

SUPREME COURT OF NIGERIA
FRIDAY 14TH FEBRUARY 2003. SC. 128/2000
CORAM:- M. L. UWAIJS CJN, S. M. A. BELGORE,
A. I. IGUOH, E. O. AYOOLA, S. O. UWAIFO, JJSC

1. JOE GOLDDAY CO. LTD
2. BASECOM NIGERIA LTD
3. WATERTUNE NIGERIA LTD
4. PARROTWAVE NIGERIA LTD APPELLANTS
5. ANENE STELLA ANENE
6. ELDER J. J. IKPATT
AND
CO-OPERATIVE DEVELOPMENT
BANK PLC RESPONDENT

APPEALS - Evidence - Evaluation - As there was no proper evaluation of evidence by trial court - Supreme Court is right to interfere by reevaluating the evidence (H1)

APPEALS - Courts - Findings of fact - Where trial court's findings are supported with enough evidence on record - Appellate court must approach such findings with due caution (H2)

PLEADINGS - Statement of claim - Averments in - Denial of - Averments in para. 6 & 7 of the claim were denied in para. 8 of statement of defence - Hence it cannot be argued that there was no denial (H3)

COURTS - Parties - Reliefs - Grant - Court must not grant a party what it has not asked for in clear terms and sufficiently proved - As court cannot make an order which is uncertain (H4)

BANKING - Customer's accounts - Consolidation - To ascertain financial worth of its customer - Bank may consolidate customer's accounts - Unless precluded by express or implied agreement (H5)

DAMAGES - Award - Correctness of - Court of Appeal made sound calculation by awarding N12,155,179 to defendant - As 6th plaintiff

did not deny contents of exhibit 3 - And DW1 was not cross examined on same (H6)

FACTS

Defendant is a commercial bank, while 1st to 4th plaintiffs are companies incorporated in Nigeria of which 6th plaintiff is the Chairman/Chief Executive. The companies maintained current accounts with defendant. 5th plaintiff is the wife of 6th plaintiff and a director in 1st and 2nd plaintiffs' companies. Defendant alleged that 6th plaintiff had fraudulently used his position as the Chairman of the Finance Committee of the Board of Directors and a shareholder of defendant bank to obtain an overdraft facilities to the tune of N64,043,389.88 on behalf of the companies.

Defendant further alleged that 6th plaintiff facilitated the movement of defendant bank's funds to cover his companies' cash-strapped which resulted in their indebtedness to defendant. Defendant went on to allege that the total sum of N127,623,809.69 was systematically credited and correspondingly debited into 1st plaintiff's account at the Broad Street Lagos. On the other hand, plaintiffs insisted that they later got the services of auditors who queried the payments and withdrawals of the said amount of N127,623,809.69 and wrote that they were not owing defendant. Thus plaintiffs filed this action at the Federal High Court Calabar. The learned trial Judge found for plaintiffs. Defendant being dissatisfied, appealed to the Court of Appeal Calabar division. The appeal was allowed in part. Aggrieved, plaintiffs filed appeal in Supreme Court.

ISSUES FOR DETERMINATION

(a) Whether the plaintiffs established their claim that the defendant debited the account of the 1st and 2nd plaintiffs with false and unauthorised charges, commissions and debits and if the answer is in the affirmative whether the 1st and 2nd plaintiffs are entitled to an order for the reversal of such false and authorised charges, commissions and debts.

(b) Whether the defendant was justified in consolidating the accounts of the 1st and 3rd plaintiffs.

(c) Whether the consolidation of the accounts of the 1st and 3rd plaintiffs by the defendant and generally the operation of the said accounts by the defendant occasioned any damage or injury to

the plaintiffs.

(d) Whether the respondent is entitled to the award of N12,155,179 as counter-claim against the plaintiffs.

HELD (Unanimously dismissing the appeal per UWAIFO JSC)

Evidence - Evaluation - Interference - Justification

1. From the foregoing evidence, I hold that the finding of the learned trial Judge was not borne out by the evidence before him. The finding was perverse as it did not take into account the evidence of the corresponding credits or payments of the sum of N127,623,809.69 into the account of the 1st respondent - No. 10044-001. As there was no proper evaluation of the evidence, this court deems it proper to interfere with that finding and re-appraise and re-evaluate the evidence. I therefore hereby find as a fact that on the foregoing evidence there was nothing to be credited into the account of the 1st respondent, since the debit and the credit entries respectively neutralised themselves. I hold that there was no proof of fraud leading to any financial benefit to the appellant, or loss to the respondents in this exercise. Most importantly also is the question whether the said sum of N127,623,809.69 as was ordered by the learned trial Judge to be credited to the account of the 1st plaintiff/respondent was even claimed as a relief by the respondents in their statement of claim. The answer is certainly in the negative.” The law, however, permits and indeed expects a Court of Appeal in appropriate circumstances to look at the evidence on record and make an objective finding of fact in place of a perverse finding made by the trial court. There is a long line of authorities supporting this course, all in the interest of justice.

I am satisfied that, that was what the court below did in the present case. It was the right thing to do instead of allowing the obviously perverse findings of the trial court and the order that followed, which would have fraudulently credited the said sum of N127,623,809.69 to the 1st plaintiff at the expense of

the defendant to whom the 1st plaintiff was otherwise indebted, to stand and prevail. (pp. 559 D/561 B)

Courts - Findings of fact

2. It is true that the findings of fact made by a trial court are entitled to respect by an appellate court when it is clear that the trial court has adequately performed its primary duty of evaluating and ascribing probative values to the evidence before it. In such circumstances such findings are to be approached by an appellate court with due caution and not on the basis that it would or might itself have found otherwise. The essential consideration is that there is enough evidence on record from which the trial court's findings can be supported. (p. 560 H/561 D)

D

PLEADINGS - Statement of claim - Averments in - Denial of

3. In paragraph 7 of the statement of claim, it is indicated that the interest rate and commission on turnover were tied to the transactions relating to the said N127,623,809.69. Part of the averment in that paragraph containing certain figures of interest and commission charged was reproduced in the appellants' brief of argument. Learned counsel has argued that, that averment was "not denied at all" by the defendant. I am afraid that cannot be entirely correct. Paragraphs 6 and 7 of the statement of claim were denied in paragraph 8 of the statement of defence. It cannot therefore be argued that there was no denial and/or explanation in regard to the plaintiffs' averment in paragraph 7. (p. 561 H)

G

Parties - Reliefs - Grant

4. A look at the said relief shows that nothing specific in terms of amounts in figures could be made an order of court. When a relief is sought from court, it must not be a matter of speculation or doubt as to what it entails. The court cannot be expected to make an order which is uncertain or which is subject to different interpretation as to whether it meets the relief claimed. Nor has the court a duty to engage in any semantics in the order it makes in an attempt to explain what the

plaintiff intended to ask for and accordingly grant it. The guiding rule is that the court must not grant a party what it has not asked for in clear terms and sufficiently proved

The court below stated its position on relief 2 claimed in this case thus:

“The relief claimed in paragraph 35(2) of the statement of claim is vague. The law is that a relief claimed by a party in an action must be proper, precise and certain. It is not the duty of the court to go about fishing out the alleged false, fraudulent and excessive debits in order to reverse them.”

