

**SUPREME COURT OF NIGERIA**  
24TH FEBRUARY, 2006. SC. 236/2001  
**CORAM:- I. L. KUTIGI, U. A. KALGO, D. MUSDAPHER,**  
**A. M. MUKHTAR, W. S. N. ONNOGHEN, JJSC**

ALHAJI ABBA SATOMI SALEH

(substituted by an order of court with ..... APPELLANT  
MUAZU ABBA SATOMI SALEH)

AND

BANK OF THE NORTH LIMITED ..... RESPONDENT

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COMPANY LAW - Evidence - Juristic person - Such as the respondent  
- Acts through its servants - Who can testify on matters - That took place  
before they were employed (H1)

BANKING - Overdraft facility - Repayment of - Is proved by production  
of bank teller - Not mere ipse dixit of the debtor (H2)

BANKING - Overdraft - Manipulation of account - Alleged against the  
bank - Is not established - And is a ploy - To avoid repayment of the  
overdraft (H3)

COURTS - Appeals - Evaluation of evidence - Where trial court abdicates  
its duty - In relation to proper appraisal of evidence - The appellate court  
will handle the evaluation (H4)

APPEALS - Evidence - Interfering with trial court's evaluation of evi-  
dence - Was properly done by Court of Appeal - In the circumstances of  
this case (H5)

**FACTS**

Before the High court of Justice Maiduguri, the plaintiff/respon-  
dent filed an action against the defendant/appellant. Respondent claimed  
the sum of N2,041,078.70 being the balance due on overdraft facilities  
granted to the appellant, interest on the same amount was also claimed.

The appellant in a separate suit claimed against the respondent the total sum of N1,506,610.00 as wrongly and negligently debited against him, and also claimed N1000,000 general damages. Pleadings were exchanged in each of the two suits which were consolidated and tried together. Respondent called three witnesses, tendered a number of documents, while the appellant testified and called a witness.

Appellant claimed that his account was manipulated by respondent, but did not lead any documentary evidence towards proofing how he paid the overdraft facility, except his oral evidence (*ipse dixit*). At the close of the case the Trial Court dismissed the claims of the respondent and granted the claims of the appellant. Respondent's appeal to the Court of Appeal was allowed. Being dissatisfied, appellant has now appealed to the Supreme Court.

#### **ISSUE FOR DETERMINATION**

*“Was the Court below right having regard to the pleadings, the evidence on the printed record and the circumstances of this case to have reversed the findings and judgment of the trial Court?”*

#### **HELD** (Unanimously dismissing the appeal per **MUSDAPHER JSC**) **COMPANY LAW - Evidence - Juristic person**

1. I entirely agree with the opinion of the Court below, that the mere fact that - a bank staff was not around when a customer's bank account was opened was not enough to prevent the staff from testifying or giving evidence on customer's account. It is settled law, that a company such as the respondent bank herein is a juristic person and can only act through its agents or servants. Any agent or servant can consequently give evidence to establish any transaction entered into by a juristic personality. Even where the official giving the evidence is not the one who actually took part in the transaction on behalf of the company. Such evidence is nonetheless relevant and admissible and will not be discountenanced, or rejected as hearsay evidence. The learned trial judge was clearly in error to have ignored the evidence led by the respondent's witnesses on the ground merely that they were not around when the appellant opened its account with the respondent bank. (p. 865 H)

#### ***Overdraft facility - Repayment of***

2. In a situation such as this, where the appellant claimed to have repaid the loan overdraft against statements of accounts tendered by the respondent bank showing non payment by the appellant, the proof of payment by the mere “*ipse dixit*” of the appellant cannot be sufficient proof of repayment of the debt. See *DEBO VS. CHEKO (NIG.) LTD*, [1986] 6 SC 176.

The best way of proving payment of money into a bank account is by the production of a bank teller or an acknowledgment showing on the face of it that the bank has received the payment. A bank teller duly stamped with the official stamp of the bank and properly initialled by the cashier, constitute *prima facie* proof of payment of the sum therein indicated and a customer, after producing such a teller or receipt needs not prove more unless payment is being challenged see *ISHOLA VS. S.G.B. [NIG.] LTD*. *supra* and *AEROFLOT VS. U.B.A.* (1986] 3 NWLR (Pt. 27) 188. (p. 866 E)

#### ***Overdraft - Manipulation of account***

3. On the issue of the manipulation of the appellant's account by the staff of the respondent, in my view, the learned trial judge failed to consider the evidence led by the respondent, that the complaint of the appellant was fully investigated and was found to be baseless and the appellant was duly informed in “*exhibit L*.” The statement of account referred to above exhibits E1 - E35 were tendered by the plaintiff/respondent in proof of the debt owed, the statements of account were not falsified by the appellant and no entry was shown or proved to be wrong. The appellant did not pinpoint any error even when all the cheques issued by him exhibits J1 - J820 were made available to him., in particular, he did not identify the 8 cheques he disagreed with. I am of the firm view that the allegation of mishandling of the account appear to me to be a mere ploy or subterfuge to avoid repayment of the overdraft.

