IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIERO

ON TUESDAY

THE 12TH DAY OF DECEMBER, 2023.

BETWEEN: ***SUIT NO. B/929/2022***

MR. ROBERT ABHAFIMEA OBHAFUOSO ----------CLAIMANT

AND

FIRST BANK OF NIGERIA PLC.----------DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim dated the 26th day of September, 2022 but filed on the 28th of September, 2022 claiming as follows:

1) ***A DECLARATION that the Claimant is entitled to a refund of the sum of N2,305,601.19 (Two Million, Three Hundred and Five Thousand, Six Hundred and One Naira, Nineteen Kobo) only been the various excess sums and illegal bank charges unlawfully deducted from the Claimant's account No. 2009039764 domicile in the Defendant's Kings Square Branch, Benin City, Edo State between September 17, 2007 – January 01, 2021;***
2) ***The sum of N10,000,000.00 (Ten Million Naira) only being general damages for the unlawful deductions; and***
3) ***PERPETUAL INJUNCTION restraining the Defendant whether by themselves, agents or privies from making any further deductions from the Claimant's said account without the consent of the Claimant.***

In proof of his case, the Claimant testified and called one witness named Mr. Kehinde Oduoye. During the hearing, the Claimant tendered some exhibits. Exhibit "A" is a letter of offer dated 27/09/2007 while Exhibits "B" and "B1" are the Claimant's Bank Statement for the period between 2007 - 01/2021 and a Certificate of Compliance in line with the provisions of ***Section 84 of the Evidence Act, 2011***. Exhibits "C" is a Letter dated 11/11/2021 on Forensic Audit Report and Exhibit "D" a report on Forensic Investigations of bank charges.

The Claimant's case as can be gleaned from his evidence is that he has been a customer of the Defendant Bank, maintaining and operating Account No. 2009039764 domiciled in the Defendant's King Square Benin City Branch office since September, 2007.

He alleged that shortly after the said Account came into operation, the Defendant granted him a loan facility in the sum of N7, 000, 000:00 (Seven Million Naira) only which he had fully repaid as at 2011. He said that sometime in 2009 he noticed some discrepancies in his Statement of Account which he immediately reported to the Defendant. According to him, two years after his report, the Defendant credited his account with the sum of N264, 555:00 (Two Hundred and Sixty – Four Thousand Five Hundred and Fifty – Five Naira) only being the excess management fee illegally deducted from the account in respect of the his complaint.

He said that in January, 2021 he discovered some other discrepancies in his Statement of Account which prompted him to apply for a comprehensive Statement of Account from the 1st of June, 2007 to the 26th of January, 2021. He said that he lodged several complaints at the Defendant's King Square Benin City, Branch Office and later at the Defendant's Lagos Head Office without any response from them so he engaged the services of FIRST INQUIRY CONSULT – a firm of Auditors to reconcile the discrepancies in the said Account.

He said that his Auditors thoroughly examined the comprehensive Statement of Account of the Claimant from 1st of June 2007 to 26th of January, 2021 and submitted a Report of their findings to the Defendant. A copy of the said Report was admitted as Exhibit "D" at the trial. He alleged that the Report revealed that between 2007 and 2021, the Defendant stole, converted and concealed the sum of N2,305, 601.19 (Two Million, Three Hundred and Five Thousand, Six Hundred and One

Naira, Nineteen Kobo) only from his account which was classified as excess and illegal bank charges in the said Report.

The Claimant's case against the Defendant is based on the findings of the Auditor as contained in the aforesaid Report.

In defence of this suit, the Defendant called only one Witness, Mr. Oji Onyebuchi (DW1) and tendered some documentary exhibits.

In a nutshell, the Defendant's case is that the Claimant was granted a loan facility with terms and conditions mutually agreed upon by both parties.

They maintained that the Defendant did not at any time violate any of its duties or obligations to the Claimant. They denied making any illegal deductions of funds from the Claimant's account. They alleged that the charges collected from the Claimant's account are legitimate charges governed by the terms of operation of his account and the Central Bank of Nigeria (CBN's) Guidelines on Bank charges which they tendered and were admitted in evidence as Exhibits "E1" and "E2".

According to them, the account opening form duly executed by the Claimant at the opening of the account authorizes the bank to deduct charges, fees, costs and taxes from his account.

In a bid to deny the alleged illegal deductions and charges, in his deposition which he adopted as his evidence, the D.W.1 produced a table to show the charges applied to the Claimant's account and to emphasise that some of the charges have become time barred in line with CBN Circular No. FFR/DIR/GEN/CIR/05/011 of August 21, 2015 which adopted a time limit of six (6) years within which complaints against Financial Institutions should be lodged. They tendered a certified true copy of the circular as Exhibit "F".

The Defendant maintained that some of the charges claimed by the Claimant to have been illegally charged from his account have become time barred in line with the said Exhibit "F" and that the charges collected from the Claimant's account are legitimate charges governed by the terms of operation of his account and in accordance with the extant regulations regulating bank charges.

They alleged that from their records, the Claimant is still indebted to the Defendant to the tune of N2,816.91 (Two Thousand, Eight Hundred and Sixteen Naira and ninety One kobo) which is recoupable from the Claimant's account as AMC undercharge between December, 2015 and September, 2021.

At the conclusion of the Defendant's evidence, the learned counsel for both parties filed their final written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the Defendant, ***F.T. Odebata Esq.*** formulated two issues for determination as follows:

(a) Whether the cause of action in this suit is not time barred or statute barred and as such unmaintainable, same having become stale; and

(b) Whether the Claimant is entitled to the reliefs he seeks against the Defendant in this case.

Thereafter, the learned counsel argued the two issues seriatim.

On issue one he submitted that this Honourable court lacks the jurisdiction to hear and determine this suit, same being time barred or statute barred and therefore incompetent. He posited that from the Claimant's own showing, the cause of action in this suit arose in 2007, more than 15 years ago.

