

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE SABONGIDDA-ORA JUDICIAL DIVISION, HOLDEN AT SABONGIDDA-ORA
BEFORE HIS LORDSHIP, HON. JUSTICE N.A. IMOUKHUEDE, ON THURSDAY THE
15TH DAY OF JUNE, 2017

<u>B E T W E E N:</u>		<u>SUIT NO. B/103/2012</u>
MR. EPHRAIM UKWOMA	CLAIMANT
A N D		
UNITED BANK FOR AFRICA PLC	DEFENDANT

J U D G M E N T

The Claimant's claim against the Defendant are as follows:-

1. The sum of N2,000,000.00 (Two Million Naira) being the sum fixed with the Defendant by the Claimant and which sum the Defendant failed, refused and/or neglected to pay to the Claimant upon demand.
2. 35% interest per annum on the sum of N2,000,000.00 from the month of March, 2010 till judgment.
3. The sum of N6,000,000.00 as general damages.
4. The sum of N15,000,000.00 as exemplary damages.
5. 10% interest on the Judgment debt till liquidation.
6. The sum of N80,000.00 per month as loss of profit from the month of March, 2010 till Judgment.

It is pertinent to note that the Defendant admitted through its Amended Statement of Defence that the Claimant fixed his N2,000,000.00 with the Defendant at its Mission Road Branch, Benin City and the money was still in their possession. It was on the strength of this admission that the Claimant prayed this Court through a motion dated the 18th day of September, 2013 to enter Judgment

for the Claimant in the sum of N2,000,000.00, which this Court granted and the Defendant refunded the sum of N2,000,000 to the Claimant in October 2013.

On the 24th of February 2014, Claimant gave evidence and testified that he is a businessman who deals on bicycle spare parts and that he was operating two accounts, namely savings and current accounts at the Defendant's branch at Mission Road, Benin City. The Claimant testified that he fixed the sum of N2,000,000.00 with the Defendant and was issued with a fixed deposit certificate No. TD049000010353 by the Defendant which was admitted and marked Exhibit A. The Claimant testified that when the fixed deposit matured he was paid the sum of N90,000.00 as interest accrued on the sum of N2,000,000.00 and he opted to refix the principal sum with the Defendant. The Claimant testified that he was told by the Defendant's Operational Manager at the Defendant's Branch office at Mission Road, Benin City that it was no longer possible to do so. The Claimant testified that when he asked why, he was told that one Mrs. Okpara used his N2,000,000.00 as a collateral for a loan she took from the Defendant. The Claimant testified that he never discussed with Mrs. Okpara or agreed with Mrs. Okpara to use his money as a security for the alleged loan she took from the Defendant. The Claimant testified that his money was converted by the Defendant into a security for a loan without his consent. The Claimant testified that when he again visited the Operational Manager of the Defendant, he was asked to go and call Mrs. Okpara. The Claimant testified that when he inquired of her he was told that she was no longer working with the Defendant. The Claimant testified that he then briefed his Counsel who wrote on his behalf to both the Group Managing Director of the Defendant and Operational Manager demanding for the payment of the N2,000,000.00 letters were admitted and

marked Exhibits B and C, the Defendant's reply was admitted and marked Exhibit D. The Claimant testified that as a customer to the Defendant, the Defendant owed him a duty not to injure his financial interest but that the Defendant was negligent in handling his money when it converted same into a collateral to back up someone's loan without his consent sought and obtained. The Claimant testified that as a businessman he has been kept away from his funds by the Defendant without any good reason. The Claimant testified that he buys and stock motor cycles for sale. The Claimant testified that as at the month of March 2010, a brand new motor cycle was sold for N80,000.00 with a profit margin of N4,000.00 on each motor cycle and he would have sold 20 motorcycles each month. The Claimant testified that he lost a profit of N80,000.00 per month. The Claimant testified that he applied to the Defendant through a letter for a statement of account on his savings account No. 2032477834 which was admitted and marked Exhibit E, while the Claimant's statement of account which was issued to him by the Defendant was admitted as Exhibit F. The Claimant testified that he never discussed anything about rolling over of his fixed deposit account with Defendant neither did he agree or consent to same. The Claimant testified that that he was never issued with any other fixed term deposit certificates apart from the fixed Deposit certificate No. TD049000010353 with the value date of 2nd September, 2009. Under cross examination, the Claimant stated he does not have any document to show that Mrs. Okpara used his money as security. The Claimant also stated that motor cycles are of different types, that the prices differ because they are not the same products and the profits are also not the same. The Claimant stated that he is not aware that the Defendant has been rolling over his money and paying interest on that account. The Claimant stated

that he does not know the name of the Operational Manager who told him that Mrs. Okpara had used his money as security for a loan. That was the case for the Claimant.

