

SUPREME COURT OF NIGERIA
15TH JULY, 1999. SC. 117/1993
CORAM:- A. G. KARIBI-WHYTE, I. L. KUTIGI, S. U. ONU,
U. A. KALGO, S. O. UWAIFO, JJSC.

1. D. STEPHENS INDUSTRIES LTD. APPELLANTS
2. STEPHEN D. GEORGEWILL
AND
1. BANK OF CREDIT AND COMMERCE RESPONDENTS
INTERNATIONAL (NIG.) LTD
2. MR. RANJAN TAMPI
-

***APPEALS** - Ground of law- Particulars - How to frame - Ground of law requiring particulars - And the purpose of requiring particulars.*

***BANKING** - Account - Notice to close an account - Made by a customer - May be by oral instruction - And the banker is entitled to act on the notice without delay.*

***BANKING** - Account - Closure of the customer's account - At the instance of the banker - The banker must give the customer reasonable notice.*

***BANKING** - Account - Notice to close - Revocation - Notice to have his account closed - Made by the customer - May be revoked by him before the banker acts on it - But in the present case the notice was not revoked.*

***BANKING** - Banker and customer relationship - Termination - In the instant case since the relationship was terminated - By a notice given by the appellant - The respondents were justified in not paying the appellant's cheque.*

FACTS

In the High Court of Rivers State sitting at Port Harcourt, the plaintiffs/appellants sued for general damages of N1,000,000.00 because their cheque for N162.45 dated 30th. July, 1984 was returned unpaid by the defendants/respondents with the endorsement

"DRAWER'S ATTENTION REQUIRED".

The cheque in question was given to one Clara Clement Kalio (PW1) on 30th. July 1984 by the appellant. She lodged it in her account with First Bank of Nigeria Port Harcourt Main Branch. The cheque got to the 1st respondent bank on 8th. August, 1984 and was returned unpaid on 9th. August, 1986 with the afore mentioned endorsement. The reason the respondents gave for not honouring the cheque was that on 23rd. July, 1984 in the presence of d.w.1 and d.w.2 in the office of the 1st respondent bank's manager, Mr. Rajan Tampi (d.w.4), the 2nd appellant feeling dissatisfied with the respondents, instructed that the 1st appellant's account be closed. The account was accordingly closed on 2nd. August, 1984. The respondents then forwarded the balance in that account in a cheque by letter to the appellants which they accepted.

At the conclusion of hearing, the learned trial judge gave judgment for the appellants for the sum of N25,000.00 holding that such an endorsement was defamatory of them. He also held that the defence of justification cannot stand. Dissatisfied, the respondents appealed to the Court of Appeal, Port-Harcourt Division which allowed the appeal. The appellants have now appealed to the Supreme Court raising seven issues but the appeal was determined on three issues.

ISSUES FOR DETERMINATION

(1) in what manner should a notice to close an account be made by a customer, (2) what is the consequence of such a notice and (3) what is the obligation of the bank on receiving the notice?

HELD (Unanimously dismissing the appeal per lead judgment of **UWAIFO JSC**)

Appeals - Ground of law

1. It must be said that the framing of a ground of law or misdirection

requiring that particulars be supplied may well be a question of the skill of the counsel who raises the ground of appeal. The particulars supporting such a ground need not always be adumbrated. They can often be conveniently laced with or embedded in the complaint made in the ground of appeal to show the reason for such a complaint which makes the ground somewhat self-explanatory. That is the ultimate purpose of requiring particulars. They tend to highlight briefly why and how the error of law occurred. In other words, the appellant says 'I complain that the court has erred in law in the way it resolved the issue in question. My reason for this is because', which reason is then given as part of the complaint if straightforward and short. But if the reasons are many, there could be need to set them out. Whichever form they are given, they are the particulars envisaged in Ord. 8, r.2(3) of the Rules of this court: see Atuyeye v Ashamu (1987) 18 NSCC (pt.1) 117 at p.130; (1987) 1 NWLR (pt.49) 267 at p.268; Globe Fishing Industries Ltd. v Coker (1990) 7 NWLR (pt.162) 265 at p.300; Shyllon v Asein (1994) 6 NWLR (Pt.353) 670 at p.385. (p. 2312 A)

