

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 10**

**SUIT NO: FCT/HC/CV/2226/2014**

**BETWEEN:**

**FIRST CHOICE PROPERTIES LIMITED.....CLAIMANT**

**VS**

**1. ECO BANK NIGERIA PLC**

**2. AFAM OSIGWE.....DEFENDANTS**

**JUDGMENT**

By an Amended Writ of Summons filed on 12/2/15, the Claimant commenced this Suit against the Defendants. In Paragraph 44 of the Amended Statement of Claim, the Claimant Claim from the Defendants jointly and severally as follows:-

- (1) The sum of ₦2,053,628,000.48 as loss of earnings on the Plot 1750 Dape which the Plaintiff could not buy owing to the negligence of the 1<sup>st</sup> Defendant - ₦2,053,628,000.48
- (2) Loss of earnings on Plot 520 Kukwaba which the Plaintiff could not purchase owing to the negligence of the 1<sup>st</sup> Defendant - ₦1.070,334,00.53

- (3) The sum the Plaintiff had to repurchase the Plot 1750 Dape from the actual owner - ₦750,000.000
  - (4) Loss of earning on Plot 522 Kukwaba - ₦2,153,064,000.35
  - (5) Cost of the 11 duplexes demolished by the Department of Development Control at ₦75,000,000 each - ₦825,000,000
  - (6) Cost of 3 Bungalows destroyed by the Department of Development Control at ₦35,000,000 each - ₦105,000,000
  - (7) Cost of Perimeter fence pulled down by the Department of Development Control - ₦125,000,000
  - (8) Cost of purchasing the two Plots 520 and 522 at Kukwaba - ₦802,000,000
  - (9) Amount expended on Plot 1750 - ₦573,206,400.63
- Total Special damages - ₦8,497,232,401.89
- Add ₦1,502,767,599 for loss of business opportunity, public ridicule, exposure to adiom loss of reputation as general damages - ₦1,502,767,599
- TOTAL = ₦10,000,000,000.89**

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On 18/2/15, the 1<sup>st</sup> Defendant filed her Amended Statement of Defence while 2<sup>nd</sup> Defendant filed his Statement of Defence and counter-claim on 24/2/15. And in the said counter-claim, Counter-Claimant seek the court of the following reliefs against the Claimant.

- A. The sum of ₦1Billion (One Billion Naira) as General Damages for defamation of character.
- B. An Order of Injunction restraining First Choice Properties Ltd, the Defendant to the counter-claim by themselves or through their agents, servants or privies from further publication of any libelous allegation of or concerning the 2<sup>nd</sup> Defendant.
- C. Apology published on three (3) different days in at least two daily newspaper circulating widely in Nigeria or a personal apology.

Pleadings having been settled and exchanged by parties, trial of the Suit commenced on 4/6/2018. Yoila Yilyuhur who works for I.D. Kwatmak & Co, Chartered Accountants and a subpoenaed witness testified for the Claimant as PW1 and stated sometime in 2011 his firm was approach by Claimant that they are into transaction with their Bankers and requires a cash flow projection for project they intend to go into. That they were briefed by Claimant that they intend to go into construction projects. They demanded for documents relating to the project, which is for construction of housing unit and on the basis of information given, they prepared cash flow projection for Plot 1750 Dape. That in 2012, they were again approached by Claimant for cash flow projection in respect of Plots 520 and 522 Kukwaba. That from the cash flows as presented, the business was found to be viable and from analysis, Plot 1750 Dape has profit of ₦2,053 Billion, Plot 520 ₦1,070 Billion and Plot 522 ₦2.153 Billion.

In the course of the testimony of the PW1, the following documents tendered and admitted in evidence.

1. The cash flow projection for Plot 1750 Dape prepared by I.D. Kwatmak & Co for the Claimant – Exhibit "A".
2. The cash flow projection for Plot 522 Kukwaba prepared by I.D. Kwatmak & Co for the Claimant - Exhibit "B".
3. The cash flow projection for Plot 520 Kukwaba prepared by I.D. Kwatmak & Co for the Claimant - Exhibit "C".

Under cross-examination by 1<sup>st</sup> Defendant, he stated that the Exhibit "A", "B", "C" were solely prepared on the basis of information given by Claimant. He admitted that the cash flows shows the expected income and expenses but stated they aren't mere assumption. When shown Exhibit "B", 2<sup>nd</sup> page and asked to confirm that the basis assumption on that page forms part of the document, stated this assumption are explanatory note and form part of the cash flow projection and same goes for Exhibit "B", "C". Stated he does not agree that cash flow projection is different from actual business profit and that issues like taxes, debts and others does not affect cash flows because it has been taken care of.

The 2<sup>nd</sup> Defendant did not cross-examine the PW1.

Detective Bassey Effionge, also a subpoenaed witness, an investigator with the EFCC and currently Head of Cyber Crime Unit in the South East Zonal Office Enugu testified for the Claimant as PW2. Stated he investigated a case reported by Claimant against one Alhaji Ibrahim Kamba and in the

course of investigation had course to invite, interview and obtained Statements from officials of 1<sup>st</sup> Defendant. That they also recovered land documents for Plot 1750 Dape found to be forged and are still in their custody. That the complaint basically was that Claimant was to acquire land in Dape, met the vendor Alhaji Kamba and on conclusion of Agreement for sale approached 1<sup>st</sup> Defendant for a facility of ₦300 Million for purchase of the land. Since 1<sup>st</sup> Defendant was financing the purchase on their behalf, carried out due diligence on Claimant's behalf and thereafter sum of ₦300 Million transferred to Alhaji Kamba and the title documents recover from him was in custody of 1<sup>st</sup> Defendant as collateral. That Claimant moved to site and started selling to subscribers after they incurred additional sum of ₦278 Million for preparing and clearing the site. That another party later showed up laying claim to ownership of same land and they had to go to FCDA to verify their title document which turned out to be forged documents. That in the course of investigation, interviewed Ibrahim Mohammed of 1<sup>st</sup> Defendant and obtained his Statement. Also interviewed and obtained Statements from Joan Tarila Wilson also of 1<sup>st</sup> Defendant. That Alhaji Kamba was also interviewed and his Statements obtained

In the course of the evidence of the PW2, the following documents were tendered and admitted in evidence.

- (1) The Certified True Copy of Statements of Bello Mohammed Ibrahim as Exhibits "D'.

- (2) The Certified True Copy of Statements of Joan Tarila Wilson as Exhibit "E".
- (3) The Certified True Copy of Statements of Alhaji Ibrahim Kamba taken by one Lawal Mainasara as Exhibit "F".

Cross-examined by 1<sup>st</sup> Defendant, stated he is not party to the Loan Agreement and not aware of the duties and responsibilities of the parties. He stated there were documents to show Claimant incurred additional ₦278 Million and that the document formed part of the Petition that led to the investigation. He, however, stated the documents are not before the court in evidence. He also stated that the title documents retrieved from 1<sup>st</sup> Defendant are in their custody but are not before the court in evidence.

Under cross-examination by 2<sup>nd</sup> Defendant, he stated the investigation shows the procedure for conducting land search on Properties at AGIS was followed. Also stated that in the course of investigation, invited Lawyers from Law Forte, the law firm instructed to conduct a search, who gave him the Search Report issued to 1<sup>st</sup> Defendant and copy of Search Report from AGIS and that Search Report given to him is same as that issued by AGIS and Search Report by Law Forte is same as that issued by AGIS. He also stated that Joan Tarila and Ibrahim Mohammed, both of 1<sup>st</sup> Defendant, confirmed to him that they engaged their lawyers to go to AGIS to confirm that the documents are good to be used as collateral.