On the 16th of December 2014 the Defendant opened its case and DW1, Mr Idris Yusuf, a banker testified that the Claimant fixed his money with the Defendant's Branch office at Mission Road, Benin City. DW1 testified that at the time the Claimant fixed N2,000,000 with the Defendant, the Defendant had two Branches on Mission Road, Benin City. DW1 testified that upon the maturity of the fixed term deposit on March, 4, 2010 the Claimant's Account was credited with the sum of N95,424.66 (Ninety five thousand, four hundred and twenty four Naira sixty six kobo) as interest on the principal sum fixed. DW1 testified that the Claimant had earlier during the opening formality of the Fixed Deposit given his consent to the Defendant to keep rolling over the principal sum. DW1 testified that upon the first maturity, the Claimant's principal sum was rolled over on March 4, 2010 with Certificate Deposit No. ID 049000010470 based on the instruction to automatically roll over the deposit given by the Claimant to the Defendant. DW1 testified that the roll over mentioned was for a tenure of 90 days and interest rate at 2.75% which was to mature on August 31, 2010. DW1 testified that shortly after the Claimant fixed his money, interest rate on fixed term deposit dropped and has since been fluctuating. DW1 testified that the interest rate on Fixed Term Deposit is regulated by the Central Bank of Nigeria (CBN) and as such the interest rate agreed between the Claimant and the Defendant crashed to 2.75%pa as a result of CBN's directive to reduce interest rate of Term Deposit.

DW1 testified that the current interest rate on the Fixed Term is 4.75% pa as regulated by CBN. DW1 testified that before the Claimant's principal sum could

mature, the Defendant's Branch where the Claimant's account was operated was closed down for administrative reasons. DW1 testified that upon the closure of the said Mission Road Branch, all the Term Deposit accounts were transferred to the Defendant's Internal Account. DW1 testified that the Defendant uses Internal Account for administrative purposes like when a branch is closed down as in this case or to pre-generate an account and other purposes. DW1 testified that the Internal Account comprises several accounts in one system. DW1 testified that the Claimant's Term Deposit got matured on 31st of August 2010 in the Defendant's Central Internal Account. DW1 testified that the Defendant rolled over the capital and interest which was now N2,024,410.96 (Two Million, Twenty four Thousand, four hundred and ten Naira, Ninety six kobo) on September 3, 2010 with Certificate Deposit No. TD049000010533 based on the existing consent of rollover given to the Defendant by the Claimant for a 180 days tenure with interest rate at 3% pa which was to mature on March 2, 2011. DW1 testified that the Claimant's Fixed Term deposit was further rolled over at the interest rate of 3% pa for a tenure of 90days with Certificate deposit number TD038600002108. DW1 testified that the Claimant's Term Deposit is still running with Certificate Deposit No. TD038600002229 on a 90 days tenure and on a continuous rollover. DW1 testified that the Claimant's Term Deposit could no longer be rolled over for more than 90days tenure as a result of the Defendant's policy. DW1 testified that the Claimant's current account position is N2,238,409.42 as was fixed on April 22, 2011. DW1 testified that the next interest payment will be due on July 21, 2013 when the current placement will mature. DW1 testified that the Claimant's fixed deposit account has now been liquidated as his principal sum of N2,000,000.00 (Two Million Naira) has been given to him. DW1 testified that the Claimant's

accrued interest is with the Defendant who is willing and ready to hand over same to the Claimant.

DW1 testified that the Defendant relies on the following Term Deposit Certificates.

- (i) TD049000010470
- (ii) TD049000010533
- (iii) TD038600002108
- (iv) TD038600002229

