

SUPREME COURT OF NIGERIA JUDGMENT — 2024

**IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA**

ON FRIDAY, THE 17TH DAY OF MAY, 2024

BEFORE THEIR LORDSHIPS:

1. **HON. JUSTICE I. U. ONWUDIWE, JSC** (Presiding)
2. **HON. JUSTICE A. M. BELLO, JSC**
3. **HON. JUSTICE S. O. KEHINDE, JSC**
4. **HON. JUSTICE M. T. KALU, JSC**
5. **HON. JUSTICE R. A. IBRAHIM, JSC**

SUIT NO: SC/412/2022

Between:

CHIEF OLALEKAN ADEYEMI *Appellant*

And

SUNRISE MICROFINANCE BANK LTD *Respondent*

APPEARANCES

- **A. O. Okafor, SAN** with **M. Yusuf** and **T. Aina** for the Appellant.
- **K. A. Danjuma** with **E. N. Eze** for the Respondent.

JUDGMENT

ONWUDIWE, JSC (Delivering the Lead Judgment):

1. Introduction

This appeal questions the propriety of the decision of the Court of Appeal, Lagos Division, delivered on **18th March 2022**, affirming the judgment of the High Court of Lagos State (Commercial Division) delivered on **9th July 2020**.

At the centre of the dispute is whether the Respondent bank was entitled to **debit the Appellant’s account** by way of a “security set-off” for a facility allegedly granted to a company in which the Appellant was said to be a guarantor, and whether the Appellant established a case for **unlawful debiting, breach of contract, and general damages**.

The Appellant has urged this Court to allow the appeal. The Respondent insists the appeal is devoid of merit.

2. Facts (as found by the trial court and affirmed by the lower court)

The material facts are largely undisputed:

1. The Appellant maintained Account No. **019-xx-xxxx** with the Respondent at its Marina Branch, Lagos.
2. On **11th January 2018**, the Respondent granted a credit facility of **₦85,000,000.00** to **Apex Coastal Logistics Ltd** (hereinafter “the Company”).
3. The Respondent alleged that the Appellant executed a **Deed of Guarantee** and a **Letter of Set-Off** authorising the bank to set off any indebtedness of the Company against the Appellant’s deposits.
4. On **3rd September 2019**, the Respondent debited the Appellant’s account in tranches totalling **₦27,450,000.00**, describing same as “SECURITY SET-OFF: Apex Coastal”.
5. The Appellant denied executing any enforceable set-off mandate and asserted that the bank’s action was unilateral, wrongful, and constituted a breach of banker-customer contract.
6. The trial court dismissed the Appellant’s claims, holding that the Respondent proved the guarantee and set-off mandate and was therefore entitled to debit the account. The Court of Appeal affirmed.

Dissatisfied, the Appellant appealed to this Court.

3. Issues for Determination

From the Appellant’s Notice of Appeal and briefs, and having considered the Respondent’s formulation, I adopt the following issues:

1. **Whether the lower court was right to affirm that the Respondent proved a valid and enforceable set-off mandate/guarantee authorising the debit of the Appellant’s account.**
 2. **Whether the debit of the Appellant’s account, in the circumstances, amounted to unlawful debiting and breach of the banker-customer contract.**
 3. **If Issues 1 and 2 are resolved in favour of the Appellant, whether the Appellant is entitled to the reliefs claimed (refund, interest, and damages).**
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4. Submissions of Counsel

Appellant

Learned silk for the Appellant contended that the alleged set-off instruction was not proven in law. He argued that:

- The burden lies on the bank to justify debits, particularly where a customer challenges same.
- The Respondent did not establish due execution of the guarantee and set-off documents; the supposed signatures were disputed.
- No credible evidence of the Appellant's consent to set-off was produced; at best, the bank relied on internally generated documents.
- The lower courts failed to properly evaluate documentary and oral evidence, thereby occasioning a miscarriage of justice.

Counsel urged the Court to order a refund of **₦27,450,000.00** with interest and award damages for wrongful debit.

Respondent

Respondent's counsel argued that:

- The Appellant executed a guarantee and set-off mandate and did not rebut the Respondent's evidence at trial.
- A bank is entitled to set-off where there is a contractual basis or clear mandate.
- The evaluation of evidence by the trial court, affirmed by the Court of Appeal, is not lightly disturbed by the Supreme Court absent perversity.

Counsel urged dismissal.

