

SUPREME COURT OF NIGERIA
27TH SEPTEMBER, 1996. SC. 174/1987
CORAM:- M. E. OGUNDARE, E. O. OGWUEGBU,
S. U. ONU, Y. O. ADIO, A. I. IGUH, JJSC.

INSURANCE BROKERS OF NIGERIA PLAINTIFF/ APPELLANT

AND
ATLANTIC TEXTILESDEFENDANT/RESPONDENT
MANUFACTURING COMPANY LTD.

***APPEALS** - Findings of fact - By trial court - Where supported by abundant evidence - It should not be reversed.*

***EVIDENCE** - Unchallenged evidence - Where the opposite party - Who had opportunity to challenge plaintiff's ample evidence - Fails to do so - The court will act on that evidence.*

***EVIDENCE** - Proof - Whether plaintiff's evidence fell short of the essential proof - Required to establish its claim.*

***EVIDENCE** - Receipts - Onus of proof - shifts to the defendant who claims to have paid - To tender relevant receipts in proof thereof.*

***EVIDENCE** - Admissions - Whether in the face of admissions made by the defendant - The Court of Appeal was right in dismissing appellant's claim.*

***PLEADINGS** - Denial of plaintiff's averments per se - Vide the statement of defence - Without proving the denial by evidence - Cannot defeat plaintiff's established claim.*

FACTS

Before the Ikeja High Court, Plaintiff/Appellant filed an action against the Defendant/Respondent claiming N243.869.27 being outstanding balance of premiums on various insurances effected at the request of the defendant. Plaintiff had an arrangement as a brokerage house with the defendant to secure insurance policy covers on credit basis for the defendant's motor vehicles, machineries, etc. Exhibits B - B3 being the last monthly statement of account forwarded by the Plaintiff to the defendant show that the amount claimed is the outstanding balance due

from the defendant to the plaintiff.

The trial judge found in favour of the plaintiff and awarded the sum of N243,802.13. The defendant appealed to the Court of Appeal which allowed the appeal and dismissed the plaintiff's case in its entirety. Aggrieved by the lower court's decision, plaintiff has now appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

"1. Whether on the pleadings and the evidence the Court of Appeal was justified in holding that the plaintiff had not proved its claim.

2. Whether having regard to the defendant's admissions in Exhibit H the Court of Appeal was justified in dismissing the plaintiff's claim in its entirety, p. 1682

HELD (Unanimously allowing the appeal per lead judgment of **IGUH JSC**)

Unchallenged evidence

1. In the first place, it cannot be doubted that having regard to the pleadings and the testimony of P.W.I before the court, there is ample evidence in support of the essential and material averments in paragraphs 4, 5 and 6 of the Statement of Claim. This evidence, if credible and accepted by the court, was clearly sufficient to establish the appellant's claim. Not one single question was put by the respondent's learned counsel to P.W.I in relation to the Debit Notes, Exhibits D - D16 which chronologically set out the various insurance covers transacted by the appellant at the request and on behalf of the respondent. In such a situation where material evidence given by a party to any proceedings was not challenged or rebutted by the opposite party who had the opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it. (p. 1685 D)

Whether evidence fell short of the essential proof

2. In my view, the court below was in definite error by holding that the evidence of P. W. 1 fell short of the essential proof required to establish the existence of the various insurance contracts averred in paragraph 4 of the Statement of Claim. No doubt, the onus of proof was on the appellant to establish each and every item of the insurance agreements concerned. This the appellant did by meticulously setting out the detailed particulars of each and every such agreement in Exhibits D - D16, showing in a most methodical, but simple manner, the Debit Note in respect of each of them, the precise nature of the insurance effect, the exact date of the transaction, the period of

time covered by each policy, the policy number of the transaction as well as the precise premium payable in respect thereof. (p. 1686 C)

