

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DATED THE 31ST DAY OF MARCH 2021**

SUIT NO: FCT/HC/CV/967/2014

BETWEEN

PRINCE ADETOKUNBO KAYODE, SAN..... CLAIMANT

AND

MRS OLAYINKA ESTHER BONIRE.....DEFENDANT

- **OLATUNJI SALAWU ESQ WITH F.P. CHORIO ESQ AND MISS G.O. ADEJUMO REPRESENTING THE CLAIMANT**
- **DR. ADEKUNLE OLADAPO OTITOJU ESQ WITH OTEGA DAVID ESQ AND OLABODE TUNDE ESQ REPRESENTING THE DEFENDANT**

JUDGMENT

This Suit was initially commenced under the Undefended Cause List Procedure wherein the Claimant sought against the Defendant the following Sets of Reliefs, namely: -

- 1. The Sum of N81, 082, 000 (Eighty-One Million, Eighty-Two Thousand Naira) Only being the Total Sum of Money had and received by the Defendant from the Claimant for the Purchase of Lands and Processing of Land Applications and Allocations within the Federal Capital Territory, Abuja upon a failed consideration.**
- 2. 10% Interest per Annum on the Judgment Sum from the Date of Judgment until Final Liquidation.**

The Court upheld the Defendant's Notice of Intention to Defend and the Suit was transferred to the General Cause List on the 11th of February 2015 with Parties ordered to file Pleadings. On the 27th of February 2015, the Claimant filed his Statement of Claim, whose Claims were materially the same with the above Claims as set out in the Undefended List and upon

service of the Claimant's Pleadings and other Processes on the Defendant, she then filed her Statement of Defence on the 19th of October 2016, which was regularized during Trial.

Upon Conclusion of Trial, the Filing of Written Addresses was ordered and Learned Counsel representing the Defendant filed on the 5th of October 2020, his Final Written Address wherein he formulated a Sole Issue for Determination, which is: -

“Whether the Defendant have been able to proof his Case by Credible Evidence to be able to be entitled to the Judgment of this Court.” (Sic).

In response, Learned Counsel representing the Claimant in his Regularized Final Written Address filed on the 5th of November 2020, formulated an equally similar Issue with that of the Defendant and his was: -

“Whether the Claimant has proved his Case on the Preponderance of Evidence to be entitled to the Reliefs sought in the Circumstances of this Case.”

By way of a Further response, Learned Counsel representing the Defendant filed on the 16th of November 2020, a Reply on Point of Law, which Addresses Learned Counsel representing the Contending Parties adopted on the 19th of November 2020.

Now, the Facts and Evidence whereupon Learned Counsel across the divide formulated their Issues, are as follows: -

The Claimant established his Case through his Sole Witness Mike Idache, his Personal Assistant, who testified on Oath that he had the Consent and Authority of the Claimant to testify in his stead. According to him, sometime in 2005 through a mutual friend, the Claimant got to know the Defendant, who was a Staff of the Department of Land Administration at the Ministry of the Federal Capital Territory. She advertised a Park Allocation in the Central Area, wanting to know whether the Claimant would be interested. The Claimant indicated interest and supplied to her his Company Name, “Paradise City Africa Limited” through whom the Park Allocation Application would be processed. Sometime in August 2006, she presented a Clearance Letter to the Claimant for the Approval/Allocation of the Park, which bore his Company's Name. Mike Idache identified a

Photocopy of the Clearance Letter stating that the whereabouts of the Original Copy was in a Criminal Proceedings in Apo. The Clearance Letter was tendered, which the Defence objected to on the ground that being a Public Document, only its Certified True Copy was admissible. The Objection was overruled with the Clearance Letter was admitted into evidence, as **Exhibit A**.

The Claimant received the Clearance Letter of Approval, and paid the Sum of Sixty Million Naira (N60, 000, 000.00) through an Overdraft from Aso Savings and Loans Plc. The Sum of Fifty Million Naira (N50, 000,000) was for the Cost of obtaining Approval and Allocation whilst the Sum of Ten Million (N10, 000, 000) was for Architectural Drawing. Sometime in 2011, the Claimant gave her Associate, Mr. Kunle, the Sum of Three Million, Sixteen Thousand (N3, 016, 000) to validate the Park Allocation.

Aside of the above transaction, the Defendant also offered to sell to the Claimant, her Offer Letter in respect of Property in Kaura District for the Sum of Five Million Naira (N5, 000, 000), which the Claimant paid and the Offer Letter was surrendered to him.

The Defendant again approached the Claimant with yet another Offer to sell to him a Plot of Land in Maitama in the Sum of Thirty Million Naira (N30, 000, 000), which the Minister of the Federal Capital Territory, had allocated to her. The Claimant initially paid to her the Sum of Ten Million Naira (10, 000, 000) as part-payment with the Balance to be paid upon obtaining the Final Approval.

Upon subsequent investigation of the Titles to all the above Landed Properties, the Claimant discovered that they were not genuine but fake. Following this investigation, the Claimant demanded a refund of all his monies, totaling the Sum of Eighty-One Million, Eighty-Two Thousand Naira (N81, 082, 000).

On the 23rd of January 2013, the Defendant had made a Written Undertaking to refund all these Sums on or before the 30th of January 2013, which fell through. In February 2013, she also issued out Eight (8) Skye Bank Plc Post-Dated Cheques in the Sum of Seventy-Eight Thousand, Sixty-Six Thousand Naira (N78, 066, 000), issued in his name, Mike Idache,

which upon presentation, was returned unpaid. The Eight (8) Skye Bank Plc Post-Dated Cheques and the Handwritten Undertaking were tendered and admitted into evidence without any objection as **Exhibits B1-B8 and Exhibit C** respectively.