DW1 testified that the Claimant's Term Deposit Account was subsequently transferred from the Internal Account to the Defendant's 95-97 Mission Road. DW1 testified that the Defendant was not negligent in handling the Claimant's fixed deposit fund. DW1 testified that the Claimant's funds were never used as collateral to secure any other loan allegedly given to one Mrs. Okpara. DW1 testified that the Defendant did not convert the Claimant's funds to a security for anybody's loan. DW1 testified that the Defendant never asked the Claimant to call Mrs. Okpara who was no longer in its employment. DW1 testified that the Defendant never in any way injured the feelings or the financial interest of the Claimant nor converted the Claimant's funds to secure any loan given to a 3rd party. DW1 testified that the said Mrs. Okpara alleged by the Claimant to be in the Defendant's employment is unknown to the Defendant as there was no Mrs. Okpara ever in the employment of the Defendant. DW1 testified that in 2010 a Motor Bike did not cost up to N80,000.00 (Eighty thousand Naira). DW1 testified that the use of Motor Bikes began to decline in 1999, when many State Governments banned the use of Motor Bikes as a means of public transport on account of the high incidence of crimes with which they were associated. DW1

testified that it would have been impossible for the Claimant to make the profit anticipated because the demand for Motor Bikes had dropped sharply by 2010 and continues to drop till today and motor bikes are in fact being gradually replaced by Tricycles. Under cross examination by Counsel to the Claimant , DW1 stated that the records show that the Claimant fixed N2 Million in their Bank and the records show that the Claimant was fully paid interest once. DW1 stated that the Claimant had signed from inception for roll over until he calls for his money and that such consent is usually signed. DW1 stated that there is a consent form for fixed deposit but that he does not have the consent form in Court to show where the Claimant signed for roll over. DW1 denied that they refused the roll over on the ground that the fixed deposit was used as collateral to secure a loan. DW1 admitted that the money was not paid in 2011 pursuant to the demands of the Claimant. DW1 stated that fixed deposit contract is between the customer and the bank. DW1 stated that fixed deposit is regulated by the Central Bank and the interest rates go up and down. DW1 stated that from Exhibit 'A' the Claimant was paid the first interest, he was not paid the subsequent interests because he did not ask. DW1 stated that the customer is supposed to ask for the interest. That was the case of the Defendant.

Counsel to the parties filed written addresses and adopted the following issues for determination:

- 1) Whether or not it is lawful for the Defendant to allow a 3rd party access to the funds or money the Claimant fixed with the Defendant without the Claimant's consent first had and obtained.

- 2) Whether or not the Defendant did not owe the Claimant a duty to protect his financial interest regard being had to the Banker Customer relationship existing between both of them.
- 3) Whether going by the evidence (both documentary and deposed) before this Honourable Court on the part of the Claimant, the Defendant is not in breach of the duty of care he owed to the Claimant.
- 4) Whether going by the evidence adduced in the case on the part of the Claimant, the Claimant is entitled to the reliefs he sought from this Honourable Court.'

Counsel to the Defendant submitted that the Claimant's Claim that that his funds where converted into a collateral to back up a loan given to one Mrs. Okpara without his consent and that his feelings and financial interests were injured owing to the interference with his Fixed Deposit Account are not supported by any iota of evidence before this Court.

Counsel to the Defendant submitted that the Claimant has not been able to prove the said particulars of negligence he is relying on (to establish his claim) and failure to prove same is fatal to his claim of negligence which must consequently fail, as he is to recover on the pleaded particulars and relies on the case of Diamond Bank Ltd Vs. Partnership Investment Co. Ltd (2010) 13 W.R.N. Pg. 35 at 43.

Counsel to the Defendant submits that failure of the Claimant to prove negligence in a claim for damages negates the Defendant to be held liable for damages and relies case of Akanbi Vs. Alatedo Nig. Ltd (2000) 1 NWLR (Pt. 639) pg. 125 at 133 Ratio 17.

Counsel to the Defendant submits that Claimant is not entitled to the interest of 35% per annum on the sum of N2,000,000.00 from March, 2010 till Judgment as this claim has not been substantiated by any averment in his pleadings and evidence and relies on the case of Abacha Foundation Vs. UBA (2010) 2-3 MJSC Pg. 107 at pg 109 ratio 2. Counsel to the Defendant submitted that in order to justify an award of exemplary damages, it is not sufficient to show simply that the Defendant has committed the wrongful act complained of: it must be shown that Defendant's conduct was either high handed, outrageous, insolent, vindictive, oppressive or malicious and showing contempt of the Defendants rights or in disregard of every decent conduct of civilized men and relied on the case of Marine Management Associates Inc. & Anor. Vs. National Maritime Authority (2012) 13 SC (Pt. 11) 141. Counsel to the Defendant submits that the N80,000.00 (Eighty thousand Naira) per month loss of profit is anticipated and is in the nature of special damages which has to be strictly proved and relies on the case of Ibok Vs. Spring Bank Plc (2002) 35 WRN Pg. 161 at 168 .

