IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO, ABUJA

ON TUESDAY, THE02nd DAY OF MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA

JUDGE

SUIT NO.: FCT/HC/CV/1332/2021

BETWEEN:

KUNDERA MICHEAL MUNKAILU — **CLAIMANT**

AND

1. **STERLING BANK PLC**
2. **ADO ABDULKAREEM**
3. **TAUHEED YAHAYA**
4. **GLORIA**

— **DEFENDANTS**

JUDGMENT

The Claimant filed this suit against the Defendants *vide*a Writ of Summons, dated and filed on the 29th of June 2021.The claims of the Claimant against the Defendants are:

1. *Immediate payment of the sum of ₦30,000,000.00 {Thirty Million Naira Only} to the Claimant being the principal sum invested by the Claimant with the 1st Defendant on auto roll over.*
2. *Interest at the rate of 20% per annum on the principal sum from December 2019 until Judgement is entered.*

3. *Interest at the rate of 20% on the Judgement sum.*

4. *Cost of litigation at ₦1,500,000.00.*

Other supporting documents that were attached to the writ of summons are, the Claimant's Witness Statement on Oath, Pre-Action Counselling Certificate, List of Witnesses, and four documentary exhibits.

On the 19th of January 2022, the Court granted the Claimant's motion for substituted service of the originating processes on the 2nd, 3rd and 4thDefendants. On the 17th of February 2022, the Counsel to the Claimant informed this Honorable Court that service was effected on the 2nd of February 2022. After the service of the Claimant's originating processes on the Defendants, the 1stDefendant filed its Statement of Defense on the 15th of November 2021.

At trial, the Claimant gave evidence as PW1 on the 10th of May 2022. He adopted his Witness Statement on Oath which was filed on the 29th of June 2021 and tendered, in the course of the hearing the following documents:-

1. The confirmation of investment by the 1stDefendant dated 1st of July 2019.
2. Letter of complaint written by the Claimant to the 1stDefendant dated 4th December 2019.
3. Letter captioned complaint of ₦30,000,000.00 investment through the Regional Manager (Ado-Abdul Kareem) dated 16th December 2019, written by the 1stDefendant to the Claimant.
4. Letter of request for tracking account number written by the Claimant to the 1stDefendant dated 17th January 2020.

In his evidence the PW1, stated that he opened an account with the 1st Defendant sometime in June 2019. That the account was opened at the Gwarimpa branch with the sum of ₦30,000,000.00 (Thirty Million Naira only). The 1st Defendant through the 2nd, 3rd and 4th Defendants informed PW1 that the investment of the ₦30,000,000.00 (Thirty Million Naira) would yield 15% interest *per annum* and that the investment was on "auto rollover". PW1 testified that he received interest on the ₦30,000,000.00 (Thirty Million Naira) investment with the Defendants through bank alerts for the month of July, August, September, October and November 2019. Thereafter, PW1 did not receive any notice of payment of interest for the month of December 2019 and no explanation was offered by the Defendants.

PW1 further stated that it was when he complained in writing to the 1st Defendant about the non-payment of interest for the month of December 2019 that the 1st Defendant informed PW1 that his investment was between him and the 2nd Defendant, and that the 2nd Defendant was acting in private capacity. PW1 also stated during trial that he did not request the 1st Defendant to transfer his ₦30,000,000.00(Thirty Million Naira) to the 2nd Defendant even though he got a call from someone who asked if he had an investment and if he needed roll over. PW1 replied to the person that his money was already on rollover. Prior to this, PW1 and the Defendants had maintained a good customer/banker relationship. It was the case of the Claimant that the statement from the 1st Defendant had adversely affected his health as he entirely depended on his investment for his upkeep as a retiree.

During cross-examination, PW1 stated that he was a director before his retirement from the Ministry of Communications and that he wasn't a director presently in any energy distribution company or any company at

all. He further stated that he recalled the day he received the phone call which was on the 20th of June 2019. PW1 also stated that he received the amount of ₦332,876.00 (Three Hundred and Thirty-Two Thousand, Eight Hundred and Seventy-Six Naira) in the month of July to October. The witness also stated that he did not write any letter to the bank which was dated 28th of June 2019, and 4th of December 2019.

Counsel to the Claimant re-examined PW1. In the course of re-examination, he testified that he had no idea who wrote **Exhibits B1-B2**, which were exhibits attached to the Statement of Defense.

On the 7th of July 2022, the 1st Defendant opened its defense. Its witness, one Atari Adagdzu, was sworn in and he proceeded to give his evidence. He identified himself as the investigating officer in the internal audit department of Sterling Bank Plc. He adopted his Witness Statement on Oath on the 15th of November, 2021 as his oral evidence in the case.

In his Witness Statement on Oath, the witness confirmed some of the facts deposed to by the Claimant in his own Witness Statement on Oath but went ahead to assert that on the 19th of May 2019, the Claimant instructed the 1stDefendant to book the funds in his account as term deposit at 10% interest *per annum* in accordance with the 1stDefendant's terms and conditions. He stated that the Claimant was issued a letter of investment dated the 8th of June 2019. In accordance to the letter of investments, the Claimant was paid the sum of ₦126,493.15 (One Hundred and Twenty-Six Thousand, Four Hundred and Ninety-Three Naira, Fifteen Kobo) being the prorated interest on the invested sum on the 28th day of June 2019 of which payment was made *via* the 1stDefendant's official channel.

The 1st Defendant's witness further stated that, by his letter dated 28th day of June 2019, the Claimant requested for the liquidation of his term deposit with the 1st Defendant and the Claimant by the same correspondence requested that the fund which was in his term deposit be transferred to the personal current account of one Ado Abdul Kareem, who is the 2nd Defendant in this proceedings. That notwithstanding the expressed intention of the Claimant to liquidate his investment and to transfer his investment to the 2nd Defendant in his personal capacity, the witness personally called the Claimant through his listed telephone number to enquire about the deposit. He added that this was done in order to safeguard the fund of the Claimant.

It was also testified by the witness of the 1st Defendant that in the course of the telephone conversation, the Claimant referred the witness of the 1st Defendant to his written instruction to liquidate the funds to the personal account of the 2nd Defendant. The 1st Defendant did not inform the Claimant that his ₦30,000,000.00 (Thirty Million Naira) would yield any interest above 10% *per annum* as that would have been contrary to relevant regulations and applicable legislation. The 1st Defendant did not pay any interest on the sum of ₦30,000,000.00 (Thirty Million Naira) or any other sum to the Claimant for the months of July, August, September, October or November 2019. The investment with the 1st Defendant having been liquidated on the 28th of June 2019.

