

**UNITY BANK PLC v RHOOR & LUE (NIG) LTD & ANOR [2025] 9 NWLR (Pt.1994) 1: A  
TALE OF JUDICIOUS JUSTICE AND JUDICIAL INJUSTICE**

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**ABSTRACT**

The Supreme Court judgment in the Unity Bank *Unity Bank PLC v Rhour & Lue (Nig) Ltd* [2025] 9 NWLR (Pt.1994) 1 provided a landmark decision in bank credit recovery procedure in Nigeria. While the decision brought justice to the bank by what the apex court held, the court occasioned injustice to the bank in what it failed to do timeously. This has become a metaphor for the administration of justice in Nigeria. Aimed at attaining a judicial and judicious resolution of dispute on banks unpaid credit, the article interrogated the strength and weaknesses in this decision by the apex court. Relying on doctrinal methodology, the paper leveraged *inter-alia* on the Constitution of the Federal Republic of Nigeria, 1999 and the Banks and Other Financial Institutions Act, 2020 as the primary sources of data, while published text and virtual resources provided the secondary sources of data. The paper found that the inordinate delay in this case occasioned serious asset loss to the bank notwithstanding the judgment in its favour requiring the Supreme Court to unravel and deal with the factors culpable for the 18 years lifespan of this case in the Supreme Court. The paper recommended the strict enforcement of the Rules of Professional Conduct for Legal Practitioners 2023 and the Code of Conduct for Judicial Officers, deployment of technology in justice administration in Nigeria, a review of the admission requirements to study law, recruitment process to the bench and progression on the bench to increase capacity for the administration of justice.

**Keywords:** Justice, Injustice, Judicious and Judicial

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## 1.1 INTRODUCTION

Financial institutions provide the payment system in every economy. They are the axle on which credit and development institutions orbit. As purveyors of short and medium term finance for the economy, the bill of health of the financial institutions is a major determinant of the overall health status of the economy.

The banking subsector facilitates commerce and economic activities in the public and private sectors through financial accommodation. The common kinds of financial accommodation include the grant of loan or overdraft facility to the customer, loan syndication, provision of credit guarantees, financing equipment leasing, debt factoring and contract financing. The economy thrives on these commercial credits.

Lending is a core feature of banking business. Bankers' credit financing can become an albatross for financial institutions. The non-repayment or non-servicing of credit facility has hurting domino effects on the lender and the entire financial system. This can erode the capital base of a financial institution and lead to eventual collapse<sup>1</sup>.

Consequently borrowing is regulated by motley of laws guiding credit institutions in the business of lending. The Central Bank Act, 2007<sup>2</sup>, Banks and Other Financial Institutions Act, 2020<sup>3</sup>, Companies and Allied Matters Act, 2020<sup>4</sup> provide conduct of business and prudential regulations in the industry. The Credit Reporting Act, 2017<sup>5</sup> bears on banks as credit institutions in considering application for credit by any person or considering a person's qualification to act as a guarantor for any credit or reviewing, renewing, restructuring or monitoring of existing credit facilities<sup>6</sup>. The Secured Transaction in Moveable Assets Act, 2017<sup>7</sup> applies to all security interest in moveable assets created by an agreement that secures payment or the performance of an obligation. The

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<sup>1</sup> Non-performing or toxic assets have been responsible for the 2008-2010 world's credit market paralysis. In retrospect, the collapse of the subprime mortgage market in the U.S.A arose from non-performing loans advanced to borrowers. This set in motion chains of reactions that precipitated the global financial crisis between 2008 and 2010. The USA government had to inject the sum of \$750 billion as a bailout into the financial sector to ease the credit crunch. In Nigeria, the Central Bank of Nigeria in 2009 injected N620 billion naira as bail out for non-performing and unsecured loans of 8 troubled banks who had their capital level compromised owing to exposures in the capital market and the downstream petroleum sector.

<sup>2</sup> No.7 ,2007 (CBN Act 2017)

<sup>3</sup> No.5 2020(BOFIA 2020)

<sup>4</sup> No.3 2020 (CAMA 2020)

<sup>5</sup> No.2 2017 (CRA 2017)

<sup>6</sup> CRA, 2017 Section 7

<sup>7</sup> No.3, 2017

Asset Management Corporation of Nigeria Act, 2010<sup>8</sup> established the Asset Management Corporation of Nigeria (AMCON) as a special interventionist vehicle to rid the banks of non-performing loans and stimulate lending by the banks.<sup>9</sup> Enforcement institutions are set out to manage recovery of credit by finance providers. The High Court of the Federal Capital Territory<sup>10</sup> and High Court of the various States<sup>11</sup> and the Federal High Court are vested with jurisdiction to hear and determine causes arising from banker-customer and financial institutions/client or creditor/debtor relationships. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, 2004<sup>12</sup> provide for the recovery of debts owed to failed banks and for the trial of offences relating to financial malpractices in banks and other financial institutions. The Act vests the Federal High Court with exclusive jurisdiction to hear and determine all matters concerning the recovery of debt owed to a failed bank.<sup>13</sup>

By section 53, AMCON Act, the Chief Judge of the Federal High Court may designate any judge of the Federal High Court to hear matters for the recovery of debts owed to the corporation or an eligible financial institution and other matters arising from the provisions of the Act to the exclusion of any other matter for such period as may be determined by the Chief Judge.