Sanni Adamu, also a subpoenaed witness and staff of FCDA in the department of Urban and Regional Planning testified for the Claimant as PW3. He testified that the department is the custodian of the Abuja Master

Plan and carry out the design and designation of land users. Stated the Plots 520 and 522 Kukwaba is a green area and green areas are mainly for Parks and gardens for recreational purpose and not meant for mass housing. Stated AGIS is under FCTA and not FCDA but said he does not know the functions of AGIS.

Cross-examined by 1<sup>st</sup> Defendant, stated he cannot confirm that all the departments meet to synergies on all their works and is not part of his official schedule to advice persons who desire to purchase land.

Under Cross-examination by 2<sup>nd</sup> Defendant, stated he is not aware that AGIS issued a report in respect of Plot 1750 Dape and 522 Kukwaba where it was stated that they were for housing estate and do not know whether in the FCT, AGIS is the land registry that keeps records of lands. He, however, stated that the Urban Regional Planning Department keep records of land from other departments.

Chief Austin Arah, the Managing Director of Claimant testified for Claimant as PW4. He adopted his witness deposition on Oath sworn to on 12/2/15 as his evidence in this case. Also his Statement on Oath on 7/10/15 in respect to the counter-claim of 2<sup>nd</sup> Defendant and response to the defence of 1<sup>st</sup> Defendant. He testified that Claimant is customer and operates an account with 1<sup>st</sup> Defendant. That in the course of its business owns and had developed three estates in Abuja called City Homes 1, 2 and 3. The estates were doing well and impressed with the performance of the account, 1<sup>st</sup> Defendant offered to finance any viable housing estate Claimant may embark on and in that regard Claimant informed

1<sup>st</sup> Defendant that it was about to venture into an estate in Dape, 1<sup>st</sup> Defendant accepted to finance the project on conditions part of which is to submit the title documents of the land for due diligence regarding any encumbrances of title, purpose of grant and cash flow projection to satisfy 1<sup>st</sup> Defendant that it is a viable project and would recover its money on time. That the Claimant then introduced Alhaji Kamba, the alter ego of the owner of the land in the name of Kamba Engineering Co. Ltd. That 1<sup>st</sup> Defendant then instructed its lawyers Law Forte, 2<sup>nd</sup> Defendant herein, to carry out search on the land. On 10/8/201, 2<sup>nd</sup> Defendant carried out search and turned in report and confirmed it was free from any encumbrances, the purpose for housing and good investment. That upon the report and 1<sup>st</sup> Defendant satisfying itself, now dealt with the owner and agreed to credit Claimant's account with ₦300 Million and requested Alhaji Kamba to deposit with it title deeds in respect of Plot 1750 Dape and then transferred ₦300 Million Naira to Kamba Investment Ltd. That the said sum was to be paid through proceeds of sale from City Homes 1, 2 and from Plot 1750 Dape. He stated that proceeds from the three estates within a short period paid off the ₦300 Million, interest and other charges. He also stated that Claimant had embarked upon site clearing, settlement of Gwari indigenes who were in occupation and had economic crops, construction of bridges and access roads and parameter fence.

He further stated that in consonance with the Agreement between parties, Claimant identified two Plots of land at Kukwaba, 520 and 522 and 1<sup>st</sup> Defendant instructed 2<sup>nd</sup> Defendant to conduct search and advise. That 2<sup>nd</sup> Defendant conducted search and turned in report that its free of any



encumbrances and was for residential purposes. Further that it was part of the Agreement that 1<sup>st</sup> Defendant was to contribute 20% of any land 1<sup>st</sup> Defendant was financing. That Claimant contributed ₦160 Million on Plot 522 bought at ₦800 Million and ₦36 Million on Plot 520 purchase at ₦180 Million. That by the terms of offer given the Claimant by 1<sup>st</sup> Defendant, the financing fee was to be refunded through realization from sale from earlier financed Properties at Dape which sum Claimant had completely repaid and the sales from the two properties now being financed.

He stated that Claimant took possession of the land and submitted its plan to development control for approval and after processing and scrutinizing the building plans informed Claimant that the plans could not be approved because the use of the Plots was not for residential purpose. With regard to Plot 1750 Dape, stated that the Managing Director of the owner of the land submitted photocopy of title deed to 1<sup>st</sup> Defendant to conduct search and 1<sup>st</sup> Defendant's lawyers conducted search and turned in positive report but 1<sup>st</sup> Defendant collected fake certificate of occupancy from Kamba Engineering Co. Ltd. That little care would have shown that Right of Occupancy submitted was fake because it was different from the photocopy earlier submitted to 1<sup>st</sup> Defendant. Also stated the ₦300 Million 1<sup>st</sup> Defendant paid was to Kamba Investment Ltd, a different company, even though the file documents were in the name of Kamba Engineering Ltd.

He stated that Claimant was building on Plot 1750 Dape following the advise of Defendant when staff of development control came and demolished eleven duplexes, three bungalows on grounds that Claimant

trespass into the land of another. That they also demolished the parameter fence built round the Plot. He further stated the subscribers to the houses being constructed on Plot 1750 Dape became restive and Claimant complained to EFCC who arrested the Managing Director of Kamba Investment Ltd and some staff of 1<sup>st</sup> Defendant and they made Statements. He stated that result of investigation showed the land belongsto Kamba Engineering Ltd but 1<sup>st</sup> Defendant curiously and inexplicably paid the purchase of ₦300 Million to Kamba Investment Ltd. That 1<sup>st</sup> Defendant was grossly negligent in dealing with Kamba Investment Ltd when the land Propertiesbelong to Kamba Engineering Ltd.

The PW4 further testified that because of the enormous pressure on Claimant by subscribers, Claimant approached the actual owner of the land to purchase it directly from them and they agreed on ₦750 Million as new price and as at 2013 had paid over ₦40 Million to the actual owner from contribution by subscribers. That this sum ordinarily should have been used to pay off part ofthe sum used by 1<sup>st</sup> Defendant in financing Plots 520 and 522 Kukwaba.

He stated 1<sup>st</sup>Defendant is a bank that trades in money for it to finance the purchase ofthese parcels of land and had insisted on veritable cash flow projection to ascertain whether or not the transaction is viable or not and in that regard Claimant engaged the services of I.D. Kwatmak & Co, firm of Chartered Accountants and Management Consultants and the firm prepared cash flow projection for Dape Land which showed Claimant would have made profit of ₦2,053,628,000.48 on projects projected for Plot 1750Dape. That the firm also prepared cash flow projection for Plot 520

and 522 Kukwaba which showed that Claimant would have made profit of ₦1,070,334,000.53 on Plot 520 and ₦2,153,064,000.35 on Plot 522. That Claimant expended these sums on Plot 1750.

He also stated when the purchase of Plot 1750 Dape and 520, 522 Kukwaba fell through, subscribers and indeed the public felt betrayed and took Claimant as unserious, unreliable, fraudulent and a company which no decent human being should deal with and this exposed Claimant to public ridicules, embarrassment and odium and was reduced in its reputation and suffered loss and damages.

In the course of the testimony of the PW4, the following documents tendered and admitted in evidence.