He submitted that a cause of action matures or arises on a date or from the time a breach of any duty or act occurs which warrants the person who is affected by such breach to take a court action. He maintained that the right to court action does not last till eternity and time begins to run when there is in existence a person who can sue and another who can be sued and all the facts that are material to be proved to entitle the Claimant to succeed. On this proposition of law, he relied on the Court of Appeal decision in the case of ***UGHIEVWEN MICROFINANCE BANK LIMITED V. CENTRAL BANK OF NIGERIA (2017) ALL FWLR (Part 880), Page 823 at PP. 840-841, paras H-E.***

He defined a cause of action as a fact or combination of facts which gives the Claimant a justifiable right to sue and claim a remedy against the Defendant. That it includes all the things necessary to give a right of action and every fact which is material to be proved to entitle the Claimant succeed against the Defendant. He

referred the Court to the following decisions on the point: ***SULGRAVE HOLDINGS INC. V. FEDERAL GOVT. OF NIG. (2013) ALL FWLR (Pt. 659) p. 1050 AT p. 1063, Paras D-F; SIFAX NIGERIA LIMITED V. MIGFO NIGERIA LIMITED (2015) ALL FWLR (Pt. 803) P. 1857 at 1895, paras B-G; and ATTORNEY GENERAL OF THE FEDERATION V. ABACHA (2011) ALL FWLR (Pt. 566) P. 445 at P. 450, Ratio 6.***

He submitted that applying the position of the law to the Claimant's case which was filed on the 28th of September, 2022, the Claimant's cause of action arose in 2007 when he took the said loan from the Defendant. He said that this fact was also corroborated by Exhibit "A" which is the letter of offer of credit dated September 27th, 2007 tendered by the Claimant himself. He posited that in his Writ of Summons, the Claimant claims that the Defendant made unlawful and illegal deductions from his account to the tune of N2,305,601.19 between September, 2007 – 1st January, 2021.

He maintained that the time begins to run for the purposes of the Limitation Law from the date the cause of action accrued and in this case, it was in 2007 when the Claimant allegedly noticed the so called illegal deductions from his account with the Defendant.

Furthermore, learned counsel referred the Court to ***Section 4(1) of the Limitation Law of Bendel State 1976 (as applicable to Edo State)*** which provides thus:

"No action shall be brought by any person for a wrong after the expiration of six years from the date on which the right of action accrued to him".

He referred to the case of ***EGBE V. ADEFARASIN (No. 2) (1987) 1 NWLR (Pt. 47) pg. 20,*** where ***Oputa JSC*** (of blessed memory) exposited thus:

"How does one determine the period of limitation? The answer is simply by looking at the Writ of Summons and the Statement of Claim alleging when the wrong was committed which gives the Claimant a cause of action and by comparing the date with the date on which the Writ of Summons was filed. This can be done without taking oral evidence from the witnesses. If the time on the

Writ is beyond the period allowed by the Limitation Law then, the action is statute-barred".

On the effect of an action that is statute-barred, he referred to the cases of ***ADEOMI V. GOVERNOR, OYO STATE (2003) FWLR (Pt. 149) pg. 1444, at pg. 1453, Ratio 18;*** and ***MUOMAH V. SPRING BANK PLC. (2009) 3 NWLR (Pt. 1129) Pg. 553 at 568-570.***

Counsel submitted that the issue of limitation is clearly a threshold issue of jurisdiction which touches on the competence of the claim of a party so that once it is raised, it must be determined before a consideration of the merits of the case. He submitted further that the issue of jurisdiction can be raised at any stage of the proceedings and even on appeal before the Supreme Court. For this proposition of the law, he relied on the Supreme Court case of ***SHELIM V. GOBANG (2009) ALL FWLR (Pt. 496) page Ratio 1.***

He submitted that the Claimant in this case has no right of action any longer and cannot enforce any right whatsoever against the Defendant having waited for almost 12 years before filing this suit against the Defendant in contravention of ***Section 4(1) of the Limitation Law of Bendel State, 1976 (As applicable to Edo State)***. He also relied on Exhibits "E1", "E2" and "F" and the case of ***IKEJA REAL ESTATE COMPANY LTD. V. ONI (2017) ALL FWLR (pt. 876) Pg. 145 at 155, Ratio 14***.

He finally urged the Court to resolve Issue One in favour of the Defendant.

On Issue Two, learned counsel posited that the crux of the Claimant's case is that the Bank has been deducting illegal charges from his account without his consent from 2007 till 2021. He submitted that the charges collected from the Claimant's account are legitimate charges governed by the terms of operation of his account and the Central Bank of Nigeria (CBN's) Guide to Bank Charges.

He submitted that it is settled law that the relationship between a Bank and its customer is contractual and governed by the account opening documents which contain the terms of banking relationship between a bank and its customers. See ***ACCESS BANK PLC. V. UGWUH (2013) LPELR 20735 (CA).***

He posited that the Account Opening Form as well as the Letter of Offer (Exhibit "A) duly completed and executed by the Claimant authorizes the Bank to deduct charges, fees, costs and taxes from his account. He said that the Account Opening Form provides thus:

"You assume full responsibility for, and further authorize us to debit your account(s) without notice with such fees and/or charges and/or costs and/or reimbursements and/or expenses and/or levies and/or penalties and/or commissions determined and/or advised by us in relation to the opening, closing and operation of an account, the consummation of electronic banking transactions (internet, mobile banking and/or card transactions, etc) as well as any other transactions or dealings involving you and us; notwithstanding that your account may be dormant, overdrawn or that the debit may lead to an overdrawn position on your account.…

All fees charged by us shall be in accordance with our fee schedule as may from time to time be determined. Charges shall be determined, and are subject to review at any time and at our discretion. You hereby waive your right to prior notification of any such charge and hereby exonerate us from any liability for taking such charges".

He also referred to the part of the Account Opening Form which states thus:

"…I understand that the Bank may debit my account for services, charges as applicable from time to time…"

He submitted that it is settled law that parties are bound by the terms of their contract. See the ***REGISTERED TRUSTEES OF MASTER'S VESSEL MINISTRIES NIGERIA INCORPORATED V. REV. FRANCIS EMENIKE & ORS. (2017) LPELR – 42836 (CA);*** and ***SOLEL BONEH (NIG) LTD. V. CANITEC INTL. CO. (2006) LPELR – 12607(CA).*** He therefore submitted that the Claimant is bound by the terms of the contract between him and the Bank as contained in the account opening form, as well as the letter of offer (Exhibit "A") which he signed and executed at the time of opening the said account and also at the time of taking the loan referred to in Exhibit "A".

