**IN THE MAGISTRATES’ COURT: DELTA STATE OF NIGERIA**

**IN THE OWA OYIBO MAGISTERIAL DISTRICT**

**HOLDEN AT OWA OYIBO**

**SUIT NO: CMO/…./2021**

**BETWEEN**

**MR MR K. D. ---------------- PLAINTIFF**

**AND**

**VIRALBANK NIG. LTD -----------------------------DEFENDANT**

**DEFENDANT’S FINAL WRITTEN ADDRESS**

1. **INTRODUCTION** 
   1. Your Worship, this suit was commenced by a claim filed on the 2nd of December 2021. From the claim, the Plaintiff seeks the following reliefs from this Noble Court;
      1. *An order directing the Defendant to credit the Plaintiff’s account with the sum of N100,000 being the total amount illegally/wrongly debited from the Plaintiff account number xxxxxxxxxxxx with the Defendant’s Bank (sic)*
      2. *The sum of N1,000,000 being the damages, business failure and inconveniences suffered by the Plaintiff*
      3. *The sum of N100,000 being the cost of litigation of this action*
      4. *An order directing the Defendant to apologize in writing to the Plaintiff*
   2. Expectedly, on the 10th of January 2022, the Defendant who was represented by Mr Amadi, took its plea. The Defendant pleaded not liable to the claim of the Plaintiff. Thereafter, trial commenced on the 21st of February 2022 with the Plaintiff himself giving evidence in support of his case. After his testimony, the Plaintiff was duly cross examined and he closed his case on the same date.
   3. On its part, the Defendant opened its case on the 14th of March 2022 by calling a sole witness in the person of Mr Amadi (DW1). DW1 was examined in chief and extensively cross examined. After this, the Defendant closed its case on the 19th of July 2022. Upon the closure of the Defendant’s case, this Noble Court directed that parties proceed to file their final written address, hence this final written address.
2. **BRIEF STATEMENT OF THE FACTS AND EVIDENCE LED AT TRIAL** 
   1. Your Worship, the facts of the Plaintiff’s case as stated in the Claim and during his evidence in chief before this Noble Court are amenable to brevity. We crave this Court’s gracious indulgence to restate them.
   2. The Plaintiff is a business man who resides at No 1 Okubor Street, Agbor, Delta State. He is also customer of the Defendant Bank with savings account number xxxxxxxxxxx. According to him, he has been using the banking services of the Defendant for well over 15 years. Sadly, in the course of the blissful bank-customer relationship, a grouse arose which has birthed this case. More precisely, the Plaintiff’s grouse with the Defendant happened on the 14th day of November 2021 when he received two debit alerts of N50,000 (Fifty Thousand Naira each) totaling N100,000 (One Hundred Thousand Naira).
   3. It is the Plaintiff’s case that these debt alerts were not authorized by him (that is they were illegal and wrongful). Consequently, he laid a complaint with the Defendant and subsequently briefed his Lawyers to write a formal demand letter to the Defendant as well. To him, all the responses received from the Defendant on the issue were not palatable and so, he has approached this Noble Court for justice per the reliefs sought by this suit.
   4. In the course of his testimony, the following documents were tendered through the Plaintiff and admitted in evidence as follows;
      1. Letter from D. O. Ehiedu & Co to the Defendant – EXHIBIT 1
      2. 1st Response letter from the Defendant to D. O. Ehiedu’s letter – EXIHBIT 2
      3. 2nd letter from the Defendant to D.O. Ehiedu dated 27th January 2022 (with two annexures attached) – EXHIBIT 3
      4. Plaintiff’s statement of his account with the Defendant – EXHIBIT 4
      5. Plaintiff’s Debit (ATM) Card with PAN number xxxxxxxxxxxx – EXHIBIT 5
   5. During cross examination Sir, very crucial facts came to the fore. First, it became clear that the Plaintiff is the manager/owner of the business described as Express Car Wash. To aid business operations at the car wash, he uses a POS machine. This POS machine is routinely taken to the car wash to ensure easy payment for services rendered. Also, it was revealed that the Plaintiff has no banking experience and so cannot be expected to understand technical banking transactions. In addition, the Plaintiff was shown his statement of account wherein he made some very fundamental observations in evidence. First, he confirmed that there was no entry for a withdrawal of N100,000 on the 16th of May 2021. He further confirmed from the statement of account that the debt entries indicating the disputed N100,000 withdrawal/debit in November 2021 have the inscription “TeamApt” and this inscription is equally written on the annexures to Exhibit 3. Finally, he confirmed that his business has continued making profit since the alleged unlawful or wrongful debits in November 2021.
