

COURT OF APPEAL  
LAGOS DIVISION  
20<sup>TH</sup> MAY, 2002. CA/L/125/2000  
CORAM:- G. A. OGUNTADE, S. GALADIMA, C. M.  
CHUKWUMA-ENEH, JJCA

NIGERIA DEPOSIT INSURANCE ..... APPELLANT  
CORPORATION (NDIC)  
AND  
ECOBANK NIGERIA PLC ..... RESPONDENT

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COURTS - Addresses of counsel - Fair hearing - Where trial court by itself dispensed with addresses from both sides - Fair hearing principle is breached - Against a party that needed to address (H1)

COURTS - Parties - Equal treatment - Where the opportunity to do a thing is granted - An indolent party or one that has no need of exercising that right - Cannot complain (H2)

COURTS - Actions - Address of counsel - Guaranteed by s. 258(1) of 1979 Constitution - Is an essential input - Without which a judgment cannot be standard - Save where a party voluntarily refused to address the court (H3)

TRIBUNALS - Hearing - Addresses of counsel - Failed bank Tribunal - Though applicable schedule made no copious provisions - As to procedure for hearing civil cases - Adopted Rules of Federal High Court provides - That court shall entertain addresses from parties (H4)

ACTIONS - Jurisdiction - Debts - Interest claimed in this case - Is within the jurisdiction of the Failed Bank Tribunal - Claim before the Tribunal is not for damages or anticipated profit - As erroneously held (H5)

COURTS - Banking - Interest charges - Basis - Courts will always recognize Banks' rights - To recover accumulated interest charges -

Such claim has never been treated - As one for damages or anticipated profit (H6)

### **FACTS**

Before the Failed Banks Tribunal Zone VII Lagos, appellant filed an action against the respondent. Appellant's claim was for recovery of debt in respect of accumulated and unpaid interest due to Centre Point Merchant Bank (CMB) - a failed bank. The principal sum was N5 million which respondent held for the period of over 4 years before paying it. The accumulated interest on the principal sum is subject of the present suit. The trial Tribunal heard evidence from both parties and adjourned the case for address. On the adjourned date, instead of calling for counsel's addresses, the Tribunal went ahead and delivered judgment in the matter.

The Tribunal erroneously regarded the claim as being for damages and anticipated profit. It declined jurisdiction on that basis. Being dissatisfied, appellant has now appealed to the Court of appeal.

### **ISSUES FOR DETERMINATION**

*"3.1 Whether the lower tribunal was right in striking out the case for want of jurisdiction on the basis that the appellant's claim for interest amounted to a claim for damages or anticipated profit in respect of which the lower tribunal lacked jurisdiction.*

*3.2. Whether the lower tribunal was entitled to deliver judgment on the day fixed for address from counsel who were present in court and who were willing to address the court."*

**HELD** (Unanimously allowing the appeal, ordering a retrial, per **GALADIMA JCA**)

### ***Addresses of counsel - Fair hearing***

1. Here the record at p.30 has shown that it was the learned trial Judge who, after conclusion of the defence on 14/1/99, adjourned the case to 17/1/99 for address. On that date counsel for the parties were present in court for the purpose of addressing. It is not that both counsel declined to address the court; but the learned trial Judge suo motu on his own unilaterally dispensed with the address and proceeded to deliver judgment. The appellant has correctly complained that it was prevented from presenting its case fully before the lower court resulting

in breaching of its right to a fair hearing. It has been said times without number that an essential attribute of fair hearing is that a court or tribunal must hear both sides to a case and consider all material issues before reaching a decision. (p. 956 H)

### ***COURTS - Parties - Equal treatment***

2. The requirement that equal treatment, equal opportunity or equal consideration be given to all concerned is not breached in a situation where a party was afforded the opportunity to be present at the trial to present his case or to defend himself but he deliberately refused to avail himself of such an opportunity through his own neglect or tardiness because the law will not in any way aid the indolent. However, the rule is applicable where a party is denied an opportunity of being heard. In the instant case the respondent does not appear aggrieved by the arbitrary decision of lower tribunal to dispense with the addresses of counsel which the appellant so much needed to put all material issues before the tribunal reached its decision. (p. 957 C)

### ***COURTS - Actions - Address of counsel***

3. I must say that a party is not compellable to address the court where he has the right so to do, but where the right exists a party must not be denied that right. Addresses of counsel form part of the entire case. It has been held in *Obodo v. Olomu* (1987) 3 NWLR (Pt.59) 111, per Obaseki, J.S.C., at pages 123-124 that:

