



- c. Bank's apology for negligence of the receiving cashier for failure to verify the account holders name with the account number.
- d. The publication by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant that I (Plaintiff) did not pay any money at all into the Diamond Bank.

The 1<sup>st</sup> Defendant filed her Statement of Defence on the 13<sup>th</sup> day of March, 2013 wherein she attached her witness Statement on Oath and List of Documents.

The evidence of the 1<sup>st</sup> Defendant is reproduced below as follows:

I, Amarachukwu Arinzeh (Male), Banker Christian, Nigeria of No.13, Akpakpava Street, Benin City do hereby make Oath and State as follows:

1. That I am the Defendant's Customer Service Manager, Akpakpava Branch, Benin City.
2. That the Defendant is a Commercial Bank duly incorporated and licensed to carry on the business of banking.
3. That the Claimant is not a customer of the Defendant.
4. That one Mr. Ogbu Nnaemeka is a customer of the Defendant with Account No. 0019410448 domiciled at Nsukka Branch of the Defendant and he is also resident at Nsukka, not Benin City.
5. That the Defendant is not in any way indebted to the Claimant and did not receive any sum from the Claimant on 21<sup>st</sup> day of November, 2012 as deposit to be paid into any account.
6. That the Defendant exercises utmost care in handling cash and instruments from customers and has standard procedure of receiving cash and crediting same into accounts.
7. That every cash or deposit received by the 1<sup>st</sup> Defendant from customers are diligently recorded and accounted for.

8. That the following are the procedures for receiving deposit from customers and crediting same into their account.
  - (i) The customers/depositor obtains the deposit slip and fills same with the required details.
  - (ii) That the details are: Name of account, date of transaction, account number, name of depositor, phone number of the depositor, denomination of the currency, address of the depositor, name of the branch account where the account is domiciled.
  - (iii) That the Defendant's front desk teller cashier receives the deposit and the deposit slip from the depositor and verifies the deposit slip and the cash and also carries out physical examination of the cash to ensure correctness. That I can identify samples of the Defendant's customer's deposit slips and shall rely on same at the trial.
  - (iv) That when information contained in paragraph (iii) above is correct, the cashier then uses a validating machine (time stamped machine) to stamp the deposit slip. The validating machine imprints the name of the Bank and time of the transaction on the deposit slips.
  - (v) That the imprints made by the validating machine shows in all the copies of the deposit slips.
  - (vi) That after validating the deposit slip, the cashier will then stamp each copies of the deposit slip and signed then as well.
  - (vii) That the cashier will then release duplicate copies of the deposit slip to the depositor and retain the original copy.
9. That the Defendant's deposit slip is triplicate that is, the original (white copy), duplicate (blue copy) and triplicate (pink copy).

The Defendant will at the trial identify samples of the deposit slips issued by the Defendant to its customers and shall reply on them at the trial.

10. That the pink copy is the control copy.
11. That on the receipt of the blue and pink copy from the cashier, the depositor drops the pink copy in the control box and goes home with the blue copy.
12. That the control copy is used to match with the original copy by the auditor at the end of each day's transaction.
13. That after validating the deposit slip, the cashier then credits the account in the electronic ledger.
14. That where there is error in the information provided by the depositor in the deposit slip, we contact the customer/depositor to correct the information and where it is impracticable to contact the customer/depositor, the cash is held in suspense or sundry account pending when we get the correct information.
15. That the Claimant never deposited the sum of One Million, Two Hundred Thousand Naira (N1,200,000.00) into any account with Defendant's branch on 21<sup>st</sup> day of November, 2011. That I can identify the certified true copy of the Defendant's transactional journal for 21<sup>st</sup> November, 2011 shall be rely on same at the trial.
16. That the Defendant does not have the original or the control copy of deposit slip no. 4829921 in its possession and as such the Claimant never deposited any sum of money with the Defendant's Akpakpava Branch.
17. That on investigation, Defendant found out that no such money was paid into its Akpakpava Branch and that it is all fraud on the part of the Claimant.

18. That account no. 0019410446 into which the Claimant purportedly paid the money into does not exist. It is not in the Defendant's data base.
19. That the Claimant never alerted the Defendant of his alleged payment until 4 months later that is on the 19<sup>th</sup> day of March, 2012 when he wrote through his Counsel.
20. That the deposit slip the Claimant is parading is a forgery and the Claimant's Claim is fraudulent.

