

**IN THE HIGH COURT OF JUSTICE, EDO STATE - NIGERIA**

**IN THE BENIN JUDICIAL DIVISION**

**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP: HON. JUSTICE J.O. OKEAYA-INNEH, (JUDGE)**

**DELIVERED ON MONDAY THE 6<sup>TH</sup> DAY OF JUNE 2016**

**BETWEEN:**

**SUIT NO. B/23/2013**

AIGBE OSAMWONYI ... CLAIMANT

AND

UNITED BANK FOR AFRICA PLC., DEFENDANT

**J U D G M E N T**

The Claimant filed their Writ of Summons dated 18/1/2013 and by their Statement of Claim dated 18/1/2013. The Claimant claimed thus:-

28. Wherefore the Claimant claims against the Defendant as follows:-

- a) The sum of N100,000.000.00 (One Hundred Million) Naira) only for breach of confidentiality by the Defendant's branch office at Ikpoba Hill by printing nine (9) pages of the Claimant's Statement of Account without Claimant's consent and authorization to an unknown person.
- b) An unreserved apology published in the front page of at least two (2) national dailies

- c) A letter of unreserved apology written to and addressed to the Claimant in person.
- d) The sum of N5,000,000.00 (Five Million Naira) only as exemplary and general damages)

The Defendant entered appearance and in line with the Edo State High Court (Civil Procedure) Rules, 2012, the Defendant, the Defendant filed their Statement of Defence, list of documents to be relied upon at the trial.

The Claimant filed a Reply to Defendants Statement of Oath on 10/1/2014. Defendant then filed a clean copy of the Written Statement on Oath on the 25/8/2015.

Claimant opened their case by calling on Claimant, Mr. Aigbe Osamwonyi to testify. The Claimant stated that his name is Aigbe Osamwonyi and that he lives at No.15B, Amusa Eke, Off Erediauwa, Ekenwan Road, Benin City. He stated that he is a Legal Practitioner and that he knows the Defendant and that the Defendants are his bankers. Claimant stated that he remembers making a Witten Statement on Oath on the 18/1/2013 and that he wants the court to adopt the said Written Statement on Oath as is evidence in Chief before this Honourable Court in respect of this matter.

**WITNESS STATEMENT IN SUPPORT OF CLAIM:**

I, Aigbe Osamwonyi, Male, Christian, Legal Practitioner and a Citizen of the Federal Republic of Nigeria of No. 28, Ehaekpen Street, off Ekenwan Road, Uzebu Quarters, Benin City hereby solemnly make oath and state as follows-

- 1 That I am the Applicant herein and by virtue of my position, I am conversant with the facts of this case.
- 2 That until the 27<sup>m</sup> of September 2012, when the Bank unilaterally closed my account, I was a Customer of the United Bank for Africa Plc, Ekenwan Road Branch, Benin City with account No. 1008690729.
- 3 That I opened the aforesaid account on the 20<sup>th</sup> of December 2007 and since then, I had full confidence in the management of my accounts/funds until the 17<sup>th</sup> of September 2012.
- 4 That on the 17<sup>th</sup> of September 2012, I was at Abuja for a one week business trip when I received an SMS (text message) alert from the Defendant which showed that my account had been debited with the cost of printing ~~₦~~NINE (9) PAGES OF MY STATEMENT OF ACCOUNT at the Ikpoba Hill Branch of the Defendant in Benin City.
- 5 That I was surprised to receive the text message because I DID NOT apply for any statement of account from any of the branches of the Defendant and upon a careful perusal of the text message, I saw, it had my account details.
- 6 That I was shocked and the realization that my account had been tampered with without my consent, dawned on me and I quickly cut short my one week business trip and returned to Benin City.
- 7 That I returned from Abuja on the 19<sup>m</sup> of September 2012, and immediately proceeded to the Ekenwan Road Branch of the Defendant in Benin, where my account is domiciled and had a meeting with the Manager of the branch.
- 8 That the Ekenwan Road branch Manager of the Defendant Bank then made some enquiries via his mobile phone from the Ikpoba - Hill branch and the incident was confirmed.
- 9 That on the strength of the confirmation that indeed Nine (9) pages of my statement of account had unlawfully been printed without my consent and authorization, I then

immediately applied for my statement of account to cover the opening balance an/Entire transactions for the month of September 2012. That before I submitted the original of the application to the Defendant, I made a photocopy of the said application. A copy of the said application is attached herewith and marked as Exhibit ~~A~~q

