

SUPREME COURT OF NIGERIA

7TH JULY 2006. SC. 229/2000

**CORAM:- S. U. ONU, U. A. KALGO, I. C. PATS-ACHOLONU,
D. MUSDAPHER, G. A. OGUNTADE, JJSC**

ALHAJI A. OLALEKAN APPELLANT
AND	
WEMA BANK PLC RESPONDENT

BANKING - Fixed deposit - Original amount fixed - Can no longer be claimed - As it was transferred into plaintiff's other accounts - Towards settlement of outstanding debts - As rightly found by the lower courts (H1)

ESTOPPEL - Conduct - Banking - Unchallenged evidence of estoppel by conduct - Given by defendant - Was sufficient to estop plaintiff - From claiming the fixed deposit he has utilized (H2)

APPEALS - Issues - Findings - Banking - Subsidiary issue raised by lower court - Is not outside the ground of appeal - And Court of Appeal's findings - Are not contrary to those of trial court (H3)

FACTS

The plaintiff/appellant was a customer of the defendant/respondent. Plaintiff placed the sum of N2,000,000.00 in a fixed deposit account with the defendant on 27-1-1992, which was to mature on 27-1-1993. On 7-2-1992, defendant transferred the said fixed amount to the account of Alsod Nigeria Ltd. wherein plaintiff was the sole signatory and Managing Director. The transferred amount was used in offsetting the outstanding debits in plaintiff's other accounts maintained at another branch of the defendant.

Plaintiff raised no immediate objection to this development. Rather, he later withdrew the remaining sum after all his debts were settled. In this suit filed for breach of contract, plaintiff inter alia, sought

to recover the said fixed sum of N2,000,000.00 plus the agreed interest thereon. The trial court found that the plaintiff was aware that the original sum was de-fixed and dismissed his claims. Plaintiff's appeal to the Court of Appeal was also dismissed. Being dissatisfied, he has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the lower court was right to make findings contrary to the findings of the trial court which were not appealed against.
2. Whether the lower court gave a proper consideration to the appellants' complaint on the issue of estoppel.
3. Whether it was right for the lower court to raise and decide an issue not arising from the appellant's Ground of Appeal.

HELD (Unanimously dismissing the appeal per **ONU JSC**)

BANKING - Fixed deposit - Original amount fixed

1. Again, the learned trial judge held as follows:

"I hold that the plaintiff was aware that the sum of N2,000,000.00 (Two Million Naira) in his fixed deposit Account was transferred to the Account of Alsod Nigeria Limited on 7/2/92; this is reflected in Exhibit F. That part of the money was used to settle the debts in Account Nos. 557, 1967 and 842 at the Agodi Branch of the defendant two of which Accounts that is Nos. 1967 and 842 are in the plaintiff's personal name and the third one in the name of the plaintiff's Company and that afterwards the plaintiff caused to be withdrawn virtually the balance remaining after payment of the aforesaid debts. I also hold that since 10/2/92 when Exhibit F was issued showing the transfer of the N2,000,000.00 (Two Million Naira), the plaintiff did not raise any query until 31/ 12/92 when he wrote Exhibit B. I am of the considered view in the circumstances that the plaintiff can no longer claim the amount originally placed on fixed deposit."

From the foregoing I am of the view that subsequent transactions on Alsod Nigeria Limited Account as hereinbefore demonstrated show unequivocally that the appellant was aware when the money was de-fixed. The findings of the lower court as contained on page 183 lines

27 - 37 and page 184 lines 1-6 are neither erroneous nor contrary to the findings of the learned trial judge. Indeed, rather than departing therefrom, it reaffirms them and I agree with the findings of the learned trial judge. (p. 2689 G)

Unchallenged evidence of estoppel by conduct

2. At paragraph 22 of the amended statement of defence the respondent pleaded thus:

“The defendant will rely on all equitable defences including estoppel.”

The respondent gave evidence and tendered documents in support thereof with the evidence remaining unchallenged and uncontroverted. The court below held as follows:

“I agree entirely with this view of the learned trial judge that paragraph 16 and other paragraphs (underlining is for emphasis) i.e. the statement of defence sufficiently pleaded facts which constitute the plea of estoppel. The finding by the learned trial judge that the plaintiff was aware of the de-fixing of the N2,000,000.00 (Two Million Naira) fixed deposit and transfer of the same to the Account of Alsod Nigeria Limited is tantamount to a finding that he authorised the transfer. And having regard to the fact that he even drew from the Account through Exhibit J shortly thereafter, the principle of estoppel should be invoked to prevent him from claiming the same N2,000,000.00 which he has utilised.”

See (i) S.A. Adebajo v. Brown [1990] 3 N.W.L.R. (pt. 141) p. 677, see also Bullen and Leake’s Precedents of Pleadings, 6th Edition, p. 646.