#### PARTICULARS OF FRAUD

- (i) The Claimant's deposit slip by which he purported to have deposited the sum of One Million, Two Hundred Thousand Naira (₦1,200,000.00) does not reflect the validating machine stamp of the Defendant.
- (ii) The Claimant's deposit slip is also not signed by any official of the Defendant.
- (iii) Claimant Claims that he paid the money into account no. 0019401446 when in fact no such account exists in the bank.
- (iv) Claimant Claims he paid One Million, Two Hundred Thousand Naira (₦1,200,000.00) into the Akpakpava Branch when the branch computer records reveal no such transaction by Claimant on that day.
- (v) Claimant Claims he paid the sum of One Million, Two Hundred Thousand Naira (₦1,200,000.00) to Defendant via deposit slip no. 4829921 when Defendant does not have in its possession the original white slip or the pink control copy.

- (vi) The Claimant never alerted Defendant of his alleged payment made in November, 2011 until four months later in March, 2012.
21. That the Claimant is not entitled to the reliefs sought, as his Claims are unfounded, unmeritorious, gold-digging, brought malafide and out to be dismissed with substantial costs in favour of the Defendant.
  22. That I pray this Honourable Court to dismiss the suit as the Claimant is not entitled to any of the relief he is seeking in this Court and this action is an attempt to extort and defraud the Defendant.
  23. That I depose to this affidavit in good faith and believing same to be true and correct in accordance with the Oaths Act.ö

Prior to the above, the Claimant had filed his witness Statement on Oath and List of Documents on the 4<sup>th</sup> day of December, 2012.

The evidence of Claimant is reproduced as follows:

öI, Mr. Obi, a businessman, Nigerian, Male residing at No.6, Adesuwa Street, New Benin, Benin City do hereby make Oath and state as follows:

1. I am the Claimant in this suit.
2. The 1<sup>st</sup> Defendant is a commercial bank duly incorporated and licensed in Nigeria with its head office at plot 126 Adebola Hopewell, Victoria Island, Lagos State Nigeria.
3. The 2<sup>nd</sup> Defendant is a businessman and operates a business account with the 1<sup>st</sup> Defendant at No.13, Akpapkava Street, Off Bamawo Junction, Benin City.
4. I am a businessman and I transact business with other individuals both home and abroad.

5. In the course of my business transaction I came in contact with the 2<sup>nd</sup> Defendant Mr. Ogbu Nnaemeka Jonas who is also a businessman.
6. In one particular transaction I got indebted to the 2<sup>nd</sup> Defendant to the tune of (₦1,200,000) only.
7. When I informed the 2<sup>nd</sup> Defendant of my readiness to pay back the sum of ₦1,200,000 the 2<sup>nd</sup> Defendant promised to send his account number with the Diamond Bank for ease of payment.
8. The 2<sup>nd</sup> Defendant eventually sent me account No. 0019410448 which he operate with Diamond Bank No.13, Akpakpava Road, Off Bamawo Junction, Benin City, Edo State.
9. On the 21<sup>st</sup> of November, 2011 I went to the said Diamond Bank Akpakpava with the sum of One Million Two Hundred Thousand Naira (1.2M) only to pay into the account of Mr. Ogbu Nnaemeka Jonas as directed.
10. At the Bank I obtained a Deposit Slip No. 4829921 with which I paid the sum of One Million, Two Hundred Thousand Naira (₦1.2M) only into the account of Mr. Ogbu Nnaemeka Jonas. Photocopy of the Deposit Slip shall be relied upon during trial. The Bank is put on notice to produce the original copy.
11. After the payment I waited for the 2<sup>nd</sup> Defendant to acknowledge the payment.
12. Rather than the 2<sup>nd</sup> Defendant acknowledging the receipt of payment he told me that the money I paid into his account was not credited to his account.
13. In responds to the claim of the 2<sup>nd</sup> Defendant I went to the Bank to inquire why the money I paid into the 2<sup>nd</sup> Defendant's account was not credited to his account.

14. On investigation by the Bank officials the money though actually paid but into another account No. 0019410446 erroneously instead of Account No. 0019410448.
15. In spite of this mix-up, the name of the account holder Mr. Ogbu Nnaemeka Jonas was copiously written on the Deposit Slip.
16. At the point of lodgment of the sum, the receiving bank cashier ought to have verified the name on the slip with the account number written on the slip to ascertain its correctness.
17. I was regularly going to the Bank with a view of getting this mix-up rectified so that the account holder Mr. Ogbu Nnaemeka Jonas can have his money.
18. The 2<sup>nd</sup> Defendant is a customer of the Diamond Bank who operates accounts no. 0019410448.
19. Since on the 21<sup>st</sup> of November, 2011, when the mix-up was discovered I have account since the money was paid into that account in his name.
20. I intended to pay that amount into account no. 0019410448 operated by Mr. Ogbu Nnaemeka Jonas and not into account no. 0019410446.
21. Till now, the 2<sup>nd</sup> Defendant is still embarrassing me over the payment of the sum.
22. I identified the lady cashier who received the money on the 21<sup>st</sup> of November, 2011 to the bank official during investigation.
23. The Diamond Bank will suffer if it credits the money to the account of Mr. Ogbu Nnaemeka Jonas.
24. Since 21<sup>st</sup> of November, 2011 the sum of One Million, Two Hundred Thousand Naira Belonging to me has been tied down in Diamond Bank.

