

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:

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FIRST CITY MONUMENT 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, Igboere, on the 9th day of June, 2015.*

APPEARANCE:

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

FEMI ATOYEBI (SAN),
WITH MR. OLADAPO AKIN OSUN,
MISS BUNMI MUKOYE,
AYODEJI JOLAOSO,
AND L.O. ADHEKPUKOLI : For the Defendant.

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

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

1 T.A. MOLAJO (SAN): With profound respect to My
2 Lady, T.A. Molajo (SAN). My learned friends with me
3 for the claimant are, Afolake Laose (Mrs.),
4 Okechukwu Enebli Esq., and Mr. Nelson Osagie.

5 FEMI ATOYEBI (SAN): With profound respect to My
6 Lord, my learned friends Mr. Oladapo Akin-Osun,
7 Miss Bunmi Mukoye, Mr. Ayodeji Jolaoso, and
8 Mr. L.O. Adhekpukoli, They appear with me for the
9 defence.

10 T.A. MOLAJO (SAN): My Lady, D.W.1 is still in the
11 box, and he is to continue his cross-examination?

12 THE COURT: Witness, come to the box.

13 REMEMBER YOU ARE STILL ON OATH.

14 IF YOU ARE A WITNESS IN THIS CASE, PLEASE GO OUT OF
15 COURT AND OUT OF HEARING.

16 CONTINUATION OF CROSS EXAMINATION OF D.W.1.

17 (SULE ELAKAMAH-DEFENDANT'S WITNESS.1)

18 BY T.A. MOLAJO (SAN):

19 Q. Mr. Sule Elakamah, just to refresh your
20 memory, as you stated on the 14th of May 2015,
21 personally when you were last here, it is your
22 current position that, the sum of 441,775 million,
23 represents the total sum received into the claimants
24 account, during the period of the receivership?

25 A. Yes My Lord.

26 Q. I wish to direct your attention to paragraph
27 27 of your witness statement, which for economy of
28 time, I will read out to you. In that paragraph
29 your state, "the sum of 416,725,000 was received,
30 during the period of receiverships, via Bank drafts,

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1 and cheques, which sums were verifiable from the
2 claimant's statement of account with the defendant."
3 you confirm that, that is what you said?

4 A. Yes My Lord.

5 Q. Which is the correct position then, is it the
6 441, 775,000 which you stated in oral evidence, or
7 this 416,725,000 which you state in paragraph 27 of
8 your written statement?

9 A. My Lord, I have stated that, there was a
10 review of that account, by the Internal Audit
11 Department of the defendant, and we discovered that,
12 there was an omission of about N25,000,000.00, and
13 when that is added to about the 416, that is already
14 stated in the witness statement, that brings the
15 figure to about 441, which I said was supposed to be
16 the correct position as at today.

17 Q. When was that audit conducted?

18 A. The audit department did some confirmation,
19 it is a periodic thing which they do each time....

20 Q. Let me simplify it for you, when did you
21 settle at this N441,775,000.00 as being the sum
22 received. At which point in time?

23 A. When the last audit was done, about this year
24 by the Internal Audit Department.

25 Q. This year?

26 A. Yes, this year.

27 T.A. MOLAJO (SAN): May I see the exhibits.

28 BY T.A. MOLAJO (SAN):

29 Q. What you are indeed saying is that, paragraph
30 27 of your written statement on oath, is untrue?

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1 A. There were omissions, which were discovered,
2 and that omission, added to that..., and which we
3 have made effort to point out, and bring it to the
4 attention of the Court?

5 Q. Are you saying then that, it is correct to
6 say that, 416 million plus, was what was recovered?

7 A. The initial audit that was carried out, My
8 Lord revealed that figure, but when another audit
9 was carried out by the Internal Audit Department,
10 they discovered yet another omission of 25 million.

11 Q. Mr. Elakamah, I am only asking you to
12 confirm, whether paragraph 27 is incorrect, or
13 untrue?

14 A. By the omission of 25 million which was
15 discovered subsequently, if added to that, it will
16 be right to say that, 416 will no longer stand, but
17 what is actually correct is the 441, which we have
18 stated in our previous letter before to the
19 claimant.

