IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
DELIVERED ON THE 18TH SEPTEMBER, 2023

FCT/HC/CV/1498/2019

BETWEEN

EBGAKU JOHN KOTSO … … … CLAIMANT

AND

DIAMIND BANK PLC … … …DEFENDANT

JUDGEMENT

By a writ of summons and statement of claim issued on the 1st day of April, 2019 the claimant herein, states he operates three (3) accounts 0012781035, 0027429180 and 0012676999 with the defendant's branch in Mohammed Buhari way, Garki – Abuja; that he subscribed to the defendant's online banking service, with a maximum limit transaction of #500,000,00 (Five Hundred Thousand Naira) per day; that the maximum transaction limit placed on his accounts had been maintained and adhered to by the defendant; that he has never exceeded his limit per day.He testified that on a certain occasion he had attempted to transact beyond his limit on his accounts, but was barred from completing the transaction, because his request exceeded the authorized maximum limit of #500,000.00. He continued that on the 13th October, 2016 between the hours of 11:15am to 12:34pmthe three accounts were operated without his consent and authorization and cumulatively, the sum of #5,947,585.61 was withdrawn from his accounts. The claimant testified that he had the following as balance to his credit in the three accounts;#2,988, 555.88 in

0012781035; #2,876,575.88 in 0027429180 and #142,437.00 in 0012676999.He claims that on 13th of October 2016, he was debited severally by the defendants without his consent or authorization.

He testified further that, he neither applied through Automated Teller Machine, nor was hephysically present at the bank; that he also did not consent to the withdrawals of the sum of #5,945,585.61. (Five Million, Nine Hundred and Forty-Five thousand Five Hundred and Eighty-five Naira, Sixty-One Kobo) deposited with the defendant. He continued that upon receipt of the first debit alert on his mobile phone through his mobile line 08023248169 at 11.15am, he called his Account officer's mobile number 08034727965 instantly and requested her to block/stop any form of transfer from all his accounts domiciled with the defendant. That his Account Officer requested for his Accounts details which he there and then sent to her via text message (SMS) from his mobile line (08023248169) to her mobile line 08034727965; that upon putting a call across to his Account Officer, he was assured and at peace that the Defendant will secure his Accounts from any further fraudulent transactions.

He continued that the Defendant kept sending him alerts of fraudulent transactions on his Account Numbers: 0012781035, 0027429180 and 0012676999; that the message (SMS) alerts he received on his mobile phone in respect of all transactions, bear the names of persons who are all unknown to him, that he did not authorize or consent to the withdrawal of a single kobo from any of his three Accounts with the Defendant or any other bank; that upon his protest and insistence that his money must be refunded, his account officer sent in complaints Nos: DB-161013937343; DB-161013213825; DB-16103106869; that also, the Defendant reimbursed him with the sum of #938,240.00 (Nine Hundred and Thirty-Eight Thousand, Two Hundred and Forty Naira) only.

Testifying further, he stated that staff of the defendant confirmed to him that the monies had been lost to some fraudsters who beat the security system of the defendant; that after waiting with high expectations to be refunded the remaining sum of #5,009,345.61 for about seven (7) weeks after the refund of the initial sum of #938,240.00 (Nine Hundred and Thirty-Eight Thousand, Two Hundred and Forty Naira) only, he wrote a letter of complaint to the defendant.The defendant in its response to his letter of complaint, alleged that the fraudulent transaction on his accounts was as a result of his breach of the online Banking terms and conditions, which involved, disclosing his account confidential details to a third party. Testifying further, the claimant insist that his maximum transfer limit is #500,000.00 on his online banking service for each day, thus, it is unfathomable how a total sum of #5,947,585.61 (Five Million Nine Hundred and Forty-Seven Thousand Five Hundred and Eighty-Five Naira Sixty-One Kobo) within a space of an hour without any formal application and further authorization by the Claimant; that assuming but not conceding that an account holder becomes negligent with his account's confidential details and in the process, a third party had access to the account holder's account, any transaction by such third party ought not to exceed the maximum transaction limit per day as stipulated in the Banks Terms and Conditions associated with the Online Banking Services; that it is the responsibility of the Defendant as a bank to take measures in safe guarding the accounts of its customers from all forms of illegal and fraudulent activities and as such the defendant is liable for the fraudulent withdrawal from the Claimant's accounts.