- (1) Ecobank Letter , Statement of Account in respect of First Choice Properties Ltd dated 22/7/11, 8/6/12, 26/7/11, 26/7/11, copy of cheque dated 3/11/11 for N4 Million, A copy of Acknowledge by one Amina Hanola dated 18/9/15, Ecobank Statement of Account for the Claimant dated 1/8/11 - 2/3/12, 26/8/10 – 5/5/12, 01/9/12 -10/9/14, 01/9/12 – 10/9/14 and 26/3/2010 – 5/5/12 collectively as Exhibit "G".
- (2) The following letters under the letter head of First Choice Properties Ltd dated 20/12/12, 11/1/13, 15/1/13, 15/6/15 with attached documents including copies of cash receipts; 28/10/11 and 17/2/15; cash receipts No. 0429 dated 12/10/11 collectively as – Exhibit "H".

- (3) Letter from Law Forte (Legal Practitioners) Search Report dated 10/8/12, 16/8/12, 22/3/12, 8/8/12 collectively as Exhibit "I".
- (4) Two letters from Adekoya Aziz dated 1/2/13 with First Choice Properties Ltd cash receipt No. 0457 dated 8/2/12, 4/2/13 with a letter from First Choice Properties Ltd attached dated 28/2/12. A letter from Brodefe Network Ltd dated 10/10/17 with attached letter from First Choice Properties dated 19/10/17 and two other letters dated 23/10/17 and 26/10/17 collectively as Exhibit "K".
- (5) The following letters.
  - i. NNPC/Kaduna Refinery & Pet. Co Ltd dated 8/6/13 and attached letters dated 8/6/13, 8/6/12. 8/6/13.
  - ii. A letter from AFRIUM dated 28/1/2013.
  - iii. A copy of handwritten letter by Chief Executive of First Choice Properties Ltd dated 7/10/13.
  - iv. A letter dated 6/9/12 addressed to Managing Director First Choice Properties Ltd.
  - v. A letter dated 1/7/13 addressed to Managing Director First Choice Properties Ltd.
  - vi. A hand written letter dated 4/4/13 acknowledgment of the sum of ₦2.5 Million.
  - vii. A letter dated 12/3/13 addressed to Managing Director

First Choice Properties Ltd.

- viii. A letter from Adekoya Aziz dated 1/2/13 addressed to Managing Director First Choice Properties Ltd.
- ix. Hand written letter dated 16/2/2012 addressed to Managing Director First Choice Properties Ltd.
- x. A letter dated 4/2/13 from Augoye addressed to Managing Director First Choice Properties Ltd.
- xi. Letter dated 19/10/11 from Federal Ministry of Justice to Managing Director First Choice Properties Ltd.
- xii. A letter dated 14/5/12 from Ntroit Consulting addressed to Managing Director First Choice Properties Ltd.
- xiii. A letter dated 31/10/11 from Dakorim Boma Odunuga addressed to Managing Director First Choice Properties Ltd.
- xiv. Hand written letter (copy) dated 29/2/12 addressed to Managing Director First Choice Properties Ltd.
- xv. A letter dated 19/10/11 from Touch Smart Ltd to Managing Director First Choice Properties Ltd.
- xvi. A letter undated addressed to Managing Director First Choice Properties Ltd with attachments – Ecobank deposit slips and cash receipts from First Choice.

- xvii. A letter dated 6/12/11 to addressed to Managing Director First Choice Properties Ltd from Sunday Arowosegbe and attached First Choicecash receipts.
- xviii. A letter dated 1/7/13 addressed to Managing Director First Choice Properties Ltd with attached letter dated 24/10/11 Zenith Bank Plc cheque and acknowledgment
- ixx. Hand written letter dated 22/9/14 to Managing Director First Choice Properties Ltd by Sunny Umoren.
- xx. A letter dated 11/1/13 addressed to addressed to Managing Director First Choice Properties Ltd with attached cash receipts of First Choice Properties and letters dated 15/1/13.
- xxi. A letter dated 8/6/13 from Group Medical Services Division to Managing Director First Choice Properties Ltd.
- xxii. A letter dated 8/6/13 dated addressed to Managing Director First Choice Properties Ltd signed by Sule Abdulkadir with Zenith Bank Plc cheque dated 10/10/12.
- xxiii. A letter dated 12/3/12 addressed to Managing Director First Choice Properties Ltd signed Ajibike Tenola.
- xxiv. A letter dated 25/4/17 addressed to Managing Director First Choice Properties Ltd by Elvis Iyamu.
- xxv. A hand written letter dated 29/2/12 addressed to Managing Director First Choice Properties Ltd signed by

Ayalogu Cynthia.

- xxvi. A letter from Salisu Mohammed & Co dated 4/6/15 addressed to Managing Director First Choice Properties Ltd.
- xxvii. A letter dated 18/6/15 addressed to Managing Director First Choice Properties Ltd signed by Anthonia Uchendu.
- xxviii. A letter dated 6/9/13 addressed to Managing Director First Choice Properties Ltd.
- xxix. An acknowledgement receipt by Mohammed Bashiru Haruna for ₦2.5 Million dated 4/4/13.
- xxx. A Petition made to National Assembly (House of Representative) dated 19/10/17.
- xxxi. Invitation letter by the Police addressed to Engr. Emeka Okeke dated 3/1/17 and Chief Austin Arah.
- xxxii. Independent Corrupt Practices & Other Related Offences Commission (ICPC) letter dated 26/10/17 addressed to Managing Director First Choice Properties Ltd.
- xxxiii. EFCC letter dated 18/11/16 addressed to Managing Director First Choice Properties Ltd.
- xxxiv. ICPC letter dated 3/10/17 addressed to Managing Director First Choice Properties Ltd.
- xxxv. A letter dated 1/3/12 by First Choice Properties Ltd to

Nwachukwu Eze Chikadiba and the attached letter dated 11/1/13 and First Choice Properties cash receipt No. 0438 of 1/3/12, 0437, 0752 and another letter of First Choice Properties Ltd dated 11/1/13 to Barr Eze C. Nwachukwu.

xxxvi. Copies of Ecobank Cheques dated 26/4/12, 10/10/12, 18/9/15, 26/10/11, 18/9/15 collectively as Exhibit "L1 - 36".

6 Documents all letters collectively as Exhibit "M1 – 11".

Cross-examined by 1<sup>st</sup> Defendant and when shown Exhibit "G", he confirmed that Exhibit "G" regulates the transaction between Claimant and 1<sup>st</sup> Defendant was to conduct search and from Statement of account in Exhibit "G", has charged ₦2,250,000.00 legal search fee. He stated that Claimant did not conduct due diligence on the properties secured on the loan and did not engaged 2<sup>nd</sup> Defendant to conduct search. When shown Exhibit "I", confirmed Exhibit "I" was not addressed to Claimant. When Para 10 of Statement of Claim read to him and asked to show on Exhibit "G" where the Agreement stated the averment in Para 10, he stated that the item 13 of Exhibit "G" confirms the position. He stated that the title document was not provided by Claimant and did not know if it was defective. He further stated that the requirement that Claimant submit a cash flow projection was before the letter of offer was given and it was not stated in Exhibit "G". That no form of documentation from 1<sup>st</sup> Defendant that Claimant issued a cash flow projection. He confirmed that as at 1/8/14 Claimant was indebted to 1<sup>st</sup> Defendant to the tune of



N864,704,275.08 because for the 1<sup>st</sup> facility granted before the tenor of that facility, Claimant fully repaid the loan with interest before the 2<sup>nd</sup>/3<sup>rd</sup> facility and because of the problem of the land use could not make up and has not paid since 2013. He also confirmed the ₦2,250,000.00 as contained in Exhibit "G" was for legal fee including the search.