25. I consulted my lawyer who wrote to the Manager Diamond Bank Plc requesting that the One Million, Two Hundred Thousand Naira (₦1.2M) deposited into account no. 0019410446 be reaccredited to account no. 0019410448. This letter to the Manager Diamond Bank will be relied upon during trial. The Bank is put on notice to produce the original.
26. I cannot afford to loose that huge sum of money to Diamond Bank as a result of this mix-up.
27. **WHEREOF** the Claimant Claims against the 1<sup>st</sup> Defendant as follows:
  - a. A declaration that the (₦1.2M) paid into the Diamond Bank with the name of the 2<sup>nd</sup> Defendant belongs to him and it should be credited to the account of Mr. Ogbu Nnaemeka Jonas or refunded to me.
  - b. The sum of Five Million (₦5,000,000.00) damages being damages suffered by the Plaintiff as a result of the banks refusal to credit the money to Mr. Ogbuø account.
  - c. Bankø apology for negligence of the receiving cashier for failure to verify the account holders name with the account number.
  - d. The publication by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant that I (Plaintiff) did not pay any money at all into the Diamond Bank.ö

The fact as garnered from the pleadings of the parties are quite simple, which in summary is that the Claimant alledged to have paid the sum of One Million, Two Hundred Thousand Naira (₦1.2M) into a Bank account operated by the 1<sup>st</sup> Defendant erroneously instead of the Bank account of the 2<sup>nd</sup> Defendant also being operated by the 1<sup>st</sup> Defendant to off set the debt he owed to the 2<sup>nd</sup> Defendant.

Claimant and 1<sup>st</sup> Defendant each called one witness and closed their cases.

The 1<sup>st</sup> Defendant filed his final written address on the 5<sup>th</sup> day of November, 2013 which he adopted before this Court. Learned Counsel for the 1<sup>st</sup> Defendant canvassed three issues for determination, viz:-

1. Whether the Claimant proved beyond all reasonable doubt the allegation of fraud committed by the 1<sup>st</sup> Defendant as pleaded in paragraph 14 of his Statement of Claim.
2. Having regard to the state of pleadings in this case whether the 1<sup>st</sup> Defendant is in receipt of the Claimant's money which is now in dispute.
3. Whether the Claimant has *locus standi* to institute this action.

Claimant's Counsel did not file a written address.

ON ISSUES ONE AND TWO, Learned Counsel to the 1<sup>st</sup> Defendant argued that there is a contradiction between the contents of Exhibit 5B, that is paragraph 4 therein, and paragraphs 15 (vi) and Paragraphs 11, 12, 13 and 19 of Claimant's pleadings. He thus submitted that when the evidence of a party/witness contradicts itself, the Court can not believe such evidence relying on A.G. RIVER STATE VS. A.G. AKWA IBOM STATE (2011) 8 NWLR (part 1248) page 31 at 99, paragraphs D ó H, Page 129, paragraphs E ó H (Ratio 17).

Learned Counsel also argued that where the evidence of a party support and the case of the adversary, the adversary can take advantage of such evidence, relying on EDOKPOLOR AND CO. LTD. VS. BENDEL INSURANCE AND CO. LTD., (1977) 2 NWLR (part 486) page 131 at 140 ó 141, paragraphs G ó A.

He argued that the Claimant having pleaded fraud in paragraph 14 of his Statement of Claim, crime is put in issue and as such it must be proved beyond all reasonable doubt relying on IMAM VS. SHERIFF (2005) 4 NWLR (part 914) page 80 at 168, paragraphs G ó H; 170 paragraph B, Ratio 11; FALAE VS. OBASANJO (1999) 4 NWLR (part 599) page 476 at 498, paragraphs E ó F; 504, paragraphs C ó D 506, paragraphs C ó D; Ratio 14. He submitted that the Claimant did not prove the alledgation of diverting his credit to another account.

Learned Counsel also argued that Section 169 (D) of the Evidence Act, 2011 should be construed by this Court against the Claimant who did not call any witness who was privy to the investigation that the said sum was actually received by the 1<sup>st</sup> Defendant and paid into Account No. 0019410446 instead of Account No. 0019410448.