- 10 That the statement of account that I requested for was immediately printed out and handed over to me. Photocopies of the said statement of account are attached herewith and marked as Exhibit ~~B~~q
- 11 That I also then demanded to see and obtain a copy of my mandate card in order to re-ascertain the signatories and instructions on my account, that may have warranted the unauthorized printing and release of my statement of account to an unknown person(s).
- 12 That to my surprise, my request was turned down by one of the Defendant's staff at Ekenwan Road branch and I was told that the mandate card can only be released to me with the permission of the Legal Department of the Defendant's Bank at its headquarters in Lagos.
- 13 That the refusals to allow me see my mandate card came as a rude shock and which threw me into a state of panicking and all efforts to get the support of the manager proved abortive. I then went home amidst fear and uncertainty, since I had just returned from a journey.
- 14 That the next day, the 20th day of September 2012, I wrote an application for the closure of my account on the ground of breach of confidentiality.
- 15 That upon submitting the application for closure, the Defendant's staff after reading the application refused to accept or acknowledge the receipt of same and I was instructed by the staff that unless and until I expunge the reason for the closure, my account will not be closed.
- 16 That I then went to see the Manager of Ekenwan Road branch of the Defendant and informed him of what had transpired with one of his staff.
- 17 That to my surprise, the Manager of the branch, also instructed me to expunge certain portions of the application for closure of my account as it would implicate certain persons.
- 18 That because I refused to do the bidding of the Manager and his staff, the letter for the closure of my account was not accepted and my account was not closed as requested and I left the Bank's premises after about four (4) hours, frightened for my

life. Attached herewith and marked as Exhibit ~~£~~qis the said application for closure of my account.

- 19 That I suffered emotional stress, fear, grave inconvenience and discomfort which negatively impacted on my health due to the security challenge in Edo State and several incidences of people being kidnapped and shown their statements of account.
- 20 That as a result, I immediately briefed my Solicitors (Oaihimire & Oaihimire) who wrote the Defendant a solicitor~~£~~ letter informing the Defendant of the breach of my fundamental human rights by two (2) of its branches in Benin City. Attached herewith and marked as Exhibit ~~£~~qis a copy of the said solicitor~~£~~ letter.
- 21 That about seven (7) days after the solicitor~~£~~ letter has been dispatched, the Manager of Ekenwan Road branch called me on phone, to come and collect a Manager~~£~~ cheque in the balance sum in my account from the Bank, with a letter that the account had been closed by the Bank unilaterally.
- 22 That upon the advice of my Solicitor, I went to the Bank to collect the said Manager~~£~~ cheque sometime in October 2012. Attached herewith and marked as Exhibit ~~£~~qand ~~£~~l qis a photocopy of the said Manager~~£~~ Cheque and the said letter.
- 23 That without any recourse to me, my account was closed unilaterally by the Bank without my consent and authorization, as the Manager of the Ekenwan Road branch of the defendant and his Staff willfully, deliberately and bluntly refused to accept my application for the closure of my account.
- 24 That on the 7th of November 2012, Ruth O. Oaihimire (Mrs.) of Counsel, informed me and I verily believe her, at about 6:00 P.M in her office, that the Defendant~~£~~ reply to the Solicitor~~£~~ letter had just been received by her Secretary and I was shown a copy. Attached herewith and marked as Exhibit ~~£~~qis a copy of the said reply.
- 25 That the Defendant in their reply alleged that the said statement of account was printed and handed over to one Mrs. Aigbe Aimede Josephine whom they alleged is my wife.
- 26 That I had at no time changed my mandate on my account and neither did I at anytime introduce any Mrs. Aigbe Aimede Josephine as my WIFE to any branch(es) of the Defendant in Nigeria, nor included any person as a co-signatory to my account to warrant the flagrant breach of my fundamental human right.
- 27 That my right to privacy of information and right to confidentiality have been seriously breached by the Defendant.