Account - Notice to close an account

2. It is therefore open to the customer to give an oral instruction to have his account closed at once although he would not be able to take out whatever remains as credit therein until a proper settlement of obligations on both sides is carried out. But the banker is entitled to act on the notice without delay. (p. 2314 D)

Account - Closure of the customer's account

3. It is when it is the banker who decided to have the account of the customer closed that he must give the customer reasonable notice in case there are outstanding cheques to be cleared or some business the customer intends to conclude through the bank account: see Joachimson v Swiss Bank Corpn. (1921) 3 K.B.110 at p.127 where Lord Akin L.J. said "it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice." This is obviously, as has been said, when it is the banker who initiates the ceasing

of doing business with the customer. See also, Prosperity Ltd. v Lioyds Bank Ltd. (1923) 39 T.L.R. 372. The customer must therefore be given time by the banker to make such arrangements as are necessary to protect his credit and credibility: see Buckingham v London and Midland Bank (1895) 12 T.L.R. 70. (p. 2314 E)

Account - Notice to close - Revocation

4. It has been held however that when a customer gives notice to have his account closed, he may revoke that notice before the banker acts on it because as said by Romer L.J. in Rekstin v Severo Sibirsko and The Bank for Russian Trade (1933) 1 K.B. 47 at 71-72, such notice "operated as no more than a revocable mandate to the bank, so that until it was acted upon, it was open to the (customer) to revoke it." In the present case the notice to close the account was given by the 2nd appellant on 23 July, 1984. That notice was not revoked - at least not to the knowledge of the respondents even if it can be said that the appellants had the intention to do so by issuing a cheque on 30 July, 1984 - and on 2 August, 1984 the respondents acted on it. The cheque issued by the appellants on 30 July did not come through till 8 August to the 1st respondent bank from the clearing house, which is the Central Bank of Nigeria. (p. 2315 A)

Banker and customer relationship

5. The relationship of banker and customer depends basically on the ordinary principles of contract and it could, at least in theory, be brought to an end in any of the ways a contract may be determined. But in practice it could more properly be terminated by mutual agreement, by notice given by the customer or by the banker, by the death of the customer, by the mental disorder of the customer, and by bankruptcy or winding up of either party: see Law of Banking (supra) at p.349. In the present case it was terminated by the notice given by the 2nd appellant (a customer). Therefore as at the date (8 August 1984) when the appellants' cheque in question reached the respondents, the relationship of banker and customer had come to an end and the respondents were

justified in not paying the said cheque: see Berry v Halifax Commercial Banking Co (1901) 1 Ch.188. The respondents owed the appellants no further obligation, and had the cause, to refrain from endorsing the said cheque the way they did, namely, "Drawer's attention required." That was one way they could secure the appellants' attention and if need be B warn them to issue no more cheques on that closed account because they would not be honoured. Of course, the respondents might well have endorsed the cheque "Account closed" or "No account " to finally bring it home to the appellants that they cannot make any unwarranted C use of that account: see Leading Cases in the Law of Banking by Chorley & Smart, 4th edn. p.304. (p. 2315 D)

REPRESENTATION

Parties are absent. Not represented

D

CASES REFERRED TO

Atuyeye v Ashamu (1987) 18 NSCC (pt.1) 117 at p.130; (1987) 1 NWLR (pt.49) 267 at p.268

E

Globe Fishing Industries Ltd. v Coker (1990) 7 NWLR (pt.162) 265 at p.300

Shyllon v Asein (1994) 6 NWLR (Pt.353) 670 at p.385

Joachimson v Swiss Bank Corpn. (1921) 3 K.B.110 at p.127

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Prosperity Ltd. v Lloyds Bank Ltd. (1923) 39 T.L.R. 372

Buckingham v London and Midland Bank (1895) 12 T.L.R. 70

Rekstin v Severo Sibirsko and The Bank for Russian Trade (1933) 1 K.B. 47 at 71-72

Berry v Halifax Commercial Banking Co (1901) 1 Ch.188

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BOOK REFERRED TO

Lord Chorley, law of Banking, 6th edn, P.349

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LEAD JUDGMENT BY UWAIFO JSC

This appeal is from a decision of the Court of Appeal, Port Harcourt Division given on 23 January, 1992. The plaintiffs/appellants (here-

inafter called the appellants) sued in the High Court, Port Harcourt for general damages of N1,000,000.00 because their cheque for N162.45 dated 30 July, 1984 was returned unpaid by the defendants/respondents (hereinafter called the respondents) with the endorsement "**DRAWER'S ATTENTION REQUIRED.**" The learned trial judge gave judgment for the appellants for the sum of N25,000.00, holding that such an endorsement was defamatory or them. He said: "I have come to a finding that the words were capable of having a libellous meaning and indeed were libellous of the plaintiffs. I have also held that the defence of justification cannot stand."