As I am of the same opinion, I endorse the above observation and hold that the relief as claimed is not capable of being made a court order. (p. 562 F)

BANKING - Customer's accounts - Consolidation

5. The argument of learned counsel is that the accounts belonged to two distinct juristic personalities and so their individual authorization must be obtained to consolidate their accounts. It has been further contended that the consolidation gave rise to the false misrepresentation that the 1st and 3rd plaintiffs were owing N64,043,389.88. I do not find these contentions valid in the circumstances of this case.

There is no doubt in law that a banker may consolidate the accounts owned by a customer in his own right, unless precluded by agreement, express or implied from the course of business from doing so, in order to ascertain and treat as the balance, the amount standing to the credit of the customer. It is a prudent way open to the banker to assess the financial worth with it of that customer. It is a different thing where a banker opens two accounts for a customer, one in the customer's own name and the other in a business name or in the name of an incorporated body under his aegis or control. The court below saw the 6th plaintiff as the alter ego of the 1st and 3rd plaintiffs who acted in such a way in regard to them and the running of their accounts as if there was no justifiable distinction between him as a person and the two companies. It would appear those accounts were operated 'in his own right'. There is nothing in this appeal to dispute that sce-

nario. There is nothing also that the defendant was placed in such a circumstance that he was precluded by agreement, express or implied from the course of business from consolidating those two accounts in order to ascertain and treat the balance, if any, as the only amount really standing to the credit of the 6th plaintiff. In the event, the defendant found that the debit balance against the two was over N64 million. I do not think any damage or injury was thereby suffered by the plaintiffs. (p. 563 D/564 D)

DAMAGES - Award - Correctness of

6. As to the last issue whether the defendant was entitled to the award of the sum of N12,155,179 by way of counter-claim, I have no doubt that it was, from the trend of the evidence.

There might well have been dispute as to the outstanding overdraft. But that had become a matter for the court to resolve. There certainly was no substance in the finding that the defendant led no evidence in proof of the counter-claim. The court below considered the evidence as revealed in exhibit 3 which put the amount at N17,155,179.60. That document was addressed to the 6th plaintiff indicating what he was owing the defendant. The reaction to it from the 6th plaintiff was not that the debt was denied. It was simply, in the main, that he wanted a breakdown of the amount - see exhibit 4.

The said exhibit 3 was tendered by the plaintiffs. In his evidence, DW1 Tommy Jonny Udofa, Asst. General Manager of the defendant, testified among other things in regard to exhibit 3. In particular he said that the outstanding debts of the plaintiffs in all their accounts were extracted and added together in exhibit 3, and that the amount involved was the subject of the counter-claim. No question was directed to him in cross-examination in respect thereof. It seems to me that in all the circumstances the counter-claim was not seriously contested. But to arrive at the award made, the court below took other factors into account. The 6th plaintiff's house was sold for N8 million out of which N3 million was deducted as agency fees etc leaving a balance of N5 million. This amount was deducted from the proved outstanding overdraft. What

was left to be paid came to N12,155,179.00. The court below awarded that amount and I cannot fault that simple analysis. I have come to the conclusion that this appeal lacks merit altogether. I hereby dismiss it. (p. 564 H)

REPRESENTATION

P. I. N. Ikwueto, Esq with C. Ochieze, Esq., for the Appellants
Kayode Sofola, SAN with Messrs. Frank Chude, Esq.; Ella Ikolodo),
for the Respondent

CASES REFERRED TO

Akinloye v. Eyiola (1968) NMLR 92
Woluchem v. Gudi (1981) 5 SC 291
Odofoin v. Ayoola (1984) 11 SC 72
Amadi v. Nwosu (1992) 5 NWLR (Pt.241) 273
Olale v. Ekwelendu (1989) 4 NWLR (pt. 115) 326
Adeleke v. Aserifa (1990) 1 NWLR (Pt.136) 94
Fatoyinbo v. Williams (1956) 1 FSC 87
Lawal v. Dawodu (1972) 1 All NLR (Pt.2) 270
Fashanu v. Adekoya (1974) 6 SC 83
Balogun v. Akanji (1988) 1 NWLR (Pt.70) 301
Ekpenyong v. Nyong (1975) 2 SC 71
Ige v. Olunloyo (1984) 1 SCNLR 158
British and French Bank Ltd. v. Opaleye (1962) 1 All NLR 26

STATUTE REFERRED TO

Failed Banks (Recovery of Debts) and Financial Malpractices in Banks
Decree No.18 of 1994

LEAD JUDGMENT BY UWAIFO JSC

The plaintiffs' statement of claim in this case is by any standard prolix. There are ostensibly 35 paragraphs but in effect there are in all 115 paragraphs. This is because paragraph 11 has 60 sub-paragraphs which are nearly as wordy as the main paragraphs; and paragraph 12 which deals with particulars of "*false, fraudulent or excessive charges/debits on 2nd plaintiff's account*" has 23 sub-paragraphs equally copious in statement. The statement of defence together with counterclaim contains 48 paragraphs and the reply to it covers 15

paragraphs. Without a doubt, enormous efforts were expended on both sides. But from my appreciation, of the available facts and circumstances, it seems to me that the litigation is founded on a charade of grievances which the 6th plaintiff made the cause of his lost fortune. In my view, the litigation by the plaintiffs was not worth the trouble at all.

The defendant is a commercial bank. It has branches in Lagos at Broad Street; in Uyo at Oron Road; and in Calabar at Calabar Road. The 1st to 4th plaintiffs are companies incorporated in Nigeria of which the 6th plaintiff is the Chairman/Chief Executive. The 1st plaintiff maintained current accounts with the defendant bank at Calabar, Broad Street Lagos and the Oron Road Uyo branches. The 2nd plaintiff maintained a current account at the defendant's Broad Street Lagos branch, the 3rd plaintiff at the Idumota Street Lagos branch and the 4th plaintiff also at the Idumota Street Lagos branch. The 5th plaintiff is the wife of the 6th plaintiff although she appears to bear her maiden name in this case. She is a director in the 1st and 2nd plaintiff companies. At all times material to this case, the 6th plaintiff was a director in the defendant bank and a shareholder of the bank having 4,468,318 shares. His wife is or was a shareholder of the bank having 3,489,743 shares. The 6th plaintiff, apart from being a director in the defendant bank, was the chairman of the Finance Committee of the Board of Directors of the defendant bank.