   6. On its part, the Defendant denied all liability for the claims of the Plaintiff and vigorously contested the Plaintiff’s case. The case of the Defendant as relayed by DW1 is that on the 16th of May 2021, the Plaintiff used his Debit (ATM) card on the POS machine at Express Car Wash. On the said date, he withdrew the sum of N100,000 in two batches or tranches of N50,000 (Fifty Thousand Naira) each. These transactions were successful as the Plaintiff received the monies withdrawn. In other words, the Plaintiff was credited for the transaction.
   7. Having been credited (that is having taken the monies withdrawn), his account should have in the ordinary course of things been debited on the same day being 16th of May 2021. But contrary to expectations, the Plaintiff’s account was not debited instantly for the transactions. His account was only debited on the 14th of November 2021. In effect, the debt complained of by the Plaintiff were for the transactions he duly carried out or authorized on the 16th of May 2021. The withdrawals were thus not illegal or wrongful as the Plaintiff has alleged.
   8. The Defendant further explained that this delay in receiving the debit is not the usual occurrence in the banking system. Also, it was not due to any fault of the Plaintiff or fraud. It was rather due to technical lapses that intermittently happen in the backend banking system that runs POS transactions. Due to this lapse, the Defendant had to carry out a reconciliation of the Plaintiff’s transaction and the debit was properly done or reflected in the Plaintiff’s account after the reconciliation was concluded.
   9. Although DW1 did not tender any document, he identified some of the Exhibits tendered by the Plaintiff. More importantly, under cross examination, DW1 re-affirmed some very crucial points in the Defendant’s case and explained the documents in evidence from a Banker’s perspective. He confirmed that though the Plaintiff received the monies he withdrew in May 2021, he was not debited for the transaction in May 2021 hence it did not reflect on his statement of account. Due to this delay, there was need for reconciliation. It was after this reconciliation that the Plaintiff’s account was properly debited in November as it should have been since May 2021. It is this proper debit that is shown on the Plaintiff’s statement of account.
3. ISSUE FOR DETERMINATION
   1. Your Worship, we respectfully submit that from the facts and evidence adduced in this case, a central issue arises for determination in this suit and it is;
      1. *Whether the Plaintiff has proved his case and is thus entitled to the grant of the reliefs sought in this case?*
4. **ARGUMENT ON THE SOLE ISSUE FOR DETERMINATION** 
   1. Your Worship, we submit that in civil cases such as the extant case, the Law is now settled that the burden of proof in the sense of establishing the case lies on the Plaintiff. This is the ultimate or legal burden of proof. Please see **Sections 131, 132 and 133 of the Evidence Act 2011**. This burden lies on the Plaintiff because he is the party who makes a claim and if no evidence is adduced, his claim is bound to fail. However, where the Plaintiff has adduced satisfactory evidence in support of his claim, the onus shifts to the Defendant to rebut the evidence (or Plaintiff’s claim). Please see - **Blackstone Crushing Co. Ltd V. Samoba (Nig) Ltd (2020) LPELR-51129(CA).**
   2. Furthermore Sir, we submit that there is in law an interplay between the burden of proof and standard of proof. This interplay exists to the extent that the burden on a Plaintiff is to be discharged on the balance of probabilities. On this point Sir, we yet call to aid the Court of Appeal authority of **Owena Mass Transportation Co Ltd v Okonogbo (2018) LPELR 45221 (CA)** where the Court made clear the interplay between the standard of proof in civil matters and the burden of proof with these words;