It was averred by the witness that, any text message or email alert received by the claimant in respect of his account was routine official communication in respect of the transaction between him and third parties and that same was not in respect of any investment with the 1st defendant. It was further stated by the witness of the 1st defendant that, any interest received by the claimant in the months of July, august,

September, October and November 2019 was not paid by the 1st Defendant. It was further averred that the witness was aware that the 1st Defendant responded to the Claimant's complaint by informing him that the ₦30,000,000.00 (Thirty Million Naira) investment after his instruction to liquidate his initial investment with the 1st Defendant transaction was between the Claimant and Ado Abdul Kareem in the latter's personal capacity to which the 1st Defendant was not liable.

In support of its defense, the Defendant tendered through its witness the following documents:-

1. The Claimant's letter of instruction liquidating the investment dated 28th June 2019;
2. The Claimant's statement of account as at 22nd June 2019;
3. The 1st Defendant's letter of investment issued in favor of the Claimant dated June 8th 2019;
4. Certificate of compliance with the provisions of section 84(4) of the Evidence Act, 2011;
5. 1st Defendant's transcription of the recorded voice call between DW1 and the Claimant; and
6. Flash drive of the recorded voice callbetween the DW1 and the Claimant.

During cross-examination, the witness for the 1st Defendant confirmed thatthe Claimant's accounting officer as at 2019 was one Gloria Omoyele and that the Regional Manager of the bank as at 2019 was the 2nd Defendant, that is, Ado Abdul Kareem, and that Tauheed Yahaya who is the 3rd Defendant was the Business Manager in the Kado Conoil branch. He stated that these three were all the staff of the 1st Defendant. The witness further confirmed that the 2nd, 3rd and 4th Defendants were no longer with the bank. He averred that the Claimant had invested

₦30,000,000.00 (Thirty Million Naira Only) with the 1st Defendant. The witness further asserted that the instruction to liquidate the Claimant's funds was given on the 28th of June 2019 which is in respect of **Exhibit B1- B2**. The witness was then asked by the Claimant's Counsel if he knew Mrs Temilayo Adegoke, the Chief Legal Counsel of the 1st Defendant and Blessing Ugo, a senior associate of the 1st Defendant. The witness confirmed he knew these people and stated that it was the bank who replied to the Claimant's complaint which is **Exhibit C1**.

The witness also confirmed during cross-examination that it was on the 28th of June 2019 that the money was moved from the Claimant's account because the bank acted on the instruction of the Claimant, adding that the approval was given on the 1st of July 2019while the money was removed from the Claimant's account three days before the approval was given. The witness further confirmed that he made a personal call to the Claimant in August 2019 and that the call was made two months after the Claimant's money was moved. The witness also stated that the Claimant instructed the bank to move his ₦30,000,000.00 into the 2nd Defendant's account but the Claimant never indicated whether the account was either savings or current account. And finally, the witness confirmed that the Claimant did not fill any form for transfer of money which was to indicate if he wanted his funds transferred to the 2nd Defendant.

There was no re-examination of the witness.

The 2nd, 3rd and 4th Defendants did not file any Statement of Defence. They were neither in Court nor represented by Counsel. They also did not cross-examine the PW1 and the DW1.

Upon conclusion of evidence, the parties filed and exchanged their Final Written Address. On the 7th of February 2023, parties through their respective Counsel adopted their Final Written Addresses.

In the Final Written Address filed on behalf on the 1st Defendant, two main issues were formulated for this court to determine. These issues are:

1. *Whether the 1st Defendant has a legitimate duty to honor the instructions of the Claimant in the circumstance of this case?*
2. *Whether the Claimant is entitled to be granted Relief 4 not proved in this proceeding?*

On the first issue, learned Counsel to the 1st Defendant argued that the pedestal upon which the claims of the Claimant are anchored before this Honorable Court is his contended investment with the 1st Defendant. It was the case of the 1st Defendant that having regard to the evidence placed before this Court and the current state of law, the Claimant had failed to justify his claims. Counsel also argued that it was not in dispute that the Claimant and the 1st Defendant were on the same page on the relationship that existed between them which was the banker-customer relationship. He added that such relationship was a contractual one with its peculiarities of monetary and commercial transaction which involved the use of special documents. Counsel relied on the case of ***I.O.M. Nwoye & Sons co Ltd v CCB Plc (1993) 8 NWLR (Pt 310) 210 at 220***to support his submissions. It was further argued by learned Counsel that to determine the rights and obligations arising from the said relationship between the 1st Defendant and the Claimant, the law gave rise to several rights and obligations and one of these obligations was on the part of the banker not to pay out money in the account of the customer except with his instruction. The case of ***UBA Plc v.Wasiu***

(2017) 4 NWLR (Pt 1555) 318 at 327was relied on by the learned Counsel to support his arguments.

In his submissions, Counsel to the 1st Defendant further stated that the 1st Defendant had a duty to obey the lawful and legitimate instructions of the Claimant as its customer and that in this matter before this Court, the Claimant authorized the 1st Defendant to liquidate his investment with the Claimant's mandate with the bank. Thus, having regard to the instructions of the Claimant it became incumbent on the 1st Defendant to comply. It was further submitted by the Counsel that not complying with the Claimant's instructions to liquidate the money in his account would amount to a breach of contractual relationship between the parties. He also argued that it was the law that where a banker refused to pay a customer's cheque belonging to the customer, such an act of refusal amounted to a breach of contract. The case of ***Wema Bank Plc v.Osilaru (2008) 10 NWLR (Pt 1094) 150 at 171***was relied on by Counsel.

Counsel argued that, in applying the reasoning in the case cited to this instant matter before this Court, it was clear that the 1st Defendant held in hand an amount equivalent to that embedded in the letter of the Claimant and the instruction the Claimant gave to the 1st Defendant was clear and that there was a contractual duty on the 1st Defendant to obey the Claimant as this would amount to the 1st Defendant being liable to damages if the instructions of the Claimant were not obeyed. In support of this argument Counsel relied on the case of ***Yusuf v.Cooperative Bank Ltd (1994) 7 NWLR (Pt 359) 676 at 692***and the case of***STB Ltd v.Anumnu (2008) 14 NWLR (Pt 1106) 125 at 151***.It was submitted by Counsel that based on the evidence before this Court, the Claimant has clearly evinced an intention to liquidate its investment with the

1st Defendant which was clearly expressed from **Exhibit 1** which is the Claimant's authorized termination of his investment. The case of ***Northern Assurance Co. Ltd v.Wuraola (1969) LPELR-25562 page 10-11 paras F-A*** was relied on by Counsel to support his submissions.