Denial of plaintiff's averment per se

3. It seems to me that the court below in holding that the insurance contracts were not proved laid undue weight on the fact that the respondent in its pleading disputed the appellant's claims. It did not appear, with respect, that the court below adverted its mind to the fact that there was hardly any evidence from the respondent to controvert the material facts upon which the appellant grounded its claim. It is true the respondent in its Statement of Defence generally denied each and every allegation of fact contained in the Statement of Claim. But an averment in pleadings is no evidence and can never be so construed. On the contrary, it has to be proved by evidence subject however to admission by the other party. It seems to me plain, from the evidence before the trial court and the findings of the learned trial Judge that the appellant satisfactorily established the various insurance contracts in issue and that the respondent was clearly unable to puncture the appellant's case. In my view, the court below was in error to have held otherwise. (p. 1687 B)

Receipts - Onus of proof

4. It seems to me both from the pleadings and the case for the respondent that it claimed to have fully paid the amount in issue to the appellant. This being so, the onus of proof was upon it to establish this defence by tendering the relevant receipts as it did in respect of its 1979 payments. This it failed to do. (p. 1688 A)

Evidence - Admissions

5. In a civil action, admissions by a party are evidence of the facts asserted against but not in favour of such a party although they are not estoppels or conclusive against the party against whom they are tendered. In the face of these admissions, the court below was still able to dismiss the appellant's claim in its entirety. In my view, the Court of Appeal, with respect, was in gross error by dismissing the appellant's claim in its entirety without taking into consideration the respondent's express admissions as contained in its pleading and its letters, Exhibits H and J. (p. 1688 C)

Findings of fact

6. In the present case there is abundant evidence on record from which the trial court arrived at its findings of fact which are neither perverse

nor otherwise erroneous. I think the Court of Appeal was in definite error to reverse these findings of fact of the trial court. The conclusion I therefore reach is that all three issues under consideration in this appeal must be resolved in favour of the appellant. (p. 1689 A)

B NOTABLE POINTS OF INTEREST

IGUHJSC

1. Onus of proof - How it shifts in civil cases

With profound respect to the court below, it is beyond dispute that the onus of proof in civil cases, generally speaking, lies on the plaintiff to satisfy the court that he is entitled, on the evidence brought by him, to the claim he asserts and that he must rely on the strength of his own case and not on the weakness of the defence. It is equally true on the issue of the burden of adducing evidence in civil cases that the onus probandi rests upon the party who would fail if no evidence at all, or no more evidence, as the case may be, were given on either side. Such onus probandi therefore rests, before evidence is gone into, upon the party asserting the affirmative of the issue; and it rests, after evidence is given, upon the party against whom the court, at the time the question arises, would give judgment if no further evidence were adduced. (p. 1684 G)

E

2. Where defendant's case supports that of plaintiff

It is further trite that the rule that a plaintiff, in establishing his claim, must succeed on the strength of his own case and not on the weakness of the defence does not apply where the defendant's case itself supports that of the plaintiff and contains evidence on which the plaintiff is entitled to rely. Where the case of the defendant lends support to that of the plaintiff, the trial Judge cannot ignore it in arriving at a conclusion as to who is entitled to the judgment of the court. (p. 1685 B)

G REPRESENTATION

Parties absent and unrepresented

CASES REFERRED TO

- Kodilinye v. Mbanefo Odu 2 W. A.C.A. 336 at 337
H Akunwata Nwagbogu v. Chief Onoli Ibeziako (1972) 1 All N.L.R. 200
Omoregbee v. Lawani (1980) 3 - 4 S.C. 108 at 117
Akinfosile v. Ijose (1960) S.C.N.L.R. 447
Muraina Akanumu v. Adigun and Another (1993) 7 N.W.L.R. (Part 304) 218 at 231

Obmiami Brick and Stone Ltd. v. A.C.B. Ltd. (1992) 3 N.W.L.R. (Part229)
260 at 293

Honika Sawmill (Nig.) Ltd. v. Mary Hoff (1994) 3 KLR 57

RULES REFERRED TO

Supreme Court Rules 0.6. r. 8(7)

B

LEAD JUDGMENT BY IGUH JSC

In the Ikeja Judicial Division of the High Court of Lagos State, the plaintiff instituted an action against the defendant claiming as follows:-

“The sum of N243,869.27 (Two hundred and Forty three Thousand, Eight Hundred and Sixty Nine Naira and Twenty-seven Kobo) being outstanding balance of premiums on various insurances effected at the request of the defendant by the plaintiff on defendant’s goods, properties and personnel together with 6% interest per annum on the said sum from the 31st October 1982 until judgment is given in this Suit, which the defendant has refused and/or neglected to pay despite repeated demands.”