He submitted that the Central Bank of Nigeria (CBN) as a Regulator has the power to make regulations or policies which are binding on the Bank (as well as all financial institutions) and the Defendant Bank has a duty to comply with all CBN regulations. He posited that ***Section 56 of the Banks and Other Financial Institutions Act 2020*** empowers the CBN (through the Governor) to make Rules and Regulations for the operation and control of all institutions under its supervision. He referred to the case of ***ANAMBRA STATE ENVIRONMENTAL SANITATION AUTHORITY & OTHERS V. EKWENEM (2009) 6-7 S.C. PART II PAGE 5 @ 36-37,*** where the Supreme Court held that a government agency set up for a particular purpose must carry out its statutory duties.

Furthermore, he submitted that it is trite law that where the law empowers a body to make regulations, such regulations made pursuant to the law would have the force of law. See ***FRSC V. OFOEGBU (2014) LPELR – 24229 (CA).***

He submitted that the CBN has the power to make regulations under BOFIA and the regulations made thereto have the force of law which the Bank is obligated to obey. See also ***NEPA V. EDGEMERE & ORS. (2000) LPELR-6884 (CA).***

Counsel posited that it was pursuant to its statutory powers that the CBN issued the Guide to Bank Charges which must be complied with by all financial institutions regulated by the CBN. That in compliance with the Central Bank of Nigeria (CBN's) Guide to Bank Charges, the Bank charged the Claimant for the intra bank FIP transactions consummated by him, as evidenced in the account statement frontloaded by him. He said that they have shown how these charges were applied to the Claimant's account in their defence.

Finally, he urged the Court to resolve Issue Two in favour of the Defendant and dismiss the suit in its entirety with costs in favour of the Defendant for lacking merit.

In his final written address, the learned counsel for the Claimant, ***G.O. Giwa-Amu Esq.*** adopted the two issues for determination as formulated by the learned counsel for the Defendant and argued them seriatim.

ISSUE 1:

Whether the cause of action in this suit is not time barred or statute barred and as such unmaintainable, same having become stale.

Arguing this first issue, the learned counsel submitted that the Claimant's Claim is not statute barred and is therefore maintainable against the Defendant.

According to him, the Claimant's case is that in January, 2021 he noticed several discrepancies in his Statement of Account and thereafter applied for a comprehensive Statement of his said Account from 01-June – 2007 to 26 – June – 2021 from the Defendant. He then engaged the services of FIRST INQUIRY CONSULT – a firm of Auditors to reconcile the discrepancies in his account.

He said that the Claimant informed the Defendants vide **EXHIBIT C** and the Claimant's Auditor's Report was equally forwarded to the Defendant vide **EXHIBIT D**. He said that the above mentioned evidence is contained in paragraphs 15, 16, 17, 18, 19, 20 & 21 of the Statement of Claim. That in response to the aforementioned pleadings in the Statement of Claim, the Defendant in her Statement of Defence joined issues with the Claimant on the said paragraphs with her pleadings as contained in paragraphs 4 & 6 of her Statement of Defence without specifically denying paragraph 15 of the Statement of Claim wherein the Claimant clearly stated and led evidence in paragraph 25 of his Witness Statement on Oath to the effect that it was in January, 2021 that he again noticed several discrepancies in his Statement of Account. He posited that this present discrepancy is different from the one the Claimant noticed in 2009 which the Defendant remedied by crediting his account with the sum of N264, 555:00 (Two Hundred and Sixty – Four Thousand Five Hundred and Fifty – Five Naira) only.

He posited that the only defence put forward by the Defendant is that the Claimant's case is statute barred without any express or implied denial of the Claimant's monetary claims.

He submitted that when averments in pleadings are not denied or controverted, they are deemed to be admitted and he relied on the cases of ***A.C.B V. NWANNA TRADING STORE (NIG.) LTD 2007 1 NWLR (PT. 1016) 596 AT 605 RT. 9; MILITARY GOVERNOR OF LAGOS STATE V ADEYIGA (2012) 205 LRCN 1 AT 13 RT 8; and NANNA V. NANNA (2006) 3 NWLR (PT. 966) 1 AT 15 RT 17.***

Learned counsel submitted that the Defendant having covertly admitted the facts contained in paragraphs 15, 16, 17, 18, 19, 20 & 21 of the Statement of Claim – particularly paragraph 15 thereof, they cannot be heard to say that the Claimant's cause of action arose in 2007, to be caught up by the provisions of any Limitation Act or the purported directive of the CBN as contained in **EXHIBIT F**. He also relied on the case of ***SIFAX (NIG) LTD V. MIGFO (NIG.) LTD (2018)9NWLR (PT. 1623) 138 AT 147 RT. 4***.

He submitted that in the instant case the cause of action arose when **EXHIBIT D** was made available to the Claimant by the Auditor – FIRST INQUIRY CONSULT and not in 2007 as alleged by the Defendant. That it was after **EXHIBIT D** – was made available to the Claimant that he became aware that the total sum of **N2, 305, 601.19 (Two Million Three Hundred and Five Thousand Six Hundred and One Naira, Nineteen Kobo)** only has been illegally deducted from his account by the Defendant.

He urged the Court to discountenance **EXHIBIT F** – the purported certified true copy CBN Circular No. FFR/DIR/GEN/CIR/05/011 of August 21, 2015 on the following grounds: Firstly that **EXHIBIT F** is a public document and only a certified true of a public document is admissible by virtue of the provisions of ***Section 104(1) of the Evidence Act, 2011***

He posited that there is no evidence that the Defendant paid any fees on **EXHIBIT F** and he referred to the case of ***UDO V. THE STATE (2016) 12 NWLR (PT. 1525) 1 AT 92 PARAS. K – U***.

He said that **EXHIBITS E1 & E2** are also public documents which are inadmissible and he urged the Court to expunge them.

He contended that the Central Bank of Nigeria (CBN) cannot by a circular to all banks, discount houses and other financial institutions make a law setting a time limit within which customers of a bank can institute actions against a bank for claims as the case maybe.

Furthermore, he submitted that by the provisions of ***Section 4(1) & (7) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)*** the powers to make laws falls squarely on the National Assembly and/or the State Houses of

Assembly as the case maybe. That in this regards the National Assembly has since passed into Law the **Limitation Act Cap 522 LFN, 1990** while the **Limitation Law of Bendel State, 1976** is applicable in Edo State. That both legislations have set a time limit of 6 years within which any person can bring an action founded on tort and breach of contract.