Further to above, in Exhibits H1 and H2 the appellant wrote to the respondent admitting his indebtedness. (p. 866 H)

***Appeals - Evaluation of evidence***

4. Since, the trial court had abdicated its duty in relation to the proper appraisal of the evidence, the Court of Appeal was in a good position to do so to ensure that justice is done to both parties. As shown at the beginning of this judgment, the case of the respondent bank was simple and straight forward. There was no dispute that the appellant at his request applied for and was granted loan facilities. There was no dispute that the appellant enjoyed the facilities. The appellant wrote letters, such as Exhibit III admitting his indebtedness to the respondent. In his pleadings he claimed to have repaid the loans. It was incumbent on him under the circumstances to prove there payment. He cannot by his mere ipse dixit sufficiently prove repayment as against the tendered cheques and the statements of account which he could not falsify. He did not prove the repayment as he averred to in his pleadings by relying on “*all the other relevant bank documents*”.

The appellant also claimed that there was manipulation of his accounts by the staff of the respondent. He simply failed to establish the allegation and as mentioned above, the respondent caused evidence to be given that the allegation was investigated and was found, to be false.

(p. 868 E)

***APPEALS - Interfering with trial court's evaluation of evidence***

5. Under the circumstances the Court of Appeal is clearly justified in re-evaluating, the evidence and in drawing correct inferences from the primary facts established. In the case of EZEKWESELI VS. AGBAPOUNWU [2003] 9 NWLR (Pt 825) 337, it was held that an appellate court has always the competence to interfere or disturb the evaluation of evidence and findings of fact which are not based on proper and dispassionate appraisal of the evidence given in support for each parties case or where such findings are perverse in the nature of the evident and the pleadings or where on the face of the record, justice has not been done in the case.

Consequently the Court of Appeal was in a position to have properly evaluated the evidence adduced by the parties in the course of its judgment and to hold that the respondent proved its case on the balance of probabilities and the appellant had failed to establish his claims.

I must in the end resolve this single issue against the appellant.

I accordingly dismiss the appeal and affirm the judgment of the Court of Appeal. The respondent is entitled to costs assessed at N10,000.00 against the appellant. (p. 869 C)

**NOTABLE POINT OF INTEREST****MUKHTAR JSC*****1. When documentary evidence will be imperative***

I don't think the defendant/appellant needed to specifically plead the various amounts paid to the respondent, as argued by learned counsel, for he has already pleaded the sum total of N400,000.00 which he said he paid back. It is not every fact that needs to be pleaded.

The only grave omission is the absence of documentary evidence which he could rely on, but which he did not produce. Such evidence that has documents to buttress it are expected to be backed by documents.

This is beyond the question of demeanour, for the whole case revolves around documentary evidence.

Although it is the prerogative of a trial judge who sees, watches, and listens to a witness to assess and determine his demeanour, the appellate court will interfere where he did not make good use of that advantage, and when a finding based on evidence is perverse and not supported by credible and cogent evidence. (p. 872 E)

**REPRESENTATION**

F. Umaru for the Appellant

D. D. Onietan for the Respondent

**CASES REFERRED TO**

Okoya v. Santilli 1994 4 NWLR part 338 page 256

A.C.B. v. Gwagwada 1994 5 NWLR part 342 page 25

KATE ENTERPRISES LTD. VS. DAEWOONIG. LTD [1955] 2 NWLR (PT 5) 155

ISHOLA VS. SGB. [NIG.] LTD. (1997) 2 NWLR (Pt 488) 405

ANYAEBOSI VS. R.T. BRISCOE [NIG.] LTD. [1987] 3 NWLR (Pt 59) 84

IGUNBOR VS. UGBEDE [1976] 9-10 SC 179

DEBO VS. CHEKO (NIG.) LTD, [1986] 6 SC 176

AEROFLOT VS. U.B.A. (1986] 3 NWLR (Pt. 27) 188

OGBU VS. ANI [1994] 7 NWLR (Pt 355) 128

EZEKWESELI VS. AGBAPOUNWU [2003] 9 NWLR (Pt 825) 337

B MOGAJI VS. ODOFIN [1978] 4 SC 91

WOLUCHEM VS. GODI 1981 5 SC 291 EEBA VS. OGODO [1984] 1 SC NLR 372

Akinola v. Oluwo 1962 1 SC NLR 352

Lawal v. Dawodu 1972 8-9 S.C

C Woluchem v. Gudi 1981 5 S.C. 291

**LEAD JUDGMENT BY MUSDAPHER JSC**

D In the High Court of Justice of Borno State of Nigeria in the Maiduguri judicial division and in suit No. M/1 66/88, the respondent herein, Bank of the North Ltd as the plaintiff claimed against the appellant herein as the defendant as follows:-