Furthermore, learned Counsel to the 1st Defendant relied on the case of ***Agbareh & Anor v.Mimra &Ors (2008) LPELR-43211 SC*** to support the argument that the evidence placed before the Court spoke for itself adding that it was clear that there was no other inference that could be deduced from it as it was an expressive statement of intention of the Claimant to bring his investment to an end. He argued that the only course of action open to this Honorable Court was to determine the intention of the Claimant with regard to the exhibits before the Court by looking at the ordinary meaning of the words used by the Claimant in the exhibits. Counsel cited the cases of ***Ozomaro & Ors v.Ozomaro & Anor (2014) LPELR-2263 (CA), Uba v. Union Bank of Nigeria Plc (1995) 7 NWLR (PT 405) 397 at 409-410***.

Finally, learned Counsel relied on the cases of ***BCCI v.Stephen Ind. Ltd (1992), Progress Bank (Nig.) Ltd v.Ugonna (Nig.) Ltd (1996) 3 NWLR (Pt 435) 202, FBN Ltd v. AP Ltd (1996) 4 NWLR (Pt 443) 438, Access Bank Plc v. M.F.C.C.S. (2005) 3 NWLR (Pt 913) 460 at 476, Union Bank v.Nwoye (1990) 2 NWLR (Pt 130) 69 at 78, ACB Ltd v.Obmiami Brickstone Ltd (1990) 5 NWLR (Pt 149) 230,*** and ***Ukaegbu v.Nwololo (2009) 3 NWLR (Pt 1127) at 224*** to support his submissions on the fact that the 1st Defendant was not liable for its compliance with the instruction of its customer who had evinced clear intention to terminate its investment with the bank which he insisted was the duty of a banker in every circumstance. Counsel invited the Court to find that the witness in the Claimant's case lied in his testimony, and his evidence was

unreliable and not credible.He alsourged the Court to find that the 1st Defendant was not liable to the Claimant for carrying out his lawful instructions in the ordinary course of banker-customer relationship.

In arguing the second issue formulated, learned Counsel to the 1st Defendant relied on these cases ***Dibal v.Eguma (2016) LPELR-41236 CA, C.G.G (Nig.) Ltd v.Augustine &Ors (2010) LPELR-8592*** to support his submissions on fact that the Claimant was not entitled to be awarded litigation cost because he had failed to lead evidence in support of such relief. *In toto*, Counsel submitted that the Claimant was not entitled to any relief or damages claimed against the 1st Defendant as the action was frivolous and an abuse of court process and that same should be dismissed for the reasons canvassed in the 1st Defendant's arguments.

In his response to the 1st Defendant's Final Written Address filed on its behalf, learned Counsel to the Claimant filed his own Final Written Address on behalf of the Claimant. Four issues were formulated for this Honorable Court to determine. They are:-

1. *Whether there is a banker-customer relationship between the Claimant and the 1st Defendant?*
2. *Whether the 2nd,3rd and 4th Defendants were staff and employees of the 1st Defendant and thus its agents?*
3. *Whether the 1st Defendant is vicariously liable for the actions of the 2nd, 3rd and 4th defendants in this case?*
4. *Whether the Claimant is entitled to the reliefs sought?*

In his argument on issue one, learned Counsel for the Claimant cited this case to support his submissions: ***UBN PLC v. V.I.T.P.P. (2000) 12 NWLR (Pt 680) 99 at 110*.** Learned counsel argued that there was clear evidence before this Court showing a banker/customer relationship

between the Claimant and the 1st Defendant, and that both parties have agreed that the Claimant invested ₦30,000,000.00 (Thirty Million Naira) with the 1st Defendant in the Claimant's account, even though the 1st Defendant pleaded a different account number from that of the Claimant.

On the second issue, learned Counsel for the Claimant argued that the 2nd,3rd and 4th Defendants were staff and employees of the 1st Defendant and thus its agents. The 1st Defendant through its witness stated that the 2nd Defendant was the Regional Manager of the 1st Defendant as at 2019 while the 3rd Defendant was the Business Manager and the 4th Defendant was the Claimant's accounting officer and gave her full name as Gloria Omoyele. He maintained that this clearly meant they were agents of the 1st Defendant and acted in that capacity. Learned Counsel relied on the case of ***Ironbar v. C.R.B.R.D.A. (2004) 2 NWLR (Pt 857) 411***.

On the third issue formulated by the Counsel to the Claimant, he argued that the 1st Defendant was not diligent in its dealing with the Claimant because the Claimant denied making **Exhibit E1** dated 28th June 2019, which is a purported letter of liquidation and which was not signed and there was no word from the witness as to the whereabout of the original and what happened to the original. In other words, there is a difference between what was tendered as **Exhibit E1** and what was frontloaded. Counsel submitted that given the nature of the fiduciary relationship between the Claimant and the 1st Defendant, the 1st Defendant ought to have been more prudent and circumspect. He noted that being prudent did not include calling the 1st Defendant two months after his funds had been liquidated. Learned Counsel further argued that the phone call made to the Claimant by the witness of the 1st Defendant was meant to mock and probably ridicule the Claimant. Counsel urged this Honorable

Court to look at **Exhibit C1** to note that it was made on the 16th day of December 2019, almost six months after **Exhibit E1** was made and **Exhibit C1** was made sequel to **Exhibit B1-B2**, which is the complaint on the ₦30,000,000.00 (Thirty Million Naira) investment.

Counsel also submitted that, no effort was made by the 1stDefendant to confront the 2nd,3rd and 4thDefendants after the Claimant complained of his predicament. Especially the 2ndDefendant who the Claimant stated in **Exhibit B1-B2** that he, the 2ndDefendant, met the Claimant and asked him to lend him ₦10,000,000.00 (Ten Million Naira). He added that it was obvious that the 1stDefendant did not act on this information because, ostensibly, it was acting in cohort with the other Defendants. He submitted that the Court should hold the 1st Defendant vicariously liable for the action of the 2nd, 3rd and 4thDefendants because reasonable care and skill was not exercised towards the Claimant by the 1stDefendant. Learned Counsel relied on the case of ***Super Ceramics Manufacturers Ltd v H.E.P.Engineering Nig Ltd (2021)11 NWLR (Pt 1788) 407 at 427***in support of his argument on this third issue.