Pleadings were ordered in the suit and were duly settled, filed and exchanged.

The pleadings filed by the parties in the cause appear markedly precise and brief. It is pertinent to set out paragraphs 3 to 8 of the Statement of Claim which, in the main, summarised the case for the plaintiff. These aver as follows -

“3. Under an arrangement in 1978 with the plaintiff, the defendant company insured its goods, properties and personnel through the brokerage of the plaintiff company.

F

4. Pursuant to the said arrangement the plaintiff underwrote the various insurances requested by the defendant and duly notified the defendant of the nature of insurance effected, the period covered, policy numbers and the premiums payable.

5. The defendant accepted the premiums established and made some payments in part settlement thereof to the plaintiff.

6. The plaintiff debited the account of the defendant for the unpaid balance of premiums and advised the defendant by monthly Statements of Account.

7. The defendant defaulted in the payment of outstanding balance of insurance premiums and have refused and/or neglected to settle the account in full.

8. At the trial the plaintiff will rely on:-

(a) The last Statement of Account dated 31/10/82 showing the

debit notes numbers, dates covered, insurance policy numbers and balance of premiums outstanding.

(b) Defendant's letter dated 27/3/79 admitted liability for N270,506.29 as at February 27, 1979, with proposal to liquidate the debt by N50,000.00 monthly.

B *(c) Copies of memoranda of Insurance effected for the defendant and the premiums debited."*

The defendant, while denying "each and every allegation of fact contained in the Statement of Claim" answered in paragraphs 2 to 5 of its Statement of Defence as follows:

C *"2. The defendant avers that in 1978 it agreed with a brokerage house to arrange at the usual premiums insurance cover for the properties, goods and personnel of the defendant on a credit basis.*

3. The defendant avers that its letter of 27th March, 1979; mentioned in paragraph 8(b) of the Statement of Claim, was written to Messrs. D C.T. Bowring & Co. (Nigeria) Limited and a total sum of N256,131.79k had been paid by the defendant between March and October, 1979 to the said Messrs. C.T. Bowring & Co. (Nigeria) Limited.

4. The defendant further avers that the plaintiff was not in existence when the contract described in paragraph 2 supra was entered E into and the defendant would therefore contend at the trial of this suit that the plaintiff lacks the legal capacity to sue.

5. The defendant would further contend that the claim is frivolous, speculative and a gross abuse of process."

F At the subsequent trial, both parties testified on their own behalf but called no witnesses.

The plaintiff's case is that it had an arrangement as a brokerage house with the defendant company to secure insurance policy covers on credit basis for the defendant's motor vehicles, machineries, plants and various other properties. It also secured insurance policies in respect of G fire, marine cargo and engineering equipment of the defendant company and covered the defendant's staff under the Workmen Compensation Act. The plaintiff prepared a Debit Note for each and every item of insurance cover transacted on behalf of the defendant and forwarded the same to the defendant company. Copies of the relevant Debit Notes are H Exhibits D - D16. The plaintiff also issued monthly statements of account to the defendant showing all unpaid premiums in respect of the insurance transactions concluded on behalf of the defendant. The last monthly statement of account forwarded to the defendants in respect of the said transactions are Exhibits B - B3.

Exhibits B - B3 show N243,869.27 as the outstanding balance payable by the defendant company to the plaintiff in respect of various insurance transactions concluded by the plaintiff on behalf of the defendant. The defendant company, by Exhibit C dated the 27th March, 1979, acknowledged owing the plaintiff an outstanding balance of N270,508.29 as at the 27th February, 1979. B

