

The Defendant filed a statement of defence and counterclaim on 20th October 2017 deemed duly filed and served on 24th October 2017. Therein the Defendant counterclaimed as follows:-

- “1. An order of Court dismissing the Plaintiff’s suit against the Defendant for want of merit, vertiginous and gold digging.***
- 2. An order of court directing the Plaintiff to pay to the Defendant the sum of ₦10,000,000 (Ten Million Naira) only being General Damages suffered by the Defendant and expenses incurred for flight tickets, transportation fee, Hotel bill, hiring services of lawyer, other incidental expenses, embarrassment and inconvenience suffered by the Defendant as a result of defending frivolous allegation.***
- 3. An order of Court directing the Plaintiff to pay to the Defendant the sum of ₦500,000 (Five Hundred Thousand Naira) only as cost of this suit.”***

The Plaintiff filed a reply to the Defendant’s statement of defence and counterclaim on 30th January, 2018 deemed duly filed and served on 6th February, 2018. Therein she urged the court to grant her reliefs and dismiss the counterclaim with costs of ₦2 million.

The Plaintiff testified as PW1 in support of her case. She adopted her witness statement on oath of 22nd February 2017 and amended witness statement on oath of 5th April 2018. She testified inter alia that she met the Defendant in 2008 in Abuja, and trusted the Defendant because of his status as a civil servant working with a reputable government organisation, NDIC. She approached the Defendant in 2010 to help her purchase a property around Garki or Wuse Area of FCT Abuja. Based on the Defendant’s assurances that he could get her a good property of her choice at a very affordable price, she sent him her life savings for the purchase of the property.

The Defendant then cunningly deceived her that her funds could not purchase a house in her choice area but only at Sunny Vale Homes, Dakwo District Abuja.

That the Defendant was not acting in good faith when he made the proposal of Sunny Vale property to her but connived with the original allottee of an uncompleted three bedroom bungalow at Sunny Vale Homes at Dakwo District Abuja to inflate the price of the said property with intent to defraud her.

That the said property was purchased for the sum of ₦5,326,140 by the Defendant based on the allocation given to members of the co-operative society of the Nigeria Deposit Insurance Corporation whereas the Defendant made her believe the property was purchased for ₦14 million.

That she reported the matter to the police, but as the police was delaying in charging the matter to court, she filed a direct criminal complaint before the Area Court of FCT at Aco Estate Lugbe, which later referred the matter to the police for further investigation.

The court upon reviewing the police report, advised her to file a civil action since her aim was to recover her money in the possession of the Defendant.

That the Defendant has refused to release the outstanding sum of ₦8,673,860 in his possession, insisting it was the entire ₦14 million he spent in purchasing the property at Sunny Vale Homes which she later discovered to be false.

She urged the court to grant her claims.

She was cross examined and discharged. Thus the Plaintiff closed her case.

The Defendant as DW1 testified in his defence and called another witness, Baye Sheidu – the original allottee of the said property. DW1 adopted his witness statement on oath of 20th October, 2017.

He tendered the following documents in evidence:-

- Photocopy of Sunny Vale Homes Price list – Exhibit D1
- Photocopy of Solicitor's Letter dated 7th November 2013 – Exhibit D2

- Photocopy of Notification of Loan Approval dated 26th March 2009 – Exhibit D3
- Photocopy of Letter to be Branch Head NDIC dated 3rd September 2013 with invitation to the police station attached – Exhibit D4.
- Certified true copy of direct criminal complaint dated 24th April 2015 – Exhibit D5
- Certified true copy of police report dated 30th July 2015 – Exhibit D6
- Certified true copy of record of proceedings from Lugbe Area Court – Exhibit D7

He testified inter alia that the Plaintiff approached him in 2010 to help her buy a house.

That he bought her a 3 bedroom flat which her ₦14 million could afford. That prior to the purchase he had disclosed to the Plaintiff the nature of the property and the location and connected her to Baye Sheidu, the original allottee and retired staff of NDIC who could not meet up with the payment of the purchase price for the Mortgage loan facility from the bank. The Plaintiff appeared to be satisfied before embarking on the transaction.

