

**SUPREME COURT OF NIGERIA**  
27TH SEPTEMBER. 1996. SC. 44/1990  
**CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE,**  
**M. E. OGUNDARE, U. MOHAMMED, A. I. IGUH, JJSC.**

SAVANNAH BANK OF NIGERIA LTD. .... APPELLANT  
AND  
ALHAJI R. A. SALAMI ..... RESPONDENT  
(TRADING UNDER BUSINESS NAME  
OF R. A. SALAMI & SONS)

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***BANKING*** - Dishonouring a cheque - Liability of a bank for so doing -  
When and how does it arise.

***BANKING*** - Guarantee - Condition that the account of the guarantor  
shall be blocked - To maintain a minimum of the amount guaranteed -  
Implication.

***CONTRACTS*** - Extrinsic evidence - Instance when it can be adduced -  
To explain a written document.

**FACTS**

The plaintiff/respondent before the Ogun State High Court filed an action against the defendant/respondent claiming N 50,000.00 as special and general damages for wrongful dishonour of his cheque. The plaintiff issued cheques that he was sure his account balance as at that time should be able to carry. But the cheques were dishonoured. The defendant's reason for dishonouring the cheques was that the plaintiff guaranteed an overdraft facility granted to another person. By reason of this guarantee, plaintiff's account was to be blocked to always ensure it has the sum of N5,000 until the overdraft has been fully repaid. If the cheques in issue were honoured, plaintiff's account would fall short of the N5,000 balance.

The trial court dismissed the plaintiff's action. His appeal to the Court of Appeal was allowed by a majority decision as that court awarded the sum of N10,000.00 to the plaintiff. Being dissatisfied, the defendant has now appealed to the Supreme Court raising a lone issue.

**ISSUE FOR DETERMINATION**

*“Whether the majority of the Court of Appeal (Sulu-Gambari & Ogwuegbu JJ.CA) were right in relying solely on exhibit ‘J’ to conclude that the defendant unlawfully dishonoured the plaintiff's cheques and without taking into consideration evidence of the nature of the trans-*

*action, the circumstances under which the exhibit was written and the intention of the parties to the transaction.”*

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

***Contracts - Extrinsic evidence***

1. It is evidently clear that the Manager of the Bank is a stranger to the terms of the agreement in Exhibit J. That being so, it tails within the exception to the general rule that extrinsic evidence could be adduced to explain what the Manager told PW.2 to inform the respondent to write in a letter which the Manager termed as additional security to the guarantee. It is quite in order to permit the Manager to establish through evidence what he actually told PW.2 orally as a condition for the guarantee of the loan (p. 1744 F)

***Banking - Guarantee***

2. The evident of PW.2 confirmed what the Manager told the Court was the condition of the guarantee. Those conditions were clearly spelt out ill Exhibit ‘S’. I therefore entirely agree with the opinion of Akanbi. JCA. (as he then was) in the minority judgment that if the construction of the majority justices to Exhibit T is without reference to the circumstances that brought it to life, the document would be rendered useless and guaranteeing nothing. If the account of the respondent is not blocked to maintain a minimum of N5,000.00 during the pendency of the overdraft, what is the wisdom of the Bank in insisting in blocking the account in die first place. The respondent could clear all the funds in his current account since the bank could not dishonour his cheques during the pendency of the overdraft. Thus, if PW.2 defaulted in paying back the overdraft by which time the account of the respondent was without any credit balance, blocking tin account would be die most ridiculous and absurd exercise. I therefore agree with the minority judgment that the learned trial judge was right that at tin time the cheques of the respondent were presented before the bank the amount in his current account would not leave the mandatory N5,000.00 which had been blocked pending the settlement of the overdraft. (p. 1744 G)

***Dishonouring a cheque***

3. There are several limitations to the banker’s duty to honour a cheque drawn by the customer. First, the banker is under an obligation to honour a cheque only if the customer’s account is either actually in credit, or where it is in debit, if the customer has been given an overdraft. Thus, if

the customer has made a deposit, but a cheque is presented before the banker has had reasonable time for crediting the amount deposited into his account, he is not liable if he dishonours the cheque. The Manager in the case in hand explained that when the cheques were presented the N4.000.00 which the respondent directed to be paid into his account had not yet been credited to the account. It is therefore wrong to hold the bank liable for the dishonour of the respondent's cheques if the banking practice is taken into consideration. (p. 1745 F)

## **NOTABLE POINTS OF INTEREST**

### **MOHAMMED JSC**

#### ***1. Written agreement - When extrinsic evidence may be allowed***

It is trite law that when a transaction has been reduced into writing by the agreement of the parties extrinsic evidence is inadmissible to contradict, vary, add to or subtract from the terms of the document. However, a stranger to the agreement could not be precluded from proving the truth of what had been agreed in order to establish the ignorance, carelessness or fraud of the parties. (p. 1744 C)

