

CASE DIGEST

CONTRACT: AGREEMENT; ESTOPPEL; ORAL VARIATION OF A WRITTEN AGREEMENT CANNOT AMOUNT TO ESTOPPEL

ACCESS BANK PLC v. NIGERIA SOCIAL INSURANCE TRUST FUND

SUPREME COURT

(KEKERE-EKUN; OKORO; ABOKI; SAULAWA; ABUBAKAR, JJ.SC)

Nigeria Social Insurance Trust Fund (Respondent), a parastatal of the Federal Government of Nigeria placed various sums of money in Access Bank Plc (Appellant) on the basis of a written agreed interest rate and default penalty. At the end of the placement term, the appellant made some payments to the respondent as interest and default penalty. The Respondent later realised that the interest paid was not properly computed at the agreed rate and that the penalty paid was not computed on a daily basis as agreed. On this note, the Respondent demanded further interest and default penalty payments from the Appellant. The Appellant denied any liability and asserted that it had paid all the demanded sums of money due to the respondent. Aggrieved by the Appellant's response, the Respondent commenced an action at the High Court of Abuja (trial Court) for various sums of money as balance interest and default penalty, N6 million as cost of prosecuting the suit, and exemplary damages. At the conclusion of the hearing, the trial Court dismissed the claims of the Respondent. Dissatisfied, the Respondent appealed to the Court of Appeal, which found and held that there was no convincing evidence of the asserted verbal or oral negotiations subsequent to the written agreement between the parties and that the appellant's failure to immediately request for the balance of the penalty calculated on basis of daily default did not amount to a waiver of the balance payment. Consequently, the Court of Appeal allowed the Respondent's appeal, set aside the trial court's judgment, and entered judgment in favour of the Respondent. Dissatisfied with the decision of the Court of Appeal, the Appellant further appealed to the Supreme Court. One of the issues for determination was: *Whether the lower court was right when they held that the defence of estoppel by conduct did not avail the appellant*

The Learned Counsel for the Appellant submitted that the court below was wrong when it held that the defence of estoppel by conduct did not avail the appellant at the lower Court and that the court below arrived at that decision without properly evaluating the appellant's submissions and evidence placed before it. Arguing further, he stated that it is not in dispute, that there was an express agreement regulating the transaction between the parties, but this agreement was varied after the Appellant paid 11% interest and 2% penal fee vide business letter to which the Respondent did not reply. He concluded with the position that silence is an admission which is capable of acting as estoppel and that a case of estoppel by conduct has been established by the Appellant against the Respondent. He urged the Court to resolve the issue in the Appellant's favour.

Learned Counsel for the Respondent contended on the other hand that since the contract between the Appellant and Respondent was entered into in writing, then the tenor and terms of such a contract can only be read and known by the contents of the documents. Thus, any condition or agreement that seeks to vary the original agreement between the appellant and respondent must be in writing. He submitted that the court below amply captured the inapplicability of the doctrine of estoppel, and therefore urged the Court to resolve the issue in the Respondent's favour.

The Supreme Court in resolving this issue held that:

If a man by his words or conduct willfully endeavours to cause another to believe in a certain state of things which the first knows to be false and if the second believes in such state of things and acts upon the belief, he who knowingly made the false statement is estopped from averring afterwards that such a state of things does not exist at the time. Again, if a man either in express terms or by conduct, makes representation to another of the existence of a state of facts which he intends to be acted upon in a certain way, in the belief of the existence of such a state of facts, to the damage of him who so believes and acts, the first is estopped from denying the existence of such a state of facts. In the instant case, it was shown that the agreement with the Appellant was duly entered and reduced into writing. Also, there was no convincing evidence that there were verbal or oral negotiations in respect of the written agreement between the parties. The fact the Appellant did not immediately request for the balance of the penalties calculated as per daily default did not amount to a waiver of the balance, nor can it be said that the Respondent was estopped by their conduct.

Furthermore, Parties, in their freedom to contract, are deemed to intend to be governed by the terms of their contract. They are not permitted to adduce oral evidence to establish terms extrinsic to the terms agreed or to vary the terms agreed.

Dr. Taiye Oniyide, Esq., with Theophilus Okwute, Esq., for the Appellant.

Tuduru U. Ude, Esq., with Eric Apia, Esq., and C. C. Agidi, Esq., for the Respondent.

This summary is fully reported at (2022) 9 CLRN

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