

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS ISLAND JUDICIAL DIVISION, IGBOSERE.
HOLDEN AT HIGH COURT NO.19 (LANDS DIVISION)
BEFORE THE HON. JUSTICE M. O. OBADINA (MRS.)

SUIT NO: LD/1668/2009.

-BETWEEN:

ZUMAX NIGERIAN LIMITED.

Claimant.

-AND:

FIRST INLAND BANK PLC.

Defendant.

STATUS: DEFENCE: (PARTIES REPRESENTED).

*TRANSCRIPT OF PROCEEDINGS, before the Honorable Justice
M. O.Obadina (Mrs.), held at the Lagos State High Court,Lagos Island
Judicial Division, Igboosere, on the 14th day of May, 2015.*

APPEARANCE:

T.A. MOLAJO (SAN),
WITH, AFOLAKE LAOSE (MRS.),
AND OGECHUKWU ENEBELI: For the Claimant.

FEM. TOYEBI (SAN),
WITH AYODEJI JOLAOSO: For the Defendant.

Reported By:
AKINBOLAJI OLAMIGOKE ANTHONY,
Official Court Reporter,
Court 19.

TRANSCRIPTS ORDERED BY:
HON. JUSTICE M.O. OBADINA.

Chiboching
14/5/15

1 FEMI ATOYEBI (SAN): That will be the case for the
2 first witness for the defence.

3 CROSS EXAMINATION OF DEFENDANT'S WITNESS.1. (D.W.1.
4 SULE ELAKAMAH)

5 BY T.A. MOLAJO (SAN):

6 Q. Mr. Sule Elakamah, one preliminary point...?

7 THE COURT: I am sorry counsels, in the numbering
8 of the exhibits, there is an error. The defendant
9 already tendered exhibits D.1, and D.2 through the
10 first claimant's witness, so the numbering of these
11 exhibits just tendered will be from D.3 to D.17.

12 BY T.A. MOLAJO (SAN):

13 Q. One preliminary point in opening, you gave
14 your address, whilst in the box as 8, Matardi
15 Street, Wuse Abuja?

16 A. Yes.

17 Q. Is that your residence?

18 A. That is my residence.

19 Q. What do you do then, in the address which you
20 give in your witness statement?

21 A. The address on the witness statement, is the
22 head office address, and I currently work in Abuja
23 as the head of Legal region, for Abuja, and the
24 Northern part of Nigeria.

25 Q. Are you saying, this is the address of your
26 employer, not yours?

27 A. The address on the witness statement, is the
28 address of my employer.

29 Q. Are you a Legal practitioner?

30 A. I am a lawyer, My Lord.

1 Q. And, when were you called to the Nigeria Bar?

2 A. I was called in 1992.

3 Q. You have about 23 years experience.

4 A. Yes My Lord.

5 Q. Were you once employed by First Inland Bank

6 P.L.C.?

7 A. Yes My Lord.

8 Q. When were you employed by that Bank?

9 A. I was employed in 2006 by First Inland Bank.

10 Q. And, of course, you now work for, First City

11 Merchant Bank?

12 A. Yes My Lord.

13 Q. When did you started working for F.C.M.B.?

14 A. I started working for FCMB in 2012.

15 Q. So, you have been a legal officer in a Bank

16 since 2006?

17 A. Yes My Lord.

18 Q. As a legal officer of that length of time, in

19 the service of First Inland Bank, and now with

20 F.C.M.B, you are of course familiar with the history

21 of First Inland Bank?

22 A. I am, My Lord.

23 Q. You are aware that, during the reforms in the

24 Banking industry, of 2005, I.M.B, merged with some

25 other Bank's to form, First Inland Bank?

26 A. Yes My Lord.

27 Q. And, you are no doubt aware that, all the

28 assets and liabilities of IMB, were transferred to

29 First Inland Bank?

30 A. I am aware.

1 Q. You are also no doubt aware, that all the
2 assets, and liabilities of First Inland Bank, were
3 in turn, recently transferred to F.C.M.B, as a
4 result of a merger between those two Bank's?

5 A. Yes, I am aware.

6 Q. As a legal officer of considerable experience
7 in a Bank, you are well aware of the essentials of
8 good Banking practice?