### **IGUHJSC**

#### ***2. Whether proof of oral term can be given***

Where a contract, not required by law to be in writing, purports to be contained in a document which the court is justifiably satisfied was not intended to express the whole agreement between the parties, proof may be given of any omitted or supplement oral term, expressly or impliedly agreed between them before or at the time of the execution of the document, if it be not inconsistent with the documentary terms. Even where there exists a contract purporting to be fully expressed in writing, whether required by law to be so or not, proof may be given of a prior or contemporaneous oral agreement or warranty, not inconsistent with the document, and which forms part of the consideration for the main contract. However both the terms of the collateral agreement and animus contrahendi of the parties thereto must be strictly proved. The burden of proof is upon the party who alleges non-completeness of the full terms of the document. (p. 1753 C)

#### ***3. Extrinsic evidence of oral agreement - Whether admissible***

Another qualification to the general rule is where there exists a separate oral agreement constituting a condition precedent and with reference to any obligation under a contract. In such circumstance extrinsic evidence of such oral agreement is admissible in interpreting the contract. See

Section 132 of the Evidence Act. And although evidence of surrounding circumstances may not be admissible for the purpose of adding to a deed, a stipulation to which the parties did not intend by that deed to agree; it the court, knowing the terms of a deed and all the circumstances surrounding its execution, is satisfied that the parties intended by that instrument to agree to B terms which though not clearly expressed, are in its belief to be implied in it, there is no reason why it should not give effect to it. Extrinsic evidence to some extent may therefore, be admissible to show the true nature of the transaction or the apparent intention of the parties although such evidence may vary or add to the written instrument. (p. 1753 F) C

C

**REPRESENTATION**

Appellant not represented

A. Osinuga, for the respondent

**D CASES REFERRED TO**

Marzetti v. Williams (1830) IB & Ad. 415, 424

Webster v. Higgins (1948) 2 All E.R. 127

Strongman (1945) Ltd v. Sincock (1955) 2 Q.B. 525

Tucker v. Bennet 38 Ch. D 1 at 9

E Government of Kelantan v. Duff Development Company (1923) A.C. 395 at 412

Hamlyn v. Wood (1891) 2 Q.B.

Olagunju v. Raji (1986) 5 N.W.L.R. (Part 42) 408 at 419

**F STATUTE REFERRED TO**

Evidence Act s. 132

**LEAD JUDGMENT BY MOHAMMED JSC**

G The plaintiff, who is respondent in this appeal, instituted an action before the High Court of Ijebu-Igbo, Ogun State, and claimed against the defendant N50,000.00 as special and general damages for wrongful dishonour of his cheques.

H The facts which gave rise to this appeal are in the following narrative:

Alhaji R.A. Salami maintained a current account No. 074 with the appellant at Ijebu-Igbo branch. The respondent, on 5th November, 1984, issued out two separate cheques for N1,000.00 and N3,000.00 in favour of one Ladipo Sodeinde and Alhaji Ileaje respectively. Again, on

31st December, 1984, he issued out cheque No. 119/C006534 for the sum of N2,000.00 and another cheque No. 119/006535 for the sum of N1,000.00. Both cheques were issued in favour of his son, Mr. Isiaka Ayodele, with special instruction to his son that if he collected the money he should deliver it to any of his friends coming from Abuja. The money was to be used for the joint venture the respondent was executing with his friend at Abuja. All the cheques were dishonoured by the appellant. The respondent demanded for an apology from the bank for dishonouring his cheques when he had enough funds in his account to meet the amount in the cheques. When the apology was not given he instituted this action.

Pleadings were ordered, duly filed and delivered. The respondent gave evidence showing that he had enough funds in his current account No. 074 to meet the amount requested to be drawn in all the dishonoured cheques. His second witness was one Alhaji Rahman Olalere Yinusa. Part of his evidence touches the main issue concerning this appeal. When PW2 was cross-examined part of his reply reads thus: D

*"I can read and write. I agree that the overdraft given to me was for a period of 3 months. The Manager of the defendant Bank stated the conditions under which the overdraft would be approved. I also signed a paper in October 1984 in connection with this overdraft."*

*Letter of Approval dated 22/10/84 is admitted and marked Exhibit 'L'. Witness continues: One of the conditions is that the guarantor must be a customer of the defendant Bank. Another condition is that the guarantor's account must be good: I first nominated one Popoola as a guarantor. Popoola is a wealthy man. He later refused to go through with the formal process because according to Popoola, he guaranteed someone who later died and as at that time, he (Popoola) was still paying the debt. Before he said this, he had signed the formal guarantor's form.* E F

*Witness reads out Clauses 4 and 9 of Exhibit "L". The Manager told me that guarantor's account must not fall below N5,000.00 during the pendency of the loan to me. I explained this to the plaintiff."* G

*The case for the appellant was given through six witnesses. But the most important of them is the evidence of Mr. Oluyemi Kuforiji the Manager of the respondent bank at Ijebu-Igbo branch. Part of his evidence is as follows:*

*During October 1984, Alhaji Yinusa applied for credit facilities. I looked at the account ledger in his name. He told me the purpose he wanted the money i.e. to buy drugs. He asked for N5,000.00*

*I gave conditions under which I would approve the overdraft. I told him he should have a fixed amount of N5,000.00 in his account or*