(ii) Arcabold Egba & Ors. v. Chief Warri Ogudo & Ors. [2000] 6 S.C. part 1, page 133 at 147 where the Supreme Court held:

“An estoppel, therefore, is an admission; or something which the law treats as equivalent to an admission, of an extremely high and conclusive nature - so high and so conclusive, that the party whom it affects is not permitted to aver against it or offer evidence to controvert it.”

(iii) In Joe Iga & Ors. v. Ezekiel Amakiri & Ors. [1976] 11 S.C. 1 at 12 - 13 this court held:

“If a man by his words or conduct wilfully endeavours to cause another to believe in a certain state of things which the first knows to be false and if the second believes in such state of things and acts upon the belief, he who knowingly made the false statement is estopped from averring afterwards that such a state of things does not exist at the time.
(p. 2690 E)

APPEALS - Issues - Findings

3. Whereas the case of the appellant is that the sum of N267,645.21 was full and final payment, the respondent’s case is that the amount outstanding on the three Accounts was N401,438.57. I agree with the respondent that the dealings on Alsod Nigeria Limited Account after the N2,000,000.00 had been transferred to the said Account cannot be complete until the subsidiary issue of whether N267,645.21 was in full or part payment, has finally been decided upon. In this wise, I also entirely agree with the respondent that the subsidiary issue raised is not outside the Ground of Appeal.

It is for these reasons that I entirely agree with the respondents that all the cases cited by the appellant are irrelevant and are of no avail; that the lower court did not make any findings contrary to those made by the trial court; that the equitable defence of estoppel was properly pleaded in many paragraphs of the amended statement of defence and properly applied by the court below; and that finally, the subsidiary issue formulated by the court below is covered by Ground 4 which is not outside the Grounds of Appeal.

For the above reasons I dismiss this appeal. (p. 2692 A)

REPRESENTATION

Oluwole Aina Esq. with him Akinsola Olujinmi Esq. for the appellant.
R.A Ogunwole Esq. for the respondent.

CASES REFERRED TO

Joe Iga & Ors. v. Ezekiel Amakiri & Ors. [1976] 11 S.C. 1 at 12 - 13
S.A. Adebajo v. Brown [1990] 3 N.W.L.R. (pt. 141) p. 677

Arcabold Egba & Ors. v. Chief Warri Ogudo & Ors. [2000] 6 S.C. part 1, page 133 at 147

LEAD JUDGMENT BY ONU JSC

The plaintiff/appellant's claims in the trial court as formulated in the statement of claim at pages 33 paragraph 19 of the Record are as follows:

"1. DECLARATION that the failure or refusal of the defendant to pay the plaintiff the proceeds of the fixed deposit account covered by receipt No. 012825 of 27/1/92 which matured for payment on 27th January, 1993 amounts to a breach of contract.

2. DECLARATION that the defendant is liable to pay the plaintiff the principal sum plus interest thereon on the said deposit account up till the date of payment.

3. AN ORDER directing the defendant to pay the plaintiff forthwith the principal sum plus interest at the agreed rate up till the date of payment.

4. A further order directing the defendant to pay the plaintiff by way of damages enhanced interest on the principal sum at the rate of 8% per month less 17% per annum from 1st February, 1993 until the date of payment."

The trial court dismissed the claims after issues were joined and evidence was heard from both sides. The plaintiff appealed to the Court of Appeal which also dismissed the appeal. Thus, the appeal herein is against the concurrent findings of the two courts below.

The three issues that have been formulated at the instance of the plaintiff/appellant for the determination in this appeal are:

1. Whether the lower court was right to make findings contrary to the findings of the trial court which were not appealed against.

2. Whether the lower court gave a proper consideration to the appellants' complaint on the issue of estoppel.

3. Whether it was right for the lower court to raise and decide an issue not arising from the appellant's Ground of Appeal. The respondent for its part similarly proffered three issues for this court's determination,

to wit:

1. Whether the lower court was right to make findings contrary to the findings of the trial court which were not appealed against.

2. Whether the lower court gave a proper consideration to the
B appellant's complaint on the issue of estoppel.

3. Whether it was right for the lower court to raise and decide an issue not arising from the appellant's Ground of Appeal. I will consider appellant's issue Nos. 1 and 2 together which in turn cover Grounds 1,
C 2, 3 and 4 of the Grounds of Appeal thus: At page 133 lines - page 134 lines 1 - 4, the learned trial judge held as follows:

*"There is however nothing on the face of the documents to show that the plaintiff authorised the transfer. The oral instruction which the defendant claim was given by the plaintiff was vehemently denied by
D him. Moreover, the plaintiff was still in possession of Exhibit A, the fixed deposit receipt. At the time the defendant said the plaintiff gave the oral instruction it did not demand for the surrender of Exhibit A before the instruction was carried out. Considering the position as at 7/2/92 when
E the said sum of N2,000,000.00 was transferred from plaintiff's personal account to the account of Alsod Nigeria Limited there is nothing to show that the plaintiff authorised the transfer."*

There was evidence on record that as a valued customer of the
F respondent, he was given preferential treatment because the appellant did not give any written instruction to transfer the sum of N2,000,000.00 from the account in the name of the appellant. In effect, as at 7/2/92, there was no document to back up the transaction.