5. Resolution

Issue 1: Proof of a valid and enforceable set-off mandate/guarantee

The relationship between a banker and its customer is principally contractual. Where a customer complains of a debit, it is settled that the bank bears the duty to justify the debit by reference to a mandate or contractual entitlement. See (fictional placeholders):

- *Okoro v. Unity Bank Plc* (2016) 9 NWLR (Pt. 1525) 210
- *Ibrahim v. GoldTrust Bank* (2018) 4 NWLR (Pt. 1609) 455

In the instant case, the Respondent relied on:

- **Exhibit R1:** Deed of Guarantee (purportedly signed by the Appellant)
- **Exhibit R2:** Letter of Set-Off/Mandate
- **Exhibit R3:** Statement of Account showing the debits

The Appellant disputed his signature on Exhibits R1 and R2. Once a signature is specifically denied, the party relying on it must prove due execution. Such proof may be by:

- calling the maker or a witness to execution,
- expert evidence (e.g., handwriting expert), or
- surrounding circumstances that irresistibly point to execution.

In the record before us, the Respondent neither called the alleged witnessing officer who purportedly saw the Appellant sign, nor produced any independent verification. The Respondent also did not seek any forensic comparison, despite the direct challenge.

The trial court held that the Appellant “did not sufficiently disprove” the signature. With respect, that approach reverses the burden. The bank must establish the mandate. The customer is not required to prove a negative beyond raising a credible dispute.

Accordingly, I hold that the lower courts were in error in affirming that Exhibits R1 and R2 were proved as valid mandates binding on the Appellant. This issue is resolved **in favour of the Appellant**.

Issue 2: Whether the debit amounted to unlawful debiting/breach

Having held that the Respondent failed to prove a valid set-off mandate, it follows that the debit lacked contractual foundation. Absent a proven mandate, the Respondent’s action constitutes an **unlawful debit** and therefore a **breach** of the banker-customer contract.

A bank cannot, by unilateral internal designation of an entry as “security set-off”, clothe itself with authority where none is proven. The customer’s funds remain protected by the contract and applicable banking duties.

Issue 2 is also resolved **in favour of the Appellant**.

Issue 3: Reliefs

The Appellant claimed:

1. Refund of **₦27,450,000.00**
2. Interest
3. General damages

Refund

The statement of account (Exhibit R3) clearly shows the debit total of **₦27,450,000.00**. The Respondent did not dispute the arithmetic, only the justification. Since justification fails, the sum must be restored.

Interest

Pre-judgment interest is not automatic; it must be pleaded and proved either by:

- agreement,
- mercantile custom, or
- statute, or
- facts justifying it as a natural consequence of withholding money.

From the pleadings and evidence, the Appellant established that the money was wrongfully withheld. In commercial matters, a court may award interest to do justice, provided it is not speculative.

I award:

- **Pre-judgment interest at 10% per annum** on **₦27,450,000.00** from **3rd September 2019** (date of final debit) to **9th July 2020** (date of trial court judgment), and
- **Post-judgment interest at 10% per annum** from **9th July 2020** until full liquidation.

General damages

A wrongful debit is actionable. However, damages must remain reasonable and not punitive where special loss is not established. The Appellant claimed reputational embarrassment and disruption of business cashflow, but offered limited proof of specific consequential losses.

In the circumstances, I award **₦2,000,000.00** as general damages for wrongful debit and breach of contract.

6. Conclusion

This appeal succeeds. The judgment of the Court of Appeal, Lagos Division delivered on **18th March 2022**, affirming the trial court judgment of **9th July 2020**, is hereby **set aside**.

In its place, judgment is entered for the Appellant as follows:

1. The Respondent shall **refund** to the Appellant the sum of **₦27,450,000.00**.
2. The Respondent shall pay **pre-judgment interest at 10% per annum** on the said sum from **3rd September 2019** to **9th July 2020**.
3. The Respondent shall pay **post-judgment interest at 10% per annum** from **9th July 2020** until the judgment debt is fully liquidated.
4. The Respondent shall pay **₦2,000,000.00** as **general damages**.
5. Costs of **₦500,000.00** are awarded in favour of the Appellant.

Appeal allowed.

CONCURRING JUDGMENTS (Summaries)

BELLO, JSC: I agree entirely. The burden to justify a debit lies on the bank. Once signature is directly denied, the bank must prove execution. I also agree with the refund, interest and damages.

KEHINDE, JSC: I concur. The lower courts wrongly shifted the burden to the customer. Banks must show a clear mandate before set-off.

KALU, JSC: I agree. The evidence was insufficient to establish the set-off instruction. This Court will intervene where findings are perverse or based on wrong principles.

IBRAHIM, JSC: I concur with the lead judgment and the orders made.