*someone with N5,0000.00 in his savings or current account. This amount of N5,000.00 would be used to support the overdraft. This is known as personal guarantee supported with cash. This means that the account of the guarantor must not fall below N5,000.00 at any time before the overdraft is fully repaid. In other words, the guarantor's account is blocked to the extent of N5,000.00. I repeat, the account blocked must not be allowed to reduce beyond N5,000.00. On this arrangement, Alhaji Salami's account would not be allowed to go below the sum of N5,000.00"*

The respondent told the trial court that on 5th November, 1984, he instructed his son to pay N4,000.00 into his current account and after payment he was given a teller. The teller was admitted as Exhibit "G". The respondent however, admitted during cross examination that the Manager told him that at the time his cheque for N1,000.00 was presented for cashing his account's credit balance would fall below N5,000.00. The respondent however denied any knowledge that the condition of his standing as guarantor for Alhaji R.O. Yinusa was that his account must not fall below N5,000.00.

The learned trial Judge after considering all the evidence adduced found, in a well considered judgment, that the dishonour of the respondent's cheques was not wrongful. He accordingly dismissed his claim. Alhaji R.A. Salami being dissatisfied with the decision of the trial High Court filed an appeal before the Court of Appeal. In a split decision Sulu-Gambari, J.C.A. and Ogwuegbu, J.C.A. (as he then was) allowed the appeal and awarded N10,000.00 damages in favour of Alhaji Salami. Akanbi, J. C.A. (as he then was) dissented and dismissed the appeal.

The majority decision was based on the interpretation given to Exhibit "J". Exhibit "J" was a letter which Alhaji Yinusa told the trial Court that the Manager told him to get the respondent to write to the bank and say that he (the respondent) agreed to stand as a guarantor to the loan which Alhaji Yinusa applied to be given. Alhaji Yinusa told the Court that he helped the respondent to write the letter. The letter is Exhibit "J" and it reads:

*"This is to certify that I guarantee M/S Royco Chemists and Super-market Limited, Ijebu-Igbo, for the sum of N5,000.00 (Five Thousand Naira) and I also agree that my account be blocked for the same amount in the event the guarantee fails to pay the overdraft on schedule."*

Sulu-Gambari, J.C.A. who wrote the lead judgment, with which Ogwuegbu, J.C.A. concurred, interpreted Exhibit "J" in the following words:

*"It means that in the event the guarantee (borrower) fails to pay the overdraft on schedule, then the guarantor's account would be blocked*

*for the same amount. The schedule of payment was to ensure for the period of three months. In the course of the specified period, the borrower complied with the terms of the repayment schedule. He paid in N1,000.00 and it was in evidence that he never defaulted. Having not defaulted therefore, the account of the guarantor does not become blockable."*

Dissatisfied with the majority decision of the Court of Appeal, B the appellant came before this Court. Learned counsel for the appellant relied on a single issue in prosecuting this appeal. The issue reads:

*"Whether the majority of the Court of Appeal (Sulu-Gambari & Ogwuegbu JJ.C.A.) were right in relying solely on Exhibit "J" to conclude that the defendant unlawfully dishonoured the plaintiffs cheques C and without taking into consideration evidence of the nature of the transaction, the circumstances under which the exhibit was written and the intention of the parties to the transaction."*

Learned counsel for the respondent formulated similar issue and urged that the appeal be dismissed.

Two documents are vital for the determination of this appeal. They are Exhibit "J" (reproduced above) and Exhibit "S" which is the Bank's continuing Guarantee Form. The appellant's case as given in the pleadings is that the condition for the grant of the overdraft by the appellant to PW2 was that the guarantor's account must not fall below E N5,000.00 during the pendency of the overdraft. In the minority judgment of Akanbi, J.C.A. (as he then was) the learned justice disagreed with the interpretation given to Exhibit "J" by the majority judgments. The learned justice quite correctly, in my view, gave reasons for his disagreement with the majority in the following words:

*"In the instant case to construe Exhibit "J" in the manner F appellant's counsel would want me to do, is to overlook the facts of the case, the issue before the court and the nature of the transaction. PW2, the plaintiff's own witness testified to the effect that the condition precedent to the grant of the overdraft was that he should produce a guarantor G who has a current account with the bank, that guarantor must maintain in the account a minimum sum of N5,000.00 of the overdraft and that sum has to be "blocked" for the duration of the overdraft. The witness said that he duly communicated these requirements to his guarantor and it was in those premises that Exhibit "J" was written not by the lending H bank but by the PW2 himself before the guarantor duly signed it. The trial court adverted its mind to these and came to the conclusion that the intention manifested in Exhibit "J" was that as long as PW2 continued to enjoy and operate the overdraft facilities, the appellant has to have at*

*least N5,000.00 in his current account to support the overdraft.”*

It is quite plain, going through the evidence as a whole that Akanbi, J.C.A. was quite right in his interpretation: In his testimony, PW2 told the trial Court that when he approached the bank for the loan, the Manager told him that he must get somebody who had account with the bank and B that the guarantor’s account must not fall below N5,000.00 during the pendency of the loan given to him. PW2 said that he explained the condition to the respondent.