Under Re-examination, he stated that the 1<sup>st</sup> facility is that of ₦300 Million paid for Plot 1750 Dape and before the tenor of that facility Claimant repaid the loan with all interest and is same facility the owner submitted fake title document to 1<sup>st</sup> Defendant. That as at the time this was discovered, Claimant has started developing and all the development brought down by the development control. That because 1<sup>st</sup> Defendant was elated with the speed Claimant repaid the loan, they granted Claimant the 2<sup>nd</sup>/3<sup>rd</sup> facility. The 2<sup>nd</sup> facility being Plot 522 which is ₦460 Million and the 3<sup>rd</sup> facility is Plot 520 which is for ₦162 Million and are contained in the Exhibit "G".

Cross-examined by 2<sup>nd</sup> Defendant, he admitted as Real Estate Developer Claimant will not build on a land except it is convinced that the land is suitable for that purpose. He confirmed that the Exhibit "I" was not given to Claimant by 2<sup>nd</sup> Defendant, but applied for it orally from 1<sup>st</sup> Defendant. He stated that Claimant got building approval on Plot 1750 but for Plot 522 and 520 could not because the purpose of the land was not for housing.

He admitted under normal circumstance and as businessman before approaching 1<sup>st</sup> Defendant would have taken steps to ensure the land is good but in this case, 1<sup>st</sup> Defendant requested to meet the owner to carry out due diligence by themselves and 1<sup>st</sup> Defendant dealt with the owner

while Claimant was asked to take the back seat. He admitted the transaction for Plots 1750, 520 and 522, the Claimant was buyer while 1<sup>st</sup> Defendant, the financier and not co-buyer.

Chief Emeka Okeke, Executive Director/Project of Claimant also testified for Claimant as PW5 and adopted his Witness Statement on Oathsworn to on 8/7/19 as his evidence in this case. He stated 1<sup>st</sup> Defendant was to conduct due diligence as contained in Letter of Offer and Claimant paid for the service in the sum of ₦6 Million for each transaction as follows; ₦2,250,000 for legal services, ₦3 Million as Management fees and ₦750,000 for processing the loan and the fees debited to Claimant's account. Stated the duty of Claimant begins and ends with the introduction of the owner. That 1<sup>st</sup> Defendant, upon due diligence and satisfied that the collateral was genuine before it advanced the loan to Claimant. That Claimant only have to identify a prospective land for estate and introduce same to 1<sup>st</sup> Defendant who will them take over and secured all confirmation, processing and certification. He also told the court that customers and subscribers usually pay directly into Claimant's account with 1<sup>st</sup> Defendant, but when the buildings on Plot 1750 were demolished, they stopped paying and when the Urban and Regional Planning Department advised development control that Plot 520 and 522 were not for Housing Estate, Development Control stopped all construction work ongoing and the off takers stopped paying monies into the loan account with 1<sup>st</sup> Defendant and they began to demand the refund of the monies.

The Exhibit "N<sup>1 - 45</sup>" was in the course of the testimony of PW5 tendered and admitted in evidence.

Cross-examined by 1<sup>st</sup> Defendant, admitted the transaction between Claimant and 1<sup>st</sup> Defendant is regulated by written Agreement and under it the duties and obligations of each party clearly stated. He disagreed that under the Agreement, Claimant was required to produce satisfactory Search Report covering collateral for the loan. He admitted Claimant is not party to any transaction between 1<sup>st</sup> and 2<sup>nd</sup> Defendant and do not know 2<sup>nd</sup> Defendant.

Under Cross-examined by 2<sup>nd</sup> Defendant, he confirmed that Alhaji Kamba was introduced to 1<sup>st</sup> Defendant by Claimant but wrote to 1<sup>st</sup> Defendant when Claimant started having problems with Plot 1750. When shown Exhibit N<sup>11</sup>, stated the letter came after writing several letters to 1<sup>st</sup> Defendant. When shown Exhibit "G" and asked to read the conditions to draw down, he admitted all the things stated thereunder were to be given to 1<sup>st</sup> Defendant. He also confirmed no such Provision that 1<sup>st</sup> Defendant would appoint search agent in any of the documents. He also stated the Search Report by 2<sup>nd</sup> Defendant was never officially made available to Claimant and Claimant never saw it before the botched Sale Agreement.

At the close of the case of Claimant, the matter was adjourned for the Defendants to open their defence. On 4/3/2020, 1<sup>st</sup> Defendant open its defence by calling Ibrahim Bello, a business consultant and who worked with 1<sup>st</sup> Defendant as Account Manager for 8 years, who testified as DW1 and adopted his Witness Statement on Oath sworn to on 18/2/15 as his evidence in this case. He stated Claimant is a customer of 1<sup>st</sup> Defendant and maintains an account with it and in the course of banking relationship with 1<sup>st</sup> Defendant, applied for and was granted facilities – ₦300 Million in

2011 for purchase of Properties at Plot 1750 Dape, ₦162 Million in 2012 for purchase of Properties at Plot 520 Kukwaba and ₦640 Million in 2012 for purchase of Properties at Plot 522Kukwaba. Finally liquidated the N300 Million facility (City Homes 3) and applied for facility for purchase of Properties at Plot 520 and 522 Kukwaba and tendered title documents as security and further undertook to repay from proceeds from subscribers to city Homes 1 and 2 but discovered the title documents not genuine and therefore not valid security for the loans. That one of the conditions for the grant was for Claimant to offer genuine collateral security. That contrary to expectation the search undertaken by Defendant purely for its benefit and comfort showed the security offered was not genuine. Stated Claimant introduced Alhaji Kamba to 1<sup>st</sup> Defendant as managing Director of Kamba Engineering Ltd and further represented to 1<sup>st</sup> Defendant that Kamba Engineering was registered holder of the Certificate of Occupancy in respect of the Properties offered as security for the facility. He stated 1<sup>st</sup> Defendant was not negligent in its dealings with Claimant and that the appointment by 1<sup>st</sup> Defendant of private search agent was not intended to relieve Claimant of the obligation to title and that Claimant was not party to the contract between 1<sup>st</sup> Defendant and 1<sup>st</sup> Defendant's search agent. He stated that Kamba Investment Ltd was involved in the loan transaction by virtue of Power of Attorney made in its favour by Kamba Engineering Ltd and that it was Claimant that introduced both entities into the transaction by representation and through documents tendered to 1<sup>st</sup> Defendant. That although the loan in respect of City Homes 3 fully paid, the title document for City Homes 3 Claimant offered as security was discovered to be cloned

document. He stated Claimant is in arrears in repayment of the loan granted in respect of Plots 522 and 520.

He testified 2<sup>nd</sup> Defendant was agent of 1<sup>st</sup> Defendant only engaged to search and advise 1<sup>st</sup> Defendant on adequacy of title document tendered to 1<sup>st</sup> Defendant by Claimant. That 1<sup>st</sup> Defendant not by reason of any advice received by 1<sup>st</sup> Defendant from the search agent liable to Claimant for any defect in the title of Claimant to any security tendered. Further that the burden of ensuring that everything needed to secure both the title of Claimant to the Properties in respect of which Claimant obtained loan facility as well as ensuring legal adequacy and validity of collateral is squarely carried by Claimant and is not shared by 1<sup>st</sup> Defendant.