On the issue of negligence Counsel to the Claimant submitted that this Honourable Court is called upon to determine (a) if it is lawful for the Defendant to allow a 3rd party access to the customer's fund (b) whether or not the Defendant did not owe the Claimant the duty to protect his financial interest and (c) whether going by the evidence canvassed before this Honourable court the Defendant is not in breach of the duty of care he owes the Claimant. Counsel to the Claimant submitted that the Defendant bank owed the Claimant a duty of care not to injure him in his financial interest.

Counsel to the Claimant also submitted that the Defendant's refusal, neglect and or failure to release the Claimant's money to him when he demanded for it,

and without offering any reason as to why it could not be released to him falls far below the standard required of a commercial bank and relied on the case of Emmanuel Agbanelo Vs. Union Bank of Nig. Plc (2000) 77 LRCN page 1140.

In reviewing the evidence before Court it is not in dispute that Claimant as a customer of the Defendant placed his N2,000,000 in a fixed deposit account. The money matured on 4th of March 2010 and he was credited with the sum of N95,424.66 (Ninety five thousand, four hundred and twenty four Naira sixty six kobo) as interest on the principal sum fixed. It is also not in dispute that Claimant's money was held by the Defendant for over 2 years after a demand for it was made by the Claimant. The Defendant claimed that there was an agreement with the Claimant for automatic refixing of the money. Defendant pleaded several fixed deposit certificates which the Claimant said he never received and which the Defendants never produced as evidence in Court. Though the Defendant claimed that upon the opening formality of the fixed deposit, the Claimant had earlier given his consent to keep rolling over the amount, there is no evidence before this Court of such consent. I believe the Claimant that he only received one certificate which he tendered as Exhibit A. The Defendant pleaded several fixed deposit certificates which the Claimant said he never received and which the Defendant never produced as evidence in Court. I believe the Claimant that he only received one certificate which he tendered as Exhibit A. A close look at Exhibit A shows that the interest rate agreed on by the parties was 10.75% pa. The Defendant cannot assert that they rolled over the fixed deposit and were paying interest on the amount. DW1 under cross examination admitted that the Claimant was not subsequently paid interest on his money because he did not ask. Since fixing of money is an agreement between the Banker and Customer,

both parties have to be in agreement for the use of the fund. It cannot be a unilateral action on the part of the Banker. Though the Defendant claimed that upon the opening formality for the fixed deposit, the Claimant had earlier given his consent to keep rolling over the amount, there is no evidence before this Court of such consent. I believe the Claimant when he said that there was no prior agreement for automatic rollover with the Defendant. A careful examination of Exhibit A shows that the interest rate agreed on was 10.75% p.a. I do not believe the Claimant agreed to receive an interest of 2.75% pa for the next rollover of 90 days. I believe the Claimant's case that the only agreement for fixed term deposit was when he first fixed his money on the 2nd of September 2009 which ended on the 2nd of March 2010. I find that thereafter the Defendant held onto the Claimant's money without his consent for two years until it was released by an order of this Court. In his evidence and under cross examination, DW1 insisted that the Claimant had signed for a roll over of his funds, under cross examination he admitted that there is a consent form for roll over usually signed by their Customers which the Claimant signed. DW1 said that he however did not bring the form to Court. Also the alleged fixed deposit certificates which were copiously pleaded by the Defendant were not tendered by the Defendant. Under cross examination DW1 stated that the documents got lost when they moved their branch office. I do not believe the evidence of the Defendant that there was an agreement between the Claimant and the Defendant for a revolving fix deposit and I so hold.

Claimant pleaded the following claim for Negligence in his Amended Statement of Claim:

16. The Claimant avers that as a customer to the Defendant the Defendant owed him a duty of care not to injure his financial interest. Unfortunately the Claimant's financial interest was seriously injured by the Defendant's attitude.
17. That the Defendant was negligent in handling his fixed deposit fund when it converted same into a collateral to back up a loan purportedly given to one Mrs Okpara without the consent of the Claimant sought and obtained.
18. The Claimant avers that he was injured both in his feelings and his financial interest owing to the Defendant's unlawful interference with his fixed deposit account.

PARTICULARS OF NEGLIGENCE

- a. The Claimant's fund was used to collateralize a loan without the Claimant's Consent.
- b. Mrs Okpara or any other person was not a party to the fixed deposit account the Claimant kept with the Defendant.
- c. The said Mrs. Okpara existed the Defendant's employment with the full knowledge of the Defendant which exist compounded the woes of the Claimant.