- 28 That I verily believe that there is no rational justification for printing my statement of account to a third party without my prior consent and authorization to the Defendant, whether orally or in writing
- 29 That I swear to this affidavit in good faith, conscientiously believing the contents to be true and correct and in accordance with the relevant Oaths Acts.

In the course of trial, the Claimant tendered the following documents:-

1. Letter dated 19/9/2012 written by the Claimant to the Defendant marked exhibit ~~%A+~~
2. Statement of Account from U.B.A PLC for Aigbe Osamwonyi marked Exhibit ~~%B+~~
3. Letter dated 20/9/2012 written by Claimant to Defendant marked Exhibit ~~%C+~~
4. Letter dated 24/9/2012 from Claimant's Counsel to Defendant marked Exhibit ~~%D+~~
5. Photocopy of UBA cheque dated 27/9/2012 issued by Aigbe Osamwonyi marked Exhibit E
6. Letter dated 28/9/2012 written by the Defendant to Claimant's Counsel marked Exhibit F.
7. Photocopy of UBA Mandate Card of Aigbe Osamwonyi from UBA Plc marked Exhibit G
8. Letter date 27/9/2012 written by Defendant to Claimant marked Exhibit H.

Under cross examination, Claimant stated that he married to Aimede Aigbe but cannot remember her English name. Claimant further confirmed he signed Exhibit A and also signed the witness deposition before court. In the course of that, a specimen of Claimant's signature was taken and marked as Exhibit J.

Claimant stated that he cannot remember when he was separated from his wife. Claimant further confirmed signing Exhibit G, his mandate card and also stated that the signature in Exhibit J is also his signature. Claimant stated that due to the revelation made by the Bank to a third party about the amount in his account he suffered severe emotional stress.

Claimant further stated that he had the sum of N905,715.18k (Nine Hundred and Five Thousand, Seven Hundred and Fifteen Naira and Eighteen Kobo) in his account and that he was worried that due to the revelation by the Bank, kidnappers will be looking for him. Claimant stated that he never gave any letter of authority to his wife to collect his statement of account from the Defendant on 19/9/2012.

***THERE WAS NO RE-EXAMINATION.***

The Defendant opened their case by calling on one Ezeani Grace. She stated that she is officer with the UBA Plc and knows the Claimant. She confirmed making a written statement on oath the 25/8/2015 in respect of

this matter. A copy of the said statement was shown to her. She identifies same and further states that she wishes to adopt her Statement on Oath as her evidence in Chief before the court in respect of this matter. In the course of her testimony, she tendered the following documents:-

- a) Letter dated 17/9/2012 headed Authority to Release Statement marked Exhibit K.
- b) Photocopy of Student ID Card of the University of Benin issued on 16/12/2009 marked Exhibit L. She further confirmed Exhibits H and Exhibit G.

Under Cross . examination Defendant stated that she worked in the UBA Plc for 12 years and presently in the operations department. She also stated that apart from serving in Ekenwan Road Branch, she also served in Uselu and Mission Road branches of the UBA Plc. She identifies Exhibit H and states that she saw the Claimant's letter before she signed the letter. She identifies Exhibit C and states that this is the letter she responded to. She stated that she is not aware why the said Exhibit C was not endorsed. She stated that all she has stated before the court is the truth. She further stated that the bank came to know that Josephine Aigbe was the Claimant's wife from the oral conversation the then manager had with the Claimant.

Learned Counsel for the Defendant failed to file their final written address as contemplated and provided for by the Rules of this Court after being given the opportunity to do so. Defendants were consequently foreclosed from filing same upon the application of Claimant's Counsel.

Learned Counsel for the Claimant in his Written address formulated two issues for determination which are:-

- a) Whether the Defendant has sufficiently discharged the evidential burden on it ~~that~~ where signature is disputed by the Claimant, the onus is on the Defendant.+
- b) Whether the defendant exercised due diligence in giving out the Claimant's Bank Statement on the strength of the ~~purported~~+ letter of authority allegedly signed by the Claimant.