The defendant company admitted writing Exhibit C to the plaintiff accepting liability to the tune of N270,508.29 being outstanding premium on various insurance. Its case is that it had paid N275,000.00 to C.T. Bowring and Company (Nigeria) on account of various instalments. Exhibits E- E6 are some of the receipts C.T. Bowring and Company C (Nigeria) issued to the defendant in respect of the said payments. It claimed that the sum of N250,000.00 was paid to C.T. Bowring (Nigeria) in 1979 while another N250,000.00 was paid to it in 1980. The defendant admitted that the plaintiff Company was the successor of C.T. Bowring and Co. (Nigeria). The defendant company did not think it owed any money D to the plaintiff company when the former discontinued business with the latter in 1981. It however admitted under cross-examination that the defendant wrote Exhibit H dated 2nd March, 1981 to the plaintiff admitting its indebtedness to the plaintiff in the sum of N110,511.33. The contents of Exhibit H were confirmed by the defendant company in Exhibit J. E

At the conclusion of hearing, Agoro, J., as he then was, after an exhaustive review of the evidence on the 19th day of April, 1984 found for the plaintiff against the defendant in the sum of N243,802.13 being outstanding balance of premium on the aforesaid various insurance agreements.

Dissatisfied with this decision of the trial court, the defendant F lodged an appeal against the same to the Court of Appeal, Lagos Division which in an unanimous decision allowed the appeal on the 7th day of May, 1987, set aside the judgment of the High Court and dismissed the plaintiff's case in its entirety.

Aggrieved by the said decision of the Court of Appeal, the plaintiff G has appealed to this court. I shall hereinafter refer to the plaintiff and the defendant in this judgment as the appellant and the respondent respectively.

Six grounds of appeal were filed by the appellant against the said decision of the Court of Appeal. I do not find it necessary to reproduce H them in this judgment. It suffices to state that the appellant, pursuant to the rules of this Court, filed its brief of argument in which three issues were identified for the determination of this court. These are as follows –

“1. Whether on the pleadings and the evidence the Court of

Appeal was justified in holding that the plaintiff had not proved its claim.

2. *Whether having regard to the defendant's admissions in Exhibit H the Court of Appeal was justified in dismissing the plaintiff's claim in its entirety.*

3. *Whether having regard to the uncontradicted evidence of PW1 B on the monthly issuance by the plaintiff of Exhibits B - B3 the Court of Appeal was justified in criticising the way the learned trial Judge made use of the Exhibits in his assessment and appraisal of the totality of the evidence before him"*

The respondent, although served with the appellant's brief of C argument, failed to file its respondent's brief.

At the oral hearing of the appeal before us, both parties were absent and were unrepresented by counsel. Pursuant to Order 6 Rule 8(7) of the Rules of this Court, the appeal was taken as argued on the appellant's brief of argument filed on the 9th day of February, 1990.

D The appellant in its written brief of argument contended that the Court of Appeal was in error by holding that the credible and uncontradicted evidence of PW 1 together with the Exhibit tendered were insufficient to establish the appellant's case. It was submitted that the Court of Appeal failed to take the respondent's express admissions of its indebted- E ness to the appellant into consideration and thus erroneously dismissed the appellant's claim in its entirety. It was argued that the court below misdirected itself when, in the face of Exhibits B - B3, it held that the appellant failed to prove each and every item of the insurance agreements in issue. Relying on the decision in Akinloye and Another v. Eyiola and F others (1968) 1 NMLR 92 at 95, the appellant finally submitted, quite rightly, that where a court of trial unquestionably evaluates the evidence and appraises the facts, it is not the business of the Court of Appeal to substitute its own views for those of the trial Court. It was argued that the trial Court having carefully evaluated the evidence and made findings G thereupon, the court below ought not without cause to embark on a fresh appraisal of the evidence and to overturn the findings of the trial Court.

It is clear to me that the three issues formulated by the appellant for the determination of this Court relate to one basic question namely, whether on the pleadings and evidence, the court below was right in H holding that the appellant had not proved its claim. I therefore find it convenient in this judgment to consider all three issues together.

Turning now to the pleadings, although the respondent denied each and every allegation of fact averred in the appellant's Statement of Claim, it expressly admitted in paragraph 2 of its Statement of Defence

that in 1978, it agreed with C.T. Bowring and Company (Nigeria) to arrange at the usual premiums, insurance covers for its diverse properties on credit basis. D.W.1 the respondent's sole witness at the trial, admitted in his evidence that the appellant was the successor of the said C.T. Bowring and Company (Nigeria). This evidence is fully supported by the appellant's certificate of incorporation, Exhibit A. No issue, however, was joined by the parties in this appeal on the question of the appellant's legal successorship to C.T. Bowring and Company (Nigeria). I will now examine the central issue for determination in this appeal which is whether the appellant was able to establish its claim.