He posited that in the instant case, the Defendant is relying solely on **EXHIBIT F** and not any of the existing Limitation Laws. He urged the Court to disregard any reference to the Limitation Law by the Defendant in their final Written Address having failed to plead same in their Statement of Defence and he relied on the case of ***NIGERIAN INSTITUTE OF INTERNATIONAL AFFAIRS V. AYANFALU 2007 2NWLR (PT. 1018) 246 AT 252 RT.***

He submitted that **EXHIBIT F** is not a Statute of Limitation but merely a circular of the apex Bank in Nigeria. He maintained that the powers of the CBN is contained in ***Section 26 – 42 of the CBN Act, Cap C4, LFN, 2004*** and it does not empower the CBN to make any law to limit the time within which a person may institute an action in a competent court of law.

Finally, he submitted that **EXHIBIT "F"** only relates to the matters or complaints made by a customer against a financial institution to CBN and not such complaints made to a Court of competent jurisdiction.

He urged the Court to resolve Issue I in favour of the Claimant.

ISSUE II

Whether the Claimant is entitled to the reliefs he seeks against the Defendant in the case.

Arguing this second issue, learned counsel submitted that the Claimant has proved his case on the preponderance of evidence to warrant this Honourable Court to grant the reliefs sought.

He submitted that the Defendant's defence is based entirely on **EXHIBIT "G"** which is a document co - written by Chibueze Ezeorah and Isaiah B. Adeyemi. He pointed out that none of the co – authors testified in this suit. He submitted that the evidence of the Defendant's sole witness who did not conduct any analysis to arrive

at the conclusion made by Chibueze Ezeorah and Isaiah B. Adeyemi as contained in **EXHIBIT G"** is unreliable and inadmissible same being hearsay which is contrary to the provisions of ***Section 126(d)*** *of the* ***Evidence Act, 2011***. He said that there is no evidence from the Defendant suggesting that the co – authors of **EXHIBIT G"** are dead or cannot be found or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable to fall under the exception to the rule as contained in the proviso of **Section 126(d)** of the **Evidence Act, 2011**which would have made the evidence of the Defendant's sole witness admissible. He relied on the case of ***THE STATE V. MASIGA (2018) 8 NWLR (PT. 1622) 383 AT 394 RT. 17; and ODOGWU V. THE STATE (2014) 233 LRCN 200 AT 206 RT. 5***.

He maintained that the entire evidence of the Defendant's sole witness is based on the contents of **EXHIBIT G"** and that the witness admitted under cross examination that all he told court is what the head customer complaints and investigation told him.

He submitted that the Defendant failed to rebut the evidence led by the Claimant in this suit, therefore this Honourable Court should enter judgment in favour of the Claimant as per his claim. He relied on the following decisions on the point: ***NWABUOKU V. OTTIH (1961) 1 ALL NLR 487 AT 488; ADEJUMO V. AYANTEGBE (1989) 6 S.C.N.J. (PT. 1) 76 AT 78 RT. 13; NIGERIAN MARITIME SERVICES LTD V. AFOLABI (1978) 2 S.C. 79.***

Finally, he urged the Court to resolve ISSUE II in favour of the Claimant and grant the reliefs sought.

Upon receipt of the Claimant's counsel's written address, the learned counsel for the Defendant filed a Reply on Points of law.

Responding to the Claimant's allegation that upon his discovery of the alleged illegal deductions from his said account sometimes in 2009, he lodged a complaint to the bank and after about two years, they made some refunds into his account being excess management fees. He posited that the Claimant failed to lead any documentary evidence to confirm his claim but waited till 2022 before he came to court. He said that by virtue of ***Section 131 of the Evidence Act 2011***, the proof lies on him who asserts.

Learned counsel made some further submissions on the evidence adduced at the trial which cannot be classified as reply on point of law.

Responding to the submission of the Claimant's counsel urging the Court to disregard any reference to the Limitation Law he submitted that the issue of limitation is a threshold issue of jurisdiction which touches on the competence of the claim of a party and can be raised at any stage of the proceedings and even on appeal before the Supreme Court. For this proposition of the law, he relied on the case of ***SHELIM V. GOBANG (2009) ALL FWLR (PT. 496) 1866 AT PAGE 1868, RATIO 1***.

In further response to the Claimant's Counsel's objection to the reference to the law of Limitation on the ground that same was not pleaded, he referred to the totality of paragraph 6 of the Defendant's Statement of Defence which he said contain copious facts relating to the limitation law. He submitted that you do not plead law and relied on the case of ***CHIME V. ATT. GEN. (FEDERATION) (2008) ALL FWLR (PT. 439) 550,*** where the Court of Appeal held thus:

"It is not the province of the law of pleadings that any law to be relied upon by a party must be pleaded, all that is necessary for the pleading of the defence of the statute of limitation is to plead facts enabling the court to hold that the action is statute barred, otherwise, the statement of defence will be pleading evidence contrary to the rules of pleadings" (Ratio 3).

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the parties.

I will adopt the two issues as formulated by the parties with slight modifications as follows:

(i) Whether the Claimant's suit is statute barred by limitation of time;
(ii) Whether the Claimant is entitled to the reliefs he seeks against the Defendant in this suit.

I will now proceed to resolve the two issues seriatim.

ISSUE 1:

Whether the Claimant's suit is statute barred by limitation of time?

It is settled law that the relationship between a banker and its customer is that of a debtor and creditor, with the banker being the debtor while the customer is the creditor. The relationship is founded on simple contract. See ***Yusuf v. Co-operative Bank Ltd (1994) 7 NWLR (pt.676) 681; Sani Abacha Foundation for Peace & Unity & Ors v. U.B.A. Plc (2010) 17 NWLR (pt.1221) 192; U.B.N. Plc v. Ajabule & Anor (2011) LPELR 8239 (SC) and Ecobank v. Anchorage Leisures Ltd & Ors (2018) LPELR -45125 (SC). Thus in U.B.N Plc Chimaeze (2014) 9 NWLR (pt.1411) 166.***

Sequel to the foregoing, a complaint by a customer in relation to his funds kept with the bank is a complaint of a breach of contract.