Arguing issue one as formulated, Counsel submitted that by virtue of the express provisions **of Section 93 (1) of the Evidence Act, Laws of the Federation of Nigeria Cap E14, 2011**, the onus is on the Defendant who alleged that the Claimant signed the disputed "Exhibit K". The said section provides thus:-

**"If a document is alleged to be signed or to have been written wholly or in part by any person the signature or the handwriting of so much of the document as is alleged to be**

**in that person's handwriting must be proved to be in his handwriting".**

Counsel further submitted that this position of the law was aptly stated by the Supreme Court that where a Claimant alleges that he did not sign a signature ascribed to him, the onus is on the defendant to prove that the signature is that of the Claimant. Counsel placed reliance for this proposition on the case of **NDOMA EGBA VS. AFRICAN CONTINENTAL BANK PLC (2005) 14 NWLR (PT 944) AT PAGE 102 PARA D-F** where Oguntade J.S.C (Rtd.) held that:-

**“... Plaintiff however said that he did not sign any of them. The plank of the Plaintiff’s case was that he did not sign the cheques. On the other hand the defendant in paragraphs 11 and 17 reproduced above pleaded that it was the Plaintiff who signed the signatures ascribed to him on exhibits 2, 3 and 4. Indeed the defendant could have escaped liability for plaintiff’s claim only if it established that it was the plaintiff and not anyone else who signed exhibits 2, 3 and 4. It is therefore apparent that it was the defendant and not the plaintiff who bore the burden of establishing that it was the plaintiff and not anyone else who signed exhibits 2, 3 and 4.”**

Counsel submitted that in this case, the Claimant, in paragraph 12 of the Statement of Claim filed on the 18th of January 2013 and paragraphs 1-

3 of the Reply to Defendants Statement of Defense dated 17-06- 2013 denied issuing, giving or signing any "letter of authority" dated 19- 09-2012 or at any other time earlier, to any person and in particular to one Uyi Josephine Aigbe to collect on his behalf his statement of account at any branch of the defendant's bank and in particular at the Ikpoba Hill Branch.

Counsel argued that the defendant did not lead evidence to rebut or controvert the assertions of the Claimant, by either calling the benefactor of the statement of account - Uyi Josephine Aigbe, the verifying officer, the Manager of the Ikpoba Hill branch or any person who is familiar with the handwriting or the signature of the Claimant in the Ekenwan Road branch of the defendants bank where the account is domiciled or better still, a signature/hand Writing expert to discharge the onus placed on it by law.

Counsel further submitted that although the defendant's witness under cross examination admitted knowing the Claimant as a customer, she was emphatic that she did not have any relationship with the Claimant prior to this suit and has not served in any capacity at the Ikpoba Hill branch of the Bank where the bank statement was issued to Uyi Josephine Aigbe .

Counsel posited that the only safe conclusion that can be made for this deliberate refusal to call these vital witnesses is that their evidence would have either been in tandem with that of the Claimant or adverse to the

defendant's defence. Counsel relied on the provisions of **Section 167 (d) of the Evidence Act, Laws of the Federation of Nigeria, 2011** and prayed this court to invoke the said provisions of Section 167 (d) of the Evidence Act and to so hold.

Counsel stated that the position of the law as laid down in the case of **EBEINWE V STATE (2011) 7 NWLR (PT 1246) 402 AT 416 PARA D PER MUKHTAR JSC (CJN) (RTD.)** is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial judge, who would ascribe probative value to it.

Arguing issue two which queries whether the defendant exercised due care and diligence in releasing the Claimant's bank statement to a third party on the strength of a purported letter of authority, that is Exhibit K allegedly signed by the Claimant, Counsel submitted that the defendant did not exercise due care or diligence in verifying the signature of the Claimant, but were grossly negligent in the discharge of their duty and responsibility to the Claimant.

Particularizing the negligence, Counsel contended that:-

- a) there was no letter of request by the Claimant that his bank statement be printed at the Ikpoba Hill branch of the defendant's bank and that there is nothing before this Honourable Court to show that the

Claimant made any written application to the Ikpoba Hill branch of the Defendant Bank to warrant honouring Exhibit K. Counsel submitted that although the defendant's witness evidence under cross examination is to the effect that Exhibit K is to be taken as both the letter of request and authority to release the bank statement, it is contrary to the earlier evidence under cross examination that an application for the issuance/request for a bank statement must be formal i.e in writing by the account holder to the defendant bank.