The claimant avers that, he instructed his attorney, to write the Defendant, demanding reimbursement of the sums taken from his said Savings Accounts with the Defendant and that a reminder was again, written; that the defendant responded to his letters, that the reason given by the defendant is not satisfactory, tenable and not acceptable to him; that any negligence which truncates

the banking policy of a bank cannot be said to be the fault of the customer, but rather that of the liability of the bank and as such the defendant cannot deny liability of the fraudulent and unauthorized transfer of the sum of #5,947,585.61 (Five Million Nine Hundred and Forty-Seven Thousand Five Hundred and Eighty-Five Naira Sixty- One Kobo), from the Claimant's bank accounts domiciled with the Defendant.

The claimant called two other witnesses, a subpoenaed witness who testified as CW1, and an IT expert who testified as CW3. The three witnesses were thoroughly cross- examined.

The claimant claims against the defendants as follows;

1. A Declaration that the banker-customer relationship between the Claimant and the Defendant is founded on simple contract.

2. A Declaration that the Defendant as Claimant's Banker owed it a duty of care and a contractual obligation to the Claimant to secure all sums lodged by the Claimant in his Account Numbers;

0012781035, 0027429180 and 0012676999, all domiciled with the Defendant.

3. A Declaration that the Defendant's failure to secure the Claimant's sum of 5,947,585.61 (Five Million Nine Hundred and Forty-Seven Thousand Five Hundred and Eighty-Five Naira Sixty-One Kobo) lodged in the Claimant's Account Numbers: 0012781035, 0027429180 and 0012676999, all domiciled with the Defendant, amounts to breach of duty of care, and negligence.

4. An Order of this Honourable Court compelling the Defendant to pay the Claimant forthwith, by crediting his Account Numbers. 0012781035, 0027429180 and 0012676999 with the sum of N5,947,585.61 (Five Million Nine Hundred and

Forty-Seven Thousand Five Hundred and Eighty-Five Naira Sixty-One Kobo) being the total sum the Defendant allowed to be withdrawn from the Claimant's above referred Account Numbers domiciled with the Defendant, without the Claimant's authorization or consent and therefore against his wish.

5. Damages in the sum of #10,000,000.00 (Ten Million Naira) for breach of contract.

6. ANY further Order(s) this Honourable Court may deem fit to make in the circumstance.

On the 23/05/2022, the defence opened it case and called a single witness DW1. Ikechukwu Onyeachonam testified as DW1, he adopted his witness statement oath of24/9/2020. The defendant admits that the claimant is a customer operating three accounts numbers 0012781035; 0027429180 and 0012676999in the defendant's Garki branch.The defendant states that the claimant subscribed to the online banking service; that the claimant had an authorization by the defendant to a maximum limit transaction of #500,000.00 per day; that it was later increased by the claimant to a maximum limit transaction of #1,000,000.00 per day for local transfer (transfer in account or accounts within the same bank) and #6,000,000.00 (six Million Naira) per day for NIP transfers (transfers from Account or Accounts in one Bank to Account or Accounts in another bank). The defendant admits that withdrawals were made in the claimant's account on 13/10/2016 but denied, the withdrawals were made between the hours of 11:15am to 12:34pm. The defendant admits that, it sent complaints numbers DB-161013937343, DB-161013213825 & DB-161013106869, that the defendant confirmed the receipt of the claimant's letter of demand dated 8/12/2016 and the defendant's response dated 8/6/2017. The defendant stated that the unauthorized deductions were as a result of negligence on the part of the claimant as he had shared his personal banking

details with fraudsters. The defendant testified further that, it was able to salvage the sum of #739,000:00 from Diamond Bank and #380,000 from Fidelity Bank; that the monies were credited to the claimant's accounts with the defendant.