He also argued that Exhibit òAö, Diamond Bank Deposit Slip No. 4829921 tendered by the Claimant falls short of the standard requirement of the 1<sup>st</sup> Defendant. The Learned Counsel said the criteria for validating Exhibit òAö are contained in Exhibit òDö tendered by the 1<sup>st</sup> Defendant which should contain the followings:-

- (a) Rubber Stamping.
- (b) Time Stamping.
- (c) Endorsement by the receiving teller cashier.

Learned Counsel finally submitted that he who asserts must prove, referring to Section 131 (1) of the Evidence Act, 2011 and submitting that the Claimant failed to prove his assertion.

ON ISSUES THREE (3) on whether the Claimant has *locus standi* to institute this action, Learned Counsel to the 1<sup>st</sup> Defendant submitted that the Claimant in paragraph 18 of his Statement of Claim avers that Account No. 0019410448 belonged to the 2<sup>nd</sup> Defendant and also prayed this Court in his relief at paragraph 27 (a) for a declaration that One Million, Two Hundred Thousand Naira) paid into the Diamond Bank with the name of the 2<sup>nd</sup> Defendant belong to him and it should be credited to the account of Mr. Ogbu Nnaemeka Jonas who is 2<sup>nd</sup> Defendant or refunded to him. He also argued that since the 2<sup>nd</sup> Defendant failed to enter appearance, it is trite that he will have no *locus*, referring this Court to ADEGOKE MOTORS LTD VS. ADESANYA (1989) 3 NWLR (part 109), 250 at 282 paragraph C. He further submitted that in determining *locus standi*, the Court has to look at the Writ of Summon and Statement of Claim, relying on OWODUNNI VS. REGISTERED TRUSTEES CCC (2000) 10 NWLR (part 675) 315 at 354 ó 355, paragraphs H ó A; 357, paragraphs F ó G, Ratio 5.

Learned Counsel also submitted that *locus standi* of a party is fundamental and basic; if a person has no *locus standi*, being a busy body over a matter being adjudicated in Court, he has no right to be granted audience by a competent Court. He cited KLIFCO LTD. VS PHILIPP HOLZMANN A.G. (1996) 3 NWLR (part 436) 276 at 296, paragraph G, Ratio 19. Learned Counsel urged Court to strike out the Statement of Claim of the Claimant and dismiss the action, relying on THOMAS VS OLOFOSOYE (1986) 1 NWLR (part 18) 669, per Obaseki, J.S.C at page 671, paragraphs G ó H; 682, paragraph H.

Finally, the Learned Counsel submitted that the issue of jurisdiction is determined by the nature of the Claimant's Claim and not the Defendant's Defence; that the issue of jurisdiction can be raised at any time and at any stage of the proceedings as it is fundamental to adjudication; that it can be raised for the first time in the trial Court or in the Court of Appeal or even at the Supreme Court by any of the parties or by the Court itself *suo motu*. He cited AKAGBAJO VS. ATAGA (1998) 1 NWLR (part 534) 459 at 468 paragraphs B ó C. He then concluded, urging Court to dismiss the Claimant's Claim with substantial cost.

The 2<sup>nd</sup> Defendant did not also file his Memorandum of Appearance. The Claimant did not also file any written address before this Court.

On the 20<sup>th</sup> day of June, 2013, the Claimant opened his case by calling the Claimant as P.W.1 who testified on Oath. Thereafter, the Claimant closed his case. The P.W.1 adopted his Statement on Oath filed on the 4<sup>th</sup> day of December, 2012 and he was cross examined. Through the P.W.1, Exhibits "A" and "B" were admitted by this Court. While Exhibit "A" is a Diamond Bank Deposit Slip No. 4829921, while Exhibit "B" is a letter dated on the 19<sup>th</sup> day of March, 2012 from the Law Firm of J.E. Ogbogu and Co. addressed to the Manager, Diamond Bank Plc, 13, Akpakpava Street, Benin City in respect of the One Million, Two Hundred Thousand Naira (N1.2M), subject matter of this dispute.

The Learned Silk, Dr. A. O. Eghobamien, (SAN) cross examined the P.W.1 on Exhibit "A" where the latter said.