- b) the Defendant's witness under cross examination admitted not knowing or having the particulars of the person who verified the signature of the Claimant in Exhibit K at the Ikpoba Hill branch of the Bank and that there is nothing before this Honourable court to show that due diligence was followed in verifying the signature of the claimant at the Ikpoba Hill branch of the defendant bank since the account was domiciled at the Ekenwan branch of the bank. Counsel submitted that the above position is reinforced by the document listed and frontloaded by the defendant, as item 4 and captioned "Application for Mandate Card by Claimant", which showed the full particulars of the officer who verified the Claimant's signature at the Ekenwan Road branch. Counsel urged court to look at all documents in the Court's file in tandem with the decision of the Court in the case

**AGBAHOMOVO VS. EDUYEGBE (1999) 3NWLR (Pt.594), 170 @**  
**183 paras. D - E, Per ONU J.S.C.**

Counsel noted that this piece of evidence leaves one in doubt as to whether the verification of the signature of the Claimant was ever done before the purported "letter of authority" - Exhibit- K was honoured by the Ikpoba Hill branch of the defendant bank.

- c) the Defendant's witness under cross examination admitted that the verifying officer at the Ikpoba Hill Branch of the bank accepted an expired student Identity Card, Exhibit L as a means of identifying the said Uyi Josephine Aigbe contrary to the acceptable means of identification of the defendant bank.

It is Counsel's submission that from the totality of the evidence adduced from the Defendant's witness under cross examination, it is safe to conclude that due care and diligence were not exercised by the defendant in releasing the Claimant's bank statement to a third party- Uyi Josephine Aigbe and prayed this Court to so hold.

Counsel also argued that a cursory look at Exhibit K shows that the said letter is dated 12-09-2012 and this is consistent with paragraphs 3 and 6 of the Defendant's Statement of Defence and the Defendant's Witness Statement on Oath. Paragraphs 6 and 9 of the Defendant Statement of

Defence and the Defendant's Witness Statement on Oath are to the effect that it was based on Exhibit K that the Claimant's account was debited for the cost of printing the Statement of Account.

Counsel submitted that Exhibit B shows that the Claimant's Account was debited on the 17-09-2012 with the sum of N1,350.00 as printing charges for nine (9) pages of statement of Account, and another =N=67.50 as VAT on the said printing and noted that this is two (2) clear days before the purported letter of authority was said to have been presented at the Ikpoba Hill branch office of the defendant.

Counsel submitted that where evidence is at variance with the pleading, such evidence will have no value and such will be discountenanced, as same is contrary to the issues joined by the parties. Counsel commended the case of **OKOKO VS. DAKOLO (2006), 14 NWLR (PT.1000), 401 @ 422, PARAS. D - E**, where Onu J.S.C. held that:-

**"Evidence on unpleaded facts ought to be discountenanced as inadmissible. Where evidence is at variance with the pleading, such evidence will have no value. It will be discountenanced because it is contrary to the issues joined and therefore goes to no issue, worthy of consideration".**

On this score, Counsel urged court to accordingly discountenance the oral evidence of the Defendant's witness as it relates to the date on 'Exhibit K'.

It is further contention that flowing from the above it is safe to conclude that the defendant bank prior to **Exhibit K** had negligently given the Claimant's Bank Statement to a third party without the prior authorization of the Claimant and that the defendant did not deny, debunk or controvert this piece of evidence. Counsel commended the case of **OFORLETE VS. STATE** (2000) 12 NWLR (PT. 681) 415 @ 436 PARAS G - C, where My Lord, Achike J.S.C held thus:-

**"Where evidence is unchallenged under cross examination, the court is not only entitled to act on or accept such evidence but it is in fact bound to do so provided that such evidence by its very nature is not incredible. Thus, where the adversary fails to cross examine a witness upon a particular matter, the implication is that he accepts the truth of that matter as led in evidence".**

Counsel also placed reliance on the case of **MUSA VS. YERIMA** (1997) 7 NWLR (PT.511) 27 @ 41 -42 PARA H- A, where My Lord Onu J.S.S held that:-

**"It is trite Law that where a Claimant adduces oral evidence which establishes his claim against the defendant in terms of the writ and the evidence is not rebutted by the defendant, the claimant is entitled to judgment.**

It is Counsel's submission that the defendant Bank failed to exercise due diligence, more particularly so, as it was a time when Kidnapping was at its height in Benin City and indeed, Edo State and that Exhibit K is an after-thought and was procured for the purpose of litigation. Counsel relied on the provisions of **Section 83 (3) of the Evidence Act, Cap. E14 Laws of the Federation of Nigeria, 2011** and urged Court to discountenance the said **Exhibit K**.