The concern of the normative framework is to create the enabling financial environment for seamless service delivery, stability of the system, and sustenance of stakeholders' confidence in the payment mechanism of the financial system.

Notwithstanding the robust legal framework on asset recovery, unpaid credit or non-performing loans remain an albatross for financial institutions in Nigeria. The AMCON as at 2022 owed ₦6,282 trillion to the CBN sourced to acquire non-performing loans in Nigeria. In 2023, the debt

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<sup>8</sup> No.4, 2010 (AMCON) Act

<sup>9</sup> In its twilight, AMCON bought over N3trillion of non-performing loans and injected N1.5 trillion into the banking sector. AMCON intervened directly by taking over Bank PHB, Spring Bank, and Afri Bank PLC changing their names to Keystone, Enterprise and Mainstreet Bank PLC. AMCON acquired a total of 3.7 trillion in bad loans from 22 lenders, recovered over 1trillion. It owes 4 trillion to the Central Bank of Nigeria in guaranteed liability.

<sup>10</sup> CFRN sections 255. According to section 257(1) "Subject to the provisions of section 251 and any other provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory, Abuja shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person"

<sup>11</sup> CFRN sections 270 & 272

<sup>12</sup> Cap F2, LFN 2004.

<sup>13</sup> Ibid, section 5

declined to ₦5.739. AMCON has not fewer than 3,000 recovery cases pending in Nigerian courts and has managed to recover ₦2.022 trillion directly from debtors<sup>14</sup>.

Time is of the essence in financial dispute resolution owing to the time value of money. Money's earning potentials may wane over time owing to inflation or a combination of several economic factors. The uncertainty of delayed payment underpins fund owners' preference for their assets when they fall due as a bird in hand is worth two in the forest. It is grave injustice to have creditors funds tied down by debtors. This injustice resonates with bankers' unpaid credit.

The importance of timelines in the administration of justice can never be overemphasised. When redress is postponed too long, it loses flair and value, occasion unnecessary suffering to litigants and erodes faith in the judicial system. Justice is about fairness in outcome and process. Justice delayed undermines the very essence of justness of a cause.

The cliché 'justice delayed is justice denied' gained traction in legal discourse and reform movements calling for speedy determination of a case. This principle has, in substance, been enshrined in constitutions and human rights charter encapsulated in the notion of fair hearing. It is in this context that the 'mixed bag' in the decided case of *Unity Bank PLC v Rhour & Lue (Nig) Ltd*<sup>15</sup> is interrogated for the value that it presents in the administration of justice in Nigeria.

The aim of this paper is to advocate for timely delivery of justice in financial assets recovery in Nigeria. The paper highlights the strength, weakness and lessons from the judgment and makes recommendations thereto. The Constitution of the Federal Republic of Nigeria, 1999<sup>16</sup>, BOFIA 2020, CBN Act 2007 and case law in the main provided the primary source of data, while extant literature<sup>17</sup> and virtual resources provided background reading and secondary source of data for this paper. The methodology of this article is doctrinal as the discourse is focused on the normative framework on credit recovery in Nigeria. The article is presented in five parts; part one is the introduction, part two is concerned with facts of the case, part three distills the pronouncements in

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<sup>14</sup><https://amcon.com.ng/news-story.php?n=146> accessed on March 8, 2025.

<sup>15</sup> [2025] 9 NWLR (Pt.1994) 1(Unity Bank's Case)

<sup>16</sup> CFRN

<sup>17</sup> I.J.Goldface-Irokalibe *Law of Banking in Nigeria*, Malthouse Press, 2<sup>nd</sup> edn 2020; K.Igwieke, *Law of Banking and Negotiable Instrument* Africana First Publishers, 2008; O.A.Ajayi *Banking Law and Ethics* Bash-Moses Ibadan, 2007; Augustine Robert Agom (2024) *The Law on Banks and Other Financial Institutions in Nigeria*, Ahmadu Bello University Press, 2024.

the matter that serve as enduring practice manual on credit recovery in Nigeria, part four examines the downside of the case and part five draws the curtain on the discussion. ‘Justice’, ‘injustice’, ‘judicious’ and ‘judicial’ are the key drivers of this discourse.

According to Black’s Law Dictionary<sup>18</sup>, justice is defined as the fair and proper administration of the law.<sup>19</sup> This concept is often described as encompassing righteousness, equity, and moral rightness, and it involves protecting right and punishing wrongs fairly. It may be retributive, restorative or distributive or procedural. Injustice is the converse of justice. According to Cambridge Dictionary, the adjective ‘judicious’ refers to using or showing judgment as to action or practical expediency, discreet, prudent, or prolific; having, exercising or characterised by good or discriminating judgment, wise, sensible or well advised. A court acts judiciously when it fairly evaluates a matter before it. On the other hand, ‘Judicial’ is something that in a way is connected with a court, a judge or legal judgment.<sup>20</sup> A court acts judicially when it is in action discharging its primary responsibility of adjudication. Pierced together, the topic examines the fairness or otherwise of the court’s decision in the Unity Bank’s case and outlines enduring lessons from the case. A brief consideration of the facts of this case is now undertaken.