E “xxxxxxxxxxx the sum of N2,041,078.70 [Two Million, forty one thousand and seventy eight Naira, seventy three kobo] against the defendant, being the balance due on overdraft and L.B.A. facilities granted to the said defendant as a customer of the plaintiff at his request from the period of November, 1973 to about 1987 inclusive of accrued interest, and other bank charges thereon as at 30/9/1988 which amount the defendant F ought to have repaid long ago but has refused or neglected to pay in spite of several demands by the plaintiff. The defendant’s indebtedness to plaintiff was admitted in writing on several occasions.

G “The plaintiff claims additionally interest on the said amount of N2,041,078,73 at the rate of 17% per annum from the 1st October, 1988 till the day of final payment of the judgment debt to be obtained ‘herein plus cost of this suit.’”

The appellant, Alhaji Abba Satomi Saleh, as the plaintiff in suit No. M/32/89 claimed against the respondent, herein as the defendant, in paragraph 13 of the Statement of Claim as follows:-

H “13(a) A declaration that the removal of the total of N1,506,610,00 by the agents and/or servant of the defendant from the 3 accounts Nos.

400085, License Buying Agent No. 410093B and 410096B of the plaintiff through payment on cheques not issued or authorized by the plaintiff is wrong, null and void,

(b) A declaration that the defendant by the acts of its servant or agents has breached the sacred relationship between a Bank and its B customer.

(c) An order that the defendant should repay to the plaintiff The total sum of N1,506,610.00 wrongly and negligently debited from accounts Nos. 400085 License Buying Agents Account No, 410096B and 410093B. C

(d) N100,000.00 General Damages”

Pleadings were duly settled filed and exchanged in each of the two suits which were eventually consolidated and tried together by the trial judge. At the hearing, the respondent herein called three witnesses and tendered a number of documents, while the appellant testified and D called a witness. After the address of counsel, in its judgment delivered on the 25/5/1995, the trial court dismissed the claims of the plaintiff in suit No.M/166/88 while the claims hi suit No. M/32/89 were allowed. Bank of the North Ltd, the respondent herein felt unhappy and appealed E to the Court of Appeal Jos Division. The Court of Appeal after hearing the appeal, in its judgment delivered on the 15/6/1999 reversed the decisions of the trial court by granting the reliefs sought by Dank of the North Ltd in suit “No. M/166/88 and by dismissing the claims of the appellant herein, F in suit No. M/32/89. This, now is an appeal by Alhaji Abba Satomi Saleh as substituted, with leave of this court, with his son Muazu Abba Satorni. Saleh. Now, the parties shall be referred to, hereafter as the appellant and the respondent as the case may be . But before I discuss the issue for de- G termination in this appeal, it shall be necessary to set out the back ground facts.

Based on the pleadings and the evidence led at the trial, the facts of the case may be summarized as fallows. The respondent is a banker and the appellant was its customer. The appellant was a businessman and H a licensed buying agent based in Maiduguri and was carrying on business under the name and style of “Alhaji Abba Satomi Saleh and Sons”. The case of the respondent was that the appellant opened a current account on

the 18/3/1971 with the respondent bank. As from November 1973, at his request, the appellant was granted overdraft facilities on his own personal account and on the Licensed Buying Agent Account [hereinafter referred to as LBA account] in the sums of N3000 and N12,000.00 respectively. By 1981, at the request of the appellant the facilities were increased to a total of N400,000.00. As at 30/9/1988, the debit balance of the appellant's accounts stood at N2,041,078.73 inclusive of accrued interest and bank charges. The respondent bank used to send regular statement of accounts and letters reminding him of his indebtedness. The appellant on several occasions both in writing and orally admitted his indebtedness to the respondent bank. To the chagrin of the respondent, on the 3/3/1988, 24/5/1988 and 11/7/1988, the appellant denied his indebtedness to the respondent and alleged that the bank had mismanaged and mishandled his accounts. The respondent denied the claims of the appellant that his accounts were mismanaged or mishandled.

On his own part, the appellant denied the respondent's claim and asserted that it was the respondent bank that is indebted to him in the sum of N1,506,510.00 being the total, amount of 8 cheques debited against his account without his authority. The appellant claimed that he discovered that the officials of the respondent bank had mishandled and mismanaged his accounts. He claimed one Mr. Chawai branch accountant and one Mr. Taiwo assistant manager had between 1982 and 1983 manipulated his accounts as a result of which they were retired by the bank.

