

IN THE COURT OF APPEAL
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

ON ... THE ...DAY OF NOVEMBER, 2016

BEFORE THEIR LORDSHIPS:

<u>MONICA B. DONGBAN-MENSEM</u>	<u>-JUSTICE, COURT OF APPEAL</u>
<u>MODUPE FASANMI-</u>	<u>- JUSTICE, COURT OF APPEAL</u>
<u>CHINWE EUGENIA IYIZOBA</u>	<u>-JUSTICE, COURT OF APPEAL</u>

APPEAL NO: CA/I/186/2008

BETWEEN

UNION BANK OF NIG. PLC ===== APPELLANT

AND

VICTOR OLAITAN IDOWU & ANOR=====RESPONDENT

CERTIFIED TRUE COPY
BARR. RUANWACHUKU ROSE ONUCHETACHI
SENIOR REGISTRAR II
COURT OF APPEAL
ENUGU DIVISION
SIGN. *[Signature]* 21/2/2020

JUDGMENT (DELIVERED BY MONICA BOLNA'ANDONGBAN-MENSEM,
JCA

1. Rights and Obligations in a Contractual Agreement

By the presentation of both parties, there exists a purely contractual relationship between the duo. The law of contract clearly requires that both parties to a contract must fulfill their contractual obligations. The contractual nature of bankers and customers relationship was dealt with in the case of **WEMA BANK PLC V. ALHAJI IDOWU FASASI SOLARIN OSILARU (2008) 10 NWLR Pg. 170**. This Court per **Okoro JCA** (as he then was) held that:

"It is now settled that the relationship between a banker and customer where a bank accepts money either in current or deposit account from its customer is a relationship of

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debtor and creditor. The relationship is essentially contractual".

Thus the failure of the Appellant to release the Treasury Bills Certificates to the tune of **1.5 Million** in accordance with the normal procedure regulating Treasury Bills Certificates is a breach of contract which warrants compensation of the aggrieved party i.e. the 1st Respondent in this appeal. See **STB LTD V. ANUMNU pg. 153.**

The explanation that the certificate was kept at the headquarters of the bank cannot be held to exonerate the Appellant from responsibility of the loss of transaction due to the non issuance of the certificate.

2. Award if Damages by trial Court

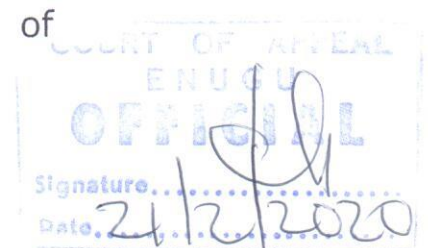
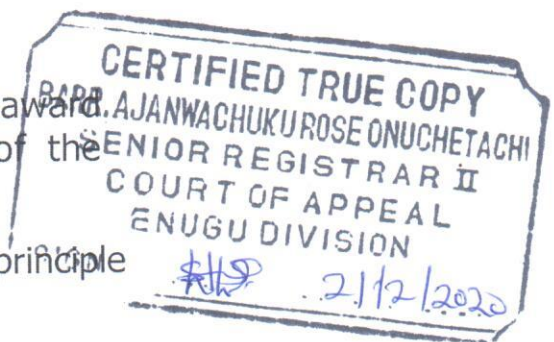
Generally, the trial Court has discretion as to the quantum of damages it would award in a claim of damages.

This principle has been upheld severally by the Apex Court as has this court.

The case of **YeleOyeneyin & Anor V. Dr. A. Akinkugbe (2010) 4 NWLR Pg. 288** held that:

"An appellate Court will not interfere with an award of damages by a trial court unless in any of the following situations: to wit.

- (a) Where the trial court acted under wrong principle of law.
- (b) Where the trial court acted in disregard of applicable principles of law.
- (c) Where the trial Court acted in misapprehension of facts.
- (d) Where the trial Court took into consideration irrelevant matters and disregarded relevant



- matters whilst considering its award; and
- (e) Where the amount awarded is ridiculously low or ridiculously high that it must have been an erroneous estimate of the damages.

In the instant case, the trial Court's award of damages was based on a proper exercise of its discretion. In the circumstances, the Supreme Court would not disturb the award."(Adekeye **JSC**)

The attitude of the Appellate Court to the evaluation of evidence by the trial Court was clearly illustrated in the case of **KAYDEE VENTURES v. MINISTER OF FCT (2010) 7 NWLR p. 206 SC, per Muhammad JSC**

in these terms:

"The duty of appraising evidence given at a trial is preeminently that of the Court that saw and heard the witnesses and it is also the right of the Court to ascribe value to such evidence. The Court of Appeal may not disturb the Judgment of the trial Court if it is supported by evidence, even in the slightest degree just because it would have come to a different conclusion on the same facts."

It is equally necessary to state the fact that the trial Court based its Judgment on the evidence led at the trial and the exhibits tendered before the award of damages.

The exhibits relied upon by the court are Exhibits:

Exhibit A (letter written by the Appellant containing a proviso that where the 1st Respondent insisted on collection of Treasury Bills Certificate, they (Appellant) shall comply.... "

Pg. 148 of the record.