In the statement of defence, the responsibilities of the Committee were stated as -

- (a) to screen and approve all credit proposals within its approval limit with the appropriate advice of the Board of Directors;
- (b) the regular review of both performing and nonperforming loans in the defendant bank;
- (c) to determine the rate of interest, commission, and penalties paid on loans/advances.

In the reply to the statement of defence, the plaintiffs admitted (a) and (b) above. There was a further averment in the statement of defence (para.5) that "this Committee is the most important and powerful in the bank." This was not specifically denied but no reference was made to the paragraph in the reply. It is by the rules of pleadings taken to have been admitted: see *Olale v. Ekwelendu* (1989) 4 NWLR (pt. 115) 326; *Adeleke v. Aserifa* (1990) 1 NWLR (Pt.136)

94.

It was in these circumstances the 1st to 4th plaintiffs became indebted to the tune of N64,043,389.88 as at 31st December, 1995 arising from (a) the overdrawn cheques at the Calabar branch; (b) the value of foreign exchange bids by the plaintiffs and their associated companies in Lagos branches totaling N41,457,176.21 which was utilised by the plaintiffs without matching funds in their accounts - the allegation being that the 6th plaintiff facilitated this by manoeuvring the movement of the defendant bank's funds to cover his companies' fund-lessness and the resulting indebtedness; (c) other miscellaneous loans which the 1st plaintiff enjoyed by mortgage security up to a limit of N5,000,000.00. B
C

It was part of the aspect of the movement of the defendant's funds, as alleged by the defendant that the total sum of N127,623,809.69 was systematically credited and correspondingly debited into the 1st plaintiff's account at the Broad Street Lagos branch as follows:

Credit

- (a) 2/5/95 N17,732,084.28
 - (b) 31/5/95 N16,407,930.83
 - (c) 30/6/95 N14,974,222.18
 - (d) 31/8/95 N14,892,424.95
 - (e) 8/8/95 N16,000,000.00
 - (f) 31/8/95 N16,876,161.86
 - (g) 29/9/95 N30,740,985.61
- E
F
- N127,623,809.69

Debit

- (a) 31/5/95 N17,732,084.28
 - (b) 2/6/95 N16,407,930.83
 - (c) 3/7/95 N14,974,222.18
 - (d) 1/8/95 N 14,892,424.95
 - (e) 9/8/95 N 16,000,000.00
 - (f) 1/9/95 N 16,876,161.86
 - (g) 3/10/95 N 30,740,985.61
- G
H
- N127,623,809.69

As will be seen, each credit was eliminated by each debit. But there is some implication which was that as for the 1st plaintiff, each of those amounts was a loan which was paid off soon after. That

would under normal banking practice attract interest. This is reflected in the averments in paras. 6 and 7 of the statement of claim. The plaintiffs claim that the amounts were “falsely and fraudulently” debited to the 1st plaintiff’s account and that they were amounts which “consisted of monies paid into account No.10044-001 of the 1” plaintiff on various dates.” The averments then went further to complain that:

“Based on these transactions, interest on the account went up from N145,086.60 in April, 1995 to N626,697.32 in May, 1995. In addition commission on turnover for the period May 1995 to December 1995 went up from N57,219.45 to N448,327.96. Interest for the same period went up from 1,248,213.90 to N3,632,419.45 all of which the 1st plaintiff paid.”

Surprisingly, as will be shown from the reliefs claimed, neither the sums alleged as “false and fraudulent” debits to the tune of N127,623,809.69 nor the “extra” interest and commission as a result of the transactions were sought specifically as a relief. This was so notwithstanding that allegations were made (i) that in 1994 and 1995, the defendant charged interest of N5,013,874.81 instead of N1,801.245,45 on the 1st plaintiff’s account resulting in an excess of N3,212,629.36; (ii) that commission of N706,803.94 on turnover was charged instead of N82,610.28, giving an excess of N624,193.66; (iii) that other excess debits were made as handling, management and miscellaneous charges amounting to N139,816,873.68. Thus there were excess bank charges and interest totaling N143,653,696.70. As to the amount of N64,043,389.88 said to be outstanding debit at one time, the plaintiffs averred that it arose from “excessive interest charges, exorbitant commission on turnover, false and fraudulent debits, unwarranted handling charges, and other charges described by the defendant as miscellaneous”. They then alleged that being under a misapprehension that they were really indebted and through the pressure on the 6th plaintiff that a report would be made to the Central Bank of Nigeria to impose sanctions against him including prosecution under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994, the 6th plaintiff had to (a) surrender all his shares in the defendant bank in part settlement of the said debit; (b) surrender all the shares by the 5th plaintiff in the defendant bank also in part settlement of that debt; (c) surrender the title deeds to the 6th plaintiff’s house at

Ikoyi, Lagos for sale by the defendant bank in part settlement of the debt; and (d) resign his membership of the Board of Directors of the defendant bank.

But the plaintiffs insist that they later got the services of auditors who queried the payments and withdrawals of the said amount of N127,623,809.69 and wrote that the plaintiffs were not owing the defendant bank, as thought. They filed this action, claiming as follows:

1. A declaration that consolidation of the accounts of the 1st and 3rd plaintiffs by the defendant without the prior or any lawful authorization in that behalf is null and void. C

2. A declaration that the defendant was not entitled to debit the accounts of the 1st and 2nd plaintiffs save as authorised by the said plaintiffs or in the normal and ordinary course of banking and an order directing the defendant to reverse all such false, fraudulent or excessive debits. D

3. An order directing the defendant to restore all the shares of the 1st and 5th plaintiffs surrendered to the defendant as a result of the false representations made by the defendant to the 6th plaintiff as to the real state of the accounts of the 1st and 2nd plaintiffs and payment to the 1st and 5th plaintiffs of all dividend, bonus, shares and all other benefits attaching to the said shares from the time of their purported surrender. E

4. Payment over to the 1st and 5th plaintiffs of the sum of N7,162,264.90 and interest being the dividends due to the 1st and 5th plaintiffs for the year 1995 which amount the defendant withheld in purported part settlement of the debts allegedly owed by the 1st and 3rd plaintiffs. F

5. Payment over to the 6th plaintiff of the sum of N5m and interest being value of house at Ikoyi sold and retained by the defendant in purported part settlement of the debt allegedly owed by 1st and 3rd plaintiffs. G

6. Damages in the sum of N10 million for fraudulent tampering with the accounts of the 1st and 2nd plaintiffs and for the distress and embarrassment caused to the Directors of the 1st and 2nd plaintiffs as a result of the threat and false representation as made by the defendant as to the true state of the plaintiffs accounts. H

7. An order restoring the 6th plaintiffs to the Board of the

defendant with effect from the date of his purported resignation.”

