

HASSOM NIG LTD v. TRADE BANK LTD; MORADEYO BUKOYE

COURT OF APPEAL
(ILORIN DIVISION)

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CA/IL/37/2002
WEDNESDAY 22ND JUNE 2005

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(MUNTAKA-COOMASSIE; IKONGBEH; ABDULLAHI, JJ.CA)

BANKER-CUSTOMER – *Banker-customer relationship – is not created by payment of money to a bank*

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CIVIL PROCEDURE – *Judgments – relevance of method utilised to write judgment*

COMMERCIAL LITIGATION – *Interest – Circumstances where interest can be claimed – necessity of proving entitlement to a claim for interest*

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Facts:

Trade Bank the 1st respondent, (a commercial banking institution) appointed the 2nd respondent as receiver-manager of Kwara Textile Limited when Kwara Textile Limited failed to redeem its debt to the 1st respondent. The 2nd respondent put Kwara Textile Limited up for sale consequent upon which he entered into negotiations with the appellant. After the negotiations, the 2nd respondent and the appellant agreed to a purchase price of ₦2.7 million which the 2nd respondent remitted to the 1st respondent when it was paid.

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The appellant could not take possession of the property purchased. The 1st respondent wrote to it stating that Kwara Textile Limited had redeemed its debt. The 1st respondent further issued a cheque to the appellant for the purchase price as well as the sum of N735,004.10k (Seven hundred and thirty five thousand, four naira ten kobo) as compensation for holding its money for 797 days.

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The appellant (as plaintiff) instituted an action wherein it contended that the amount paid to the respondents ought to attract 21% interest and as a result, the appellant claimed the sum of N814,771.18k (Eight hundred and fourteen thousand, seven hundred and seventy one naira, eighteen kobo) as the outstanding balance. The respondents (as defendants) on the other hand, contended that no banker-customer relationship existed between the 1st respondent and the appellant. The trial judge agreed with the respondents and dismissed the appellants claim.

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Dissatisfied with the decision of the trial judge, the appellant appealed to the Court of Appeal.

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Held: (*Unanimously dismissing the appeal*)

[1] Banker - Customer – Payment of money to a bank without more does not create a banker-customer relationship

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The appellant submitted that since the deposit of N2.7m paid was deposited in an account with the 1st respondent, the appellant is entitled to interest at the rate of 21%. Reliance was placed on the cases of *Afoka v. ACB (supra)* at 224, *UBN v. Salami (supra)* at 547; *KSTA v. Ofodile* (1999) 10 NWLR (Pt. 543) 538 at 547. I took time to read up these cases, and I must say that common to all, there is a banker and customer relationship well established and founded in them. Unlike the case at hand, there exists no banker and customer relationship between the appellant and the 1st respondent. The sum of N2.7m paid by the appellant was the consideration for the purchase of Kwara Textile Ltd and not a loan. The appellant, it goes without saying, maintains no account with the 1st respondent and neither was the issue of interest discussed or negotiated at the time of payment. (p. 146 lines 20 to 31)

[2] Commercial Litigation - Interest – At common law, interest is not recoverable on an ordinary debt as a matter of course

It has been settled that interest is not recoverable at common law on ordinary debt in the absence of some:-

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(a) Contract, express or implied

(b) Merchantile usage

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(c) By statute such as S.17 of the judgment Act of 1838; and

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(d) Power of court to award interest in exercise of its equitable jurisdiction where a person in fiduciary relationship has improperly profited from his fiduciary position. (p. 145 lines 37 to p. 146 line 2)

[3] Commercial Litigation - Interest – A claim for interest must be proved

It is also established that where a party claims interest under any of these heads of claim for interest, it must also be pleaded and evidence adduced in support of same. See the case of *Mashin Fabric A/S v. Olaogun (supra)* at p. 187 where the Supreme Court per Ayoola JSC held as follows:-

45 “For a claim of interest to properly exist for consideration in a court of law it must be stated in the endorsement of the claims on

the Writ of Summons as in the Statement of claim whether the claim of interest is based on contract or statute and the ground upon which the claim is based”.