## **1.2. FACTS OF THE CASE IN *UNITY BANK PLC v RHOOR & LUE (NIG) LTD***

The bank, on request advanced the sum of N19 million to the company in July 2001 to finance a contract for the supply of two Mercedes Benz Tippers to the Abuja Environmental Protection Board of the Federal Capital Territory. By the terms of the agreement the facility was repayable in 30 days and the company was required to securitise the transaction by the domiciliation with the bank of the payment due from the Abuja Environmental Protection Board. The company defaulted in the repayment agreement. The bank in September 2002, issued a writ of summon under the undefended list procedure claiming the resulting balance in the account which has slightly gone above N27 Million, compound interest at 32% and post judgment interest at 19%. The company filed a notice of intention to defend with an affidavit in support in which it admitted obtaining the loan of N19 million from the bank. The defendant disputed the interest charged on the facility and further contended that the repayment of the loan was subject to the payment on the supply contract

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<sup>18</sup> Bryan Garner (ed) Black’s Law Dictionary, Thompson West, Dallas, 8th edn.

<sup>19</sup> Ibid, P.880

<sup>20</sup> Cambridge Advanced Learners’ Dictionary & Thesaurus. Retrieved from Cambridge University Press-dictionary-cambridge.org on 16/10/2025 @7:12am

which had been domiciled with the bank and since payment had not been made, the repayment was not due. In June 2005, the High Court of the FCT delivered judgment in the case in favour of the bank under the undefended list procedure. Dissatisfied, the company, *pronto*, lodged an appeal to the Court of Appeal. In April 2007, the Court of Appeal, of the view that there were triable issues, allowed the appeal and ordered a retrial of the case. Aggrieved, the bank in April 2007, appealed to the Supreme Court. In February 2025, the apex court partially allowed the appealed, restored the judgment of the lower court and remitted the claim for compound interest back to the lower court for fresh hearing. In the lead judgment, the effervescent wordsmith, Ogbuinya JSC, providing a philosophical context to the justice in this case, stated:

In the presence of the respondent's wholesale admission of the loan facility of N19 million, a liquidated sum per excellence, the issue of difficult point of law vanishes, factual disputation takes to flight and the necessity for further account/investigation becomes a pipe dream. Thus the admission disables and demolishes any triable issue, or defence on the merit, being brandished and paraded by the respondents, *vis a vis* the admitted N19m loan. It renders it a sham, feeble, friable, frivolous and moonshine defence which is intended to dribble and cheat the appellant out of its entitled claim of N19m. it stems from the foregoing that the respondents, by their own showing, starved the court of any evidence of triable issue or defence on the merit in respect of the admitted principal sum of N19M as the loan facility. In the eyes of the law, a party who makes an admission surrenders himself to the fact and law and makes himself an easy prey in the waiting hands of his adversary. The admission is a *pessimi exempli* of an admission against interest party's acknowledgment of a fact that is inimical to his position. The net effect comes to this. The appellant, the lender banker is entitled *de jure*, to a return of the admitted sum of N19M. Needless to observe, that the sum belongs to an army of depositors who reposed mountainous confidence in the appellant owing to the fiduciary relationship between them. It smells of injustice to deny the depositors of their hard earned resources stashed in the appellant's vault for their use in future. That tantamount to a serious erosion of the cherished legal duty of a banker to a customer under which it has to husband the funds in its custody.<sup>21</sup>

This decision of the apex court has several takeaways for stakeholders of the financial system. Banks and other financial institutions work the money market segment of the financial system where short term funds are sourced. Long term borrowing is not suitable for the money market. Consequently, unpaid or delayed payment of banker's credit hurts the banks and the entire financial system very badly. The summary judgment or undefended list procedure is the most

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<sup>21</sup> Ibid,P.47

suitable recovery route for unpaid banker's credit. This procedure was judicially laid bare by the Supreme Court in bringing justice to Unity Bank PLC in this case.

### 1.3.JUDICIOUS JUSTICE

Justice is a multi-faceted concept. While its true meaning vary across philosophical traditions, it consistently revolves around the core ideas of right, fairness. According to the Natural Law School, justice is based on morality, reason and divine law. It reflects what is inherently right and fair in nature. Aristotle, Aquinas, Cicero and co-travellers of the Natural Law school viewed justice as giving to each person their due according to natural right. The Positivist School views justice as obedience to the law as enacted by the sovereign. John Austin, Hobbes and fellows of this school understand justice to mean conformity with the command of the state as exemplified in the laws enacted by the State. For Jeremy Bentham, John Stuart Mills and Scholars of the Utilitarian School of Law, justice is a matter of maximizing overall happiness and wellbeing for the greatest number of people. A just society is one whose law, institutions and actions produce the greatest good for the greatest number, often prioritising consequences over individual rights.