On the forth issue as to whether the Claimant was entitled to the reliefs sough, Counsel to the Claimant relied on **Section 131 and 132 of the Evidence Act, 2011**and the cases of ***Obasi Brothers Merchant Co. Ltd v.Merchant Bank of Africa Securities Ltd (2005) 21 NSCQR 275,284, Omega Bank v. OBC (2005) 21 NSCQR 771, Ukaegbu v.Nwololo (2009) 3 NWLR (PT 1127) 194 at 209, Saeby v Olaogun (1999) 10-12 SC 45 at 56, UBA Plc v.Vertex Agro Ltd (2020) 17 NWLR (PT 1754) 467, A.G Ferroro Company Ltd v.Henkel Chemical Nig Ltd (2011) ALL FWLR PT 587 647 at 660*** *and* ***Okeke v.Petmag Nig Ltd (2005) 4 NWLR (PT 915) 245 Ratio 3 at 250*** to urge this Honorable Court to enter judgement in favor of the Claimant and grant

the reliefs sought, because the Claimant had an investment of ₦30,000,000.00 (Thirty Million Naira) with the Defendant and the 1st Defendant had not explained satisfactorily through its evidence before this Court as to what happened to the investment. The Claimant denied ever making **Exhibit E1** which is the alleged letter of instruction to liquidate the investment and the **Exhibit E** is different from what was frontloaded and the 1st Defendant had failed in its duty to exercise reasonable care and skill in dealing with the Claimant who is its customer. He submitted finally that the 1st Defendant wasvicariously liable for its acts of the 2nd, 3rd and 4th Defendants who were its staff and employees.

In response to the Claimant's Final Written Address, the 1st Defendant filed its Reply on Points of Law. in the said Reply, the 1st Defendant stated that the cases cited by Counsel to the Claimant were irrelevant and utterly inapplicable to the issue which borders on the 1st Defendant being vicariously liable for the alleged actions of the 2nd, 3rd and 4th Defendants. He added that the relationship between the 1st Defendant and the Claimant was founded on contract and not tort. He also argued that the 2nd Defendant was acting in his personal capacity when he accepted funds into his personal account which were outside the scope of his duties as an employee of the 1st Defendant. He insisted that the kernel of the case of the Claimant was the alleged fraud purportedly committed against him by the parties sued as the 2nd,3rd and 4th Defendants which was criminal in nature, adding that the liability for criminal action was personal and not vicarious.Therefore, the actions of the 2nd,3rd and 4th Defendants could not be transferred to the 1st Defendant.

Counsel for the 1st Defendant also replied the Claimant on the issue of whether **Exhibit E** as having no probative value because according to the Claimant, the exhibit did not bear any signature or mark. Counsel submitted that the argument of the Claimant on **Exhibit E** was misplaced and ought to be discountenanced having regard to the fact that the exhibit before the court bore a thumbprint of the Claimant. The Court was urged by Counsel to find and hold that **Exhibit E** did not suffer from any defect. Finally counsel concluded by submitting that from the legal and factual arguments contained in the 1st Defendant's Final Written Address filed on the 8th of December 2022, and the foregoing submissions on point of law only, the Claimant was not entitled to the reliefs or damages claimed against the 1st Defendant as the action was frivolous and an abuse of court process. Counsel urged the Court to dismiss the matter for these reasons that was canvassed by the 1st Defendant.

Above are the cases of the parties before me.After considering the issues which the parties have formulated in their respective Final Written Addresses, I have formulated this issue to guide the Court in determiningthe dispute between the parties.

> ***"Whether the Claimant has not made out a case of negligence against the Defendants and therefore entitled to the reliefs claimed?"***

It must be stated at the outset that a banker-customer relationship is contractual in nature. In every contract, the basic constituent elements are offer, acceptance, intention to enter a legal relationship and consideration. Under every contract, the parties are required to perform defined obligations to each other and enjoy benefits that accrue from being in that relationship. In other words, every contract comes with

rights and obligations. See ***Akinola v. Lafarge Africa Plc (2022) 12 NWLR (Pt. 1844) 379 S.C. at 400 – 401, paras G – A***. To underscore that contractual nature of a banker-customer relationship, the Supreme Court in **Haston (Nig.) Ltd. v. A.C.B. Plc (2002) 12 NWLR (Pt. 782) 623 S.C. at 646, paras B – C** held that "***A banker/customer relationship is contractual in nature. It is that of debtor and creditor or principal and agent. Also, the banker owes its customer a duty of care.***" The Court highlighted the special nature of the banker-customer relationship in **Linton Ind. Trading Co. (Nig.) Ltd. v. C.B.N. (2015) 4 NWLR (Pt. 1448) 94 C.A. at 108, paras B – C** when it held that "***The relationship that exists between a banker and a customer is one founded on a banker and customer contract. It involves a specie of contract with special usages with particular reference to monetary or commercial transactions***." See also***I.O.M. Nwonye Sons Ltd. v. C.C.B. Plc (1993) 8 NWLR (Pt. 310) 210 C.A. at 220, paras C – D; G.T.B. v. Ekemezie (2016) 2 NWLR (Pt. 1497) 579 C.A. at 598 – 599, paras H – A; U.B.A. Plc v. Wasiu (2017) 4 NWLR (Pt. 1555) 318 C.A. at 337-338, paras. H-B; G.T.B. v. Ogboji (2019) 13 NWLR (Pt. 1688) 67 C.A. at 84 – 85, paras G – A***.

Because the relationship between a customer and his banker is simultaneously contractual and fiduciary in nature, the banker is obligated to exercise due duty of care in its management of the monies of the customer in its custody. Any action that derogates from this duty of care may ground a claim for breach of contract as well as negligence depending on the facts of the case.

Since a banker owes its customer a duty of care in the management of its funds as a result of the special nature of the banker/customer relationship, the tort of negligence is implicated in the breach of this

contract. Negligence has been defined in a plethora of judicial authorities. For instance, in ***Access Bank Plc v. Mann (2021) 13 NWLR (Pt. 1792) 160 CA at 177, paras E – F***, the Court of Appeal held that "***Negligence is a tort that deals with a breach of duty to take care. It is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation. It is a conduct which falls below the standard by law for the protection of others against unreasonable risk or harm***."This decision is an echo of the *locus classicus* on this subject. In the English *locus classicus* of ***Donoghue v. Stevenson (1932) AC 562 at 580***, the Privy Council of the House of Lords laid down the following principle which remarkably redefined the tort of negligence. Lord Atkins, speaking the mind of the House of Lord, postulated what is today known as the 'neighbor principle'. In what has become one of the most memorable dicta in judicial authorities, Lord Atkin stated that "***The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question***."This definition has been accepted and applied in a plethora of decisions emanating from this jurisdiction. See, for instance, ***Jwan v. Ecobank (Nig.) Plc (2021) 10 NWLR (Pt. 1785) 449 at 482 para D; DHL Int'l Nig. Ltd. v. Eze-Uzoamaka (2020) 16 NWLR (Pt. 1751) 445 491 – 492 paras G –***

C; Owoyele v. Mobil Prod. (Nig.) Unltd (2021) 5 NWLR (Pt. 1768) 70 at 88 paras D – H among other cases.