He further testified 1<sup>st</sup> Defendant owes no duty of care in any dispute between Claimant and its subscribers or Development Control or any other Government Agency. He stated Claimant did not purchase any Properties on the advice of 1<sup>st</sup> Defendant and 1<sup>st</sup> Defendant no way concerned with any event as between the Development Control and Claimant in relation to Plot 1750 and the demolition of the parameter fence round the Plot. That no issue regarding Plot 1750 ever arose save that 1<sup>st</sup> Defendant discovered it could not derive any comfort from the title document in respect of the Properties as security for later loan to Claimant because the title document was cloned and therefore invalid. That 1<sup>st</sup> Defendant had no hand in the matter between the Claimant and the actual owner of any of the properties offered by Claimant to 1<sup>st</sup> Defendant.

The DW1 further testified that 1<sup>st</sup> Defendant Knows nothing about any transaction between Claimant and I.D. Kwatmak & Co and is not bound by any of such transaction not being party to it and has no business with cash projection as contained. He further stated 1<sup>st</sup> Defendant accepts no liability for any event which occurs regarding Plot 520 and 522 Kakwaba for which Claimant tendered a cloned Certificate of Occupancy to 1<sup>st</sup> Defendant as security and claims full payment for the facility granted the Claimant. That the action of Claimant was brought in bad faith to prevent 1<sup>st</sup> Defendant from taking steps to enforce its rights of recovery against the Properties known as No. 40 Onikoyi Lane Park View Estate Extension Ikoyi, Lagos which Claimant tendered as security for the loan which Claimant failed to pay despite repeated demands.

In the course of the testimony of DW1, the following documents tendered and admitted in evidence.

1. Copy of Tripartite Mortgage Deed between First Choice Properties, Josph Olufemi Williams and Ecobank – Exhibit “O”.
2. Copy of Consent Letter of Mortgage dated 13/9/12 to the Manager Ecobank by Joseph Olufemi Williams – Exhibit “P”.
3. Copy of letter titled “Request for payment Proposal in respect of existing facilities with the Bank dated 14/10/13 by Claimant – Exhibit “Q”
4. Copy of letter titled “Re-Facility letter” dated 8/6/12 to Managing Director of Claimant by Ecobank – 1<sup>st</sup> Defendant – Exhibit “R”.

5. Copy of letter titled "Request for Credit Facility of ₦800,000,000 dated 4/4/12 – Exhibit "S".
6. Copy of letter dated 6/8/12 titled "Re: Term Loan Facility – Exhibit "T".
7. Copy of letter dated 4/7/12 titled :Irrevocable Repayment Commitment by the Claimant – Exhibit "U".
8. Copy of letter dated 4/7/12 titled "Irrevocable understanding by the Claimant – Exhibit "V".
9. Copy of Guarantee/Indemnity issued to 1<sup>st</sup> Defendant by Austin Arah – Exhibit "W".
10. Copy of consent letter of mortgage dated 12/9/11 to 1<sup>st</sup> Defendant by Joseph Olufemi Williams - Exhibit "X".
11. Copy of letter dated 9/10/13 titled "Re-Certificate of Occupancy 94/94 198910 dated 27/12/2989 issued by Registrar of Deeds, Lagos State – Exhibit "Y".
12. Copy of the letter dated 21/8/14 titled "Final Demand Notice – Outstanding Indebtedness to 1<sup>st</sup> Defendant to Managing Director of Claimant – Exhibit "Z".
13. Copy of irrevocable Power of Attorney given by Kamba Engineering Ltd to Kamba Investment Ltd dated 16/12/2010 – Exhibit "AA".

14. Copy of letter dated 28/9/2011 titled "Consent to Assign Plot 1750 Cadastral Zone CO4 Dape District – Exhibit "BB".
15. Copy of letter dated 5/8/2011 "Request for a Term loan of ₦300,000,000 (Three Hundred Million Naira only). Acceptance of facility from Claimant to the 1<sup>st</sup> Defendant – Exhibit "CC".
16. Copy of letter dated 20/6/14 titled "Without Prejudice" Demand letter on your indebtedness of ₦731,254.93 in respect of your term loan and lease finance facility as at June 16,2014 – Exhibit "DD".

Cross-examined by 2<sup>nd</sup> Defendant, he stated that it is correct if a bank instruct a lawyer to conduct a search, the Lawyer goes to AGIS to conduct the search to see if there is no encumbrance. He confirmed that the 1<sup>st</sup> Defendant has no complaint over its search in respect of Plot 1750 Dape, 522 and 520 Kukwaba and did not see anything wrong in the search result. He also stated that in a mortgage transaction, it is the customer who desire to obtain the loan facility that identifies the Properties, negotiates with the seller before approaching the bank to finance it.

Under Cross-examination by Claimant, the DW1 stated that it is customary when applying for loan facility the customer submits title document and every other document to the bank to enable it decide on whether or not to finance the transaction. And the bank must be satisfied of the genuineness of the documents by way of reviewing search report and valuation report of the Properties. That this is what 1<sup>st</sup> Defendant asked 2<sup>nd</sup> Defendant to



do for it. He admitted that the money paid to 2<sup>nd</sup> Defendant for the service was from Claimant's account. He stated that the 1<sup>st</sup> Defendant expects Claimant to have done its due diligence and that the Bank relies on the search conducted by their Lawyers and the customer but says he does not have anything of such from Claimant. He admitted that this is not the first loan transaction with Claimant. Stated in the first transaction, Claimant did not submit any search report but their Lawyers (Law Forte) in respect of the Properties. He stated that he cannot remember that the report in custody of 1<sup>st</sup> Defendant shows Plots 520 and 522 were for Housing Estate because it has been quite a while but believe that it complies with expectation of 1<sup>st</sup> Defendant. He admitted that before 1<sup>st</sup> Defendant gives out loan, must be satisfied that the project is viable and would be repaid.

On 22/5/2020, the 2<sup>nd</sup> Defendant opened his defence and in support of his defence and counter-claim, adopts his witness deposition on Oath sworn to on 24/2/2015 as his testimony in the case and testify as DW2. He testified that his law firm has never received instructions from Claimant or acted for her in any professional or personal capacity. That the instruction from 1<sup>st</sup> Defendant was to conduct land search at AGIS to verify the authenticity of Right of Occupancy and confirm if there is any registered charge/encumbrance which may render the Properties unsuitable as security for a proposed loan. That his firm conducted the search at AGIS in respect of Plot 1750 Dape granted to KambaEngineering Ltd and duly stamped and signed Search Report dated 10/8/11 obtained from AGIS formed the basis of his firms report and advice to 1<sup>st</sup> Defendant. Also conducted search in respect of Plot 522 and duly stamped and signed report dated 15/8/12

obtained and formed the basis of his report and advice to the Bank. Also on Plot 520 and duly stamped and signed report dated 9/8/12 obtained which formed the basis of his report and advice to 1<sup>st</sup> Defendant.

He stated that in consonance with the practice of AGIS, original copy of the title deeds were at different dates presented to the requisite officer for sighting who confirmed that they were authentic. Stated the said title documents were never handed over to his firm but were brought by staff of the 1<sup>st</sup> Defendant who presented same to AGIS officials for authentication in the presence of a lawyer from his firm. That after the authentication, AGIS accepted his application and later issued the firm duly stamped and signed search reports on the respective dates stated. That in preparing the Search Reports relied strictly on the content of the respective printed reports obtained from AGIS. He stated that his advice as contained in the reports sent to 1<sup>st</sup> Defendant was mainly targeted at advising 1<sup>st</sup> Defendant as to the suitability of using the properties as security and nothing more. Further that a person like Claimant who proposes to use a Properties as security for a loan she wishes to obtain from 1<sup>st</sup> Defendant is deemed to have done her due diligence before approaching 1<sup>st</sup> Defendant. That his report in respect of the properties was meant for sole confidential use of 1<sup>st</sup> Defendant and the advice therein contained not extended to any third party like Claimant. That he did not at any time act nor had contract with Claimant and owes her no fiduciary duty.