The learned counsel for the respondent argued that the majority decision had no difficulty in holding that the language of Exhibit “J” was C so clear that no parole evidence is required to determine its true meaning. It is trite law that when a transaction has been reduced into writing by the agreement of the parties extrinsic evidence is inadmissible to contradict, vary, add to or subtract from the terms of the document. However, a stranger to the agreement could not be precluded from proving the truth D of what had been agreed in order to establish the ignorance, carelessness or fraud of the parties.

In the case in hand, Exhibit ‘J’ is a letter written to the Bank Manager by the respondent certifying that he stood as guarantor to Messrs Royco Chemists and Supermarket, Ijebu-Igbo, for the overdraft of E N5,000.00. The issue in dispute between the parties is the point where the respondent said in Exhibit ‘J’ that he agreed that his account be blocked for the same amount in the event PW2 failed to pay back the overdraft on schedule. The document was signed by both PW1 and PW 2. PW2, as a matter of fact explained in his evidence before the trial court that he F helped the respondent who was illiterate to draft the letter, Exhibit ‘J’. **It is evidently clear that the Manager of the Bank is a stranger to the terms of the agreement in Exhibit ‘J’. That being so, it falls within the exception to the general rule that extrinsic evidence could be adduced to explain what the Manager told PW2 to inform the respondent to write in a G letter which the Manager termed as additional security to the guarantee. It is quite in order to permit the Manager to establish through evidence what he actually told PW2 orally as a condition for the guarantee of the loan.**

The evidence of PW2 confirmed what the Manager told the Court was the condition of the guarantee. Those conditions were clearly spelt out in H Exhibit “S”. I therefore entirely agree with the opinion of Akanbi, J.C.A. (as he then was) in the minority judgment that if the construction of the majority justices to Exhibit “J” is without reference to the circumstances that brought it to life, the document would be rendered useless and guaranteeing nothing. If the account of the respondent is not blocked to maintain a minimum of



**N5,000.00 during the pendency of the overdraft, what is the wisdom of the Bank in insisting in blocking the account in the first place. The respondent could clear all the funds in his current account since the bank could not dishonour his cheques during the pendency of the overdraft. Thus, if PW2 defaulted in paying back the overdraft by which time the account of the respondent was without any credit balance, blocking the account would be the most ridiculous and absurd exercise.**

**I therefore agree with the minority judgment that the learned trial Judge was right that at the time the cheques of the respondent was presented before the bank the amount in his current account would not leave the mandatory N5,000.00 which had been blocked pending the settlement of the draft. The learned trial Judge gave his reason why he believed that the cheques presented by the respondent were not dishonoured wrongfully in the following words:**

*"If, on 5/11/84, the opening balance in account No. 074 was N5,979.88 as I have held above, that the agreement between the Bank and the plaintiff is that at all times during the life of the overdraft in favour of PW2, the minimum to remain in that account should not be less than N5,000.00 can it be said that there was sufficient and available fund in this account when Exhibit "B" or "D" was presented on 5/11/84? There was no sufficient and available fund to accommodate either of them or worse still, both. This is so because I believe "that when these two cheques were presented, the payment in Exhibit 'G' had not been made. Similarly, and for the same reason as above, when Exhibits 'E' and 'F' were presented on 31/12/84 (the defendant was not sure that Exhibit 'E' reached the Bank 0031/12/84) there was no sufficient and available fund in the account 074 to accommodate these cheques."*

**There are several limitations to the banker's duty to honour a cheque drawn by the customer. First, the banker is under an obligation to honour a cheque only if the customer's account is either actually in credit, or, where it is in debit if the customer has been given an overdraft. Thus, if the customer has made a deposit, but a cheque is presented before the banker has had reasonable time crediting the amount deposited into his account, he is not liable if he dishonours the cheque - See Marzetti v. Williams (1830) 1B. & Ad. 41S, 424. The Manager in the case in hand explained that when the cheques were presented the N4,000.00 which the respondent directed to be paid into his account had not yet been credited to the account. It is therefore wrong to hold the bank liable for the dishonour of the respondent's cheques if the banking practice is taken into consider-**

ation.

In the end, this appeal succeeds and it is allowed. The majority judgment of the Court of Appeal together with all the orders made therein are set aside. If any money had been paid by the respondent, it should be refunded. The decision of the trial High Court which the minority judgment of the Court of Appeal affirmed is hereby confirmed. I award N1,000.00 costs in favour of the appellant.

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#### UWAIS CJN

C I have had the opportunity of reading in draft the judgment read by my learned brother Mohammed, J.S.C. I agree that the appeal has merit.

Accordingly I too allow the appeal and hereby set aside the decision of the Court of Appeal with N1,000.00 costs against the respondent.

