization. See **UBA PLC V VERTEX AGRO LTD (2020) 17NWLR (PT 1754) 467 AT 473-474 RATIO 3.**

**"By virtue of S. 37(3) of the Cybercrimes (Prohibition Prevention) Act 2015, the appellant was bound to provide clear legal authorization for the unauthorized debits and reverse the unauthorized debits within 72 hours after it was informed by the Managing Director of the respondent on 21-10-2016 or it received the formal letter from the respondent on 24-10-2016 complaining about the unauthorized debits 21-10-2016."**

From the case law cited and the enabling law quoted, the duty of the Bank upon written notification by the customer of the unauthorized debit, was to provide the clear legal authorization for the debit or reverse such debit within 72 hours. The question this court is saddled to determine is whether the bank followed the procedure.

The case of the claimant is that seven deductions/debits of Ten Thousand, Two Hundred and Fifteen Naira (N10,215.00) amounting to Seventy-One Thousand, Five Hundred and Five Naira (N71,505.00), deducted by the Defendant from the Claimant's bank account with account No. 0226395835 on the 22nd September, 2021 between the hours of 02:21:5 to 04:52:1 of same day without her consent or authorization is illegal and entitles the Claimant to both reversal of the amount and damages.

Paragraphs 3, 4, 5 and 13 of the Originating Summons goes to reveal the case of the Claimant, along with the statement of Account of the Claimant as well as letter of demand and response from the Defendant Exhibits AA1, AA2, AA3 and AA4.

The case of the Defendant is that the debits were from previous remita transactions and the notifications were just sent to the Claimant on the 22<sup>nd</sup> of September, 2021. Paragraphs 4 (d), (e) and (f):

- The Defendant emphatically states that she never debited the Claimant's account seven (7) other times after the first successful debit as admitted in his paragraph 3 of the affidavit in support.

- That the seven (7) other debit alerts the claimant claimed to have received are delayed debit alerts from previous transactions earlier carried out by him but was only debited on the 22<sup>nd</sup> September, 2021 when the merchant (remita) got value for the monies.
- The alleged seven (7) other debit alerts on Exhibit AA2 attached to the Claimant's originating processes are all carrying different Remita Retrieval Reference (RRR) numbers from each other, signifying that they are for different transactions earlier carried out by the Claimant and not one transaction producing different RRR numbers.

The Appellate court in **FAILA V. USMAN & ORS (2019) LPELR-48389(CA) (Pp. 10 paras. D)** On whom lies the burden of proof in civil cases stated that **"By Section 133 of the Evidence Act 2011, in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings."**

In **MOGBO V. ONWUKWE (Pp. 12 paras. A)** on meaning of the phrase "burden of proof", **"Burden of proof has two meanings; first is the burden of proof as a matter of law and the pleadings which is usually referred to as the legal burden or the burden of establishing a case. The second is the burden of adducing evidence, usually described as evidential burden. While the burden of proof in the first case is always static, burden of proof in the second case shifts according to the worth of evidence adduced; See ODUKWE V. OGUNBIYI (1998) 8 NWLR (PT. 561) 339."**

In **OKOYE & ORS V. NWANKWO (2014) LPELR-23172(SC) (Pp. 45 paras. A)** the Appellate court relying on Black's Law dictionary defined "shifting the burden of proof" as:

**"Transferring it (i.e. burden of proof) from one party to the other, or from one side of the case to the other, when he upon whom it rested**

**originally has made out a PRIMA FACIE case or defence by evidence, of such a character that it then becomes incompetent upon the other to rebut it by contradictory or defensive evidence."(See: H. C. Black's Law Dictionary, 5th ed. P. 1234)."**

The Claimant has alleged that the Defendant made unauthorized debits from his account and failed to reverse same according to section 37 of the Cybercrime Act. The burden has shifted to the Defendant to disprove this assertion. The duty of the Defendant at this stage is to present cogent evidence to disprove this assertion. Now, the Defendant has relied on **Exhibit GT1A – 1D** in a bid to explain to this court that the transactions were made on previous days by the claimant and he only got the notifications on the 22<sup>nd</sup> September 2021 when the merchant remita got value for the monies and they were delayed debit alerts. It is interesting to note that the exhibits relied on by the defendant do not relate to this case but are samples of what remita receipts look like. This is ludicrous as this evidence does not touch on the case at hand and does not answer the crucial question before this court and I so hold.

The Defendant has failed to lead credible evidence in support of their assertion. Claimant having submitted documents which showed the transactions of the day in question and the recurrent deductions which she claimed she did not make, the evidential burden shifted to the Defendant to explain the basis for those deductions, the why, the when and the how the deductions were made backed by documentary evidence. Defendant only tendered **exhibits GT1A-GT1D** which do not concern this suit in any way and does not explain the delayed debit transactions. This court cannot speculate as to the reason for the delayed debit or proof of same which is what defendant counsel is expecting this court to do.