In a judgment delivered on 9 December, 1997, the learned trial Judge (G.C. Ezekwe, J) found for the plaintiffs as follows:

(1) a declaration that the consolidation of the 1st and 3rd plaintiffs’ account by the defendant without prior or lawful authorization is null and void;

(2) an order directing the defendant to restore all the shares of the 1st and 5th plaintiffs surrendered to the defendant as a result of the “false representations made by the defendant to the 6th plaintiff as to the real state of the accounts of the 1st and 2nd plaintiffs” and payment over to the 1st and 5th plaintiffs of all dividends, bonuses, shares and all other benefits attaching to the said shares from the time of the purported surrender;

(3) payment over to the 1st and 5th plaintiffs of the sum of N7,162,264,90 and interest being the dividends due to them for the year 1995 which amount the defendant withheld in purported part settlement of the debts allegedly owed by the 1st and 3rd plaintiffs;

(4) a declaration that the defendant was not entitled to debit the account of the 1st and 2nd plaintiffs save as authorised by the said plaintiffs or in the normal and ordinary course of banking; an order directing the defendant to reverse all such fraudulent and excessive debits;

(5) an award of N1,000,000.00 as general damages in favour of the plaintiffs against the defendant. The counter-claim by the defendant for (i) the outstanding debt of N18,249,848.88 with interest; (ii) an order that an equitable mortgage was created in favour of the defendant when the plaintiffs deposited their title deed with it; (iii) a declaration that the resignation by the 6th plaintiff from the Board of the defendant is proper, was dismissed. I need hardly say that I have found it difficult to understand the reason for the judgment. With due respect, there was no reasoning of the learned trial Judge in a judgment spanning over 52 fullscap pages typed double space from which one could appreciate why the reliefs were granted.

In the appeal against the judgment, the defendant raised four issues for determination by the Court of Appeal as follows:

(i) Whether the twin public policy principles of ‘ex turpi causa’ and ‘in pari delicto’, did not operate to disentitle the plaintiffs from the grant of the reliefs sought in the proceeding, in view of the patent

disclosure of the 6th plaintiff's offences against the provisions of section 18(3) and (9) of Decree No.25 of 1991?

(ii) Whether the conclusions/orders arrived at by the trial court can properly be sustained on the evidence and other material exhibits before the court

(iii) Was the trial court right in dismissing the defendant's counter-claim? B

(iv) If the answers to (i), (ii) and (iii) are in the affirmative, whether the trial court had jurisdiction to entertain and/or adjudicate over the suit as constituted and in the light of the evidence disclosed at the trial? C

In a carefully considered leading judgment by Ekpe JCA, to which Edozie and Opene JJCA fully and effectively contributed, the Court of Appeal, Calabar Division, allowed the appeal in part and made the following orders: D

1. The order crediting the sum of N127 million odd in the account of the 1st plaintiff is set aside,

2. The order setting aside the sale of the shares of the 1st and 5th plaintiffs and the order for their restoration or reversion to the 1st and 5th plaintiffs are set aside. E

3. The order for the payment over to the 1st and 5th plaintiffs of the sum of N7,162,246.90 and interests being dividends due to the 1st and 5th plaintiffs for the year 1995 is set aside.

4. The award of N1 million as general damages is set aside. F

5. The order dismissing the counter-claim is set aside. In its place the counter-claim is allowed to the tune of N12,155,179.

6. The order declaring the consolidation of the 1st and 2nd plaintiffs' account null and void is set aside.

The appeal in respect of issues touching on section 18(3) and (9) of Decree No.25 of 1991 (as to illegality) and the jurisdiction of the Federal High Court to entertain the suit was dismissed. The plaintiffs have now appealed to this court and have raised and argued the following issues for determination: G

(a) Whether the plaintiffs established their claim that the defendant debited the account of the 1st and 2nd plaintiffs with false and unauthorised charges, commissions and debits and if the answer is in the affirmative whether the 1st and 2nd plaintiffs are entitled to an order for the reversal of such false and authorised charges, com- H

missions and debts.

(b) Whether the defendant was justified in consolidating the accounts of the 1st and 3rd plaintiffs.

(c) Whether the consolidation of the accounts of the 1st and 3rd plaintiffs by the defendant and generally the operation of the said accounts by the defendant occasioned any damage or injury to the plaintiffs.

(d) Whether the respondent is entitled to the award of N12,155,179 as counter-claim against the plaintiffs.

C Issue (a)

The argument of the plaintiffs' learned counsel on this issue is very extensive. It is in two prongs. The first is in respect of an alleged improper traverse or denial of paragraph 11(1) - (47) and (49) - (58) of the statement of claim by the averment in paragraph 14 of the statement of defence. It will be unwieldy to set out the contents of the said paragraph 11 in a judgment like this. They run into 57 lengthy sub-paragraphs and cover several pages. The averment in paragraph 14 of the statement of defence in response thereto reads:

E *"14(a) The defendant denies paragraph 11(1-47 and 49-58) of the statement of claim as it never falsely and maliciously debited the accounts of the 1st plaintiff of the various sums alleged. Rather as stated in paragraph 6 of this defence, the plaintiff being the alter ego of all other companies mentioned in the paragraph, and which had no accounts, but participated in Foreign Exchange transactions (under strict cover of the 6th plaintiff as chairman of Finance Committee of defendant).*

(b) *These Companies apart from not having account with the defendant had also no money to bid for Foreign Exchange they demanded.*

(c) *At the instance of the 6th plaintiff liabilities were transferred into 1st and 2nd plaintiffs' account.*

(d) *These liabilities are - cost of Foreign Exchange, cost of transaction, cost of funding other miscellaneous charges like - letter of credit, amendment commission, letter of credit account, operating commission, telex charges etc.*

(e) *List of these Companies supplied by the 6th plaintiff without disclosing to the Board of Directors of defendant and the various documents for the Foreign Exchange transactions are hereby pleaded*

and shall be relied on at trial.”