The defence of justification referred to was whether the current account of the appellants on which the cheque in question was drawn had been effectively and properly closed at the time the cheque came through. If it had, then it follows that the appellants had no cause of action. That was the issue the Court of Appeal decided. In his leading judgment, Edozi JCA observed as follows:

"..... if the account had been closed at the material time then the endorsement on the cheque, Exh. A, with the words complained of would not have been actionable. It is important to appreciate that the operative moment is the time when the endorsement complained of was made on the cheque Exh.A. According to the appellants, it was on August, 9th 1984 when Exh A was presented through the clearing house. If at that material time the account in question had not been closed and was in sufficient funds to meet the value of the cheque, then, in the absence of any acceptable explanation, the appellants stood to be mulcted in damages."

He later concluded on the crucial issue whether the account had been closed and the performance of the trial judge in respect of the evidence thereon by saying inter alia:

"It is trite law that where the court of trial fails to appraise the facts and make specific finding of fact on point which are crucial to the proper determination of the of the case before it, an appellate court will intervene to set aside the judgment of the lower court on the case..... It is my view that since the learned trial judge had failed to make a

specific finding on whether or not the 2nd respondent demanded that the account be closed and having contrary to the trend of evidence held that the account had not been closed, that finding is perverse and cannot support the judgment."

The appellants have now appealed that judgment upon eleven B grounds of appeal. From the said grounds of appeal seven issues for determination were set down in the appellants' brief of argument. The respondents filed no brief of argument and took no steps whatever to contest the appeal. I must say that most of the grounds of appeal as well C as the issues for determination are misconceived and unnecessary. They are mainly on the competence of the grounds of appeal filed in the lower court. The present appellants took a preliminary objection against them there and the court carefully resolved the objection. In the end, it decided the appeal virtually on two of the grounds, namely, grounds 1 and D 2.

I note that that ground 1 was not objected to by these appellants. Ground 2 was objected to on the ground that it contained no particulars. But that ground, as held by the lower court quite rightly, in my view, has E particulars incorporated in it. The said grounds 1 and 2 were stated as follows:

"1. The learned trial judge erred in law and on the facts in holding that the account of the 1st plaintiff with the 1st appellant had F not been closed at the time material to this action when

(i) There was evidence before him by Chief Warmate who was referred to in paragraph 10 of the statement of claim that the 2nd plaintiff demanded the immediate closure of the 1st plaintiff's account.

(ii) Exhibit 'D' which the learned trial judge held was not dated G was in fact dated August 9, 1984 and was duly acknowledged to have been received by the 1st appellant on August 9, 1984.

2. The learned trial judge erred in law and on the facts in holding that July 30, 1984 appearing on Exhibit 'A' which is a specifically crossed cheque is the date material to the action and not August 9, H 1984 which was the date when Exhibit 'A' came through the clearing house to the 1st appellant."

It must be said that the framing of a ground of law or misdirection requiring that particulars be supplied may well be a question of the skill of the counsel who raises the ground of appeal. The particulars supporting such a ground need not always be adumbrated. They can often be conveniently laced with or embedded in the complaint made in the ground of appeal to show the reason for such a complaint which makes the ground somewhat self-explanatory. That is the ultimate purpose of requiring particulars. They tend to highlight briefly why and how the error of law occurred. In other words, the appellant says 'I complain that the court has erred in law in the way it resolved the issue in question. My reason for this is because', which reason is then given as part of the complaint if straightforward and short. But if the reasons are many, there could be need to set them out. Whichever form they are given, they are the particulars envisaged in Ord. 8, r.2(3) of the Rules of this court: see Atuyeye v Ashamu (1987) 18 NSCC (pt.1) 117 at p.130; (1987) 1 NWLR (pt.49) 267 at p.268; Globe Fishing Industries Ltd. v Coker (1990) 7 NWLR (pt.162) 265 at p.300; Shyllon v Asein (1994) 6 NWLR (Pt.353) 670 at p.385.