Finally, efforts towards recovering these Sums from the Defendant have failed.

Under Cross-Examination by the Defence, Mike Idache stated that he was conversant with all the aforesaid transactions in question including that of the Park, which formed the basis for **Exhibit A**. In 2013, the Claimant was no longer interested in the Park Allocation because it was not genuine following a Search the Claimant conducted, which Search Report might be in the Claimant's Custody.

When asked, Mike Idache stated that he was unaware of any Letter of Authority for the Land to be sold.

Shown a Letter, Mike Idache agreed that the Letter therein was in the Letterhead Paper of his Principal, and when asked whether he was aware of the Defendant's arrest and of the fact that she was made to give a Written Undertaking, he stated that the Defendant wrote the Undertaking in her own handwriting. This Letter was admitted into evidence as **Exhibit D** with an overruled objection that only the Maker could be referred to the Document.

Finally, he denied dating the Cheques stating that it was the Defendant herself who dated them and anytime he was to head to the Bank to present them, he would inform the Defendant and he also informed her when the Cheques bounced.

There was no further Cross-Examination and there was also no Re-Examination and the Claimant closed his Case.

The Defendant on her own part, testified in her regard on Oath contending that she assisted the Claimant in acquiring many properties within Abuja whilst he was a Minister of the Federal Republic of Nigeria sometime in 2006. Presently, she is a Businesswoman but before then, she was working with the Federal Capital Territory Administration, where she retired in

2009. Before retirement, she was the Chief Surveyor in the Survey Department.

One of the properties was a Park Allocation within the Central Area, she acquired for him using his Company, "Paradise City", which name was used to forward an application to the Abuja Parks and Garden Department. She tendered without any Objection Bundles of Documents in regard to the Park, which were admitted into evidence as **Exhibits E1 to E14**. Also, tendered was a Copy of the Authority Letter to Sell, whose Original was before the Trial Court in Apo. The Copy was admitted into evidence as **Exhibit F**.

She admitted that the Claimant gave the Sum of Fifty Million Naira (N50, 000, 000) but in US Dollars. Further, through his directive, she spent this Sum to pursue the Park Allocation, which Allocation was granted since 2006, with the Allocation Papers delivered to him. Together with the Claimant in the company of a Surveyor, he was shown the Allotted Area somewhere behind NNPC Building opposite Ceddi Plaza, Abuja. According to her, the Claimant appreciated her, promising to pay her Agency Fees, which he never did.

Sometime in 2012, whilst she was in the United States of America for medical surgery, the Claimant informed her that he had paid Bills in the Sum of Three Million, Sixteen Thousand Naira (N3, 016, 000) in order to validate his ownership over the Park Allocation. She challenged the receipt of this Sum alleged to be given to her Staff, Mr. Kunle, stating that the Sum could have been paid either by any of the Claimant's Staff or by himself. There was no comeback by the Claimant by way of a Reply to these aforesaid facts, as pleaded in **Paragraphs 10, 11 and 12** of the Defendant's Statement of Defence.

Whilst on bed rest, the Claimant informed her that some persons have encroached on the Park whereupon she mandated Mr. Kunle to report this encroachment to the Development Control, who upon discovery of the Rightful Owner, placed a "Stop Work" on the Park Allocation. Based on this encroachment, the Claimant informed her that he was no longer interested with the Park Allocation, insisting that he wanted his money back.

Upon her return to Nigeria in December 2012, whilst still recuperating from pains, the Claimant invited her to his residence. In his residence, she and her husband, for more than Five (5) hours, were kept under house arrest, threatened and accused of being rogues. She was also threatened with seizure of her properties if she refused to pay the Claimant's monies. He also threatened to see her end-up in jail, pontificating that nothing would happen to him. During those hours under house arrest, she had to borrow the Sum of Six Million Naira (N6, 000, 000) from family friends and neighbours to bail her out from the intimidation, harassment and torture meted on her by the Claimant. The Claimant through one, Mr. Mike Idache collected this money, who also signed for it. She had also deposited her Sale of Federal Government House Papers with the Claimant but he alleged that her papers were fake and forged.

In addition, during those hours under house arrest, she was pressured into issuing Undated Cheques with a covenant, gotten under Duress, to pay in trenches the monies given to her, despite the fact that she had no means of paying back until the Park was sold. She stated that it was the Claimant, who drafted the Undertaking and forced her into recopying it, which she did. According to her, she recorded all the threats in her phone during the period of the house arrest, which was copied into a CD Rom. The Certificate of Compliance, the CD Rom and its Transcript were into evidence as **Exhibits H1, H2 and H3** respectively.

Further, the Claimant prevailed on her into issuing a Cheque in the Sum of Seventy-Eight Million, Sixty-Six Million (N78, 066, 000), which Sum he calculated on his own. When she protested about the issuance of the Undated Cheques, the Claimant got angry and almost got physical with her.

Therefore, she had no choice but to issue out the Cheques in the name of Mike Idache in order to secure her release and that of her husband. According to her, she had informed the Claimant not to present these Cheques or Date them until the Park Allocation was sold. However, the Claimant instructed Mike to date and present the Cheques knowing that there was no money in her Account. The Defendant stated that the Park Allocation had been in the Market since 2013 and the Claimant had frustrated the Sale by not granting to her a Power of Attorney to Sell. She

then stated that till now, she had not secured any Buyer and those Buyers who had promised to pay, never did due to economic circumstances.