The defendant continued that the claimant subscribed to terms and condition to the extent that if there is any compromise on the part of the claimant, the defendant shall not be liable. The defendant maintained that the claimant increased his daily limits and reiterates the method and manner of banking transaction using online banking services. The defendant explained it action that upon receipt of the complaint, it traced the funds to Diamond Bank, First Bank, Guaranty Trust Bank, Fidelity Bank and Heritage Bank. The defendant credited the claimant's account with fund salvaged from other accounts and explained that the sum of #866,924.44 was credited to account number 0012781035 and the sum of #230,684.98 was credited to account number 0027429180. The defendant then avers that the total sum salvaged was #1,097,609.42 and credited same to the claimant's accounts.

After the close of parties' case, Onwucheckwa Onwucheckwa, Esq., filed on behalf of the defendant a written address on 5/8/2022.He raised three [3] issues for determination thus;

1. Whether the Claims of the Claimant as constituted is not at large, inchoate or wrong in law and as such not grantable.

2. Whether the Claimant has fulfilled the conditions, in an action in Negligence, to clearly particularize what constitutes the negligent act complained of and how it led to injury on the part of the Claimant.

3. Whether the Claimant has established his claims to entitle him to the Reliefs sought.

On the part of the claimant, Iorker T. Daniel, Esq., settled the final written address. It was filed on 03/02/2022. He also, raised three [3] issues for determination thus;

> 1. Whether there is a Banker - Customer relationship between the Claimant and the Defendant, which creates a contractual obligation and a duty of care on the Defendant to secure all sums lodged by the Claimant in his account numbers; 0012781035, 0027429180, and 0012676999, all domiciled with the Defendant.
>
> 2. Whether the Defendant's failure to secure the Claimant's sums of money deposited in his Accounts Numbers; 0012781035, 0027429180, and 0012676999, all domiciled with the Defendant amounts to breach of contractual obligation and duty of care.
>
> 3. Whether the Claimant is entitled to a refund of his money yet to be refunded by the Defendant being part of the total sum of #5,947,585.61 that was withdrawn from his three (3) bank accounts domiciled with the Defendant and which the Defendant did not secure but allowed to be withdrawn by persons not at all known to the Claimant without the Claimant's consent and authorization.

The defendant upon receipt of the claimant's final written address filed a reply on point of law dated and filed on the 21/03/2023.

Learned counsel to the parties, argued and adopted their final written address on 11/7/23 and the matter was adjourned for judgement.

After a careful review of the processes filed and evidence presented by the parties, it is my firm view, that the issues formulated on behalf of the parties, be reformulated in other to determine the real controversy between parties. In GREGORY OTSU & ANOR v. KEYSTONE BANK LIMITED (2021) LPELR-56136(CA) "It is a settled principle of law that a Court is entitled to reformulate

issue from issues formulated by a party or parties in order to give it precision and accentuate the real issue(s) in controversy between the parties. It assists in achieving a more judicious and proper determination of a matter. In other words, the purpose is to narrow the issue or issues in controversy in the interest of accuracy, clarity and brevity. See KALEJAIYE V. LPDC & ANOR (2019) LPELR-40735 (SC); ETIM V. AKPAN & ORS (2018) LPELR-44904 (SC); NYACO V. ZADING (2018) LPELR-44086 (CA)."

Bolden by the above decision, and upon a careful consideration of the evidence put forward by parties' vis a vis the issues so formulated by parties;I find it appropriate to nominatetwo issues for determination.

1. Whether there is a Banker - Customer relationship between the Claimant and the Defendant, which creates a contractual obligation and a duty of care on the Defendant to secure the money of the claimant domiciled with the Defendant;
2. Whether the claimant has established his claims to entitle him to the reliefs sought.

Issue one

Whether there is a Banker - Customer relationship between the Claimant and the Defendant, which creates a contractual obligation and a duty of care on the Defendant to secure the money of the claimant domiciled with the Defendant.