5 I have closely analysed the Amended Statement of Claim of the appellant, and I have not been able to see where appellant pleaded its right to claim interest under any of the situation stated above.(p. 146 lines 8 to 20)

Obiter

10 **[4] Judgment – Court must evaluate evidence but is not bound to reduce judgment to writing in a particular manner**

15 My Lords, I must, at this juncture, point out that there is no hard and fast rule as to the manner or methods, a trial court should write its judgment provided a trial judge properly reviewed the evidence adduced before him alongside the pleadings before arriving at his decisions, in such a way that the cases put forward by both parties were considered, evidence evaluated, and the findings based on the evidence adduced before him.
20 (p. 145 lines 20 to 25)

MUNTAKA-COOMASSIE, JCA (Delivering the Lead Judgment): The appellant herein, was the plaintiff in the court below, and claimed against the respondent in its amended statement of claim as follows:

25 “Whether the plaintiff claims against the defendants jointly and severally the sum of ₦814,771.18k (Eight hundred and fourteen thousand, seven hundred and seventy one Naira) at 21% interest rate from the 1st day of December, 1995 until judgment and thereafter at the courts rate until the total liquation of the judgment sum, costs of this suit.”

30 Pleadings were filed and exchanged and the parties called their respective witnesses. The facts of this matter I think are clear and not in dispute. The 2nd respondent was appointed by the respondent as the receiver-manager of Kwara Textile Limited, the Company having failed to redeem its debt with the 1st defendant, the 1st defendant thus refused to exercise its right of sale.

40 The Kwara Textile Limited was put up for sale by the 2nd respondent. The appellant thereafter showed interest in acquiring the Kwara textile Limited. Consequently, both the appellant and the 2nd respondent entered into negotiations and the sum ₦2.7m (Two million, seven hundred thousand Naira) was agreed as the purchase price, the appellant thereafter paid the sum of ₦2.7m to the 2nd respondent who handed same over to the 1st respondent. The appellant took steps to take possession of the property but could not. However, by a letter dated 27/11/95, the 2nd respondent wrote to the appellant i.e. Exhibit p3, wherein he explained why the
45 property could not be handed over to him i.e. that the owner of the Coy-Kwara

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5 textile Limited, had redeemed the debt arising out of mortgages. He attached a cheque for the amount of the money paid by the appellant, also a letter from the respondent to that effect. As compensation for holding the appellants money for 797 days, that 1st respondent paid the appellant the sum of ₦735,004.10k (Seven hundred and thirty five thousand, four naira ten kobo).

10 Not satisfied with the amount paid as compensation, the appellant filed this action against the respondents for the amount earlier stated above contending that the money was deposited with the 1st dependant and it should therefore attract interest, which he stated to be 21%, hence there is still a balance of ₦814,771.18k (Eight hundred and fourteen thousand, seven hundred and seventy one naira eighteen kobo) to be paid.

15 PW2 a retired banker and PW3, an economist in the Research Department of the Central Bank of Nigeria (CBN) established that the rate of interest as at then was 21%. The respondents on their part contended that there was no banker and customer relationship between the appellant and the 1st respondent. In fact the appellant has no bank account with the 1st respondent and that the money paid was for the purchase of Kwara textile Limited, which contract could not be performed by reason of an intervening circumstance hence, the amount of ₦735,004.10k (Seven hundred and thirty five thousand, four naira ten kobo) paid was sufficient compensation for the appellant. DW1 and DW2 were called as witnesses to the respondents.

25 Both parties, after the close of the case, addressed the court, and on the 7/10/99, the lower court delivered its judgment. In the judgment the learned trial judge made some far reaching findings which are hereby reproduced. See page 71 of the record.

30 “It is also clear from the averments in the pleadings and the witnesses’ evidence that at no point in time did the plaintiff open and operate any account with the 1st defendants bank. The plaintiff cannot and in fact they have not led any evidence to show any purpose for which the sum of ₦2.7m was deposited other than that it was consideration for the purchase of the property offered to the plaintiff for sale. In the circumstance, the court cannot but believe the evidence of the defendants witnesses that
35 when the plaintiff paid the said sum of ₦2.7m to 2nd defendant the latter in turn took the money and deposited it into the account of the Kwara Textile Limited, which was then in retainership with the Trade Bank Plc. The 1st defendant moreover, there was, at the material time to this case, no
40 negotiation or indeed any agreement as to interest rates chargeable on the amount paid by the plaintiff to the 2nd defendant pursuant to this agreement to purchase the property in question and therefore (*sic*) wonders why the claim of 21% interest rate CBN prime rate on the said deposit by the plaintiff when there was not such agreement between the
45 parties and the transaction is not one of banking by nature.”

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that the appellant had not proved its entitlement to charge interest at the prime rate of 21% on the ₦2.7m deposit paid to the respondent for the purchase of Kwara Textile Limited.”