As mentioned above, the trial judge dismissed the claims of the bank and entered judgment in favour of the appellant. The Court of Appeal reversed the decision of the trial court by allowing the claims of the bank and by dismissing the claims of the appellant.

The appellant has filed five grounds of appeal from which only one -issue has been identified formulated and submitted to this court for the determination of the appeal. The issue reader

*"Was the Court below right having regard to the pleadings, the evidence on the printed record and the circumstances of this case to have reversed the findings and judgment of the trial Court?"*

The respondent has more or less formulated the same issue for

determination of the appeal.

All the arguments of the appellant centred and complained on the Court of Appeal setting aside and overruling the findings of facts made by the learned trial judge. It is argued that the learned trial judge had properly reviewed and appraised the entire evidence before he came to the conclusion that the respondents had not *"shown on the preponderance of probability that the defendant is owing the bank the amount claimed The suit is hereby dismissed,"* The Court of Appeal on the other hand, came to the conclusion, that- the appellant having pleaded that he repaid the overdraft of N400,000.00 and would rely in proof thereof on *"all the ether relevant bank document showing that he had paid back to the plaintiff the sum of N400,000.00."* The proof by his mere *"ipse dixit"* that he had repaid was not enough failed to establish the repayment by adducing evidence through the *"relevant documents i.e tellers, cheques etc."* It was also the finding of the lower court that the repayments were not specifically pleaded nor were they indeed proved and accordingly, the Court of Appeal found that the appellant had, having admitted the debt, failed to establish that he had paid the debt.

In its judgment, the Court of Appeal held:-

*"Despite the plethora of documentary evidence xxxxxx which the appellant [the bank] tendered In proof of its case, the learned trial judge dismissed its case. In go doing he gave three main reasons firstly, that one of the three witnesses, P.W1, P.W2 and P.W3 was not there when the respondent opened the account with the bank, secondly, that he believed the respondent paid the amount he claimed he paid; and thirdly, that the respondent's manipulation of his account as confirmed by D.W.1 was true."*

**I entirely agree with the opinion of the Court below, that the mere fact that - a bank staff was not around when a customer's bank account was opened was not enough to prevent the staff from testifying or giving evidence on customers account.** See KATE ENTERPRISES LTD. VS. DAEWOO NIG. LTD [1955] 2 NWLR (PT 5) 155. See also H ISHOLA VS. SGB. [NIG.] LTD. (1997] 2 NWLR (Pt 488) 405. See also ANYAEBOSI VS. R.T. BRISCOE [NIG.] LTD. [1987] 3 NWLR (Pt 59) 84, IGUNBOR VS. UGBEDE [1976] 9-10 SC 179. **It is settled law, that a**

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company such as the respondent bank herein is a juristic person and  
can only act through its agents or servants. Any agent or servant can  
consequently give evidence to establish any transaction entered into  
by a juristic personality. Even where the official giving the evidence  
is not the one who actually took part in the transaction on behalf of  
the company. Such evidence is nonetheless relevant and admissible  
and will not be discountenanced, or rejected as hearsay evidence. The  
learned trial judge was clearly in error to have ignored the evidence  
led by the respondent's witnesses on the ground merely that they were  
not around when the appellant opened its account with the respondent  
bank.

In a situation such as this, where the appellant claimed to have  
repaid the loan overdraft against statements of accounts tendered  
by the respondent bank showing non payment by the appellant, the  
proof of payment by the mere "ipse dixit" of the appellant cannot  
be sufficient proof of repayment of the debt. See DEBO VS. CHEKO  
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The best way of proving payment of money into a bank account  
is by the production of a bank teller or an acknowledgment showing  
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duly stamped with the official stamp of the bank and properly ini-  
tialled by the cashier, Constitute prima facie proof of payment of the  
sum therein indicated and a customer, after producing such a teller or  
receipt needs not prove more unless payment is being challenged see  
ISHOLA VS. S.G.B. [NIG.] LTD. supra and AEROFLOT VS. U.B.A.  
(1986] 3 NWLR (Pt. 27) 188.

On the issue of the manipulation of the appellant's account by  
the staff of the respondent, in my view, the learned trial judge failed to  
consider the evidence led by the respondent, that the complaint of the  
appellant was fully investigated and was found to be baseless and the  
appellant was duly informed in "exhibit L." The statement of account  
referred to above exhibits E1 - E35 were tendered by the plaintiff/  
respondent in proof of the debt owed, the statements of account were  
not falsified by the appellant and no entry was shown or proved to  
be wrong. The appellant did not pinpoint any error even when all the

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cheques issued by him exhibits J1 - J820 were made available to him.,  
in particular, he did not identify the 8 cheques he disagreed with. I  
am of the firm view that the allegation of mishandling of the account  
appear to me to be a mere ploy or subterfuge to avoid repayment of  
the overdraft.