Mr. Ikwueto, learned counsel for the plaintiffs, argues that the above amounted to insufficient or evasive traverse and cites a number of authorities. It is surprising that he expended so much effort on this. The question of the insufficiency or the evasiveness of the averment in paragraph 14 of the statement of defence was not an issue at any stage of the proceedings. It was not raised at the trial court, and not a word was said about it in the address of counsel in the judgment. It did not arise in the Court of Appeal and no ground of appeal filed in this court relates to it even though Mr. Ikwueto relies on grounds 1, 2 and 3 as covering it simply because in one of the particulars of error given for ground 3 he irrelevantly and inappropriately alleged that paragraphs 11 and 12 of the statement of claim were not specifically denied. I therefore ignore argument on the issue. However, had the issue properly arisen, I would have held that the relevant averments in the said paragraph 11 were sufficiently traversed.

As to the second prong of that issue which was a complaint directed at the finding of the court below in regard principally to the sum of N127,623,809.69 Mr. Ikwueto's final submission on it in the plaintiffs/appellants' brief of argument concludes thus:

“My Lords are humbly urged to set aside the erroneous justification by the court below for the unlawful and unauthorised manipulation of the account of the 1st and 2nd appellants by the respondent and uphold the order of the learned trial Judge that the said sum of N127,623,809.69 amongst other false charges unlawfully debited to the account of the 1st appellant be reversed. The appellants' pleadings and evidence at the trial clearly show the total amount of the false charges as N143,653,696.70. It is accordingly submitted that the learned trial court was justified to have made the order for the reversal of these false, fraudulent and excessive charges/debits. It must for purposes of clarity be further submitted that the court below greatly erred and occasioned a grievous miscarriage of justice when it set aside the order of the learned trial court.”

In my view, anyone who is familiar with the matter of the said N127,623,809.69 and the evidence regarding it cannot find any merit in the argument above. In the course of his oral argument before this court, Mr. Ikwueto seemed to have realised that the 'double entries'

of the amounts making up that sum - i.e. on the credit and debit sides - resulted in the sum neutralising itself, when it was pointed out to him by the court. I agree with Mr. Kayode Sofola SAN that from the circumstances of the case, the appellants cannot be heard to maintain that the said sum of 127 million shown as credit and debit is still an issue. He was also right when he contended that the plaintiffs did not claim that amount or any other specific amounts in their second relief and that the said relief so vaguely stated was not one a court could grant. To insist that the learned trial Judge was right in making an order which would in effect award that sum to the plaintiffs is, in my opinion, a misconceived claim to a right known not to exist.

The court below examined paragraphs 6 and 7 of the statement of claim which laid out the said credit and debit sides, and also carefully considered the evidence. It then observed inter alia, per Ekpe JCA:

In my view, the purport of these two paragraphs is that while in paragraph 6 of the statement of claim the sum of N127,623,809.69 was falsely and fraudulently withdrawn from the 1st respondent's account No. 10044001, however, in paragraph 7 the said sum of N127,623,809.69 so falsely and fraudulently withdrawn by the appellant from the 1st respondent's account No. 10044-001 was paid back or credited into the said 1st respondent's account. It follows from the foregoing that there were corresponding debits and credits respectively of the sum of N127,623,809.69 into the 1st respondent's account No. 10044-001. In other words, while the sum of N127,623,809.69 was withdrawn from the 1st respondent's said account, the same sum of money was subsequently paid into that account. The result therefore, is that the corresponding debits and credits cancelled out themselves and thus leaving no outstanding debit or credit. In my opinion therefore, going by the state of the pleading in paragraphs 6 and 7 of the statement of claim, the respondents cannot be said to have incurred any loss of funds to justify the order of the learned trial Judge that the said sum of N127 million be credited in the account of the 1st plaintiff (respondent).

Even on the evidence, the testimony of PW. 1 (6th respondent) supported paragraphs 6 and 7 of the statement of claim on the debit entries and the credit entries, even though he did not know

how the debits and credits came about. It was the evidence of DW1 and DW2, who were some of the principal actors in the appellant bank that threw some light into the said debits and Credits respectively amounting to N127,623,809.69. DW1 was the Assistant General Manager of the appellant. He testified that those entries of debits and credits amounting to N127.6 million were mere fictitious entries which were manipulated to favour the plaintiff by the Branch Manager of the defendant by hiding the indebtedness from the CBN and NDIC. D.W. 2, the Branch Manager, Broad Street branch of the appellant, testified that on the issue of the N127.6 million he was instructed by the 6th plaintiff not to allow his overdrawn position to get to the Central Bank, and so he should move funds into his (6th plaintiff) account and reverse same after preparing his returns. He further testified that the subsequent dates were their reversals of all these credit entries.

From the foregoing evidence, I hold that the finding of the learned trial Judge was not borne out by the evidence before him. The finding was perverse as it did not take into account the evidence of the corresponding credits or payments of the sum of N127,623,809.69 into the account of the 1st respondent - No. 10044-001. As there was no proper evaluation of the evidence, this court deems it proper to interfere with that finding and re-appraise and re-evaluate the evidence. I therefore hereby find as a fact that on the foregoing evidence there was nothing to be credited into the account of the 1st respondent, since the debit and the credit entries respectively neutralised themselves. I hold that there was no proof of fraud leading to any financial benefit to the appellant, or loss to the respondents in this exercise. Most importantly also is the question whether the said sum of N127,623,809.69 as was ordered by the learned trial Judge to be credited to the account of the 1st plaintiff/respondent was even claimed as a relief by the respondents in their statement of claim. The answer is certainly in the negative.

The emphasised portion of the above passage from the judgment of the court below is a reflection of the evidence of the 6th plaintiff (as PW1) in regard to the 1st plaintiff's account in question. He had testified in examination-in-chief that he did not know how

the debits came about but that he knew of the credits which came to N127m. That seemed to suggest that the credits were lodged into the account in the normal course of business of which he was aware. That would be a reason for claiming that if the debits alleged to have been made irregularly up to the tune of the credits were discounted, then the credits would inure to the benefit of the 1st plaintiff. That was why he testified in cross-examination: "The sum of N127m in my account is my money." But another aspect of his evidence in cross examination was not consistent with that claim which the issue under discussion was meant to assert and insist on. He testified thus:

"I was enjoying facilities in the defendant. The limit was N5m.... On 24/4/95 I bided for 1,000 U.S. dollars. This brought the account to N14,909,376.26. There is need to redress this indebtedness. Between 20/4/95 to 29/9/95 the account has (sic) risen to N34,129,583.89. The account was not operated alone. It is not my duty to see that the accounts go to CBN. There was sudden credit of more than N30m. There was another credit of N14,974,222.18. Another credit of N14,892,424.95. In August, 1995, there was another credit of N16m. On 31/8/95 there was another credit of N16,876,161.86. In September, 1995 there was another credit of N30,740,985.61. I do not know how the credits came about."