In a case of a breach of contract such as in the instant suit, it is settled law that the burden is on the Claimant to prove that there was a contract between him and the Defendant and that the contract was breached to his disadvantage. See: ***Orji Vs Anyaso (2000)2 NWLR (part 643) page 1; and RFO CONSTRUCTION CO. LTD V. MINISTER OF WORKS & ANOR (2018) LPELR-46711(CA) (PP. 23 PARAS. B).***

Essentially, the Claimant's case is that sometime in 2009 and 2021 he discovered some discrepancies in his Statement of Account with the Defendant which prompted him to engage the services of a firm of Auditors to reconcile the discrepancies in the said Account.

He alleged that the Audit Report revealed that between 2007 and 2021, the Defendant stole, converted and concealed the sum of N2,305, 601.19 (Two Million, Three Hundred and Five Thousand, Six Hundred and One Naira, Nineteen Kobo) only from his account which was classified as excess and illegal bank charges in the said Report. This is the basis of the suit against the Defendant.

On the other hand, the Defendants have maintained that all the deductions from the Claimant's account were legitimate charges governed by the terms of operation of his account and the Central Bank of Nigeria (CBN's) Guidelines on

Bank charges which they tendered and were admitted in evidence as Exhibits "E1" and "E2".

According to them, the account opening form duly executed by the Claimant at the opening of the account authorized the bank to deduct charges, fees, costs and taxes from his account.

More fundamentally, the Defendant has maintained that this action is statute barred by virtue of the six year period of limitation stipulated in Exhibit F, the extant Central Bank Circular on the subject.

In this suit, the Claimant has seriously challenged the legality of the deductions on the grounds inter-alia that EXHIBITS E1 & E2 together with **EXHIBIT F** – the CBN Circular No. FFR/DIR/GEN/CIR/05/011 are all public documents and only certified true copies of such public documents are admissible by virtue of the provisions of ***Section 104(1) of the Evidence Act, 2011.***

Furthermore, he has contended that the Central Bank of Nigeria (CBN) cannot by a circular to all banks, discount houses and other financial institutions make a law setting a time limit within which customers of a bank can institute actions against a bank for claims as the case maybe. That by the provisions of ***Section 4(1) & (7) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)*** the powers to make such laws falls squarely on the National Assembly and/or the State Houses of Assembly as the case maybe.

At this stage it is expedient to determine some of these salient preliminary issues before I proceed further to determine the merits of the Claimant's case.

First on the issue of whether Exhibits "E1", E2" and "F" were duly certified being public documents. Upon a careful examination of the three documents, I observed that contrary to the submissions of the Claimant's counsel, the documents are photocopies of certified true copies of the aforesaid public documents. The certification is in substantial conformity with the provisions of the Evidence Act.

Furthermore, it is settled law that a photocopy of a certified true copy of a public document is admissible in evidence under ***Section 90 (1) (c) of the Evidence Act 2011; MADAKI & ORS V. KINGHAM (2015) LPELR-25696(CA) (PP. 18-21 PARAS. C).***

Furthermore, on the validity of these Central Bank Circulars and Guidelines, it is settled law that every Court of law is empowered to take judicial notice of all the laws, enactments, and any subsidiary legislation made thereunder in any part of Nigeria. See ***Section 122 of the Evidence Act 2011 No. 18, which provides:***

122. (1) No fact of which the Court shall take judicial notice under this Section needs to be proved.

(2) The Court shall take judicial notice of-

(a) all laws or enactments and any subsidiary legislation made under them having the force of law now or previously in force in any part of Nigeria;

(b) all Public Acts or Laws passed or to be passed by the National Assembly or a State House of Assembly, as the case may be, and all subsidiary legislation made under them and all local and personal Acts or Laws directed by the National Assembly or a State House of Assembly to be judicially noticed."

AMUSA V STATE (2003) LPELR-474 (SC).

For example under the Central Bank Act, 2007, section 51 thereof empowers the CBN to make rules and regulations for the smooth running of the Banking sector.

However, some of the documents in question are not regulations but circulars. On the legal status of government circulars, the Apex Court in ***MAIDERIBE VS FRN 2014 5 NWLR AT 92*** held thus:-

"In administrative law book eight edition co-authored by Professor W. Wade and C. Forsyth at page 851 throws light on the status of department circulars generally, such circulars are- "a common form of administrative document by which instructions are disseminated, ... Many such circulars are identified by serial numbers and published and many of them contain general statements of policy; .... They are therefore of great importance to the public giving much guidelines about government organization and the exercise of discretionary powers. In themselves, they have no legal effect whatsoever, having no statutory authority".

In the case of ***AMAECHINA & ANOR V. HON. MINISTER OF EDUCATION & ORS (PP. 21-22 PARAS. B)*** the Supreme Court held thus: ***"…a circular is no more than a mere administrative document conveying new policy guidelines by the Federal Government and since on the page of the circular it was not shown to have been issued under an order Act, Law or Statue, then it has no legal effect."***

From the foregoing exposition, it is apparent that the **EXHIBIT F** – the CBN Circular to all banks, discount houses and other financial institutions which allegedly set a time limit within which customers of a bank can institute actions against a bank for claims is a mere administrative document conveying a new policy guideline by

the Federal Government and cannot be construed as a subsidiary legislation which has legal effect.

Apart from the limitation clause enshrined in Exhibit F, in his written address, the learned counsel for the Defendant is also relying on the period of limitation enshrined in ***Section 4(1) of the Limitation Law of Bendel State 1976 (as applicable to Edo State)*** which provides thus:

"No action shall be brought by any person for a wrong after the expiration of six years from the date on which the right of action accrued to him".

However, in his written address, the learned counsel for the Claimant has seriously contended that in the instant case, the Defendant is relying solely on **EXHIBIT F** and not on any of the existing Limitation Laws. He urged the Court to disregard any reference to the Limitation Law by the Defendant in their final Written Address having failed to plead same in their Statement of Defence.

Contrariwise, the Defendant's Counsel's referred to the facts which they pleaded in their Statement of Defence relating to the limitation law. He maintained that you do not plead law but facts.

For the avoidance of doubts, the relevant portions of the Defendant's pleadings in relation to the defence of limitation of time are ***paragraphs 7 and 8*** which are reproduced as follows:

"7. In further specific response to paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the statement of claim, I categorically state that the table below shows the charges applied to the Customer's account and the amount applied. The table also shows which charges have become time barred in line with CBN Circular No. FFR/DIR/GEN/CIR/05/011 of August 21, 2015 which adopted a time limit of six (6) years within which complaints against Financial Institutions shall be lodged;

8. It is also my contention that as demonstrated by the table above, some of the charges claimed by the Claimant to have been illegally charged from his account have become time barred in line with the CBN Circular No. FFR/DIR/GEN/CIR/05/011 of August 21, 2015 which adopted a time limit of six (6) years within which complaints against Financial Institutions shall be lodged. I shall rely on a Certified True Copy of the said CBN Circular of August 21, 2015 at the trial of this case."

