

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

4TH DAY OF APRIL, 2023

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

SUIT NO. FCT/HC/CV/713/2017

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

MR. ROTIMI OLUGBENGA **CLAIMANT**
(Trading under the name and style
of ROTIMI OLU & CO.)

AND

FIRST BANK OF NIGERIA PLC **DEFENDANTS**

JUDGMENT

The Claimant's Writ of Summons and Statement of Claim is dated and filed on the 25/01/2017 but amended vide an Amended Writ of Summons and Statement of Claim dated and filed on the 23rd of May, 2018.

The Claimant claims as follows:

- (1) A declaration that the Defendant's act of revealing and issuing the Claimant's Statement of Account to a

third party without its authorization or Order of Court is a breach of contract between Claimant and Defendant and therefore wrongful.

- (2) ₦10 Million as general damages.
- (3) ₦50 Million as special damages.
- (4) 25% interest per annum from the 31st December 2015 until judgment and thereafter 10% per annum from the date of judgment until the judgment debt is finally liquidated.

The Writ of Summons, Statement of Claim and all other processes were served on the Defendant. The Defendant filed and served its Defence, Counterclaim and all other accompanying processes. The Claimant's Reply to Statement of Defence and Defence to Counterclaim is also dated 23/05/2018.

The Claimant opened his case and gave evidence for himself. He is Olugbenga Rotimi. He is the senior partner in Rotimi Olu & Co., Estate Surveyors and Valuers. He remembers deposing to a Witness Statement on Oath on the 23/05/2018. He adopted same as his oral evidence.

He deposed that he has a registered business name under the Companies and Allied Matters Act with its office at Suite A4, Block A, Plot 2105 Herbert Macaulay Way, Wuse District, Zone 6, Abuja and carries on business of estate surveying and valuation.

That he is a customer of the Defendant and maintains an account with the Defendant at Area 3, Garki, Abuja with Account No. 3065632290.

That the work of Claimant depends on financial capacity before a property owner will choose it as manager or valuer for any of their big properties.

That Claimant chose Defendant as its banker on trust as a banker of repute who could maintain high level of financial confidentiality.

That Claimant observed that its prospective clients with huge financial properties usually come to its office and quote exactly the amount of its money saved in its

account with the Defendant, which often times resulted in the client refusing to trust him with their properties suggesting that Claimant lacks the financial capacity to manage their big properties.

That Claimant consequently wrote a Letter of Complaint dated 31/12/2015 to the Defendant about this unethical conduct. That in spite of the above, the Defendant through its Ogba branch in Lagos issued its Statement of Account to a third party on the 5/01/2016 disclosing his financial standing without authorization or a Court Order.

That a client having properties worth ₦2 Billion abruptly pulled out as a result of this leaked Statement of Account by the Defendant. The action of the Defendant has caused the Claimant to lose an expected profit in terms of commission to the tune of ₦100 Million.

The Claimant swore to another Witness Statement on Oath attached to its Reply to Defendant's Statement of Defence and Defence to Counterclaim. He generally denied the Statement of Defence. The additional

Statement is full of arguments and legal conclusions rather than facts.

The Claimant tendered the following Exhibits A - A3.

- (1) Claimant's Professional Certificate.
- (2) Letter from Rotimi Olu & Co. to Branch Manager of Defendant dated 31/12/2015.
- (3) Copy of Bank Statement of Witness.
- (4) Copy of letter from AFO Global Properties dated 10/01/2016.

Under Cross-Examination, he answered that he is a signatory to the account. That he is the only signatory. That the last entry in Exhibit A2 Statement of Account is Statement charges. That it is for the payment of this bank Statement. The above is the case of the Claimant.

The Defendant opened its defence and called a witness, Oladipupo Olaniyan in its Defence and Counterclaim. He adopted his written Deposition on Oath deposed on the 21/03/2018. He said he is the Relationship Manager in the Defendant's retail banking group.

That the Defendant has been maintaining a very high professional standard of service delivery to its customers. That Claimant wrote a letter of complaint to her but states that the Defendant/Counterclaimant neither acted unethically nor unprofessionally in dealing with all its customers' accounts including Claimant's account.

When they received the letter, Defendant investigated the alleged unethical disclosure of lodgment in Claimant's account and found the Claimant's complaint to be unfounded. That Defendant engaged a Legal Practitioner to represent her for ₦5 Million only.

Under Cross-Examination, he answered that he is a Relationship Manager of the Defendant in Abuja and not in Lagos. That he never interacted with the Claimant as his Account Officer. That he had worked in the Defendant's Ogba Branch before as at 5/11/2016. That Defendant did not reply Exhibit A1.

To another question, he answered that they did not give their Statement of Account to third parties. He further answered that the report of the investigation should have been in writing.

The DW1 tendered a Receipt of ₦5 Million in the name of Defendant, First Bank of Nigeria - Exhibit B.

The above is the case of the Defendant.

The Defendant's Final Written Address dated 28/04/2022 but filed on 29/04/2022. Learned Counsel to the Defendant raised two (2) issues for determination:

(1) Whether the Claimant has successfully established his case against the Defendant to warrant the grant of the reliefs sought.

The second issue raised is: Whether the Defendant is entitled to the reliefs in the Counterclaim.

On the first issue, he argues that declaratory reliefs are not granted as a matter of course. That they are granted upon credible evidence.

That there is nothing in Exhibit A2 to show that it was issued to a third party. It was not acknowledged by anyone.