õI cannot read the document because it is faint. The stamp on the document is an original stamp. This document is the one the bank gave me, the Bank stamped the duplicate.ö

When further cross examined on the lodgment of the One Million, Two Hundred Thousand Naira (N1.2M), the subject matter of this case, he said:

õI paid in the money on the 21<sup>st</sup> day of November, 2011. I became aware that the money was credited to the account in January, 2012. The money was credited to 0019410446 instead of account no. 0019410448. I don't know the owner of account no. 0019410446. I made a mistake in the last digit.ö

When asked by the Learned Silk whether he reported the incidence to the police, he said:

õI did not report the matter to police when I discovered the mistake.ö

For the 1<sup>st</sup> Defendant, she opened her defence on the 21<sup>st</sup> day of October, 2013 by calling one Amarachukwu Arinze as D.W.1 who testified on Oath and adopted his Statement on Oath as his evidence. Relevant excerpts from answers to the question put to him in cross examination by Learned Counsel, O. C. Oside are as follows:-

õI am aware that the Claimant came to the bank severally to report in respect of the money he paid in that day. I am not aware if any bank official openly told him that he did not pay any money but I am aware of the fact that he made a complain to the bank and the bank told him to hold on while we investigated and after our investigation we told him that we do not have any record that he paid in any money.ö

He also said:

“I am not aware that the Claimant was able to identify the cashier he paid the money to before the bank officials.”

In determining this suit, I am unable to agree with the Learned Counsel to the 1<sup>st</sup> Defendant that his ISSUE ONE is germane to the determination of this suit.

This ISSUE ONE of the 1<sup>st</sup> Defendant’s Counsel posits that the Claimant pleaded fraud in paragraph 14 of his Statement of Claim. The reproduction of that paragraph is necessary.

“14. The Plaintiff avers that on investigation by the bank officials the money though actually paid, but into another account no. 0019410446 erroneously instead of account no. 0019410448.”

The above from whatever angle one looks at it does not raise the issue of fraud. I therefore adopt ISSUES TWO AND THREE of the Learned Counsel to the 1<sup>st</sup> Defendant as sufficient to determine this case with a minor adjustment. They are reproduced hereunder: as ISSUES ONE AND TWO:

ISSUE ONE: Having regard to the state of pleadings in this case and the evidence led whether the 1<sup>st</sup> Defendant is in receipt of the Claimant’s money now in dispute to entitle him to the reliefs sought.

ISSUE TWO: Whether the Claimant has *locus standi* to institute this action.

I shall consider ISSUE TWO first as the answer to this issue in the negative will render the examination of ISSUE ONE a mere academic exercise which a Court of Law and equity should not be engaged in. This ISSUE TWO is whether the Claimant has *locus standi* to institute this action. Onalaja, J.C.A. (as he then was) defined the term *locus standi* as “denoting legal capacity to institute

proceedings in a Court of Law in KLIFCO LTD. VS PHILIPP HOLZMANN A.G (1996) 3 NWLR (part 436) page 276 at page 292 paragraph D.

In KLIFCO'S case (Supra), Onalaja, J.C.A. (as he then was) at page 296 paragraph G held that *locus standi* is fundamental as failure to have it would deny a person a right of audience by a competent Court where he said:

“The *locus standi* of a party is fundamental and basic because if a person has no *locus standi* by being a busy-body without sufficient legal interest in the matter being adjudicated or litigated in Court, that person has no right to be entertained or granted audience by a competent Court.”

In determining whether a Claimant has *locus standi* in a case, the Court has to look at the whole Statement of Claim of the Plaintiff as held by the Supreme Court in OWODUNNI VS. REG. TRUSTEES OF CELESTIAL CHURCH OF CHRIST (2000) 10 NWLR (part 675) 315 at 354 ó 355, paragraphs H ó A, per Iguh, J.S.C thus:

“It cannot be disputed that the question whether or not a Plaintiff has a *locus standi* in a suit is determinable from totality of all the averments in his Statement of Claim.”

Even in the recent case of PACERS MULTI-DYNAMICS LTD. VS THE M.V. “DANCING SISTER” AND ANOR (2012) Vol. 207 LRCN 168 at 187 paragraphs K ó Z, the Supreme Court held per Rhodes-Vivour that the two tests for determining if a person has *locus standi* to sue are that the action is justifiable and there must be a dispute between the parties. The person must also show sufficient

legal interest in his Statement of Claim. Below is the Learned Justice's *ratio decidendi*:

“A person has *locus standi* to sue in an action if he is able to show to the satisfaction of the Court that his civil rights and obligations have been or are in danger of being infringed. There are two tests for determining if a person has *locus standi*. They are:

1. The action must be justifiable; and
2. There must be a dispute between the parties.

In applying the test, a liberal attitude must be adopted. To have *locus standi* the Plaintiff's Statement of Claim must disclose sufficient legal interest and show how such interest arose in the subject-matter of the action. (Underlining mine for emphasis).