“It is true that in civil cases, the burden of proof is on the party who asserts a fact to prove same, for he who asserts must prove. The standard of proof required is on a preponderance of evidence and balance of probabilities… In civil cases the onus of proving an allegation is on the Plaintiff and the onus does not shift until he has proved his claim on the preponderance of evidence and balance of probabilities”

* 1. Flowing from the foregoing authority, we state further that in deciding a civil suit on the balance of probabilities, the trial Court is expected to place the evidence of each of the parties on an imaginary scale. After this placement on the scale has been done, the Court is to give judgment in favour of the party for whom the scale tilts. This much was established by the Supreme Court in the case of **Olonade v Sowemimo (2014) LPELR-22914(SC) at 27** where the Court stated as follows;

“My Lords, in a civil matter such as this, the court decides the case on the balance of probabilities or preponderance of evidence. The trial court does this by first deciding which evidence it accepts from each of the parties, putting the accepted evidence adduced by the plaintiff on one side of the imaginary scale and that of the defendant on the other side of the scale and weighing them together. The court then decides which side’s evidence is heavier, not by the number of witnesses called by either party or on the basis of the one being oral and the other being documentary, but by the quality or probative value of the evidence be it oral and/or documentary.”

* 1. In reliance on the law as stated in Owena Mass Transportation Co Ltd v Okonogbo (Supra), we submit that in this case the Plaintiff bears the burden of leading credible evidence in proof of his claim. In addition, Sir, relying on Olonade v Sowemimo (Supra) we submit that since the standard of proof required in this case is on the balance of probabilities, judgment ought to be given in favour of the party whose evidence tilts the imaginary scales of justice.
  2. Flowing from the preceding, it is our contention that a review of the evidence led in this case will reveal that Plaintiff has failed to discharge the burden of proof on him. The Plaintiff’s failure is especially glaring as his evidence was grossly discredited under cross examination and shown not to be worthy of believe. Also, Sir, we submit that the balance of probabilities in this case tilt in favor of Defendant and therefore the claims of the Plaintiff should be dismissed in their entirety. We crave Your Worship’s indulgence to argue the sole issue raised in this address using various sub-issues hereunder.

**The Balance of Probabilities is Overwhelmingly in the Defendant’s Favor**

* 1. We submit that the evidence in this case reveal that the balance of probabilities weighs heavily in the Defendant’s favor and not the Plaintiff’s; **Olonade v Sowemimo (Supra)**. To buttress this submission, we only have to briefly revisit the evidence on record.
  2. In this case the Plaintiff has said that two debits of N50,000 each (amounting to N100,000) happened on this account on the 14th of November 2021. His case is that he did not authorize these debits and they are therefore wrongful and illegal. In reaction to this specific allegation of the Plaintiff, the Defendant explained that the supposedly wrongful debits are actually proper and were in fact authorized by the Plaintiff.
  3. In further explanation of the propriety of the debits, the Defendant stated that the Plaintiff carried out two POS withdrawals of N50,000 each on the 16th of May 2021 using this ATM card. On the said date, he received the withdrawn monies amounting to N100,000 and went his jolly way. In the ordinary course of things, his account should have been debited for the withdrawal of N100,000 made on the 16th of May 2021 but it was not. It was this debit that did not reflect in the Plaintiffs account on the 16th of May 2021 that was eventually passed unto the Plaintiff’s account on the 14th of November 2021.
  4. The Defendant also stated clearly that this occurrence was not due to any fault of the Plaintiff or any form of fraud. It was rather a technical lapse that happened in the backend banking system that runs POS transactions. Due to this lapse, the Defendant had to carry out a reconciliation of the Plaintiff’s transaction and the debit was properly done or reflected in the Plaintiff’s account in November 2021.
  5. In reaction, the Plaintiff said in this evidence in chief that he did not authorize the transactions of 16th May 2021. He proceeded to tender his statement of account (EXHIBIT 4) as proof of his allegations.
  6. Your Worship it is noteworthy that in this case, the Plaintiff affirmed under cross examination that he is not a Banker and has never worked in a Bank. Thus, clearly Sir, the Plaintiff is oblivious of what happens at the backend of the various transactions he carries out with his Bank – the Defendant. All he knows as demonstrated in evidence is that he slots in an ATM card and makes his transactions. He also knows that he receives SMS alerts and debits for transactions he carries out with the Defendant. He is not an expert in Banking and he truthfully confirmed so in evidence.
  7. Conversely Sir, DW1 clearly demonstrated his expertise in Banking matters. He especially demonstrated his knowledge of the backend technological and other arrangements that have to be in place for something that seems as simple as a POS transaction to happen. In his examination in chief, he stated as follows;

*“For POS transactions to be successful, it involves different Banks coming together and also there is a central Unit (called Interswitch) which is inbetween the Banks. If there is a credit but no debt, there is need for reconciliation*”