As regards, the Sum of Ten Million Naira (N10, 000, 000), she stated that the Claimant gave her the Dollar Equivalent, which she gave to an Architect, who was to design a Hotel for the Park, which Design was completed and handed over to the Claimant. Yet again, there is no comeback by the Claimant by way of a Reply to these sets of facts as pleaded in **Paragraphs 38 and 39** of the Defendant's Statement of Defence.

Concerning the Plot of Land in Kaura District, the Defendant stated that she delivered the Allocation Letter to the Claimant over Seven (7) Years ago, but the Claimant failed to take steps in protecting or perfecting his Title, only to complain Seven Years Later that the Plot had issues. Again, the Claimant did not Reply to this fact as alleged in **Paragraphs 40 and 41** of the Defendant's Statement of Defence.

According to the Defendant, she visited the Land Registry, where it was gathered that the Plot had Double Allocation, and she believed it was the Federal Capital Territory Authority that was answerable to the Claimant and not her, since she was not saddled with the responsibility of allocating lands within Abuja.

With respect to the Maitama Plot, the Defendant stated that the Claimant did not pay the Sum alleged.

Mrs. Olayinka maintained that the Claimant had in his Custody all the Title Documents pertaining to the Lands in question except for that of the Park, which was returned to her to sell in order to recoup the Claimant's money.

Finally, according to her, she had suffered at the hands of the Claimant, who as a Senior Advocate and one-time Minister, used the machinery of government to initiate her Police Arrest and Custody for almost 20 days at different times and at different Police Stations, before she was later granted Magisterial Bail in March 2014. The Initial First Information Report preferred against her at the Magistrate Court was terminated with

a fresh Criminal Charge preferred against her before the High Court of Justice in Apo, where she was arraigned and granted Bail. The Enrolment Order granting her Bail was provisionally admitted into Evidence, as **Exhibit G**, with Ruling reserved in this Judgment.

The Defendant contended that she did not steal the Claimant's money nor use it for her private use. Instead, she expended the Money in accordance with the Claimant's instruction, which was, for her to acquire a Park. The Claimant had confirmed the genuineness of the Title Documents.

Under Cross-Examination by Learned Counsel representing the Claimant, she testified that the Transaction for the Maitama Property was not concluded and she denied receipt of any amount. As regards the Park, she stated that it was concluded, acknowledging receipt of the Sum of Fifty Million Naira (N50, 000, 000) in US Dollars. She stated that it was incorrect to say that this transaction took place prior to the Claimant's appointment as Minister in 2007, and maintained her stance that this transaction took place when he was Minister.

As regards the Payment of the Sum of Three Million Six Thousand Naira (N3, 016, 0000) to Kunle, her Staff, she denied this payment stating that the Claimant only issued to Kunle a Receipt. According to her, the Park was available and vacant with the Documents in her Custody.

When asked, she testified that she never dealt with the Claimant's Office, as Minister but dealt with him in his personal capacity adding that there was no relationship between the Claimant and her Husband. She agreed going to the Claimant's Residence severally on invitation and had visited sometime in 2012, in the company of her husband. According to her, the Undertaking to Refund made by her, the issuance of the Cheques were obtained under Duress and on the threat that she would not be allowed to exit his Residence unless she did so. According to her, she had her Cheque Book in her bag on that fateful day.

Further, she stated that she was taken to Court by the Claimant on a Charge that had nothing to do with Monetary Refund. According to her,

family friends, including a Lawyer, had intervened to resolve the issue but the Claimant turned down the offer for settlement. According to her, she was granted Bail and in that Court, the Trial is still pending.

She stated that the Claimant was aware of being recording and in fact, he told them to record. As to the relationship between **Exhibits H2 and H3**, the Defendant stated that **Exhibit H2** was a correct version of **Exhibit H3**.

Under Re-Examination, the Defendant stated that the money was used for purchasing the land. Tendered through her was a Certified True Copy of the Accelerated Development of Parks and Recreation, which was admitted into evidence as **Exhibit I**.

No further evidence was elicited from Mrs. Olayinka and on that note, the Defence applied to Close her Case and the Case was adjourned for Adoption of Final Written Addresses, which Addresses have been set above and there would be no need to restate them here.

Now, having appraised the facts and evidence, the Court will before formulating its own Issues, first and foremost would deal with the following Questions, namely: -

(1). *The Admissibility of the Provisionally Admitted Enrolment Order of the Bail granted to the Defendant as informed by **Exhibit G**, which was reserved by this Court for Ruling in the Judgment; and*

(2). *The Challenge by the Defence Counsel to the effect that the Oral Evidence of Mike Idache was Hearsay because of the Claimant's inability to appear and lead evidence and further, that no Evidence had been led in regard to the Claimant's Case thereby being occasioning prejudice to the Case of the Claimant.*

On the **Question of the Admissibility of the Bail Enrolment Order as informed by Exhibit G**, that was granted by My Learned Brother Justice Belgore, Learned Counsel representing the Claimant had contended during Trial that the Enrolment Order being a Public Document, what the Defence sought to tender was a Photocopy, which by the provisions of **Sections 89(e) and (f) and 102 of the Evidence Act, 2011 (As Amended)**, needed to be Certified before it could be admitted into evidence. Therefore, the failure to Certify rendered the Photocopy, inadmissible.

Learned Counsel representing the Defence on his own part, submitted that the Document is an Enrolment Order by a Court, for which this Court could take Judicial Notice of the Order. Further, **Section 102 of the Evidence Act** did not apply, on the ground that Relevance is the basis of Admissibility, as the Order was both pleaded and frontloaded. Therefore, he urged the Court to admit the Bail Enrolment Order.