Counsel further submitted that assuming without conceding that this Honourable Court holds that **Exhibit K** was not procured for the purpose of litigation, which the Claimant consistently denied writing or signing, the only option open to this court is to compare the signature and handwriting on **Exhibit K** with the signature of the Claimant, elicited under cross examination and marked as **Exhibit I** in this case, on the one hand. Counsel also urged court to compare the said signature in **Exhibit K** with that on **Exhibits A and C** as this is in tandem with the extant provisions of **SECTION 101 (1) AND (2) OF THE EVIDENCE ACT, CAP. E.14, LAWS OF THE FEDERATION OF NIGERIA, 2011** and the decision of the Supreme Court in **ADENLE V. OLUDE (2002) 18 NWLR (PT. 799) 413 @ 430 Paras, D, F - H, Per Uwaifo J.S.C.**

Counsel argued that the inconsistency in the evidence of the defendant witness under cross examination to the effect that **Exhibit K** is dated 17-09-

2012 and the investigation of the Legal Services Division of the Defendant Bank in Paragraph 2 of **Exhibit F** which states amongst others, that;

"... On the 19<sup>th</sup> September, 2012, your client addressed two applications for issuance of statement of account to the Ekenwan and Ikpoba Hill business offices .... "

is conclusive that the Defendant was not only careless and negligent, but is shielding the truth from this Honourable Court and urged the court to so hold. Counsel further submitted that where a document is clear and unambiguous, oral or parol evidence is inadmissible to vary such a document. Reliance was placed on **SECTION 125 OF THE EVIDENCE ACT, CAP E.14, LAWS OF THE FEDERATION OF NIGERIA, 2011** and on the case of **BUNGE VS. GOVERNOR OF RIVERS STATE (2006) 12 NWLR (PT. 995) 573 @ 616 - 617, Paras. G - A**, where My Lord Ogbuagu J.S.C held that:-

**" By virtue of Section 132, (now section128 of the Evidence Act 2011) in the interpretation of a document, oral or parol evidence will not be admissible among other things to contradict or alter it, where the document is clear and unambiguous".**

Counsel argued that from the totality of the evidence before this court in this case, the Defendant's witness, (Mrs. Grace Ezeani) is not a credible witness as her evidence under cross examination is inconsistent to her

evidence in chief and documentary evidence admitted as Exhibits. Counsel also submitted that the evidence of the defendant's witness was also contradictory in material particulars with the defence of the defendant as it relates with the procedure of honouring identification cards and the names or particulars of the verifying officer at the defendant's Ikpoba - Hill branch office. Counsel commended the decision of the Court of Appeal in **OGUNTAYO VS. ADEBUTU (1997) 12 NWLR (PT.531), 81 @ 94 PARAS.**

**A - B:** Per Musdapher J.C.A (as he then was), (JSC) (CJN) (RTD) who reasoned thus:-

**"A witness who sets out deliberately to mislead the Court by lying on oath, either by denying facts known to him or misrepresenting facts upon which he is questioned until forced to retract his evidence or contradict himself by whatever means, cannot be relied upon because he has from his performance destroyed any rational basis for accepting his evidence in part or in total based on credibility."**

Counsel submitted that the evidence of the Claimant is firm, consistent even under cross examination and same remains unchallenged and uncontroverted and that the position of the law is that where evidence is unchallenged or uncontradicted, the onus of proof is satisfied on minimal proof, since there is nothing on the other side of the scale. Counsel placed reliance for this proposition on the case of **MOBIL OIL (NIG.) LTD VS.**