In his written address Counsel to the Claimant submitted that on the issue of negligence, this Court is called upon to determine (a) if it is lawful for the Defendant to allow a 3rd party access to the customer's fund (b) whether or not the Defendant did not owe the Claimant the duty to protect his financial interest and (c) whether going by the evidence canvassed before this Court the Defendant is not in breach of the duty of care he owes the Claimant.

In the case of U.T.B. v. Ozoemena (2007) 3 NWLR (Pt.1022) 448 the Supreme Court held per Kalgo JSC that :

"For a Plaintiff to succeed in an action for negligence, he or she must plead all the particulars in sufficient detail of the negligence alleged and the duty of care owed by the Defendant and all these must be supported by credible evidence at the trial".

In the case of Diamond Bank Ltd V PIC Ltd 2010 ALL FWLR(512)1098 the Supreme Court held per Ogbuagu JSC that: 'Negligence is a question of fact and not of law, so each case must be decided in the light of the facts pleaded and proved.'

I have carefully reviewed the Claimant's case and there is no evidence before this Court that the Defendant allowed a third party access to Claimant's funds. What is in evidence is that the Defendant withheld the Claimant's funds and this was not released till October 2013 after a Court order. If there is no evidence before this Court to prove that the Defendant allowed a third party to access Claimant's fund or that his funds was used as a collateral for a loan it will be an academic exercise for this court to deliberate on the Claimant's issue of 3rd Party access to his funds. The Claimant hinged his Claim for negligence on the issue that the Defendant allowed a third party access to his funds. I agree with Counsel to the Defendant that there is no iota of evidence before this Court that the Defendant allowed access of a third party to Claimant's funds and I so hold.

In reviewing the evidence before Court it is not in dispute that Claimant as a customer of the Defendant placed his money in a fixed deposit account. Money

matured on 4th of March 2010 and he was credited with the sum of N95,424.66 (Ninety five thousand, four hundred and twenty four Naira sixty six kobo) as interest on the principal sum fixed. I believe the Claimant when he said that when he went to discuss with the Defendant operational manager he was told certain things. What is clear is that the Claimant's funds were never released to him as and when due in spite of demands by himself and his lawyer and was only released when the matter was in Court. I believe the Claimant's evidence that the only agreement for fixed term deposit was when he first fixed his money on the 2nd of September 2009 which ended on the 2nd of March 2010. I find that thereafter the Defendant held unto the Claimant's money without his consent for two years until it was released by an order of this Court. In his evidence and under cross examination, DW1 insisted that the Claimant had signed for a roll over of his funds. Under cross examination he admitted that there is a consent form for roll over usually signed by their Customers which the Claimant signed. DW1 said that he however did not bring the form to Court. Also the alleged fixed deposit certificates which was copiously pleaded by the Defendant were not tendered by the Defendant. Under cross examination DW1 stated that the documents got lost when they moved their branch office. I do not believe the evidence of the Defendant that there was an agreement between the Claimant and the Defendant for a revolving fix deposit and I so hold. I do not believe DW1 when he said that there was subsequent rollover of Claimant's money by the Defendant. DW1 under cross examination admitted that the Claimant was only paid the first interest but was not paid the subsequent interests because he did not ask. How can there be an agreement for rollover of his fixed deposit without payment of interest? If it is true that there was a roll over agreement between

the Claimant and the Defendant, interest payment was supposed to be automatic and not awaiting Claimant's request. I find from the evidence led that there was no rollover agreement between the Claimant and the Defendant and that the Claimant's fund was withheld by the Defendant from 2nd March 2010 to October 2013 when it was released to the Defendant without payment of interest on his money. I find that the Claimant is entitled to accrued interest on the use of his funds by the Defendant and I so hold.

The Claimant is claiming 35% interest per annum on the sum of N2,000,000 from the month of March 2010 till date of judgment. The evidence before this Court is that the Defendant released the sum N2,000,000 to the Claimant without payment of interest in October 2013 after an order of this Court. In the case of *Ekwunife V Wayne (West Africa Ltd)* 1989 5 NWLR(122)422 the Court held that interest may be claimed as a right where it is contemplated by the agreement between the parties, or under a mercantile custom, or under a principle of equity such as breach of fiduciary relationship citing *London Chatham and Dover Railway V S.E. Railway* 1893 AC429, 434. It is clear from the evidence led that there was an agreement between the Claimant and Defendant on payment of interest for the N2,000,000 deposited with the Defendant. Exhibit A clearly shows the nature of transaction between the Claimant and the Defendant and the interest agreed upon was 10.75% pa. It is also clear that under the mercantile custom of banking, payment of interest on funds is normal. Therefore, there is nothing wrong in the court granting the 10.75% p.a interest rate provided for in the Term Deposit Certificate Exhibit A. The Plaintiff is entitled to it as of right see *Wema Securities And Finance Plc Vs. Nig. Agricultural Insurance Corporation* (2015) All FWLR(Pt. 807) pg. 410 .

