**AFRICAN CONTINENTAL BANK LTD.**

**v.**

**BINTU KOTUN**

HIGH COURT OF LAGOS

1ST DECEMBER, 1969

SUIT NO. LD/119/68

**LEX (1969) - LD/119/68**

OTHER CITSTIONS

2PLR/1969/2 (HC-L)

**BEFORE:** KASSIM, J.

**REPRESENTATION**

DEBO AKANDE, - for the Plaintiffs

Y.A.O. AKANDE, - for the Defendant

**ISSUES FROM THE CAUSE(S) OF ACTION**

BANKING AND FINANCE:- Banking practices – Recovery of loans due, demanded for but unpaid – Bank loan by way of overdraft facilities – Nature of evidence required to prove same – Where an illiterate involved in contract thereto – Duty on bank

CHILDREN AND WOMEN LAW:- *Women in Business – Women and Education –* Illiterate Woman engaged in international transaction and as guarantor for a credit facility to a third party – Statutory protections under Illiterate Protection statutes – Issues arising therefrom – How treated

COMMERCIAL LAW - CONTRACT:- Contract of overdraft - Claim to recover – Where involves an illiterate guarantor - How treated

**PRACTICE AND PROCEDURE ISSUES(S)**

INTERPRETATION OF STATUTES:- Illiterates Protection Act – Objects of - Statutory duty on writer of document to be signed by an illiterate – Legal effect

**MAIN JUDGEMENT**

**KAZEEM, J**.:-

The plaintiffs head their application for a writ of summons “undefended Writ brought under Order III rule 9” and claim therein “the sum of £l,970.14s.4d. being the total amount due from and payable by the defendant to the plaintiffs in respect of loan by way of overdraft facilities given by the plaintiffs to the defendant at the defendant’s request as well as in respect of interest and bank charges on her overdrawn account between November, 1962 and June, 1966, as per attached Statement of Account.” The application alleges, as usual, that several demands for the debt were not met; and to it was attached an affidavit sworn to by one George Ifedonachukwu Emecheta which states that the defendant is justly and truly indebted to the plaintiffs in the sum claimed and that the Statement of Account attached to it is a true copy of the original Statement of Account. The defendant filed notice of her intention to defend the claim and attached to it an affidavit in which she says inter alia, that she was a customer of the bank for over fifteen years, that she is not indebted to the bank in any sum at all, that the transaction in question relates to a loan made to one Liadi Salakoh in the sum of £1,500 for which he gave as security documents covering eleven plots of land and three houses and which documents are still with the plaintiffs who asked her to stand surety for the said Salakoh and told her that she would not be called upon until the securities given by the said Salakoh had been sold and the money realised had been found to be insufficient to satisfy the loan; and that no overdraft had been granted to her in respect of the said transaction as alleged by the plaintiffs.

Pleadings were ordered and duly filed and served. The first witness for the plaintiff was called to say not more than that he prepared the Statement of Account, exhibit ‘C’, for checking by the second witness for the plaintiffs, Chima Opara, who testified that he was an Accountant of the plaintiffs Bank at their Martins Street Branch. He tendered the defendant’s signature card, exhibit ‘A’, and all the other exhibits (‘B’ to ‘J’) in this case. I am surprised to find that a bank allowed a customer who gave a specimen signature such as the defendant was alleged to have given on exhibit ‘A’ to transact business with them with it.

The defendant says in paragraph 3 of her Statement of Defence that she is not in a position to admit or deny paragraphs 3, 4 and 5 of the Statement of Claim, which relate to the cheques. Exhibits ‘B’, ‘D’, ‘E’ and ‘F’, and that she puts the plaintiffs to the strict proof of the allegation contained therein. The proof put forward is unacceptable as will be shown later in this judgment.

Paragraphs 6 to 8 of the original Statement of Claim reads as follows:-

“6. On the 13th February, 1964, the Defendant placed an order for goods from London for one WO. Salakoh through the plaintiff’s Bank and issued cheque No. 13/A 18421 for £1,510, to cover the goods in favour of the plaintiff’s Bank and the plaintiff accordingly ordered the goods for her.

