

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN –
CHIEF JUDGE**

FRIDAY, 13TH APRIL, 2018

SUIT NO. B/319/2015

BETWEEN:

- | | | |
|----------------------------------|---|-----------------|
| 1. KENDA MANNA INTERNATIONAL LTD | } | í í í CLAIMANTS |
| 2. MAMOUD MANNA | } | |

AND

UNITED BANK FOR AFRICA PLC í í í í í .. í DEFENDANT

J U D G M E N T

The Claimant herein opened a current account with the Defendant. CW1 in his evidence stated that the Claimants have a bidding website for electronic products. They asked the defendant sometime in June 2014 to use its account for e-commerce business site vide an email to the defendant's officials in charge of the account. They informed the defendant of its office in Canada that manages the e-commerce site and the funds generated from the account with the defendant are usually transferred back to Canada. The defendant created a user name and password for the claimant to be able to monitor the flow of funds from Master Cards from the U-collect UBA group and Visa Card. They sent an e-mail to the defendant explaining the risk involved in its business in the form of charge backs from their customer's operations and asking to be notified when such charge backs occur. He explained when charge backs occur and that they could be disputed for a period of three months explaining the process. By their calculation, the sum

of ₦77,863,906.07 (seventy seven million, eight hundred and sixty three thousand, nine hundred and six naira, seven kobo) was due to them in the settlement account but when they demanded from the defendant on 18/11/2014 their statement of account it was ₦59,948,193.53 (fifty nine million, nine hundred and forty eight thousand, one hundred and ninety three naira fifty three kobo). They sought to know why there was a difference in their settlement account and statement of account and the defendant said it was due to charge backs on the said account. The defendant refused to credit the difference to the claimants' account and by e-mail stated that only ₦14,942,369.81 (fourteen million, nine hundred and forty two thousand, three hundred sixty nine naira eighty one kobo) was debited not the difference of ₦17,915,712.54 (seventeen million, nine hundred and fifteen thousand, seven hundred and twelve naira, fifty four kobo) as found by claimants. The defendant in spite of several meetings held could not furnish them with the details of the charge back and refund of ₦14,942,369.81 (fourteen million, nine hundred and forty two thousand, nine hundred and forty two naira eighty one kobo) into their account No. 1010495451 with the defendant. The defendant conducted an investigation into the matter and when on the 21/01/2015, Claimants wrote a letter of demand for payment of ₦14,942,369.81 (fourteen million, nine hundred and forty two thousand three hundred and sixty nine naira eighty one kobo) the defendant caused the arrest of 2nd Defendant at the A.I.G's Zone 5, Benin Office on 11/2/2015 alleging fraud or use of fraudulent website. The defendant refused them access to their domiciliary account, which is separate and when they wrote

on for withdrawal of \$3,000 (three thousand U.S. Dollars) it was declined and they further debited claimantsø domiciliary account of the sum of \$15,200 (fifteen thousand, two hundred U.S. Dollar) crediting their current account with ₦3,002,000 (three million and two thousand naira) which they subsequently debited. The claimants therefore claims refund of the sum of ₦17,915,712.54 (seventeen million, nine hundred and fifteen thousand seven hundred and twelve naira fifty four kobo) and \$15,200 (fifteen thousand and two hundred U.S Dollars). The defendant instigated the Special Fraud Unit (S.F.N.), Lagos to arrest 2nd Claimant who was also detained at the Ugbor Police Station, Benin City on 15/4/2015 from 4p.m till the next day when he was taken to Lagos. Claimants claim ₦1,690,500 (one million, six hundred and ninety thousand five hundred naira) spent for the trips to Lagos. The defendant gave claimants 90 days to repay a delinquent facility of ₦43,688,401.87 (forty three million, six hundred and eighty eight thousand, four hundred and one naira, eighty seven kobo). They exchanged several letters. The claimants also demanded from the defendant the sum of ₦10,425,913.53 (ten million, four hundred and twenty five thousand nine hundred and thirteen naira, fifty three kobo).

The defendant through its forensic officer, Joseph Eluagu gave some definitions of on-line transactions and identified the documents. That the claimants being the merchant that applied and enrolled on the U.B.A. U-connect platform which is an e-commerce platform allowing merchants receive on-line payments for goods and services rendered. The claimantsø current account with U.B.A is the merchantø settlement account. He found