It was those two grounds of appeal I have already reproduced that supported the main, and perhaps the only, issue upon which the appeal was decided. Consequently, the only two issues which call for consideration on this appeal out of the seven stated by the appellants are: (1) Was the Court of Appeal right to reverse the decision of the trial judge that the account of the appellants was not properly closed. (2) Whether the Court of Appeal was correct in disturbing the findings of the High Court under the circumstances of this case.

The evidence is that the cheque in question was dated and given to one Clara Clement Kalio (p.w.1) on 30 July, 1984 by the appellants. She lodged it into her account with First Bank of Nigeria Ltd., Port Harcourt Main Branch. The cheque got to the 1st respondent bank on 8 August, 1984 and returned unpaid on 9 August, 1986 with the words "DRAWER'S ATTENTION REQUIRED". The excuse the respondents gave for not honouring the cheque was that on 23 July, 1984 in the

presence of one Philetus George Warmate (d.w.1) and one Celina Teka (d.w.2) in the office of the 1st respondent bank's manager, Mr. Rajan Tampi (d.w.4), the 2nd appellant feeling dissatisfied with the respondents, instructed that the 1st appellant's account be closed. The respondents said the account was accordingly closed on 2 August, 1984. The respondents then forwarded the balance in that account in a cheque by letter to the appellants which they accepted. If that was the position, the respondents had no obligation to pay the appellant's cheque which came in after 2 August. B

The learned trial judge considered the evidence on the point. He made some comments which tended to show that he was not satisfied with the manner the account was closed. He said: , "..... if a demand to close the account was made on 23 July 1984 as the defendants claim, it can hardly be said that closing it on 2nd August 1984 gave enough time for pending transactions to be concluded." Eventually, the learned trial judge ended that issue as follows: C D

"In summary, it is my finding that the closing of the account by the defendants was not properly done. If indeed the 2nd plaintiff demanded closure in a fit of temper the defendants ought to have raised the matter again in a calmer and more sober occasion and atmosphere than that described by the defendants when the 2nd plaintiff asked that the account be closed and should have then informed the plaintiffs in writing when the account would be closed." E F

I think this was a finding that the account was closed at the request of the 2nd appellant. The comments made by the learned trial judge as to what should have been the attitude of the respondents to that request might have raised questions of law whether the respondents owed the appellants that kind of obligation in the circumstances. The court below misconceived the essence of what the trial court did when it came to the conclusion that the trial court no specific finding of fact on whether the 2nd appellant demanded that the account be closed and that it erred on the evidence to have held that the account had not been closed. The trial court certainly did make a finding that the account was closed at the request of the 2nd appellant upon a proper understanding of the passage G H

quoted above from the judgment of that court, except that it said that it was an improper closure in the circumstances the request was made.

The real issues are, (1) in what manner should a notice to close an account be made by a customer, (2) what is the consequence of such a notice and (3) what is the obligation of the bank on receiving the notice? As regards issue (1), there does not appear to be any decided case on it but Lord Chorley who is regarded as a leading authority on Banking Law says in his Law of Banking, 6th edn, page 349:

"Since the customer is entitled to withdraw his balance on demand, it would appear that he is under no obligation to give any advance notice of his decision to close his account the closing of the account does not necessarily bring the mutual obligations to an end. The customer clearly remains liable for any overdraft, and the banker for properly conducting any operation needed in connection with the closure....."

It is therefore open to the customer to give an oral instruction to have his account closed at once although he would not be able to take out whatever remains as credit therein until a proper settlement of obligations on both sides is carried out. But the banker is entitled to act on the notice without delay.

