IN THE HIGH COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT JUDICIAL DIVISION
HOLDEN AT PORT HARCOURT
BEFORE HONOURABLE JUSTICE M.O. OPARA (JUDGE)
SITTING AT HIGH COURT 9, PORT HARCOURT
ON TUESDAY THE 8TH DAY OF APRIL, 2025

SUIT NO: PHC/160/CS/2023

BETWEEN:

DR. ALVAN UZOCHUKWU -- CLAIMANT

AND

ZENITH BANK PLC -- DEFENDANT

JUDGMENT

By a writ of summons filed on the 26th day of January, 2023, the Claimant claims against the Defendant as follows:

1. A declaration that the Defendant's opening of 12 different accounts namely:

   a) 2231156916
   b) 2231156923
   c) 2231156277
   d) 2231156284
   e) 2231156291
   f) 2231156325
   g) 2231156301
   h) 2231156260
   i) 2231156318
   j) 2231156349
   k) 2231156332
   l) 2231156909

   in the name of the Claimant with deficits/debits of ₦10,000.000 each without any submission of account opening mandate by the Claimant to the Defendant for those accounts or his consent/or authorization(s) or knowledge is a breach of the Defendant's duty under its contract with the Claimant to

exercise reasonable care and skill in carrying out its duty and amounts to fraud, is unlawful, illegal and void.

2. A DECLARATION that the continuous deprivation of the Claimant's right to the sum of ₦15,000 (Fifteen Thousand Naira) transferred on the 03/11/2022 to the account number 2231156909 opened by the Defendant without the Claimant's consent or authorization and still detained by the Defendant in the said account amounts to fraud, is unlawful and illegal.

3. Order that the sum of ₦15,000 (Fifteen Thousand Naira) which represents the total amount transferred on the 03/11/2022 to the account number 2231156909 opened by the Defendant without the Claimant's consent or authorization be refunded to the Claimant.

4. Sum of ₦10,000.00 (Ten Million Naira) as general and exemplary damages against the Defendant in favour of the Claimant.

On receipt of Claimant's processes, the Defendant in opposition filed its statement of defence and other processes on 10th March, 2023.

On 07/02/2024, Pretrial Conference was conducted and concluded and the case was adjourned for hearing.

On 31/10/2024, Claimant opened his case. He testified for himself as CW1 and tendered exhibits C1 to C4. Claimant was vigorously cross-examined by the Defendant's counsel, C. T. Ekpeye, Esq. Claimant thereafter closed his case.

On 11/12/2024, the Defendant opened its defence. Sarah Tamunowari testified as DW1 and tendered exhibits D1 to D2. She was vigorously cross-examined by the Claimant's counsel, V. U. Uzochukwu, Esq. The Defendant closed its case and the case was adjourned to 18/03/2025 for address.

On 18/03/2025, both counsel adumbrated and adopted their final written addresses and the case was adjourned for judgment.

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THE JUDICIARY
HIGH COURT REGISTRY
PORT HARCOURT
CASH OFFICE
Date: 2/6/2025

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IGWE JOHN PROMISE (ACA)
ASST CHIEF REGISTRAR

In his address, Nnachi. O. Egwu, Esq., Defendant's solicitor raised three issues for determination. They are:

1. Whether the Claimant has proved his case as required by law so as to be entitled to the reliefs sought.

2. Whether Exhibit C ought to have been admitted and what probative value can be attached to same.

3. Whether the Claimant has shown that he suffered any damage as to be entitled to the claim of general and exemplary damages.

On issue one, learned counsel posited that Claimant failed to prove his entitlement to this relief. He relied on sections 131, 132 and 133 of the Evidence Act, 2011 and submitted that it is trite that he who asserts must prove.

He argued that it is an uncontroverted evidence that Claimant enrolled in the "save for me" scheme using six (6) secret digit PINs and ATM Card details from his personal Techno mobile phone and created 12 accounts that were linked to Claimant's enrollment using Defendant's mobile banking application.

He added that Claimant depositing ₦15,000.00 into one of the 12 virtual accounts proves that Claimant was fully aware of the existence and operation of those accounts, and he did not prove that he intended to deposit the money into his main account.

Counsel asserted that Claimant personally made the transfer from his Wema Bank account to the account bearing his full name and must have imputed the specific account number as he could not have imputed a wrong number if he was not aware of the account. Besides, he had done many other transactions on the accounts using the mobile app.