In this regard, the learned trial Judge was in no difficulty in holding that the appellant, but for its claim in respect of Debit Note No. M82/16964 dated 22nd January, 1982 for a premium of N67.14 had established the rest of its claims. Said he -

"The evidence before the court, which I accept, showed that the defendant Company had since 1978 been doing various insurance business on credit basis with Messrs. C.T Bowring and Company (Nigeria); and when the name was changed in 1979, the defendant company continued to do various insurance business on credit basis with the Insurance Brokers of Nigeria as could be observed from the letters tendered in evidence

The evidence of Mr. Abubakare Olayiwola Shewu, which I accept, showed that the Insurance Brokers of Nigeria arranged various Insurance covers credit basis for the defendant company in respect of Workmen's Compensation, Fire, Cash in Transit, Motor vehicle and Motor Cycle Comprehensive, Marine Cargo and Engineering Inspection for which Debit notes marked Exhibits D - D16 were forwarded to the defendant company. The Statement of Account marked Exhibits B - B3 shows an outstanding balance of N243,869.27 as at 31st December, 1981 due and payable by the defendant company. The witness also said that the plaintiff had already paid the premiums to the Insurance Companies and the Insurance Certificates had been forwarded to the defendant company.

I have examined the 33 items of claim in Exhibits B- B3 in relation to the letter, Exhibit "G' by which the defendant company discontinued business dealings with the plaintiff and it has been discovered that Debit Note No. M82/16964 dated 22nd January, 1982 for a premium of N67.14 should be deducted from the outstanding balance of N243,869.27. This will leave a balance of N243,802.13 due and payable by the defendant company. The claim for interest will be refused because it was not in the nature of plaintiff's business to claim interest."

He concluded his judgment as follows -

"It seems to me that the plaintiff is entitled to the return of premium paid on behalf of the defendant company in respect of various classes of insurance cover arranged by the plaintiff on credit basis. Accordingly, it is adjudged that judgment be entered in favour of the plaintiff against the defendant company in the sum of N243,802.13 together with costs to be assessed by the court."

The Court of Appeal, on the other hand, per the lead judgment of Mohammed, J.C.A. as he then was, to which Kutigi, J.C.A. as he then was, and Kolawole, J.C.A. concurred viewed the matter differently as follows:-

"The ultimate burden of establishing a case in civil causes is as disclosed on the pleadings and it is the party who would lose the case if on completion of pleadings and no evidence is led that has the general burden of proof - Murana Elemo & Ors. v. Fasasi Omolade and Ors. (1968) NMLR 359.

See also S 136(1) & (2) of the Evidence Act. In the case in hand since the claim has been disputed by the appellants the onus of proof is squarely on the respondent to establish, through evidence, each and every item of the insurance agreements enumerated on Exhibits B-B3. It is wrong to throw the Exhibits at the face of the Court and expect it to do the reconciliation of individual entries in order to establish whether or not the amount claimed had been settled or not. The learned trial Judge was in error to do the examination himself without evidence supporting such exercise"

It concluded -

"..... the onus is on the respondent to prove each agreement and establish the liability of the appellant still outstanding against each policy. The evidence adduced by the witness for the respondent, including the documentary exhibits tendered, fell short of the essential proof required to establish the existence of the various insurance agreements as averred in paragraph 4 of the Statement of Claim.

In the result the respondent had failed to prove its claim and accordingly this appeal must succeed. It is allowed. The judgment of the Lagos High Court in suit No. ID/381/83 delivered on 19th April, 1984 is set aside. The claim of the plaintiff/respondent before the High Court is dismissed."