**NATIONAL OIL & CHEMICAL MARKETING COMPANY LTD (2000) 9**

**NWLR (PT. 671) 44 @ 52, PARA. H** and urged court to resolve Issue 2 in favour of the Claimant.

In conclusion, Counsel submitted that there is no doubt that the evaluation of evidence by a trial Court is of utmost importance in the adjudication process as it is not possible for the court to have findings of fact without first evaluating the evidence as presented by the parties. Counsel commended the decision in the case of **BASIL VS. FAJEBE (2001) LL NWLR (PT725) 592 @ 608**, where My Lord, Ayoola J .S.C (RTD.) stated clearly what evaluation of evidence involves thus:-

**"Evaluation of evidence involves reviewing and criticizing the evidence given and estimating it. That any decision arrived at without a proper or adequate evaluation of the evidence cannot stand is now a truism. Evaluating evidence does not stop with assessing the credibility of witnesses, although that, in appropriate cases, is part of the exercise. It extends to a consideration of the totality of the evidence on any issue of fact in the circumstances each case in order to determine whether the totality of the evidence supports a finding of fact which the party adducing the evidence seeks that the trial Court should make"**

Counsel submitted that judgment be delivered in favour of the Claimant as per his writ of summons.

Before I proceed, I will state here that after several adjournments at the instance of the Defendant, the Defendant failed to file their written address. Upon the formal application made by I. E. Oahimirie learned counsel for the Claimant praying the court to foreclose the Defendants for failure to file their written addresses, the court after considering submissions by both learned Counsel gave a considered ruling on the 15/3/2016 foreclosing the Defendant from addressing court on time as required by the Rules of court. The Claimant's counsel was then called upon to proceed and address Court.

I have carefully considered this suit and the written submissions of learned counsel for the Claimant. I now turn to the issues for determination as formulated by Claimant's Counsel. Learned Counsel for the Claimant formulated two issues which I think captures the essence of the issues joined between both parties. I shall therefore resolve the issues joined as per the issues as formulated by Claimant's Counsel.

Claimant Counsel's issue one as formulated in his written address questions whether the Defendant has sufficiently discharged the evidential burden on it that where signature is disputed by the Claimant, the onus is on the Defendant. This issue as formulated was obviously formulated having the provisions of Section 93(1) in mind. Read together with the

decision in **NDOMA EGBA V. A.C.B (SUPRA)**, it places the burden of proof on the Defendant as to who signed a given document when the signature is in dispute.

The plank of Defendant's case absolving itself from liability is that the Claimant by **Exhibit K** instructed the bank to release Claimant's Statement of Account to a third party, one Uyi Josephine Aigbe. Claimant on the other hand contends that he did not issue nor sign the said **Exhibit K**. I think by virtue of Section 93(1), Evidence Act, 2011, the onus and burden of proof that the Claimant indeed signed **Exhibit K** rests squarely on Defendant. It is consistent with the age long assertion that he who asserts must prove. See **REPTICO S. A. GENEVA V. AFRIBANK NIGERIA (PLC) (2013) LPELR-20662 (SC)**. See also **Sections 131(1)(2), 132 and 133 of the Evidence Act, 2011; Elias V. Omo-Barre (1982) 5 SC; AGALA & ORS. V. WUCHEM V. EGWERE & ORS. (2010) 5 SCM 22 AT 37.** Have they sufficiently discharged that evidential burden on them? I think not, for the Defendant has only asserted that Claimant authored and signed **Exhibit K** without more. I find nothing in the evidence or testimony of the Defendants to move this court to believe that the Claimant indeed authored and signed **Exhibit K**. It is must therefore be taken that the Defendant has not satisfactorily challenged, controverted or disproved Claimants evidence and

has equally failed to discharge the evidential burden on it as provided for in **Section 93(1) of the Evidence Act, 2011.**

I therefore answer issue one in favour of the Claimant.

Learned Counsel's issue two seeks answers to the question on whether the Defendant exercised due diligence in giving out the Claimant's Bank Statement on the strength of letter of authority allegedly signed by the Claimant.

**Exhibits F and K** will be the compass in directing us to the answers in resolving this issue. Now, **Exhibits K** purports to be the authority from the Claimant to the Defendant to release Claimant's Statement of Account to a third party. Defendant's witness stated under cross examination that when its customers demand for their statement of account, they have to make a formal written application in that regard. My understanding is that the customer must first furnish the bank with a letter of request. **Exhibit K** herein however does not satisfy that requirement. **Exhibit K** is clearly headed as a "letter of authority" enabling the Bank to release Claimant's Statement to one Uyi Josephine Aigbe. Now, can it be said that the claimant made a formal request for his statement of account from the bank on the strength of **Exhibit K**? Nothing from Defendant's defence persuades me to come to that conclusion.