9 A. Yes, I am aware sir.

10 Q. Would you agree that, transparency with
11 customers, and accuracy, are essential qualities of
12 good Banking?

13 A. Transparency is essential.

14 Q. From your knowledge with the facts of this
15 case, would you say that, the 2 Banks for which you
16 worked earlier I.M.B, and First Inland Bank,
17 practiced good, or bad Banking practice, in relation
18 to the funds of the claimant?

19 A. The Bank practiced good Banking practice with
20 the funds of claimant.

21 Q. Would you also agree, that there have been
22 serious irregularities by your Bank, starting from
23 IMB, and subsequently, First Inland Bank, in the
24 running of claimant's account?

25 A. I am not aware of any irregularities, My
26 Lord.

27 Q. Would you agree that, your Bank, starting
28 from I.M.B, and subsequently, First Inland Bank,
29 made several false, or untrue statements concerning
30 the claimant's accounts held with those two (2)

1 Banks?

2 A. I am not aware of any false statement made by
3 the Bank, about the customers account.

4 Q. According to you, in your witness statement,
5 your Bank, at that time, I.M.B, paid a sum Of
6 N68,535,801.00, as commission to the receivers,
7 which they appointed, to take over the running of
8 the claimant's business?

9 A. I am aware of a payment of a little over
10 N68,000,000.00, as commission, which the Bank
11 immediately corrected, that it was made in error.

12 T.A. MOLAJO (SAN): May I have the exhibits.

13 BY T.A. MOLAJO (SAN):

14 Q. You just volunteered a statement, for which I
15 did not ask, but it may be useful to you. Please
16 confirm, you said, that a huge sum of money, of over
17 68 million, out of the claimant's account, was paid
18 in error?

19 A. I said, from the letter there, that we
20 communicated with the receivers, that the money was
21 not due to them. It was paid in error.

22 Q. Please turn to paragraph 36 of your latest
23 witness statement. Please read out what it says?

24 A. "I know that, the defendant strongly disputed
25 the sum of N68,535,801.00, which was erroneously
26 paid as 10% commission fees, to the receivers
27 manager's, as contained in a letter dated, December
28 29th, 2003...."

29 Q. That over N68 million is the claimant's money
30 correct. It was paid out of the claimant's account?

1 A. It was paid out erroneously.

2 Q. Was it your money?

3 A. It was not my money.

4 Q. It was the claimant's money, yes?

5 A. Okay, I agree with you.

6 Q. In other words, what you are telling this
7 Honourable Court, is that, your Bank made an error
8 as huge as that, in respect of the claimant's money,
9 and you said that, your Bank has not been involved
10 in any irregularities concerning the claimant's
11 money?

12 A. I have said, the Bank is not involved in any
13 irregularities, because these were things that were
14 done in error, and....

15 Q. And error is not irregular, is it something
16 you do as a matter of practice?

17 A. No, it is not done as a matter of practice.

18 Q. Now, I show you exhibit C.42 that is the
19 letter by which I.M.B, your employer at that time,
20 admitted paying that sum of over 68 million naira to
21 the receivers in 2003?

22 A. Correct.

23 Q. In your witness statement, paragraph 36, you
24 said "I know that the defendant strongly disputed
25 the sum of 68 million naira plus, which was
26 erroneously paid, as 10% commission, to the
27 receivers manager's as contained in his letter
28 dated, December 29th, 2003; that letter is exhibit
29 C.42. What you are saying here, kindly assist the
30 Court, you are saying that, you strongly disputed;

1 the payment which you admit was made. You dispute
2 something which you admit?

3 A. The figure stated in the letter, was paid in
4 error, that is why the Bank wrote, and said, the
5 receiver manager did not collect as much money, on
6 which we are paying you commission, we are going to
7 ask you to refund the balance to us.

8 Q. What I am asking you to reconcile is, are
9 these two (2) apparently contradictory statements,
10 you said that the defendant strongly disputed the
11 sum of 68 million which was admitted to have been
12 paid. How can you dispute something which you
13 admit... that's the problem I have with the
14 evidence.... If you can't reconcile, just say so?