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D

#### BELGORE JSC

I had the privilege of reading in advance the judgment of Mohammed, J.S.C. with which I am in full agreement. Parties are bound by their agreement and the lodgments in respondent's account could not support his commitment to the appellant on the overdraft facility granted PW2 which he guaranteed. I find great merit in this appeal and for the fuller reasons in the judgment of my learned brother Mohammed, J.S.C. I also allow this appeal setting aside the majority judgment. I also abide by the consequential orders as to costs made by Mohammed, J.S.C.

F

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#### OGUNDARE JSC

G The plaintiff was at all times material to this action a customer of the defendant bank. Sometime in 1984 he stood guarantor for Royco Chemists and Supermarket Ltd. who had applied for, and was granted, an overdraft facility by the bank in the sum of N5,000.00. A condition of the guarantee was that the plaintiff would keep his current account in such a manner that the balance, at all times while facility was being enjoyed by the borrower, would not fall below the sum of N5,000.00. Apart from the guarantee agreement (Exhibit S) a letter, Exhibit J, was signed by the plaintiff and forwarded to the defendant bank Exhibit "J" reads:

*"The Manager,*

*Savannah Bank (Nig.) Ltd.*

22nd October, 1984

*Ijebu-Igbo,*

*Dear Sir,*

*This is to certify that I guarantee M/S Royco Chemist & Supermarket Ltd. Ijebu-Igbo for the sum of Five Thousand Naira (N5,000.00) and also agreed that my account be blocked for the same amount in event the guarantee fails to pay back the overdraft on schedule.*

B

*Thanks*

*Yours faithfully,*

*R.A. Salami & Sons*

*1 Ramisegun Str.,*

*Oke-Shopin, C*

*Ijebu-Igbo,*

*Ogun State.*

*(Sgd.)*

*R.A. Salami*

*Managing Director”* D

While the overdraft facility remained unpaid, the plaintiff issued cheques on his account which were dishonoured by the defendant bank and, in consequence, he instituted an action against the defendant claiming a total of N50,000.00 special and general damages for wrongful dishonouring of his cheques.

E

At the trial in the High Court of Ogun State, pleadings were ordered, filed and exchanged; evidence was led for the parties. After addresses by learned counsel for the parties, the learned trial Judge (Ajibola J.) in a considered judgment, found that the dishonour of the plaintiff's cheques in question was not wrongful and dismissed plaintiff's action.

F

The plaintiff appealed to the Court of Appeal. In a split decision (Sulu-Gambari J.C.A. and Ogwuegbu, J.C.A. (as he then was), Akanbi, J.C.A. (as he then was) (dissenting) that Court allowed the appeal, set aside the judgment of the trial High Court and entered judgment in favour of the plaintiff in the sum of N10,000.00 general damages with costs. It is against that judgment that the defendant bank has now appealed to this Court upon 3 grounds of appeal.

G

Written Briefs of arguments were filed and exchanged by the parties. In the appellant's Brief the defendant bank poses the following question as calling for determination in this appeal:

H

*“Whether the majority of the Court of Appeal (Sulu-Gambari & Ogwuegbu, JJ.C.A.) were right in relying solely on Exhibit “J” to conclude that the defendant unlawfully dishonoured the plaintiffs cheques and without taking into consideration evidence of the nature of the trans-*

*action, the circumstances under which the exhibit was written and the intention of the parties to the transaction.”*

The plaintiff in his own Brief reframed the question as follows:

“Whether the majority decision of the Court of Appeal, Ibadan, (Sulu-Gambari and Ogwuegbu JJ.C.A.) as to the correct interpretation of Exhibit “J” in coming to the conclusion they reached was right.”

The learned trial Judge had found that the agreement between the Bank and the plaintiff “is that at all times during the life of the overdraft in favour of PW2, the minimum to remain in that account (Plaintiff’s) should not be less than N5,000.00” and that at the time the C cheques in question in this case were presented to the Bank for payment plaintiff had less than that amount in his account. The Court of Appeal (Majority decision) came to a different conclusion on the construction to be placed on the agreement between the parties.

Sulu-Gambari, J.C.A. in his lead judgment observed:

D “The first rule about the construction of documents enjoins that the simple natural meaning of the words be ascribed to them unless this is impossible, and the defendant must be severally precluded from giving oral evidence to disparage the clear expression already reduced for the plaintiff in writing. If a document that is capable of being interpreted E clearly is misconstrued, nobody let alone an illiterate should be made to suffer any detriment for such misconstruction.

I have come to the conclusion in this respect that the learned trial Judge has not given the document, Exhibit “J”, its natural and ordinary meaning and that upon a close reading and study of that document, it is F manifest that what was stated in Exhibit “J” is to the effect that the appellant’s current account No. 074 could be blocked if, and only if, the PW2 (Borrower) defaults in the repayment of the overdraft facility of N5,000.00 (Five Thousand Naira) granted to him, after the expiration of three months. This period of time was supplied by the evidence of DW1 which had already been G quoted at pages 37 to 38 of the record (*supra*).”