He contended that it is unimaginable that a bank will open an account for a customer without their consent; that the deduction of ₦10,000.00 (Ten Thousand Naira) from the accounts when it received the ₦15,000.00(Fifteen Thousand Naira only) was as a result of the negative balance which is in line with the terms of that package and in line with banking practice.

He submitted that it is the law that an account holder has a duty of understanding the terms and conditions of a financial product before engaging in it. He cited the case of A. G. LEVENTIS (NIG.) PLC V AKPU (2007) 17 NWLR (Pt.1062) 117.

Learned counsel contended that Claimant having voluntarily credited one of his virtual accounts, he cannot now turn around to claim ignorance or that the bank wrongfully deducted his funds as he activated the accounts using his mobile app and secret pin peculiar to and known to him alone.

He further contended that if Claimant alleges he did not open the accounts, then the only conclusion is that; he compromised his banking credentials, which is a gross negligence. He relied on sections 3,4 and 6, of the Central Bank of Nigeria's Guidelines on the operation of electronic payment channels in Nigeria (June 2020).

He maintained that the Claimant provided no evidence to show that he requested the closure of those accounts when he became aware of their existence, that his failure to act promptly to mitigate his loss indicates that he consented to their continued operation.

On the issue of not sending an email to Claimant, Counsel submitted that it is fundamentally untrue as the account opening is an automated process that needs no further notification to authenticate. As for the mandate forms, he submitted that they are traditionally required for opening of bank accounts through the in-branch procedure across the counter but are not applicable in the instant case where the digital banking and self-service platforms are used. He urged the court to hold that Claimant voluntarily and validly created the 12 virtual accounts and cannot be allowed to approbate and reprobate.

On Claimant's argument of continuous deprivation of his ₦15,000.00 amounting to fraud and that Defendant frequently deducts his money, learned counsel contended that Claimant has not provided evidence to substantiate his claim of fraud, misrepresentation or wrongful conduct against the Defendant.

He added that Defendant never at any time demanded payment of any debt, nor has Defendant alleged any indebtedness to Claimant.

On issue two, learned counsel asserted that it is trite law that for a document which is a correspondence between parties to be admissible and given a probative weight, there must be evidence of service on the opposing party. He cited S. P. D. C (NIG.) LTD V X. M. FED. LTD (2006) 16 NWLR (Pt.1004) 189. He submitted that there is no evidence that the letter was served on the Defendant either via acknowledgment copy, courier receipt or personal service and absence of such proof has created a defect in the evidential value of exhibit C1.

He submitted that it is settled law that the admission of a document does not automatically mean it has probative value. He relied on BUHARI V OBASANJO (2005) 13 NWLR (Pt.941) and OKAFOR V OKEKE (2007) 10 NWLR (Pt.1043) 521. He added that exhibit C1 was never served on Defendant and does not mention any request for closure of accounts.

He relied on ONOCHIE V ODOGWU (2006) 6 NWLR (Pt.975) 65 to emphasize that admissibility is distinct from probative value and an inadmissible document should not form the basis of a judicial determination. He urged the Court to discard the document in the interest of justice.

He posited that non-service raises a constitutional issue of fair hearing as Defendant was denied the opportunity to respond to the contents of the letter before its admission. He relied on ADENIJI V STATE (2001) 13 NWLR (Pt.730) 375 and urged the court to expunge exhibit C1 from its records.

On issue three, learned counsel posited that Claimant has not proved that he suffered any damage by the existence of the said accounts and until he is able to prove the actual breach of duty of care and actual damage suffered, the action must fail. He cited UNIVERSAL TRUST BANK OF NIGERIA V FIDELIA OZOEMENA (Suit No. SC 129/2001 delivered on 26th January, 2007) and NIGERIA AIRWAYS LTD V ABE (1988) 4 NWLR (Pt.90) 524.

He submitted that it is a settled principle of civil jurisprudence that substantial damage without alleging and proving actual damage does not extend to a customer of a bank who is not a trader. He relied on GIBBONS V WESTMINSTER BANK LTD (1939) 2 K. B. 882.

He opined that Claimant is not a trader and has not proved actual damage aside from his *viva voce* claims. He urged the court to dismiss the claim for general and exemplary damages.

Defendant's counsel in conclusion urged the court to dismiss the suit with monumental cost against the Claimant for lacking merit.

V. U. Uzochukwu, Esq., Claimant's counsel in his written address raised two issues for determination. They are:

1. Whether the Claimant through his case has disclosed the existence of any contractual relationship between himself and the Defendant.

2. Whether the Claimant has through his evidence before the court proved reasonable cause of action against the Defendant and that the Defendant has breached a duty of care to the Claimant to be entitled to his reliefs sought before the court against the Defendant.