20 Q. So you agree that, in infact, taking the
21 position earlier than that audit, that it was 441?

22 A. My Lord, we made effort at all times to
23 ensure that, we put up our facts, and not to
24 suppress any information. Our initial position, when
25 the audit was done, and was sent to legal
26 department, those who carried out the audit at the
27 time, discovered that, what was there, was 441. But,
28 the subsequent audit, which again, by human error,
29 they had omission, they omitted those figures added
30 up before, they now said it was 416, which we now

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1 maintain. But, when another audit was done again,
2 they discovered that, there is another omission of
3 about 25 million, which now brought to the 441,
4 which was earlier on admitted before the claimant.
5 So, we are now maintaining the 441, that is the
6 correct thing there. In any case, all of these are
7 in the statement of account that we issued to the
8 claimant, there have been no addition, there have
9 been no subtraction. The same statement of account,
10 that is before the Court, if we review it over, and
11 over again, those omissions we are saying has been
12 discovered, are contained in that statement of
13 account.

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14 Q. Mr. Elakamah, we will come to the statement
15 of account, I think we can now agree, that you had
16 moved from 441, to 416, back to 441?

17 A. Agreed.

18 Q. It is also your case that, you applied only
19 N215,000,000.00 to reducing the claimant's
20 indebtedness. Is that not correct?

21 A. 215 was in one of the accounts, which was
22 used to reduce the outstanding balance. The sum of
23 215 was part of the money, that was used to reduce
24 the claimant's indebtedness.

25 Q. That is what you said in paragraph 31 of your
26 witness statement. If you recover 441,775,000 and
27 you used 215 million, what happened to the
28 difference between those two (2) figures?

29 A. My Lord, we have said, the 215 is part of the
30 sum reducing it, the other sum, as well, was also

1 reducing the balance owed the defendant. Because,
2 what the claimant owes the defendant, at a point,
3 was about N498,000,000.00. So, that sum of 215, is
4 just in part of what has been reduced, the remaining
5 part is also reducing the balance that was owed to
6 the defendant.

7 Q. I am are trying my best to understand. Are
8 you saying that, the 414, 775 was used to reduce the
9 indebtedness?

10 A. Correct, part of it was used to reduce the
11 indebtedness.

12 Q. Again, I have a problem with that, when you
13 say part of it, it is either the whole, or the part,
14 which is it?

15 A. My Lord, the total sum of 441, came into the
16 claimant's account with the Bank, and all of that
17 money including the 215, were part of the money that
18 was used to reduce the indebtedness with the Bank.

19 Q. I see, let me repeat what you have said, so
20 that I don't mis represent you. You said, the whole
21 of the money, being 441,775, and also, the 215, were
22 both used to reduce the indebtedness. Is that what
23 you are saying?

24 A. Yes, they were both used to reduce the
25 indebtedness.

26 Q. That will mean, the whole of the money that
27 came in, will be the sum of 215, and 441?

28 A. No, 215 certainly came in at the point of the
29 receivership. The total inflow was 414 that came
30 in.

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1 Q. I will move on, you alone understand. I will
2 show you the statement of account, which you
3 prepared in respect of this account, exhibit C.27.
4 I am referring you to the entry of 9th
5 December 2003? (DOCUMENT SHOWN TO WITNESS)

6 A. My Lord, this statement of account, although
7 I have seen it, I am not able to interpret what it
8 is. Those that prepared it, will be here to
9 interpret what it is. I am a lawyer, I am not
10 conversant with the statement of account.

11 Q. I am also a Lawyer, I have looked at it,
12 apart from that, you are the witness in the box, and
13 I will do my best to get you, within the bounds of
14 what the Law permits to assist the Court, you chose
15 to give evidence yourself. Please look at it, and
16 read out, I am asking you to read it out, not to
17 analyze, or interpret?

18 A. As I said, My Lord, there are departments in
19 the Bank, what the legal department does, is to make
20 use of information provided by those units. The
21 Internal Audit Department officer that is coming,
22 will testify, and clarify every issue on this
23 statement of account.

24 THE COURT: He is only asking you to read, not to
25 interpret.

26 BY T.A. MOLAJO (SAN):

27 Q. Read the entry of 9th December 2003?

28 A. "Payment of commission, on recovery made on
29 Zumax account...."

30 Q. What is the sum?

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1 A. "36,367,609."

