**CITIBANK NIGERIA LIMITED**

**v.**

**MR. MARTINS IKEDIASHI**

IN THE SUPREME COURT OF NIGERIA

24TH DAY OF JANUARY, 2020

SC.621/2015

**LEX (2020) - SC.621/2015**

**OTHER CITATIONS**

3PLR/2020/10 (SC)

(2020) LPELR-49496(SC)

**BEFORE THEIR LORDSHIPS**

OLABODE RHODES-VIVOUR, JSC

OLUKAYODE ARIWOOLA, JSC

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, JSC

AMIRU SANUSI, JSC

EJEMBI EKO, JSC-end!

**BETWEEN**

CITI BANK NIG. LTD. - Appellant(s)

AND

MR. MARTINS IKEDIASHI - Respondent(s)-end!

**ORIGINATING COURTS**

1. COURT OF APPEAL [Lagos Division]

2. LAGOS STATE HIGH COURT [Justice F. O. Atilade Presiding]-end!

**REPRESENTATION**

Folabi Kuti, Esq. with him, H. H. Bassey Esq., Pius Owhoavwodua Esq. and Temidayo Adeoye Esq.For Appellant

AND

Osayaba Giwa-Osagie Esq. with him, Michael Dedon Esq. Ikechukwu Odozor Esq. and Bisola Bamigbola, Esq.For Respondent-end!

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

COMMERCIAL LAW – CONTRACT - DELIVERY OF AN ARTICLE BY POST:- Principle that the placing or delivery of an article to an officer of the Postal Service in the course of his/her duties shall be deemed to be delivered to the addressee - Section 64(3) of the Nigerian Postal Service Act – Proper construction of

BANKING AND FINANCE – CUSTOMER-BANK RELATIONS:- Closure of account – Requisite notice required by contract between bank and customer before unilateral closure of customer account – When sent by post – Date of delivery to customer – How determined

BANKING AND FINANCE – BANKING OPERATIONS:- Clearance of check – Endorsement made on denied check – Basis and nature of – Whether publication to another bank and/bank employee can be deemed defamatory of customer

TORT AND PERSONAL INJURY LAW – DEFAMATION - QUALIFIED PRIVILEGE: Defence of qualified privilege – Essence and nature of

TORT AND PERSONAL INJURY LAW – DEFAMATION - QUALIFIED PRIVILEGE: Privileged occasion – When deemed to have legally arises – Essential elements required to sustain the defence – Duty on plaintiff when the defence of qualified privilege is asserted – Whether needs to plead and establish malice on part of defendant

ADMINISTRATIVE AND GOVERNMENT LAW - LEGISLATION - NIGERIAN POSTAL SERVICE ACT: Provisions of the Nigerian Postal Service Act regarding the determination of time when a registered package is deemed delivered to the recipient at law – Proper treatment of - Whether the placing or delivery of an article to an officer of the Postal Service in the course of his/her duties is deemed to be delivery to the addressee-end!

**PRACTICE AND PROCEDURE** **ISSUES**

EVIDENCE - ADMISSION/ADMITTED FACT(S): Facts not specifically – When would be deemed established

PLEADINGS:- Amended Statement of Defence asserting a special plea – Plea of qualified Privilege – What a Plaintiff must file to refute same - Whether requires specific pleading/traversing in a reply brief and calling of evidence to establish malice in the defendant

INTERPRETATION OF STATUTE:- Section 64(3) of the Nigerian Postal Service Act – Interpretation of

WORDS AND PHRASES- “In the ordinary course of post” – Meaning under the Nigerian Postal Service Act-end!

**CASE SUMMARY**

The Plaintiff/Respondent instituted an action claiming against the defendant as follows:

(a) Damages for the breach of contract in the sum of N10million;

(b) Damages for libel in the sum of N10million as per the defendants published defamation vide the cheque dated 14th November, 2003, on which the word account closed was written;

(c) A full apology from the defendant to the Claimant.

(d) Interest on the judgment sum at the rate of 10% per annum until final payment thereof.

The claim arose because the Claimant, operated a current account with the Appellant/Defendant bank and while the said account was still in credit, he issued a cheque in favour of a third party, which was presented for payment to the bank. However, the cheque was returned unpaid with the words “ACCOUNT CLOSED” endorsed on it. It was the contention of the respondent that the said endorsement on the cheque was not only a breach of contract but also libelous having been published to the third party and the staff of the UBA Plc when in fact he was not given notice of any such closure of his account with the appellant.-end!

The bank, on the other hand, maintained that the endorsement on the cheque was proper as respondent’s account with the bank had earlier been closed and the notice of the said closure given to the Respondent via a letter sent through a Registered post as contained in the agreement. At the conclusion of hearing and final addresses, the trial Court gave judgment for the respondent against the bank entering judgment for damages in the sum of N2million in respect of the defendants liability for the libelous statement against the Claimant. Being aggrieved, the appellant appealed to the Court below on five grounds. The appeal succeeded in part as judgment of the trial Court was affirmed except as it relates to the award of damages in the sum of N2million and costs of N200,000 which was set aside.-end!

**DECISIONS HISTORY**

1. Lagos State High Court (Judgment of the Honourable Justice F. O. Atilade delivered 16th February, 2007) - awarded damages in the sum of N2million and costs of N200,000 which was set aside.

2. Court of Appeal, Lagos Division [Judgment delivered on the 7th day of February, 2014] trial court’s judgment in part as it set aside the award of N2million and costs of N200,000-end!

ISSUES FOR DETERMINATION

FOR APPELLANT

“(i) Whether the required notice of account closure was duly given to the respondent by the appellant under and by virtue of the provisions of Section 64(3) of the Nigerian Postal Service Act. (Distilled from Grounds 1 and 5 of the Amended Notice of Appeal).