Further to above, in Exhibits HI and H2 the appellant wrote  
to the respondent admitting his indebtedness. I reproduce admitting  
Exhibit 'HP' dated 29/11/1982:-

"The Area Managers,

Bank of the North Ltd.

Maiduguri Branch

Dear Sir,

With reference to my letter dated 11/11/1982, I agree to  
liquidate my debts from the following sources:-

Sources

Amount

(a) Construction contract .

N656,250.00

(b) Produce Business

212,000.00

(c) School food supply .

168,000.00

N1,036,250.00

xxxxxxxxxxxxxxxxxx"

The appellant went further to ask for additional loan or overdraft  
to "finance Basalah Industries Ltd, a company wholly owned by me to the  
production level."

In my view, the trial court completely abdicated its responsibility  
of properly evaluating and of appraising the entire evidence led before it.  
It has also misdirected itself on the onus and inferences from the evidence  
adduced. But the law is settled that an appellate court shall not ordinarily  
interfere with the verdict of a trial court. In the case of OGBU VS. ANI  
[1994] 7 NWLR (Pt 355) 128 at 140 BELGORE JSC stated thus:-

This Court has on several occasions warned against interfering  
with conclusion of trial court on facts. Trial court has many advantages a  
Court of Appeal never has. It sees the witnesses, hears them and assesses  
their demeanour and makes finding in line with what in law is admissi-

ble. It is the trial court that can assess the veracity of a witness before it. ONUOHA VS THE STATE [1989] 2 NWLR (Pt 101)

23. It is not the function of the appellate court to interfere with the finding of trial court on facts. There are however, exemptions to this rule. If the finding is not supported by evidence that finding shall be set aside by the appellate court, also when the finding is supported by evidence but that evidence is by law not admissible or the finding is perverse it will be set aside by the appellate court. See CHUKWOEKE VS. NWANKWO [1985] 2 NWLR (Pt.6) 195, EGBASE VS. ORIAREGHAN [1985] 2 NWLR (Pt 10) 884 AJUWA VS. ODILI (1985) 2 NWLR (Pt.9) 710, OGBECHIE VS. ONOCHIE [1986] 2 NWLR (Pt. 23) 484. AGBOMFO VS. AIWEREOBA [1985] 1 NWLR (Pt 70) 325.”

**Since, the trial court had abdicated its duty in relation to the proper appraisal of the evidence, the Court of Appeal was in a good position to do so to ensure that justice is done to both parties. As shown at the beginning of this judgment, the case of the respondent bank was simple and straight forward. There was no dispute that the appellant at his request applied for and was granted loan facilities. There was no dispute that the appellant enjoyed the facilities. The appellant wrote letters, such as Exhibit III admitting his indebtedness to the respondent. In his pleadings he claimed to have repaid the loans. It was incumbent on him under the circumstances to prove there payment. He cannot by his mere ipse dixit sufficiently prove repayment as against the tendered cheques and the statements of account which he could not falsify. He did not prove the repayment as he averred to in his pleadings by relying on “all the other relevant bank documents”.**

**The appellant also claimed that there was manipulation of his accounts by the staff of the respondent. He simply failed to establish the allegation and as mentioned above, the respondent caused evidence to be given that the allegation was investigated and was found, to be false.** The statements of account and the cheques issued by the appellant were all placed before the court and the appellant did not “rely” on them to establish his claims. Nor did the appellant identify the eight cheques claimed were not issued by him. I agree with the decision of the Court of

Appeal, that the appellant did not lead credible evidence to entitle him to judgment while the respondent “*had led sufficient credible evidence to be entitled to judgment to his claims.*”

**Under the circumstances the Court of Appeal is clearly justified in re-evaluating, the evidence and in drawing correct inferences from the primary facts established. In the case of EZEKWESELI VS. AGBAPOUNWU [2003] 9 NWLR (Pt 825) 337, it was held that an appellate court has always the competence to interfere or disturb the evaluation of evidence and findings of fact which are not based on proper and dispassionate appraisal of the evidence given in support for each parties case or where such findings are perverse in the nature of the evident and the pleadings or where on the face of the record, justice has not been done in the case.**

Consequently the Court of Appeal was in a position to have properly evaluated the evidence adduced by the parties in the course of its judgment and to hold that the respondent proved its case on the balance of probabilities and the appellant had failed to establish his claims. See MOGAJI VS. ODOFIN [1978] 4 SC 91. WOLUCHEM VS. GODI 1981 5 SC 291 EEBA VS. OGODO [1984] 1 SC NLR 372.