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On the first issue as formulated by the appellant, he submitted that the judgment of the lower court contained only two pages while the remaining pages contained the reviews of evidence, pleadings and addresses of the parties. This approach, he submitted, depicted and or omission to appropriately review and make specific findings on issues brought for adjudication. By this approach the trial judge failed to meet the standard laid down in *Mogaji v. Odojin* (1978) NSCC 121 at 213-4

According to the appellant’s counsel the issues raised in the pleadings were not properly addressed. This approach again is contrary to the principle to be adopted in writing judgment. He cited the following cases:-

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(a) *Adeyeye v. Ajiboye* (1987) 3 NWLR (Pt. 61) 432 at 451.

(b) *State Civil Service Commission v. Bazuagbe* (1984) 7 SC 19 at 40.

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(c) *Uzuagbe v. Progress Bank Ltd* (1988) 4 NWLR (Pt. 87) 236 at 249.

On the second issue, the appellant submitted that the bank interest as is known within the circle of banking Institutions is the money payable by a banker to a customer to the bank or money had and received from whether by way of loan overdraft, advances or in any related business. Hence, the money deposit with the respondent bank cannot be treated other than as loan to the bank. He relies on *FBN v. Osunedo* (1998) 11 NWLR (Pt. 527) 132 at 142.

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He therefore submitted that the deposit of ₦2.7m pursuant of the purchase that failed cannot be treated as anything other than as a deposit which ordinarily will attract the dominant minimum prevailing interest rate. He submitted further that there is a conclusive contract for the purchase of the property in question between the parties in respect of the sum of ₦2.7m with the defendant. We therefore submitted that is customary of banks to give loans in anticipation of receiving interest and also to take deposit with a view to payment of interest on it. He cited the cases of:-

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Afoka v. ACB (1994) 5 NWLR (Pt. 331) 217 at 224.

UBN v. Salami (1998) 3 NWLR (Pt. 543) 528 at 54.

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Barclays Bank DCO v. Hassan (1961) All NWLR 836.

On the third issue the appellant submitted that the respondent did not discharge the burden of proof that the deposit was a call deposit which attracted 5%. This fact was never substantiated. He who asserts must prove. Parties are bound by their pleadings and any evidence given contrary to pleadings goes to no issue. He

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relied on *Remi v. Sunday* (1999) 8 NWLR (Pt. 613) 92 at 106 A-B.

5 The respondents in their brief of argument submitted the 1st issue as formulated by them that there is no rule of law which prescribes the minimum number of pages which a judgment of court must contain. Once a judgment satisfies, in substance, the time allowed minimum standard of a judicial decisions, same cannot be impugned on ground of size. See p. 4-5 of the respondents brief. He relied on the case of *Adeyeye v. Ajiboye* (1987) 3 NWLR (Pt. 61) 432 at 451, *Abidoeye v. Alawode* (2001) 3 SCNJ 40 at 49. He submitted that the judgment in question satisfied the principle set out in the above cited cases. He further submitted that there is no straight jacket approach to judgment writing, each judge has his own approach but whatever approach a Judge adopts the bottom line is that such approach should not occasion a miscarriage of justice. He cites the Supreme Court's case of *Jekpe v. Ahokwe* (2001) 2 SCNJ 55 at 67. Learned counsel again submitted that the trial Judge sufficiently reviewed and evaluated that evidence of the parties before him. He referred to the findings of the trial judge as contained in the judgment. He then submitted that the findings of fact of the trial Judge were unassailable as they were borne out of the evidence and the pleadings.

20 On the second issue formulated by the respondents, it was submitted that the whole evidence of PW2 and argument relating to the claim of 21% prime lending rate for money paid by the appellant for the purchase of Kwara Textile Ltd was completely misplaced. The said deposit cannot be treated as loan when the appellant admitted that it was not a loan; he referred to the evidence of PW1. It was submitted that the holding of *FBN v. Osunedo* (*supra*) is only consistent with any deposit by a customer into his account and not when money is paid for the purchase of property. It was submitted that interest cannot be paid in vacuum. A party claiming interest must bring his claim within one of four situations where claim for interest is recoverable. He cited the case of *Garba v. Sheba International (Nig) Ltd.* (2002) NWLR (Pt. 748) 372 at 398. In addition there must be pleaded facts on the grounds on which interest is being claimed. He referred to cases of:-

- (i) *Maskin Fabric A/S v. Olaogun* (1999) 12 SCNJ 171 at 187.
- (ii) *F.M.B.N. v. NDIC* (1999) 2 SCNJ 57

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It was therefore submitted that appellant having failed in all these respects, the trial court was right in dismissing the entire claim.