Although the 6th plaintiff claimed not to know how the credits came about, at least that confirms that those credits were not lodged by him. Without those credits, the account would remain in debit and as admitted by him in evidence "there is need to redress this indebtedness". The court below having found that the trial court's finding that the amount in question belonged to the 1st plaintiff was perverse, undertook its own evaluation in line with the evidence having regard to the testimonies of DW1 and DW2 which explained how the credit entries came to be made by a method manipulated at the instance of the 6th plaintiff in order to shade the true position of the indebtedness in that account from the Central Bank of Nigeria (CBN) and the Nigerian Deposit Insurance Corporation (NDIC); and the court below having accepted that evidence, arrived at a contrary finding to that of the trial court which it considered perverse.

It is true that the findings of fact made by a trial court are entitled to respect by an appellate court when it is clear that the trial court has adequately performed its primary duty

of evaluating and ascribing probative values to the evidence before it. In such circumstances such findings are to be approached by an appellate court with due caution and not on the basis that it would or might itself have found otherwise. The essential consideration is that there is enough evidence on record from which the trial court's findings can be supported. See Akinloye v. Eyiola (1968) NMLR 92; Woluchem v. Gudi (1981) 5 SC 291; Odofin v. Ayoola (1984) 11 SC 72; Amadi v. Nwosu (1992) 5 NWLR (Pt.241) 273. ***The law, however, permits and indeed expects a Court of Appeal in appropriate circumstances to look at the evidence on record and make an objective finding of fact in place of a perverse finding made by the trial court. There is a long line of authorities supporting this course, all in the interest of justice.*** See Fatoyinbo v. Williams (1956) 1 FSC 87 at 89; (1956) SCNLR 274; Lawal v. Dawodu (1972) 1 All NLR (Pt.2) 270 at 286; Fashanu v. Adekoya (1974) 6 SC 83 at 91; Balogun v. Akanji (1988) 1 NWLR (Pt.70) 301 at 315. ***I am satisfied that, that was what the court below did in the present case. It was the right thing to do instead of allowing the obviously perverse findings of the trial court and the order that followed, which would have fraudulently credited the said sum of N127,623,809.69 to the 1st plaintiff at the expense of the defendant to whom the 1st plaintiff was otherwise indebted, to stand and prevail.***

I have considered the other argument on this issue as it relates to reversal of "charges, commissions and debits" as pleaded in paragraphs 10 and 11 of the statement of claim and argued copiously and tenaciously by learned counsel in the plaintiffs/appellants brief of argument and before this court. The decision of the learned trial Judge in that regard would appear to have been made in the same language as relief 2 was couched by the plaintiffs when he said:

"I declare that the defendant was not entitled to debit the account of the 1st and 2nd plaintiffs save as authorised by the said plaintiffs or in the normal and ordinary course of banking and an order directing the defendant to reverse all such false, fraudulent and excessive debits."

In paragraph 7 of the statement of claim, it is indicated that the interest rate and commission on turnover were tied

to the transactions relating to the said N127,623,809.69. Part of the averment in that paragraph containing certain figures of interest and commission charged was reproduced in the appellants' brief of argument. Learned counsel has argued that, that averment was "not denied at all" by the defendant. I am
 B **afraid that cannot be entirely correct. Paragraphs 6 and 7 of the statement of claim were denied in paragraph 8 of the statement of defence.** After stating that what was complained of in those paragraphs arose from the acts perpetrated by the 1st plaintiff in
 C abuse of his position as the Chairman of the Finance Committee of the defendant to overdraw the account No. 10044-001 without authorization, the defendant pleaded further in paragraph 9 of the statement of defence as follows:

"9(i) The defendant avers that it's part of its policy to charge
 D *interest on all loans and advances duly authorised but when the loans and advances are unauthorised apart from charging the statutory 21% it also charges penalties depending on the level of the unauthorisation.*

(ii) The defendant further states that at all times material state-
 E *ments of account were regularly prepared and furnished the 6th plaintiff on behalf of other plaintiffs and had never raised any objection whatsoever."*

It cannot therefore be argued that there was no denial and/or explanation in regard to the plaintiffs' averment in para-
 F **graph 7.**

However, the court below considered the relief sought for the reversal of the alleged false, fraudulent and excessive debits and held, quite rightly, that the relief was imprecise. **A look at the said relief**
 G **shows that nothing specific in terms of amounts in figures could be made an order of court. When a relief is sought from court, it must not be a matter of speculation or doubt as to what it entails. The court cannot be expected to make an order which is uncertain or which is subject to different interpretation as**
 H **to whether it meets the relief claimed. Nor has the court a duty to engage in any semantics in the order it makes in an attempt to explain what the plaintiff intended to ask for and accordingly grant it. The guiding rule is that the court must not grant a party what it has not asked for in clear terms and**

sufficiently proved: see Ekpenyong v. Nyong (1975) 2 SC 71; Ige v. Olunloyo (1984) 1 SCNLR 158. **The court below stated its position on relief 2 claimed in this case thus:**

“The relief claimed in paragraph 35(2) of the statement of claim is vague. The law is that a relief claimed by a party in an action must be proper, precise and certain. It is not the duty of the court to go about fishing out the alleged false, fraudulent and excessive debits in order to reverse them.” B

As I am of the same opinion, I endorse the above observation and hold that the relief as claimed is not capable of being made a court order. C

Issues (b) and (c) - Issues (b) and (c) were argued together in the appellants' brief of argument. One is whether the defendant was justified in consolidating the accounts of the 1st and 3rd plaintiffs; and whether the consolidation occasioned any damage or injury to the plaintiffs. ***The argument of learned counsel is that the accounts belonged to two distinct juristic personalities and so their individual authorization must be obtained to consolidate their accounts. It has been further contended that the consolidation gave rise to the false misrepresentation that the 1st and 3rd plaintiffs were owing N64,043,389.88. I do not find these contentions valid in the circumstances of this case.*** D E

There is no doubt in law that a banker may consolidate the accounts owned by a customer in his own right, unless precluded by agreement, express or implied from the course of business from doing so, in order to ascertain and treat as the balance, the amount standing to the credit of the customer. It is a prudent way open to the banker to assess the financial worth with it of that customer. It is a different thing where a banker opens two accounts for a customer, one in the customer's own name and the other in a business name or in the name of an incorporated body under his aegis or control: see British and French Bank Ltd. v. Opaleye (1962) 1 All NLR 26; (1962) 1 SCNLR 60. F G H