The defendant argued that the claimant's case is inchoate, I am unable to agree with the defendant, as it is within the court's discretion and power to determine what reliefs will be granted to the claimant upon the presentation of cogent and credible evidence. The court is not bound to award all the claims or reliefs of the claimant, except for the one established or admitted by the defendant. In OKOLIE V. OKOLIE (2020) LPELR-51411(CA) (Pp. 26 paras. A)the Court of Appeal per Aliyu, JCA

> "...It is a trite law that a Court is not bound to grant the exact claim of the plaintiff. Where circumstances of a case warrant it, the Court can and has the power to award less but never more than what the party claims. See Nwagu Vs. Fadipe (2012) LPELR-7966 (CA) and Lawal & Anor. Vs. Fadipe (2012) LPELR-7966 (CA)."

The claimant avers that he maintains account number 0012781035; 0027429180 and 0012676999 with the defendant. See paragraphs 3 and 4 of the statement of claim and these facts were admitted by the defendant as well, save for the fact that there no longer exist banker/customer relationship between parties. See paragraphs 4 of the defendant's statement of defence. The claimant in his reply stated that his accounts with the defendant is still active and operative with cash deposits and has not been closed or frozen, thus there still exists a banker/customer relationship between him and defendant. I must state that the issue in contention is not whether the defendant still operates his account with the defendant. What is in consideration is the relationship between parties as of 13/10/2016. I have taken a careful consideration of the pleadings and evidence before the court; it is clearly shown vide evidence and pleadings, that there exist a banker/customer relationship between parties as of 13/10/2016. See exhibit A; there is equally in evidence that the sum of #5,947,585.61 was transferred from the account of the claimant on the 13/10/2016 and monies were salvaged by the defendant from different banks and returned to the claimant's account with the defendant. The defendant confirmed that the claimant operates account 0012781035; 0027429180 and 0012676999 with it. See paragraph 3 of both statement of claim and statement of defence. Therefore, these facts need no further evidence by either party. Therefore, what is admitted need no further proof. See section 123 of Evidence Act; NDUKWE V. LPDC & ANOR (2007) LPELR-1978(SC) (Pp. 64 paras. C), SKYE BANK & ANOR V. AKINPELU (2010) LPELR-3073(SC) (Pp. 45 paras. F-F), AG RIVERS

STATE V. UDE & ORS (2006) LPELR-626(SC) (Pp. 31 paras. A-A) and VEEPEE INDUSTRIES LTD V. COCOA INDUSTRIES LTD (Pp. 31 paras. B-B).

Equally, it is not in contention that the defendant owes the claimant a fiduciary duty and duty of care to protect the funds in the claimant's said account. In GTB V. OYEWOLE & ANOR (2013) LPELR-22166(CA) (Pp. 10-11 paras. E) the Court of Appeal per Dongban-Mensem, JCA now PCA said:

> "By the state of pleadings of both parties, it is not disputed that 1st Respondent is an account holder with the Appellant which issued the 1st Respondent Account number 421/421752/110. This fact alone establishes a fiduciary relationship which thereby elicits a duty of care by the Appellant to the 1st Respondent. A breach of such a duty of care imposes a liability for negligence on the bank (The Appellant). (See Afribank Nig. Plc v. A. I. Investment Ltd (2002) 7 NWLR (Pt.765) 40, Agbanelo v. UBN Ltd (2000) 23 WRN 1, Ndoma-Egba v. A.C.B. (2005) 7 SC (Pt.111) 27." Per DONGBAN-MENSEM, J.C.A

Clearly, the defendant owes a duty of care to the claimant and the relationship being contractual, the defendant has a greater responsibility to ensure that it protects the interest of the claimant and where it fails in its duty, there are consequences. The bank must be alert to its duty, so as not to suffer for negligence. See MAINSTREET BANK LIMITED v. JUUMANWIN NIGERIA LIMITED (2013) LPELR-21855(CA)Where a bank owes its customer a duty of care the Bank has a duty to exercise reasonable care and skill in carrying out the business of its customer. See Agbanelo v. UBN (supra)." Per UZO IFEYINWA NDUKWE-ANYANWU, JCA (P. 30, paras. C-D)

Having found that there exist banker and customer relationship between parties,it is not in contention that the defendant owes the claimant a fiduciary duty and duty of care to protect the

funds in the claimant's said accounts. It is convenient to resolve issue one in favour of the claimant against the defendant.And I so hold.