2 Q. What I read here is, "36,367,609.88", is that
3 correct?

4 A. Okay, ".88."

5 Q. That is over 36 million?

6 A. Yes.

7 Q. Look again at exhibit C.42, please confirm
8 that sum of over 36 million, paid as commission to
9 the receivers, and which appears as an entry on the
10 9th of December, 2003 in C.27, is not one of the
11 payments said to have been paid, or made to the
12 receivers in exhibit C.42, which came to a total of
13 over N68,000,000.00.

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14 A. Yes My Lord, it is not one of them.

15 Q. If added to N68,535,801.00, said to have been
16 paid, that 36,382,809.88, will bring the total
17 commission to over a hundred million naira?

18 A. Yes, I do agree.

19 Q. What was the percentage agreed between the
20 defendant and the receivers, as commission payable
21 on recoveries?

22 A. The percentage was about 10 percent
23 commission, but as invoices were submitted, payments
24 were made, which was approved by the then Managing
25 Director, Edwin Chinwe?

26 Q. Mr. Elakamah, no one asked you about
27 invoices, you want us to refresh your memory with
28 the instrument of appointment with Zumax, we will
29 do. But, you will make things easier by telling the
30 Court what you know. Was the agreed percentage 10%?

1 A. 10%.

2 Q. Please confirm, at 10%, payment of over a
3 hundred million, is consistent with recoveries of
4 over a billion?

5 A. My Lord, we have said, entries were made, and
6 errors, omissions were made, and when that payment
7 68 million that was made, the Bank when the
8 correction was done, they discovered that, they made
9 an error in payment. They did pointed out that, it
10 is an error, even the 68 million stated in there, it
11 is in error that it was made. It is not unlikely
12 too, that the N36,000,000.00 was seen, was made in
13 error as well.

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14 THE COURT: You have not answered the question.

15 BY T.A. MOLAJO (SAN):

16 Q. I asked you to make a simple arithmetical
17 deduction. At 10% commission, will payment of over a
18 hundred million naira to the receivers, be
19 consistent with recoveries by them of over one
20 billion?

21 A. It will be consistent, if it is 10%, 10%
22 will come to that.

23 Q. You mentioned something else, you say the
24 36 million may also be a mistake?

25 A. I said, it is possible, it was paid in error.

26 Q. Are you confirming as a fact, that it was
27 paid in error?

28 A. Based on what we have here?

29 Q. 36 million is not part of the payments which
30 are listed in exhibit C.42, so you can't base

1 anything concerning 36 million on C.42. So, I am
2 asking you that, that was another error made by your
3 Bank?

4 A. It is possible it is an error made by the
5 Bank.

6 Q. That it is, confirm that it is?

7 A. Because I am not the one that made the
8 payment, I may not be able to know exactly what that
9 problem is, I am saying based on the fact that we
10 have referred to this and called the receivers
11 manager, to say errors has been made in the payment
12 of commission....

13 Q. You may also have made a mistake in
14 respect of the 36 million?

15 A. It is possible.

16 Q. So you are speculating, in respect of a sum
17 of such magnitude as 36 million of customers' money,
18 you are prepared to sit in the box, and speculate,
19 that the Bank may have paid it out in error. Is that
20 responsible, as an officer of the Bank, to
21 speculate, in respect of such a huge sum of money.
22 we are not here to play. So, what is your answer?

23 A. It was commission paid.

24 Q. You have also stated, I refer you to
25 paragraphs 32, and 33, of your witness statement. I
26 will read that to you: "During, and after the
27 period of receivership, the defendant wrote series
28 of request to the receivers managers, for the
29 statement of their affairs with Zumax. Despite the
30 said letters, the receiver Managers, bluntly refused

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1 to, and or, neglected to provide details of the sums
2 recovered during the course of the receivership.
3 This situation persisted, until the receivers
4 managers requested for their commission." You recall
5 that you said that?

6 A. I recall, My Lord.

7 Q. In spite of their refusal to give you the
8 statement of their affairs as receivers of Zumax,
9 you continued to pay them commission, throughout the
10 period of their receivership. Did you not?

11 A. They were paid commission.

12 Q. Do you remember when they were appointed?

13 A. I think probably December, 2002.

14 Q. And their receivership was terminated,
15 please confirm if I am wrong, in April 2005.

16 A. Yes.

17 Q. Between those two dates, in fact spanning a
18 period of almost 3 years, you continued to pay them
19 commission, without waiting for statement of
20 affairs?