15 A. (WITNESS REMAINED SILENT).

16 Q. Are you confused?

17 A. I am not confused.

18 FEMI ATOYEBI (SAN): My Lord, I think the witness
19 has answered the question, he just did now. What he
20 said last, I don't want to repeat him, I believe we
21 are being recorded live.

22 T.A. MOLAJO (SAN): I don't know if my learned
23 friend is making an objection, rather than
24 repeating what the witness has said.

25 THE COURT: I think we should make progress, Mr.
26 Molajo, you can make it an issue for your address,
27 if there is any conflict in what the witness has
28 said. It is a matter of interpretation.

29 T.A. MOLAJO (SAN): My Lady, I prefer the hint of
30 the Court.

1 BY T.A. MOLAJO (SAN):

2 Q. You said that, the Bank asked the receivers
3 to refund these monies erroneously paid to them?

4 A. Yes, the letter I stated earlier, they asked
5 them to refund the money after reconciliation,
6 because they didn't quite earn the money.

7 Q. The money was never refunded?

8 A. I am not aware the money was refunded.

9 Q. Again, when this matter became the subject of
10 a dispute, between your Bank and the claimant, and a
11 report was made, by the claimant to C.B.N. Director
12 of Banking supervision, did you make any
13 representation to the C.B.N.?

14 A. I think, the Bank did.

15 Q. I will show you, exhibit C.24, is that your
16 representation to the C.B.N. Director of Banking
17 supervision?

18 (DOCUMENT SHOWN TO WITNESS).

19 A. Yes, My Lord, it is.

20 Q. Please turn to page 2 of C.24, I direct your
21 attention to paragraph C. In that paragraph, you
22 stated that, and I quote, " The total sum of,
23 N399,537, 500.00, was recovered by inflows into the
24 companies account with IMB, between February and
25 September 2003, no inflows were received after
26 September 2003. Those dates are significant,
27 because in exhibit C.24, you are claiming a little
28 over 399 million, was received into the claimant's
29 account between those two (2) dates, February, and
30 September, 2003. Am I correct?

1 A. My Lord this claim was made, and
2 subsequently, before the Banker's committee, the
3 Bank made representation to say, there were omission
4 that were not added to that figure, which made this
5 figure not to be the only figure that came into the
6 customer's account.

7 Q. You are saying again, that the Bank made a
8 mistake?

9 A. There was an error, and because of that
10 error, a payment that came in, was omitted, which
11 was subsequently added up to it.

12 Q. We have been through error number two (2). I
13 will refer back to exhibit C.42, please look at the
14 paragraph numbered as one (1). In that paragraph,
15 what I.M.B. claimed to have come into the account of
16 the claimant, was a different sum, N441,775,000.00.
17 Am I correct?

18 A. You are correct.

19 Q. Please confirm, those 2 figures, were in
20 respect of the same period of time?

21 A. I confirm that, the figures quoted in this
22 exhibit C.42, 441, is the amount of inflow that came
23 into it. Our group audit department did a further
24 review of this account, and confirm this figure that
25 IMB has earlier on stated in here, and that witness
26 will throw more light, when he is called into this
27 witness box.

28 Q. What I want you to address is the time line
29 within which this monies is alleged to have come in,
30 I am saying to you, and I want to confirm or dispute

1 it that, both the 399 as claimed in C.24, and the
2 441, and these are millions, as claimed in exhibit
3 C.42, were said to have come in, during the same
4 time frame?

5 A. My lord, the internal audit staff that is
6 coming will give that clarification, I am unable to
7 do that.

8 Q. Look at paragraph 1 of C.42, the total inflow
9 in the account from January 2003 to date, what is
10 the date of the letter?

11 A. 29th of December, 2003.

12 Q. Is 441 plus million, correct?

13 A. Correct.

14 Q. Look at C.24, second page, paragraph C, the
15 total sum of 399 million plus, was recovered under
16 the receivership etc, between February and
17 September, 2003. No inflows were received after
18 September, 2003. Do you now agree that they relate
19 to the same period.

20 A. I have said the group internal audit that did
21 the review will confirm those figures that came into
22 this account.