The following documents were tendered and received in evidence in the course of the testimony of the DW2.

1. Bundle of documents representing the credentials of the witness numbering Nine (9) all copies, the court having cited originals and released to him as Exhibit "EE<sup>1-9</sup>".
2. Three (3) receipts of payments made at AGIS for Legal Search No. 00009837C of 10/8/2011, 000127804 of 8/8/2012, 000127805 of 8/8/2012 as – Exhibit "FF<sup>1-3</sup>".
3. A letter dated 4/8/2014 addressed to Bank Manager of 1<sup>st</sup> Defendant by Claimant titled "Update on Our Transaction with your Bank as Exhibit "GG".
4. A letter dated 25/8/2014 titled "Issues on Land search conducted by the Firm by 1<sup>st</sup> Defendant to Law Forte as Exhibit "HH".
5. A letter dated 1/9/2014 addressed to the 1<sup>st</sup> Defendant by Law Forte titled "Issued on Land search conducted by your firm as Exhibit "II".

The DW2 (2<sup>nd</sup> Defendant) was not cross-examined by the 1<sup>st</sup> Defendant.

Under Cross-examination by Claimant, he stated their involvement is to ascertain whether title documents proposed as security for loan are genuine or not, but has nothing to do with the grant or refusal of the loan. He admitted that whenever they conduct search it relates to fulfillment of loan transaction. When shown Exhibit "G", he confirmed it is a condition to be fulfilled before a draw down by customer. He stated he did limit himself to the genuineness of the title document in his report that before search is

conducted, original of the document must be brought before AGIS can proceed to allow search, and that if AGIS did not confirm the genuineness of the documents, you cannot proceed to the next stage. Stated he stands by his report dated 10/8/2011 and report issued to him by AGIS. He admitted he did not enter Urban and Regional Planning Department to know the use of the land before writing his report because 1<sup>st</sup> Defendant did not instruct him and that he carried out instruction of 1<sup>st</sup> Defendant. He also admitted that where Claimant have issues about the transaction, will be right for them to write 1<sup>st</sup> Defendant for clarification.

At the close of trial, the matter was adjourned for the adoption of Final Written Addresses. On 19/11/2020, the parties adopted their respective Written Addresses.

In the Final Written Address of 1<sup>st</sup> Defendant filed with leave of court on 13/7/2020 and settled by Kehinde Aina, a sole issue was raised for determination;

“Whether the Plaintiff has established on the preponderance of evidence led before this Hon. Court that it is entitled to the reliefs sought in its Statement of Claim”.

In the Final Written Address of 2<sup>nd</sup> Defendant, Mazi Afam Osigwe (SAN) of counsel raised three (3) issues for determination as follows:-

- (1) Does the 2<sup>nd</sup> Defendant/Counter-Claimant owe the Claimant any duty of care in the circumstances of this Suit.

- (2) Assuming without conceding that the 2<sup>nd</sup> Defendant/Counter-Claimant owes the Claimant any duty of care in the circumstances of this Suit, has Claimant proved that 2<sup>nd</sup> Defendant/Counter-Claimant is in breach of any such duty of care.
- (3) Has 2<sup>nd</sup> Defendant/Counter-Claimant sufficiently proved that, that he has suffered injury and damage to his reputation as a result of the Statements made concerning him in the Claimant's letter dated August 4, 2014 (Exhibit "GG").

In the Final Written Address of Claimant Counsel for Claimant, A.O. Maduabuchi (SAN) submitted two (2) issues for determination on the main claim namely;

1. Whether the Claimant has proved that the Defendants owe it a duty of care and whether that duty has been breached.
2. Whether the Claimant has proved damages.

I have given an insightful consideration to the pleadings as well as the testimonial and documentary evidence and the written submissions of learned counsel for the parties and find that two (2) issues calls for determination and that is;

1. Whether or not the Claimant has established a case of Negligence against the Defendants and entitled to the grant of the reliefs sought in its Amended Statement of Claim.

2. Whether or not the 2<sup>nd</sup> Defendant/Counter-Claimant has made out a case entitling him to the reliefs sought in his counter-claim.

These issues encompasses all the issues distilled for determination by learned counsel in their respective written submissions.

On issue 1, Negligence in law means the failure to exercise the standard of care that a reasonably prudent person, would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harms. See the case of Diamond Bank Ltd Vs Partnership Investment Company Ltd & Anor (2009) LPELR -393 (SC). And for a Claimant to succeed in an action for negligence must prove;

1. That the Defendant owed him duty of care.
2. That the Defendant failed to exercise due care.
3. That the Defendant's failure to exercise due care caused him injury or damages. See the case of Okwejiminor Vs Gbakeji (2008) 5 NWLR PT 1079 172 at 176 – 177 (SC).

It is also the position that negligence is a question of fact and not law. Therefore each case must be determined in the light of the facts pleaded and proved. See Diamond Bank Ltd Vs Partnership Investment Company Ltd (Supra) at 74.

In the determination of this issue, consideration shall be given to the properties in issue, that is Plots 1750 Dape and 520 and 522 Kukwaba,

which are the basis of complaint of negligence on the part of Defendant by Claimant.

In respect of Plot 1750 Dape, the evidence of Claimant in brief through the PW4 and PW5 is that by the Agreement between Claimant and 1<sup>st</sup> Defendant, that is, the Exhibit "G", Claimant as part of the conditions was to submit the original title document of the Properties to 1<sup>st</sup> Defendant for due diligence. That 1<sup>st</sup> Defendant had instructed 2<sup>nd</sup> Defendant to carry out search and on 10/8/2011 2<sup>nd</sup> Defendant did carry out search and turned in report and confirmed that the Properties is free of any encumbrance. That upon the report and satisfying itself, 1<sup>st</sup> Defendant now dealt with Alhaji Kamba, the owner and requested him to deposit the original title document with it and thereafter transferred ₦300 Million to Kamba Investment Ltd. That the title document collected from Alhaji Kamba turned out to be cloned documents. That 1<sup>st</sup> Defendant was negligent in its dealings with Alhaji Kamba, that little care would have shown to 1<sup>st</sup> Defendant that the title document submitted to it was cloned document because it was different from the photocopy earlier submitted to 1<sup>st</sup> Defendant. Stated the duty of Claimant begins and ends with the introduction of the owner of the Properties. That 1<sup>st</sup> Defendant, upon due diligence and satisfied that the collateral was genuine, advance loan to Claimant. That Claimant only have to identify a prospective land and introduce same to 1<sup>st</sup> Defendant who will then take over and secure all confirmation.

The 1<sup>st</sup> Defendant, in its evidence, in brief, had stated part of the condition for the grant of the loan facility was for Claimant to offer genuine collateral

security in line with the Agreement, that is Exhibit "G". That the search carried out by 1<sup>st</sup> Defendant through its agent, the 2<sup>nd</sup> Defendant, purely for its benefit and comfort showed that the security offered was not genuine. Stated, 1<sup>st</sup> Defendant was not negligent in its dealings with Claimant and that the appointment by 1<sup>st</sup> Defendant of private search agent was not intended to relieve Claimant of the obligation to title and Claimant was not party to the Agreement or contract between 1<sup>st</sup> Defendant and its search agent. That 1<sup>st</sup> Defendant, by reason of any advice received from the search agent, is not liable to Claimant for any defect in title of Claimant to any security offered as the burden of ensuring that everything needed to secure both the title of Claimant to the Properties in respect of which Claimant obtained loan facility as well as ensuring legal adequacy and validity of collateral is squarely on Claimant and is not shared by 1<sup>st</sup> Defendant.