On what a Claimant must establish in an action for negligence, the Supreme Court held in ***British Airways v. Atoyebi (2014) 13 NWLR (Pt. 1424) 253 S.C. at 301, paras G – H*** that "***The essential elements to establish in an action in negligence are: (a) the existence of a duty to take care owed to the complainant by the appellant; (b) failure to attain that standard of care prescribed by the law; and (c) damage suffered by the complainant, which must be connected with the breach of duty to take care***." This principle has been the settled position of the law as pronounced in cases on negligence. See also ***Owoyele v. Mobil Prod. (Nig.) Unltd. (2021) 5 NWLR (Pt. 1768) 70 C.A. at 88, paras D – H; DHL Intl Nig. Ltd. v. Eze-Uzoamaka (2020) 16 NWLR (Pt. 1751) 445 491 – 492 paras G – C***.

The essential part of the Claimant's claim in this case is that the Defendants were negligent in handling his investment of ₦30,000,000.00 (Thirty Million Naira) as they did not exercise the requisite duty of care and skill in that regard. On the other hand, the 1st Defendant's contention is that the relationship between the Claimant and the 1st Defendant was a banker-customer relationship and, therefore, contractual in nature. Being so, the 1st Defendant believed that the Claimant could not hold it responsible for the fraudulent actions of the 2nd, 3rd and 4th Defendant, since criminal liability was personal and could not be transferred.

I have noted that it is the responsibility of the Claimant is to show his evidence to prove negligence. In accordance with this concept of the law, the Claimant pleaded and led evidence to the effect that:-

1. The Claimant invested the sum of ₦30,000,000.00 (Thirty Million Naira) with the 1st Defendant as an investment on auto rollover that would yield him a 15% interest *per annum*.
2. The Claimant had started receiving interest on the sum he invested with the 1st Defendant *via* alerts for the months of July, August, September, October, and November, 2019; but did not receive credit alert for December, 2019.
3. The Claimant complained to the 1st Defendant of the non-paymentof the interest on his investment for the month of December, 2019 but he was told by the 1st Defendant that the investment was between him and the 2nd Defendant in the 2nd Defendant's private capacity.
4. The 2nd, 3rd and 4th Defendants were staff of the 1st Defendant who assisted the Claimant during his investment.
5. The Claimant maintained that, he had a customer/banker relationship with the 1st Defendant when his fund with the 1st Defendant was mismanaged.

The Claimant, in furtherance of his oral evidence before the Court tendered the following documents in evidence:

1. The confirmation of investment by the 1st Defendant dated 1st of July 2019.
2. Letter of complaint written by the Claimant to the 1st Defendant dated 4th December 2019.
3. Letter captioned complaint of ₦30,000,000.00 investment through the Regional Manager (Ado-Abdul Kareem) dated 16th December 2019, written by the 1st Defendant to the Claimant.
4. Letter of request for tracking account number written by the Claimant to the 1st Defendant dated 17th January 2020.

These documents were admitted in evidence and marked as **Exhibits A1, B1-B2, C1 and D1** respectively.

In order to counter the case of the Claimant, the 1st Defendant asserted that the Claimant transacted with the 2nd Defendant in the 2nd Defendant's personal capacity and not in the latter's capacity as a member of staff of the 1st Defendant.

The crux of the above averments and the exhibits tendered and admitted as evidence in this Court on the 10th of May, 2022 is that the 1st Defendant did not exercise duty of care to the Claimant in respect of the funds of the Claimant with it. Which the claimantshows that there was negligence on the part of the defendants. In the Statement of Defense of the 1st Defendant, the allegation of negligence was strongly denied. I have already reproduced the defence of the 1st Defendant earlier in this Judgment. It is clear to this honorable court that what is at the bulls-eye of the defense of the 1st Defendant is that:-

1. The 1st Defendant is not liable to the Claimant as claimed having regard to the fact that it followed instructions of the Claimant to terminate the investment with the bank.

2. The Claimant was issued a letter of investment confirming his term deposit of ₦30,000,000.00 (Thirty Million Naira) and in accordance with the letter of the term of investment, the Claimant was paid a prorated interest on the invested sum and such payment was *via* the payment channels of the 1st Defendant.

3. It was the Claimant that instructed the 1st Defendant to transfer his funds to the 2nd Defendant.

The 1st Defendant also tendered a number of documents as exhibits in the course of the testimony of its witness, DW1. These documents are:-

1. The Claimant's letter of instruction liquidating the investment dated 28th June 2019;
2. The Claimant's statement of account as at 22nd June 2019;
3. The 1st Defendant's letter of investment issued in favor of the Claimant dated June 8th 2019;
4. Certificate of compliance with the provisions of section 84(4) of the Evidence Act, 2011;
5. 1st Defendant's transcription of the recorded voice call between DW1 and the Claimant; and
6. Flash drive of the recorded voice call between the DW1 and the Claimant.

The above documents were admitted in evidence on the 7th of July, 2022 and marked as **Exhibits E1, F1-F6, G1, H1-H2, I1-I2 and J1** respectively.

I have scrutinized these documents. I find that **Exhibit A**which is a certificate of investment of ₦30,000,000.00 (Thirty Million Naira) which was issued to the Claimant came with the official embossment of the 1st Defendant. The investment sum was stated to be ₦30,000,000.00 (Thirty Million Naira) at the interest rate of 15% per annum. This puts the gross interest at ₦369,863.01K (Three Hundred and Sixty-Nine Thousand, Eight Hundred and Sixty-Three Naira) and the net interest at ₦332,876.7K (Three Hundred and Thirty-Two Thousand, Eight Hundred and Seventy-Six Naira, Seven Kobo). The content of **Exhibit A** is different from Exhibit G1 which put the interest rate at 10%, the gross interest at ₦246,575.34K (Two Hundred and Forty-Six Thousand, Five Hundred and Seventy-Five Naira, Thirty-Four Kobo) and the net

investment at ₦221,917.81K (Two Hundred and Twenty-One Thousand, Nine Hundred and Seventeen Naira, Eighty-One Kobo). **Exhibit G1** is also on the official letterhead of the 1st Defendant. While the value date on **Exhibit A** is 01st July, 2019 with a maturity date of 31st July, 2019, the value date on **Exhibit G1** is 08th June, 2019 with maturity date of 08th of July, 2019.