Upon a careful examination of the aforesaid paragraphs, it is evident that there was no reference whatsoever to the provisions of ***Section 4(1) of the Limitation Law of Bendel State 1976 (as applicable to Edo State).*** The Defendant's counsel only relied on the provisions of Exhibit F, the CBN Circular which I have already held to be a government policy without any legal effect.

It is settled law that the onus is on the defendant who relies on the defence of limitation to specifically plead the statute and facts relevant to the defence and prove same. See ***SAVANNAH BANK OF NIGERIA LTD. VS. PAN ATLANTIC SHIPPINGS & TRANSPORT AGENCIES LTD. & ANOR (1987) 1 NWLR (Pt. 49) 212;*** and ***JIMOH ADEKOYA ODUBEKO VS. VICTOR OLADIPO FOWLER & ANOR. (1993) 7 NWLR (Pt. 308) 637 AT 660.***

Incidentally, ***Order 15, Rule 7(2) of the Edo State High Court (Civil Procedure) Rules, 2018*** provides as follows:

"(2) Where a party raises any ground which makes a transaction void or voidable such matters as fraud, Limitation Law, release, payment, performance, facts showing insufficiency in contract or illegality, either by any enactment or by common law, he shall specifically plead same"(Underlining supplied).

From the above provision, it is apparent that under our rules, it is mandatory to specifically plead the statute of limitation as a defence. If the Defendant herein was serious about the issue of Limitation they should have pleaded same in their Defence in line with the provisions of ***Order 15, Rule 7(2) of the Edo State High Court (Civil Procedure) Rules, 2018.***

The paragraphs in the pleadings of the Defendant relevant to the issue of statute bar have been reproduced earlier. It is a cardinal rule of pleadings that such specific matters as the Limitation Law must be expressly set out or pleaded in the Statement of Defence. This, the Defendant failed to do. As a matter of fact, no specific Limitation Law or statute was pleaded by the Defendant and the Court should not be left to speculate as to which particular Limitation Law bars the Claimant's action. The averments in paragraph 7 and 8 of the Defendant's Statement of Defence fall short of the requirements of the law as they do not specify the Statute of Limitation relied on which bars the Claimant's action. It follows therefore that the Defendant cannot be granted protection under any Limitation Law in the present circumstance. See ***IHEANACHO V. EJIOGU (1995) 4 NWLR (PT. 389) 324;*** and ***ALLEN V. ODUBEKO (1977) 5 NWLR (PT. 506) 638.***

In the event, I hold that the defence of limitation of time cannot avail the Defendant in this suit. I therefore resolve Issue 1 in favour of the Claimant.

I will proceed to determine the merits of the Claimant's case.

ISSUE 2:

Whether the Claimant is entitled to the reliefs he seeks against the Defendant in this suit.

Essentially, the fulcrum of the Claimant's case is a refund of the various excess sums and illegal bank charges unlawfully deducted from his account in the Defendant's Kings Square Branch, Benin City, Edo State between September 17, 2007 – January 01, 2021.

Like in all civil suits, the burden is on the Claimant to prove that the alleged sums were unlawfully deducted from his said account.

Section 15 of the Bank Act, mandates all licensed banks to charge interest rates on advances, loans, credit facilities or deposits in accordance with the Central Bank of Nigeria Guidelines on minimum and maximum rates of interest. Where the terms of the agreement between the bank and the customer are clear with regards to the agreed rate of interest and there is no provision for variations, the Bank cannot vary the agreed interest rate to accord with the Guidelines of the Central Bank on interest rate. The law will always frown at any arbitrary charges by banks on the account of their customers. See ***UBN PLC V. AJABULE & ANOR (2011) LPELR-8239(SC)(PP. 41 PARAS. D); KENFRANT NIGERIA LIMITED VS.UBN PLC (2002) 8 NWLR (PT. 789) 46; UNION BANK OF NIGERIA LIMITED VS. OZIGI (1994) 3 NWLR (PT. 333) 385; RHOR AND LUE NIGERIA LTD & ANOR V. BANK OF THE NORTH LTD (2007) LPELR-9037(CA) (PP. 6 PARAS. A).***

The relationship existing between a bank and its customers is contractual. Therefore, both parties are bound by the terms of any contract they enter into.

In the instant case by the Letter of Offer (Exhibit A) dated 27th of September, 2007, the Defendant advanced the Claimant facility of N7, 000,000.00 (Seven Million Naira) repayable within a period of 36 months at an interest rate of 16% per annum. The offer letter stipulated that for late payment, interest shall be charged at the ruling overdraft rate on all overdue and unpaid installments. The letter also referred to several other bank charges.

Like I said earlier on in this judgment, the Central Bank of Nigeria is conferred with powers to regulate and control banking activities in Nigeria. In the exercise of this power, it controls by law the interest rate chargeable by any bank and dictates the fluctuation in the rate of interest. See ***UBN V OZIGI (SUPRA). UBN V SAX (NIG.) (1994) 8 NWLR (PT. 361) PG. 150. Section 15 of the Bank Act.***

From the evidence adduced at the trial, the Claimant was unable to repay the loan within the period of 36 months so the Bank charges continued to fluctuate over the years during his repayment. He is challenging the validity of several of these charges which he claims were unlawfully imposed on him.

In a bid to prove the unlawfulness of the charges, he engaged the services of a firm of Auditors to audit his Statements of Account of the Claimant from 1st of June 2007 to 26th of January, 2021 and the Auditor's Report was admitted as Exhibit "D" at the trial. The Report revealed that between 2007 and 2021, the Defendant made

some deductions amounting to the sum of N2, 305,601.19 (Two Million, Three Hundred and Five Thousand, Six Hundred and One Naira, Nineteen Kobo) which they classified as excess and illegal bank charges.