The learned Justice of Appeal explained -

“It (Exhibit J.) means that in the event the guarantee (borrower) fails to pay the overdraft on schedule, then the guarantor’s account would be blocked for the same amount. The schedule of payment was for the tenure H for the period of three months. In the course of the specified period, the borrower complied with the terms of the repayment schedule. He paid in N1,000.00 and it was in evidence that he never defaulted. Having not defaulted therefore, the account of the guarantor does not become blockable so as at the time the cheques were being issued and presented for payment

*and were so dishonoured by the bank, the act of dishonouring those cheques amounts to a breach of contract.” (1st brackets are mine)*

Ogwuegbu, J.C.A. in his own contribution, observed:

*“Exhibit ‘J’ to my mind means what it says. That the appellant’s account should be blocked for the sum of N5,000.00 (Five thousand Naira) in the event of the borrower’s failure to repay on schedule i.e. on 31.1.85. There is no evidence that the overdraft facility was due for repayment at the time the cheques were presented. Therefore until there is a default in repayment of the entire facility or any outstanding balance as at 31.1.85, the appellant’s account could not be blocked in the sum of N5,000.00. If the contrary is the case, what would be the position where the borrower is owing only N1,000.00 (One thousand Naira) before 31.1.85 and the appellant who has N4,000.00 (Four thousand Naira) in his account issues a cheque for N2,000.00 (Two thousand Naira) in favour of a third party? Will the said cheque not be honoured having regard to the terms of Exhibit ‘J’? My answer is in the affirmative. One must consider the meaning of the words used and not what one may guess to be the intention of the parties. See Smith v. Lucas (1881) 18 Ch.D.531 at 54a. It is one of the cardinal rules of construction that the court deals with a document according to the clear intention of the parties appearing in the four corners of the document itself. Exhibit ‘J’ is clear and unambiguous and will therefore prevail. This is not a case where the intention of the parties collected from the expressions used in the document does not square with the words used in which case the intention would prevail.*

*A situation might arise where the appellant withdraws all or substantial part of his money in his account before 31.1.85 to the extent that the respondent bank is still owed a larger amount by the borrower. In such a case, the respondent bank should fall back on Exhibit ‘S’ because they failed to stipulate in very clear terms in Exhibit ‘J’ that the account of the appellant should be blocked in the sum of N5,000 (Five thousand Naira) during the duration of the overdraft facility - 31.1.85. If there was any oral agreement, it was embodied in Exhibit ‘J’ and evidence cannot be given to prove its content. See Lagos Timber Co. Ltd. v. Titcombe (1943) 17 NLR 14 and Eke v. Odofin (1961) All NLR 404 at 406.*

*Unfortunately in this case, the expressed intention of the respondent bank in Exhibit ‘J’ is different from what they really desired. See Simpson v. Foxon (1907) p. 54 at 57. The words used in Exhibit ‘J’ must be given their plain ordinary meaning since it will not lead to any absurdity or inconsistency with other expressions used therein or with Exhibit ‘S’.*

*It is my humble opinion that the learned trial Judge miscon-*

*strued the true meaning and purport of Exhibit 'J'. He went outside the four walls of the document without any justification for doing so."*

With profound respect to their Lordships of the Court below they cannot on the evidence be right. To begin with, Exhibit J was written by the plaintiff to the defendant and not the other way round. Secondly, there was evidence, which the learned trial Judge accepted that before Exhibit 'J' was written the Bank Manager explained fully to the plaintiff that he would be required to keep a minimum of N5,000.00 in his account during the period of the overdraft facility to Royco Chemists and Supermarket Ltd. and plaintiff agreed. Exhibit 'J' was written by him in confirmation of his agreeing to the condition. Akanbi, J.C.A. summarized the facts very lucidly in his dissenting judgment when he said:

*"In the instant case to construe Exhibit 'J' in the manner appellant's counsel would want me to do, is to overlook the facts of the case, the issue before the court and the nature of the transaction. PW2, the plaintiff's own witness testified to the effect that the condition precedent to the grant of the overdraft was that he should procure a guarantor who has a current account with the bank, that guarantor must maintain in the account a minimum sum of N5,000.00 of the overdraft and that sum has to be "blocked" for the duration of the overdraft. The witness said that he duly communicated these requirements to his guarantor and it was in those premises that Exhibit 'J' was written not by the lending bank but by the PW2 himself before the guarantor duly signed it. The trial court adverted its mind to these and came to the conclusion that the intention manifested in Exhibit 'J' was that as long as PW2 continued to enjoy and operate the overdraft facilities, the appellant has to have at least N5,000.00 in his current account to support the overdraft. Indeed Exhibit 'L' which Alhaji Yinusa PW2 signed before he was allowed to take advantage of the overdraft facilities as I noted before clearly stipulated that the security was a "personal guarantee supported with a pledged current account No. 074". After all Exhibit 'J' was an "additional security "to Exhibit 'S' which is in common form."*

I agree entirely with the learned Justice of Appeal when he observed:

*"So in my view to construe Exhibit 'J' without reference to the circumstances that brought it to life, is to create an absurd situation, whereby Exhibit 'J' would be rendered a useless piece of document guaranteeing nothing, conferring no right whatsoever and no obligation either. Were that the intention of the parties there would have been no need for Exhibit 'J' to be executed when already Exhibit 'S' already contained some form of guarantee. Equally so, the endorsement referred to in Ex-*

*hibit 'L' would also have been unnecessary. “*

In my respectful view, the interpretation placed on Exhibit 'J' by the learned trial Judge and confirmed by Akanbi, J.C.A is the correct one having regard to the circumstances of this case. And as it is not in dispute that at the times the plaintiff's four cheques were presented for payment he had not up to N5,000.00 in his account, those cheques were rightly B dishonoured by the defendant bank. I accordingly answer the only question placed before us in this appeal in the negative.