(ii) Whether on the state of the pleadings and evidence led, the lower Court was wrong in failing to uphold the defence of qualified privilege in the appellant's favour. (Distilled from Grounds 2 and 3 of the Amended Notice of Appeal).

(iii) Whether the respective sums awarded to the respondent by the lower Court as damages for breach of contract and for libel were justified in the peculiar circumstances of the case. (Distilled from Ground 4 of the Amended Notice of Appeal).”-end!

FOR RESPONDENTS

“The respondent also distilled three issues for determination of the appeal from the same five grounds of appeal contained in the Amended Notice and Grounds of Appeal filed by the appellant. The three issues for the respondent are the same though couched differently but from the same respective grounds.” -end!

ISSUES ADOPTED BY THE COURTS

The issues in the appellants brief of argument was adopted by the Court in determining the appeal.-end!

**DECISION OFSUPREME COURT**

Bank is covered with the defence of qualified privilege regarding its publication of check to staff and third. Court also held that the respective sums awarded to the respondent by the lower Court as damages for breach of contract and for libel were justified in the peculiar circumstances of this case. There was no breach of contract between the parties in this case in that the appellant complied with the provisions of clauses 7 and 8 of the contract in the account opening form in conjunction with the provisions of Section 64(3) of the NIPOST Act as the required notice of account closure was given to the respondent by the appellant, and the alleged defamatory words endorsed on the cheque was covered by qualified privilege.-end!

**MAIN JUDGMENT**

OLUKAYODE ARIWOOLA, J.S.C. (Delivering the Leading Judgment):

This is an appeal against the judgment of the Court of Appeal, Lagos Division delivered on the 7th day of February, 2014 affirming the decision of the trial Court, per the Honourable Justice F. O. Atilade delivered on the 16th day of February, 2007 except as to damages. The respondent was the claimant at the trial Court whilst the appellant was the defendant.

The gist of the case goes thus:

By a writ of summons and Statement of Claim both dated 20th October, 2004, the respondent instituted an action against the appellant. In paragraph 18 of the Statement of Claim, the Claimant claims against the defendant as follows:

(a) Damages for the breach of contract in the sum of N10million;

(b) Damages for libel in the sum of N10million as per the defendants published defamation vide the cheque dated 14th November, 2003, on which the word account closed was written;

(c) A full apology from the defendant to the Claimant.

(d) Interest on the judgment sum at the rate of 10% per annum until final payment thereof.

The appellant as defendant in response filed a Statement of Defence dated 31/08/2005 which was subsequently amended pursuant to an Order of Court so to do granted on 06/11/2006.

The respondents case as Claimant was that he operated a current account with the appellant and on 14th November, 2003 while the said account was still in credit, he issued a cheque in the sum of thirty thousand Naira (N30,000.00) in favour of one Dr. T. A. Bashorun. The said cheque was subsequently presented for payment by Dr. Bashorun to his bank - United Bank for Africa Plc for payment but the cheque was returned unpaid with the words ACCOUNT CLOSED endorsed on it.

The respondent had contended that the said endorsement on the cheque is not only a breach of contract but also libelous having been published to Dr. T. A. Bahorun and the staff of the UBA Plc when in fact he was not given notice of any such closure of his account with the appellant.

On the other hand, the appellants case was that the endorsement on the cheque which the respondent was complaining about was premised on the fact that the respondents account with it had earlier been closed and the notice of the said closure given to the respondent via a letter sent through a Registered post as contained in the agreement.

At the trial, which commenced on the 2nd day of May, 2005, the respondent (as claimant) testified and called one other witness. Four documents were tendered, admitted and marked Exhibits A-D. The appellant in its defence called three witnesses as DW1-DW3 and tendered couple of documents which were admitted and marked Exhibits W-K respectively.

At the conclusion of hearing, the trial Court ordered written addresses. Counsel filed and exchanged same which they respectively adopted on 18th December, 2006.

In its reserved considered judgment, the trial Court gave judgment for the respondent. The Court, inter alia, held as follows:

It is in the light of the foregoing that I hereby enter judgment for the Claimant against the Defendant for damages in the sum of N2million comprising both nominal damages and damages in respect of the defendants liability for the libelous statement against the Claimant. It is further ordered that the defendant pays to the Claimant the sum of N200,000 as costs of litigating this suit and N2,000 costs of the defendants application dated the 18th October, 2006 respectively.

Being aggrieved, the appellant appealed to the Court below on five grounds. The appeal succeeded in part as pertains the amount awarded as damages and costs. The judgment of the trial Court was affirmed except as it relates to the award of damages in the sum of N2million and costs of N200,000 which was set aside.

The appellant was further aggrieved with the judgment of the Court below and has appealed to this Court on four grounds of appeal filed on 7/4/2014.

Subsequently, by an order of this Court granted on the 26th September, 2017, the Notice and Grounds of Appeal was amended and duly filed and served by the appellant.

In compliance with the Rules of this Court, briefs of argument were filed and exchanged by parties.

When the appeal came up for hearing on 4th November, 2019, Mr. Afolabi Kuti of counsel for the appellant identified appellants brief of argument filed on 30th October, 2017. He adopted and relied on same to urge the Court to allow the appeal.

Osayaba Giwa-Osagie Esq., of counsel for the respondent identified the respondents brief of argument filed on 23rd February, 2018 but deemed properly filed and served on 4th November, 2019. Learned counsel adopted and relied on same brief of argument to urge the Court to dismiss the appeal in its entirety.

In the appellant's brief of argument, the following three issues were distilled for the determination of the appeal:

Issues for Determination:

(i) Whether the required notice of account closure was duly given to the respondent by the appellant under and by virtue of the provisions of Section 64(3) of the Nigerian Postal Service Act. (Distilled from Grounds 1 and 5 of the Amended Notice of Appeal).