The 2<sup>nd</sup> Defendant on its part had testified he never received instructions or acted for Claimant. That the instructions he had was from 1<sup>st</sup> Defendant to conduct search at AGIS to verify the authenticity of the land document and confirm if there is any encumbrance. That he conducted search in respect of Plot 1750 Dape and a Search Report dated 10/8/2011 obtained from AGIS formed the basis of his report and advice to 1<sup>st</sup> Defendant. Also conducted search in respect of Plot 522 and 520 Kukwaba and search reports dated 15/8/12 and 9/8/12 obtained from AGIS and formed the basis of his report and advice to 1<sup>st</sup> Defendant. Stated that in line with the practice at AGIS, the original copies of the title deeds were at different dates presented to AGIS for sighting and were confirmed authentic. Stated



the title documents were never handed over to his firm but were brought to AGIS by staff of 1<sup>st</sup> Defendant who presented them to officials of AGIS for authentication in the presence of a lawyer from his firm.

From the testimonies of the Claimant and 1<sup>st</sup> Defendant, parties are in Agreement as to one issue and that is, that the relationship between the Claimant and 1<sup>st</sup> Defendant is governed by an Agreement, that is the Exhibit "G" which is the Letter of Offer. I have looked at the said Exhibit "G". By clause 32 of the said Exhibit "G", part of the conditions for the loan facility was for the Claimant to submit original title document and a satisfactory land search on same. See also the clause 15 of the Exhibit "G". However, this was not the case. The Claimant in evidence stated they introduced Alhaji Kamba, the alter ego of the owner of the Properties in the name of Kamba Engineering Ltd and 1<sup>st</sup> Defendant then dealt with the said Alhaji Kamba directly and carried out due diligence on the Properties themselves through the DW2. This evidence of Claimant was corroborated by the testimony of the DW2. It is also in evidence that it was 1<sup>st</sup> Defendant that collected the original title document from the said Alhaji Kamba. This was also corroborated by the DW2 in his evidence when he stated that he was never given the title document, rather it was the staff of the 1<sup>st</sup> Defendant who brought it to him at AGIS. It was also the testimony of the DW2 that the requisite officer at AGIS confirmed the documents as genuine after sighting and that is why he could carry out the search because if a document upon sighting is not genuine you will not be allowed to proceed to the next stage in AGIS and it is all of these that formed the basis of his search on the instruction of the 1<sup>st</sup> Defendant and the reports he turned

out in his Exhibit "II". In the view of court, this obviously informed the decision of 1<sup>st</sup> Defendant to grant the loan facility as Claimant is taken to have fulfilled the condition to draw down.

The question here is; how come a title document that was adjudged valid for the security of the loan now turned out to be a cloned or fake document. In the view of court, this poser can best be answered as between the 1<sup>st</sup> Defendant and Alhaji Kamba who gave the title document to the 1<sup>st</sup> Defendant. The argument of 1<sup>st</sup> Defendant that, it is the Claimant that has the responsibility to provide valid title document is not tenable in the circumstance. The 1<sup>st</sup> Defendant cannot turned around to contend that it was the Claimant that has the responsibility and duty to provide valid title document under the Agreement when the whole issue has turned soar, because she cannot approbate and reprobate.

It is expected of the 1<sup>st</sup> Defendant that in his dealing with Alhaji Kamba on behalf of Claimant ought to have exercised a high degree of care to avoid any damage that may cause Claimant in the absence of exercise of due care, because in the circumstance owes Claimant duty of care. Unfortunately, the 1<sup>st</sup> Defendant, in the view of court, did not. What is more, the Claimant has also in evidence stated that the title document the 1<sup>st</sup> Defendant collected from Alhaji Kamba is not same document as the photocopy earlier submitted to 1<sup>st</sup> Defendant by Alhaji Kamba. That little care on the part of 1<sup>st</sup> Defendant would have revealed to 1<sup>st</sup> Defendant that the document is not genuine.

The 1<sup>st</sup> Defendant in dealing with the said Alhaji Kamba on behalf of Claimant owes the Claimant duty of care to avoid any damage his dealings with Alhaji Kamba may cause the Claimant. This, however, was not the case, as proper care was not exercised and therefore caused the Claimant great loss.

Regarding the Plot 520 and 522 Kukwaba, it is the evidence of Claimant through the PW4 and PW5 that the search conducted by 2<sup>nd</sup> Defendant at AGIS on the instruction of the 1<sup>st</sup> Defendant, turned in reports that Plots 520 and 522 Kukwaba was free of any encumbrance and is for residential purpose, that is the Exhibit "FF<sup>1-3</sup>" of the DW2, whereas the land is green area, and mainly for parks and recreation and this informed the reason why the development control did not approve the building plans of the Claimant. These pieces of evidence of Claimant was corroborated by the evidence of the PW3, staff of FCDA in the department of Urban and Regional Planning. Curiously, the 1<sup>st</sup> Defendant through the DW1 in evidence stated that they have no complain or find fault over the Search Report on Plot 520 and 522 Kukwaba turned out by the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant also in his evidence stated the search report conducted on Plots 520 and 522 Kukwaba and the reports turned out are in order and said he stands by the reports. Quere:- if these Statements by 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant are correct, why then did the Development Control reject the building plans submitted by the Claimant on the ground that the land is a green area meant for Parks and Recreation and not for residential purpose? The simple logical answer to this poser is that the search reports, that is the Exhibit "FF<sup>1-3</sup>" of the DW2 on the use of the land could

not be correct. This view is further buttressed by the fact that it is the Urban and Regional Planning Department of FCDA, the custodian of the Abuja Master Plan, that authenticates the use of lands in the FCT. Interestingly, this fact is well acknowledged by the 1<sup>st</sup> Defendant in the Exhibit "R" of the DW1; Letter of Offer. See also the Exhibit "G" of the PW4, Para 31 thereof. However, the instruction to 2<sup>nd</sup> Defendant by 1<sup>st</sup> Defendant was to go to AGIS. This was corroborated by the evidence of the DW2 who stated he never visited the Urban and Regional Planning Department because he followed his client's instruction. This goes to show negligence on the parts of the Defendants. However, on this, it is the 1<sup>st</sup> Defendant who should be vicariously liable for the negligence of the 2<sup>nd</sup> Defendant because the 2<sup>nd</sup> Defendant was acting as an agent of the 1<sup>st</sup> Defendant. It is the law that a disclosed principal must be held liable for the act of its agent. See the case of UBA Plc Vs Ogundokun (2009) 6 NWLR PT 1138, 450 at 456. See also Danjuma Vs S.C.C. (2018) ALL FWLR PT. 959, 1148.

From all of these, the issue 1 for determination is answered in the affirmative.

On the issue 2, whether or not 2<sup>nd</sup> Defendant/Counter-Claimant has made out a case entitling him to the reliefs sought in his counter-claim. It is a cardinal principle of law that a counter-claim is entirely a different and independent action from the main claim. See O.O.M.F. Ltd Vs NACB Ltd (2008) 11 NWLR PT. 1098, 412. See also Atiba Iyalamu Savings & Loans Ltd Vs Suberu (2019) ALL FWLR PT.1008, 949 (SC). And to succeed in the counter-claim, the onus is on the Counter-Claimant to discharge the

burden of proof in his counter-claim. In other words, he must prove his case.