It is for the above reasons that I agree with my learned brother Mohammed, J.S.C. that this appeal be allowed. I too allow it, set aside the judgment of the Court below and restore that of the trial High Court C dismissing plaintiff's case. I abide by the order for costs made by my learned brother Mohammed, J.S.C.

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### IGUH JSC

D

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Mohammed, J.S.C. and I agree entirely that there is substance in this appeal and that the same ought to be allowed.

What called for determination before the trial Court was whether the plaintiff's cheques, Exhibits B and D of the 5th November, 1984 for N1,000.00 E and N3,000.00 respectively and Exhibits E and F of the 31st December, 1984 for N1,000 and N2,000.00 respectively were rightly dishonoured by the defendant. The answer to this question is essentially dependent on the main issue for decision in this appeal. This is whether the current account No. 074 of the plaintiff who guaranteed the N5000.00 overdraft facility granted by the defendant to PW2 Alhaji Yinusa, was subject to “*blockage*” in the sum of N5,000.00 F during the subsistence of the facility. Whereas the trial court resolved this issue in the affirmative, the majority judgment of the Court of Appeal was on a contrary view hence this appeal.

With profound respect to the Court of Appeal, it would seem G that it based its judgment solely, but erroneously, on the interpretation of Exhibit J as if that document constituted the contract of guarantee between the plaintiff and the defendant in respect of N5,000.00 overdraft facility granted by the defendant to PW2. Without doubt, the contract between the parties was Exhibit S, the Bank's standard “*Continuing H Guarantee*” form which the plaintiff duly executed. Exhibit J is a mere letter dated the 22nd October, 1984 which PW2, the beneficiary of the overdraft facility, wrote in his own words to the defendant on behalf of the plaintiff. Although the plaintiff signed Exhibit J, it cannot be seriously

argued that it constituted the contract of guarantee between the parties. Although, I am prepared to accept the observation in the minority judgment of the Court of Appeal that Exhibit J, at best, is an “*additional security*” to Exhibit S, it is clear to me that there is no evidence of its acceptance in law by the defendant Bank.

B Turning now to the interpretation of Exhibit J., it is convenient at this stage to reproduce it. It reads thus -

“*The Manager,  
Savannah Bank (Nig.) Ltd.,  
Ijebu-Igbo.*

C *Dear Sir,*

*This is to certify that I guarantee M/S Royco Chemist Supermarket Ltd. Ijebu-Igbo for the sum of five thousand Naira (N5,000.00) and also agreed that my account be blocked for the same amount in event the guarantee fails to pay back the overdraft on schedule.*

D *Thanks*

*Yours faithfully,  
R.A. Salami & Sons  
1, Ramisegun Street,  
Oke-Shopin,  
Ijebu-Igbo,  
Ogun State.*

E

*Sgd.*

*R.A. Salami  
Managing Director.”*

F The appellant’s contention is that although extrinsic evidence is not admissible to contradict or vary a written contract, such evidence is admissible for the purpose of applying it to the facts which the parties had in their mind at the time of the making of the contract or to explain it or identify the subject matter. It was therefore submitted that the evidence of what happened at the time Exhibit J was made is admissible and that the trial Court was right to have relied on the evidence of both the defendant and the plaintiff’s own witness, to arrive at the correct or real meaning of the words therein employed. In the view of the appellant, the only reasonable interpretation that could be given to the contents of Exhibit J is that the account of the guarantor must not fall below N5,000.00 at any time before the overdraft is fully repaid.

The respondent, on the other hand has argued that since the contents of Exhibit J are not ambiguous, the clear duty of the court is to give the document its natural and ordinary meaning and to interpret it as



it is and ignore any extrinsic evidence that may seek to explain the document. The submission is that since the contents of Exhibit J are not ambiguous, the only plain and reasonable interpretation to it is that the plaintiff's current account could only be blocked after PW2 had defaulted in the repayment of the overdraft facility granted to him.