(ii) Whether on the state of the pleadings and evidence led, the lower Court was wrong in failing to uphold the defence of qualified privilege in the appellant's favour. (Distilled from Grounds 2 and 3 of the Amended Notice of Appeal).

(iii) Whether the respective sums awarded to the respondent by the lower Court as damages for breach of contract and for libel were justified in the peculiar circumstances of the case. (Distilled from Ground 4 of the Amended Notice of Appeal).

The respondent also distilled three issues for determination of the appeal from the same five grounds of appeal contained in the Amended Notice and Grounds of Appeal filed by the appellant. The three issues for the respondent are the same though couched differently but from the same respective grounds. The issues in the appellants brief of argument shall however be used in determining this appeal.

Issue 1

Whether the required notice of account closure was duly given to the respondent by the appellant under and by virtue of the provisions of Section 64(3) of the Nigerian Postal Service Act.

Learned counsel for the appellant submitted that the Nigeria Postal Service Act, Cap N127, Laws of the Federation of Nigeria, 2004 (hereinafter referred to as NIPOST Act) is the governing law regulating postal services in the country, as well as delivery of articles by post. He referred to Section 64(3) of the NIPOST Act, in particular Subsections 3(a) and (b) and contended that in the interpretation of Statutory Provisions, the words used in a Statute should be given their ordinary meaning. He relied on International Bank for West Africa Ltd. Vs Imano (Nig.) Ltd & Anor (1988) 3 NWLR (Pt.85) 633 at 660. He contended further that parties are not allowed to import extraneous matters into the provisions of a Statute under the guise of interpretation. He cited AG, Anambra State Vs. Attorney General of the Federation (2007) 5-6 SC 192; Theophilous Vs. FRN (2012) LPELR 984 (CA).

Learned counsel contended that the main issue in dispute between the parties borders on whether the appellant gave the required notice to the respondent before the closure of the respondents account under the contract between the parties. It is the contention of the appellant that the respondent did not deny the dispatch of notice of account closure in his pleadings. Learned counsel referred to the appellants specific allegation in the amended Statement of Defence that the notice of closure was dispatched to the respondent on October 15, 2003 vide a letter dated September 22, 2003 and that same was received by one Stanley U.K. on the respondents behalf. But that nowhere in the respondents pleadings is there a categorical denial that the notice of closure of his account was dispatched to him in accordance with the relevant terms of the contract between the parties.

Learned counsel referred to paragraph 14 of the respondents statement of claim and paragraph 8 of the appellants amended statement of Defence on the issue of dispatch of the Notice to the respondent. He contended that it is not in dispute that the respondent did not file a Reply to controvert the allegation contained in paragraph 8 of the amended Statement of Defence. That the averment in paragraph 14 of the respondents statement of claim is not a material averment of fact but a legal argument. He submitted that it is not a denial of the appellants averment in paragraph 8 of the Amended Statement of Defence. And that not having denied the allegation is an admission of the fact. He referred to Order 15 Rule 5(1) of the Old High Court of Lagos State (Civil Procedure) Rules, 2004 under which the parties pleadings were filed.

On the need to file a Reply to the Statement of Defence by a plaintiff in answer to certain facts in the defence which were not in the Statement of Claims he relied on Chief PTS Tende & Ors Vs. Attorney General of the Federation & Ors (1988) 1 NWLR (Pt.71) 506 at 517. Meridien Trade Corp Ltd Vs. Metal Construction (W.A) Ltd (1998) LPELR 1862 (SC).

Learned counsel submitted that having failed to file a Reply to controvert the specific allegation in the amended Statement of Defence, that the notice of Closure of account was sent to him by registered post, the respondent is deemed to have admitted the act. He contended that any evidence offered by the respondent to the contrary goes to no issue being founded on unpleaded facts. He relied on Dalek (Nig) Ltd Vs. OMPADEC (2007) 7 NWLR (Pt.1033) 402 at 429430.

On the uncontroverted evidence of dispatch of the notice of account closure to the respondent by post, learned counsel referred to Exhibit C, the Account Opening Form. He referred to Clauses 7 & 8 thereof and contended that the appellant complied with the requirements in the said contract terms. He referred to the testimony of DW3 who was a mail room supervisor and the dispatch booklet Exhibit J to show that the said letter of notice of closure of account was dispatched to the Post Office on October 15, 2003.

He submitted that all that the appellant was required to show to justify the closure of the account under the contract and in law was that the letter of notice was dispatched to the respondents address at the Nigerian Postal Service (NIPOST) that is, that the letter was sent by registered post within the 7 day period before the account was closed. He relied on Daily Times (Nig) Plc. Vs. Amaizu (1999) 12 NWLR (Pt.631) 439 at 457.

On the position of the law on registered post, learned counsel submitted that the placing or delivering of an article to an officer of the Postal Service in the course of his duties shall be deemed to be delivery to the addressee. He referred to the provisions of Section 64 (3) again of the NIPOST Act. He also referred again to Clause 8 of the contract between the parties as contained in the account Opening Form (Exhibit C), wherein the respondent agreed that any notice or letter addressed to him and sent through post at the address supplied by him shall be considered as delivered to and received by him at the time it would be delivered in the ordinary course of post, and must be read in conjunction with the provisions of Section 64(3) of the Nigerian Postal Service Act.

Learned counsel contended that having delivered the notice of closure of the respondents account to the post office on October 15, 2003, the respondent cannot be heard to complain that he was not served with the notice or letter contrary to the clear forms of the contract between the parties. He stated that the appellant waited for a month after the notice was sent before proceeding to close the respondents account on November 14, 2003. He submitted that the appellant accordingly gave the respondent the required 7-day notice before closing his account in compliance with clause 7 of the contract.