**I must in the end resolve this single issue against the appellant. I accordingly dismiss the appeal and affirm the judgment of the Court of Appeal. The respondent is entitled to costs assessed at N10,000.00 against the appellant.**

KUTIGI JSC

I have had the advantage of reading before now the judgment just delivered by my learned brother Musdapher, JSC. I agree with his reasoning and conclusion that the appeal lacks merit. I accordingly dismiss it with N10,000.00 costs against the Appellant and in favour of the Respondent. The judgment of the Court of Appeal is confirmed.

KALGO JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother Musdapher JSC in this appeal. I entirely agree with him that there is no merit in the appeal and it ought to be dismissed. I dismiss it accordingly and affirm the decision of the Court of Appeal. I award N10,000.00 costs in favour of the respondent.

### MUKHTAR JSC

I have had a preview of the judgment delivered by my learned brother Musdapher JSC. The reliefs sought by the appellant who was then the plaintiff in the High Court of Justice of Borno State are:

(a) A declaration that the removal of the total of N1,506,610.00 by the agents and/or servants of the defendant from the 3 accounts Nos. 400085, License Buying Agents No. 410093B of the plaintiff through payments on Cheques not issued or authorized by the plaintiff is wrong, null and void.

(b) A declaration that the defendant by the acts of its servants or agents has breached and sacred relationship between a Bank and its customer.

(c) An order that the defendant should repay to the plaintiff the total sum of N1,506,610.00 wrongly and negligently debited from Account Nos. 400085, License Buying Agents Account No. 410096B and 410093B.

(d) N100,000.00 general damages.

Prior to the above claim, the defendant therein in another suit claimed as follows against the respondent in this appeal :-

*"Wherefore the plaintiff claims from the defendant the sum of N2,041,078.73 (Two million, forty-one thousand and seventy eight Naira seventy-three kobo) being the balance due from him on the facilities granted to him by the plaintiff inclusive of accrued interest and other bank charges thereon as at 30/9/88; plus interest therein at the rate of 17% p.a. from 1st October, 1988 till the day of final payment of the judgment debt due to be obtained herein in addition to the costs of this suit."*

The two suits were consolidated and the learned trial judge in his judgment found thus in respect of the first suit :-

*"In view of the evidence reviewed above, I do not think the plaintiff, the Bank of the North has shown on the preponderance of probability that the defendant is owing the Bank, the amount claimed."*

In respect of the second suit he found as follows :-

*"I find it proved by his evidence that his account has been debited by these cheques to a total sum of N1,506,610.00. He is entitled to his money. I will enter judgment for him against the defendant, the Bank of the North for the sum of N1,506,610.00 and current interest which according to his counsel is 21%."*

The Bank of the North was dissatisfied with the decisions, so it appealed to the Court of Appeal on ten grounds of appeal. The Court of Appeal found merit in the appeal, and it allowed it. Alhaji Abba Satomi Saleh was aggrieved by the judgment of the Court of Appeal and he has appealed to this court on five grounds of appeal. Briefs of argument were exchanged by learned counsel. Only one issue for determination was raised in the appellant's brief of argument, to cover all the five grounds of appeal. The issue is :-

*"Was the court below right having regard to the pleadings, the evidence on the printed record, the circumstances of this case to have reversed the findings and judgment of the trial court."*

The issue raised in the respondent's brief of argument is in pari materia with the above issue.

The appellant's grouse is premised on the reversal of the findings of facts of the learned trial judge by the appellate court below, and a portion of the judgment in which there was such reversal, and which the appellant is attacking reads :-

*"Apart from the fact that the above payments were not specifically pleaded, no documentary evidence was tendered as evidence of the payments despite the respondent averment in paragraph 8 of his statement of defence quoted above that he would rely on all the other relevant bank documents showing that he paid back to the plaintiff the sum of N400,000.00. It is my candid view that the respondent by the mere 'ipse dixit' evidence adduced by him not supported by any bank tellers, credible notes etc had failed to discharge the burden of establishing repayment of the credit facilities granted to him by the appellant."*



In his judgment the learned trial judge found as follows on the said payments :-

*“The defendant, Alhaji Satomi in his evidence said that he is not owing the Bank. He said he paid some amounts to his bank account the amounts include N1,280.00. He said he also paid N60,000.00, N150,000.00; N200,000.00; N400,000.00 he said his account was mishandled. He said he has no account as 410055, 410040, 410097, 410027, 410041, 33427, 4100953 I believe his evidence.”*

I don’t think the defendant/appellant needed to specifically plead the various amounts paid to the respondent, as argued by learned counsel, for he has already pleaded the sum total of N400,000.00 which he said he paid back. It is not every fact that needs to be pleaded. See *Okoya v. Santilli* 1994 4 NWLR part 338 page 256, and *A.C.B. v. Gwagwada* 1994 5 NWLR part 342 page 25.