That Exhibit A3 does not make any positive claim. That to come across means as meet or find by chance. The maker of Exhibit A3 was not called as a witness. He never said document was issued to him.

The Claimant has failed to prove its case, general damages therefore cannot ensue.

That special damages of Defendant is based on an expected commission. That in Exhibit A3, parties are still negotiating. What was terminated was all pending meetings and negotiation.

The Claimant's Written Address is dated 20/09/2022. Learned Counsel to the Claimant adopted same and raised an issue for determination which is akin to the Defendant's two issues.

He argues that the Claimant's evidence is credible and uncontradicted. That DW1's evidence was impugned and discredited when he admitted that the relationship of banker/customer existed between Claimant and Defendant.

That the Defendant owed Claimant a duty of care. That Exhibits A, A1, A2 and A3 show injury/damage suffered by Claimant. That Claimant was not cross-examined.

The Defendant's claim for refund of legal fees paid is repugnant to public policy and absolutely improper. That Defendant abandoned the Counterclaim as it failed to lead evidence in proof thereof.

That damages cannot be awarded for costs incurred in an action to seek remedy for loss suffered by a party to a contract as a result of breach of contract by the other party to the contract.

I have also read and considered the Defendant's Counsel Reply to Claimant's Written Address. The issues for determination as raised by parties are:

- (1) Whether the Claimant has successfully established his case against the Defendant to entitle him to the grant of the reliefs sought.
- (2) Whether the Defendant has proved its Counterclaim.

On the first issue, I have reproduced the evidence of the only witness. The law is trite that in civil cases, the onus of proving an allegation is on the Claimant and does not shift until he has proved his claim on the preponderance of evidence and balance of probabilities.

IMAN vs. SHERIFF (2005) 4 NWLR (PT. 914) 80.

Sections 131, 132 and 133 of the Evidence Act.

The Claimant's case is simple. His allegation is that his prospective clients with huge financial backing usually come to his office and quote the exact amount standing

to his credit in his account with the Defendant against all banking standard which often times resulted in the client refusing to trust him with their properties.

He wrote a letter to Defendant complaining of its unethical attitude. That the Defendant through its Ogba Branch on 5/01/2016 issued its Statement of Account disclosing its financial standing without its authorization or Court Order to a third party.

That a big client negotiating with him in managing one of its properties worth ₦23 Million in Abuja cut off the deal citing the said Statement of Account he came across. That he lost expected profit.

The Claimant is the customer of the Defendant. The Claimant operates an account in the Defendant. It is a case of banker/customer relationship. The law is that the relationship of a bank with its customer is that of agent and principal as well as a debtor and a creditor.

A bank a fortiori, the Defendant has a mandatory duty to protect the funds of its customers. The Defendant also owes the Claimant a duty of care.

It is an established principle of law that a bank is under a legal obligation to keep its customers' affairs secret. A bank has a duty to exercise reasonable care and skill in carrying out banking business in relation to its customers.

The complaint of the Claimant is that his clients are often privy to the state of his account with the Defendant. That on 5/01/2016, Defendant branch issued its Statement of Account to a third party without authorisation or a Court Order. It is Exhibit A2. It is not stamped, signed and dated. It is a computer generated document. It failed to comply with Section 84 of the Evidence Act.

Furthermore, Exhibit A2 is an entry in a banker's book. The Claimant fails to comply with Section 90 (1) (iii) of the Evidence Act. The document has no credibility. There

is nothing to show on the face of the Statement of Account to suggest that it was issued at Ogba.

The Claimant, PW1 admitted under Cross-Examination that he is the only signatory to the account. He was charged for obtaining the said Exhibit A2. It is the last entry in the said Statement of Account.

The Claimant did not give evidence as to who the Exhibit A2 was issued to. Exhibit A2 is letter dated 10/01/2016 addressed to the Claimant. It is a photocopy. It is not acknowledged.

There is no evidence of the whereabouts of the original. The evidence of the sole witness is not cogent and credible. There is no evidence or scanty evidence to suggest that the Defendant issued the said Statement of Account.

The Claimant did not lead evidence to prove that the said Statement of Account was leaked to a third party by the

Defendant. The said third party has remained a mirage or ghostly as he or she was not named.

In the circumstance, it is my view and I so hold that the Claimant did not prove that his Statement of Account was revealed to a third party. No general damages can therefore ensue. The Claimant did not specifically plead and prove the special damages claimed.

Reliefs 3 and 4 also fail.

In totality, the Claimant failed to prove his case against the Defendant on the balance of probability and preponderance of evidence so as to entitle him to judgment. The suit fails for lack of merit and it is dismissed.

The Defendant filed a Counterclaim and claimed four reliefs. The first, second and 3rd reliefs are declaratory. I have read the reliefs. With due respect, they make no sense to me. They are conclusions the Court ordinary will reach at the end of the trial when judgment is to be entered.

In respect of relief 5, which is cost of the suit, it is not akin to cost of legal or professional fees. It is guarded by the Rules of Court.

Exhibit B is a photocopy. There is no evidence of the whereabouts of the original copy. No foundation was laid for its admissibility. I therefore expunge same as it is inadmissible. Even if it is Bill of Charges, it was not issued and served.

By the Rules of Court, this is a case where payment of cost is not necessary. See Order 56 (3) of the Rules of Court. It is similarly my view and I so hold that the Counterclaim is frivolous.

The Claim and Counterclaim fail for lack of merit. They are both dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
04/04/2023

Parties absent.

Victor Emenike, Esq. holding the brief of Prisca
Ozoilesike, Esq. for the Defendant.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
04/04/2023