He also showed the Plaintiff Exhibit D1, the price list, and the Plaintiff understood, was satisfied, before the sale transaction took place.

That the sum of ₦5,326,140 was the price of the property as at 2008, two years before the property was resold to the Plaintiff. That the said price was actually negotiated by the Defendant in 2006, subject to review. That the original allottees took a joint mortgage loan to finance the project. That as at 2010 when the property was sold to the Plaintiff by the Defendant that the price was ₦14 million, and reflected in Exhibit P1, which was presented to the Plaintiff before the transaction took place, and which the Plaintiff agreed to buy the property without misrepresentation.

That the Plaintiff in 2012 later resold the property for ₦25 million thereby making a profit of ₦11 million. He knew this because the Plaintiff refused to pay ₦500,000 to effect change of ownership of the property with the Estate Management.

Therefore to enable the Plaintiff successfully sell the property she invited Baye Sheidu the original allottee, through the Defendant, to transfer the title on behalf of the Plaintiff.

He said the Plaintiff was satisfied with her purchase until 2 years later when she began to complain of breach of trust or cheating.

He then asked her to surrender the house for a refund of her money with interest at the prevailing rate, but she refused and hurriedly resold the property in 2012 for ₦25 million. Then in 2013 the Plaintiff's solicitor wrote Exhibit D2 to complain of breach of trust.

That the loan facilities used to finance the project involved payment of interest and other administrative charges which were added to the purchase price.

That the Plaintiff's complaint in Exhibit D2 failed. She thereafter petitioned against him to the office of the Inspector General of Police on allegation of criminal breach of trust, cheating and misappropriation via Exhibit D4, The Inspector General of Police referred the case to Maitama Metropolis Area Command Office for investigation.

He was invited from Ilorin. After thorough investigation by the Area Command Maitama Metropolis which included a visit to the Estate Management Office of Sunnyvale, an invitation to Baye Sheidu (the original allottee) and other affected parties, the Area Command found the Plaintiff's allegation to be untrue.

He was discharged without charging him to court.

The Plaintiff, was however dissatisfied with the outcome and in 2015 hired a counsel to lodge a direct criminal complaint against the Defendant at Grade 1 Area Court, AMAC Housing Estate (Aco) Airport Road via Exhibit D5 dated 24th April 2015.

The court referred the matter to Lugbe Division of the Nigeria Police and Garki Police Station. Investigations were again conducted which exonerated the Defendant. The court therefore discharged the Defendant.

See Exhibit D7. During these times he was reporting to the police from Kwara State and to the Area Court from Enugu where he was working. On each visit he spent money on flight ticket, transportation, hotel bills, lawyer's fees and incidental expenses all in defence of a frivolous allegation made by the Plaintiff against him.

That the criminal petitions to the police and the direct criminal complaint against him by the plaintiff had subjected him to untold hardship, risks, embarrassment and humiliation.

Thus he urged the court to dismiss the Plaintiff's suit and grant his counter claim.

DW1 was cross examined and discharged.

DW2 Baye Sheidu gave evidence in tandem with the DW1. He said he requested for his house at (Block AB 56A) at Sunny vale Homes, Dakwo District be sold to the Plaintiff at the rate of ₦14 million as was reflected in the Sunny vale Homes price list as at 2010.

That the Plaintiff in turn resold the house for ₦25 million. In 2013 he was invited by the Area Commander Maitama Metropolitan Police in respect of the petition written against the Defendant by the Plaintiff.

After thorough investigation, the police discharged the Defendant after they found the Plaintiff's allegations were untrue.

He was equally invited by the police at Lugbe and Garki Divisions of the Nigeria Police based on the direct criminal complaint made against the Defendant by the Plaintiff at Grade 1 Area Court Aco Estate Abuja.