On the interpretation the Court below gave to Section 64(3) of the NIPOST ACT, learned counsel contended that the Court erroneously interpreted the provision by importing extraneous provisions into it. He referred to the findings of the Court below on pages 169-170 of the record. He contended that nowhere in clauses 7 and 8 of the contract and Section 64(3) of the Act is it provided that collection of the notice or letter from the post office is a condition precedent to closure of the respondents account by the appellant. He submitted that the lower Court was duty bound to give ordinary simple meaning and interpretation to the clear provisions of the Act. He relied on International Bank for West Africa, Ltd Vs. Imano (Nig) Ltd & Anor (1988) 3 NWLR (Pt.85) 685.

Learned counsel further submitted that parties are bound by the clear terms of their contract and the Court is bound to construe the terms of the contract and cannot rewrite a new contract for the parties. He relied on Arjay Ltd Vs. Airline Management Support Ltd (2003) 7 NWLR (Pt.820) 577 at 634.

He submitted that the appellant gave the respondent the required 7 day notice before his account was closed. Hence the appellant did not breach the contract with the respondent. Learned counsel urged the Court to hold that the required notice of account closure was duly given to the respondent by the appellant under and by virtue of the provisions of Section 64(3) of the NIPOST and the contract terms. Issue one is consequently answered in the affirmative.

In treating issue No. 1 by the respondent, learned counsel for the respondent contended that the starting point for determining whether requisite notice was given to the respondent before the closure of his account is the agreement of the parties. He submitted that a determination of whether or not requisite notice was given to the respondent is the central issue in this appeal.

Learned counsel referred to clauses 7 and 8 of the Account Opening Form constituting the contract of parties. He contended that, while clause 7 requires 7 days notice to be given (after delivery) before the closure of the account, clause 8 provides that any notice or letter will be considered delivered and received by the respondent at the time it would be delivered in the ordinary course of post. He submitted that from the two clauses of the contract, it is the time at which the notice or letter is delivered that is material to a determination of whether requisite notice was given and not the manner of delivery.

Learned counsel contended that evidence ought to have been led, in order to comply with Articles 7 & 8 of the contract, that in the ordinary course of post, a letter or notice sent through post would be delivered to the respondents address at a particular time, for instance, one week, two weeks, four weeks or six weeks. Therefore, a determination of whether closure of the account can only be made upon ascertaining when delivery according to the contract was made. He submitted that it is not the date it was delivered to the post office or received by the respondent that matters but the time it is deemed to have been delivered in the ordinary course of post to the respondent. He stated that there was no evidence of this time. He submitted that the two Courts below were right in agreeing with the respondent that Section 64(3) of the NIPOST Act is inapplicable because the provision deals with the manner of delivery of postal articles and not the time delivery is deemed to have been made. He contended that the provisions in the Act is different from the intendment of the provision of Clauses 7 and 8 of the Contract and therefore irrelevant to a determination of this appeal. He urged the Court to disregard the arguments contained in paragraphs 4.1-4.4 of the appellants brief of argument.

In response to paragraphs 4.5-4.14 of the appellants brief, learned counsel contended that by paragraph 14 of the respondents statement of claim, the allegation that no notice was given before the closure of the account was put in issue. He referred to paragraph 14 of the Statement of Claim, the allegation that no notice was given before the closure of the account was put to issue. He submitted that the pleading put into contention whether notice was given or not.

Learned counsel contended that to the extent that the said paragraph 8 of the amended Statement of Defence responded to the respondents allegation that no notice was dispatched and received, the respondent had no further obligation to reply or deny that he did not receive the said notice. Issues had become joined at that point for a judicial determination.

He contended that the appellant is wrong to have submitted that just because the respondent did not react to the appellant denial, such non response amounted to an admission. He submitted that the import of paragraph 14 of the respondents statement of claim is that the respondent did not receive any notice of closure of the account. He relied on Ishola Vs. SGB (Nig) Ltd (1997) 2 NWLR (Pt.488) 405; Bakare Vs. Ibrahim (1973) 6 SC 205; Akeredolu Vs. Akinremi (1989) 3 NWLR (Pt.108) 164.

Learned counsel submitted that it is not in all cases that a reply is necessary. Where a plaintiff has already raised issue of fact in his pleading which constitutes a rebuttal of the defendants pleading on the issue, no further reply is needed. He urged the Court to discountenance the arguments and submissions of the appellant on this point in paragraphs 4.5-4.14 of the appellants brief.

Learned counsel contended that the appellant did not provide abundant and uncontroverted evidence of dispatch of the notice of account closure to the respondent by post. He referred to paragraphs 4.15-4.34 of the appellants brief of argument and submitted again that the provisions of S.64(3) of the NIPOST Act is not applicable to this matter because the section only provides for the method or manner of delivery of an article of post which will be deemed as delivery under the Act. He contended that to determine whether there was delivery, recourse must be had to the contract as the manner of delivery is not the relevant consideration in determining delivery but the time of delivery as required by the contract. He submitted that the evidence of dispatch does not, under the contract constitute evidence of delivery as delivery must be determined in relation to the time it would be delivered in the ordinary course of post.

Learned counsel contended that phrase in the ordinary course of post appearing in the contract of the parties has its technical meaning. It must mean the time it ordinarily takes to deliver such letters without intervening circumstances such as strikes, riots, natural disasters, civil and disorderly situations inhibiting delivery. He submitted that the phrase cannot mean mere delivery to the postman or placing such an item in a collection box. He relied on Section 26 of the Interpretation Act, Cap 123 Laws of the Federation of Nigeria, 2004.

Learned counsel submitted that the term in the ordinary course of post comes with a specific time in the postal business, evidence of which ought to have been led by the appellant in order to determine delivery date and calculate period of notice of closure.