The pronouncements of the Supreme Court Justices in this case speak to general notion of fairness, existing finance laws and systemic balance and sustainability. The ratio *decidendi* in this case are reminiscent of the effervescence of dicta that have defined legal jurisprudence.<sup>22</sup> The intellectual rigours in the adumbration of the vast principles on asset recovery, analytical clarity, linguistic precision, critical thinking and strong research outcomes that underpin this decision commend this judgment to stakeholders of the financial services industry. The judgment is a restatement of the law and a practice manual for asset recovery institutions and law firms. Twenty one judicious pronouncements that speak to justice in the case are distilled and laid out *verbatim*

- i. For a balanced consideration of this vexed limb, it is germane to display the significance and characteristics of undefended list procedure: 'an adjectival soul mate of summary judgment procedure. Incontestably, it is already an overworked procedure in our adversarial system of administration of justice. Proceeding under undefended list procedure is employed by a party (usually claimant) where the claim is for only a liquidated

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<sup>22</sup>*Donoghue v Stephen* [1932]AC 562; *Salomon v A Salomon Co. Ltd* [1897]AC 22; *Central London Property Trust Ltd v High Trees house Ltd*(1947) 1 KB 130; *Okafor v Nnaife*(1973) JELR 41314(SC); *Military Administrator of Lagos State v Ojukwu* (1986) 2 NWLR (Pt.18) 621; *Inakoju v Adeleke* (2007) 4 NWLR (Pt.1025) 423

demand...By the very liberal nature of an undefended list procedure, judgments are awarded to plaintiffs without taking the defence of the defendants, see *Macaulay v NAL Merchant Bank Ltd.*(1990) 4 NWLR (Pt.144) 283. The purpose of undefended list procedure is to enable a plaintiff to obtain summary judgment without trial where he has a patently clear and reasonable case. It is however not designed to shut out a defendant who can show a defence.<sup>23</sup>

- ii. It is pertinent to state that the provisions on undefended list in the civil Procedure Rules of the different High Courts are adjunct to the course of justice. They are rules of court touching on the administration of justice and the procedure is simply designed to ensure speedier attainment of justice with ease, certainty, and dispatch when it is abundantly clear that the defendant has absolutely no defence to the plaintiff's case. The undefended list procedure is a specie of summary judgment evolved by the rules of court for the speedy disposal of otherwise uncontested cases and where there is no reasonable doubt as to the efficacy of the plaintiff's claim and it would be most unconscionable to oblige an otherwise liable defendant the opportunity to employ more subterfuge to dribble his opponent and the court just for the purpose of stalling proceedings and cheating the plaintiff out of reliefs to which he ordinarily would have been entitled.<sup>24</sup>
  
- iii. In *Maja v Samouris* (200) 7 NWLR (Pt.765)78, at 102, Iguh JSC, declared "A liquidated demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any other or further investigation. Whenever the amount to which a plaintiff is entitled can be ascertained by calculation or fixed by any scale of charges or other positive data, it is said to be liquidated or made clear. Again, where the parties to a contract, as a matter of the agreement between them, fix the amount payable on the default of one of them or in the event of breach by way of damages, such sum is classified as liquidated damages where it is in the nature of a genuine pre-estimate of the damage which would arise from breach of the contract so long as the agreement is not obnoxious as to constitute a "penalty" and it is payable by the party in default. The term is also applied to sums

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<sup>23</sup> Ibid@P.43

<sup>24</sup> ibid@P.57

expressly made payable as liquidated damages under a statute. In this case, the loan of 19million admitted by the respondents is a liquidated sum.<sup>25</sup>

- iv. A “Liquidated money demand” as a claim for an amount previously agreed on by the parties or that can be precisely determined by operation of law or by the terms of the parties’ agreements. A liquidated money demand is a claim or demand in which the amount is fixed or has been agreed upon or is capable of ascertainment by mathematic computation or operation of law. A claim for compound interest cannot be classified as a liquidated money demand and is thus not suitable for the undefended list procedure.<sup>26</sup>
- v. Under the undefended list procedure, a defendant is allowed to file a notice of intention to defend alongside an affidavit disclosing a defence on the merit. A defendant’s affidavit must condescend upon particulars and deal specifically and frontally with the plaintiff’s claim and affidavit. It must state clearly what the defence is and whether it is against the whole or part of the claim without necessarily proving same.
- vi. Now, for an affidavit to constitute a defence on the merit under the undefended list procedure, the defendant must set out the defence in the affidavit in support of notice of intention to defend and not simply say that he has a defence. The affidavit must show reasonable grounds of defence; that there is some dispute between the parties requiring to be gone into. *Osifo v Okogbo Community Bank* (2006) 15 NWLR Pt.1002)260.<sup>27</sup>
- vii. In *S.P.D (Nig) Ltd v Arho-Joe (Nig) Ltd* (2006) 3 NWLR (Pt.966) 172, it was held that “triable issue or a defence on the merit under the undefended list procedure” is disclosed where a defendant affidavit in support of the notice of intention to defend is such that it requires the plaintiff to explain certain matters with regard to his claim, or throws some doubt on the plaintiff’s claim. A triable is an uncontroverted material allegation contained the defendant’s affidavit which cannot and should not be given a wave of the back-hand and which requires further investigation by the court to unravel the veracity or otherwise of same. Situation that would give rise to a triable issue include the existence of: (a) dispute as to the facts which ought to be tried; or (b) real dispute as to the amount due to the party