*“The hearing of addresses by every court established by the Constitution of the Federal Republic of Nigeria is recognised by the Constitution. It is to be given before judgment is delivered. See section 258(1) of the Constitution of the Federal Republic of Nigeria, 1979. Its beneficial effect and impact on the mind of the Judge is enormous but unquantifiable. The value is immense and its assistance to the Judge in arriving at a just and proper decision, though dependent on the quality of address cannot be denied. The absence of an address can tilt the balance of the learned Judge’s judgment just as much as the delivery of an address after conclusion of evidence can.”*

Stressing the importance of an address in this context Belgore, J.S.C., has this to say at p. 120:

*“The procedure whereby the parties to a case at the conclusion*

*of evidence are to address the court on the evidence before the court, enumerating the issues canvassed and adverting to the law governing the issues has taken such a root in our superior courts that denial of it cannot be regarded as mere procedural irregularity.”*

B No doubt from all that have been said above an address by  
counsel is to assist the court to clearly identify the issues for consideration so that the court can reach an informed balanced and equitable judgment in any particular case. When a judgment is reached without such an essential input by a counsel it cannot qualify as a standard  
C judgment, since the issues in controversy could not have been adequately articulated appreciated and dealt with. (p. 957 E)

### ***TRIBUNALS - Hearing - Addresses of counsel***

D 4. In the instant case the proceedings at the lower tribunal were in respect of civil cases governed by the procedure stipulated in schedule 1 of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal Decree 1994. Paragraph 20 of the schedule provides that at the conclusion of the hearing the tribunal shall deliver its judgment. The word “hearing” as used in paragraph 20 of the schedule  
E must necessarily include “address” by counsel. Although the schedule did not make copious provisions relating to the procedure for actual hearing of civil cases but it provides in paragraph 27 of the schedule that  
F “where these rules contain no provision in respect of any matter relating to or connected with the hearing of a case under this Decree the provisions of the Civil Procedure Rules of the Federal High Court shall apply with such modifications as may be necessary to render them conveniently applicable”. It is noted that the 1976 Rules was the applicable Civil  
G Procedures Rules of the Federal High Court at the time of the judgment of the lower tribunal in February, 1999. It provides in Order XL Rules 4, 5 and 6 that the court shall entertain addresses from parties after the conclusion of evidence before delivering judgment. (p. 958 E)

### ***ACTIONS - Jurisdiction - Debts***

H 5. Here the principal amount having been paid by the respondent on 7/3/95 the interest remained outstanding and that was the subject matter of the suit before the lower tribunal. I do not think this fact was in dispute before the tribunal. The bone of contention however, was

the rate of interest payable. At no time before the tribunal did the appellant make any claim for damages or for anticipated profit as erroneously held by the lower tribunal. A claim for interest such as the one before the lower tribunal is not a claim for anticipated profit. This is simply a claim for debt by a customer from a banker. In this case the debt consisted of a principal amount and the accrued interest. B

A “debt” within the context of section 3(1) of the Decree means the principal debt plus accrued interest, the appellant was merely claiming interest charges which brings their claim perfectly within the jurisdiction of the lower tribunal. (p. 960 B) C

### ***Banking - Interest charges - Basis***

6. Our courts will always recognise the rights of money lenders and banking institutions to recover their accumulated interest charges, as part of the debt due to them by debtor customers. This type of claim D has never been treated as a claim for damages or anticipated profit. Such interest claims are based on the guidelines of the Central Bank as well as the Banks and Other Financial Institutions Decree No. 59 of 1991.

In the result all the issues having been resolved against the respondents this appeal succeeds. The judgment of the lower tribunal is hereby set aside. The case is remitted to Chief Judge of the Federal High Court to be reassigned to another Judge for expeditious trial. (p. 960 G) E

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## ***NOTABLE POINTS OF INTEREST***

### ***GALADIMA JCA***

#### ***1. Failed Bank - Definition and clarification***

The respondent has contended that there was no evidence adduced by the appellant to establish that ‘CMB’ came within the definition of a “failed bank” in section 29 of the Decree. Reliance was placed on evidence of the appellant’s first witness. If the evidence of Christian Omezirike Ajoku is to be carefully considered, then quite a different view would have been held. H

Besides, the reports tendered by the appellant showed that CPMB was a failed bank within the meaning of section 3 of the Failed Bank Decree, 1994, as amended which defines a failed bank as a bank

*“whose capital to risk weighted assets ratio is below such minimum percentage as may be prescribed from time to time by the Central Bank, the Nigeria Deposit Insurance Corporation or such other appropriate authority.”* (p. 959 D/960 E)