* 1. While under cross examination DW1 explained again and again that Banking transactions must be carefully documented. Hence, he referred to the ‘credit leg’ and ‘debit leg’ that must happen in each and every transaction. He then carefully narrowed down his explanation to the case at hand. His explanation was simple and unshaken by the lengthy cross examination of the Plaintiff’s Counsel.
  2. Your Worship from what we have restated above, two testimonies are before this Noble Court. The testimony of a layman in Banking matters and the testimony of a Banker of 13 years standing. We submit Sir that in this case, the testimony (and explanations) of DW1 is to be preferred to that of the Plaintiff and should therefore tilt the scales of justice.
  3. Are we saying that this case should be decided in the Defendant’s favor merely because someone who is unlearned (with all due respect to the Plaintiff) in banking matters has gone up against the Defendant for what he perceives to be a wrong done against him? No, God forbid that we do so Sir. Rather, we are saying that unlike the Plaintiff, the Expert in this case (DW1) did not just present his mere words (ipse dixit). Various documentary evidence before this Court confirm the explanations DW1 has given. Even the documents presented and raised to the high heavens by the Plaintiff as conclusive proof of his case rather confirm the case and evidence of the Defendant.
  4. To begin with, DW1 said there were two successful POS transactions on the 16th of May 2021. The Plaintiff denied this fact. Yet Exhibit 3 was tendered through the Plaintiff with two annexures which are the receipts that evidence the POS transaction referred to by DW1. DW1 even gave further explanation while under cross examination as follows;

*Q: Once a customer does a transaction, it must reflect?*

*A: Yes, there must be a record of such transaction. The receipts you have (referring to the annexures to Exhibit 3) was (sic) pulled from the Merchant POS of the Plaintiff and there must have been a contact with his ATM Card and pin imputed for the transaction to be successful.*

* 1. Your worship the answer above (which is in evidence before this Court) further reaffirms two facts. The first fact is that the Plaintiff has and operates a POS machine from which the annexures to Exhibit 3 were retrieved. (refer to letter) The ownership of the POS by the Plaintiff is also confirmed by a plethora of evidence in this case. Under cross examination the Plaintiff stated that the POS machine operates from Express Car Wash and he lives at No 1 xxxxxx Street, Agbor. The annexures to Exhibit 3 clearly have at their heading “Merchant Copy, Monie Point, Express Car Wash, 1 xxxxxxxx Street, Agbor. Null”. Indeed, this evidence elicited from the Plaintiff under cross examination corroborates the answer given by DW1 under cross examination as reproduced in the paragraph above when he said “…merchant POS of the Plaintiff”.
  2. Thankfully, DW1 did not end there. So, the second fact affirmed or reaffirmed by the testimony of DW1 as reproduced above is that for the annexure to Exhibit 3 to have come into existence at all, there was in actual fact a contact between the ATM card of the Plaintiff with his pin correctly inserted. Can this fact be verified at all Sir? Or Did DW1 come here to lead this Court into chasing clouds?
  3. We submit that the fact of the POS transaction carried out with the Plaintiff’s ATM card is evident from the annexures to Exhibit 3 which the Plaintiff tendered himself. We humbly invite this Court to compare the Plaintiff’s ATM card (which is in evidence as Exhibit 5) with the annexures to Exhibit 3. Most respectfully Sir, when the PAN number on the annexures to Exhibit 3 which is xxxxxxxxxxx is compared with the string of digits written on the ATM card (Exhibit 5), it becomes evident that both numbers are the same. This clearly links the Plaintiff to the transactions showed as ‘Approved’ in the said annexures.
  4. Your Worship, we need to submit that it is common knowledge in this Country that for ATM transactions and even POS transactions to happen via a debit card, the Pin (or secret number) of the card holder must be imputed into the POS machine or ATM. This fact is now so notorious that we respectfully submit that Court is entitled to presume under Section 167 of the Evidence Act 2011 that in the absence of any evidence to the contrary, the Plaintiff’s ATM card and PIN must have been inputted into his own POS machine at Express Car wash for the transactions in question to happen.
  5. In making the foregoing submission, we recognize that the Plaintiff denied these transactions but we submit that his mere ipse dixit denial was not sufficient in the face of documentary evidence. In addition, Sir, when asked under cross examination if he made any complaints to the Bank in May 2021, the Plaintiff could not give any satisfactory response. We submit that the absence of any complaints to the Defendant in May 2021 further indicates that the words of DW1 when he said that the credit leg of the transaction evidenced in Exhibit 3 was passed since May 2021 were in fact the truth. If the reverse of what DW1 said was the case (that is a case where Exhibit 3 was printed as approved but the Plaintiff was not credited), he (the Plaintiff) would have definitely made a formal complaint to the Defendant. But there is no such complaint here.
  6. Also, Sir the Plaintiff attempted to deny the annexures to Exhibit 3 which DW1 explained were “pulled from the Merchant POS of the Plaintiff”. However Sir, since truth cannot hide, the Plaintiff’s attempt failed woefully under cross examination. To demonstrate this failure, we only need to point My Lord to the record where the Plaintiff in answering questions under cross examination said *“I am not the one that did the transactions that were not successful”*. My Lord we submit that the clear implication of this answer is that the Plaintiff only carried our ‘successful transactions’ including that of 16th May 2021.
  7. Furthermore Sir, assuming but not conceding that the Plaintiff’s testimony as reproduced in the paragraph above does not lead to the implication that he authorized the transactions of 16th May 2021, a further noose yet strangulates the case of the Plaintiff. In respect of the said annexures to Exhibit 3, it is relevant to note that the Plaintiff in his evidence in chief made reference to ‘e-rats’ in the Bank who carry out unauthorized transactions on customer’s account. He clearly sought to link the transaction in this case to this allegation of fraud. Little wonder that he proceeded to deny the annexures in his evidence in chief. In effect Sir, by denying the annexures to Exhibit 3, the Plaintiff is making an imputation of fraud/forgery on the Defendant. This is especially clear when the PAN number of the Plaintiff is on the annexures.
  8. In furtherance of this submission, we call to aid the case of Adelaja v Alade (1999) 6 NWLR (Pt 608) 544 at 557 where a similar occurrence happened. The words of the Court of Appeal are most apposite as follows;