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<sup>25</sup> Ibid @ 43

<sup>26</sup> @P.62-63,Per Abiru JSC

<sup>27</sup> Ibid @P.58

- making a claim which would necessitate taking an account to determine the amount; or (c) reasonable grounds or a fair probability of a *bonafide* defence.<sup>28</sup>
- viii. In *Okoli v Morecab Finance (Nig) Ltd* (2006) LPELR 2463(SC), this court held that in an action placed in the undefended list where the plaintiff claims repayment of loans, the defences open to the defendant are only two- (i) that the defendant had refunded the entire loan by the production of receipts, bank tellers or any other document showing that the debt was totally repaid or (ii) that he never borrowed the money in the first place, he never applied for the loan or debt, he never obtained any money and that any purported application of the loan or receipt for the loan issued by him is a forgery.<sup>29</sup>
- ix. In the territory of financial transactions, interest connotes compensation permitted by law or agreed to or fixed by the parties for the use or forbearance of borrowed money. It is the money a borrower pay a lender for the use of the money sought and obtained by the borrower from a lender. It is the cost of utilisation of credit or funds of another person.<sup>30</sup>
- x. Interest rate signifies “the percentage of an amount of money which is paid for its use for a specified time”. See *Veepee Ind. Ltd v Cocoa Ind. Ltd* (supra), at 506, per Tanko Muhammed, JSC (as he then was), *Nota bene*, interest rate, which usually fluctuates according to the whims and caprices of the lending financial institutions; like pendulum of a wall clock must fall within the purview of the interest rate as ordained by the Central Bank of Nigeria through the instrumentality of its Monetary Policy Guidelines.<sup>31</sup>
- xi. The law makes it incumbent on a party claiming interest to prove even the interest rate as the court is disrobed of the jurisdiction to take judicial notice of it.<sup>32</sup>
- xii. This court in *Akpan v. Akwa Ibom Property & Investment Co. Ltd* (2013) 6 SCNJ 400 at 418: (2013) 12 NWLR (Pt.1368) 377 held as follows:

Generally, a claim for interest under the undefended list bears the same principles as in a claim under the general cause list. Any plaintiff claiming

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<sup>28</sup> Ibid @p.58

<sup>29</sup> Ibid @ 61 per Abiru

<sup>30</sup> Ibid @ P.49

<sup>31</sup> Ibid @ P.49

<sup>32</sup> Ibid @P.49 per Ogbuinya JSC

interest under the undefended list must disclose in his affidavit how his right to interest accrues and how the rate thereof was arrived at.”

In, other words, the affidavit in support of the claim must disclose explicit and good grounds upon which the interest is claimed.<sup>33</sup>

- xiii. It is gleanable from the oracular pronouncement, housed in the ex-cathedra authorities (supra), which wear the crest of finality in virtue of section 235 of the Constitution, (as amended), the grund norm of our *copus juris* that a claim for interest is not submissive to an undefended list procedure. The reason is not far-fetched. A claim for interest (especially pre-judgment interest) usually hungers for further investigation by dint of evidence thereby parting ways and deserting the lean colony of liquidated money demand which is characterised by certainty and specificity of monetary sum. A monetary claim of interest is not a sum that is arithmetically ascertainable without further investigation.<sup>34</sup>
- xiv. While a claim for the actual amount constituting a principal loan granted can be termed as liquidated claim within the requirement of the undefended list procedure, a claim for interest accruing on the loan granted which must be arrived at upon calculation on the agreed rates of interest having regard to the period covered, does not qualify as a liquidated claim under the rules of court relating to the undefended list procedure. Thus a claim for interest is not submissive to the undefended list procedure. . . . A claim for compound interest cannot be classified as liquidated money demand and is thus not suitable for the undefended list procedure.
- xv. With respect to the claim for post judgment interest, this court in *OAN Overseas Agency (Nig) Ltd v. Bronwen Energy Trading Ltd* (2022) 11 NWLR (Pt.1842) 489 stated thus:
- “It is not a matter for endless discourse as it is well settled that after winning a judgment, payment may be delayed by the judgment debtor. For this reason, the courts are empowered to make such discretionary orders as to preserve the benefit of the judgment until such time as it is complied with. No doubt, one of such processes is the post-judgment award of interest which serves to compensate the successful party for the loss of use of money from the period of

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<sup>33</sup> Ibid @ 61 per Abiru

<sup>34</sup> Ibid @P.50 Per Ogbuinya JSC

the court's judgment until the time the judgment is actually paid including the period during which appeals are pending. Post judgment interest compensates the successful party for the delay in receiving the judgment owed. This is clearly in exercise of its discretionary powers to order interest in respect of a judgment in favour of a party. The law is that post judgment interest needs not be specifically claimed. The award is at the discretion of the court and it is regulated by the rules and operating statute.<sup>35</sup>