B *2. Damages & interest defined*

The appellant’s claim was for payment of interest which is quite distinct from a claim for damages. Osborne’s Concise Law Dictionary defines damages as “Compensation of indemnity for loss suffered owing to a tort or breach of contract or breach of some statutory duty committed by some other person. The principle is that the injured party should be put as nearly as possible in the same position, so far as money can do it, as if he had not been injured. As for the word “interest” the same dictionary defines it as “a sum payable in respect of the use of another person’s money, such money called the principal.” (p. 959 F)

**REPRESENTATION**

S.E. Elema, Esq., for the Appellant

B. O. Ogundipe, Esq., for the Respondent

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**CASES REFERRED TO**

Renolds Construction Company Ltd. v. John Okpegboro (2000) 2 NWLR (Pt. 645) 367

Obodo v. Olomu (1987) 3 NWLR (Pt. 59) 111

Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530 at 536

Tecno Mechanical (Nig.) Ltd v. Ogunbayo (2000) 1 NWLR (Pt. 639) 150

Liman v. Mohammed (1999) 9 NWLR (Pt. 617) 116

G Nigerian Merchant Bank Plc. v. Aiyedun Investment Ltd. (1998) 2 NWLR (Pt. 537) 221

Union Bank v. Ozigi (1991) 2 NWLR (Pt. 176) 677

**STATUTES & RULES REFERRED TO**

H Bank and Other Financial Institution Decree, 1991, s. 23

Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree, 1994, ss. 3 (1) and 29

Federal High Court (Civil Procedure) Rules, 1976, O. XL rr. 4, 5 & 6

### **LEAD JUDGMENT BY GALADIMA JCA**

This is an appeal by the appellant against the decision of Evuti, (J), Chairman of Failed Banks (Recovery of Debts) and Banks Financial Malpractices in Banks Tribunal, Zone VII, Lagos, delivered on 17/2/99 B in which the appellant's claim was struck out for want of jurisdiction.

The appellant's claim before the tribunal, which was for recovery of debt in respect of accumulated and unpaid interest was regarded by the tribunal as a claim for damages or anticipated profit on the basis of C which the lower tribunal declined jurisdiction.

Dissatisfied, the appellant first appealed to the Special Appeal Tribunal but with the promulgation of the Tribunals (Certain Consequential Amendments) Decree of 29/5/1999, the appellant has now lodged its appeal before this court in which it raised three grounds D and formulated three issues therefrom thus:

*"3.1 Whether the lower tribunal was right in striking out the case for want of jurisdiction on the basis that the appellant's claim for interest amounted to a claim for damages or anticipated profit in respect of which the lower tribunal lacked jurisdiction."* E

*3.2. Whether the lower tribunal was entitled to deliver judgment on the day fixed for address from counsel who were present in court and who were willing to address the court."*

In the respondent's brief of argument the following three issue F were formulated for the consideration of this court:

*"3.1 Was the tribunal entitled to proceed to deliver its judgment without hearing address from counsel to the parties having expressly adjourned to a particular date for that purpose?"*

*3.2. Was the tribunal entitled suo motu, to raise an issue of law G and proceed to determine the same without granting parties an opportunity of being heard in respect thereof?"*

*3.3 Was the appellant's claim before the tribunal within the tribunal's limited jurisdiction?"*

I would rather be guided by the two issues identified by the H appellant in the determination of this appeal. However the summary of facts material for the consideration of this appeal shall be first exposed. On 18/10/91, Centre Point Merchant Bank (CMB) gave instruction to

the Central Bank (CBN) to transfer a total of N5,000,000 (Five million Naira) to the account of the respondent. This transfer was effected on the same date but was never actually credited to CMB's account with the respondent. The explanation offered by the respondent for this failure was that the CBN failed to furnish it with sufficient details as to deposit such as to enable it to identify the beneficiary of this sum until 7/2/95. Consequently the respondent was unable to apply these funds immediately to CMB's current account with it. However on 7/3/95, the said sum of N5,000,000, was eventually paid to CMB.

It is contended by the appellant that the respondent declined to pay the said sum and the appellant on behalf of CMB, brought proceedings in the Failed Banks (Recovery of Debts) and Financial Malpractices in the Bank Tribunal, for the purpose of recovering a debt owed by the respondent to CMB.