21 A. From the records we have there, they were
22 paid commission.

23 Q. Again the statement of the claimant's account
24 remained with you, infact you were preparing them.
25 Your Bank was in possession of the statement of
26 account, correct?

27 A. The Bank prepares statement of account for
28 customers.

29 Q. I am talking about the claimant, you were in
30 possession of the statement of account, because you

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1 were preparing them through out the period of the
2 receivership?

3 A. Under the receivership, the Bank keeps
4 custody of it, but receivership has access to the
5 account.

6 Q. You knew what was coming in, and what was
7 going out?

8 A. Correct.

9 Q. Lets take another look at exhibit C.24 that
10 is the Banks letter to the C.B.N. dated July 4,
11 2006. I direct your attention to the last sentence
12 of page 2, in fact, it is the last two (2) lines.

13 You say there, "in addition, no transfer of funds
14 from any Red sear, off shore account, was received
15 as alleged."?

16 A. Yes.

17 Q. Look again at exhibit C.42, that is your
18 letter to the receiver of December 29th, 2003. that
19 reads, "total inflow in the account, from
20 January 2003, to date, (and the date of the letter
21 is December 29th, 2003), is 441,775,000 and not
22 603,625,98.93. Of this amount, actual inflow during
23 the period of your receivership is 171,775,000. The
24 additional inflow of 270,000 being the naira
25 equivalent of U.S. \$2,000,000 came from Chevron
26 contract proceeds, paid into Red sear account before
27 the commencement of your receivership." Now please
28 refer to paragraph 38 of your witness statement.
29 You stated and I read, "the calculations and claims
30 referred to by the claimant, regarding the alleged

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1 remittance from Red sear Nigerian Limited, and the
2 City Bank account are not connected to the
3 defendant." And surely, that cannot be correct?

4 A. In view of what you said in C.42.

5 Q. There you are denying any knowledge of any
6 remittance from Red Sear Nigerian Limited, in C.42,
7 you are saying, what came into the account, included
8 proceeds paid into Red Sear account. So, one of
9 those statement is false, which one is it?

10 A. (WITNESS REMAINED SILENT)

11 Q. Mr. Elakamah, please assist the Court, which
12 is true, and which is false. They can't both be
13 true?

14 A. They can't both be true, the comment on it
15 should be correct.

16 Q. So, C.42 is correct?

17 A. Yes, it is correct.

18 Q. I refer this time, to paragraph 8 of your
19 witness statement, you have stated, and I quote
20 verbatim, "I know that, as at December 2002, the
21 claimant was in default, and owed the defendant,
22 about the sum of N465,635,70.60. You recall that
23 you said that?

24 A. I do.

25 Q. Then, you go on to state that, you will rely
26 on a copy of a letter dated December 6th, 2002?

27 A. Correct.

28 T.A. MOLAJO (SAN): May I see exhibit C.7.

29 BY T.A. MOLAJO (SAN):

30 Q. Please show him the second paragraph of

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1 exhibit C.7, which is a letter dated
2 December 6th 2002, to which you referred in
3 paragraph 8 of your witness statement, reads as
4 follows: "We hereby put you on notice, that the said
5 facility has matured, and is long overdue for
6 repayment, without the company honoring its
7 obligation thereto. Accordingly, we have called in
8 your facility, and demanded for repayment of the
9 full outstanding sum, which amounted to
10 N465,635,70.16 debit, as at December 6th 2002?"

11 A. Yes.

12 Q. As at December 6th 2002, that date is
13 significant, because that is the date on which the
14 debit balance, according to that letter was 465 plus
15 million, correct?

16 A. Yes.

17 Q. According to that letter, exhibit C.7, the
18 correct specific date on which that sum was owing,
19 was December 6th, 2002. I suggest to you that, that
20 is untrue?

21 A. That is what the audit revealed as at that
22 point.

23 Q. Do you stand by it?

24 A. I stand by it, that it was revealed to us.

25 Q. In order words, you are saying that, it is
26 true.

27 Q. Have you changed your mind about that sum of
28 indebtedness being due on December 6th 2002?

29 A. It is the sum that was due, as at that date.

30 Q. Please look again at exhibit C.27, the

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1 statement of account. According to that statement
2 you prepared, what is the debit balance on the
3 account, on December 6th, 2002?