On issue one, learned counsel submitted that it is a settled principle of law that the relationship between a bank and its customer is contractual in nature; it is that of a debtor and creditor or principal and agent so a bank is bound to protect the customer's funds and where it fails to do so, it constitutes a breach of contract for which the bank will be liable for damages. He relied on the case of JIGNA FARMS LTD V UBN PLC (2016) LPELR – 40231 (CA).

He argued that once the bank accepts the money in the customer's name, a contractual relationship is formed between the parties and it is the responsibility of the bank to ensure that the rights of the customers are adequately protected and respected.

He maintained that since Claimant operates an account 2100102709 with the Defendant there is a contractual relationship between them before the 12 accounts, the subject matter in dispute were created.

On issue two, learned counsel submitted that it is settled that a bank is bound and has the responsibility to inform Claimant and to provide excellent customer service, reasonable care and skill in the course of transacting with customers. He cited NDIC V OKEM ENTERPRISES LTD (2004) 10 NWLR (Pt.880) 107 and CENTRAL

BANK OF NIGERIA, BANK CUSTOMER BILL OF RIGHTS AND DUTIES OF 2019 (issued in 2019).

He posited that Claimant operates an account with Defendant and tendered exhibits in proof of his opening account number 2100102709 but maintained that he is not aware nor did he authorize the creation of 12 other accounts; that he made complaints to the Defendant's Onitsha and Ekwulobia branches and the Defendant did nothing.

He opined that it is in evidence that Claimant has been insisting to know how the 12 accounts came to be and has shown his displeasure over their existence in his name.

He submitted that the testimonies of the Claimant and Defendant's continuous operation of the 12 accounts in the Claimant's name establishes a reasonable cause of action.

He contended that by the Central Bank of Nigeria Bank Customer Bill of Rights and Duties of 2019, which provides for several rights accruing to banking customers in Nigeria, Claimant has a right to be informed.

He asserted that Defendant did not contradict the evidence of Claimant that the 12 accounts were created in Claimant's name nor did Defendant deny that it always sent notifications of banking activities on Claimant's account no: 2100102709 but admitted that no sms notification was sent to the Claimant regarding the opening of the 12 accounts.

He submitted that it is settled law that a court can act on unchallenged or uncontradicted evidence and deem same as established. He relied on NWOGO OBIA & ORS V AGWU NJOKU & ORS (1990) 3 NWLR (Pt.140) 570 and ONYIORAH V ONYIORAH (2019) 15 NWLR (Pt.1695) 227.

He contended that the Defendant failed to prove that Claimant created those 12 accounts; that the court is bound to accept the uncontradicted evidence as proved. He cited NWOGO OBIA & ORS V AGWU NJOKU & ORS (1990) (SC) (supra) and urged the court to so hold.

He posited that Defendant's creation of the 12 accounts in Claimant's name with ₦10,000.00 (Ten Thousand Naira) deficit in

each of those accounts caused him great embarrassment, financial distress, trauma, gross inconvenience, bad financial reputation and an impression that he is a debtor to the bank and not credit worthy and the Defendant could not contradict this.

He maintained that Claimant being a Medical Doctor, his profession demands that he maintain a good degree of creditworthiness but Defendant has tainted it by their actions. He submitted that Defendant did not prove that Claimant created those 12 accounts nor did they give any reason why those accounts are still operational despite Claimant's indication of displeasure by his verbal complaints at their Onitsha and Ekwulobia branches and his letter, exhibit 1 which Defendant refused to respond to till date.

He contended that the issue of Claimant's ATM Card and pin being compromised is Defendant's way of fishing for facts.

He urged the Court to hold that the actions of the Defendant in disregarding his complaints about the 12 accounts and its failure to take any immediate action caused Claimant pain and serious inconveniences. Therefore Claimant is entitled to the reliefs sought for the Defendant's action and failure to perform its duty of care and for professional negligence. He relied on NDIC V OKEM ENTERPRISES LTD (2004) (supra) and urged the court to so hold. He urged the court to grant the reliefs sought by Claimant.

I have carefully gone through the processes, the evidence adduced before the court and the written addresses of counsel.

After a calm consideration of the oral and documentary evidence before the court, I believe that a sole issue calls for determination. It is:

> Whether the Claimant has proved his case to be entitled to the reliefs claimed.

It is trite law that the burden of proving the existence of any fact is on the party who asserts it. This the Claimant must do by credible, cogent and convincing evidence. Where he fails to prove the facts relevant to the reliefs claimed, his claim is bound to fail. See IBRAHIM V GARKI (2017) 9 NWLR (Pt.157) 377.