The tribunal heard evidence from both parties and on 14/1/99 adjourned further proceedings to 17/2/99 "for address." On 17/2/99 instead of hearing address of counsel, the tribunal proceeded to deliver its judgment. It struck out the appellant's claim on the ground that the same was outside the jurisdiction of the tribunal. Such are the simple straightforward facts. I shall however, consider the second issue formulated by the appellant first. The basis upon which the appellant contends that the tribunal erred in delivering its judgment without hearing address of counsel is that in doing so it breached its right to a fair hearing as guaranteed by section 33 of the 1979 Constitution of the Federal Republic of Nigeria, then applicable. It is contended by the respondent's counsel in their brief that within the context of the provisions of the Failed Bank etc, Decree, section 33(1) have been complied with. The basis for this contention are, firstly that the tribunal granted both parties a fair hearing within a reasonable time. Secondly, because the tribunal further treated both parties equally, in declining to hear addresses from both counsel. It is my sincere opinion that this flawed argument of the learned counsel for the respondent is a negation of the whole essence of requirement of an address in a trial.

***Here the record at p.30 has shown that it was the learned trial Judge who, after conclusion of the defence on 14/1/99, adjourned the case to 17/1/99 for address. On that date counsel for the parties were present in court for the purpose of address-***



**ing. It is not that both counsel declined to address the court; but the learned trial Judge suo motu on his own unilaterally dispensed with the address and proceeded to deliver judgment. The appellant has correctly complained that it was prevented from presenting its case fully before the lower court resulting in breaching of its right to a fair hearing. It has been said times without number that an essential attribute of fair hearing is that a court or tribunal must hear both sides to a case and consider all material issues before reaching a decision. See Renolds Construction Company Ltd. v. John Okpegboro (2000) 2 NWLR (Pt. 645) 367. The requirement that equal treatment, equal opportunity or equal consideration be given to all concerned is not breached in a situation where a party was afforded the opportunity to be present at the trial to present his case or to defend himself but he deliberately refused to avail himself of such an opportunity through his own neglect or tardiness because the law will not in any way aid the indolent. However, the rule is applicable where a party is denied an opportunity of being heard. In the instant case the respondent does not appear aggrieved by the arbitrary decision of lower tribunal to dispense with the addresses of counsel which the appellant so much needed to put all material issues before the tribunal reached its decision. I must say that a party is not compellable to address the court where he has the right so to do, but where the right exists a party must not be denied that right. Addresses of counsel form part of the entire case. It has been held in Obodo v. Olomu (1987) 3 NWLR (Pt. 59) 111, per Obaseki, J.S.C. at pages 123-124 that:**

***“The hearing of addresses by every court established by the Constitution of the Federal Republic of Nigeria is recognised by the Constitution. It is to be given before judgment is delivered. See section 258(1) of the Constitution of the Federal Republic of Nigeria, 1979. Its beneficial effect and impact on the mind of the Judge is enormous but unquantifiable. The value is immense and its assistance to the Judge in arriving at a just and proper decision, though dependent on the quality of address cannot be denied. The absence of an address can tilt the bal-***

*ance of the learned Judge's judgment just as much as the delivery of an address after conclusion of evidence can."*

Stressing the importance of an address in this context Belgore, J.S.C, has this to say at p. 120:

*"The procedure whereby the parties to a case at the conclusion of evidence are to address the court on the evidence before the court, enumerating the issues canvassed and advertng to the law governing the issues has taken such a root in our superior courts that denial of it cannot be regarded as mere procedural irregularity."*

No doubt from all that have been said above an address by counsel is to assist the court to clearly identify the issues for consideration so that the court can reach an informed balanced and equitable judgment in any particular case. When a judgment is reached without such an essential input by a counsel it cannot qualify as a standard judgment, since the issues in controversy could not have been adequately articulated appreciated and dealt with. See Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530 at 536.

*In the instant case the proceedings at the lower tribunal were in respect of civil cases governed by the procedure stipulated in schedule 1 of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal Decree 1994. Paragraph 20 of the schedule provides that at the conclusion of the hearing the tribunal shall deliver its judgment. The word "hearing" as used in paragraph 20 of the schedule must necessarily include "address" by counsel. Although the schedule did not make copious provisions relating to the procedure for actual hearing of civil cases but it provides in paragraph 27 of the schedule that "where these rules contain no provision in respect of any matter relating to or connected with the hearing of a case under this Decree the provisions of the Civil Procedure Rules of the Federal High Court shall apply with such modifications as may be necessary to render them conveniently applicable". It is noted that the 1976 Rules was the applicable Civil Procedures Rules of the Federal High Court at the time of the judgment of the lower tribunal in February, 1999. It provides in Order XL*

**Rules 4, 5 and 6 that the court shall entertain addresses from parties after the conclusion of evidence before delivering judgment.**

Obviously, the lower tribunal acted in breach of its Malpractices in Banks Decree 1994. It provides as follows:

*“3(1) The tribunal shall have power to*

*(a) recover, in accordance with the provisions of this Decree, the debts owed to a failed bank, arising in the ordinary course of business and which remain outstanding as at the date the bank is closed or declared a failed bank by the Central Bank of Nigeria;”*

Therefore before the tribunal can exercise this power, there must be evidence to indicate not only that the application is brought on behalf of a “failed bank”, but also the bank has closed or has been “declared a failed bank” by the Central Bank of Nigeria.

