

IN THE HIGH COURT OF LAGOS STATE

BEFORE THE HONOURABLE JUSTICE K.A. JOSE (MRS)

30TH APRIL 2013

MR. WILLIAM AREO CLAIMANT

AND

ZENITH BANK PLC DEFENDANT

“The defendant as a bank keeping the funds of the claimant and disbursing same out was in a situation of such proximity to the claimant as to owe him a duty of care in respect of said money”

The claimant, a customer of the defendant at its Dugbe, Ibadan branch, claims inter - alia the sum of N1, 225,300.00 (One million, two hundred and twenty-five thousand, three hundred Naira) against the defendant.

On 9th October 2008, the claimant, believing his credit balance with the defendant as at 1st October, 2008 was N1,225,300.00 (One million, two hundred and twenty five thousand, three hundred Naira), issued a cheque to a third party which cheque was dishonoured. His account officer informed him that the balance in his account was N653.92 (Six hundred and fifty three Naira, ninety-two Kobo).

Subsequent to the above, the claimant discovered that on 2nd October 2008, a total sum of N300,000.00 (Three hundred thousand Naira) was withdrawn from his account via ATM machines in tranches of N20,000.00(Twenty thousand Naira) per withdrawal: a sum of N1,500.00(One thousand five hundred Naira) was also debited from his account as ATM fees. On the same day, a total sum of N906,600.00 (Nine hundred and six thousand, six hundred Naira) was debited

from the same account vide POS transaction. On 7th October 2008, a further sum of N17,200.00 (Seventeen thousand, two hundred Naira) was debited from the account vide ATM machine.

Dissatisfied with the above-mentioned state of affairs, the claimant and his Solicitors on different occasions wrote to the Defendant requesting that his account be credited with amount withdrawn from his account as he was not privy to nor did he authorise the withdrawal. The claimant's request was refused, neglected and ignored by the defendant, as result of which the claimant instituted an action against the defendant.

The claimant has contended that the sum of N1, 225,300.00 (One million, two hundred and twenty-five thousand, three hundred Naira) was withdrawn from his account due to negligence on the part of the defendant. The Claimant stated that there was a maximum limit of N60, 000.00 (sixty Thousand Naira) daily withdrawal on claimant's account via ATM and that a diligent bank would have blocked further transactions on the account and decline the transactions at the Point of Sale terminal when the limit was exceeded. He submitted that the defendants did not exercise sufficient skill and care in managing the claimant's account otherwise it should have been alerted by the unusual pattern and magnitude of the withdrawals from the account and that the transactions were fraudulent and the defendant should have flagged and blocked it. The Claimant posited that the claimant's ATM card had been cloned in connivance with the defendant's officials. He submitted that the defendant has breached the duty of care owed the claimant and that he has suffered damages as a result.

The defendant denied any negligence, it stated that the claimant failed to establish that there was a contract between the parties with regards to the maximum limit of N60,000.00 (sixty thousand Naira) daily withdrawal on the claimant's account. It stated that the claimant who has the burden to prove that there was a daily limit failed to prove same and also failed prove that the defendant was negligent in allowing transactions over the limit. The defendant stated further that the claimant did not plead any limit for the POS transactions

or that there was any custom, which prevented such transactions. It was also contended on behalf of the defendant that since the transactions all took place in one day, it was impossible for the defendant to detect that the pattern of the withdrawals was unusual and fraudulent since the transactions both on ATM machine and POS terminals were impersonal and automated. Defendant submitted that the claimant's card could not have been cloned since, by the claimant's admission on cross examination, a card cannot be cloned if the person doing the cloning does not have the original copy of the card.

In resolving the dispute, the trial court found that there was only one issue for determination which is:

Whether the defendant was negligent in allowing the withdrawals made on the claimant's account via ATM and POS on 2nd and 7th October 2008.

The court, quoting from Black's Law Dictionary, 7th Edition, defined negligence as "the failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation". The court further held that in order to prove negligence, a claimant has to establish three main things:

1. That the defendant owed it a duty of care
2. That there was a breach of this duty
3. There was damage resulting from the breach

(See *Abubakar v Joseph (2008) 13 NWLR (Pt. 1104) 307*)

The court in applying the principle to the case at hand asked the questions; whether the defendant owed a duty of care to the claimant in respect of his account with it? The court answered in the affirmative stating that "*the defendant as a bank keeping the funds of the claimant and disbursing same out was in a situation of such proximity to the claimant as to hold him a duty of care in respect of said money*"

The next question asked by the court is whether there was a breach of the duty of care? The court assessed the evidence before it thus; the claimant testified that the amount withdrawn was above the maximum daily limit on ATM withdrawals of N60,000.00 (Sixty thousand Naira) and as a result there was a

breach. The defendant simply denied the N60,000.00 (Sixty thousand Naira) but accepted that there was a maximum daily limit on ATM withdrawals, it failed to state that limit. The court held that *“a fact averred in a pleading must be denied properly otherwise there will be no effective denial”*. It was held that the defendant did not sufficiently traverse the daily limit on withdrawals as pleaded by the claimant. The court accepted that the claimant proved that there was a daily withdrawal limit of N60,000.00 (Sixty Thousand Naira Only) and that the fact that further money was dispensed after the withdrawal limit was exceeded shows that there was a breach of the duty of care on the part of the defendant.

The last question the court answered is whether the breach of the duty of care led to damage? The court held that the breach of the duty of care owed the claimant by the defendant led to the wrongful withdrawals on the claimant's account, it held that claimant has sufficiently shown the damage caused to him by the damage which is the loss of N1,225,300.00 (One million, two hundred and twenty five thousand, three hundred Naira)

Having answered all the questions in favour of the claimant, the court held that the claimant has proved he is entitled to all his claims and same were consequently granted.