Exhibit B1-B2 is the letterof complaint from the Claimant to the 1st Defendant wherein he complained of the non-payment of December, 2019 interest and the possibility that his investment might have been mismanaged. In **Exhibit C**, the 1st Defendant responded to the Claimant's letter. I find the following excerpt from **Exhibit C** intriguing:

> "*Our conclusion is that the ₦30,000,000.00 investment transaction was between you and Ado-Abdul Kareem in his private capacity. The bank is not a party to the said private arrangement*."

The above excerpt from **Exhibit C** is intriguing because the contents of **Exhibit A and Exhibit G1** negates this claim. **Exhibit A and Exhibit G1**are official documents of the 1st Defendant. The 1st Defendant has neither debunked nor challenged the authenticity of **Exhibit A**. It merely claimed that the Claimant entered into the investment evidenced by **Exhibit A** with the 2nd Defendant in the latter's personal capacity. Further to this, **Exhibit E** which is the application by the Claimant to the 1st Defendant for liquidation of his investment was dated the 28th of June, 2019 and approval for same issued on the 1st of July, 2019. Curiously, the investment was purportedly liquidated on the 28th of June, 2019 as can be seen from **Exhibit F1-F6**. Interestingly, the follow-up call from DW1 to the Claimant on his investment with the 1st Defendant was made in August, 2019. That was about two months after the investment of the

Claimant had been liquidated as the 1st Defendant claimed in its evidence. This call is before this Court as **Exhibits I1-I4 and J** which are the transcription of the voice call and the flash disk containing the recording of the call respectively. The call from DW1 to the Claimant, as recorded in **Exhibit J**, lasted for two minutes forty-two seconds. DW1 could be heard in the recording informing the Claimant that "*I am calling in regards of your deposit with us…*" and asking him "*I am calling to confirm when you would be rolling it over*." If the deposit had been liquidated in June, 2019 as the 1st Defendant claimed in its defence, what deposit was the DW1 referring to in August of that same year when that call was made, two months after the deposit had been purportedly liquidated? This inconsistency was emphasized during the cross-examination of DW1.

Finally, the Claimant demanded for tracking number in respect of his letter of complaint marked as **Exhibit B1-B2**. There is no response from the 1st Defendant to this letter – at least, none from the record of this Court and the evidence before me. What did the 1st Defendant fail to furnish the Claimant with a tracking number in respect of his complaint? Why did it fail to reply Exhibit B1-B2? The effect of failure to respond to an official correspondence is settled. In ***Thompecotan & Sons Nigeria Limited v. Jos South Local Government Council (2021) 4 NWLR (Pt. 1766) 277 C.A. at 289, paras A – B***, the Court held that "***The failure by a party to reply a business letter which by its contents requires a response amounts to an admission of what is contained therein***." Similarly, in ***Kabo Air Ltd. v. Mumi Bureau De Change Ltd. (2020) 4 NWLR (Pt. 1715) 488 C.A. at 506 paras G – H***, the Court held that "***The law allows an inference to be drawn that the failure or refusal of a person to reply to a demand letter amounts to admission of liability. However, it is not conclusive***."

The 1st Defendant has put the whole blame of the transaction of the investment sum of the Claimant on the Claimant and the 2nd Defendant in his private capacity. But the law as is clear from decided cases I have enumerated above and other plethora of decided cases that the relationship between the Claimant and the 1st Defendant as customer and banker is totally contractual. That a banker-customer relationship exists between the Claimant and the 1st Defendant is not in doubt. That fact was established in the course of hearing of this suit. Since a banker-customer relationship exists between the Claimant and the 1st Defendant, the 1st Defendant is obligated to exercise due duty of care in safeguarding the funds of the Claimant in its custody.The Claimant as a customer is a creditor in respect of the funds deposited with the 1st Defendant while the 1st Defendant is a debtor in respect of such funds.See the case of ***UBA v.Ajabule & Anor (2011) LPELR 8239 SC***. The Court was quite effulgent in the case of ***Utavie v. Capital Development Authority (2020) 14 NWLR (Pt. 1744) 368 C.A. at 390-391, paras. G-G*** where it held that

> "***A bank undertakes to receive money and to collect bills for its customer's account. The proceeds received are not to be held in trust for the customer but the banks borrow the proceeds and undertake to pay them. It promises to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be two or three days. It is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in***

exercising his written orders so as not to mislead the bank or facilitate forgery. A term of such a contract is that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept. This encapsulates a banking transaction between the bank and its customers. The essence of the transaction is the contractual relationship between the banker and the customer in which the banker receives the money as a loan from the customer and promise to honour any request for the refund of the loan, sometimes with interest. In some instances, the money is received as loan for a fixed period of time within which the loan cannot be refunded even on demand since the banker may use the money to invest it in interest yielding business so that the lender will also get back his money with interest. In the instant case, the trial court was wrong by holding that actual control of monies in the custody and control of a commercial banker lies in the hands of the depositor. Such monies belong to the banker from the moment of payment into the bank, whether the customer is a public officer or a private person."

Thus, it is trite law that when a customer makes a valid demand from the banker, from the amount standing to his credit, the banker has an obligation to pay. If a valid request by a customer is not met, the customer may bring an action against the banker for breach of contract. The 1st Defendant has advanced plausible arguments in paragraphs 16 –37 of its Final Written Address that the 1st Defendant merely complied with the instruction of the Claimant as evinced in **Exhibit E1**. Yet, as I have noted above, and as confirmed during the cross-examination of

DW1, the funds were liquidated before approval for same was granted. The 1st Defendant did not provide an explanation for this anomaly.**Exhibits I1-I4 and J** which is the telephone conversation between the DW1 and the Claimant wherein the DW1 urged the Claimant to roll over his investment with the 1st Defendant came about in August, 2019 – that is, two months after the purported liquidation of the said investment. The question which the 1st Defendant has not answered is what investment was its officer urging the Claimant to roll over if, as the 1st Defendant had contended, the Clamant liquidated his investment and moved his funds to the bank account of a third party since June, 2019? There is no doubt that, from the facts before me that the 1st Defendant breached the duty of care it owed the Claimant in respect of the management of the Claimant's funds with it.The unpleasant consequence of the breach of this duty of care is the damage which the Claimant suffered in the form of the loss of his investment and his ₦30,000,000.00 (Thirty Million Naira).