With profound respect to the court below, it is beyond dispute that the onus of proof in civil cases, generally speaking, lies on the plaintiff to satisfy the court that he is entitled, on the evidence brought by him, to the claim he asserts and that he must rely on the strength of his own case and not on the weakness of the defence. See Kodilinye v. Mbanefo Odu (1935) 2 WACA 336 at 337, Frempong v. Brempong (1952) 14 WACA

13 etc. It is equally true on the issue of the burden of adducing evidence in civil cases that the onus probandi rests upon the party who would fail if no evidence at all, or no more evidence, as the case may be; were given on either side. Such onus probandi therefore rests, before evidence is gone into, upon the party asserting the affirmative of the issue; and it rests, after evidence is given, upon the party against whom the court, at the time the question arises, B would give judgment if no further evidence were adduced.

It is further trite that the rule that a plaintiff, in establishing his claim, must succeed on the strength of his own case and not on the weakness of the defence does not apply where the defendant's case itself support that of the plaintiff and contains evidence on which the plaintiff is entitled to rely. Where C the case of the defendant lends support to that of the plaintiff, the trial Judge cannot ignore it in arriving at a conclusion as to who is entitled to the judgment of the court. See *Akunwala Nwagbogu v. Chief Ogo Ibeziako* (1972) 1 All NLR 200, *Josiah Akinola v. Oluwo* (1962) 1 SCNLR 352; (1962) 1 All NLR 225, *Oduaran v. Asarah* (1972) 1 All NLR (Pt. 2) 137 etc. D

In the first place, it cannot be doubted that having regard to the pleadings and the testimony of PW1 before the court, there is ample evidence in support of the essential and material averments in paragraphs 4, 5 and 6 of the Statement of Claim. This evidence, if credible and accepted by the court, was clearly sufficient to establish the appellant's claim. Not one single question was put by the respondent 's learned counsel to PW1 in relation to the Debit Notes, Exhibits D - D16 which chronologically set out the various insurance covers transacted by the appellant at the request and on behalf of the respondent. Not even the viva voce evidence adduced on behalf of the respondent company as much as contradicted or controverted, no matter how vaguely, the accuracy or otherwise of the said Exhibits D - 16, which, in my view, constituted a vital aspect of the appellant's case. This is because they serially reflected the particulars of each and every insurance cover that was the subject matter of this action. In such a situation where material evidence given by a party to any proceedings was not challenged or rebutted by the opposite party who had the opportunity to do so, it is always open to the court seised of the matter to act on such unchallenged evidence before it. See *Isaac Omoregbe v. Daniel Lawani* (1980) 3-4 SC. 108 at 117, *Odulaja v. Haddad* (1973) 11SC. 357, *Nigerian Maritime Services Ltd. v. Alhaji Bello Afolabi* (1978) 2 SC. 79 at 81, *Adel Boshali v. Allied Commercial Exporters Ltd.* (1961) 2 SCNLR 322; (1961) All NLR 917, *S.O. Nwabuoku v. P.N. Otthi* (1961) 2 SCNLR 232; (1961) 1 All NLR.487 at 490 etc. E F G

In the present case, the appellant's evidence through PW1, its

sole representative at the hearing, including the documentary exhibits tendered is that it arranged insurance covers for the respondent's diverse properties, prepared the Debit Notes, Exhibits D-D 16 in which each and every item of such transaction was set out and forwarded to the respondent, that the appellant issued monthly statements of account, Exhibit B-B3 of the unpaid premiums which were sent to the respondent and that as at the date of the writ of summons in the suit, the sum of N243,869.27 was the outstanding balance payable by the respondent to the appellant. The Debit Notes, Exhibits D- D 16 were not cross-examined upon in any way. Even the statements of account, Exhibit B-B3, was hardly seriously challenged by the respondent at the hearing. **In my view, the court below was in definite error by holding that the evidence of PW 1 fell short of the essential proof required to establish the existence of the various insurance contracts averred in paragraph 4 of the Statement of Claim.**

The court below gave as its reason for holding that there was insufficient proof of the said insurance agreements when it stated that since the claim had been disputed by the respondent in its pleadings, the onus of proof was squarely on the appellant to establish each and every item of the insurance agreements enumerated in Exhibit B-B3. The Court of Appeal was of the view that what the appellant did was to *"throw the exhibits at the face of the court and expect it to do the reconciliation of individual entries in order to establish whether or not the amount claimed had been settled or not."*