See also the Supreme Court case of CHIEF GAFARU AROWOLO VS CHIEF SUNDAY OLOWOOKERE AND ORS (2012) Vol. 203 LRCN 58 at page 88 paragraphs A ó F.

A careful perusal of the 27 paragraph Statement of Claim of the Claimant will reveal that the Claimant has disclosed sufficient legal interest and he has also shown how such interest arose in the subject-matter of this action. The interest of the Claimant is the One Million, Two Hundred Thousand Naira (N1.2M) which he alleged to have paid into the wrong account number with the 1<sup>st</sup> Defendant which belongs to the 2<sup>nd</sup> Defendant. Could the 2<sup>nd</sup> Defendant have instituted this action? That would have obviously denied him the *locus Standi* as he had no dealing with the 1<sup>st</sup> Defendant in respect of the subject matter of this action which is the One Million, Two Hundred Thousand Naira (N1.2M). However, why the Claimant

decided to make the 2<sup>nd</sup> Defendant a party in this case is something I cannot fathom out. What Claim does the Claimant have against the 2<sup>nd</sup> Defendant? Of course, nothing. I believe that the 2<sup>nd</sup> Defendant would have been better off being a witness for the Claimant. That said, I am of the firm belief that based on the laws cited above, the Claimant has *locus standi* to institute this action. I therefore resolve this ISSUE TWO against the 1<sup>st</sup> Defendant. I now proceed to decide ISSUE ONE.

On ISSUE ONE, the Claimant pleaded in paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 that he transacted business with the 1<sup>st</sup> Defendant when he lodged in the sum of One Million, Two Hundred Thousand Naira (N1.2M) into account no. 0019410446 instead of account no. 0019410448 belonging to the 2<sup>nd</sup> Defendant. He also admitted that he was a contributory factor to this error as he pleaded in paragraph 20 of his Statement of Claim. These averments were given evidential backing by paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 20 of the P.W.1 Statement on Oath which he adopted as his evidence before this Court.

The 1<sup>st</sup> Defendant denied the above averments especially in her paragraphs 6, 7, 8, and 9 reproduced hereunder:

6. The Defendant avers that she is not indebted to the Claimant in any way and states that Claimant's Claim is a fraudulent attempt to extort money from Defendants.
7. The Defendant denies paragraph 9 of the Statement of Claim and avers that on the 21<sup>st</sup> day of November, 2011 claimant never deposited the sum of One Million, Two Hundred Thousand Naira (N1,200,000.00) into any account at its branch.

8. The Defendant denies paragraph 10 of the Statement of Claim and states that the entry in the Deposit Slip is a forgery and an attempt to defraud Defendants. The Defendants further avers that it does not have the original copy nor the control copy of Deposit Slip No. 4829921 in its possession as such was never deposited by the Claimant. Defendant shall at the trial rely on the certified true copy of her transactional journal for 21<sup>st</sup> November, 2011.
9. The Defendant denies paragraph 14 of the Statement of Claim and avers that upon investigation, the bank officials discovered that no such money was ever paid into the bank by claimant on that day.ö

It is pertinent for me to state that it is trite that the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleading. This burden shall be discharged on the balance of probability in all civil proceedings. See Sections 133 and 134 of the Evidence Act, 2011 (as amended).

It is also trite to state that pleadings do not constitute evidence. See: KAYDEE VENTURES LTD VS. THE HON. MINISTER OF FEDERAL CAPITAL TERRITORY AND ORS (2010) Vol. 181 LRCN 69 at 98 paragraphs U where Muhammad, J.S.C said:

öNow, the trite position of the law of pleading is that where an averment has not been supported by evidence, that averment is deemed abandoned and must be struck out by the Court.ö

It is also trite that there must be oral and/or documentary evidence to show that the facts pleaded are true. See the reasoning of the Supreme Court in CAMEROON AIRLINES VS. OTUTUIZU (2011) Vol. 195 LRCN 198 at 231 Ratio P, per Rhodes-Vivour:

“Averments in pleadings are facts as perceived by the party relying on them. There must be oral or/and documentary evidence to show that the facts pleaded are true. Consequently, pleadings without evidence to support it are worthless.”