It is when it is the banker who decided to have the account of the customer closed that he must give the customer reasonable notice in case there are outstanding cheques to be cleared or some business the customer intends to conclude through the bank account: see Joachimson v Swiss Bank Corpn. (1921) 3 K.B.110 at p.127 where Lord Akin L.J. said "it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice." This is obviously, as has been said, when it is the banker who initiates the ceasing of doing business with the customer. See also, Prosperity Ltd. v Lloyds Bank Ltd. (1923) 39 T.L.R. 372. The customer must therefore be given time by the banker to make such arrangements as are necessary to protect his credit and credibility: see Buckingham v London and Midland Bank (1895) 12 T.L.R. 70.

It may be convenient to consider issues (2) and (3) together. It has been held however that when a customer gives notice to have his account closed, he may revoke that notice before the banker acts on it because as said by Romer L.J. in Rekstin v Severo Sibirsko and The Bank for Russian Trade (1933) 1 K.B. 47 at 71-72, such notice "operated as no more than a revocable mandate to the bank, so that until it was acted upon, it was open to the (customer) to revoke it." In the present case the notice to close the account was given by the 2nd appellant on 23 July, 1984. That notice was not revoked - at least not to the knowledge of the respondents even if it can be said that the appellants had the intention to do so by issuing a cheque on 30 July, 1984 - and on 2 August, 1984 the respondents acted on it. The cheque issued by the appellants on 30 July did not come through till 8 August to the 1st respondent bank from the clearing house, which is the Central Bank of Nigeria.

The relationship of banker and customer depends basically on the ordinary principles of contract and it could, at least in theory, be brought to an end in any of the ways a contract may be determined. But in practice it could more properly be terminated by mutual agreement, by notice given by the customer or by the banker, by the death of the customer, by the mental disorder of the customer, and by bankruptcy or winding up of either party: see Law of Banking (supra) at p.349. In the present case it was terminated by the notice given by the 2nd appellant (a customer). Therefore as at the date (8 August 1984) when the appellants' cheque in question reached the respondents, the relationship of banker and customer had come to an end and the respondents were justified in not paying the said cheque: see Berry v Halifax Commercial Banking Co (1901) 1 Ch.188. The respondents owed the appellants no further obligation, and had the cause, to refrain from endorsing the said cheque the way they did, namely, "Drawer's attention required." That was one way they could secure the appellants' attention and if need be warn them to issue no more cheques on that closed account because they would not be honoured. Of course,

the respondents might well have endorsed the cheque "Account closed" or "No account " to finally bring it home to the appellants that they cannot make any unwarranted use of that account: see Leading Cases in the Law of Banking by Chorley & Smart, 4th edn. p. 304.

The court below was right in allowing the appeal against the judgment of the trial court and setting it aside as well as dismissing the claim. In the circumstances, I find that this appeal is totally lacking in merit and I accordingly dismiss it. I make no order for costs as the respondents did not in any way participate in defending this appeal.

KARIBI-WHYTE JSC

I had the opportunity of reading the leading judgment of my learned brother S. O. Uwaifo, JSC in this appeal. I agree entirely with the decision.

The appeal is completely lacking in merits. I make no order as to costs. The appeal was heard on the brief of the Appellants. Respondents did not file any brief of argument. Neither Counsel nor the parties were present during the hearing of the Appeal.

KUTIGI JSC

I read in advance the judgment just rendered by my learned brother Uwaifo, J.S.C. I agree with his reasoning and conclusion. The appeal lacks merit. It is accordingly dismissed with no order as to costs.

ONU JSC

I have had the advantage of a preview of the judgment of my learned brother Uwaifo, JSC just delivered. I am in entire agreement with him that the appeal lacks merit and must perforce fail.

I too dismiss the appeal and make similar consequential orders inclusive of those as to costs contained in the leading judgment.

KALGO JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother uwaifo JSC in this appeal. I entirely agree with his reasoning and conclusions reach therein.

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The learned trial judge was clearly wrong in the assessment of the evidence before him as regards the closing of the appellant's account and its effect on the payment of the cheque Exhibit 'A' which was only declared for payment on 9th August 1994 when the respondent's account was closed on 2nd August, 1994. There was therefore no ground upon which the award if damages for libel of the sum of N25,000.00 or any amount at all could be supported in favour of the respondents. The Court of Appeal was therefore right in my view, in allowing the appeal before it and reversing the decision of the learned trial judge as it did.

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In the circumstances, I also agree that there is no merit at all in this appeal. I accordingly dismiss it and abide by the orders made in the leading judgment as to costs.

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