ISSUE 2

Whether the claimant has established his claims to entitle him to the reliefs sought.

The settled pleadings and state of evidence is that the sum of #5,947,585.61 was transferred from the account of the claimant on the 13/10/2016 and monies salvaged by the defendant from different banks, were returned to the claimant's account with the defendant. Both parties stating different reasons. In the issue at hand, the onus is on the claimant to proof the negligence of the defendant and in order for him to succeed, he must prove that the defendant in the circumstance of this case, breached the duty and which breach has occasioned damages to him. These three conditions must coexist before the claimant can succeed. See AGBONMAGBE BANK LTD V CFAO (1966) LPELR-25282(SC).

The settled pleadings and state of evidence of the claimant is that the sum of #5,947,585.61 was moved from his accounts with the defendant to several other account in different banks, including the defendant's bank without hisconsent and authorization. The defendant did not deny the movement of the funds, but states that the claimant, having negligently disclosed his account details to a 3rd party, he breached the terms and conditions with regards to the defendant's online platform services. Now, the main question to be answered in this proceeding, is, who is/was responsible for the movement of the claimant's fund? Was the fund moved due to the negligence of the defendant or was it moved due to the carelessness of the claimant or the act of another party? Answers to these questions shall settle the issues and determine the case one way or the other.

The claimant in paragraph 28 of the statement of claim averred that he wrote the defendant to further contest the unauthorized and illegal withdrawals on his accounts domiciled with the defendant. See exhibit C1; that the defendant upon receipt, responded vide exhibit C2, explaining the reasons for the alleged fraudulent transactions on the claimant's account. The claimant in his reply and evidence states that he never breached any terms; that he never disclosed his confidential details to a third party, which could have occasioned the fraudulent transactions on his accounts. He states that his maximum transfer limit on each of his account is #500,000.00 on his online banking service per day; that it is unfathomable, how a total sum of #5,947,585.61 was transferred from his account within a space of an hour without any formal application or further authorization by the claimant. Exhibit C1 reads in part;

"On 13th of October, 2016 my following three accounts 0012781035; 0027429180 and 0012676999 were operated unauthorized having regrettably revealed my details by responding to an email message to stop deduction of N15,500."

By the above, it is not in doubt that, the first paragraph of exhibit C1 is an admission against the interest of the claimant, which is to the effect that the claimant disclosed his details to a 3rd party. He, therefore, shall be responsible for the consequences of his action. In KAMALU & ORS V. UMUNNA & ORS (1997) LPELR-1657(SC) (Pp. 27 paras. C)the Supreme Court, per BELGORE., J.S.C held thus:

> *"Where there are admissions by a party against his interest, such admissions will be admissible against the person [Ajide v. Kelani (1985) 3 NWLR (Pt.12) 248, 260; S.20(3)(a) Evidence Act]. This is not to say, however, that admission per se is conclusive proof of the entire matter in litigation, but it stands firmly on the subject of the admission against the person making it. Also, it must be viewed in relation to the entire evidence before the*

Court to know the weight to attach to it. [Ojiegbe & Ors. V. Okwaranyia & Ors (1962) 2 SCNLR 358. (1962) 1 All NLR 605; Nwankwo v. Nwankwo (1995) 5 NWLR (Pt.394) 153, 171; Seismograph Services (Nig) Ltd. v. Eyuafe (1976) 9-10 SC.135"

Going further, the claimant states in evidence, that his maximum transaction limit on his account transaction is #500,000 per day; that on a certain occasion he had attempted to transact beyond his limit, but was barred from completing the transaction, because his request exceeded the authorized maximum limit of #500,000.00. This assertion was not denied by the defendant; rather it averred in its statement of defence, that the claimant did a self-service increase from #500,000.00 to #1,000,000 for local transfer and #6,000,000 for NIP transfer; that this was done via the claimant's online Diamond mobile application after the claimant had disclosed his confidential online bank secret details. Under cross examination, the defendant's witness was asked thus;

Q: Read paragraph 5 witness statement on Oath- Do you have any document to show that the claimant indeed increased his maximum transaction as stated in paragraph 5 Witness Statement on oath;

A: On our mobile application, it is a self-service which a customer can use on her own to increase his/her limit, it is provided for on the platform;

Q: do you have anything to show that he made that increase;

A: No, but I don't work in the IT Dept.