In trying to substantiate his averments, the Claimant tendered Exhibits “A” and “B” being the Diamond Bank Plc Deposit slip No. 4829921 used for lodging the One Million, Two Hundred Thousand Naira (N1.2M) on the 21<sup>st</sup> day of November, 2011 and Exhibit “B” the letter to the 1<sup>st</sup> Defendant in respect of the One Million, Two Hundred Thousand Naira (1.2M) dated on the 19<sup>th</sup> day of March, 2012. Exhibit “A” is vital to the success of the Claimant’s case. It is also trite that a document should speak for itself and no oral evidence can be used to amend documentary evidence. See: OGUNDELE VS. AGIRI (2009)12 M.J.S.C (part 1) page 126 at page 144 where Muntaka-Coomassie, J.S.C said:

“Documents when tendered and admitted in Court are like words uttered and do speak for themselves. They are more reliable and authentic than words from the *vocal cord* of man as they are neither transient nor subject to distortion and miss-interpretation but remain permanent and indelible through the ages.”

It is also trite that documentary evidence is the best form of evidence as held by the Supreme Court in EGHAREVBA VS. OSAGIE (2010) Vol. 180 LRCN 75 at page 103 paragraph Z, per Ogbuagu, J.S.C:

“It is now firmly settled that documentary evidence is the best evidence. It is the best proof of the contents of such document and no oral evidence will be allowed to discredit or contradict the contents thereof except where fraud is pleaded.”

See also SALZGITTER STAHL GMBH VS TUNJI DOSUNMU INDUSTRIES LIMITED, (2011), Vol. 194 LRCN 192 at 232 paragraph K.

On the face of Exhibit “A”, there are obvious questions that require answer which the document cannot supply. They are as follows:-

1. What date was this transaction done?
2. Who owns the account (Title of Account)?
3. What is the Account Number the money was lodged into?
- 3b. What is the amount in figures
4. What is the amount in words lodged into this account?
5. What is the name of the Depositor in Exhibit “A”?
6. What is the address of the Depositor in Exhibit “A”?
7. What is the phone number of the Depositor in Exhibit “A”?

As reproduced above, the P.W.1 admitted during cross-examination that Exhibit “A” is unreadable.

To counteract Exhibit “A”, the 1<sup>st</sup> Defendant through D.W.1 tendered Exhibit “D” which was admitted, which are three samples of how the 1<sup>st</sup> Defendant’s Deposit Slip should be like. Exhibit “D” answered all the seven (7) question raised above which Exhibit “A” woefully failed to supply any answer to.

Furthermore, the evidence of D.W.1 could not be ruffled by the Learned Counsel for the Claimant on the criteria to validate the 1<sup>st</sup> Defendant's Deposit Slip.

The D.W.1 under cross-examination said:

“Acknowledgement by bank involves three things: time stamping, rubber stamping and endorsing with the signature of the cashiers.”

Does Exhibit “A” have these features? It has all but the last one – signature of the cashier. I therefore hold on Exhibit “A” that the document cannot be relied upon to substantiate the transaction which the Claimant alleged took place on the 21<sup>st</sup> day of November, 2011 as it is unsatisfactory.

Exhibit “A” having been held to be unsatisfactory to substantiate the allegation of the Claimant, is there anything left for the Court to consider? Let me look at other pleadings and evidence of the Claimant.

1<sup>st</sup> Defendant's Counsel submitted that paragraph 19 of the Claimant's Statement of Claim conflicts with paragraphs 11, 12, 13 and 14 of same. And that all these paragraphs are in conflict with paragraph 4 of Exhibit “B” which is the Claimant's letter through his Counsel to the manager of Diamond Bank Plc concerning the (N1.2M) dated the 19<sup>th</sup> day of March, 2012. For ease of reference, I reproduce these paragraphs infra:

- “11. The Plaintiff avers that after this payment he waited for the 2<sup>nd</sup> Defendant to acknowledge the payment.
12. The Plaintiff avers that rather than the 2<sup>nd</sup> Defendant acknowledging the payment, he told him that the money he paid into the 2<sup>nd</sup> Defendant's account was not credited to him.

13. The Plaintiff avers that in responds(sic) to this claim by the 2<sup>nd</sup> Defendant, he went to the bank to inquire why the money he paid into the 2<sup>nd</sup> Defendant's account was not credited to him.
14. The Plaintiff avers that since on the 21<sup>st</sup> day of November, 2011 and when the mistake/mix-up was discovered he has been pressurizing the bank to credit this sum to Mr. Ogbu Nnaemeka Jonas account since the money was paid into that account in his name.

**Paragraph 4** of Exhibit B says:

After the said lodgment our client was out of the country for sometime when he came back, he was informed by your customer that the said sum was not credited to his account. On reaching your bank to clarify this issue he was told, that account no. 0019410446 did not exist.

The P.W.1 testified on Oath in respect of the above pleading in his witness Statement on Oath at paragraphs 11, 12, 13 and 14 while he testified on Exhibit B vide his paragraph 25.