In **ABUBAKAR MAI-KIRI v. ALH. ABDULKADIR YAHAYA (2018) LPELR-46595(CA)(Pp. 26-28, paras. D-A)** the Court held;

**"Truly, the settled position of the law as expressed in several decisions is that speculation is not in the realm of the function of a Court of law neither is it the duty of the Court to search or hunt for explanation for inconsistencies in a party's case. There is however a world of difference**



**between speculation and findings of fact deduced from proved or admitted facts or the application of the principles of law to such ascertained facts. A finding is said to be speculative when it is not based on facts or knowledge of its details but on guesses or conjectures and not when it is based on or derivable from the evidence on record. Whereas speculation is a mere variant of imaginative guess which, even when it appears plausible should never be allowed by a Court of law to fill any hiatus in the evidence before it, an inference which is drawing of reasonable deductions from facts available before the Court (IVIENAGBOR V OSATO BAZUAYE & ANOR (1999) 6 SC (PT. 1) 149 per Uwaifo JSC), and the application of legal principles to ascertained facts from the evidence on record which are part of the functions of the judge, does not amount to speculation nor can the judge be accused of offering an explanation in applying the law to a given set of evidence. Therefore, the finding of the learned trial judge based on the nature of the inconsistencies in relation to the material fact in issue, that the inconsistencies were only minor discrepancies, does not amount to speculation or offering an explanation in aid of a party's case. The said finding which was based on the evidence on record and the application of the law to the evidence, cannot wear the toga of speculation as strenuously but erroneously argued by the learned Appellant's Counsel."**

It is clear that the Defendant had to either reverse the transaction or show the basis for the unauthorized transaction. From the Exhibits relied on by the Claimant Exhibit AA4 the Defendant claimed to be investigating the matter but made no further step till this matter was filed in this court on 25/3/2022. The Defendant has not successfully explained the reason for the delayed debits and having a duty thrust upon it under the law to reverse the unauthorized sum I enter judgment in favour of the claimant and against the defendant.

On the prayer of the claimant for N10,000,000 for general and exemplary damages for breach of contract I refuse same, relying on the case of **First Inland Bank V Craft 2000 (2011) LPLELR 4167** wherein the court of appeal held; " the Plaintiff now

Respondent asked for N50m as general and exemplary damages for breach of contract." The learned trial judge awarded the damages based on the claim by the Plaintiff. The award is wrong in law because general and exemplary damages can be awarded to a party for tortious liability and not for breach of contract. I rather award sum of N2,000,000 for general damages.

I grant the reliefs claimed in part as follows;

- 1. A Declaration is hereby made that the Defendant, a commercial bank does not have the powers or rights to deduct or debit the funds in the accounts of a customer without his consent and authorization.**
- 2. A Declaration is hereby made that by Section 37 (3) of the Cyber Crime (Prohibition, Prevention etc.) Act 2015, the Defendant, a Commercial bank who received the Notice of Unauthorized debits of Claimant's Account was bound to reverse same within 72 Hours having failed to explain legal basis for the unauthorized debits.**
- 3. A Declaration that the seven deductions/debits of Ten Thousand Two Hundred and Fifteen Naira (N10,215.00) amounting to Seventy-One Thousand, Five Hundred and Five Naira (N71,505.00) deducted by the Defendant from the Claimant's bank account with account No. 0226395835 on the 22nd September, 2021 between the hours of 02:21:5 to 04:52:1 of same day without her consent or authorization is illegal and reckless and gross breach of the Bank/Customer relationship between the Defendant and Claimant.**
- 4. An Order is hereby made directing the Defendant to refund the said total sum of Seventy-One Thousand, Five Hundred and Five Naira (N71,505.00) deducted by the Defendant from the Claimant's bank account with account No. 0226395835 on the 22nd September, 2021 between the hours of 02:21:5 to 04:52:1 of same day without her consent or authorization.**

5. An Order of this Honourable Court mandating the Defendant to pay the Claimant the sum of Ten Million Naira (N10,000,000.00) as general and exemplary damages for her illegal, reckless conduct of deducting or debiting the funds in the Claimants account without her consent is refused.
6. An Order is hereby made mandating the Defendant to pay the Claimant the sum of Two million Naira only (N2,000,000) as general damages.

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**HON. JUSTICE NJIDEKA KENECHUKWU  
NWOSU-IHEME  
[JUDGE]**

**Appearance of Counsel:**

1. Claimant absent and unrepresented.
2. Defendant absent and unrepresented.