He also attended the same court upon the Defendant's invitation as his witness. That both the police reports from Lugbe and Garki Divisions exonerated the Defendant and based on that the court discharged the Defendant of the criminal allegation.

He is again in court on the Defendant's invitation based on the civil case the Plaintiff filed against the Defendant.

DW2 was cross examined and discharged.

Thus the Defendant closed his case.

Mr Abdulquadir Umar learned counsel for the Defendant in his final written address formulated four issues for the court's determination thus:-

- 1. Whether there is a breach of fundamental term to contract or not?**
- 2. Whether the Defendant's act amounts to fraudulent misrepresentation or not**
- 3. Assuming but not conceding the Defendant is found liable for breach of fundamental terms of the contract and fraudulent misrepresentation, can the Plaintiff's conduct entitle her to the reliefs sought?**
- 4. Whether there was a malicious prosecution by the Claimant against the Defendant to entitle the Defendant to damages or not.**

On the other hand Mr Tosin Ojaomo in his final written address, adopted by Mr Olatunde Ojaomo for the Plaintiff identified two issues for the court's determination thus:-

- "1. Whether or not the Plaintiff has established a case against the Defendant on fraudulent misrepresentation of the terms of the contract?**
- 2. Whether or not this Honourable court can grant the Plaintiff's claims as contained on the writ of summons?"**

I shall adopt the Plaintiff's two issues as one issue and the Defendant's issue no. 4. I think these two issues encompass all other issues raised by the parties.

ISSUE ONE

Whether or not the Plaintiff has established a case against the Defendant on fraudulent misrepresentation of the terms to entitle her to judgment.

Mr Abdulquadir Umar for the Defendant submitted that a fundamental term means “a condition of contract.” A term or stipulation in a contract which is absolutely essential to its existence, the breach of which entitles the injured party to repudiate the contract and to treat it as discharged.

In other words, a condition is a term of major importance which forms the main basis of contract, the breach of which normally gives the aggrieved party a right at his option to repudiate the contract and treat it as at an end. The aggrieved party is not bound to treat the contract as at an end; he may instead affirm the contract. And in either event, he also has a right to damages.

See MC Okany – Nigeria Commercial Law, 1992, 1st Edition, page 144 to 145.

It was argued that by paragraphs 5 and 8 of the statement of claim the Plaintiff pleaded that the property she desired was a four bedroom duplex at Garki or Wuse area of Abuja but not the property the 3 bedroom bungalow at Sunnyvale in issue, but that the Defendant cunningly deceived her that her funds were not sufficient to purchase property her desired location.

The Plaintiff however admitted that she knew DW2 the original owner of the property and that she had seen the property and inspected it before collecting the title documents and accepting the house.

It was submitted that the Plaintiff, a literate person, having seen and inspected the property and accepted it and having discussed with DW2 the original allottee, there was no breach of a fundamental term of the contract. Learned counsel submitted that fraudulent misrepresentation was defined by Lord Hersell in **DERRY V PEEK (1889) 14 APP CAS 372**, as:-

“A false statement made:-

i) knowingly or

ii) without belief in its truth; or

iii) recklessly, carelessly whether it is true or false.”

In other words that if a person honestly believes that what he is saying is true, the misrepresentation is not fraudulent. He submitted that based on

the evidence before the court there was no misrepresentation as all the facts relating to the property were laid bare to the Plaintiff before and after she purchased the property.

That even when she complained of alleged balance two years after the purchase, she was urged to surrender the property for refund of her consideration with interest at the prevailing rate but she refused and hurriedly sold off the property to a buyer for ₦25 million, making a profit of ₦11 million. The Plaintiff still needed the services of DW2 the original allottee to enable her transfer title to the buyer. Learned counsel thus concluded that there was no fraudulent misrepresentation to the Plaintiff.