Learned counsel contended that it is in evidence that whereas the letter dated September 22, 2003 was delivered to the postal service on October, 15, 2003, the said letter did not get to the respondents alleged agent until November, 28, 2003. The account was closed on November 14, 2003. This piece of evidence was not rebutted by the appellant. He submitted that this in itself rebuts any evidence of proper closure of accounts with proper notice to the respondent.

He urged the Court to resolve this issue in favour of the respondent and dismiss the appeal on this ground.

Issue one for determination of this appeal is whether the required notice of account closure was duly given to the respondent by the appellant under and by virtue of the provisions of Section 64(3) of the Nigerian Postal Service Act?

From the available evidence, certain facts are not in dispute having been clearly admitted by parties or not specifically denied. They are therefore established. These facts are:

- The appellant is a banking institution with an international outreach both in its operations and its composition.

- The respondent was operating a current account No.8208018 with the appellant and the said account was always in credit at all times material to the institution in this suit.

- Sometime on 14th November, 2003, the respondent had written a cheque on the said bank account in the sum of N30,000.0-0 (Thirty Thousand Naira only) in favour of one Dr. T. A. Bashorun.

- The said cheque duly presented through his own bankers - UBA Plc by Dr. Bashorun for payment by the appellant was returned unpaid with the following endorsement on the said cheque Account closed.

- That as at the 14th November, 2003 when the respondents said current bank account with the respondent was closed, it had a balance of N957,439.02 standing to the respondents credit which upon closure was transferred to a floating account.

- The parties relationship was guided among others by the General Terms and Conditions applicable to the account.

- As at the time Dr. Bashorun presented the respondents cheque to the appellant through his bank, - UBA Plc, the respondents account had been closed.

It is also very clear from the record that the appellant relied on the terms and conditions contained in the account Opening Form which the respondent subscribed to at the opening of the current account in question. Paragraphs 7 and 8 of the said Account Opening Form read thus:

7. That the Bank may at any time with at least 7 days notice to me close my account whether it be in debit or in credit.

8. Any notice or letter addressed to me and sent through post at the address supplied by me shall be considered as delivered to and received by me at the time it would be delivered in the ordinary course of post."

It is the case of the respondent that he had no notice from the appellant that his account was to be closed. But the appellant contended that the respondent was duly notified in writing before the closure of his account in compliance with the terms of the contract between them.

The trial Court, on the issue of notice to the respondent of the closure of his account with the appellant, had found as follows:

The claimant has indeed been unequivocal to the effect that he never received any notice from the defendant informing him of the said account closure. Thus, it is in my view of little relevance that the Claimant did not file a Reply and thus dispensed with the opportunity to specifically address the issue raised by the defendant per paragraphs 8 and 16 of its defence.

The defendant had by their processes and in the course of the testimonies of DW1 & 2 tendered evidence to the effect that they had issued and dispatched the requisite notice on time and that it had in fact, been received on the Claimants behalf by one Stanley U.K.

However, due cognizance must be had to the fact that while the Claimants account was closed on the 14th November, 2003, the purported Notice of Account Closure was according to Exhibit J (the Acknowledgment slip), received on the Claimants behalf by Stanley U.K on the 28 November, 2003, a clear period of two (2) weeks after the defendant effected the account closure in exercise of its discretion pursuant to the provisions of paragraph 7 of Exhibit C (the Account Opening Form).

It is also pertinent to observe here that in the course of cross-examination, the claimant as PW1, had averred that he had never heard of any Stanley U.K. and could not have authorized this fictitious paragon to collect any documents on his behalf.

Unfortunately, no evidence was led to establish a contrary position.

From the above findings of the trial Court, it came to the conclusion that the appellant was in breach of contract for failure to notify the respondent before effecting the closure of his account.

On appeal to the Court below, the Court on the above point of the notice to the respondent for the closure of his account found, inter alia, as follows:

Though the respondent denied ever receiving any notice of closure either personally or through Stanley U.K. whom he has never met. But the appellant adduced documentary evidence to show that the letter notifying the respondent about the plan to close his account was collected from the post office by one Stanley U.K on the 28/11/2003. It is also the evidence of the appellant that the appellants (sic) respondents account was closed on 14/11/2003. It follows therefore that even if it is taken that the notice of closure of account was received by the respondent through one Stanley U. K. on 28/11/2003 as contended by the appellant. There is however a glaring evidence also from the appellant that the said notice was handed to and received by the said Stanley U.K. two weeks after the respondents account was close on 14/11/2003.

Consequently, the appellant is in breach of clause 7 of the agreement (Exhibit C) which provides for the giving of at least 7 days notice, to the respondent before his account can be closed.

From the above findings, the Court below found in favour of the respondent that no notice was given to him before his account with the appellant was closed. That led to the instant appeal by the appellant.

It is noteworthy that the appellant has strongly relied on Section 64(3) of the Nigerian Postal Service Act to support its contention that adequate notice was given to the respondent of the pending closure of his current account with the appellant.

As earlier stated, both parties had agreed to be bound by the terms of the agreement contained in the Account Opening Form. See paragraphs 7 & 8 of the form Exhibit C.

In the respondents Statement of Claim, he had averred as follows:

The claimant shall contend that irrespective of the said terms and conditions, the defendant have (sic) no right in law to close the said account without giving notice of same to the Claimant, particularly even after the said accounts were closed unilaterally.

On the issue of dispatch of the notice to the respondent, the appellant specifically pleaded in paragraph 8 of its amended Statement of Defence as follows:

In their natural and ordinary meaning, the said words are true in substance and fact

Particulars:

(a) By virtue of a written contract dated 16th September, 1999, the defendant had the power to unilaterally close the claimants account.