Claimant asserted that he opened an account with the Defendant which was running smoothly until sometime in 2022 when he made

a transfer of ₦15,000.00 (Fifteen Thousand Naira) from WEMA BANK to the said ZENITH BANK account, he found out that the money was received into another account bearing his name and instead of the ₦15,000.00 (Fifteen Thousand Naira) he deposited, the account showed ₦5,000.00 balance.

He stated that on further enquiries and on opening his Zenith Bank App, he discovered that the Defendant had linked the said new account 2231156909 to his Zenith Bank App and the said account which was previously in ₦10,000.00 deficit on receiving ₦15,000 had ₦5,000 balance. He also discovered other 11 accounts linked to the original account making it a total of 12 new accounts bearing his name with a debit or deficit balance of ₦10,000.00 each.

He said he was shocked and approached the Onitsha branch of Anambra State to relay his verbal complaints. That the officials or customer representatives asked him to call his account Manager which he did, but Defendant did nothing to resolve the matter.

That he then approached the Ekwulobia branch of Anambra State to request for statement of accounts for the 12 new accounts created by the Defendant in his name but was only given statement for one account- 2231156090. He tendered exhibits C1 to C4. He stated that Defendant refused to release the statement of account and has also refused to obey the notice to produce even in this court.

On the part of the Defendant, Defendant insisted that the Claimant created those 12 accounts on his own, and if not him, then, his secret details may have been compromised which fact Claimant vehemently denied.

It is trite law that he who asserts must prove. See Section 131 of the Evidence Act, 2011.

In the circumstances of this case I believe the Claimant has a duty to prove how he was able to pay money to an account he never opened and was not aware of.

Claimant maintained that he had a savings account NO: 2100102709 which he always operated and it is this same savings account that the Defendant in paragraph 5 of its statement of defence reproduced, showing that Claimant has been operating same.

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HIGH COURT REGISTRY
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Claimant stressed that his ₦15,000.00 was transferred into another account, his money deducted and the other accounts show a deficit of ₦10,000.00 each, in the 12 accounts Defendant opened in his name. He tendered exhibits to prove the existence of those accounts that were linked to his App.

In the circumstances of this case, I believe the only way this court can resolve the issue in dispute, that is, whether Claimant actually paid money into account no. 2231156909 as alleged by the Defendant is by perusing through the statement of account which the Defendant has failed and refused to produce even after notice to produce was served on the Defendant by the Claimant.

Indeed, this is a clear case where the court ought to invoke section 167 (d) of the Evidence Act and hold that the Defendant withheld the said statement of account because its content will be unfavourable to the Defendant.

It is obvious that Claimant was not satisfied with the response of the bank based on his banker/customer relationship. A better explanation of what transpired should have sufficed instead Defendant allowed the matter to escalate even after the Claimant's verbal complaints and the filing of this suit, Defendant did nothing. Rather Defendant continued to detain Claimant's money (₦15,000.00) on the ground that Claimant opened the account himself and has not asked the bank to close the 12 accounts. Defendant also maintained that it has not said that Claimant is a debtor neither has it asked Claimant to pay any debt. However, the bank records tendered by the Claimant show that the other 11 accounts are in deficit of ₦10,000.00 each and the account no: 2231156909 wherein he transferred ₦15,000.00 to, currently shows a balance of ₦5,000.00 instead of ₦15,000.00. See exhibit C3.

While I agree with Defendant's counsel that mandate forms are traditionally required for opening bank accounts through the in-branch procedure across the counter but are not applicable where digital banking self service platform is used, I am of the humble but firm view that the Defendant who wants the court to believe that Claimant voluntarily and validly created the 12 accounts virtually, ought to go beyond its bare evidence before this court, by adducing more cogent and reliable evidence which would show how and when

Claimant opened the said accounts as there is no magic in virtual account opening except the Defendant is saying that its system is porous. Defendant should at least have shown the digital trail, tracking or sequence of the account. The question I ask is whether a customer is not meant to answer some questions or provide some bio-data peculiar to him before the said accounts are opened? Besides, how can the Defendant allow a customer maintain 12 separate accounts in addition to the other accounts the customer has in its bank. Is the Defendant's goal just to earn the initial ₦10,000.00 deficit that comes with every 'save for me account'?

Consequent upon the foregoing, I believe Claimant has placed credible evidence before this court. The Defendant on the contrary was not able to contradict the evidence provided by the Claimant, showing that Claimant did not open the said accounts.