“in each of the exhibits the 1st Respondent’s thumb print is clearly shown, yet he denied being a party thereto even though the jurat incorporated in the conveyance was duly made…in my opinion, the implication of the 1st Respondent’s denial that it is his thumb print that appears in Exhibit D, E, F, H and is tantamount to saying that these documents are a forgery or a fake. Of course, in such situation the burden of proof of forgery rests on the party who alleges. Since crime is alleged, the standard of proof is demanding because the onus is on him who alleges to prove it beyond reasonable doubt …Ist respondent has not led evidence to establish that he did not thumbprint Exhibits D, E, F, H and R save his mere denial; accordingly, he has failed to prove that Exhibits D, E, F, H and R are a forgery”

* 1. My Lord, we submit that the allegation of fraud/forgery has serious evidentiary effects on the case of the Plaintiff. Thus, the burden was on him to proof beyond reasonable doubt that the annexures to Exhibit 3 are forged, failing of which his mere denial of them hold no water. We submit that this burden of proof was not discharged and thus, the Plaintiff’s denial in his evidence on this ground hold no water. We urge this Noble Court to so hold.
  2. In addition to the above Sir, we submit that contrary to the belief of the Plaintiff, Exhibit 4 (the Plaintiff’s statement of account) clearly corroborates the case and evidence put forward by the Defendant. To demonstrate this, we respectfully yet again refer Your Worship to the evidence on record.
  3. During Cross examination on the 21st of February 2022, the Plaintiff was shown his statement of account (Exhibit 4). On that day he made some very fundamental revelations in evidence. First, he confirmed that in the statement of account, there was no entry for a withdrawal of N100,000 on the 16th of May 2021. He further confirmed from the statement of account that the debt entries indicating the disputed N100,000 withdrawal/debit on the 14th of November 2021 have the inscription “TeamApt” and this inscription is equally written on the annexures to Exhibit 3. By truthfully answering these questions, we submit that the Plaintiff himself has shown what DW1 successfully explained subsequently with more expertise.
  4. The above explanation demonstrated by the Plaintiff under cross examination was clearly the same explanation emphasized by DW1 while under cross examination. We crave Your Worship’s indulgence to reproduce a portion of the DW1’s testimony under cross examination as follows;

***A:*** *…From what we have here on the said date it did not reflect in the customer’s account. The fact that it did not reflect is the reason for the reconciliation. The particular day the transaction was done there was the credit leg but the debit leg was not passed. The credit was successful but the debit didn’t process completely. After due reconciliation the debit leg was passed.*