(b) Pursuant to paragraph (a) above, a letter dated 22nd September, 2003, the defendant issued and caused to be dispatched on 15th October, 2003 by registered post to the claimant a notice of closure which was received by one Stanley U.K.

(c) On 14th November, 2003, a month after the notice was sent, the claimants account was closed.

The law is indeed settled, that the placing or delivery of an article to an officer of the Postal Service in the course of his/her duties shall be deemed to be delivered to the addressee. Section 64(3) of the Nigerian Postal Service Act provides as follows:

“The placing or delivery

(a) of an article in any receiving box for the deposit of postal article, or delivery of an article to an officer of the Postal Service in the course of his duties; or

(b) the delivery of a postal article at the house or office, private mail bag, and private letter box of the addressee or to the addressee (or to his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering post articles to the addressee) and where the addressee is a guest or is resident at a hotel, delivery to the proprietor or manager therefore or to his agents, shall be deemed to be delivery to the addressee.”

Furthermore, by the provisions of the above Postal Service Act, postal articles include any letter, postcard, newspaper, book document, pamphlet, pattern or sample packet, parcel or package or other article whatsoever transmissible by post."

Generally, the law guiding transmission of articles by post is the Nigerian Postal Service Act. Hence, clause 8 of the contract duly entered into by parties in this case must be read in conjunction with the provisions of the Nigerian Postal Service Act. In other words, I agree with the appellant that the clear emphasis in clause 8 is delivery of the notice or letter to the respondent by post. That is, that the appellant shall dispatch the notice of closure of the respondents account through NIPOST. By clause 8 of the contract, the respondent agreed that notice sent to him through post shall be considered as delivered and received by him at the time it would be delivered in this ordinary course of post. This means that by the provisions of Section 64(3) of the NIPOST Act, delivery of an article to an officer of the NIPOST in the course of his duties shall be deemed to be delivery to the addressee. In other words, I agree with the appellant that the Court below erred when it held that any notice or letter sent through the post to the respondent shall be deemed to have been delivered to him upon same being handed over to him in the course of ordinary post, and whereby registered post, upon such letter being signed for and collected from the postal officials. There is nowhere in clauses 7 and 8 of the terms and conditions of the agreement it is provided that collection of the notice or letter from the post office is a condition precedent to closure of the respondents account by the appellant.

From the terms and conditions of the agreement and the available evidence, I agree entirely that the respondent was given the required notice before the closure of his account. In the result, the appellant is not in breach of the contract between the parties. There is evidence that the letter of the appellant notifying the respondent of the plan to close his account was duly dispatched in the ordinary course of post, to NIPOST and this was not specifically controverted or disputed by the respondent. The notice sent to the respondent by post is deemed delivered to him at such time it would be deemed delivered in the ordinary course of post.

In the result, issue one is resolved in favour of the appellant. The respondent was given the required notice of account closure in compliance with the terms and conditions of the contract and the applicable provisions of the NIPOST Act.

Second issue is whether on the state of the pleadings and evidence led, the lower Court was wrong in failing to uphold the defence of qualified privilege in the appellants favour.

The words complained of by the respondent as being defamatory are written on the cheque issued by the respondent in favour of one Dr. T. A. Bashorun. The appellant admitted having written the said words, but claimed the defence of qualified privilege in communicating such alleged defamatory words. The respondent had pleaded in paragraph 9 of its amended Statement of Defence on pages 46-69 of the Record as follows:

Further or alternatively, if though the said words were construed to be defamatory, the defendant shall contend that the said words were published on an occasion of qualified privilege.

Particulars:

(a) The claimant is an account holder with the defendant;

(b) The United Bank for Africa is a Limited liability Company which carries out the business of providing financial services.

(c) The defendant and UBA are in the same line of business. They are required by the regulator i.e. the Central Bank of Nigeria (CBN) to disclose certain information in respect of interbank transactions.

(d) The defendant wrote and published the words complained of in compliance with the requirements of CBN and in the reasonable protection of its duty to UBA which had a reciprocal duty and or interest to receive it.

(e) UBA carries out its function through its team of staff hired to carry out different functions and handle various transactions. The defendant published the words complained of to the staff of United Bank for Africa in the ordinary course of business. In the banking industry, any publication to a member of staff is considered privileged information and therefore protected by an original qualified privilege.

The appellant contended that in proof of the above averment in its pleadings, it gave credible evidence on its defence of qualified privilege. DW1 testified as follows:

The usual practice and requirement in the banking industry particularly in respect of the cheque transactions is that when a bank is unable to conclude a transaction, the reason for such an inability is endorsed on the cheque.

The appellant contended that it had a duty/interest in making the communication and the UBA Plc to whom the communication was directly made also had a corresponding interest in having it made. Hence, the occasion in which the communication was made was an occasion of qualified privilege.

In its judgment, the trial Court found that the defence of qualified privilege was not sustainable for the appellant.

On appeal to the Court below, the Court had stated in its judgment that having found that due notice was not given to the respondent before the closure of his account by the appellant and that the consequent endorsement on the cheque with words Account closed was in breach of clause 7 of Exhibit C - the agreement between the two parties, it follows that the publication of the words in the said cheque to Dr. T. A. Bashorun and the staff of the United Bank for Africa Plc which constitute libel cannot justify a defence of qualified privilege as raised by the appellant. The Court of appeal found that the endorsement is defamatory as the imputation therein was to the discredit of the respondent which cannot be justified with the defence of qualified privilege.

Generally, a privileged occasion arises if the communication is of such a nature that it could be fairly said that those who made it had an interest in making a communication and those to whom it was made had a corresponding interest in having it made to them. Where these two co-exist, the occasion is privileged. See; Giwa Vs. Ajayi (1993) 5 NWLR (Pt.294) 423, Ugo Vs. Okafor (1996) 3 NWLR (Pt.438) 542; Ojeme Vs. Momodu (1994) 1 NWLR (Pt.323) 685; Iloabachie Esq. Vs. Benedict N. Iloabachie (2005) LPELR 1492 (SC).