Now, it brooks no argument that Relevance is a matter of fact and this was clearly demonstrated in **Paragraphs 49 of the Defendant's Statement of Defence** wherein the Defendant alleged that she was granted Bail after being re-arraigned and to establish this fact, she tendered **Exhibit G**. This Exhibit was provisionally admitted into evidence in the light of the arguments presented above and the decisive question now is, should it be admitted properly into evidence or not?

Admissibility is in the Realm of the Law once it is established that it is relevant to the fact or fact in issue and the Applicable Law is **Section 102 of the Evidence Act 2011, As Amended**, which cannot be circumvented by any ingenious argument. The Court can see that **Exhibit G** was issued under the Hand and Seal my Learned Brother, Justice Belgore, which qualifies it as a Public Document within the contemplation of **Section 102**.

Before this Court, the Defence tendered a Copy of an Original, which requires Certification as required by **Section 104** of the Same Act. Exhibit G clearly shows lack of certification and as held by His Lordship **EKO JSC** in **KEKONG VS STATE (2017) LPELR-42343(SC) PARAS E-A**, wherein he held *inter alia* that a Piece of Evidence may be Relevant and yet could, by Operation of Law, be Inadmissible.

This Court is in tandem with both the Law as well as with the Dictum of the Apex Court and therefore, would not hesitate to find that **Exhibit G** was not certified and therefore, is accordingly held to be inadmissible.

Lastly, on the **Question of Hearsay**, Learned Counsel representing the Defence contended that the Appropriate Witness the Claimant could have called to lead evidence, was the Claimant himself, who had personal

information on the transactions he had with the Defendant. The Claimant rather elected to call Mike Idache, whose evidence was hearsay and this Court ought not to receive his evidence, as his information was what he garnered from the Claimant with the exclusion of the Cheques that were issued out in his name. According to Learned Counsel, to demonstrate that the evidence of Mike Idache was hearsay, he pointed out that Mr. Mike Idache could not lead any iota of evidence when he was asked about whether he was aware of the Letter of Authority in **Exhibit F**, issued out by the Claimant to the Defendant. Therefore, the failure to lead such evidence validated the point that he was not present at the critical stages of the transactions between the Contending Parties. Reference was had to **Section 37 of the Evidence Act** and the Case of **PASTOR IZE-IYAMU OSAGIE ANDREW & ANOR VS INEC & ORS (2017) LPELR-48518(SC)**, to argue that the evidence led by Mike Idache was inadmissible. Learned Counsel's Reply on Point Law on this contention of Hearsay, was a rehash of the facts and therefore, it would be needless to restate them here.

In response, Learned Counsel representing the Claimant submitted that the Law does not require the physical presence of the Claimant in Court in order to testify, as long as he can equally do so through a person, who can give direct evidence of the facts in issue. Reference was had to the Case of **DAUDA VS IBA (2007) 2 NWLR PART 1018 PAGE 321 AT PAGE 333 PARAS D-F**. Further, the Defendant herself had made reference to the involvement of Mike Idache in **Paragraphs 34 and 35** of her Statement of Defence as well as in **Paragraph 26** of her Witness Statement on Oath. Consequently, the argument of the Defence should be disregarded as being Hearsay.

Now, as rightly argued by Learned Counsel representing the Claimant, a Party has the exclusive prerogative to call any Witness of his Choice, as his Case would swim or sink depending on the Probative Value of Evidence that may be elicited from his Witness, he had chosen to call. Reference is made to the Cases of **OLAYINKA VS STATE (2007) 9 NWLR PART 1040 PAGE 561; AND IMHANRIA VS NIGERIAN ARMY (2007) 14 NWLR PART 1053 PAGE 76**.

Therefore, a Party has a duty of ensuring that only Relevant Material Witnesses are called before the Court to establish Evidence, Oral and/or Documentary.

As earlier stated, the Claim before this Court is a Monetary Claim for monies had and received by the Defendant from the Claimant in regard to the purchase of Plots of Land within the Federal Capital Territory and in proof of the Claimant's Case, he elected to lead his evidence through his Personal Assistant, Mike Idache. Mike Idache, in his Witness Statement on Oath, had stated that he had obtained the Consent and Mandate of the Claimant to depose to the facts of this Case.

A perusal of the surrounding facts, circumstances and Evidence led, Oral and Documentary, it would appear the name of Mike Idache as well as his person, did not feature in the transactions when the Claimant doled out the Alleged Sums of Monies to Defendant to purchase the Park in his Company's name, "Paradise City Africa Limited". Neither did he feature regarding the other Plots in Maitama and Kaura District. However, positive facts and evidence began to manifest, when the Claimant demanded Refunds of all the Monies alleged paid to the Defendant, whereupon she issued out Cheques in Mr. Mike Idache's name. The Defendant herself was not oblivious of the role of Mike Idache, played in the process of the refunding the Claimant's Monies. She had alleged in **Paragraph 26** of her Statement of Defence, that it was Mike Idache, who collected the Sum of Six Million Naira (N6, 000, 000), which she borrowed from family friends. Further, in **Paragraphs 34 and 35**, the name "Mike Idache", was the name given to her by the Claimant, a Staff of the Claimant, in whose name she issued out undated Cheques, with an instruction not to date them till the Park Land was sold. Mike Idache, in his Oral Evidence, elicited under Cross-Examination, had testified that the Defendant dated the Cheques in her own handwriting and anytime he intended to proceed to the Bank to lodge her Cheques, he would call her and even when he subsequently presented the Cheques, which bounced, he had called to notify her.