4 A. I can't see it, I am trying to check for it.

5 (AFTER AWHILE). What's the date again?

6 Q. December 6th, 2002?

7 A. I can see December 9th here.

8 Q. No, I am speaking of December 6th that is the
9 date in the letter. what is the entry in the
10 statement of account for that date?

11 A. (WITNESS SEARCHED FURTHER SILENTLY)

12 Q. Mr. Elakamah, let me suggest to you, that
13 there is no entry for such a date anywhere in C.27?

14 A. Yes, there is no entry here.

15 Q. In fact, worse still, there is no debit
16 balance of 465 million plus, anywhere in exhibit
17 C.27. Look for it, confirm?

18 A. My Lord, may I say this, I am not working in
19 the Audit Department, but I do know that, usually
20 there are loan accounts, this is the current account
21 that we are seeing here. Those that got these
22 figures, would have got them somewhere, a loan
23 account is in existence, to show how much has been
24 availed, what is outstanding, and when the cheques
25 are coming, they move money from the current, until
26 they balance themselves out. It may not appear
27 here, My Lord.

28 Q. Are you saying there is yet another account
29 some where?

30 A. Loan account, My Lord.

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1 Q. Where is it, the Court will like to know, if
2 we are not to rely on this statement?

3 A. Because, I cannot see the 6th here, those
4 that prepare account usually do that.

5 Q. What is of value, which we can get from your
6 evidence, is that, there is no entry of, 465 shown
7 in C.27, which you hold?

8 A. There is none in this current account, that I
9 am holding.

10 Q. I also suggest to you, that throughout
11 November, throughout December, the debit balance in
12 that account, did not rise above 355 million. Look
13 at it, confirm it, as shown in C.27?

14 A. I can see it.

15 Q. So, in effect, please confirm, that C.27
16 shows that, the claimant was infact owing between
17 110, to 115 million, less than what you alleged in
18 your witness statement?

19 A. My Lord, I may not be able to confirm that,
20 the Internal Audit Department that gave all these
21 figures, will confirm those figures. They will
22 explain how those figures came about, about what
23 they were owing.

24 Q. It does not assist you to pass the buck to a
25 witness we have not seen. In your witness
26 statement, it is not only C.27 which refers to a
27 debit balance 465 million plus. Your witness
28 statement says in paragraph 8, "I know that, as at
29 December 2002, the claimant was in default, and owes
30 the defendant the sum of about N465,635,70.16." So,

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1 which is correct, that statement C.27, or your
2 witness statement?

3 A. I still say it again, the figures stated in
4 that witness statement on oath, obviously will be
5 the correct one, because they usually have that loan
6 account, when a customer comes in, they avail the
7 customer a facility, it goes into one account, and
8 repayment goes into his current account, where the
9 money is taken from to reduce. There is usually a
10 loan account, I am sure that is where the Internal
11 Audit got that figure that was outstanding. Once you
12 make payment into the current account, money is
13 moved from there, to reduce the balance in the loan
14 account.

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15 Q. Mr. Elakamah, all of what you are saying, is
16 speculation, none of this appears in your witness
17 statement, this is an after thought, when faced with
18 a document which clearly contradicts your witness
19 statement?

20 FEMI ATOYEBI (SAN): My Lord, with all due
21 respect, I believe it is unfair to make that
22 comment, because the witness was merely answering
23 the questions put to him by the Learned Senior
24 Advocate for the claimant. So, if it wasn't
25 contained in the statement, and he asked him the
26 question, he couldn't keep quiet truly. He gave an
27 answer he didn't obviously want to here, and that's
28 the answer.

29 BY T.A. MOLAJO (SAN):

30 Q. The alleged indebtedness of the 465 plus

1 million, was the basis of the imposition of the
2 receivership, was it not?

3 A. It was.

4 Q. The alleged failure of the claimant to pay
5 this 465 million plus in full, was the basis of the
6 terms of settlement, in which the parties eventually
7 entered?