At this stage, it is safe to say that the burden of proving that it was the defendant or a third party that increased the limit of the defendant from #500,000 to #1,000,000 or #6,000,000 as the case maybe rests on the defendant, sinceit is agreed that the daily limit of the claimant is #500,000.00 per day. It is settled in law, that where a party discharges the burden of proof placed on him and

the other party asserts the opposite, the evidential burden rest on the defendant who asserts that the claimant increased the daily transaction limit. In OKOYE & ORS V. NWANKWO (2014) LPELR-23172(SC) (Pp. 25-26 paras. F)the Supreme Court per PETER-ODILI, J.S.C held thus:

> "The burden of proof in civil cases has two distinct meanings, viz:
>
> (a) The first is the burden of proof as a matter of law and the pleadings, usually referred to as legal burden or the burden of establishing a case;
>
> (b) The second is the burden of proof in the sense of adducing evidence.
>
> While the legal burden of proof is always stable or static, the burden of which arises in the course of proceedings may shift from the plaintiff to the defendants and vice-versa as the case progresses. Federal Mortage Finance Ltd v. Ekpo (2004) 2 NWLR (Pt. 856) 100 at 130 per Olagunju, JCA; Balogun v. Labiran (1988) 3 NWLR (pt. 80) 66; Nwosu v Udeoja (1990) 1 NWLR (Pt. 125) 188; Elemo v. Omolode (1968) NMLR 359; Chigwu v. Baptist Convention (1968) 2 ALL NLR 294: Adegoke v. Adibi (1992) 5 NWLR (pt. 242) 410."

In ELEMA & ANOR V. AKENZUA (2000) LPELR-1112(SC) (Pp. 19-20 paras. D) the Supreme Court, per KATSINA-ALU, CJN RTD re-echoed the law thus:

> "The law in this regard is settled. In civil cases, while the burden of proof initially lies on a plaintiff, the proof or rebuttal of issues which arise in the course of proceedings may shift from the plaintiff to the defendant and vice-versa as the case progresses. This is also referred to as the evidential burden. This is good law and good sense. If a party calls evidence which

> reasonably satisfies the Court that the fact sought to be proved is established, the burden would shift on his adversary against whom judgment would be given if no more evidence were adduced. See Osawaru v. Ezeiruka (1978) LRN 307; (1978) 6-7 SC 130; Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410; Sections 137(1) and (2) Evidence Act Cap. 112 Laws of the Federation 1990."

I have labored to produce the above authorities to fix the burden on the defendant of proving self-service increase as pleaded by the defendant. The defendant admits in its paragraph 4 of the statement of defence as well as in evidence, that the claimant subscribed to the Diamond Bank online service for which he had an authorization by the defendant to a maximum limit transaction of #500,000 (Five Hundred Thousand Naira only) per day; that it was later increased by the claimant to a maximum limit transaction of #1,000,000.00 per day for local transfer and #6,000,000.00 per day for NIP transfers in one Bank to Account or accounts in another Bank.Now the question is, when was the daily limit of the claimant increased from #500,000 to #1,000,000.00 and #6,000,000.00 as averred by the defendant? The onus is on the defendant to produce the evidence of such increase by the claimant or any other third party. Sadly, the defendant failed to adduce any evidence in that regard. The mere ipsi dixit of the defendant, without giving credible evidence will not suffice. The defendant, here has the custody of the applications initiated by any of its customers including the claimant's either in the defendant's application or online banking, therefore, it is incumbent on the defendant to demonstrate with concrete evidence, its assertions in paragraphs19 to 24 of the defendant's witness statement on oath. It is unbelievable that the defendant would fail to produce the evidence of increase as recorded in its system, if, indeed it was the claimant or a third party that increased the claimant's limit to the amount stated by the

defendant. It is my finding that the defendant failed to adduce cogent evidence on the way and manner, the claimant or any other person increased the transaction limit on his accounts with the defendant to either #1,000,000 6,000,000 as alleged by the defendant's witness in paragraphs 27 & 28 of the witness statement on oath.