As earlier stated, what the respondent considered which the two Courts below found to be libelous were the words –

"Account closed” endorsed on the cheque issued by the respondent to a third party Dr. Bashorun who presented same to his own banker the UBA Plc for clearing. There is no dispute as to whether or not the appellant wrote those words and published it to Dr. Bashorun and the staff of the UBA Plc., but the appellant had contended that as a bank, it owed it as a duty to a sister bank the UBA Plc to disclose to it the reason for its failure to honour the cheque of the respondent. The reason being that the account had been closed before the cheque was presented, hence could not be honoured. In which case the bank UBA Plc, to whom the said alleged libelous statement or words were made had interest in receiving the reason for failure to honour the cheque.

I respectively disagree with the Court below when it held that the endorsement on the cheque was defamatory and that the imputation was to the discredit of the respondent.

In this case, the appellant had pleaded and called evidence to show that the occasion of the alleged defamation was privileged in that it owed it a duty to the sister bank to whom the cheque was returned to know why the appellant could no longer process the cheque and the reason is, as stated on the said cheque the account was already closed, even though before its closure it was in credit. The law is that there must exist a common interest between the maker of the statement and the person to whom it was made. Reciprocity of interest is an essential element in the law of qualified privilege. See; Adam Vs. Ward (1917) A. C. 09 at 334; Ademola Atoyebi Vs. William Odudu (1990) 6 NWLR (Pt.157) 384 at 405; (1990) LPELR 594 (SC).

However, the facts relied upon by the maker must be true to sustain the defence of qualified privilege. See; Hebditch Vs. Macllwaine (1844) 2 QB 54.

It is trite law that in order to debunk or destroy the defendants defence of fair comment or qualified privilege, a plaintiff must file a reply to specifically plead and call credible evidence of malice in the defendant. The respondent herein neither file a reply to plead any element of malice in the appellant in endorsing the alleged defamatory words.

It is noteworthy that the respondent herein did not file any reply to the amended statement of defence, earlier alluded to wherein the appellant pleaded the defence and called credible evidence to support the defence. By the state of the pleadings and the evidence led, I am satisfied that the appellant is covered with the defence of qualified privilege. The lower Court was therefore wrong to have failed to uphold the defence in favour of the appellant. The issue is accordingly resolved in favour of the appellant.

The third issue is whether the respective sums awarded to the respondent by the lower Court as damages for breach of contract and for libel were justified in the peculiar circumstances of this case. Having held that there was no breach of contract between the parties in this case in that the appellant complied with the provisions of clauses 7 and 8 of the contract in the account opening form in conjunction with the provisions of Section 64(3) of the NIPOST Act as the required notice of account closure was given to the respondent by the appellant, and the alleged defamatory words endorsed on the cheque was covered by qualified privilege, it is no longer necessary to consider the award of damages to the respondent.

In the final analysis, the issues considered are hereby resolved in favour of the appellant but against the respondent. The appeal therefore succeeds in its entirety and it is allowed.

Accordingly, the judgment of the Court below delivered on 7/5/2014 is set aside.

Parties are to bear their respective costs.

Appeal allowed.

**OLABODE RHODES-VIVOUR, J.S.C.:**

I had the advantage of reading a draft copy of the leading judgment just delivered by my learned brother, ARIWOOLA JSC. I agree with His Lordship's reasons and conclusion.

I also allow the appeal.

**KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C.:**

I have had the benefit of reading before now, the judgment of my learned brother, Olukayode Ariwoola, JSC, just delivered. His Lordship has meticulously considered and ably resolved the issues in contention in this appeal. I agree with the reasoning and conclusion that there is merit in the appeal and it should be allowed.

The facts of this case illustrate the sanctity of contractual terms between parties and the need to always read "the fine print." It is not in dispute that the contract between the parties was contained in the Account Opening form, Exhibit C, which provided in paragraphs 7 and 8 thus:

"7. The Bank may, at any time with at least 7 days notice to me close my account, whether it be in debit or in credit

8. Any notice or letter addressed to me and sent through post at the address supplied by me shall be considered as delivered to and received by me at the time it would be delivered in the ordinary course of post."

How is delivery determined? The answer is to be found in 64(3) of the Nigerian Postal Service (NIPOST) Act Cap. N127 Laws of the Federation, 2004, which provides:

"The placing or delivery -

(a) Of an article in any receiving box for the deposit of postal article, or the delivery of an article to an officer of the Postal Service in the course of his duties; or

(b) The delivery of a postal article at the house or office, private mail bag, and private letter box of the addressee or to the addressee (or to his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivery postal articles to the addressee) and where the addressee is a guest or is resident at a hotel, delivery to the proprietor or manager therefore or to his agent, shall be deemed to be delivery to the addressee."

The well-known canon of interpretation of statutes is that the words used must be given their natural and ordinary meaning unless such an approach would lead to absurdity. See: Ibrahim Vs Barde (1996) 9 NWLR (Pt.474) 513 @ 577 B-C; Ojokolobo vs Alamu (1987) 3 NWLR (Pt.61) 377: Adewumi vs A.G. Ekiti State & Ors. State & Ors. (2002) SCNJ 27 @ 50.

By the agreement between the parties, the appellant was entitled to close the respondent's account "at any time" "with at least 7 days notice" and "whether the account is in debit or credit." Also by their agreement, any notice or letter addressed to him would be "considered as delivered to and received" by him at the time it would be delivered in the ordinary course of post. The ordinary course of post is as stipulated in Section 64(3) of the NIPOST Act. By the provisions of Section 64(3) of NIPOST Act and clause 8 of the agreement between the parties, the notice was deemed to have been delivered to him on 15/10/2003 by registered post. This was the unchallenged evidence before the Court. There was also unchallenged evidence that the respondent's account was closed on 14/11/2003, more than 7 days after the notice was delivered to him, in accordance with Clause 7 of Exhibit C.