***Q:*** *What would you call a transaction that happens in May but reflects in November?*

***A:*** *It is a disputed transaction. If it happens, the Bank does not just rush to pass entries. We follow due process. For the time-lag; sometimes it happens where there is slow correspondence between the parties that is the reconciling Banks that have to communicate with interswitch.*

* 1. From the foregoing excerpt of DW1’s testimony under cross-examination we submit that the evidence on record before this Court overwhelmingly tilts the balance of probabilities in the Defendant’s favor.
  2. Your Worship, under this sub-issue we have submitted that the balance of probabilities tilts overwhelmingly in the Defendant’s favor. To demonstrate this, we have juxtaposed the case and evidence of the Plaintiff with that of the Defendant. As evident from the record, in support of the Plaintiff’s case is his mere ipse dixit and he is not a Banker or conversant with the internal operations of a Bank. On the other hand, in support of the Defendant’s case is the uncontradicted evidence of an expert in Banking matters and documentary evidence namely Exhibits 3, 4 and 5. Thus on one side of the scales of justice in this case is oral evidence and on the other side is documentary evidence. The question that then arises is – *which between the Oral evidence of the Plaintiff and the documentary evidence of the Defendant should be accorded greater probative value?*
  3. In specific answer to the poser raised in the preceding paragraph, we rely on the very recent case of **KUSHA v. MODU & ORS (2022) LPELR-57320(CA)** where the Court of Appeal drew on the long history of cases on this issue to re-state and re-affirm the law as follows;

“…Aiki V Idowu (2006) 9 NWLR (Pt. 984) 47, wherein it was observed - "Documents when tendered and admitted in Court are like words uttered and do speak for themselves. They are even more reliable and authentic than words from the vocal cord of man because they are neither transient nor subject to distortion and misrepresentation but remain permanent and indelible through the ages. The documents bear eloquent testimony to what happened." In another case emanating from this Court in Yaro V Manu (2014) LPELR-24181(CA) 37-38, A, Sankey JCA held: "**The law is trite that wherever documents are available, they speak louder than oral evidence on the issues in contention, and are eminently preferred**. The reason is not farfetched. It is invariably because documentary evidence is the hanger upon which to measure the veracity and/or authenticity of oral evidence. It stands as a yardstick for assessing oral evidence. Thus, where both documentary and oral evidence are given, documentary evidence should be used as a hanger from which to assess the oral testimony. Documentary evidence is, to be sure, the best proof of the contents of documents. Oral evidence will not be allowed to discredit or contradict the contents thereof except where fraud is pleaded. Oral evidence is inadmissible to alter the contents of a document because the contents of a document are invariably the chords of man." Yet again, in Agbelegah V State (2015) LPELR-24793(CA) 24, A, per Ogbuinya JCA, this Court held: "In law, documentary evidence is used as the yardstick to gauge the veracity of parol testimonies in cases of evidential impasse. By its documentary nature, it is superior to the oral evidence that ooze out from the vocal cord of man which is obedient to distortion by its maker/author."

* 1. Your Worship, in reliance on the authority of **Kusha v Modu** (Supra), we urge this Court to hold that the documentary evidence before this Court indicating the veracity of the Defendant’s case is to be given pre-eminence over the Plaintiff’s mere oral testimony. We urge this Court to so hold.
  2. In addition to the preceding submission, Sir, we further submit that the Law is now trite that in civil cases such as the extant case, a Plaintiff is to succeed on the strength of his own case and not on the basis of the weakness (if any) in the Defendant’s case. This principle of the Law was affirmed in the case of SAIDI v. IBUDE (2010) LPELR-4521(CA) Pp 34 - 34 Paras B - C where the Court of Appeal stated as follows;

“The Plaintiff can only succeed on the strength of the case he made out before the Court. In the case of AYANRU V. MANDILAS LTD (2007) ALL FWLR (pT.352) 1847 at 1849, the Supreme Court decided that it is for a claimant to prove his case and not for the opposition to disprove the claimant's claim."

* 1. In further reliance on the preceding arguments, we submit that the Plaintiff in this case has failed to prove his case and he is therefore not entitled to the grant of the reliefs he seeks in this case. We urge this Noble Court to so hold.