40 The appellant in its reply brief submitted that notwithstanding that the appellant was neither a customer nor a lender to the bank *per se*, by mere deposit of money in the account of the respondent, the appellant is entitled to claim the accrued interest as of right at regulated rate. He finally urged the court to allow the appeal.

45 Now, with due respect, I wish to state from the onset that the following facts are not in dispute i.e,

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1. That the sum of ₦2.7m was paid for the purchase of the Kwara Textile Limited.
- 5 2. The said purchase or the contract of sale could not be consummated for failure of consideration or for the in-ability of the respondents to hand over the property to the appellant; and
- 10 3. That there was no banking and customer relationship between the appellant and the 1st respondent. With the above stated undisputed facts, the narrow issue that would arise for determination would have been whether the appellant was entitled to the interest as claimed. However with the issue of the ways and approach adopted by the trial court in writing its judgments raised by the appellant it would be necessary to determine the issue before determining the issue of interest as claimed.
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My Lords, I have carefully perused the judgment of the lower court and have found that the lower court carefully and calmly reviewed the evidence of the parties before arriving at its decision. The appellant referred this court to the decision of the Supreme Court in the case of *Mogaji v. Odofin (supra)* and submitted that judgment of the lower court did not comply with the principle enunciated therein. I wish to refer to pages 213-214 of the said decision between where Fatay Williams CJN as he then was stated the law as follows:-

25 “ .In short before a judge whom evidence is adduced by the parties before him in a civil case comes to a decision as to which evidence he believes or accepts and which evidence he rejects, he should first of all see the totality of the testimony adduced by both parties on that imaginary scale. He will put the evidence adduced by the plaintiff on one side of the scale and weigh them together. He will see which is heavier not 30 by the number off the witnesses called by each party but by the quality or the probative value of the testimony of these. This is what is meant when it is said that civil case is decided on the balance of probabilities. Therefore in determining which is heavier, the judge will naturally have regard to the followings:-

- 35 (a) Whether the evidence is admissible;
- (b) Whether it is relevant.
- 40 (c) Whether it is credible.
- (d) Whether it is conclusive; and
- 45 (e) Whether it is more probable than that given by the other party.

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I have no doubt in my mind that upon the perusal of the judgment of the trial court, sufficient consideration was given to the evidence by the parties and their witnesses before it arrived at its conclusions. The complaint to the appellant was based mainly on the fact that the findings and conclusions of the trial court were
5 contained in only two pages of the judgment. I find no merit in this submission. Courts are mainly concerned with the determination of issues that would effectually and completely determine the issues between the parties before it. Where such issue is determined, the court is not longer allowed to delve into mere academic or hypothetical issues. The appellant in its brief of argument did agree
10 that the issue involved in this case is a narrow one. At page 10 of the appellant's brief of argument, it was stated *inter alia* as follows:-

“My Lords, the only issue that went for adjudication was whether the appellant was entitled to claim interest on its deposit and of course at
15 what rate?”

With this submission, the appellant agreed that the issue for determination in this case is narrow. It is therefore my view, that when this issue is determined, the number of the pages of the judgment on which this issue is resolved therefore
20 becomes irrelevant. My Lords, I must, at this juncture, point out that there is no hard and fast rule as to the manner or methods, a trial court should write its judgment provided a trial judge properly reviewed the evidence adduced before him alongside the pleadings before arriving at his decisions, in such a way that the cases put forward by both parties were considered, evidence evaluated, and the
25 findings based on the evidence adduced before him. In the case of *Jekpe v. Alokwe (supra)* at p. 86 the Supreme Court per Ogwuegbu JSC held thus:-

“It must be emphasized that there is no set style which must be followed by trial courts when writing judgments. Judges must no doubt differ in the
30 procedure and style which they adopt in their consideration of the entire evidence.” The findings of the trial court earlier set out in this judgment clearly showed that the evidence of both parties and their witnesses were considered before making its findings. I am satisfied in this case that the trial court evaluated and reviewed the evidence adduced before it. .”

35 The only issue that is left for determination is whether the appellant is entitled to the interest as claimed? It has been settled that interest is not recoverable at common law on ordinary debt in the absence of some:-

- 40 (a) Contract, express or implied
- (b) Merchantile usage
- (c) By statute such S.17 of the judgment Act of 1838; and
- 45 (d) Power of court to award interest in exercise of its equitable

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jurisdiction where a person in fiduciary relationship has improperly profited from his fiduciary position. See the following authorities:

1. *Garba v. Sheba International (Nigeria) Ltd.* (supra) at p.396;
- 5 2. *Himma Merchants Ltd v. Aliyu* (1994) NWLR (Pt. 347) 667 at 669;
3. *Koki v. FBN* 8 NWLR (Pt. 365) 665 at 683.