7. However, when the goods arrived it was discovered that the actual and total cost was £1,300 and the charges, commissions and postage amounted to £9.

8. The plaintiff, therefore, accordingly debited the Defendant’s account on the 13th February, 1964, with the said cost of the goods and the charges, commissions and postage.”

but the evidence of PW2 about the cheque for £1,510, exhibit ‘G’ is, in short, that the defendant tendered it on the 13th of February, 1964, and the bank honoured it but did not pay it in cash because the defendant went to PW.2 who took her to their Manager whom she told in his presence that she had some goods to pay for and that she wanted the bank to transfer the money to an address in London. She said that the transfer should be made on her behalf in favour of one Salakoh who was not known to the bank. The defendant was asked by the Manager to make out the cheque and PW2 made it for her in his own handwriting. The Bank accepted the cheque to prepare the transfer of the money. Later that day, the defendant came back, and said that she discovered that the cost of the goods should be £1,300 and not £1,500. The £10 extra was for bank charges. The bank debited her with £1,300 and £9 bank charges. These pieces of evidence plainly contradict paragraphs 6 to 8 of the Statement of Claim; and, moreover, this witness who is the only important witness for the plaintiffs tried to explain away this contradiction by giving fantastic pieces of evidence. For instance, he said that exhibit ‘H’ was a transfer receipt which they should have given to the defendant but that they did not give it to her because she went away without asking for it. And this witness said while under cross-examination that he knew the defendant could not read.

I was amused when the learned counsel for the plaintiffs put exhibits ‘D’ and ‘E’ into the hands of the defendant and asked her if she did not sign them; I was more amused when he appeared to be quite happy when she answered in the affirmative. Scratches made by an illiterate on a document cannot be accepted as signature, especially when they are such that can be easily forged and are not consistently similar as those in the cheques and signature card alleged to have been signed by the defendant.

The second witness for the plaintiffs became a sorry man while under cross-examination so much so that the learned Counsel for the plaintiffs, in an attempt to save a bad case, asked for an adjournment and came back with an amended Writ of Summons and Statement of Claim in which the plaintiffs’ claim was reduced to £661.14s.4d., but the story of P.W.2 could not be amended and his answers to further cross-examination ruined plaintiffs’ case the more.

The case of Halliday v. Alapatira 1 N.L.R. 7 and Animotu Otegbeye v. Little (1906) 1 N.L.R. 70 warn of the danger in dealing with natives who cannot read or write without making sure that they understand the contents of documents on which their adversaries rely; and as stated by Smith, J., in U.A.C. Ltd., v. E. Edems & Ajayi (1958) N.R.N.L.R. 33 and confirmed by the Federal Supreme Court in S.C.O.A. v. Okon (1959) 4 F.S.C. 220 at 223, “that the object of the Illiterates Protection Act, Cap. 83 Vol. III Laws of Nigeria is to protect an illiterate person from possible fraud. Strict compliance therewith is obligatory as regards the writer of the document. If the document creates legal rights and the writer benefits thereunder, those benefits are only enforceable by the writer of the document if he complies strictly with the provisions of the Ordinance. If a document which does not comply with the provisions of the Ordinance creates legal rights between the illiterate and a third party then evidence may be called to prove what happened at the time the document was prepared by the writer and the parties signed it. But the writer himself cannot adduce evidence in his own favour to remedy the omission.” The defendant said consistently that officials of the bank prepared cheques for her to sign and her allegation while under cross-examination that she thumb-impressed her cheques after signing them could if possible have been met by producing her cheques which are much older than those before me. Exhibit ‘F’ undoubtedly relates to Salakoh’s loan.

For the reasons which I have given, I dismiss plaintiffs claim with costs to the defendant assessed at £52.17s.Od.

Action dismissed.