In their defence, the Defendant denied making any illegal deduction of funds from the Claimant's account. They alleged that the charges collected from the Claimant's account are legitimate charges governed by the terms of operation of his account and the Central Bank of Nigeria (CBN's) Guidelines on Bank charges which they tendered and were admitted in evidence as Exhibits "E1" and "E2".

In defence of this suit the Defendant's sole witness, D.W.1 produced a table to show the charges applied to the Claimant's account. In the said table, the witness tried to justify some of the charges and in respect of those charges that were above six years, he made no attempt to justify them but simply explained that such charges have become time barred in line with CBN Circular, Exhibit "F".

In the course of resolving Issue 1, I have made a finding on the legal effect of Exhibit "F", that it cannot be classified as a subsidiary legislation which can impose a statutory limitation of time for the Claimant to bring an action against the Bank for unlawful deductions and charges.

Sequel to my aforesaid finding, it is apparent that since the Defendant did not make any effort to justify those charges which they alleged were time barred, with the inability of Exhibit "F" to defend them, they have no defence for the alleged deductions which are beyond six years. The evidence adduced by the Claimant in respect of the alleged deductions for the period after six years remains unchallenged and uncontroverted.

It is settled law that where the evidence of a witness has not been challenged, contradicted or shaken under cross - examination and his evidence is not inadmissible in law, and the evidence led is in line with the facts pleaded, the evidence must be accepted as the correct version of what the witness says. See ***Elegushi v. Oseni (2005) 11 NWLR (Pt. 945) 348***; and ***MICHAEL V. ACCESS BANK (2017) LPELR-41981(CA)(PP. 39-40 PARAS. E-E).***

In proof of his case, the Claimant testified for himself and called a Witness, one Mr. Kehinde Oduoye who was one of the Auditors who carried out the forensic audit of the Claimant's account for the period under review. The Forensic Audit Report was admitted as Exhibit "D". The Claimant and his Witness were cross-examined by the Defendant's Counsel on the report. In Exhibit "D", the Audit Report identified some various excess sums and illegal bank charges amounting to N2,305,601.19 (Two Million, Three Hundred and Five Thousand, Six Hundred and One Naira, Nineteen Kobo) unlawfully deducted from the Claimant's account between 17th of September 2007 to 1st of January 2021. During, the cross examination of the Claimant and his witness, I observed that the Defendant's counsel

was unable to identify any portion of the Audit report that was at variance with the extant CBN guidelines on bank charges. They could not fault the Audit Report and the evidence of the Claimant's Auditor,

However on the part of the Defendant, they fielded a sole witness in the person of one ONYEBUCHI OJI who is a Relationship Manager with the Defendant. Through their sole witness the Defendant tendered 3 documents. However, the fulcrum of their defence appears to be **EXHIBIT "G"**, a letter dated November 30, 2021 captioned **"RE: FORENSIC INVESTIGATION OF BANK CHARGES – ROBERT OBHAFUOSO – (2009039764)** written by one Chibueze Ezeorah and Isaiah B. Adeyemi.

As the learned counsel for the Claimant rightly pointed out, none of the co – authors of Exhibit "G" testified in this suit. However, the entire evidence of the Defendant's sole is essentially a regurgitation of the content of **EXHIBIT G"** which was reproduced by the witness in paragraphs 7 of his witness statement on oath.

The learned counsel for the Claimant has vigorously challenged the evidence of the Defendant's sole witness on the ground that it is hearsay which is contrary to the provisions of ***Section 126(d)*** *of the* ***Evidence Act, 2011***.

The test for determining when a statement may be inadmissible as hearsay and when it may be admissible was stated by the Privy Council in the old case of ***Subramanian v. Public Prosecutor (1956) 1 W.L.R. 965*** thus:

"Evidence of the statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by evidence, not the truth of the statement, but the fact that it was made."

Furthermore, in the Nigerian case of ***Ojo vs. Gharoro (2006) 10 NWLR (Pt. 987) 173 at 198 -199*** the Court exposited thus:

"When a third party relates a story to another as proof of contents of a statement such story is hearsay. Hearsay evidence is all evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. See Judicial Committee vs Omo (1990) 6 NWLR (Pt 159) 407. A piece of evidence is hearsay if it is evidence of the contents of a statement made by a witness who is not called to testify. See Utteh vs The State (1992) 2 NWLR (Pt. 223) 259."

Hearsay is defined in ***Section 37 of the Evidence Act 2011*** as follows:

"37. Hearsay means a statement -

(a) oral or written made otherwise than by a witness in a proceeding; or

(b) contained in a book; document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it."

In the instant case, it is apparent that the contents of **EXHIBIT "G"** amounts to hearsay because it was written by persons who were not called to testify as witnesses in this suit, for the purpose of proving the truth of the matters stated therein. Moreover, no reason was given for the failure of any of the authors of Exhibit "G" to give direct oral evidence of the contents of the exhibit and to be cross examined on same in other to determine the credibility of the facts stated therein.

Furthermore, the evidence of the Defendant's sole witness which is largely based on the contents of Exhibit "G" amounts to double hearsay. Since the witness was not the maker of Exhibit "G" any evidence contained in his deposition and the evidence elicited from him under cross examination cannot carry much weight. Where there is no opportunity to test the credibility of a report said to have been prepared by an expert as a witness, such a report is worthless and cannot relied on by any Court. See ***A.G. FEDERATION V ABUBAKAR (2007) 10 NWLR (PT. 1041) PAGE 1 AT 181 - 183 (H-D);*** and ***ACCESS BANK PLC V. F. G. ONYENWE MOTORS NIGERIA LTD (2014) LPELR-23564(CA) (PP. 26-27 PARAS. C-C)***

It is a settled principle of law by a long line of decisions that civil cases are decided on the preponderance of evidence, which expression according to the ***Black's Law Dictionary, 9th Edition, page 1301*** means: ***"Greater in weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that though, not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in most civil trials...."*** Preponderance of evidence is also referred to as balance of probability. See also ***Sections 131 to 134 of the Evidence Act 2011*** and ***OKOLIE V. OKOLIE (2020) LPELR-51411(CA) (PP. 28-29 PARAS. D).***