8 A. It was.

9 Q. Please, tell the Court if you remember, what
10 was the agreed over draft limit on the claimants
11 account?

12 A. I am not able to confirm that.

13 Q. Let me refer to you paragraphs 4 and 5 of
14 your witness statement, in paragraph 4, you stated,
15 "I know that the claimant applied for an initial
16 over draft facility of N50,000,000.00, by his
17 application letter dated November 25th, 1996. The
18 claimant applied for, and later, sought for an
19 upward review of the afore said facility to
20 N200,000,000.00, being working capital for his oil
21 servicing business, by an application letter dated
22 April 27th, 1998. that was your evidence?

23 A. Yes.

24 Q. Was that upward review to N200,000,000.00
25 granted by the defendant?

26 A. It was granted.

27 Q. I put it to you again that, that was the over
28 draft limit on the account?

29 A. I agree.

30 Q. Please look at exhibit C.27, the entry of

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1 8th April 2002, what is it?

2 (DOCUMENT SHOWN TO WITNESS).

3 A. There are two entries, one of 420 the other
4 is 250 million.

5 Q. The first reads, "cheque 04738, I.F.O. (in
6 favour of) that is sum of N30,000,000.00, which
7 brought the account to a debit of 55,135,49.7."?

8 A. Yes.

9 Q. The second entry, "8th April is commission
10 and V.A.T on cheque issue: N420.00"?

11 A. Yes.

12 Q. The debit balance remained "55 million plus"?

13 A. Yes.

14 Q. Immediately after that, appears an entry on
15 "15th April 2002 of a withdrawal described as
16 funds transfer to H.O. account (HEAD OFFICE
17 ACCOUNT)"?

18 A. Correct.

19 Q. Funds transfer from "Zumax Limited to head
20 office account, the sum of 250 million"?

21 A. Yes.

22 Q. And that brought the debit balance to
23 "255 million plus"?

24 A. Yes.

25 Q. Please tell the Court, why did you transfer
26 250 million plus of the claimant's money to your
27 Head Office account?

28 A. I don't have explanation for that.

29 Q. On the basis of this statement of account,
30 Look at paragraph 10 of your witness statement, you

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1 have stated as follow, "the claimants indebtedness
2 to the defendant as at February 28th, 2003 stood at
3 about 498 million, correct?

4 A. Yes.

5 Q. Please look at the entry in C.27, your
6 statement of account as at that date,
7 February 28th 2003. What does it say?

8 A. On the debit column, the one I am seeing here
9 is zero.

10 Q. I am asking for the debit balance, the last
11 column. I help you, you can confirm,
12 "N373,291,634."?

13 A. Correct.

14 Q. Please confirm, that is a difference of over
15 125 million, between the entry showing the debit
16 balance of that date, and your evidence as contained
17 in paragraph 10?

18 A. There is a difference.

19 Q. Are you in a position to say which is
20 correct?

21 A. There is always a loan account entry, those
22 entry that are stated in there are from a loan
23 account.

24 Q. You are sure there is one in respect of this
25 customer, you are positive?

26 A. Usually, every customer has it.

27 Q. Does one exist in respect of Zumax?

28 A. There should be.

29 Q. Mr Elakamah you are between certainty and
30 speculation, which is it?

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1 A. If they keep their figures, it should exist.

2 Q. Please look at paragraph 9 of your witness
3 statement, you have stated as follows "owing to the
4 claimants failure to discharge its indebtedness, the
5 defendant exercised its power under the terms
6 governing the transaction in line with provision
7 with the Deed of all Assets Debenture, Messrs
8 Anthony Edigbe (SAN) and Isreal Bui, were appointed
9 as joint receivers managers over the assets, and
10 undertakings of the claimant through a deed of
11 appointment dated December 18th 2002, and filed on
12 December 23, 2002." I refer also to paragraph 12 of
13 your witness statement, which states, "that the
14 receivership was not lifted until April 2005."?

15 A. Yes.

16 Q. I refer you again to exhibit C.27, please
17 look at the entry of 13th June 2003, do you see
18 it?

19 A. Yes My Lord.

20 Q. What is the sum posted?

21 A. Funds transfer in favor of Zumax what am
22 seeing here is....

23 Q. Can I see what you are holding, "funds
24 transfer in favour of Zumax Nigeria Limited,
25 233,851,038.9." Please confirm, over 233 million
26 naira in favour of Zumax?

27 A. Correct.

28 Q. What is the balance is shown there in the 3rd
29 column?

30 A. 233,851,098.9.

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1 Q. The last column?