It was further contended that assuming, though not conceding that the Defendant was found to be in breach of a fundamental term of the contract and fraudulent misrepresentation, that the Plaintiff was estopped from claiming any reliefs (in 2013) having chosen to sell off the property at a profit of ₦11 million (in 2012) rather than surrender the same for a full refund of her ₦14 million with interest.

Thus the court was urged to dismiss the Plaintiff's claim.

For the Plaintiff it was argued that where evidence is unchallenged or uncontroverted, it is deemed admitted. That it was not in contention that the Plaintiff sent a total of ₦14 million to the Defendant and that the Defendant bought property at the rate of ₦5,326,140.

It was argued that the Defendant connived with Baye Sheidu to defraud the Plaintiff of the sum of ₦8,673,860.000 being the amount fraudulently diverted by the fraudulent misrepresentation of the material facts concerning the property transaction at Sunnyvale Homes by the Defendant. He argued that the Defendant was unable to show evidence that NETCONSTRUCT NIGERIA LIMITED which sold the property to Baye Sheidu collected more than ₦5,326,140 for the purchase of the property.

It was urged that the Defendant has a fiduciary relationship with the Plaintiff and owes the Plaintiff the duty to disclose all material facts, which duty the Defendant has thus breached.

See **GORDON V GORDON (1817) 3 SWAN 400; SALZGITTER STAHL V TUNJI DOSUNMU INDUSTRIAL LTD (2010) 42 (PART 2) NSCQR 1085 AT PAGE 1109; ABBA V MANDILAS & KARABERIS LTD (2 A.L.R COMM. 241) per Omolulu J.**

It was thus submitted that the Plaintiff having established a breach of trust on the Defendant's part, is entitled to recovery of her funds from the Defendant.

Learned counsel urged the court to grant the claims of the Plaintiff and dismiss the counterclaim as a party cannot benefit from his own wrong doing. See **ENEKWE V IMB NIG LTD (2007) ALL FWLR (PT 349) 1055; ADEDEJI VS OBAJIMI (2019) EJSC (VOL. 106) PAGE 166 PARAGRAPHS B-C.**

RESOLUTION OF ISSUE 1

The Plaintiff's case is based on breach of contract. Her case is that:-

- 1) She requested a 4 bedroom duplex in Garki or Wuse, area of FCT, Abuja.
- 2) That the Defendant deceived her by informing her that the money she had sent to him was not sufficient to buy a 4 bedroom duplex at her desired location which was at Garki or Wuse, area of FCT. Abuja.
- 3) The Defendant falsely misrepresented to her that the value of the property he bought for her on her request at Sunny Vale Homes was ₦14 million, whereas the value was only ₦5,326,140.

The Defendant denied these claims of the Plaintiff, insisting that he acted in utmost good faith and in accordance with the agreement of the parties.

Now, the law is trite that he who asserts must prove. See Section 131 to 133 Evidence Act 2011 (as amended).

The onus is on the Plaintiff to prove her case on a balance of probabilities and the Plaintiff must succeed on the strength of her own case, not on the weakness of the defence.

The Plaintiff did not tender any documentary evidence before this court.

The Defendant tendered a total of 7 exhibits in evidence all without objection from the Plaintiff's counsel.

The Defendant tendered Exhibit D1, which is the Sunnyvale Homes price list. According to the Defendant, Exhibit D1 shows the price of the 3 bedroom semi-detached bungalow for ₦14 million as at 2010 when the Plaintiff's 3 bedroom property at Sunnyvale Homes Dakwo District Abuja was purchased for her.

DW2 confirmed that the said property was going for ₦14 million in 2010.

The onus is therefore on the Plaintiff to show the court that:

1) as at 2010 when she sent money to the Plaintiff, that a 4 bedroom duplex which she desired at Wuse or Garki could be bought for ₦14 million; and or that

2) the 3 bedroom property which the Defendant bought for her at Sunny Vale Homes was actually still going for the same ₦5,326,140 it was offered for in 2008 to the DW2 and not ₦14 million in 2010 when she bought it.

The Plaintiff failed to show evidence in proof of these facts.