It is equally established in evidence that the defendant breached the duty of care by allowing withdrawals above the maximum limits of theclaimant. The breach of that duty is in evidence coupled with the admission of the defendant that they were able to salvage some money in Diamond Bank and Fidelity Bank. Now, both parties gave conflicting evidence with regards to the money returned to the claimant's account by the defendant. There is in evidence that prior to writing exhibit C1 to the defendant, the defendant had been able to recover some funds from some of the accounts the monies were transferred to. See exhibit A with account number 0012781035, it clearly shows that monies were refunded back into the account of the claimant on the 14th October, 2016. Just a day after the deductions were made! See also exhibit A with account number 0027429180. The defendant, claimed it was not aware of the fact, that the claimant reported the matter to his account officer, by name Morolake Aladesanmi, then, the questions to be asked are- at what point did the claimant lodged a complaint to the defendant and what was the purpose of the refunds made to the claimant by the defendant, prior to the existence of exhibit C1? Exhibit C1 was written 8th December, 2016 while it is clearly shown in exhibit A tendered by the subpoenaed witness Aishe Adisa a staff of the defendant, that monies salvaged by the defendant were returned into the claimant's account prior to the formal complaint lodged by the claimant. See Exhibit C1.

The Dw1 under cross examination also admit that some monies were recovered. He stated thus;

Q: Do you know the total amount of money the claimant is complaining about;

A: About #5.4 or #5.9m;

Q: Did your bank ever recover any money and sent back to the claimant;

A: We did;

Q: how much was recovered

A: That was to the tune of about #1m plus;

In as much as I agree with the defendant that the claimant disclosed his details to a 3rd party, one thing is certain, which is that the defendant failed to demonstrate how the daily limit of the claimant was increased by the claimant or a third party. The fact is that the negligence on the part of the claimant can only be limited to the #500,000.00 daily limit he subscribed for with the defendant and nothing more.

Also, one fact is constant and established in this proceeding: the limit of the claimant on the three accounts is #500,000.00 per account. The sum of #5,947,585.61 was withdrawn from the claimant between 11:15am to 12:34pm on the 13th day of October, 2016 as shown on exhibit D. The defendant did not controvert this, with any other document which states the contrary.

Now, I need to clear a misconception as it relates to how much was salvaged back to the claimant's accounts. The claimant avers that the defendant reimbursed him with the sum of #938,240.00 only out of the total sum of #5,947,585.61, while thedefendant's witness, in paragraph 31 of the statement on oath, testified that the sum of #739,000.00 was salvaged from Diamond Bank and #380,000 from Fidelity Bank. The sum total of #739,000:00 and #380,000 is #1,119,000:00 (One Million One hundred and Nineteen Thousand Naira). Again,the same

defendant's witness in paragraphs 33 and 34 of his statement on oath, further deposed that the money returned to the claimant's account number 0012781053 was the sum of #866,924.44 and the sum of #230,684.98 was returned to account number 0027429180. The sum total of #866,924.44 and #230,684.98 is #1,097,609.42 (One Million and Ninety-Seven thousand, Six Hundred and Nine Naira Forty-two kobo). The defendant is inconsistent with regards to the amount recovered and credited to the claimant's accounts and like I stated earlier, the defendant failed to present through its witness, any of the claimant's statement of account to prove crediblytheamounts recovered; it equally failed to demonstrate or present documentary evidence on how the funds were salvaged from the other banks.In view of my earlier findings that the claimant contributed to the withdrawal in his accounts on 13/10/2016; the sum of (#1,000,000.00) One Million Naira is determined as the liability of the claimant in the accounts number 0012781035 & 0027429180since both accounts had funds in excess of #500,000.00. As of the 13/10/2016; the sum standing to the credit of two accounts were #2,876, 575.88 in 0012781035 and #2,988,559.88 in 0027429180; thesum of #142,437.00 in account number 0012676999was not up to the sum of #500,000. Accordingly, I find and hold that the defendant is liable to refund the difference between the sum of #5,947,585.61 and #1,938,240.00 which is #4,009,345.61 having failed to protect the fund of the claimant in the its custody.