No doubt, the onus of proof was on the appellant to establish each and every item of the insurance agreements concerned. This the appellant did by meticulously setting out the detailed particulars of each and every such agreement in Exhibits D-D 16, showing in a most methodical, but simple manner, the Debit Note in respect of each of them, the precise nature of the insurance effected, the exact date of the transaction, the period of time covered by each policy, the policy number of the transaction as well as the precise premium payable in respect thereof. These insurance agreements are carefully itemised, one after the other, in Exhibit B - B3 again showing their relevant Debit Note numbers, the dates of the transactions, the policy numbers, the precise nature of the cover, the premiums payable and the outstanding balance of premiums remaining unpaid. Exhibits D - D16 and B - B3 were expressly pleaded in paragraph 8 of the appellant's Statement of Claim and were tendered and admitted in evidence without any objection. Exhibits D - 16 in particular were neither cross-examined upon or challenged by the respondent nor did the respondent company attempt in any manner to falsify or challenge the same all through the viva voce evidence of DW1. In my view, the finding of the Court of Appeal that the

evidence tendered by the appellant fell short of the proof required to establish the various insurance agreements in issue is, with respect, totally misconceived in that it definitely failed to appreciate adequately or at all the full impact or detailed contents of Exhibits D - D16 which were tendered and admitted in evidence by consent but were not challenged or cross-examined upon by the respondent. B

It seems to me that the court below in holding that the insurance contracts were not proved laid undue weight on the fact that the respondent in its pleading disputed the appellant's claims. It did not appear, with respect, that the court below adverted its mind to the fact that there was hardly any evidence from the respondent to controvert the material facts upon which the appellant grounded its claim. It is true the respondent in its Statement of defence generally denied each and every allegation of fact contained in the Statement of Claim. But an averment in pleadings is no evidence and can never be so construed. On the contrary, it has to be proved by evidence subject however to admission by the other party. C
See *Akinfosile v. Ijose* (1960) SCNLR 447, *Muraina Akanmu v. Adigun and Another* (1993) 7 NWLR (Pt. 304) 218 at 231, *Obmiami Brick and Stone Ltd. v. A.C.B. Ltd.* (1992) 3 NWLR (Pt. 229) 260 at 293, *Honika Sawmill (Nig.) Ltd. v. Mary Hoff* (1994) 2 NWLR (pt. 326) 252 at 260 etc. **It seems to me plain, from the evidence before the trial court and the findings of the learned trial Judge that the appellant satisfactorily established the various insurance contracts in issue and that the respondent was clearly unable to puncture the appellant's case. In my view, the court below was in error to have held otherwise.** D E F

Another material aspect of this case is the respondent's admission of liability to the tune of N270,508.29 by its letter of the 27th March, 1979, to the appellant, Exhibit C being outstanding premium on various insurance covers. This is in answer to paragraph 8(b) of the Statement of Claim where the appellant pleaded the said Exhibit C in which the respondent admitted liability in the sum of N270,508.29 as at the 27th February, 1979 with the proposal to liquidate the debt by N50,000.00 monthly instalmental payments. The respondent by paragraph 3 of its Statement of Defence admitted writing Exhibit C to C.T. Bowring and Company (Nig.) but claimed that a total sum of N256, 131.79 had been H paid by it between March and October 1979. In Court, however, the respondent claimed that it paid the sum of N250,000.00 to C.T. Bowring and Company (Nigeria) in 1979 while N250,000.00 was paid in 1980. Exhibits E - E5 being receipts from C.T. Bowring and Company (Nigeria)

on various dates in 1979 were tendered in evidence at the hearing. The only receipt of its alleged payment of N250,000.00 in 1980 to the appellant was Exhibit E6 for N25,000.00 No other receipt was tendered by the respondent for the balance of N225,000.00 it allegedly paid to the appellant.

It seems to me both from the pleadings and the case for the respondent that it claimed to have fully paid the amount in issue to the appellant. This being so, the onus of proof was upon it to establish this defence by tendering the relevant receipts as it did in respect of its 1979 payments. This it failed to do.