- xvi. A loan signifies a sum of money lent to a borrower with interest...Debt or indebtedness implies a state of owing money or something owed or debt to another person.<sup>36</sup>
- xvii. The law recognises and sanctions four ways of answering/defending an allegation of indebtedness, videlicet:
- (a) To admit the debt.
  - (b) To deny the debt.
  - (c) To counter-claim against the debt;
  - (d) To set off against the debt.<sup>37</sup>
- xviii. It is settled law that a statement of account cannot, on its own, amount to sufficient proof to fix liability on a customer for the overall debit balance shown on the account. Any person who is claiming a sum of money on the basis of the overall debit balance in a statement of account is under an obligation to adduce both documentary and oral evidence explaining clearly the entries therein to show how the overall debit balance was arrived at...Where there is a dispute on an indebtedness, the claimant cannot just toss and dump before the court, the statement of account in proof of the indebtedness of the customer for the overall debit balance therein. The claimant must demonstrate through oral evidence given by a witness who is familiar with the accounts, how the debit balance was arrived at.<sup>38</sup>
- xix. In the evidentiary pyramid, admission has been crowned with the deserved toga of the best evidence against the party making it...It constitutes a concession against the interest of a party making it and binds the party.<sup>39</sup>

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<sup>35</sup> Ibid, P.63 Per Abiru JSC

<sup>36</sup> Ibid , P.45 @ Per Ogbuinya

<sup>37</sup> Ibid,@P.45 Per Ogbuinya JSC

<sup>38</sup> Ibid @ P.35, Abiru JSC

<sup>39</sup> Ibid @P46 Per Ogbuinya JSC.

- xx. The settled position of the law is that a court is drained of the necessary jurisdiction to adjudicate over an academic dispute which resides in the domain of the exclusive reserve of those in the ivory towers. The reason is this. An academic question is divorced from a live issue which engages the adjudicative attention of the courts. This is so even if its determination will enrich the legal jurisprudence.<sup>40</sup>
- xxi. Generally, a court of law, trial or appellate, has the bouden duty to consider and pronounce on all issues validly submitted and joined by the parties before it...this hallowed principle of law, which compels courts, especially those beneath the apex court, to consider all issues, is a flexible one, which has several exceptions. First the principle is limited and circumscribed to determination of issues that are relevant and material to the resolution of the dispute between the contending parties. In other words, a court need not consider an immaterial or inconsequential issue which does not disclose a bearing on the resolution of the *cacus belli inter partes*. Second, a court is not mandated to pronounce on an issue which is subsumed or encompassed by another issue that is already considered. Third, where an appellate court intends to order or orders a fresh hearing, the law forbids it from treating any other issues/points in the appeal that may arise in the rehearing proceedings.

A bank contemplating a recovery suit stands to receive proper guide and inspiration from these statements of the law. Courts are enabled thereby to deal with matters judiciously and ensure justice to litigants. There is, however, a downside of this case revealing the injustice in the matter occasioned by the court process. This is addressed under the next subheading

#### **1.4.JUDICIAL INJUSTICE**

Judicial injustice, a situational irony, refers to situation where the legal system fails to deliver fair and impartial justice. This occurs where a court's decision, process or treatment of a case is unjust, or violates acknowledged principles of fairness and due process. This undermines trust in the legal system. Inordinate delay in the determination of a cause by a court is indeed a form of judicial injustice as justice delayed is justice denied. When cases drag on for years, evidence can be lost, witness memories may fade and litigant may no longer have the means or stamina to pursue the course of that cause to its logical conclusion. This can occasion emotional and financial strain on

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<sup>40</sup> Ibid P51 Per Ogbuinya JSC

litigants, loss of public confidence and violate the right to fair hearing. The causes of delay in the judicial system are varied. They include case overload, shortage of judges and judiciary staff, absence of or dysfunctional infrastructure, bureaucratic redtapism, bad case management system, multiplicity of appeals, corruption, tardiness and dereliction of duties by the bar and the bench.

Delay in the administration of justice has become the bane of the Nigerian judicial system.<sup>41</sup> The case under review lasted 3 years in the High Court of the FCT, 2 years in the Court of Appeal and resided in the Supreme Court for 18 years. Not yet done after 23 years, the determination on the claim for compound interest by the bank is to begin its voyage in the High Court for an indeterminable period. By every standard of fairness, the delay in this case is inordinate.

An assessment of the monetary value of this judgment to the bank is revealing. The average Naira exchange rate for US \$1 in November 2002 when the case was instituted in the High Court of the FCT was ₦126.81<sup>42</sup>. In 2005, \$1 hovered between ₦132-₦136. In 2007, \$1=₦120-₦125.<sup>43</sup> In 2025, the rate has escalated to \$1=₦1,477.00.<sup>44</sup> ₦19million in 2002 was equivalent to \$149,606.299. In 2025, the ₦19 million was only worth \$12,863.9133. Such is the loss of value in the asset for the Judgment Creditor (Unity Bank PLC) owing to effluxion of time.

No business can thrive with this kind loss of value in its assets. This asset has not only become burdensome for the bank but indeed ruinous. Perplexed by the attitude of bank debtors to evade payment of debts, Okoro JCA in *Balogun v Egba Onikolobo Community Bank Nig.Ltd*<sup>45</sup> counseled:

Banking is a serious business wherein depositors monies are being given out as loans to others with the hope that it shall be repaid. A situation where customers collect loans from banks but refuse to pay back only to come to court to speak big grammar has led to the distress of so many banks all to the detriment of innocent depositors. Courts must take a firm stand whenever such matters come before them so as to save the banking industry from total annihilation.