Further, he was aware of the whereabouts of the Original of the Park Property Documents purchased through Paradise City Africa Limited, which Original was in a Criminal Trial at Gudu. Further, he had led

evidence as to the fact that both the Defendant and her husband signed the Handwritten Undertaking and there was no Rebuttal Evidence led to show that he was informed of the Signatories in the Undertaking.

In addition, under Cross-Examination, Mike Idache had positively stated that he was aware of the Park Land Allocation, as informed by **Exhibit A**, adding that his Principal was dissatisfied with the lack of Genuineness of the Allocation sometime in 2013.

From these above sets of facts and evidence adduced, it can be seen that Mike Idache was an active participant in the refund process and was abreast with the factual happenings including Documents that transpired between the Contending Parties as well as other Documents that dealt with the Criminal Trial involving the Parties.

From the above deductions, it is also important to note that the Defendant herself was not in denial of the transactions she had with the Claimant nor did she deny receiving some of the Monies allegedly collected from him. She had admitted these facts justifying the fact that she expended these Monies by her performance of her own part of the bargain, as evident from the Documents she handed over to the Claimant. These admitted facts needed no further proof that would warrant the Claimant or his representative, Mike Idache to lead any evidence in regard to admitted facts. The argument by Defence Counsel that the failure to adduce any Evidence with respect to the Authority Letter to sell the Park Allocation, and therefore should render the Entire Evidence led by Claimant's Witness as Hearsay, is tantamount to not appreciating the Law guiding Hearsay Evidence.

The Court therefore finds that the evidence of Mike Idache, was not Hearsay and his evidence is received by this Court.

Now, having dealt with the above Preliminary Questions, the Issues that would determine this Case are formulated as follows, namely: -

- 1. Whether Exhibit I, the Certified True Copy Bundle of Documents of the Accelerated Development of Parks and Recreation admitted was dumped on the Court by the Defence;***

2. Whether Exhibits B1-B8, the Eight Skye Bank Cheques including Exhibit C, the Undertaking were obtained by Duress, Threat, Intimidation, Harassment and Torture in the light of the way and manner these Exhibits were obtained from the Defendant during her Unlawful House Arrest and Custody in the Claimant's Residence; and Whether on the Preponderance of Evidence adduced by the Contending Parties, the Claimant is entitled to his Reliefs."

ISSUE ONE deals with the Dumping of the Bundle of Documents in **Exhibit I**, Learned Counsel representing the Claimant had raised an Objection stating that only **Pages 1 to 3** were Certified whilst the **Annexed List** attached thereto, were Uncertified. He argued that if indeed the Entire Bundle was a Public Document, then the List included the Bundle also ought to have been certified. Further, there was no Nexus between the **Annexed List** and **Pages 1 to 3**. Therefore, **Exhibit I** was irrelevant and the failure to certify the List was contrary to **Section 90(1)(c) of the Evidence Act**. He urged the Court to discountenance this Piece of Evidence.

In response, Learned Counsel representing the Defence argued otherwise, stating that **Exhibit I**, is a Relevant Document, and the Entire Bundle qualified as a Public Document. According to Counsel, it was not dumped on the Court, as its purpose was to address the Genuineness of the Park Allocation. Further, **Exhibit I** is Certified and the Annexed List has a Nexus with the Certified Pages. He also contended that the Claimant had been served with the Exhibit prior to its tendering and during Settlement of Documents and Learned Counsel representing the Claimant had No Objection to its tendering. Therefore, he argued that he could not now in his Written Address reprobate its relevance/significance. Reference was made to the Case of **INTERCONTINENTAL BANK LTD VS BRIFINA LIMITED (2012) LPELR-9717 (SC)**.

Now, as regards the Question of Admissibility of **Exhibit I**, the Bundle of Documents, which consisted of Several Pages of Information, only the First Three Pages were Certified and it is trite that only Certified True Copy of

Public Documents are required to be produced under Evidence Act. See the Case of **CHIEF ANATOGU VS HRH IGWE IWEKA II (1995) 9 SCNJ 1**. By this, Uncertified Photocopies of Public Documents are not admissible. See the Case of **PATRICK OGBU & ORS VS FIDELIS ANI & ORS (1994) 7 - 8 SCNJ 363**.

To this end, it is only these **Pages 1 to 3** that demonstrated the Official Act of a Government Body. Also attached to the Bundle, is another Public Document, which is the **Official Gazette of Abuja Park Regulation 2005**. These are Admissible for Consideration as Evidence.

Encased in-between these Two Public Documents, is an **Annexed List** of Park Operators/Concessionaires.

Now, Juxtaposing the Circular and Gazette as against the List, it can be seen that the List had set out the Park Operators/Concessionaires within Abuja and it apparent that it had a relationship with the other Two Public Documents. If as argued by the Defence that **Exhibit I** was a Certified True Copy, then it is not hard to envisage that all the Documents including the List that formed part of the Bundle of Documents in **Exhibit I**, was also a Public Document. However, the Court observes that not a Single Page of the List was certified and it is difficult to determine its Status whether is a Public or Private Document, as there is no *insignia* to show that it emanated from a Public Body. What is apparent is the fact that the List was interposed or inserted in-between Two Public Documents, which insertion would certainly not elevate its Status into a Public Document. For the List to qualify as a Public Document, it has to meet the requirements of **Sections 102** and particularly, **104 of the Evidence Act 2011 (As Amended)**, which deals with Certification of a Public Document. Since the List is not the Original, to Certify became imperative, and because the Claimant did not object to its tendering, would not prevent its Objection in the Final Written Address.