23 Q. Just confirm, again in the obvious, the
24 figures submitted to the C.B.N. in exhibit C.24, in
25 2006, is very different, indeed much lower than the
26 figures stated in exhibit C.42, in 2003. You
27 confirm?

28 A. I confirm that the figure is lower.

29 Q. Much lower, a difference of about 300 hundred
30 million?

1 A. 300 hundred million, I am not seeing 300
2 hundred million.

3 Q. In order words you are saying, two (2)
4 contradictory figures, relating to the same account,
5 and the same period as inflows were submitted to the
6 C.B.N. by your Bank?

7 A. I am saying those who reconciled the account,
8 the internal audit, will throw more light into all
9 that is stated there.

10 Q. I am not asking you for light, I am asking
11 for confirmation?

12 A. They will confirm it.

13 Q. I will at least, ask you to confirm which is
14 true, exhibit C.24, or exhibit C.42?

15 A. The true figure is the 441 that is reviewed
16 by the audit department.

17 Q. Exhibit C.42 is true, exhibit C.24, is
18 untrue?

19 A. You requested for confirmation, I have
20 confirmed, the true figure that is correct, is the
21 441, reviewed by the internal audit department,
22 through a further reconciliation of that account.

23 Q. Look at paragraph 27 of your witness
24 statement, in that paragraph, you have stated yet
25 another figure for the same period as the total
26 received in the claimant's account during the
27 receivership, is that not true. What is that figure
28 stated there?

29 A. It is 461 million.

30 Q. You say, the 441 is correct. what about this

1 one?

2 A. I have said, the group audit department
3 reviewed the figure to be 441.

4 Q. So, this is incorrect?

5 A. That figure is a wrong figure, the correct
6 one is the 441.

7 Q. Look at paragraph 29 of your witness
8 statement, there you said, and I read, "the
9 defendant has explained in his letter, to the
10 Banker's sub committee on ethics and
11 professionalism, dated August 23rd, 2006, already
12 pleaded by the claimant, that the variance of the
13 sum of N17,187,500.00, between N416,735,000.00, and
14 N399,537,500.00 was the inadvertent omission of
15 N17,187,500.00 lodged in the account. What you are
16 saying here, is that, yet again, the Bank omitted
17 the sum of 17,187,500.00 lodged into the claimant's
18 account?

19 A. It was omitted.

20 Q. Are you seriously saying to this Court,
21 Mr. Elakamah, that all these irregularities, which I
22 have drawn your attention, are genuine mistakes from
23 a Bank?

24 A. I will consider them to be genuine mistakes,
25 because they were not intended, they were omissions
26 which were not deliberate.

27 Q. Just to be clear, the alleged over payment to
28 the receiver, in what sum was it?

29 A. That amount about 50 million is stated in
30 that exhibit.

1 Q. 50 million of customers money. This
2 17 million, is your explanation for the difference
3 between which two (2) figures?

4 A. Between the 399 and the 416. That is the 17
5 million that is in between them.

6 Q. You have no explanation, for the difference
7 between the 441 and 399?

8 A. The difference between 399, and 416, is the
9 17 million that is in between them. If you add it to
10 it sir, it will get to the 416.

11 Q. You are saying that, has the Bank taken into
12 account the 17 million, the 416 would have amounted
13 to 441?

14 A. There was sir, a further reconciliation as I
15 have said, if you allow me to say, revealed that the
16 figure was 441, that was because there was an
17 omission of 25 million.

18 Q. There is another 25 million?

19 A. There was.

20 T.A. MOLAJO (SAN): N25,000,000.00 of customers
21 money out through the window. I am prepared to go
22 on, but the heat is getting to me. I will be on
23 it, for an hour and half.

24 FEMI ATOYEBI (SAN): We are prepared to go on, the
25 witness comes from Abuja.

26 T.A. MOLAJO (SAN): Let me strain myself more.

27 THE COURT: I am not sure if I will be able to
28 spare one and half hour. There are others matters
29 stood down to go on.

30 THE COURT: This case is adjourned to the 9th and

1 25th of June, 2015; for continuation of trial.

Bedding
14/5/15

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