The respondent has contended that there was no evidence adduced by the appellant to establish that ‘CMB’ came within the definition of a “failed bank” in section 29 of the Decree. Reliance was placed on evidence of the appellant’s first witness. If the evidence of Christian Omezirike Ajoku is to be carefully considered, then quite a different view would have been held. According to this witness, in his testimony, at page 27 of the record, the relationship between the CPMB and the respondent was that of a customer and a banker as the said CPMB maintains a current account with the respondent. At page 28, the witness further stated that “the bank/customer relationship is a creditor/debtor relationship. That is, bank is the debtor and the customer is the creditor. The testimony of the respondent’s witness presents the position of the law. The appellant’s claim was for payment of interest which is quite distinct from a claim for damages. Osborne’s Concise Law G Dictionary defines damages as “Compensation of indemnity for loss suffered owing to a tort or breach of contract or breach of some statutory duty committed by some other person. The principle is that the injured party should be put as nearly as possible in the same position, so far as money can do it, as if he had not been injured. This very definition forms the basis of the award of damages by Nigerian Courts in several decided authorities such as in the case of Tecno Mechanical (Nig.) Ltd v. Ogunbayo (2000) 1 NWLR (Pt. 639) 150 and Liman v. Mohammed

(1999) 9 NWLR (Pt. 617) 116. As for the word “interest” the same dictionary defines it as “a sum payable in respect of the use of another person’s money, such money called the principal.” In the instant case the principal sum of money was the N5 Million paid by the CPMB into current account with the respondent but which the respondent failed to credit into the said current account of the CPMB. **Here the principal amount having been paid by the respondent on 7/3/95 the interest remained outstanding and that was the subject matter of the suit before the lower tribunal. I do not think this fact was in dispute before the tribunal. The bone of contention however, was the rate of interest payable. At no time before the tribunal did the appellant make any claim for damages or for anticipated profit as erroneously held by the lower tribunal. A claim for interest such as the one before the lower tribunal is not a claim for anticipated profit. This is simply a claim for debt by a customer from a banker. In this case the debt consisted of a principal amount and the accrued interest.**

**A “debt” within the context of section 3(1) of the Decree means the principal debt plus accrued interest, the appellant was merely claiming interest charges which brings their claim perfectly within the jurisdiction of the lower tribunal.**

Besides, the reports tendered by the appellant showed that CPMB was a failed bank within the meaning of section 3 of the Failed Bank Decree, 1994, as amended which defines a failed bank as a bank “whose capital to risk weighted assets ratio is below such minimum percentage as may be prescribed from time to time by the Central Bank, the Nigeria Deposit Insurance Corporation or such other appropriate authority.”

It must be noted that the case was instituted at the lower tribunal by the appellant on behalf of Centre Point Merchant Bank (CPMB) which is a regulatory authority which can determine whether a bank is “failed” or not within the meaning of the law as stipulated above.

**Our courts will always recognise the rights of money lenders and banking institutions to recover their accumulated interest charges, as part of the debt due to them by debtor customers. This type of claim has never been treated as a claim for damages or anticipated profit. Such interest claims are based**

**on the guidelines of the Central Bank as well as the Banks and Other Financial Institutions Decree No. 59 of 1991.** Section 23 of the Decree makes it mandatory for banks to display publicly their interest rates to their customers. See *Nigerian Merchant Bank Plc. v. Aiyedun Investment Ltd.* (1998) 2 NWLR (Pt. 537) 221; *Union Bank v. Ozigi* (1991) 2 NWLR (Pt. 176) 677. B

***In the result all the issues having been resolved against the respondents this appeal succeeds. The judgment of the lower tribunal is hereby set aside. The case is remitted to Chief Judge of the Federal High Court to be reassigned to another Judge for expeditious trial.*** There shall be costs in favour of the appellant against the respondent assessed at N3,000.00. C

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**OGUNTADE JCA**

I agree.

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**CHUKWUMA-ENEH JCA**

I agree.

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