Furthermore, from the Records of Proceedings, the Court notes that **Exhibit I** was received into evidence at the Stage of Re-Examination of Mrs. Olayinka, the Sole Witness for the Defence and no Oral Evidence was elicited from her regarding the List in the Bundle of **Exhibit I**. It is worth noting that generally, Documents can be admitted into evidence at any

Stage of Examination of a Witness. However, where a Witness intends to produce a Document in proof of a fact or fact-in-issue, the appropriate Stage of doing so, is during that Witness's Examination-in-Chief. Where it is at the Stage of Re-Examination there are Two Scenarios that could occur which are: - (1). A new point may have been adduced during Cross-Examination; or (2). Where Leave to Re-Open the Case is had and obtained in order to adduce further evidence from a Document not earlier tendered during Examination-in-Chief.

In this instance, none of these two scenarios occurred and the Court is not told **WHO, HOW** and from **WHERE** the List in the Bundle of **Exhibit I** originated from, and no evidence was led in regard to the List. The Defendant was not shown the Document and in her evidence, she had never claimed that one of her Schedules of Duty as Chief Surveyor of the FCDA included the production of a List of Leased Parks Operators or Concessionaires. It is then safe to assume that another Witness needed to have been called, who would link this List in the Bundle of Exhibit, to her positive assertion that the Documents supplied by her to the Claimant were genuine and not fake.

The linking of this List to the fact of Genuineness was the Duty of the Defence and this needed to be done before any Weight could be ascribed thereto. The Court will follow the dictum in the case of **SENATOR RASHIDI ADEWOLU LADOJA VS SENATOR ABIOLA ADEYEMI AJIMOBİ & 3 ORS SC.12/2016**, where **His Lordship Ogunbiyi JSC**, held that, "...the Law is settled on documents tendered in Court which purpose and worth must be demonstrated through a witness. It is settled also that the duty lies on a party who wants to rely on a document in support of his case to produce, tender and link or demonstrate the documents tendered to specific parts of his case. The fact that a document was tendered in the course of proceedings does not relieve a party from satisfying the legal duty placed on him to link his document with his case. See also the case of **CPC VS INEC (2011) 18 NWLR PART 1279 PAGE 493 AT PAGES 546, 547.**

The List was simply tendered from Bar without any demonstration by Oral Evidence elicited in its regard and further, it was not Certified. As rightly

argued by the Learned Counsel for the Claimant, **Exhibit I** was simply Dumped and consequently, the Court will ascribe no probative value to **ONLY** the List in the Bundle of **Exhibit I**.

On **ISSUE TWO**, the Court would not hesitate to agree with Learned Counsel representing the Claimant that the Burden of Proof expected of a Party to discharge, in a Civil Proceeding, is Proof on a Balance of Probabilities or Preponderance of Evidence as set out in **Sections 131, 132 and 135 of the Evidence Act 2011 (As Amended)**. It is also the Law that a Party alleging Criminality must establish those Allegations on the Criminal Standard of Proof, which by **Section 135(1) of the Evidence Act 2011 (As Amended)** is Beyond a Reasonable Doubt.

It is important to note at the outset that the Actual Sums of Money in controversy as pleaded by the Claimant is as seen in **Paragraphs 8, 9, 10, and 12 of his Statement of Claim**, totaling the Sum of Seventy-Eight Million, Sixteen Thousand (N78, 016, 000). These Alleged Sums were handed over to the Defendant to purchase some Plots for the Claimant. It is noted that the Claimant had claimed the Sum of Eighty-One Million, and Eighty-Two Thousand Naira (N81, 082, 000) in his Statement of Claim, as the Total Sum of Monies due, but he was only able to adduce evidence in support of the Sum of Seventy-Eight Million, and Sixty-Six Thousand Naira (N78, 066, 000).

A Summary of the Competing Allegations before this Court is that the Claimant asserted that ALL the Landed Property Transactions that birthed the Title Documents therefrom, were not Genuine. They were Fake for which the Defendant should refund all his Monies expended.

On the other hand, the Defence whilst denying receiving some amounts of money, admitted that the Bulk of the Monies she collected from the Claimant were validated by the performance of her own side of the bargain, and if at there were any injury occasioned, the Claimant inflicted them on himself.

She also alleged in **Paragraphs 15 to 26** that **Exhibits B1 to B8; C; and H1 to H3** were all Unlawful Obtained from her by the Claimant through Duress, Threats, Detention, Intimidation, Harassment and Torture.

Now, these Two Competing Allegations have to be placed side by side on a Proverbial Scale to determine, which of the Two Diverse Pieces of Evidence has more Rational Probative and Legitimate Weight when pitted against one another.

To this end, the Claimant must prove the Expenditure of the Money for the Particular Purpose; and the Defendant must prove that she carried out Recognizable Official Functions and Due Process in the bid to secure the Landed Properties. She has the burden to prove that she diligently followed the Official Course in the performance of her Obligation. To this, it is expected she showed Receipts, Certifications and Official Documents.

The Defendant acknowledged the Sum of Seventy-Eight Million, and Sixty-Six Thousand Naira (N78, 066, 000), as being the Total Sum of Money she collected from Prince Kayode SAN for the Purposes of Acquiring Park Land in the Central Area in the Sum of Fifty Million Naira (N50, 000, 000); Land in Maitama for Ten Million Naira (N10, 000, 000); Land in Kaura for Five Million Naira (N5, 000, 000); Architectural Drawings for the Park Land in the Sum of Ten Million Naira (N10, 000, 000); and finally, the Settlement of Billings due to the FCDA for the Park Land in the Sum of Three Million and Sixty-Six Thousand Naira (N3, 066, 000). In it, she had undertaken to pay these Total Sums on the 30th of January 2013.