In the present case, it was the 6th plaintiff as the Chairman/Managing Director who was operating 1st and 3rd plaintiff companies' accounts. He was in fact the alter ego of the two. He had by his acts created a situation in which both companies became heavily in-

debted to the defendant through his “manipulation” of their accounts. The court below reasoned thus:

“One has to look at the particular circumstances of this case leading to the consolidation of the accounts complained of. The purpose of the consolidation of the accounts was to ascertain or determine the overall indebtedness of the 6th respondent’s associated companies to the appellant which the 6th respondent as the alter ego organised and manipulated to do business with the appellant. As a matter of fact it was the issue of the amount of indebtedness of the 6th respondent’s companies to the appellant that gave rise to this suit. The case of the respondents is not that they sustained any detriment, loss or damage by reason of the combination or consolidation of their accounts, such as that their cheque drawn on any of the consolidated accounts was dishonoured so as to give rise to cause of action in law. In other words, mere consolidation of the accounts of a customer by his banker to ascertain the totality of his indebtedness to the banker without his suffering any detriment, loss or damage by so doing does not give rise to cause of action against the banker.”

The court below saw the 6th plaintiff as the alter ego of the 1st and 3rd plaintiffs who acted in such a way in regard to them and the running of their accounts as if there was no justifiable distinction between him as a person and the two companies. It would appear those accounts were operated ‘in his own right’. There is nothing in this appeal to dispute that scenario. There is nothing also that the defendant was placed in such a circumstance that he was precluded by agreement, express or implied from the course of business from consolidating those two accounts in order to ascertain and treat the balance, if any, as the only amount really standing to the credit of the 6th plaintiff. In the event, the defendant found that the debit balance against the two was over N64 million. I do not think any damage or injury was thereby suffered by the plaintiffs.

Issue (d)

As to the last issue whether the defendant was entitled to the award of the sum of N12,155,179 by way of counter-claim, I have no doubt that it was, from the trend of the evidence. The trial court dismissed the counter-claim on the ground

that the amount of the overdraft due was being disputed between the plaintiffs and the defendant. He ended a consideration of the counter-claim with this short observation: *"Since the alleged overdraft is still disputed by the plaintiffs and the defendant what then is the basis of counter claiming for the sum of N18,249,848,88? I also hold that the defendant led no evidence to prove counter claim."* ^B

There might well have been dispute as to the outstanding overdraft. But that had become a matter for the court to resolve. There certainly was no substance in the finding that the defendant led no evidence in proof of the counter-claim. The court below considered the evidence as revealed in exhibit 3 which put the amount at N17,155,179.60. That document was addressed to the 6th plaintiff indicating what was owing the defendant. The reaction to it from the 6th plaintiff was not that the debt was denied. It was simply, in the main, that he wanted a breakdown of the amount - see exhibit 4. ^C

The defendant replied thus: "In the main, you were again requesting for breakdowns/details of figures sent to you. In this regard, you will recall that the breakdown together with details of the aggregate sum as at 31st December, 1995 had already been discussed with you and your accountants." That put an end to that matter. ^D

^E

The said exhibit 3 was tendered by the plaintiffs. In his evidence, DW1 Tommy Jonny Udofa, Asst. General Manager of the defendant, testified among other things in regard to exhibit 3. In particular he said that the outstanding debts of the plaintiffs in all their accounts were extracted and added together in exhibit 3, and that the amount involved was the subject of the counter-claim. No question was directed to him in cross-examination in respect thereof. It seems to me that in all the circumstances the counter-claim was not seriously contested. But to arrive at the award made, the court below took other factors into account. The 6th plaintiff's house was sold for N8 million out of which N3 million was deducted as agency fees etc leaving a balance of N5 million. This amount was deducted from the proved outstanding overdraft. What was left to be paid came to N12,155,179.00. The court below awarded that amount and I cannot fault that simple analysis. I have come to the conclusion that this appeal lacks merit alto- ^F

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gether. I hereby dismiss it with N10,000.00 costs to the defendant/respondent against the plaintiffs/appellants.

UWAIS CJN

B I have had the opportunity of reading in draft the judgment read by my learned brother, Uwaifo, JSC. I entirely agree that the appeal lacks merit and should be dismissed. Accordingly the appeal is hereby dismissed and the decision of the Court of Appeal is affirmed
C with N10,000.00 costs to the respondent against the appellants.

BELGORE JSC

I agree with my learned brother, Uwaifo JSC that this appeal
D lacks merit and ought to be dismissed. For the reasons he therein adumbrated, which I adopt as mine, I also dismiss the appeal with N10,000.00 costs to the defendant/respondent against the plaintiffs/appellants who were lucky to escape being arraigned before special tribunal on bank frauds.

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IGUH JSC

I have had the privilege of reading in draft the judgment just
F delivered by my learned brother, Uwaifo, JSC and I agree entirely with the reasoning and conclusions therein reached.

The facts of the case are adequately set out in the leading judgment and no purpose will be served by my recounting them all over again. I propose in this contribution to comment briefly on the issue
G of whether the Court of Appeal was justified in reversing the order of the trial court to the effect that the sum of N127,623,809.69 be credited by the defendant bank to the account of the 1st plaintiff.

In this regard it is my view that the finding of the learned trial Judge that the sum of N127,623,809.69 was falsely and fraudu-
H lently withdrawn by the defendant from account No. 10044-001 of the 1st plaintiff without any authorization and that the same should be credited by the defendant to the said account of the 1st plaintiff is totally erroneous and without any justification. I think the court below was perfectly right to have reversed that order. In the first place,

attention must be drawn to paragraph 6 of the plaintiffs' statement of claim wherein it was averred as follows:

"On various dates between May 1995 and December 1995 without the prior or any authorization of the 1st plaintiff the defendant falsely and fraudulently debited account No. 10044-001 of the 1st plaintiff with various sums of money as follows:

(a)	2/5/95	N 17,732,084.28	B
(b)	2/6/95	N 16,407,930.83	
(c)	3/7/95	N 14,974,222.18	
(d)	1/8/95	N 14,892,424.95	
(e)	9/8/95	N 16,000,000.00	C
(f)	1/9/95	N 16,876,161.86	
(g)	3/10/95.....	N30,740,985.61	
		N127,623,809.69"	

There is next paragraph 7 of the said statement of claim in D which it was averred:

"The amounts so falsely and fraudulently withdrawn by the defendant consisted of monies paid into account No.10044-001 of the 1st plaintiff on various dates as follows: :