It cannot be disputed that when a transaction has been reduced B to, or recorded in writing by the agreement of the parties, extrinsic evidence is, as a general rule, inadmissible to contradict, vary, add to or subtract from the terms of the document. But there are several exceptions to this general rule of evidence. So, evidence may, again, as a general C rule, be admissible to contradict or vary a private document intended by the parties to operate merely as a collateral or informal memorandum of a transaction, and not as an agreement, contract or other binding legal instrument. Where a contract, not required by law to be in writing, purports to be contained in a document which the court is justifiably satisfied was not intended D to express the whole agreement between the parties, proof may be given of any omitted or supplemental oral term expressly or impliedly agreed between them before or at the time of the execution of the document, if it be not inconsistent with the documentary terms. Even where there exists a contract pur- E porting to be fully expressed in writing, whether required by law to be so or not, proof may be given of a prior or contemporaneous oral agreement or warranty, not inconsistent with the document, and which forms part of the consideration for the main contract. See *Webster v. Higgin* (1948) 2 All E.R. 127; *Strongman* (1945) LD v. *Sincock* (1955) 2 Q.B. 525 etc. However both the terms of the collateral agreement and animus contrahendi of the parties thereto must be strictly proved. The burden of proof is upon the party F who alleges non-completeness of the full terms of the document. See *Tucker v. Bennet* 38 Ch. D. 1 at 9.

Another qualification to the general rule is where there exists a separate oral agreement constituting a condition precedent and with reference G to any obligation under a contract. In such circumstance extrinsic evidence of such oral agreement is admissible in interpreting the contract. See Section 132 of the Evidence Act. And although evidence of surrounding circumstances may not be admissible for the purpose of adding to a deed, a stipulation to which the parties did not intend by that deed to agree; if the Court, knowing the terms of a deed and all the H circumstances surrounding its execution, is satisfied that the parties intended by that instrument to agree to terms which though not clearly expressed, are in its belief to be implied in it, there is no reason why it should not give effect to it. See *Government of Kelatan v. Duff Develop-*

ment Company Ltd. (1923) A.C. 395 at 412 and Hamlyn and Co. v. Wood and Co. (1891) 2 Q.B. 488. Extrinsic evidence to some extent, may therefore, be admissible to show the true nature of the transaction of the apparent intention of the parties although such evidence may vary or add to the written instrument. See too *Olagunju v. Raji and Another* (1986) 5 NWLR (Pt. 42) 408 at 419.

B As I have already observed, Exhibit J. is clearly not the contractor or agreement of guarantee between the plaintiff and the defendant. It is a mere private letter written by PW2, the beneficiary of the overdraft facility to the defendant Bank. PW2, in Exhibit J, employed his own words to the best of his ability to confirm the already concluded transaction between the defendant Bank and the plaintiff as the guarantor of the overdraft facility granted to PW2. This same writer, PW2, unequivocally admitted in his evidence that the defendant Bank's Manager made it clear to him that the guarantor's account must not fall below N5,000.00 during the subsistence of the overdraft facility and that he explained this fact D to the plaintiff. Of his evidence, the learned trial Judge stated thus -

*"PW2 did not claim to be an expert in English language. He put the gist of what the Bank wanted into Exhibit 'J' using the word "blocked" to mean that the minimum in the guarantor's account 074 must not be less than N5,000.00 during the period of the overdraft."*

E I agree entirely with the learned trial Judge on this observation. It is clear to me that it was the very terms of the guarantee as offered by the defendant and accepted by the plaintiff and PW2 that he reconstructed in Exhibit J to the best of his knowledge of the English language.

In the second place, Exhibit J was clearly not the legally binding F extract of guarantee between the parties in the transaction. As already indicated, it was at best an "*additional security*" or collateral memorandum in respect of the same transaction. It is the finding of the learned trial Judge, and this is amply supported by the accepted evidence of the plaintiff's own witness, PW2 that Exhibit J, did not expressly contain the G whole terms of the agreement between the parties. The supplemental oral term expressly agreed to between the parties before Exhibit J was written does not on the evidence of PW2 and the finding of the learned trial Judge appear to be inconsistent with the document itself. Additionally, the defendant on whom the burden of proof rested established both by its H evidence and that of the plaintiff's witness PW2, the non completeness of Exhibit J.

It was further established that there was a prior or contemporaneous oral agreement between the parties which formed part of the consideration for the main contract of guarantee. This prior agreement was

to the effect that the plaintiff's account, while the overdraft facility lasted, must never fall below N5,000.00 to guard against possible failure by PW2 to repay the overdraft on schedule. I think, having regard to the above circumstances, that the trial court was fully justified in coming to the conclusion that the manifest intention of the parties was that as long as PW2 operated and enjoyed his overdraft facilities the plaintiff must have at least N5,000.00 in his relevant account as security against any possible breach of repayment on the part of PW2. B

In view of my above findings, I am unable to subscribe to the view by the majority decision of the court below to the effect that the transaction between the parties is to the effect that the plaintiff's account C could be blocked if, and only if, PW2 defaulted in the repayment of his overdraft facility of N5,000.00.

There is finally the further finding of the learned trial Judge, with which I am in full agreement, that if any of the cheques, Exhibits B, D, E and F were paid at the time of presentation, the balance of money in the D plaintiffs account would be insufficient to support the overdraft. In the circumstance, the trial court was quite right to have held that the plaintiff's relevant cheques were not unlawfully dishonoured and to have dismissed the plaintiff's claim.

It is for the above and the more detailed reasons contained in the E leading judgment of my learned brother, Mohammed, J.S.C. that I, too, allow this appeal. The majority 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. I abide by the order for costs contained in the leading judgment. F

Appeal allowed.

G

H