The court will take judicial notice of the fact that landed property tends to appreciate with time, and not depreciate, especially in a developing cosmopolitan city such as Abuja. There is evidence of the Plaintiff selling the said property for ₦25 million in 2012.

The Plaintiff left Exhibit D1 unchallenged and uncontroverted.

Again, it is clear that the Plaintiff was not the original allottee of the property in Sunnyvale Homes Dakwo Abuja. The fact that she was not a member of the Defendant's cooperative society or mortgage arrangement to my mind is the more reason why the Plaintiff could not have expected to have been offered the same ₦5,326,140 in 2010, which the DW2 was offered the same plot in 2008.

The Defendant gave uncontroverted evidence that the Plaintiff was informed of the nature of the property, the DW2 the original allottee, and she communicated with DW2 and she appeared to be satisfied before she embarked on the transactions. She was also shown the price list Exhibit D1. She was satisfied before she embarked on the transaction. She knew all the

details and accepted the property bought for her. Where then lies the fraudulent misrepresentation the Plaintiff complained about against the Defendant? I do not find any fraudulent misrepresentation or breach of trust or breach of contract against the Defendant.

A party who has performed his part of the contract on the terms agreed upon cannot be said to be in breach of contract.

Now, assuming, but not conceding that there was any fraudulent misrepresentation on the Defendant's part, it was the Defendant's unchallenged evidence that when the Plaintiff after two years, in 2012 raised the issue of breach of trust or breach of contract he demanded that the Plaintiff return the property and title documents for a full refund of her ₦14 million with interest at the prevailing rate but the Plaintiff refused and quickly sold the property for ₦25 million. In other words the Defendant offered her full restitution of her money back but she refused it.

I am aware the Plaintiff in cross examination claimed that she spent ₦9 million in completing the property but evidence in proof of this alleged sum is not before the court.

Therefore as far as the evidence is concerned, she made a profit of ₦11 million after 2 years when she resold the house. The Plaintiff is therefore estopped in my view from making any further claims on the Defendant.

See **CHIEF ADENIRAN AJAO & COMPANY LIMITED V ENGINEER ADEOLA AJIDALIUN (2019) LPELR- 47514 (CA)** where the Court of Appeal at page 17 paragraphs E-F per Ugochukwu Anthony Ogakwu JCA held that:-

“The purpose of the award of damages for breach of contract is to restore the party whose right has been violated to the same position, so far as money can do, as if his right had not been breached. This is based on the legal principle of restitutio in integrum.”

See also **WAHAB V OMONUWA (1976) LPELR (3461)**.

Having stated the above I therefore resolve issue No 1 in the negative and against the Plaintiff.

I therefore hold that the Plaintiff has failed to prove fraudulent misrepresentation or breach of contract against the Defendant. The Plaintiff's case is accordingly dismissed in its entirety.

ON ISSUE 2

Whether there was malicious prosecution by the Claimant against the Defendant to entitle the Defendant to damages.

Learned counsel for the Defendant submitted that in an action for malicious prosecution, the Defendant must prove all of the following:-

- i) That the Defendant (Plaintiff herein) instituted a prosecution against the Counterclaimant (i.e. Defendant.)
- ii) That the prosecution ended in the Defendant's favour.
- iii) That the Plaintiff has no reasonable and probable cause for prosecution
- iv) That the Plaintiff acted with malice; and
- v) That the Defendant suffered damage to his reputation, person or property.

See **USIFO V UKE (1958) 3 FS 658; AUBIN V EHUNAKU (1960) C.L.R 167 at 168.** Learned counsel submitted that the Defendant proved all the ingredients.

On (i) Institution of Action.

It was submitted that paragraphs 20 and 21 of the Defendant's statement of defence/counterclaim and paragraphs 20 and 21 of the Defendant's witness statement on oath and Exhibit D5, the direct criminal complaint written by the Plaintiff's solicitor to the court, and Exhibit D7- the record of proceedings of the criminal case instituted against Defendant/Counterclaimant in CR/122/2015 at Grade 1 Area Court, Lugbe show the Plaintiff instituted the prosecution against the Defendant.