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<sup>41</sup>*Unijoy Paper Products Ltd v NDIC & Anor*(2022) 10 NWLR (Pt.1839) 567 lasted 9 years in the Supreme Court: *Mufutau Ajayi v. SEC* (Suit No SC.314/2007 delivered on the 13/1/2023) lasted 16 years in the Supreme Court.

<sup>42</sup> J.O.Sanusi “Central Bank of Nigeria Press briefing on Macro economic developments in the year 2002 and assessment of the small and medium industries equity investment scheme (SMIEIS)” 17<sup>th</sup> December, 2002 <https://www.cbn.ng> accessed on the 8/10/2025 @ 12:04pm

<sup>43</sup> Naira to Dollar Exchange Rate History (1972-2022) –Politics-Nigeria <https://share.google/3iygDqAVXDoSiRcTe> accessed on 8/10/2025 @12.12pm

<sup>44</sup> Exchange Rates/Central Bank of Nigeria <https://share.google/dbZOOUNZDVP4UfGm> accessed On 8/10/2025 @ 12:23pm

<sup>45</sup> (2007) 5NWLR, (Pt.1028) 584,608.

In *Union Bank v Emole*<sup>46</sup> the Supreme Court held that it is wrong to grant unnecessary indulgence to a customer who mortgages his property to a banker when such customer still owes the bank some amount of money.

This unhealthy situation prompted desperate measures and knee-jerk solutions that have thrown up more challenges in the financial system. The Courts have warned that securities agencies are not debt collectors and must not be used to enforce the recovery of private debts.<sup>47</sup> The BOFIA 2020 has provided for the establishment of a Special Tribunal for the Enforcement and Recovery of Eligible Loans in Nigeria. Explaining the need for this body, the Governor of the Central Bank of Nigeria stated<sup>48</sup> "...the Tribunal was introduced in the Act to accelerate credit recovery processes and enforcement of collateral rights....supervisory observance indicates that recalcitrant debtors have exploited the non-prioritization of credit recovery matters in the Nigerian Judicial system to frustrate debt recovery efforts by financial institutions". A critical interrogation of this enactment however reveals that the entire Part F BOFIA 2020 providing for the establishment of this tribunal is home to potential issues of jurisdictional conflict with the Federal High Court and violation of the fundamental right to fair hearing. This Act, rather than attenuate, exacerbates the challenges for debt recovery measures.

The inherent challenges of systemic failure occasioned by absence of timeous relief to litigant, bureaucratic bottlenecks and corruption<sup>49</sup> have become a source of concern. The courts have been unable to untangle itself from this *haxenbesen*. This case has become a metaphor for the helpless state of the Nigerian Judiciary. A good measure of the problem is self-inflict. The recruitment process is flawed and with feeble demand for accountability and sanction. A testament to this is the failure of the courts to timeously resolve the constitutionality of the removal of the Chief Justice of Nigeria by the President<sup>50</sup>; the unresolved criminal trial of Mr. Mazi Nnamdi Kanu for over ten

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<sup>46</sup> (2001) 12 SCNJ, 74.

<sup>47</sup> *Mclaren v Jennings* (2003) FWLR (Pt.154)528; *Kure v COP* [2020] EJSC, Vol.136,1,29-30 "The police is not a debt recovery agency and has no business to dabble into contractual disputes between parties arising from purely civil transaction"

<sup>48</sup> 'CBN engages CJN on Special Tribunal for Loan recovery, financial disputes' Vanguardngr.com access 4/11/2024,10:50am "The CBN Governor told CJN and other senior judicial officers at the judges Workshop on Recent Reforms of the Banking and Financial Services Sector in Nigeria, in Abuja..."

<sup>49</sup> Dele Farotimi (2024) *Nigeria and its Criminal Justice System*, Dele Farotimi publishers, Lagos, P.ix-xi

<sup>50</sup> Appeal Court reverses ex-CJN Onnoghen's CCT conviction for assets declaration breaches <https://share.google/dTYstdLGju8UUR6SR> accessed on the 14/10/2025 @12:10am

years<sup>51</sup>; The failure of the Supreme Court to timeously resolve the question as to the constitutionality of the declaration of state of emergency in River State of Nigeria for seven months<sup>52</sup>; The failure to resolve the parliamentary suspension of a Senator for over seven months<sup>53</sup>; lack of internal democracy by political parties and the unabashed defection of politicians from one political party to another without losing their seats notwithstanding the clear provisions of the Constitutions.<sup>54</sup> These, *inter-alia* have all shown how weak the Nigerian judiciary has become. The courts themselves have reeled out contradictory judgments especially in electoral matters setting dogs amongst pigeons on Nigeria's electoral jurisprudence.<sup>55</sup> These are the substance of judicial injustice.

Judicial reform has been on the front burner of justice administration in Nigeria for decades. The frontloading system of filing court processes, the walk-in or court referred Multi-door Court house option<sup>56</sup>, and the debut of the National Industrial Court<sup>57</sup> have not significantly resolved the challenges in the administration of justice in the country.