**The Plaintiff failed to prove his entitlement to reliefs sought in this case**

* 1. The reliefs of the Plaintiff are restated hereunder for emphasis as follows;
     1. An order directing the Defendant to credit the Plaintiff’s account with the sum of N100,000 being the total amount illegally/wrongly debited from the Plaintiff account number xxxxxxxxxxxx with the Defendant’s Bank
     2. The sum of N1,000,000 being damages, business failure and inconveniences suffered by the Plaintiff
     3. The sum of N100,000 being the cost of litigation of this action
     4. An order directing the Defendant to apologize in writing to the Plaintiff
  2. In respect of reliefs 1 and 4 as restated above Sir, we rely on the preceding arguments made under sub-issue 1 to respectfully submit that the Plaintiff has failed to prove his entitlement to those reliefs. More precisely, as previously argued, the evidence before this Court shows that there was no illegal or wrongful withdrawals from the Plaintiff’s account number 38310111844 with the Defendant. In the absence of any wrongful or illegal withdrawals from the Plaintiff’s account, we submit that he is not entitled to be credited the said sum of N100,000 as per his relief 1. Similarly, we submit that with the failure of his relief 1, the Plaintiff is not entitled to a written apology (relief 4) as a matter of cause or at all in this case.
  3. With respect to reliefs 2 and 3, we also submit that the Plaintiff has failed to lead credible evidence to substantiate or necessitate the grant of those reliefs. More particularly by relief 2, the Plaintiff claimed damages for business failure and inconvenience. However, under cross examination, the Plaintiff truthfully confirmed that he has continued making profit from his business since the occurrence of the alleged unlawful withdrawals referred to in this case. He also confirmed to this Court that he makes profit of as much as between N3,000,000 (Three Million Naira) to N5,000,000 (Five Million Naira). With this confirmation from the Plaintiff’s own lips, Your Worship it is clear that the statement at paragraph 3 of the claim filed in this case was untrue from the very beginning. The said paragraph 3 reads in part as follows –

“The Plaintiff business has suffered loss, missed potential profit and gradually going down as the Defendant has failed, neglected and refused to reverse the sum illegally removed from his account. The Plaintiff’s family and business have suffered as a result of the unauthorized withdrawal”.

Your Worship, one can only wonder what else the Plaintiff is lying about in this case. If patent falsehood can be raised about the wellbeing of the Plaintiff’s family and his means of livelihood in the claim before this Noble Court, then we submit that the Plaintiff’s case is worthy of heightened suspicion as he has tried to pull wool over this Court’s eyes.

* 1. In respect of issue 3, we submit that a claim for Cost of Litigation falls in the realm of special damages. Thus for the Court to grant such a claim or relief, the party seeking same must lead credible and cogent evidence just as he would do any other claim for special damages. On this point, we rely on the case of CHIEF JOSEPH AGBALUGO & ANOR v. MR. ISAAC IZUAKOR. (2017) LCN/9870(CA), the Court stated that:

"The law is that a claim by a claimant for legal fees he paid to his Solicitor is not one that is ordinarily granted by a Court - Ihekwoaba Vs African Continental Bank Ltd (1998) 10 NWLR (Pt 571) 590 at 610-611, Nwanji Vs Coastal Services (Nig) Ltd (2004) 11 NWLR (Pt 885) 552. It is correct that in Guinness (Nig) Plc Vs Nwoke (2000) 15 NWLR (Pt 689) 135 it was suggested that such a claim was unknown to our law. The correct position of the law, however, is that solicitor's fees is claimable, and to succeed on such a claim it must be specifically pleaded as special damages and must be proved by credible and cogent evidence." Please see also; KLM ROYAL DUTCH AIRLINES v. IDEHEN (2017) LPELR-43575(CA).

* 1. My Lord no iota of evidence was adduced to prove the sum of N100,000 claimed in this suit as cost of litigation. The amount was only merely stated in the claim. Consequently, we submit that the Plaintiff’s relief 3 is also bound to fail. We urge this Noble Court to so hold.
  2. We are grateful for Your Worship’s gracious indulgence.

Dated the 2nd of August 2022

……………………………………………………………………

XXXXXXXXXXXXXXXXX

XXXXXX Legal Practitioners,

Defendant’s Counsel

xxxxxxxx Housing Complex Road,

Ekpan, Warri, Delta State.

**FOR SERVICE ON:**

xxxxxxxxxxxxxxxx ESQ

Plaintiff’s Counsel

xxxxxxxxxxxxxxx & Co

xxxxxxxxxxx, Delta State