I have noted with fascination the 1st Defendant's contention that an action for negligence cannot lie in a contractual relationship. This line of argument can be found in paragraphs 4 and 7 of the 1st Defendant's Reply on Points of Law. This contention is at variance with the known position of the law on this subject. I have pointed out earlier that in a contract, each party has a duty to perform their obligations under the terms of the agreement. If a party fails to fulfill their obligations, they may be liable for breach of contract. However, if the breach was due to circumstances beyond their control, such as an act of God or an unforeseen event, they may not be liable.

In cases where the breach was caused by the negligence of the party, they can be held liable for damages resulting from the breach

notwithstanding that the breach occurred in a subsisting contract. Generally, as I have noted above, negligence is the failure to take reasonable care to avoid causing harm to others, and it can be imputed in cases of breach of contract. It is abecedarian that under Nigerian law, a Claimant seeking to prove negligence in a breach of contract case must establish that the Defendant owed a duty of care to the them, that the Defendant breached that duty of care, and that the breach caused the Claimant damages. Once these elements are established, the Claimant may be entitled to recover damages from the Defendant for their negligence.

In ***Chevron (Nig.) Ltd. v. Omoregha (2015) 16 NWLR (Pt. 1485) 336 at 350 para A – C***, the Court of Appeal per Saulawa, JCA (as he then was) explained that **"*The term 'negligence' denotes the failure to exercise the standard of care that a reasonably prudent person would normally have exercised in a similar situation. That is to say, any conduct falling below the legal standard established to protect others against unreasonable risk of harm, as against conduct that is intentionally, wantonly, or willfully disregardful of other's rights. Negligence in law, ranges from inadvertence that is hardly more than accidental to sinful disregard of the safety of others. Negligence usually includes culpable carelessness, also termed actionable negligence; ordinary negligence and simple negligence*."

In the case of ***Fidelity Bank Plc v. Osinuga (2019) 13 NWLR (Pt. 1687) 524***, the Supreme Court held that where a contract imposes a duty of care on a party, a breach of that duty may give rise to a claim in negligence as well as breach of contract. The court emphasized that a duty of care is imposed by law in circumstances where there is a special

relationship between the parties, and where the party owes a duty of care to avoid causing harm to the other party.

In another case, ***Visafone Communications Ltd. v. ICPC (2018) 11 NWLR (Pt. 1625) 1***, the Supreme Court held that where a party breaches a contract due to negligence, they may be liable for both breach of contract and negligence. The court emphasized that the burden of proof lies on the Claimant to show that the Defendant was negligent and that the breach of contract resulted from the negligence.

Similarly, in ***Global West Vessel Specialists Ltd v. Nigeria National Petroleum Corporation & Anor (2020) 9 NWLR (Pt. 1725) 1***the Supreme Court affirmed that a party can be held liable for both breach of contract and negligence where the breach was caused by a failure to take reasonable care. The court also held that the damages awarded must be compensatory and not punitive in nature. In ***Shell Petroleum Development Company of Nigeria Limited v. Mr. Sunday Nwabueze (2021) LPELR-54063(SC)***, the Supreme Court held that where a contract imposes a duty of care on a party, a breach of that duty may give rise to a claim in negligence as well as breach of contract. The court also emphasized that a duty of care is imposed by law in circumstances where there is a special relationship between the parties. Also, in ***Central Bank of Nigeria v. Adegbite (2022) LPELR-54220(SC)***, the Supreme Court held that where a party breaches a contract due to negligence, they may be liable for both breach of contract and negligence. The court also held that the burden of proof lies on the plaintiff to show that the defendant was negligent and that the breach of contract resulted from the negligence.

It is not in doubt that the argument of learned Counsel for the 1st Defendant was motivated by the urge to avoid liability for the actions of

its officers who are sued in this suit as the 2nd, 3rd, and 4th Defendants. His contention that the actions of the 2nd, 3rd and 4th Defendants were fraudulent and therefore fell outside the scope of vicarious liability, since criminal liability is personal and cannot be transferred to another person is evidence of the 1st Defendant's approach to this suit. If that is so, what is the position of the law on vicarious liability? In ***Super Ceramics Manufacturers Ltd. v. H.E.P. Engineering Nigeria Limited (2021) 11 NWLR (Pt. 1788) 407 S.C. at 426, paras. G-H; 430, paras. B-F; 433, paras. C-D***, the Court held that "***The legal concept of vicarious liability simply means the situation of one person taking the place of another in so far as liability is concerned. In other words, vicarious liability is indirect legal responsibility for the liability of an employer for the acts of his employee. The principle of vicarious liability is that a master is liable for any wrong even if it is a criminal offence or a tortuous act committed by his servant while acting in the course of his employment.***"

The Courts have laid down the guidelines on what a party who seeks to hold a person vicariously liable for the actions of its servant or agent must establish. First, on when the principle of vicarious liability may become applicable, it is settled that the agent of the principal, or the servant of the master, must have been acting within the bounds of their defined roles. In***G.T.B. v. Ekemezie (2016) 2 NWLR (Pt. 1497) 579 C.A. at 617, paras E – F***, the Court held that "***Where the relationship of master and servant exists, the master is liable for the torts of the servant, so long only as they are committed in course of the servant's employment. The nature of the tort is immaterial and the master is liable even where liability depends upon a specific state of mind and his own state of mind is***

innocent." See also the case of ***Gata v. Paulosa (Nig.) Ltd. (1998) 3 NWLR (Pt. 543) 574 C.A. at 580 – 581, paras G – A*** in this regard.

Second, on what a Claimant who seeks to hold another person vicariously liable must prove, the Courts have provided the answer in a plethora of authorities. For instance, in the case of **Conoil Plc v. Solomon (2017) 3 NWLR (Pt. 1551) 50 C.A. at 82, paras C – F**, the Court, citing with approval the case of ***Ifeanyi Chukwu (Osondu) Ltd. v. Soleh Boneh Ltd.(2000) 5 NWLR (Pt. 656) 322***, held that "***Where it is sought to make a master liable for the conduct of his servant, the questions to be established are whether the servant was liable and whether the employer must shoulder the servant's liability. Consequently, to succeed against the master, the plaintiff must prove three things, viz: (a) the liability of the wrongdoer; (b) that the wrongdoer is a servant of the master; and (c) that the wrongdoer acted in the course of his employment with the master.***"

The evidence before me points inexorably to the fact that the transaction, or, more appropriately, the mismanagement of the N30,000,000.00 (Thirty Million Naira) of the Claimant in the custody was executed in a manner that did grievous injury to the fiduciary relationship which the banker/customer relationship between the Claimant and the 1st Defendant exemplified. Further to this, the evidence before me founds not just a breach of the banker/customer contract between the Claimant and the 1st Defendant, but a case of negligence, because the 1st Defendant did not exercise the due duty of care required of an institution of its standing in its management of the funds of the Claimant. Because the 1st Defendant could not monitor efficiently the actions of its officers such as the 2nd, 3rd and 4th Defendant, the Claimant is beleaguered with the loss of his funds. the 1st Defendant cannot

therefore responsibility by blaming the Claimant for the damages the 1st Defendant's actions have occasioned him.