Moreover, **Exhibit F** emanating from Defendant's legal department states amongst others that:-

**“on the 19<sup>th</sup> of September, 2012, your client addressed two applications for issuance of statement of account to the Ekenwan and Ikpoba Hill Business offices. One was to be delivered to your client, while the other one was to be delivered to Mrs. Aigbe Aimede Josephine (your client's wife)...”**

If the above was referring to **Exhibit K** in this proceeding, from my reading of the said **Exhibit K** it did not state that it was to serve as a letter requesting for the Claimant's Statement of Account. What is before court is a single letter dated the 19<sup>th</sup> day of September, 2012 supposedly from the Claimant authorizing the Defendant to release his Statement to a third party. Where is the letter written by the Claimant requesting for his statement of account a requirement that Defendant's witness stated was a sine qua non for a customer's statement to be printed delivered to a customer or his pointed nominee? It is safe to conclude that there was none because there was never one requesting for the Claimant's Statement of Account. The question that arises is whether there can validly be an authority to release Claimant's statement of account when there was no request for same in the first place.

Now, **Exhibit B** shows that the Claimant's account was debited on the 17<sup>th</sup> of September, 2012 based on a request for a statement of account. Curiously, **Exhibit K** belies that contention because it shows that the purported letter requesting for the statement of account was dated and written on the 19<sup>th</sup> day of September, 2012. How is it possible for a customer's account to be debited before a transaction for which it was meant was effected? It is my humble opinion that **Exhibit K** is at variance with Defendants pleadings and ought to be discountenanced. It is hereby discountenanced on the strength of the apex court decision in **YUSUF V. ADEGOKE & ANOR (2007) LPELR-SC.15/2002** where My Lord Aderemi, JSC (RTD) reasoned thus:-

**It is trite law, and we have repeated it on many occasions that parties are bound by their pleadings and that any evidence which is at variance with the averments in the pleadings goes to no issue and should be disregarded by Court.”**

I am in agreement with Claimant's Counsel that **Exhibit K** was procured for the purpose of litigation which is frowned at by **SECTION 83(3) Evidence Act, 2011**. The general principle is that a document made by a party to a litigation or person otherwise interested when proceedings are pending or is anticipated is not admissible. See **OLOMO V. APE (2013) LPELP-22327 (CA)**

Having discountenanced **Exhibit K**, I must therefore come to the conclusion that there was never a request by Claimant for his statement of account neither was there any express authority enabling the Defendant bank to release Claimant's Bank Statement to a third party.

It is in the light of the above that I resolve issue two in favour of learned counsel for the Claimant by saying that the defendant did not exercise due care and diligence in releasing the Claimant's bank statement to a third party. I take judicial notice of the fact that the incidence of kidnappings and the like was prevalent in Benin City when the Defendant's duty of strict confidentiality to the Claimant was breached thereby on account of the release of Claimant's bank statement to a third party and I imagine this must have caused emotional stress to the Claimant.

In the final analysis, I enter judgment in favour of the Claimant in following terms:-

1. I award the sum of N3,000,000.00 (Three Million Naira) in favour of the Claimant as general damages for the breach of Claimant's confidentiality by the Defendant.

2. The Defendant is hereby ordered to cause to be published, an unreserved apology in the front page of at least two (2) national dailies in favour of the Claimant.
3. The Defendant is hereby ordered to cause a letter of unreserved apology to be written and addressed to the Claimant in person.
4. I award the sum of N2,000,000.00 (Two Million Naira) only as exemplary damages in favour of the Claimant.

This is the judgment of the Court.

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**HON. JUSTICE J.O. OKEAYA-INNEH,**  
JUDGE  
6/6/2016

**COUNSEL:-**

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|-----|----------------------|-----|-----|---------------------------|
| (1) | I. E. Oaihimire Esq. | ... | ... | Counsel for the Claimant. |
| (2) | J. O. Ukpedor (Mrs)  | ... | ... | Counsel for the Defendant |