He is bound by the terms of his contract. The lower Court was therefore wrong when it held that the respondent was not given the required notice before his account was closed.

On the issue of the defence of qualified privilege relied on by the appellant, it is a defence to an untrue publication. It can only be claimed when the occasion of the publication is shown to be privileged. See: Iloabachie vs Iloabachie (2005) 13 NWLR (Pt. 943) 695: An occasion is said to be privileged where there is a common interest between the maker of the statement and the person to whom it was made. A privileged occasion is an occasion where the person who makes a communication has an interest or duty, legal social or moral, to write it to the person to whom it is made, and the person to whom it is made has a corresponding duty to receive it. See: Akomolafe Vs Guardian Press Ltd. (Printers) & Ors. (2010) 3 NWLR (Pt. 1181) 338; Iloabachie vs Iloabachie (supra); Atoyebi vs Odudu (1990) 9-10 SC 150.

The defence of qualified privilege is a shield relied upon by a defendant where it is proved that the statement complained of is untrue. In the circumstances of this case, the statement that the respondent's account had been closed was true. In my considered view, the issue of qualified privilege did not arise.

For these and the more detailed reasoning in the lead judgment, I find this appeal to be meritorious. It is hereby allowed.

I abide by the consequential orders in the lead judgment including the order on costs.

**AMIRU SANUSI, J.S.C.:**

I read in advance the judgment just rendered by my learned brother Ariwoola, JSC. His Lordship had painstakingly and adequately addressed all the salient issues canvassed by learned counsel to the parties in this appeal before arriving at the inevitable conclusion that this appeal has merit and deserves to be allowed. I agree entirely with such reasoning and shall also allow the appeal.

I abide by the consequential orders made including one on costs.

**EJEMBI EKO, J.S.C.:**

I read in draft the judgment delivered in the appeal by my learned brother, OLUKAYODE ARIWOOLA, JSC. The judgment representing my views in the appeal is hereby endorsed and adopted by me.

I will however just add a few comments of mine on facts sufficiently summarised in the lead judgment. The Appellant and the Respondent had their contract in Exhibit C. By paragraph 7 of Exhibit C, the Respondent authorised the Appellant to, "anytime within at least 7 days notice to me, close my account whether be it in debt or in credit."

By paragraph 8 of Exhibit C, the Respondent further states/provides:-

Any notice or letter addressed to me and sent through post at the address supplied by me shall be considered as delivered to and received by me at the time it would be delivered in the ordinary course of post.

The combined reading of paragraphs 7 and 8 of Exhibit C does not, in my view, envisage that the Appellant shall be burdened or obligated to prove actual delivery or receipt by the Respondent of any notice or latter sent to him by the Appellant through post. It is not in dispute that the parties to Exhibit C mutually agreed that the posting of notices or letters to the Respondent by the Appellant shall be by post-delivery. All the Appellant is obligated to prove is merely or only when the disputed letter or notice was posted as agreed.

At common law, a postal acceptance of an offer takes effect from when the letter containing the acceptance was posted. For this purpose, a letter is posted when it is put in the control of the post office, or one of its employees authorised to receive letters: CHITTY ON CONTRACT 29th Ed., Vol. 1, Para. 2.046, Page 145.

The common law Posting Rule, a rule of convenience so to say; is that once the letter is posted - that is, put in the control of the Post Office, there is presumption that it will reach the addressee and the onus is not on the addressor to ensure either that it was not lost or was in fact delivered: CHITTY ON CONTRACT (supra) at page 148, para 2053. This Posting Rule is what has been codified or enacted into Section 64(3) of the Nigerian Postal Service Act, Cap. N127, LFN 2004 - (NIPOST Act) providing 64. (3). The placing or delivery -

a. of an article in any receiving box for the deposit of postal articles, or the delivery of an article to an officer of the Postal Service in the course of his duties; or

b. the delivery of a postal article at the house or office, private mail bag, and private letter box of the addressee or to the addressee (or his servant or agent or other person considered to be authorised to receive the article according to the usual manner of delivering postal articles to the addressee/and where the addressee is a guest or is resident of a hotel, delivery to the proprietor or manager therefore or to his agent,

shall be deemed to be delivery to the addressee.

Section 64(1) of the NIPOST ACT defines postal articles to include any letter, etc. By this definition postal article should include notices or letters sent by post. The letter posted or dispatched on 15th October, 2003, which letter conveyed to the Respondent, the notice of the closure of his account, by the Posting Rule, was deemed to have been delivered to the Respondent upon the same delivered to the NIPOST for delivery to the addressee, the Respondent, at the address furnished by him. I therefore agree with the Appellant that in view of Section 64(3) of the NIPOST Act read together with paragraphs 7 and 8 of Exhibit C, it is perverse of the lower Court to hold that the physical delivery, receipt or collection by the Respondent of the letter/notice from the Appellant is a condition precedent for closure of Respondent's account with the Appellant.

The Respondent's account having been closed in terms of Exhibit C, it is reasonable for the Appellant to give "account closed" as the reason why the cheque drawn in favour of Dr. Bashorun could not be given cash value on the order of the Respondent. The Appellant's plea of qualified privilege applied in full force. The concurrent judgments of the two Courts below dismissing the plea are perverse and unreasonable in the circumstance.

With the success of issues 1 and 2 in favour of the Appellant, it follows naturally that Issue 3 be also, and is hereby resolved in favour of the Appellant. The appeal is allowed. All consequential orders made in the lead judgment are hereby adopted by me.-end!