In order to determine the preponderance of evidence, over the years, the Courts have always applied the rule in the case of ***Mogaji v. Odofin (1978) 4 SC 91 at 95***. This rule simply means that the evidence adduced by the Claimant should be put on one side of the imaginary scale and the evidence adduced by the Defendant put on the other side of the scale and weighed together, not by the number of witnesses called by either side but by evidence of probative and qualitative value to see on which side it preponderates. See ***ALHAJI BALOGUN V. ALHAJI LAHIRAN (1988) 3 NWLR (PT. 80) PAGE 66;*** and ***SOSAN V. H.F.P. ENGINEERING (NIG) LTD (2003) LPELR-7232(CA) (PP. 16-17 PARAS. D).***

Applying the aforesaid rule to the instant case, if the evidence adduced by the Claimant is juxtaposed with that of the Defendant, it is apparent that the evidence of the Claimant appears more reliable than that of the Defendant. The Claimant fielded an expert witness who carried out a forensic audit of his account over the relevant period. His witness co-authored the Audit Report which he tendered at the trial. This is line with the authorities to the effect that the report made by an expert or group of experts could be tendered through one of the experts or the expert that made it in the case the report is made by one expert. See ***BOYEWU V. STATE (2017) LPELR-42321(CA) (PP. 18 PARAS. D).***

In the absence of any valid evidence to contradict the Claimant's Audit report, I can rely on it. In the case of ***Shell Petroleum Development Co. v. Isaiah (1997) 6 NWLR (pt. 508) 236*** the Court held that where the evidence of an expert is not challenged or contradicted, the Court should rely on his evidence. See ***Obanor v. Obanor (1976) 2 SC1; Seismograph v. Onokpasa (1972) 1 NWLR 343.***

Also in the case of ***BALA V. INTERCITY BANK PLC (2009) LPELR-11902(CA) (PP. 31-32 PARAS. A),*** the Court of Appeal exposited thus: ***"It is risky for a Court to simply ignore or wave aside an expert opinion expressed by an expert in the field concerned. A doctor is an expert on health matters and his opinion cannot be disregarded for trivial reasons. To reject an expert opinion, the Court needs to have very cogent reasons for doing so, such as where there is a contrary and reliable expert opinion on the same subject. In the instant case, only Exhibit L1, the medical report was tendered and there was no other evidence available to contradict same. Hence, it so good in relation to the appellant's case".***

From the foregoing, I hold that on the preponderance of evidence, the Claimant has adduced credible and weighty oral and documentary evidence to prove that the Defendant made some deductions and imposed some charges on his account amounting to N2, 305,601.19 (Two Million, Three Hundred and Five Thousand, Six Hundred and One Naira, Nineteen Kobo) unlawfully deducted from the Claimant's account between 17th of September 2007 to 1st of January 2021.

I also hold that the Defendant has failed to adduce any credible evidence to rebut the evidence adduced by the Claimant in this suit.

In the event, I hold that the Claimant is entitled to the reliefs which he seeks in this suit. Issue 2 is therefore resolved in favour of the Claimant.

In this suit apart from seeking a declaration that the Claimant is entitled to a refund of the sums unlawfully deducted from the his account, the Claimant is also claiming the sum of N10, 000,000.00 (Ten Million Naira) as general damages for the unlawful deductions; and a perpetual injunction, restraining the Defendant from making any further deductions from the Claimant's account without his consent.

In this case, since I have made a finding that the Defendants are liable for making the excess deductions, general damages will naturally follow.

On the claim for general damages, it is settled law that the fundamental objective for the award of damages is to compensate the Claimant for the harm and injury caused by the Defendant. See the cases of ***G. Chitex Industries Ltd. v. Oceanic Bank International (Nig) Ltd (2005) LPELR-1293(SC);*** and ***Omonuwa v. Wahabi (1976) 4 SC 37 at 41.*** Thus, it is the duty of the Court to assess the Damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: ***Olatunde Laja vs. Alhaji Isiba & Anor. (1979) 7 CA.***

The quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant. In cases of breach of contract such as this, the aggrieved party is entitled to recover such part of the loss which was reasonably foreseeable as liable to result from the breach. Thus a Claimant is only entitled to damages naturally flowing or resulting from the breach. See ***Swiss Nigerian Wood Industries Ltd. v. Bogo (1971) 1 UILR 337; Agbaje v. National Motors (1971) 1 UILR 119***. The measure of damages, in such cases of breach of contract, is in the terms of the loss which is reasonably within the contemplation of the parties at the time of contract. See ***Jammal Engineering v. Wrought Iron (1970) NCLR 295; Alraine v. Eshiett (1977) 1 SC 89***.

Going through the Claimants' evidence, I observed that they led uncontroverted evidence of how they had to hire the services of Auditors in order to uncover the excess deductions over the period. Thereafter, they were constrained to hire the services of their counsel to institute and prosecute this suit. By their misconduct, the Defendant has put the Claimant through quite a tortuous ordeal for which they should be properly compensated in damages.

On the relief of a perpetual injunction against the Defendant, it is settled law that once the main claim has been proved, an order of injunction becomes necessary to restrain further breaches on the part of the Defendant. See: ***ADEGBITE VS. OGUNFAOLU (1990) 4 NWLR (PT. 146) 578; BABATOLA VS. ALADEJANA (2001) FWLR (PT. 61) 1670 and ANYANWU VS. UZOWUAKA (2009) ALL FWLR (PT. 499) PG. 411.***

In the event, I hold that the Claimant is entitled to a perpetual injunction to restrain the Defendant from making any further deductions without the consent of the Claimant.

On the whole, the Claimant's claims succeed and he is granted the following reliefs:

1) ***A DECLARATION that the Claimant is entitled to a refund of the sum of N2,305,601.19 (Two Million, Three Hundred and Five Thousand, Six Hundred and One Naira, Nineteen Kobo) only been the various excess sums***

and illegal bank charges unlawfully deducted from the Claimant's account No. 2009039764 domicile in the Defendant's Kings Square Branch, Benin City, Edo State between September 17, 2007 – January 01, 2021;

2) ***The sum of N3,000,000.00 (Three Million Naira) only being general damages for the unlawful deductions; and***
3) ***Perpetual Injunction restraining the Defendant whether by themselves, agents or privies from making any further deductions from the Claimant's said account without the consent of the Claimant.***

Costs of N200, 000.00 (Two Hundred Thousand Naira) is awarded to the Claimant.

P.A.AKHIHIERO JUDGE

12 /12/2023

<u>COUNSEL:</u>

G.O. Giwa-Amu Esq. ----------Claimant.

F.T. Odebata Esq----------Defendant.