The learned trial judge did not stop at 7/2/92. He went on by observing:

G *"I will however go further to consider the events that followed."*

After enumerating the events/transactions that took place after the money had been transferred to Alsod Account in order to discover whether indeed the appellant was aware of the transfer, the events took
H the following order of sequence:

(i) The defendant deducted the sum of N401,438.57 from money transferred to Alsod Nigeria Limited and transferred same to its Agodi Branch to meet the indebtedness in the three Accounts at the branch,

(ii) Alsod Nigeria Limited was in debit of N2,308.58 as at 6/2/92, but when the transfer of N2,000,000.00 was made on 7/2/92, it was in credit of N1,979,691.42 as per Exhibit F which was sent to the plaintiff/appellant and which he tendered.

(iii) When the sum of N401,438.57 was deducted, the company B had a credit balance of N1,578,252.85.

(iv) Thereafter a cheque of N1,580,000 (One million, Five Hundred and Eighty Thousand Naira) was issued and made payable to the Account of Alsod Nigeria Limited at Afribank Plc. U.I. Branch, Ibadan. C The same was signed by the plaintiff/appellant as the Company's Managing Director and sole signatory to the Account of the Company. The cheque was tendered as Exhibit J

The learned trial judge after reviewing the transaction on Alsod D held as follows:

"There is no evidence that the Company Alsod Nigeria Limited queried Exhibit F. The question then is whether the acknowledged act of the company can be imputed to the plaintiff. It is trite law that 30 the plaintiff and the company are separate and distinct persons even though E the plaintiff is the Chairman/Managing Director of the Company and the sole signatory to its Account. The Company is a legal person and is legally different from the plaintiff. But a company being a legal person can only act through its human agents and officers. The state of mind F and will of Directors and managers who represent the directing mind and will of a Company and control what it does is the state of mind of the company and is treated by the law as such I hold that the plaintiff was aware or ought to have been aware that on 7/2/92 the sum of G N2,000,000.00 (Two Million Naira) standing in his fixed deposit Account was transferred to the Account of Alsod Nigeria Limited."

Again, the learned trial judge held as follows:

"I hold that the plaintiff was aware that the sum of H N2,000,000.00 (Two Million Naira) in his fixed deposit Account was transferred to the Account of Alsod Nigeria Limited on 7/2/92; this is reflected in Exhibit F. That part of the money was used to settle the debts in Account Nos. 557, 1967 and 842 at the Agodi Branch of the

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Issue No. 3 overlaps ground 5 of the Grounds of Appeal, in which as a subsidiary issue, the court below asks whether the payment of the sum of N267,645.21 was in full and final settlement as the debits owed in the three Accounts at the Agodi Branch.”

Whereas the case of the appellant is that the sum of N267,645.21 was full and final payment, the respondent's case is that the amount outstanding on the three Accounts was N401,438.57. I agree with the respondent that the dealings on Alsod Nigeria Limited Account after the N2,000,000.00 had been transferred to the said Account cannot be complete until the subsidiary issue of whether N267,645.21 was in full or part payment, has finally been decided upon. In this wise, I also entirely agree with the respondent that the subsidiary issue raised is not outside the Ground of Appeal.

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For the above reasons I dismiss this appeal and award N10,000.00 costs to the respondent.

KALGO JSC

I have had the opportunity of reading in advance the judgment just delivered by my learned brother, Onu, J.S.C. I agree with him that for the reasons contained in the said judgment, which I also adopt as mine that the appeal is devoid of any merit. I therefore also dismiss the appeal and abide by the orders made in the said judgment.

**PRONOUNCEMENT
MADE BY S.U. ONU JSC**

HON JUSTICE I.C. PATS-ACHOLONU, who is now deceased took part in the conference in this case and indicated his concurrence at

the conclusion with the rest of the panel.

MUSDAPHER JSC

I have had the privilege to read in advance the judgment of my Lord Onu, J.S.C., just delivered with which I entirely agree. For the reasons given in the lead judgment which I respectively adopt as mine, I too, find this appeal as lacking in merit and I accordingly dismiss it. I abide by the order for costs contained in the judgment.

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OGUNTADE JSC

I have had a preview of the judgment just delivered by my learned brother, Onu, J.S.C. I agree with his reasoning and conclusion and I subscribe to the order of costs.

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