In this instant, it is the evidence of the DW2 that his attention was drawn to a letter dated 25/8/2014 discovered to be written by Claimant wherein his law firm, Law Forte, was substantially accused of making representation to Claimant and misleading her into going on the transactions, subject matter of this Suit, with 1<sup>st</sup> Defendant. In the said letter, Claimant insinuated professional incompetence on the part of his firm in carrying out the search. That he made detailed response to 1<sup>st</sup> Defendant and requested for copy. Stated he never received instructions from Claimant or acted for her. That the instructions received from 1<sup>st</sup> Defendant was to conduct land search at AGIS to verify authenticity of title document and confirm if there is any encumbrance. That he conducted searches on Plot 1750 Dape, 520 and 522 Kukwaba which form the basis of his report and advice to 1<sup>st</sup> Defendant. That the reports are meant for sole confidential use of 1<sup>st</sup> Defendant and do not extend to any 3<sup>rd</sup> party like Claimant. He stated that the said letter was circulated to different units/departments of 1<sup>st</sup> Defendant and read by several staff of 1<sup>st</sup> department and was subject of discussions, meetings and inquiry by 1<sup>st</sup> Defendant. That by the ordinary and natural meaning of the words used means he is negligent and incompetent lawyer and his incompetent and negligent actions caused her huge financial loss. Stated the allegation against his firm was actuated by malice and bad faith with intention of doing maximum and irreparable damage to his firm's reputation and had suffered irreparable damage to his

reputation and practice. Further that the letter exposed him to hatred, contempt, ridicule and injury in his profession and business.

The Claimant in his evidence through the PW5 stated the letter was written in good faith and without malice and under privileged circumstances to 1<sup>st</sup> defendant and in furtherance of banker/customer relationship. That if the letter was circulated to any unit/department, it was in the ordinary course of business of 1<sup>st</sup> Defendant and was sent to persons who ordinarily must see the letter in official capacity. Stated the portion quoted by 2<sup>nd</sup> Defendant counter-Claimant did not say anything negative about him nor did it contain any insinuation regarding his professional competency. That in any event was written in privileged circumstances and substantially true in fact and effect. He stated Law Forte is firm of lawyers and if anything was said regarding Law Forte is not to any individual working in the firm or any one carrying on business under the name and style. Stated the letter was sent to 1<sup>st</sup> Defendant and not published. That Claimant only wrote the letter to 1<sup>st</sup> Defendant on how the Development Control would not allow them to work on the land because it was not for housing as contained in the Search Report of Law Forte.

In this instant case, 2<sup>nd</sup> Defendant/Counter-claimant seek the reliefs as contained in his counter-claim on alleged defamation of his charters by Claimant on the basis of a letter Claimant wrote to 1<sup>st</sup> Defendant, that is the Exhibit "GG" of the DW2.

Defamation, generally is any imputation which tends to lower a person in the estimation of right thinking men or caused him to be shunned or

avoided or expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business. See *Sun Publishing Co Ltd & Ors Vs Dumba* (2019) LPELR – 46935 (CA). And defamation could either be libel and slander. Libel is defamation in permanent form mostly in written form, whereas slander is expressed through speech. See *Olaniyi Vs Elero* (2006) LPELR – 5237 (CA).

To succeed in an action for defamation, the Claimant must prove the following-

1. Publication of the offending words.
2. The words complained of refer to the Claimant.
3. The words are defamatory to the Claimant.
4. Publication to third parties.
5. Falsity or lack of accuracy of the words complained of;
6. There are no justifiable legal grounds for the publication of the words.

See *Federal Mortgage Bank of Nigeria Vs Adesokan* (2000) 11 NWLR PT 677 108 at 124 – 25. See also *Akiti Vs Punch (Nig) Ltd* (2009) 11 NWLR PT 296 Para 2 – 8. The question here is; whether the 2<sup>nd</sup> Defendant/Counter-Claimant has from the facts and evidence proved these requirements or ingredients to succeed in his action for defamation? My answer is a clear No. First, there is no falsity or lack of accuracy in the words complained of by the 2<sup>nd</sup> Defendant/Counter-Claimant as the words are a true representation of the said reports on Plots 1750 Dape, 520 and

522Kukwaba. Again, there are every justifiable reason for Claimant to write the said letter to 1<sup>st</sup> Defendant regarding the problems, Claimant encountered in respect of the properties. This view was even admitted by 2<sup>nd</sup> Defendant/Counter-Claimant in evidence where he stated that where Claimant have issues about the transaction will be right to write to 1<sup>st</sup> Defendant for clarification. Therefore, the issue 2 formulated for determination is answered in the negative.

Now to the reliefs

On relief 1, the basis of this relief is the Exhibit "A" of the Claimant, the cash flow projection for Plot 1750 Dape prepared by I.D. Kwatmak & Co for Claimant indicating what Claimant would have made as profit from the Plot 1750 Dape. Although the 1<sup>st</sup> Defendant disclaimed the said Exhibit "A" and contend in evidence that he knew nothing about it and was not part of it, the said Exhibit "A" was corroborated by the evidence of the PW1 and therefore found it to be proved. It is on the basis I grant the relief.

On the relief 2, it is also based on the Exhibit "C" of Claimant and it is corroborated by the evidence of the PW1 and also found to be proved. It is also granted.

On relief 3, there is no documentary evidence in proof of this relief. It is hereby refused.

On relief 4, it is based on the Exhibit "B" of Claimant which is corroborated by the evidence of the PW1 and found to be proved. It is hereby granted.



On relief 5, 6, 7 8,9 there are no documentary evidence in proof of these reliefs neither are they corroborated by evidence of witnesses. It is on this basis I refused the grant of these reliefs.

On the claim for ₦1,502,767,599 as general damages. General damages are damages the law presume to be the consequence of the act complained of and unlike special damages, a Claimant for general damages does not need to specifically pleaded and prove it by evidence. It suffices if the facts thereof are generally averred. See the case of EFCC Vs Inuwa (2014) LPELR -2359 (CA). I shall therefore exercise my discretion in this regard.

In conclusion judgment is hereby entered as follows in favour of the Claimant.

1. It is ordered that the 1<sup>st</sup> Defendant pay to the Claimant the sum of ₦2,053,628,000.48 as loss of earnings on the Plot 1750 Dape which the Claimant could not buy owing to the negligence of the 1<sup>st</sup> Defendant.
2. It is also order that the 1<sup>st</sup> Defendant pay to the Claimant the sum of ₦1,070,334,000.53 as loss of earning on Plot 520 Kukwaba which the Claimant could not purchase owing to the negligence of the 1<sup>st</sup> Defendant.
3. It is also order that the 1<sup>st</sup> Defendant pay to the Claimant the sum of ₦2,153,064,000.35 as loss of earnings on Plot 522 Kukwaba.

4. The 1<sup>st</sup> Defendant is also hereby ordered to pay the sum of ₦900,000,000 as general damages to the Claimant.

5. All the reliefs sought in the 2<sup>nd</sup> Defendant/Counter-Claimant in the counter-claim fails and are hereby dismissed. The counter-claim also dismissed.

This is the Judgment of the court.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

19/2/2021

**APPEARANCE:**

OBA MADUABUCHI (SAN) WITH CHIJOKE DIKE ESQ – FOR THE CLAIMANT/DEFENDANT TO COUNTER-CLAIM

CHIAMAKA OBIADI – FOR THE 1<sup>ST</sup> DEFENDANT.

AFAM OSIGWE (SAN) – FOR THE 2<sup>ND</sup> DEFENDANT/COUNTER-CLAIMANT