It is worthy of note that, even though the Total Sum was to be paid at once, the Defendant, whilst testifying, stated that this Sum was to be refunded in trenches. This is a Contradiction.

To decide the Probative Value of **Exhibits H1 to H3**, which are the Tape Recording and its Transcript tendered by the Defendant, the Court will consider the possibility of the Truth of the Contents in the Undertaking, comparing same with the Surrounding Circumstances and any Admissions. In this Undertaking, and even by her Testimony, the Defendant admitted collecting various Sums of Money from the Claimant for the Acquisition of Different Lands in Abuja. Her only contention is that, she applied those Sums of Money collected to the Correct Official Channels. It is trite that evidence admitted, needs no further proof. These Admissions have corroborated the Claimant's Claims that he expended these Amounts of Money.

The Defendant had challenged the Voluntariness of the Undertaking in **Exhibit C** by stating that she was detained and had to phone family and friends to bail her out from this Unlawful Detention. They had assisted her, by paying the Sum of Six Million Naira (N6, 000, 000) before she could be released.

From her testimony, the Defendant had worked with the Federal Capital Territory Administration, as the Chief Surveyor in the Survey Department and had only retired in 2009. By her own assertion in **Paragraph 3 of the Statement of Defence**, she stated that she helped the Claimant to acquire so many properties within Abuja, whilst he was Minister. There is nowhere in either her Oral Evidence or Pleadings that indicates the Authority and Responsibility bestowed upon her to assist with obtaining Property within the Federal Capital Territory. It was clearly outside her Scope of Engagement with the Administration and if she possessed the Capacity to secure Lands or Parks for Clients, then she had the burden to tender that Authorization.

In the Case of **MADAKI VS GOVERNOR NASARAWA STATE & ORS (2011) LPELR-5115(CA)KEKERE-EKUN, J.C.A.** (as she then was) at **PAGE 35, PARAS C-F**, held as regards **Section 151 of the Evidence Act 1990**, that, "When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representatives in interest shall be allowed, in any proceedings between himself and such person or such person's representative in interest to deny the truth of that thing."

Also in **NIGERGATE VS NIGER STATE GOVT (2008) ALL FWLR PART 406 PAGE 1938 AT PAGE 1961 PARAS D - H, Per OMOLEYE, JCA** added that this is the doctrine of 'Estoppel'. Estoppel prohibits a Party from proving anything, which contradicts his previous acts or declarations to the prejudice of a party who relied upon the acts or declarations". Also relevant are the Cases of **OYENGE VS EBERE (2004) VOLUME 18 NSCQR; KWAJAJFFA VS BANK OF THE NORTH (2004) VOLUME 18 NSCQR; AND FINALLY, MEKWUNYE VS WAEC (2020) VOLUME 81 NSCQR.**

By her Acts, Utterance and Conduct, the Defendant had held herself out to be the Person or Agent of the Minister to secure Lands or Parks for Clients.

Now, turning to the Question of Undertaking in **Exhibit C; the Cheques in Exhibits B1 to B8; and the Tape Recording and its Transcripts in Exhibits H1 to H3,** the Court will now have to decide whether they were obtained through Criminal Activity.

The Defendant's chronicles of events leading up to the Signing of the Cheques, the Undertaking and the Loan she privately undertook as well as the Arrest did not flow and was somewhat illogical. The Defendant had claimed in **Paragraph 24 of her Statement of Defence** that she was under House Arrest for about Five (5) Hours but the Tape evidenced a Recording of about 30 Minutes. She also claimed that she was forced to covenant under Duress, to pay in trenches. There is no evidence of this in the Tape and Transcript.

In **Paragraph 25,** where she claimed she had to borrow Six Million Naira (N6, 000, 000) from her family and friends to secure her Release from Custody, Intimidation and Torture, the logical conclusion of this, would be that when she was detained and tortured, she placed a call to her relations and friends for help, whereupon they raised the Sum of Six Million Naira (N6, 000, 000). There is no evidence that she reported or caused an Alarm to be raised in regard to her Detention and Torture. It is reasonable to expect that at least one of the people, who brought the money to her at the Claimant's Residence, was intimated about her Detention and Torture. This person would also have testified before this Court as to the state of mind of the Defendant. There was no such witness called. More importantly, her Spouse could also have appeared before the Court to corroborate her story but he too was absent.

To find out if there was any Truth in the compulsion to Sign the Undertaking, recourse has to be hand in first place to the Tape Recording and its Transcript. In **Paragraph 22 of his Statement of Defence,** she had averred that she recorded all the Threats issued by the Claimant on her

Phone during the Period she was privately detained and had transferred the Threat Statement into a CD-ROM, which informs **Exhibit H3**.

A careful perusal of the Transcript as well as a careful listen to the Tape Recordings, the Court can see that they both reflected a One-Sided Conversation and there is nowhere the response or comment of the Defendant was portrayed. If, as the Defendant claimed, the Claimant questioned her, her answers or responses were edited out of the Tape and Transcript. This seriously impairs the Credibility of this Piece of Evidence. Furthermore, from the flow of the Transcript, it is easy to decipher that some of the Claimant's reactions were a follow-up to her own response. However, her response was invisible in both the Tape and the Transcript leading to an irresistible presumption that the Tape was tampered with.

All of the Claimant's insistence in reclaiming his Monies and the Undertaking that he secured from her can only be understood perfectly, if all her responses were on board. There is no way of knowing what the Defendant might have said to provoke that reaction.

There was also no evidence of Arrest, Detention, Harassment or even Torture in the Recording and on the face of the Transcript. The highlighted portions therein, evidenced annoyance even though the Claimant professed not to be angry.