2 A. That is what on the last column.

3 Q. May I see it....

4 T.A. MOLAJO (SAN): My Lady, may I be permitted to
5 consult my client.

6 THE COURT: Yes please.

7 T.A. MOLAJO (SAN): Most obliged.

8 BY T.A. MOLAJO (SAN):

9 Q. Mr. Elakamah, you were looking at a wrong
10 account, the account to which I now direct your
11 attention, in the same exhibit C.27, is the one
12 which ends with number 26, the one you were looking
13 at, is the one which ends in number 77. Please look
14 at this one which ends in 26, the full account
15 number is "0101020000026", I will get you to explain
16 why the account suddenly changed to a different
17 number, later in this cross examination. Do you see
18 the entry of 13th June 2003. That is says, "funds
19 transfer in favor of Zumax Nigerian Limited"

20 A. Yes.

21 Q. The sum which is a credit of course, is
22 "239,851,098.9" The resulting balance, which is
23 what is showing on the 3rd column is N124,527,582.4
24 correct?

25 A. Correct.

26 Q. As of that date, that account has moved into
27 credit?

28 A. From the statement, yes.

29 Q. And that credit was in the sum over 124 plus
30 million, that being true, can you explain why the

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1 receivership was continued for another two (2)
2 years?

3 A. I have no explanation for this.

4 Q. Look at paragraphs 3 and 4 of your witness
5 statement, which reads, "except as otherwise
6 indicated...." You confirm that the defendant hired
7 the receivers?

8 A. Yes, they appointed to receivers to under
9 take recovery of the money owed the defendant.

10 Q. You also confirm that the defendant was
11 responsible for the remuneration of receivers?

12 A. The defendant paid commission on the money,
13 on whatever they recovered.

14 Q. You also confirm that, the defendant fired
15 the receivers, or brought the receivership to an
16 end?

17 A. The defendant did.

18 T.A. MOLAJO (SAN): My Lady, I will consult again.

19 BY T.A. MOLAJO (SAN):

20 Q. Please Mr. Elakamah, you mentioned one Edwin
21 Chime, he was Managing director of I.M.B?

22 A. He was Managing director of IMB, and Finance
23 Director of Zumax.

24 Q. He left I.M.B. in June 2003?

25 A. Yes, correct.

26 T.A. MOLAJO (SAN): My Lady, that will be all for
27 this witness.

28 THE COURT: Thank you, any re-examination?

29 FEMI ATOYEBI (SAN): Yes, My Lord, just three (3)
30 questions to clarify.

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1 RE-EXAMINATIONS OF DEFENDANT'S WITNESS.1 (MR. SULE
2 ELAKAMAH)

3 BY FEMI ATOYEBI (SAN):

4 Q. Mr. Elakamah, you informed My Lord, in the
5 course of cross examination that, there were
6 omissions in the figures recovered from the
7 claimant, which were corrected by your Audit
8 Department. Were this omissions contained in the
9 statement of account, or in some other documents?

10 A. All the omissions that were made, were all
11 contained in the statement of account, which at all
12 material time, was made available to the claimant.

13 Q. Please listen to the question again, under
14 cross examination, there are various figures
15 mentioned, and you said, there were omissions. Those
16 omissions were they omissions in the statement of
17 account, or in some other correspondence?

18 A. The omissions contained, were all in the
19 statement of account, the omissions made, were in
20 the documents that were sent out to third parties,
21 and the claimant, but all of those omissions were
22 contained in the statement of account, they are
23 there, you can find them there.

24 T.A. MOLAJO (SAN): My Lady, my learned friend is
25 now moving to cross examination, he can't cross
26 examine the witness. If need be, the evidence act
27 says leading questions cannot be asked in
28 re-examination, in either examination in chief, or
29 re-examination. The witness has answered, if my
30 learned friend is not satisfied...

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1 THE COURT: You know this particular witness does
2 not answer questions straight, you had problems
3 when asking him too. Instead of answering straight,
4 he goes round and round.

5 T.A. MOLAJO (SAN): I am in a position of
6 advantage in cross examining him, my learned friend
7 can't. He has to be content with what he said.

8 THE COURT: He needs to answer the question.

9 T.A. MOLAJO (SAN): He has, and I will repeat what
10 he said, the verbatim report will bear me out, "the
11 omissions were contained in the statement of
12 account." He then went on to add, "they were also
13 contained in other documents, sent out to the
14 claimant." In my respectfully submission, the
15 witness has answered, any further probing by my
16 learned friend, will move into the realm of cross
17 examination.