The only grave omission is the absence of documentary evidence which he could rely on, but which he did not produce. Such evidence that has documents to buttress it are expected to be backed by documents.

This is beyond the question of demeanour, for the whole case revolves around documentary evidence.

Although it is the prerogative of a trial judge who sees, watches, and listens to a witness to assess and determine his demeanour, the appellate court will interfere where he did not make good use of that advantage, and when a finding based on evidence is perverse and not supported by credible and cogent evidence. See *Akinola v. Oluwo* 1962 1 SC NLR 352, *Lawal v. Dawodu* 1972 8-9 S.C., and *Woluchem v. Gudi* 1981 5 S.C. 291.

With the above reasoning and the detailed treatment of the issue in the lead judgment, I am of the firm view and agree with my learned brother that the appeal lacks merit and substance, and deserves to be dismissed in its entirety. I abide by all the consequential orders made in the lead judgment.

H

**ONNOGHEN JSC**

I have had the opportunity of reading in draft, the lead judgment

of my learned brother, musdapher, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

The primary issue in this appeal involves evaluation of evidence, the question being whether the appellant proved his case against the respondent on preponderance of evidence. The facts of the case have been stated in detail in the lead judgment of my learned brother and I do not intend to repeat them herein except as may be needed to emphasis the point(s) being made.

From the facts as pleaded, appellant has the burden of proving that the respondent negligently debited his account to the tune of N1,506,610.00. This claim sounds more in special damages than in general damages. The law is that special damages must not only be specifically pleaded but it must also be strictly proved. Appellant does not dispute the fact that he took an overdraft/loan facility of N400,000.00 from the respondent. However, whereas the respondent avers that appellant has failed done so and that his account was negligently debited to the tune of N1,506,610.00 which he claims from the respondent.

The case of the appellant, are as pleaded inter alia, in paragraphs 6, 7, 8, 9,10,11 and 12 of the Statement of Claim:-

“6. The plaintiff sometime between late 1984 and early 1985 complained to the then General Manager of the defendant, Maiduguri that certain officers of the defendant bank to wit: Alhaji Chawai and Mr. Taiwo were mishandling his accounts, as a result of which the defendant assigned one of its officers to cross-check the operations of the plaintiff’s accounts.

7. The plaintiff avers that the result of the cross-checking was never made known to him nor were both Mr. Taiwo and Alhaji Chawai asked to explain the complaints of the plaintiff on the mishandling of Current Account NO. 400085 and License Buying Agents accounts NOS. 410096B and 4100933B.

8. The plaintiff not being satisfied with the continuous handling of his accounts by the agents, and/or servants of the defendant, and on attempt to reconcile his accounts with the defendant discovered that the agents

and/or servants of the defendant had debited on various dates between 1980 and 1982 various sums amounting to the sum of N1,506,610.00k from the plaintiff's 3 accounts with the defendant

9. The plaintiff further avers that the debiting of his 3 accounts:

B A/c No. 400085 License buying Agents 410093B and 410096B by the agents and/or servants of the defendant to the tune of N1,506,610.00k was done by making payments on Bank of the North cheques which were neither issued or authorized by the plaintiff or made with the plaintiff's consent

C 10. The Bank of the North cheques for which payment were made and money debited from plaintiff's 3 accounts by the agents and/or servants of the defendant Bank, without the consent, knowledge and/or authority of the plaintiff are as follows:-

(a) On Current Account No. 400085

D 5/11/80 Cheque No. 005/62 ... N60,000.00  
4/3/81 Cheque No. 101194 ... N50,000.00  
16/3/81 Cheque No. 11621...  
N85,000.00 14/8/81 Cheque No.  
E 116284 ... N43,000.00 5/5/82Cheque  
No. 146457... N94,800.00

(b) License Buying Agent Account No. 410096B

27/1/81 Cheque No. 104514 ... 14120,000.00

F 31/1/81 Cheque No. 104528... N178,000.00

(c) Licence Buying Agent Account No. 410093B:

Cheque No. 147202 ... .... N100,000.00

Previous amount discovered.. N000,655.00

G The plaintiff shall at the trial rely on and tender all the cheques as stated in paragraph 10 and hereby gives notice under section 97 of the Evidence Act to the defendant to produce same from their custody.