It is also established that where a party claims interest under any of these heads of claim for interest, it must also be pleaded and evidence adduced in support of same. See the case of *Mashin Fabric A/S v. Olaogun* (supra) at p. 187 where the Supreme Court per Ayoola JSC held as follows:-

15 “For a claim of interest to properly exist for consideration in a court of law it must be stated in the endorsement of the claims on the Writ of Summons as in the Statement of claim whether the claim of interest is based on contract or statute and the ground upon which the claim is based”.

I have closely analysed the Amended Statement of Claim of the appellant, and I have not been able to see where appellant pleaded its right to claim interest under any of the situation stated above. However, the appellant submitted that since the deposit of ₦2.7m paid was deposit in an account with the 1st respondent, the appellant is entitled to interest at the rate of 21%. Reliance was placed on the cases of *Afoka v. ACB* (supra) at 224, *UBN v. Salami* (supra) at 547; *KSTA v. Ofodile* (1999) 10 NWLR (Pt. 543) 538 at 547. I took time to read up these cases, and I must say that common to all, there is a banker and customer relationship well established and founded in them. Unlike the case at hand, there exists no banker and customer relationship between the appellant and the 1st respondent. The sum of ₦2.7m paid by the appellant was the consideration for the purchase of Kwara Textile Ltd and not a loan. The appellant, it goes without saying, maintains no account with the 1st respondent and neither was the issue of interest discussed or negotiated at the time of payment. I therefore found no merit in this appeal and it is accordingly dismissed. The respondents are entitled to some costs which I assessed at ₦10,000.00 (Ten thousand naria) in favour of the respondents.

35 Appeal is dismissed.

40 **IKONGBEH, JCA:** I have read before now the judgment just delivered by my learned brother, Muntaka-Coomassie, J.C.A. I agree with his conclusion that this appeal is devoid of all merit and ought to be dismissed. The appellant failed woefully to show that he is entitled to what he claimed as interest.

I too dismiss the appeal. I abide by all the consequential orders.

45 **ABDULLAHI, JCA:** I have had the privilege of reading in advance the Lead Judgment just delivered by His Lordship, Muntaka-Coomassie, J.C.A. with which I entirely agree. The appeal as His Lordship has stated in his judgment lacks merit

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and must be and it is hereby also dismissed by me. I abide by the order of costs made by His Lordship in the Lead Judgment.

Cases Cited in the Judgment:

- 5 *Abidoye v. Alawode* (2001) 3 SCNJ 40
Adeyeye v. Ajiboye (1987) 3 NWLR (Pt. 61) 432
Afoka v. ACB (1994) 5 NWLR (Pt. 331) 217
Barclays Bank DCO v. Hassan (1961) All NWLR 836
F.M.B.N. v. NDIC (1999) 2 SCNJ 57
- 10 *FBN v. Osunedo* (1997) 11 NWLR (Pt. 527) 132
Garba v. Sheba International (Nig) Ltd. (2002) NWLR (Pt. 748) 372
Himma Merchants Ltd v. Aliyu (1994) NWLR (Pt. 347) 667
Jekpe v. Ahokwe (2001) 2 SCNJ 55
Koki v. FBN 8 NWLR (Pt. 365) 665
- 15 *KSTA v. Ofodile* (1999) 10 NWLR (Pt. 543) 538
Maskin Fabric A/S v. Olaogun (1999) 12 SCNJ 171
Mogaji v. Odofin (1978) NSCC 121
Remi v. Sunday (1999) 8 NWLR (Pt. 613) 92
State Civil Service Commission v. Bazuagbe (1984) 7 SC 19
- 20 *UBN v. Salami* (1998) 3 NWLR (Pt. 543) 528
Uzuagbe v. Progress Bank Ltd (1988) 4 NWLR (Pt. 87) 236

Rules of Court Referred to in the Judgment:

Court of Appeal Rules, Order 6 Rule 2 & 4

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History:

HIGH COURT

30 **COURT OF APPEAL (ILORIN DIVISION)**

Muhammad Saifullahi Muntaka-Coomassie, JCA (*Presided and read the Lead Judgment*)

Aboyi John Ikongbeh, JCA

Tijanni Abdullahi, JCA

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Counsel:

D.A. Ariyoosu Esq, (*Holding the brief* for Biola Oyebanji) for the appellant.

Toyin Akanji Esq, (*Holding the brief* for C.U. Abugu) for the respondents.

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