On (ii) Prosecution Ended in the Defendant/Counterclaimant's Favour.

That Exhibit D7 shows that the prosecution ended in the Defendant/Counterclaimant's favour.

On (iii) Lack of Reasonable Cause

It was submitted that Exhibit D4 the invitation notice by the police on order of the Inspector General of Police sought the release of the Defendant/Counterclaimant by NDIC Ilorin for investigation.

That the Defendant was discharged by the police authority when, upon investigation, it was found that there was no criminal element to warrant prosecution of the Defendant.

However, that the Plaintiff out of malice still went ahead to petition for a direct criminal complaint against the Defendant/Counterclaimant for criminal prosecution instead of instituting a civil suit.

Learned counsel submitted that there was no probable cause for the Plaintiff to institute another direct criminal complaint against the Defendant at the Grade 1 Area Court.

On (iv) Malice

The court was urged to hold that the Plaintiff acted with malice when she, after her solicitor's petitions to the Inspector General of Police which was investigated by the Maitama Metropolis Area Command, revealed no criminal case against the Defendant, she proceeded to file a direct complaint at Grade 1 Area Court Lugbe.

On (v) Damage to the Defendant's Reputation of Person or Property

It was submitted that the Defendant suffered damage to his reputation as a result of the letter – Exhibit D4 written to the Defendant's office at NDIC Ilorin to release him from work to come to Abuja to answer allegations of criminal breach of trust and cheating which has led to the Defendant being seen as dishonest and a cheat who should not be working at NDIC.

That the Defendant further suffered financial loss in coming to Abuja from his Enugu office to defend the frivolous allegation.

Thus learned counsel urged the court to award damages in favour of the Defendant/Counterclaimant.

On the Plaintiff's part, other than the submission that the court should dismiss the Defendant's counterclaim, learned counsel to the Plaintiff offered no further arguments in opposition to the counterclaim. The Defendant's counsel filed a reply on point of law.

ON RESOLUTION OF ISSUE 2

As rightly submitted by Mr Abdulquadir Umar, learned counsel for the Defendant/Counterclaimant the Defendant/Counterclaimant must prove all the elements of malicious prosecution to succeed in his case.

See **BARAU V CHABA (1994) LPELR 14139 CA; COMPAGNIE GENERALE DE GEOPHYSIQUE (NIG) LTD V ARIEMU GHARE (2016) LPELR - 40786 CA; CHIEF JOSEPH AGBALUGO & ANOR V MR ISAAC IZUAKOR (2017) LPELR - 43289 CA.**

On the first ingredient, the Defendant needs to prove that the Plaintiff set the law in motion against him on a criminal charge. It is undisputed evidence before this court that the Plaintiff petitioned against the Defendant to the office of the Inspector General of Police an allegation of criminal breach of trust, cheating and misappropriation.

That the Inspector General of Police's office referred the matter to Maitama Metropolis Area Commander's office for investigation consequent upon which the Defendant/Counterclaimant was invited via Exhibit D4 dated 3rd September 2013.

The office of the Area Commander conducted a wide investigation after which they discharged the Defendant/Counterclaimant without charging him to court.

The Plaintiff was not satisfied with the decision of the police. She thereafter hired the services of counsel MS Prince & Partners and filed a direct criminal complaint at Grade 1 Area Court, AMAC Housing Estate (ACO), Airport Road Abuja. See Exhibit D5 dated 24th April 2015. The complaint was directed by the Grade 1 Area Court to Lugbe Division of the Nigeria police for investigation.

It is therefore clear that by the direct criminal complaint filed at the Grade 1 Area Court, the Plaintiff set the law in motion against the Defendant/Counterclaimant.