that the claimants' website is a bidding site contrary to the claim that it is for sale of electronics maintaining it is a fraudulent website used in committing fraud against the defendant. Claimants failed to prove it has an office in Canada. He admitted the inadvertence on the part of their staff in communicating the total credit, the sums charged back and transaction charges amounting to ₦77,863,906.07 (seventy seven million, eight hundred and sixty three thousand, nine hundred and six naira seven kobo) to the claimants instead of deducting the charge backs and transaction charges from the total credit. The defendant kept debiting the claimants account because it was receiving charge back claims in respect of transactions in the claimants' website. They discovered that within two months from the date of the first transaction on the claimants' website that there was an unprecedented amount of charge back debits in the settlement report in respect of transactions consummated on the claimants' website. He gave details of the findings and that the first payment on the website was on 12/9/2014 and a Nigerian website with goods sold in naira with a Nigerian IP address within two months, they had 1623 payments and all other payments were made using foreign cards and from foreign IP addresses, most of which have been repudiated by the respective card holders in different countries. He found a total of 583 cards used in the claimants' website between September, 2014 and November, 2014. Of these 583 cards, 582 were foreign issued cards. The Sole Nigerian transaction was the one used to test-run to confirm that the claimants' website was working.

The claimants were asked to provide the evidence in support of the transactions on their website like delivery of goods for the charged back transaction but could only provide computer generated invoices but no evidence of delivering to card holders in their locations. The said generated invoices were rejected by the said issuers as they did not meet charge back management guidelines for Visa merchants for genuine transaction receipt. The Bank reserves the right to set off any inability owed the Bank from any of a customer's account with the Bank. The claimants' indebtedness to the bank as at 9/1/2015 was ~~N~~36,575,285.96 (thirty six million, five hundred and seventy five thousand, two hundred and eighty five naira, ninety six kobo) as a result of the charge back of payments made on the claimant's website which had been denied by the card holders. The claimants had signed the U-connect form which undertook to indemnify the Bank. The total charge back claims in respect of the claimants' website as at June, 2015 was ~~N~~44,677,341.30 (forty four million, six hundred and seventy seven thousand three hundred and forty one naira, thirty kobo), thus resulting in a claim before the Lagos State High Court for the sum of ~~N~~70,588,509.17 (seventy million, five hundred and eighty eight thousand, five hundred and nine naira, seventeen kobo) and continues to be overdrawn. The defendant contended at the end of their defence through learned counsel, Mr. Ikhuemoise Ihenyen that the gravamen of the claimants' case are computer generated documents i.e. exhibits A, A1, A2, B1 to B4 and they failed to fulfill the provisions of section 84(2) and (4) of the Evidence Act 2011. The said exhibits are therefore inadmissible. The claimants' response is that the documents have

been admitted as exhibits with no objection and referred to their amended statement of claim paragraphs 74 ó 76. It must be noted that the pleading in a statement of claim will not translate to evidence. Mamoud Mannaa who is the sole witness for the claimants did not give evidence to that effect unlike DW1.

I therefore agree with the defendant's counsel in his copious submissions on the effect of non-compliance with Section 84 (2) and (4) of the Evidence Act, 2011. Exhibits A, A1, A2, B1 ó B4 being computer generated documents are not admissible in evidence whether both counsel agreed to their admissibility is irrelevant. There was no direct evidence from CW1 as to compliance with Section 84(2) and (4) of the Evidence Act. The court will therefore not act on them. See **Akeredolu & Anor v Mimiko** LPELR 20532 when those exhibits are excluded, it appears to me that the case of the claimants have been ripped apart. The case is mainly documentary and the documents are what should hold the case together.

I am unable to determine the claims in relief (a) and (b) of the amended statement of claim of the claimants on the preponderance of evidence without those very material and vital documents i.e. exhibits A, A1, A2, B1, B2, B3 and B4.

The claim in relief (e) appears to be captured in paragraphs 62 xv ó xxviii and 63 and 64 of the amended statement of claim. The 2nd claimant in his deposition in paragraphs 57 (i) ó (xiv), 58 and 59 specially related the expenses incurred for the trips to Lagos on the invitation to the Special Fraud Unit. On the defendant part, it is their defence that they do not have

power of arrest and both parties were invited by the Police. I have carefully examined the receipts from the hotel in exhibits C1 ó C14 and C15 and find that the 2nd claimant lodged in the hotel on days shown and the total deposit given in exhibit C15 is N1,690,500(one million, six hundred and ninety thousand, five hundred naira) claimed as special damages. I note that it is for three rooms and there is no stamp of paid for the total deposits. I have also determined that the claimants ought to have made the Police a party to this suit as it was on the invitation of the Police they went to Lagos the numbers of times they claimed to have gone. I cannot grant the claim in relief (e). It is ordered dismissed.

In sum the reliefs sought by the claimants are unsuccessful. I dismiss all.

Hon. Justice E. F. Ikponmwen,
Chief Judge.

Counsel:

M. O. IGHEKPE ESQ. í . í í í í í í FOR THE CLAIMANTS.

E. I. IHENYEN ESQ. í í . í í . í í í FOR THE DEFENDANT.