It is trite that parties are bound by their pleadings and evidence given contrary to same goes to no issue. See the Supreme Court case of SALZGITTER STAHL GMBH VS TUNJI DOSUNMU INDUSTRIES LIMITED (2011) Vol. 194 LRCN 192 particularly at page 231 paragraphs U-JJ, where it was held per Ogbuagu J.S.C thus:

It is now settled that parties are bound by their pleadings. It is to be stressed that any evidence given contrary to the pleadings go to no issue.

Paragraph 4 of Exhibit öBö which the P.W.1 testified on was not pleaded. So that piece of evidence that after the lodgment into the 1<sup>st</sup> Defendant's bank, the P.W.1 travelled is hereby discountenanced by this Court.

The P.W.1 (Claimant) pleaded and deposed on Oath that the lodgment of One Million, Two Hundred Thousand Naira (N1.2M) by him into the 2<sup>nd</sup> Defendant's bank was done on the 21<sup>st</sup> day of November, 2011 and there was no formal notification of this supposed anomaly till Exhibit öBö was written on the 19<sup>th</sup> day of March, 2012, almost four months later. And the P.W.1 said in his cross-examination thus:

öI paid the money on the 21<sup>st</sup> day of November, 2011. I became aware that the money was not credited to the account in January, 2012.ö

I find it difficult to believe the P.W.1 as a witness of truth when he pleaded in paragraph 19 of his Statement of Claim and testified to same in paragraph 19 of his witness Deposition on Oath that, öSince on the 21<sup>st</sup> of November, 2011 and when the mistake/mix-up was discovered he has been pressurizing the bank to credit this sum to Mr. Ogbu Nnaemeka Jonas account since the money was paid into that account in his name.ö It is nowhere to be found in the course of this trial that anything was done by the Claimant before the 19<sup>th</sup> day of March, 2012 to draw the attention of the 1<sup>st</sup> Defendant to the issue of the One Million, Two Hundred Thousand Naira (N1.2M) until Exhibit öBö was written by his counsel.

The Claimant's pleadings and testimony on Oath was to the effect, especially at paragraph 14 that on investigation, it was discovered by the 1<sup>st</sup> Defendant

official that the money was actually deposited into the 1<sup>st</sup> Defendant's bank account but erroneously paid into a/c No. 0019410446 instead of a/c No. 0019410448. And at paragraph 22, the Claimant averred and also testified that he had identified the cashier who received the One Million, Two Hundred Thousand Naira (N1.2M) from him. He said:

“22. I identified the lady cashier who received the money on the 21<sup>st</sup> day of November, 2011 to the bank official during investigation.”

As argued by the Learned Counsel to the 1<sup>st</sup> Defendant, which I wholly agree with, the Claimant failed to mention categorically:

- (a) Designation and the names of the 1<sup>st</sup> Defendant's official to whom he reported the alleged incident.
- (b) Who informed the Claimant that the money was in actual fact paid in but to the wrong account number.
- (c) To whom did the Claimant identify the lady cashier who received the alleged deposited sum from him.

My own question now is:

- (d) What is the name of the lady cashier?

It is the position of the law that evidence which could be and is not produced would be construed against the person who withholds it on the authority of Section 167 (D) of the Evidence Act, 2011 (as amended):

“167. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in and their relationship to the facts of the particular case, and in particular the Court may presume that a

(a) í í í í í í í í í í ..

(b) í í í í í í í í í í í ..

(c) í í í í í í í í í í í ..

(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.ö

I therefore hold that the evidence of the investigation conducted and those who carried out the investigation are within the domain of the Claimant and having failed to produce it, I construe Section 167 (D) of the Evidence Act, 2011 (as amended) against him.

On the totality of the evidence adduced in this case, I hold on ISSUE ONE that the 1<sup>st</sup> Defendant is not in receipt of the One Million, Two Hundred Thousand Naira (N1.2M) allegedly lodged by the Claimant to entitle him to the reliefs he seeks before this Court. I hold that the reliefs sought by the Claimant in this suit are unfounded, unmeritorious and brought mala fide. I therefore dismiss the Claim. No order as to cost.

HON. JUSTICE V.O. EBOREIME  
JUDGE  
20<sup>th</sup> February, 2014.

**COUNSEL:**

O. C. OSIDE, ESQ. FOR THE CLAIMANT.

DR. A. O. EGHOBAMIEN, (SAN) WITH N. OKPALA (MISS)

AND O. N. OGBEBOR (MISS) FOR 1<sup>ST</sup> DEFENDANT.

2<sup>ND</sup> DEFENDANT DID NOT ENTER APPEARANCE.