18 THE COURT: I don't agree, I think he needs to
19 answer the question.

20 FEMI ATOYEBI (SAN): The purpose of
21 re-examination, is to clarify ambiguity, there were
22 certain figures which were mentioned, which witness
23 kindly said there were omissions.

24 BY FEMI ATOYEBI (SAN):

25 Q. My question to the witness is, whether there
26 were omissions in the statement of account, or
27 whether omissions were contained in letters they
28 wrote, to whoever they wrote it to?

29 A. My Lord, there were no omissions in the
30 statement of account, but there were omissions in

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1 the correspondence that we sent out to the claimant,
2 and third party, in the course to reviewing the
3 account, there were certain things we didn't see,
4 when we were computing the figures that we sent to
5 third party. Those things, we can find them in the
6 statement of account, but they are still there.

7 Q. The second question to the witness, you also
8 stated under cross-examination that, two (2)
9 specific sums of money were received into the
10 claimant's account. The first sum was 215,000,000,
11 and the next was 441,000,000?

12 A. Yes.

13 Q. My question to you is, if I added those two
14 figures together, it becomes 629,000,000. Is it the
15 case that you recovered 629 by that statement or one
16 of them was part of the other. Can you clarify that?

17 T.A. MOLAJO (SAN): My Lady, this does not apply.
18 The witness was explicit, in saying both sums were
19 applied to the reduction of the indebtedness of the
20 claimant, that was his evidence. As to the addition
21 of those two sums, that is not something in which
22 the witness can help us. I strongly ask My Lady,
23 not allow this re-examination, or what is presented
24 in the guise of a re examination to be turned into
25 another examination in chief, or a cross
26 examination. There is no ambiguity whatsoever.

27 FEMI ATOYEBI (SAN): My Lord, evidently, all of
28 the statements contained in the witness statement
29 pointed to a particular figure, I don't want to say
30 it, because I can't testify on his behalf. Those

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1 were consistent in the testimony he gave, but then,
2 in the course of cross-examination, two figures
3 were put to him from documents, and I have come
4 away with the impression that, I am quite unclear
5 if they recovered both, which will then add up to
6 629 million, or any other figure. He needs to
7 clarify exactly what was said about 251 million,
8 and 441.

9 THE COURT: Mr. Molajo, may be I was not quite
10 following when he gave that evidence, I will allow
11 it for now, if I find out he should not have
12 answered the question, I will remove it?

13 T.A. MOLAJO (SAN): This is why, if there was a
14 shorthand note, we would have called for it.

15 THE COURT: You can see I am not writing, it is in
16 verbatim recording, but if for any reason I find
17 out he should not have answered, I will remove it.

18 BY FEMI ATOYEBI (SAN):

19 Q. You stated that two different sums 215
20 million, and 441 million were recovered, by the
21 Bank, or from the account of the claimant. My
22 question to you is, if you add them together it will
23 amount to 629 million, my question is, whether the
24 215, or the 414 are part of the same or separate
25 sums?

26 A. The 215 was used in reducing the out standing
27 loan.

28 FEMI ATOYEBI (SAN): That's not the question to
29 you.

30 T.A. MOLAJO (SAN): I submit with respect that,

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1 this ought not to be allowed, the question was put,
2 and the witness has answered. If there must be
3 order in re examination, this should not be
4 permitted.

5 THE COURT: Listen to the Lawyer, and answer the
6 question.

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7 BY FEMI ATOYEBI (SAN):

8 Q. Tell the Court, how much you recovered from
9 the claimant, 215 or, whatever it is?

10 A. The amount that came in to the account was
11 441.

12 FEMI ATOYEBI (SAN): My Lord that will be all.

13 THE COURT: The witness is discharged.

14 FEMI ATOYEBI (SAN): We have one more witness from
15 the Bank we have another date 25th Of June.

16 THE COURT: I will give you one more date before
17 vacation, in case you are not able to finish. This
18 case is adjourned to the 25th of June, 2015, and
19 16th July 2015, for continuation of defense at
20 11am.

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22 130 Polices at #40.00
23 per Police = #5,200.00
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