H 11. The plaintiff shall also rely on and tender at the trial the defendants ledgers covering current account No. 400085 and License Buying Agents Account 410093B and 410096B, to establish that his 3 accounts with the defendant Bank were wrongly and/or negligently debited by the agents and/or servants of defendant. The defendant is hereby given notice

under section 97 of the Evidence Act to produce at the trial the complete bank ledgers as stated above.

12. The defendant has inspite of demands made by the plaintiff failed, refused and/or neglected to repay the plaintiff the sum of N1,506,610.00k wrongly and/or negligently debited/removed from his accounts with the defendant. The plaintiff shall at the trial rely on and tender two letters dated 11/7/88 and 12/10/88 written to the defendant on this issue,...."

C The respondent, of course denied the averments and specifically claimed the sum of N2,041,078.73 as being the balance outstanding on account of loan credit facilities granted the appellant, which appellant admitted owing but had refused and/or neglected to pay inspite of repeated demand.

D At the trial appellant testified and called one witness but did not tender the statement of Account or ledgers he pleaded in paragraphs 10 and 11 of the Statement of Claim, from which it would have been possible to prove his allegations of manipulation of his account by the agents, and/or servants of the respondents, resulting in the negligent and wrongful E debiting of his said accounts. It is equally very important to note that appellant never also tender the eight cheques purportedly forged so as to prove the amount which were allegedly negligently debited to appellant's account.

F Though appellant failed and/or neglected to tender the aforesaid relevant documents, the respondent duly tendered them in evidence but appellant never relied on same in prove of his case. He was thus offered an opportunity by the respondent to prove his allegations against the respondents but he woefully failed to utilize same. Surprisingly the trial G court entered judgment in favour of the appellant in the following words:

"I would therefore not regard this claim by Alhaji Satomi as an after thought. I find it proved by his evidence that his account has been debited by these cheques to a total sum of N1,506,610.00. He is entitled to H his money. I will enter judgment for him against the defendant, the Bank of the North for the sum of N1,506,610.00 and current interest which according to his counsel is 21%."

It is clear from the Statement of Claim that appellant never pleaded

the issue of interest but the learned trial judge awarded 21%, which according to the learned trial judge is what learned counsel for the appellant claimed - not in the pleadings. That apart, when the figures pleaded as evidenced by the cheques allegedly paid wrongfully by the respondent are added up the total value is N731,000.00 but the figure claimed by the appellant as per paragraph 13 of the Statement of Claim is N1,506,610.00 which was duly awarded by the learned trial judge. No one knows what the difference between the sum of N731,000.00 and N1,506,610.00 stands for. Certainly that sum has not been strictly proved in evidence. However, the learned trial judge, as stated earlier, awarded the whole sum of N1,506,610.00 being special damages.

When confronted with the facts, the Court of Appeal had no alternative than to re-evaluate the evidence on record and made the following findings:

*“Looking at the parties pleadings reproduced above, it is clear to me that the respondent having admitted being granted overdraft facilities to the tune of N400,000.00 by the appellant, there is no burden on the appellant to prove that which has been admitted. On the contrary it is the respondent who asserted repayment who has the burden of proving such repayment.....”*

The Court of Appeal also found that despite the claim of the appellant to have repaid the loan of N400,000.00 he tendered no document such as bank tellers, credit notes, etc in proof and therefore held that appellant failed to discharge the burden placed on him to prove that he repaid the loan.

Turning to the case of the respondent, the Court of Appeal found, inter alia thus-

*“In the instant case where the appellant is saying that the respondent has not repaid the overdraft granted to him and has tendered statements of accounts Exhibits E1 - E35 showing the outstanding, amount, the respondents mere ipsi dixit evidence of repayment is insufficient proof thereof.....”*

That apart, there is evidence that appellant admitted his indept-  
edness to the respondent in various correspondence on the matter which

were tendered in evidence.

I hold the view that in view of the facts as pleaded and the totality of the evidence before the lower court, that court is justified in interfering with the rather strange findings of fact by the trial court which were rightly, in my opinion, set aside by that court. From the appellant brief I am unable to see where learned counsel for the appellant has demonstrated how the lower court was wrong in its decision by setting aside the judgment of the trial court. In my view, the lower court took pains to examine the totality of the evidence adduced by the parties identified and went into the issues raised in the pleadings in arriving at its decision that it is the appellant who has the burden of proving the allegations of negligently debiting the appellants accounts to the tune of N1,506,610.00 and that he failed to discharge that onus and consequently dismissed his claim.

In conclusion I too find no merit whatsoever in this appeal which is accordingly dismissed.

I aside by the consequential orders contained in the lead judgment of my learned brother, MUSDAPHER, JSC including the order as to costs.

Appeal dismissed.