Also, the defendant havingfailed to abide by its agreement with the claimant, which is abiding to the daily limit of the claimant, the claimant is entitled to damages by virtue of the banker and customer relationship which exist between him and the defendant. In OLOLO v. NIGERIAN AGIP OIL CO. LTD & ANOR (2001) LPELR-2588(SC) (Pp. 12 paras. E)the Supreme Court perKUTIGI, J.S.Cexplained the effect of claimant's contribution to his loss thus:

> *"As for the measure of damages, the principle is that the measure of damages is to be apportioned according to the proportions in which the parties are responsible for the damage taking into account both causation and blame worthiness, and the amount recoverable must be reduced to such extent as the court thinks just and equitable having regard to the Plaintiff's share in the responsibility for the damage. (See Stapley v.Gypsum Mines Ltd. (1953) A.C. 663; Davies v. Swan Motor Co. (SWANSEA) Ltd. (1949) 2 K. B. 291"*

In assessing damages, the settled principle is, restitution in integrum. The award of #4,009,345.61 (Four Million and Nine Thousand, three Hundred and Forty-Five Naira Sixty-One Kobo) does not obviate the defendant from liability occasioned by the system breach. in MMA INC & ANOR V. NMA (2012) LPELR-20618(SC) (Pp. 56 paras. B) Per MOHAMMED, J.S.C the Supreme Court held thus:

> *"The law is indeed well settled that in a case of breach of contract, which what the present case is, the assessment of damages is calculated on the basis of the loss sustained by the injured party which loss was either in the contemplation of the contract or is an unavoidable consequence of the breach. See Shell B. P. v. Jammal Engineering Ltd. (1974) 4 S.C. 33; All N.L.R. (Pt.1) 542 and Ijebu Ode L. G. v. Adedeji Balogun & Co. (1991) 22 N.S.C.C. (Pt.1) 1 at 18 also in (1991) 1 N.W.L.R. (Pt.166) 136 at 158. The fact that the damages, as in the present case are difficult to assess does not disentitle a plaintiff to compensation for loss sustained from a Defendant's conduct of breach of contract. Also, the fact that the amount of such loss cannot be precisely ascertained, does not deprive a plaintiff of all remedy, as stated by this Court in Nzeribe v. Dave Engineering Co. Ltd. (1994) 8 NWLR (Pt.361) 124 at 147."*

I findand hold the award of the sum of #500,000.00 (Five Hundred Thousand Naira) as judicial and judicious award against the defendant.

Judgment is hereby entered in part against the defendant as follows. It is herebydeclared;

1. that there exists a banker and customer relationship between the claimant and the defendant.
2. that the defendant owed the claimant a duty of care to protect funds in the claimant's account number 0012781035; 0027429180 and 0012676999.
3. that the claimant's contributory negligence in disclosing his details, as admitted by him in Exhibit C1 shall cause him the sum of one million naira (#1,000,000.00).
4. The defendant is ordered forthwith to credit the claimant's account with the sum of #4,009,345.61(Four Million and Nine Thousand, three Hundred and Forty-Five Naira Sixty-One Kobo).
5. The sum of Five Hundred Thousand Naira (#500,000,00) is awarded as damages in favour of the claimant and against the defendant.
6. Parties shall bear their respective cost.

ASMAU AKANBI- YUSUF
[HON. JUDGE]

APPEARANCES:

Iorker T. Daniel, Esq for the claimant.

Defendant absent and not represented.