(ii) That the prosecution ended in the Defendant's favour

It is undisputed evidence before this court that the Lugbe Police by Exhibit D6 dated 30th July 2015 exonerated the Defendant still the Plaintiff was not satisfied. On her request and suggestion, the court again referred the matter to Garki Police Station, which yielded an inconclusive result.

The Area Court found no element of crime disclosed in the matter and discharged the Defendant. See Exhibit D7

Therefore the prosecution ended in favour of the Defendant

(iii) That the Defendant had no reasonable or probable cause for prosecution

I agree with the Defendant that at the point the Plaintiff filed the direct criminal complaint before Grade 1 Area Court Lugbe, she had no reasonable or probable cause for a criminal prosecution.

After her report to the Inspector General of Police's office, the Maitama Area Commander's office investigated the case and found no criminal element in her complaint.

Nevertheless the Plaintiff proceeded to file a direct criminal complaint before the Lugbe Grade 1 Area Court.

(iv) That the Defendant acted with malice

Malice in this sense means absence of honest belief in the charge preferred against the Defendant/Counterclaimant. In **AGBALUGO & ANOR V IZUAKOR (SUPRA)** Habeeb Adewale Olumuyiwa JCA at page 31 paragraph D-E cited the English case of **MEERING V GRAHAM - WHITE AVIATION CO** wherein the point was elucidated thus:-

"Honest belief seems to be the substantial thing that has always to be decided and such belief must not be merely belief by the prosecutor of the guilt of the of person, but it must be a belief that the prosecutor will be able to adduce sufficient evidence before a jury or court in convicting the accused" (Emphasis mine)

In the instant case the Plaintiff proceeded to file the direct criminal complaint notwithstanding that Police investigation had disclosed to her that there was no criminal charge against the Defendant.

She was still unable to produce any evidence to justify her criminal complaint before the Grade 1 Area Court Lugbe. Reason? Simply because she had none.

Before this court, she has still been unable to produce evidence to justify any of her allegations against the Defendant.

I think the Plaintiff was hell bent on using the police as a debt collector which they are not by law, and when she did not get her way the first time at the Area Command, she persisted in laying a criminal complaint to have her way. It is a good thing she did not succeed, because her motive was improper.

Accordingly I find that her action was activated by malice.

As for the 5th ingredient cited by counsel, through the authorities I have cited refer to only 4 ingredients. I shall consider the 5th ingredient out of an abundance of caution.

5) On damage to fame, person or property

It is the unchallenged evidence of the DW1 that he was attending the Grade 1 Area Court Lugbe from Enugu where he was then working at the NDIC office at Enugu and that each time he attended he spent money on flight ticket transportation, hotel bills, lawyer's fees and other incidental expenses. From Exhibit D7 it is clear that he was represented by counsel at the Area Court.

He equally testified that the direct criminal complaint against him by the Plaintiff has subjected him to untold hardship, risk, embarrassment and humiliation.

That evidence was also unchallenged. The court finds the Defendant's evidence credible and I will rely on it.

Accordingly, I resolve issue 2 in favour of the Defendant. I find that there was malicious prosecution by the Plaintiff against the Defendant.

The Defendant claims ₦10 million general damages. General damages are awarded at the discretion of the court.

The measure of general damages is awarded to assuage such loss which flows naturally from the Defendant's (here, Plaintiff's act).

They are presumed to be the direct and probable consequence of the act complained of.

See ELF PETROLEUM V UMAH & ORS (2018) LPELR - 43600 SC PAGE 26, PARAGRAPH D-F, PAGE 27; PARA C-E per Clara Bata Ogunbiyi JSC.

I think an award of ₦2 million is reasonable in the circumstances.

I accordingly award ₦2 million general damages in favour of the Defendant.

The Defendant claims ₦500,000 as cost of this suit. This is a 2016 matter. I think ₦100,000 is reasonable as costs.

I award the sum of ₦100,000 costs in favour of the Defendant against the Plaintiff.

Judgment for the Counterclaimant.

Hon. Judge