The 1st Defendant has invited this Court to determine whether the Claimant has furnished enough evidence to be entitled to the reliefs he seek in this suit. After a pensive reflection on the facts and evidence before me, I hasten to answer the question in the affirmative. It is my considered view therefore, and I so hold, that the Claimant has placed before this Honourable Court sufficient material evidence to be entitled to the reliefs he seeks in this suit.

Quickly, on the question of whether the Claimant is entitled to pre-judgment interest as sought in his Writ of Summons, I must restate the established general position of the law which is that a Claimant who seeks pre-judgment interest must specifically plead same and lead evidence in support of same before the Court can grant the relief sought. See***Petroleum (Special) Trust Fund v. Western Project Consortium Ltd & Ors (2007) 14 NWLR (Pt. 1055) 478 C.A. at 501, paras F – G; 503, paras C-D; Skymit Motors Ltd. v. U.B.A. Plc (2012) 10 NWLR (Pt. 1309) 491 C.A. at 518-519, paras H-A Sterling Bank Plc v. Falola (2015) 5 NWLR (Pt. 1453) 405 C.A. at 437, paras A – B;Rematon Service Ltd. v. NEM Ins. Plc (2020) 14 NWLR (Pt. 1744) 281 C.A. at 304-305, paras F-C.***

However, the Courts have noted that pre-judgment interest can be granted if it is shown that it is expressly agreed upon by the parties, or it forms part of the mercantile custom regulating the contractual relationship between the parties, or it is inevitable under a principle of equity. In ***Units Environmental Sciences Limited v. Revenue Mobilization Allocationand Fiscal Commission (2022) 10 NWLR (Pt.***

1837) 133 S.C. at Pp. 162, paras. B-F; 162-163,paras. G-B the ape Court held thus:-

> "***In purely commercial transactions, a party who holds on to the money of another for a long time without any justification and thus deprives that other for the use of such funds for the period, should be liable to pay compensation by way of interest. Even where interest is not claimed in the writ, the court can, in appropriate cases, award interest in the form of consequential order. Where interest is claimable or awardable in law or equity and the exact rate of interest is not proved by evidence, the court has the discretion to levy a minimal or nominal interest rate that meets the justice of the case, provided the discretion is exercised judicially and judiciously. In situations where interest cannot be claimed for or awarded, damages or any amount in that nature can be awarded as compensation for the loss of the use of money due and not paid as at when due in breach of a contract, which loss naturally flows from that breach and should be within the reasonable contemplation of the parties to the contract when it was made.***"

It went further to explain ***at page162, paras. F-G*** of the law report that

> ***"Where there is a breach of a contract to pay moneyas and when due under a contract that involvesa breach of a fiduciary duty, a court can exerciseits equitable jurisdiction to award interest on theamount due and payable, even in the absence of anexpress provision in***

the contract for the paymentof such interest as a consequence of the breach ofcontract."

The Supreme Court concluded on this subject ***at 171, paras. D-F*** that

"***A claim for pre-judgment interest may be made by a plaintiff as of right where it is either expressly provided for in or is contemplated by the agreement between the parties or under a mercantile custom, or under a principle of equity such as breach of fiduciary relationship.***"

The Claimant had an investment with the 1st Defendant wherein he invested his ₦30,000,000.00 (Thirty Million Naira Only) at the interest rate of 15% interest *per annum*. The careless actions of the Defendants in relation to the funds of the Claimant have deprived the Claimant of both the use of his principal sum and the agreed return on investment since December, 2019. I agree with the Counsel for the Claimant that the circumstances of this case is such that this Court can safely make an award of pre-judgment interest.

With regards to the contention of the 1st Defendant that the Claimant is not entitled to Relief Number 4 which relates to the cost of action, suffice it to state that the provisions of the Rules of this Court in this regard is very apposite. Order 56 Rule 1(3) of the Rules of this Court provides that

"***In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensated for his time and effort in coming to court. The court may take into account all the circumstances of the case.***"

Rule 6 of the same Order provides thus:-

> "***Subject to the provisions of any applicable law and these rules, the costsincidental to all proceedings in the high court, including the administration ofestates and trusts, shall be at the discretion of the judge, and he shall havepower to determine by whom and the costs to be paid.***"

In view of the foregoing, therefore, I find the suit of the Claimant meritorious. Judgment is therefore entered in favour of the Claimant on the following terms:-

1. **THAT the 1st Defendant is hereby ordered to pay to the Claimant immediately the sum of ₦30,000,000.00 (Thirty Million Naira Only)being funds of the Claimant in the custody of the 1st Defendant and which the Claimant invested on an auto rollover investment plan but which the 1st Defendant through its officers negligently mismanaged in utter disregard of the fiduciary relationship created by virtue of the banker/customer relationship between the Claimant and the 1st Defendant.**

2. **THAT a pre-judgment interest at the rate of 15% per annum is hereby placed on the principal sum of ₦30,000,000.00 (Thirty Million Naira) only from December 2019 until Judgment is entered. This interest rate is founded on Exhibit A being the interest rate the parties agreed upon and which was what the Claimant was earning on his investment until the Defendants tampered with his investment.**

3. **THAT the sum of ₦1,000,000.00 (One Million Naira Only) is hereby awarded in favour of the Claimant and against the Defendants jointly and severally as the cost of this action.**

4. **THAT a post-judgment interest at the rate of 10%per annum is hereby imposed on the entire Judgement sum from the date of Judgment until the entire Judgment sum is fully and completely liquidated.**

This is the Judgment of this Court delivered today, the 02nd day of May, 2023.

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
HON. JUSTICE A. H. MUSA
JUDGE
02/05/2023

APPEARANCES:
FOR THE CLAIMANT
Cosmas Okpara, Esq.
Ginika Erike (Mrs)

FOR THE 1ST DEFENDANT:
Olanrewaju T. Akinsola,Esq.
P. A. Adewuyi, Esq.
Sojinti Nyasore, Esq.
C. N. Ayo, Esq.