As regards the fact that her Relations and Friends had to raise the Sum of Six Million Naira (N6, 000, 000) to release her from Custody, the presumption then arises, that somebody had to bring the Money to her, where she was being detained and there is no indication from the flow of the Tape Recording that a Guest was being welcomed into her location or that her Spouse exited out on her behalf. There ought to have some evidence, however small to vindicate her stance but there was none. It is important to recall that the Allegations she made in this regard were to be established Beyond Reasonable Doubt with Positive Assertion and not by mere Assertions.

Furthermore, more Positive Evidence was lacking as to the Arrest, Detention and especially Torture and to this end, the Tape Recording and its Transcript offer no assistance in the Defence of the Claim. The Defendant failed to tender Documentary or Pictorial Evidence to justify her Criminal Allegations and therefore, in conclusion the Court would

attach No Credence to these Allegations, and Weight would be attached to the Undertaking, as it is the Tape Recording and Transcript are found to be tampered and tainted/contaminated.

Turning to the Question of Cheques in the **Exhibits B1 -B8**, Post Dated or otherwise, and the Undertaking to Refund, the same reasoning as above applies, as to her failure to justify Duress and Torture. Mr. Mike Idache had testified that he always called the Defendant before he approached the Bank and so, the Defendant ought to have rebutted this fact by Positive Evidence.

To challenge the fact that the Claimant inserted the Dates on the Cheques by himself is to bring to the fore the Question of Forgery and Forensic Evidence was critical to decipher whether the insertion of the Date on the Cheques was effected by the Defendant or by the Claimant. This forensic analysis was absent throughout.

Therefore in conclusion, this issue is resolved against the Defendant and the Undertaking and the Cheques are found to be Relevant.

As regards the Park Allocation, the Claimant had alleged that the Clearance Letter in **Exhibit A** and the Letter of Approval/Allocation thereto were fake. This Allegation was also buttressed in his Complaint of Letter to the Area Commander (Metro) of the Nigeria Police Force on the 7th of October 2013, as informed by **Exhibit D**. His complaint was the Sums of Money he gave to the Defendant regarding the Park Allocation, Architectural Drawing and Billings and the Documents that emanated therefrom were fake.

From **Exhibit E1 to E14**, it can be seen that all the Processing Papers were Uncertified and therefore, unless and until they are Certified, the Court cannot say with precision, whether the Documents were Genuine or not and the Court declines to make any Pronouncement in this regard. It is clear that if the Defendant obtained Official Endorsement of her Actions, then the Minister would be responsible to Refund the Monies. If it was a case of double allocation, which was likely happened as there was encroachment on the Land, then the Minister would also be responsible, if and only if, it is proved that he actually approved the Claimant's entitlement. No evidence of Double Allocation was led. But one thing is

clear, is that the Claimant's Right was found to be flawed otherwise, he would not have demanded a Refund and the Defendant would not have offered to Refund the Money.

As regards the Sum of Ten Million Naira (N10, 000, 000) issued by the Claimant to secure Architectural Drawing for the Park, the Defence admitted collecting this Sum adding that that the Drawing was carried out and handed over to the Claimant, which assertion was not rebutted by the Claimant. A rebuttal by the Claimant would have swung the pendulum back to the Defence to lead evidence. The Defendant could also have tendered the Receipt for this Job but she equally failed to do so. The Architectural Drawing was not even tendered. The overriding effect of her Undertaking is that she consented to pay this Sum.

As regards, the Sum of Three Million Sixteen Thousand Naira (N3, 016, 000) allegedly handed over to Mr. Kunle, a Staff of the Defendant, the Defence had undertaken to pay this Sum and that ends the matter even though there is no Receipt or Cheque or Money Transfer in favour of Mr. Kunle, the Defendant's Staff.

As regards the Kaura District Plot, the Defendant implicitly admitted collecting the Sum Five Million Naira (N5, 000, 000) and she did not deny offering for sell her Letter of Offer for this Plot for which the Claimant paid the aforesaid Sum. The Claimant alleged that her Letter of Offer turned out to be fake but during Trial, he did not produce her Letter of Offer. Since the Claimant pleaded the Letter of Offer, which he failed to tender, he is deemed to have in his Custody this Letter of Offer.

The Defence on her own part alleged that the Claimant failed to perfect his Title and Seven (7) Years later upon her investigation at the Registry, she discovered that the Plot was a Double Allocation.

It is important to state that the failure to perfect Title within Seven (7) Years cannot automatically translate a Proper Allocation into a Double Allocation. The Same Analogy applies as above and having admitted Liability, she is found responsible.

Finally, as regards the Payment of the Plot of Land in Maitama, the Claimant claimed that the Maitama Plot was Thirty Million Naira (N30,

000, 000) but he paid to the Defendant the Sum of Ten Million Naira (N10, 000, 000) with the Balance to be paid upon her obtaining the Final Allocation. The Defendant on her own part stated that the Claimant did not pay for the Maitama Plot. Her traverse on this point appears to be pregnant with meaning, as it is certain that the Claimant did not pay for full amount for the Maitama Property, which was valued at Thirty Million Naira (N30, 000, 000). She did not categorically deny collecting the Sum of Ten Million Naira (N10, 000, 000), which leaves a gaping hole in her Pleadings. She is therefore liable to refund this Sum, which she had undertaken to pay.

Therefore in conclusion, Judgment is entered for the Claimant in the Sum Defendant as contained in the Undertaking in **Exhibit C**.

HON. JUSTICE A.A.I. BANJOKO
JUDGE