(a)	31/5/95	N17,732,084.28	E
(b)	31/5/95	N16,407,930.83	
(c)	30/6/95	N14,974,222.18	
(d)	31/7/95	N14,892,424.95	
(e)	8/8/95	N16,000,000.00	
(f)	31/8/95	N16,876,161.86	F
(g)	29/9/95	N30,740,985.61	
		N127,623,809.69"	

The defendant by paragraph 8 of its statement of defence answered the above paragraphs of the plaintiffs' statement of claim as G follows:

"Paragraphs 6 and 7 of the statement of claim are denied; and the defendant avers that the acts complained of were acts perpetrated by the 6th plaintiff in his capacity as the Chairman of the Finance Committee where the said Account No.10044-001 of the 1st plaintiff having been overdrawn as a result of unauthorised withdrawals of money and far above the limit statutorily allowed a Director of any Bank either in form of overdraft or loan advances. Accounts and Balance Sheets are prepared every month end and sent

by the defendant to the Central Bank of Nigeria, the 6th plaintiff intimidating the then Branch Manager ensured that the account was in credit by illegally moving funds of the Bank into his account and reversing same four (4) and five (5) days later. This continued until discovered by the Management and Board of the Directors of defendant.”

It is apparent from the averments in the plaintiffs’ statement of claim that while paragraph 6 alleged total debits of N127,623,809.69 in the plaintiffs’ account No. 10044-001, paragraph 7 thereof averred corresponding total credits of exactly the same N127,623,809.69 in the same account. It seems to me clear even from the plaintiffs’ pleadings that they suffered no loss or damage to necessitate or justify the orders of the trial court in respect of the sum of money in issue.

In the second place, it is plain from the evidence before the court that the entire story surrounding the said sum of N127.6 million is a fraudulent design whereby fictitious entries of various sums of money amounting to N127.6 million were debited to the 1st plaintiff’s account No. 10044-001 and subsequently credited to the same account. In other words, the purported debits of N127.6 million in the plaintiffs’ relevant account were subsequently reversed.

It is not in dispute that the 1st plaintiff company belonged to the 6th plaintiff. It is also admitted that the 6th plaintiff is the Managing Director and chairman of the 1st plaintiff company and chairman of the 2nd, 3rd and 4th plaintiff companies. The 5th plaintiff, for her own part, is the wife of the 6th plaintiff although it appears strange she bears a different surname from her husband, the 6th plaintiff.

Now, explaining the above falsification and manipulation of figures in the 1st plaintiff’s account with the defendant, the Court of Appeal observed thus:

“... there were corresponding debits and credits respectively of the sum of N127,623,809.69 into the 1st respondent’s account No.10044-001. In other words, while the sum of N127,623.809.69 was withdrawn from the 1st respondent’s said account, the same sum of money was subsequently paid into that account. The result, therefore, is that the corresponding debits and credits cancelled out themselves and thus leaving no outstanding debit or credit. In my opinion therefore, going by the state of the pleading in paragraphs 6 and 7 of the statement of claim, the respondents cannot be said to

have incurred any loss of funds to justify the order of the learned trial Judge that the said sum of N127.6 million be credited in the account of the 1st plaintiff (respondent).

Even on the evidence, the testimony of PW1 (6th respondent) supported paragraphs 6 and 7 of the statement of claim on the debit entries and the credit entries, even though he did not know how the debits and credits came about. It was the evidence of DW1 and DW2, who were some of the principal actors in the appellant bank that threw some light into the said debits and credits respectively amounting to N127,623,809.69. DW1 was the Assistant General Manager of the appellant. He testified that those entries of debits and credits amounting to N127.6 million were mere fictitious entries which were manipulated to favour the 6th plaintiff by the Branch Manager of the defendant by hiding the indebtedness from the CBN and NDIC. DW2, the Branch Manager, Broad Street branch of the appellant, testified that on the issue of the N127.6 million he was instructed by the 6th plaintiff not to allow his overdrawn position to get to the Central Bank, and so he should move funds into his (6th plaintiff) account and reverse same after preparing his returns. He further testified that the subsequent dates were their reversals of all these credit entries. From the foregoing evidence, I hold that the finding of the learned trial Judge was not borne out by the evidence before him. The finding was perverse as it did not take into account the evidence of the corresponding credits or payments of the sum of N127,623,809.69 into the account of the 1st respondent - No. 10044-001. As there was no proper evaluation of the evidence, this court deems it proper to interfere with that finding and reappraise and re-evaluate the evidence. I therefore hereby find as a fact that on the foregoing evidence there was nothing to be credited into the account of the 1st respondent, since the debit and the credit entries respectively neutralised themselves. I hold that there was no proof of fraud leading to any financial benefit to the appellant, or loss to the respondents in this exercise."

It is crystal clear to me that the above observations and findings of the Court of Appeal are unassailable and cannot be faulted. While this controversial sum of N127.6 million was falsely and fraudulently "moved" out from the 1st plaintiffs account No. 10044-001 at the direction of the 6th plaintiff who at all material times was a Direc-

tor of the defendant bank and chairman of its Finance Committee, the same amount was subsequently credited back to the same account. The result, as was rightly emphasised by the Court of Appeal, is that the alleged debits and their corresponding credits cancelled and/or neutralised each other and consequently left no outstanding
B debit or credit against or in favour of either the plaintiffs or the defendant. I entirely agree with the court below that the said false entries of debits and credits amounting to N127.6 million were fictitious in the sense that they were manipulated to favour the plaintiffs thus enabling them, particularly the 6th plaintiff, to conceal their indebtedness to the defendant bank from the Central Bank of Nigeria. The
C concealment of those figures as disclosed by evidence, was to ensure that the heavy unauthorised loans which had apparently been granted by the defendant Bank to the 6th plaintiff and his company, the 1st
D plaintiff, did not get to the notice of the Central Bank of Nigeria as the said Central Bank of Nigeria would otherwise have been obliged to impose punitive sanctions against the said 6th plaintiff for the grossly over-drawn position of his account in the defendant Bank of which he was a Director and chairman of its Finance Committee. I think the
E court below in the circumstances cannot be faulted when it held that no fraud was established against the defendant Bank which led to any financial benefit to it or loss to the plaintiffs as the trial court had wrongly pronounced.

F It is for the above and the more detailed reasons contained in the leading judgment of my learned brother that I, too, find no substance in this appeal. The same is hereby dismissed with costs as assessed in the leading judgment.

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AYOOLA JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Uwaifo, JSC. I agree with the detailed reasons clearly stated in the leading judgment and I do not
H wish to add anything. I dismiss the appeal with costs as assessed in the leading judgment.