The *Unity Bank PLC*'s case has become a metaphor for the administration of justice in Nigeria. The country is blessed with a burgeoning population, natural resources, skilled work force but weak and dysfunctional institutions. Compared with its peers, the weak or "captured state"<sup>58</sup> of the judiciary is gradually becoming the country's albatross and enabler for executive<sup>59</sup> and parliamentary impunity. The courage to hold bearers of powers accountable is lacking. According

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<sup>51</sup> Court fixes fresh date for judgment on Nnamdi Kanu's terrorism trial <https://www.premiumtimesng.com/new/headlines/823130-court-fixes-fresh-date-for-judgment-on-nnamdi-kanus-terrorism-trial.html> accessed on the 13/10/2025 @11:55pm

<sup>52</sup> SC/CV/329/2025

<sup>53</sup> Akpabio appeals judgment on Akpoti-uduaghan's suspension <https://share.google/yuJXPiSOZGfLwInN6> accesses on the 14/10/2025 @12:04am

<sup>54</sup> CFRN, section 68(1)(g); section 109(1)(g) *Abegunde v Ondo State House of Assembly* (2015): See *Fubara & ors v Amaehule & Ors* SC/CV/1701/2024

<sup>55</sup> Corruption and Conflicting Judgements in Electoral Process and their Impact on Nigeria's Democracy, Premium Times Centre for Investigative Journalism 2021

<sup>56</sup> Hon. Justice Olasumbo O. Goodluck (2010) "Administration of Justice Abuja Multi-Door Courthouse" in *Ogebe and the Law* (Austin Agom & Paul Onuh Igoche (eds) Legal Essays in Honour of Justice James Ogenyi Ogebe OFR, CON, Honourable Justice of the Supreme Court of Nigeria, Department of Commercial Law, Ahmadu Bello University, Zaria.

<sup>57</sup> Constitution of the Federal Republic of Nigeria, 1999, Third Alteration (2010)

<sup>58</sup> See Dele Farotimi Opcit

<sup>59</sup> In Kenya, the Supreme Court upturned the result of the Country's presidential election for non-conformity with the required electoral standards-*Raila Amolo Odinga & Stephen Kalonzo Musyokav Independent Electoral and Boundaries Commission, Chairperson independent Electoral and Boundaries Commission & Uhuru Muigai Kenyatta* (Election Petition 1 of 2017) [2017]KESC 31

to Nnaemeka Agu<sup>60</sup> “a judge must be (a) a man of sound learning and intellect as well as one who has an avid thirst for knowledge (b) he must be possessed of intelligence above the ordinary (c) he must be a man of transparent honesty and high integrity (d) such a man should be courageous.” Little of such courage has been witnessed in the Nigerian judiciary of late.

The need for radical reforms especially in the appellate court cannot be overemphasised. Beyond rhetoric, the Supreme Court may consider setting up an internal inquiry to unearth the cause of the 18 years delay in this case. The lessons from such enquiry will provide useful lessons going forward. The legal profession must demonstrate the willingness to engage in self-cleansing to aid the course of administration of justice in Nigeria. The Rules of Professional conduct for the Legal Profession in Nigeria, 2023 and the Code of Conduct for Judges have ample provisions to deal with defalcation by the members of the bench and the Bar. There is no gainsaying the fact that increased judicial capacity, establishment of fast track procedures, deployment of technology, effective case management system, Alternative Dispute Resolution options, improved infrastructure, simplified procedure, accountability (whistle blowing, sanction and reward system) and public awareness are urgently in need for judicial justice in Nigeria.

### **1.5.CONCLUSION.**

The Supreme Court judgment in the Unity Bank *Unity Bank PLC v Rhour & Lue (Nig) Ltd* is a landmark decision in bank credit recovery procedure in Nigeria. While the decision brought justice to the bank by what the apex court held, the court occasioned injustice to the bank in what it failed to do timeously. This has become a metaphor for administration of justice in Nigeria.

The paper finds that the inordinate delay in this case occasioned serious asset loss to the bank notwithstanding the judgment in its favour. Judicial injustice is inimical to the justice system and pinches away at the country’s efforts to be numbered among developing economies of the world. It is recommended that the rules of Professional Conduct for Legal Practitioners 2023 and the Code of Conduct for Judicial Officers should be enforced. There is need to deploy technology in justice administration in Nigeria. A review of the recruitment process to the bench and progression on the

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<sup>60</sup> Nnaemeka Agu P, ‘Independence of the Judiciary with particular reference to Appointment, Removal and Discipline’ cited in *Ogebe and the Law* (Austin Agom & Paul Onuh Igoche (eds) Legal Essays in Honour of Justice James Ogenyi Ogebe OFR,CON, Honourable Justice of the Supreme Court of Nigeria, Department of Commercial Law, Ahmadu Bello University, Zaria.

bench will no doubt increase capacity for judicial and judicious justice in the administration of justice. Distinguished academics and legal practitioners should be accommodated in the appellate courts to bring some vigour and verve to the appellate justice. Exploring ADR options should be a condition precedent to litigation in financial dispute resolution. On long term, it is recommended that the recruitment process for the study of law should be reviewed. A first degree in any discipline should be a minimum requirement. The Supreme Court must boldly do some soul searching. Internal inquiries to unravel the factors culpable for the 18 years lifespan of this case in the Supreme Court will enable the Court forensically deal with this perennial problem.