Reference may also be made to Exhibit H by which the respondent admitted an outstanding indebtedness of N110,511.33 to the appellant. There is also Exhibit J. dated the 24th April, 1981 by which the respondent reconfirmed this outstanding balance. **In a civil action, admission by a party are evidence of the facts asserted against but not in favour of such a party although they are not estoppels or conclusive against the party against whom they are tendered. See Okai II v. Ayikai II (1946) 12 WACA 31. In the face of these admissions, the court below was still able to dismiss the appellant's claim in its entirety. In my view, the Court of Appeal, with respect, was in gross error by dismissing the appellant's claim in its entirety without taking into consideration the respondent's express admissions as contained in its pleading and its letters, Exhibits H and J.**

Finally, the law is settled that where a court of trial unquestionably evaluates the evidence and justifiably appraises the facts, it is not the business of the Court of Appeal to substitute its own views for the views of the trial court. See Akinloye and Another v. Eyiola and anors (1968) NMLR 92 at 95, Enang v. Adu (1981) 11 - 12 SC. 25 at 39, Woluchem v. Gudi (1981) 5 SC. 291 at 320. In the present case, the learned trial Judge after a careful evaluation of all the evidence led in the case found that the appellant is the legal successor to C.T. Bowring and Company (Nigeria) with regard to the relevant insurance contracts in issue, that the respondent had since 1978 been doing various insurance business on credit basis with the appellant until their contract was terminated, that a debit note was raised by the appellant in respect of each insurance contract and forwarded to the respondent, that the relevant debit notes covering the contracts in issue in this case are Exhibits D - D16, that Exhibit B - B3 reflects the relevant insurance contracts in issue and that the outstanding balance due and payable by the respondent to the appellant in respect of the said insurance contracts is N243,802.13. What the Appeal Court ought to have done was to find out whether there is evidence on which the trial

court could have acted. Once there is such evidence on record from which the trial court made its findings of fact, the appellate court cannot interfere. See Akpagbue v. Ogu (1976) 6 SC. 63, Odofin v. Ayoola (1984) 11 SC. 72, Amadi v. Nwosu (1992) 5 C NWLR (Pt. 241) 273 at 280 etc.

In the present case there is abundant evidence on record from which the trial court arrived at its findings of fact which are neither perverse nor otherwise erroneous. I think the Court of Appeal was in definite error to reverse these findings of fact of the trial court. See Maja v. Stocco (1968) 1 All NLR 141 at 149, Woluchem v. Gudi (1981) 5 SC. 291 at 295 - 296.

The conclusion I therefore reach is that all three issues under consideration in this appeal must be resolved in favour of the appellant.

This appeal accordingly succeeds and it is hereby allowed. The judgment and orders of the Court of Appeal are hereby set aside. The decision of the trial Court is hereby restored together with the order for costs therein made. The appellant is entitled to the costs of this appeal against the respondent which I fix at N1,000.00 in this Court and N500.00 in the Court below.

OGUNDARE JSC

I agree entirely with the reasoning and conclusion contained in the judgment of my learned brother, Iguh, J.S.C. just delivered, the draft of which I had the privilege of reading before now, I have nothing more to add.

I subscribe to the order for costs made in the said judgment.

OGWUEGBU JSC

I was privileged to have read in draft the judgment which has just been delivered by my learned brother Iguh, J.S.C. I agree with him that the appeal should be allowed. The Court of Appeal was in error in holding that the evidence led by the plaintiff was insufficient to establish his case when the said evidence was cogent and uncontradicted.

It is also strange that the Court below dismissed the plaintiffs case in its entirety without taking into consideration the defendant's express admission contained in Exhibits "H" and "J" of its indebtedness to the plaintiff/appellant in the sum of N110,511.33 as at 31:1:81.

I will also allow the appeal and I endorse all the orders contained in the judgment of my learned brother, Iguh, J.S.C.

ONU JSC

I had had before now the advantage to read in draft the judgment of my learned brother, Iguh J.S.C. just delivered and I agree with his reasoning and conclusion. I adopt the same as mine and have nothing further to add thereto.

B _____

ADIO JSC

I have had the benefit of reading, in advance, the judgment just delivered by my learned brother, Iguh, J.S.C. and I agree that this appeal C should be allowed. There was evidence, including an admission, on the part of the respondent, establishing the liability of the respondent. I too allow this appeal and abide by the consequential orders.

Appeal allowed.

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