However, I agree with learned counsel for the Defendant that Claimant has not provided evidence to substantiate his claim of fraud against the Defendant. The law is well settled that if the commission of crime by a party to any proceeding is directly in issue in any proceeding, it must be proved beyond reasonable doubt.

Claimant is claiming the sum of ₦10,000.00 (Ten Million Naira) as general and exemplarily damages.

Learned counsel for the Claimant contended that Defendant's creation of the 12 accounts in Claimant's name with ₦10,000.00 deficit in each of those accounts caused Claimant great embarrassment, financial distress, trauma, gross inconvenience, bad financial reputation and an impression that he is a debtor to the bank and not credit worthy. He stated that the Defendant could not contradict the Claimant's allegations.

He maintained that Claimant being a Medical Doctor, his profession demands that he maintains a good degree of creditworthiness but Defendant has tainted it by their actions.

It is trite law that general damages are presumed by law as the direct natural consequences of the acts complained of; they are compensatory damages that results from the wrong. See ALH. AHMADU GARI V SEIRAFINA NIGERIA LTD & ANOR (2008) 2

NWLR (PT.1070) 1, 27 paragraphs A-C and BRITISH AIRWAYS V. AYOTEBI (2014) 13 NWLR (PT 1424) 253.

Learned counsel for the Defendant submitted that it is a settled principle of civil jurisprudence that substantial damage without alleging and proving actual damage does not extend to a customer of a bank who is not a trader. He relied on GIBBONS V. WESTMINSTER BANK LTD (1939) 2 K.B. 882.

Although the Claimant was unable to prove the alleged financial distress, bad financial reputation, lack of credit worthiness or tainted reputation; in the circumstances of this case, I believe Claimant is entitled to general damages.

Accordingly, I hold that Claimant has proved that he did not open the 12 accounts and that he is entitled to the sum of ₦15,000.00 which he transferred to his savings account no: 2100102709.

The law is that a banker is under a duty to honour cheques drawn on it by a customer who has sufficient funds with the bank to cover the amount endorsed on the cheque. Failure to do so constitutes a breach of contract for which the bank will be liable for damages. See the cases of STANDARD TRUST BANK LTD V ANUMNU (2008) 14 NWLR (106) 125, 150-151; UBA V. UNION BANK PLC (1995) 7 NWLR (405) 72, 81 and JIGNA FARMS LTD V. UNION BANK OF NIGERIA PLC (2016) LPELR – 40231(CA).

This is more so as the Defendant did nothing to pacify the Claimant even after he instituted this suit. Defendant even failed to respond to Claimant's letter.

Consequent upon the foregoing, I enter judgment in favour of the Claimant with the following orders:

1. A declaration that the Defendant's opening of 12 different accounts namely:

    a) 2231156916
    b) 2231156923
    c) 2231156277
    d) 2231156284
    e) 2231156291
    f) 2231156325
    g) 2231156301

h) 2231156260
i) 2231156318
j) 2231156349
k) 2231156332
l) 2231156909

In the name of the Claimant with deficits/debits of ₦10,000.000 (Ten Thousand Naira only) each without Claimant's consent/or authorization(s) or knowledge is a breach of the Defendant's duty under its contract with the Claimant. The Defendant shall immediately close all 12 accounts and delink same from Claimant's Zenith Bank App.

2. A declaration that the continuous deprivation of the Claimant's right to the sum of ₦15,000.00 (Fifteen Thousand Naira) transferred on the 03/11/2022 to account number 2231156909 opened by the Defendant without the Claimant's consent or authorization and still detained by the Defendant in the said account is wrongful.
3. It is ordered that the sum of ₦15,000.00 (Fifteen Thousand Naira) which represents the total amount transferred on 03/11/2022 to the Claimant's account- number 2231156909 opened by the Defendant without the Claimant's consent or authorization be refunded to the Claimant.
4. Defendant shall pay the sum of ₦100,000,00 (One Hundred Thousand Naira) as general damages to the Claimant.
5. Cost of ₦100,000.00 (One Hundred Thousand Naira) only is awarded in favour of the Claimant.

M.O. OPARA
JUDGE
08-04-2025

PARTIES: Claimant Absent
Defendant Absent

APPEARANCES: V. U. UZOCHUKWU, Esq. for the Claimant.
CHIEF N. D. EGWU, Esq. for the Defendant.

Confirmed by me
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02 JUN 2025
IGWE JOHN PROMISE (ACA)
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THE JUDICIARY
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Date 2/6/2025