As to the issue of damages the Court held in *Okeowo Vs. Sanyolu* (1986) 2 NWLR (Pt. 23) at page 472 ratio 5 that in an action for Negligence the Plaintiff is entitled to claim damages for losses reasonably foreseeable or arising from the Defendant's act or omission.

The Claimant is claiming

1. The sum of N6,000,000.00 as general damages.
2. The sum of N15,000,000.00 as exemplary damages.
3. 10% interest on the Judgment debt till liquidation.
4. The sum of N80,000.00 per month as loss of profit from the month of March, 2010 till Judgment.

In the case of *CBN V OKOJIE* 2015 All FWLR(807) 478 the Supreme Court held per Rhodes Vivour JSC that exemplary damages are awarded with the object of punishing the Defendant for his conduct in inflicting injury on the Plaintiff. They can be made in addition to normal compensatory damages and should be made only :

- a. In a case of oppressive , arbitrary or unconstitutional acts by government servant;
- b. Where the Defendant's conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the Plaintiff;
- c. Where expressly authorized by statute

See *Gov Lagos State V Ojukwu* 1986 1 NWLR (18) 621 *Williams V Sagay* 1999 5NWLR (396) 441.

From the evidence led by the parties I have not found the behaviour of the Defendant to be either high handed, outrageous, insolent, vindictive, oppressive

or malicious and showing contempt of the Claimant's rights or in disregard of every decent conduct of civilized men and I so hold. The Claimant's claim for exemplary damages fails and is dismissed.

The Claimant is claiming the sum of N6,000,000 as general damages ,as earlier held, Claimant was not able to prove his claim of negligence against the Defendant so the claim for general damages fail and I so hold.

On the issue of loss of profit, in the case of Stephenson Standard Company Ltd v. Yifa Nigeria Ltd (2012) LPELR-9707(CA) ,the Court of Appeal held that:

"Loss of profit is a specie of special damages which the law requires must be specifically pleaded and proved strictly by evidence of particular losses which are known and accurately measured before the trial court. In other words, loss of profit as an item of special damages must be adequately particularized in the pleading and also be proved by cogent and credible evidence at the trial. See X.S. Nig. Ltd v. Taisei (W.A.) Ltd supra; CAP Plc v. Vital Inv. Ltd (2006) 6 NWLR Pt. 976 Pg. 220." Per OGUNWUMIJU, J.C.A (Pp. 18-19, paras. F-A)".

The Claimant claims that he makes N80,000 from the sale of motorcycles per month but he never tendered any evidence to show the rate of his company's sales and turnover to confirm his oral assertion of sales of motorcycles per month.. There was no evidence to back his claim of monthly loss from the sale of motor cycles, no invoices were pleaded or tendered nor books of company account to support his claim on turnover and I so hold. The Claimant's Claim for anticipated profit as contained in his pleadings having crystalized into special damages ought to have been specially pleaded and proved by concrete and

cogent evidence. It is trite law that this Court cannot speculate, the Claimant has not been able to prove the claim of loss of profit before this Court and I so hold.

What is clear from the evidence led and proved is that the Claimant's funds were never released to him as and when due in spite of demands by himself and his lawyer and was only released when the matter was in court. Exhibit A clearly shows that the agreement between the Claimant and the Defendant for the use of his funds is 10.75% p.a. The Defendant is thus liable to pay an interest of 10.75% p.a. on the sum of N2 million from 3rd of March 2010 to October 2013 when Claimant's money was finally released to him by order of Court.

The Claimant's claim succeeds in part and I make the following orders:
10.75% interest p.a. on the sum of N2,000,000 from March 2010 to October 2013 when the money was finally released to Claimant.

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HON JUSTICE N.A. IMOUKHUEDE
JUDGE
15/6/2017

P.A. Eze Esq
Counsel for the Claimant

C. Obaro-Umeh Esq
Counsel for the Defendant