

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT APO, ABUJA**

**ON WEDNESDAY, 23<sup>RD</sup> DAY OF JUNE, 2021**


**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/0497/2018**

**BETWEEN**

**ABUJA LEASING COMPANY LIMITED     ---     CLAIMANT**

**AND**

<p><b>1. OJETUNDE AKINTONU MAYOWA</b></p> <p><b>2. MAURICE EBERE</b></p> <p><b>3. DR. OJETUNDE BOLANLE ANIKE</b></p> <p><b>4. ADAMS CLEMENT</b></p>		<p><b>DEFENDANTS</b></p>
---	--	--------------------------

**JUDGMENT**

Claimant instituted this action on 16/2/2018; its claim against the defendants was the liquidated sum of N16,375,000. The writ of summons was supported with an affidavit deposed to by Stanley Amachi, a staff of the claimant. I entered the suit for hearing in the Undefended List. On 9/5/2018, defendants filed a notice of intention to defend the suit supported with the affidavit of the 1<sup>st</sup> defendant; these processes were deemed as properly filed and served by Order of the Court granted on 28/2/2019.

When the matter came up for hearing in the Undefended List on 28/2/2019, the Court considered the affidavits of the parties and held that the defendants disclosed triable issues in their affidavit to warrant the transfer of the suit to the general cause list. Accordingly, the Court granted leave to the defendants to defend the suit. The Court directed the parties to file their pleadings.

The claimant's statement of claim was filed on 8/3/2019. The defendants' joint statement of defence was filed on 27/3/2019. On 19/3/2020, the 1<sup>st</sup> defendant filed his "*Statement of Counter Claim*". On 17/6/2020, the claimant filed its defence to the counter claim.

The claims of the claimant against the defendants are:

1. The sum of N16,375,000 being the outstanding debt [loan] owed by the defendants.
2. 10% post judgment interest.
3. N10,000,000 as general damages against the defendants jointly and severally.
4. The sum of N2,000,000 as cost of action.

The 1<sup>st</sup> defendant's counter claims against the claimant are:

1. The sum of N7,000,000 being the balance due to him from the sales of his Hyundai Sante FE SUV 2015 edition.

2. Interest at the rate of 21% per annum from 2018 till judgment.
3. And thereafter 15% per annum on the judgment sum till liquidation thereof.

At the trial, Stanley Amachi testified as PW1. He adopted his statement on oath filed on 8/3/2019 and tendered Exhibits 1, 2, 3A-3E, 4A-4C, 5A-5C & 6. During the cross examination of PW1, the defence counsel tendered Exhibit 7 through him.

The 1<sup>st</sup> defendant gave evidence as DW1. He adopted his statement on oath filed on 27/3/2019 and tendered Exhibits 8, 9, 10, 11A-11H, 12 & 13. In the course of cross examination of DW1, the claimant's counsel tendered Exhibit 14 through him.

**Evidence of the Plaintiff:**

The evidence of PW1 is that the claimant is an alternative financial services company and is also into leasing. In January 2017, the 1<sup>st</sup> defendant applied to the claimant for a loan of N9,000,000. On 24/1/2017, the claimant granted a loan facility of N9,000,000 to the 1<sup>st</sup> defendant. The tenor of the loan was for a period of 6 months [i.e. 180 days] from the date of the grant of the facility with an interest of 10% per month and the facility shall be secured by the submission of 6 post-dated cheques by the 1<sup>st</sup> defendant. The terms and conditions for the facility stated in the Offer Letter included:

- i. A deduction of N270,000 which was 3% of the loan sum at the point of disbursement.
- ii. Personal Guarantee Forms signed by the 2<sup>nd</sup>, 3<sup>rd</sup>& 4<sup>th</sup> defendants [supported by their comfort cheques].
- iii. Execution of right of entry and express authority to repossess collateral[s] in the event of default.
- iv. Title documents and bill of sale on 2 vehicles in favour of claimant.
- v. The 1<sup>st</sup> defendant shall pay the claimant a penalty fee of 5% flat per week on any debt payment delayed for any reason whatsoever.
- vi. Where the client [i.e. the 1<sup>st</sup> defendant] defaults in the payment of debt for one month period, the claimant shall be entitled to repossess the collateral asset[s] without notice.

The 1<sup>st</sup> defendant accepted the offer and submitted post-dated cheques to the claimant as part of the requirements for the loan. The 2<sup>nd</sup>, 3<sup>rd</sup>& 4<sup>th</sup> defendants signed as guarantors and guaranteed that they will personally pay the loan if the 1<sup>st</sup> defendant defaults. The 2<sup>nd</sup>, 3<sup>rd</sup>& 4<sup>th</sup> defendants also issued post-dated cheques to the claimant to show their commitment to liquidate the loan if the 1<sup>st</sup> defendant defaults. The 1<sup>st</sup> defendant was meant to pay N1,650,000 per month for the 6 months duration of the loan but he only paid N1,700,000 out of his total liability to the claimant and defaulted in paying the outstanding balance.

PW1 further stated that at the end of the 6 months duration of the loan, claimant presented the post-dated cheques issued to it by 1<sup>st</sup> defendant but all the cheques were dishonoured by his bankers. The claimant wrote several letters to all the defendants demanding the repayment of the loan but there was no positive response from them. The total outstanding debt owed by the defendants is N16,375,000, which includes principal sum and interest. The claimant paid its counsel the sum of N2,000,000 to institute this case.

PW1 tendered these documents in support of the claimant's case:

- i. Offer Letter for Trade Finance Facility dated 24/1/2017 from the claimant to the 1<sup>st</sup> defendant: Exhibit 1.
- ii. The Certificate of Incorporation of the claimant dated 30/3/2005: Exhibit 2.
- iii. 5 Receipts issued by the claimant to the 1<sup>st</sup> defendant: Exhibits 3A, 3B, 3C, 3D & 3E respectively.
- iv. 3 Letters of Personal Guarantee all dated 19/1/2017 signed by the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> defendants: Exhibits 4A, 4B & 4C respectively.
- v. 3 Cheques all dated 31/5/2017 respectively issued by the 4<sup>th</sup>, 3<sup>rd</sup> & 2<sup>nd</sup> defendants, each for N4,200,148.49: Exhibits 5A, 5B & 5C.
- vi. Letter dated 23/11/2018 from Wellspring Chambers on behalf of the 2<sup>nd</sup> defendant to the managing director of the claimant: Exhibit 6.

During cross examination of PW1, he stated that 10% of the principal sum of N9,000,000 is N900,000 per month. The interest for 6 months is N5,400,000. 5% of N9,000,000 per week is N450,000. The Counter Affidavit of the PW1 [Stanley Amachi] filed on 7/3/2018 at the Federal High Court, Abuja Division in *Suit No. FHC/ABJ/CS/117/2018:Mr.OjetundeAkintomiMayowa v. Inspector General of Police & 3 Ors.* was tendered as Exhibit 7. The questions by the cross examiner based on Exhibit 7 and the answers by PW1 are:

Q: *In that Affidavit you said the claimant [as the 3<sup>rd</sup> respondent] took the 1<sup>st</sup> defendant's vehicle in satisfaction of the loan. Did the claimant take the vehicle.*

A: *The guarantors [2<sup>nd</sup>-4<sup>th</sup> defendants] brought the vehicle to our company premises after notices were served on them. The car was brought with the consent of the 1<sup>st</sup> defendant and he drove the car to our premises.*

Q: *In other words, you are in possession of the vehicle.*

A: *The claimant took the car to the Police in a report we made about dud cheques. We took the car to the Police telling them that it is the car the guarantors brought to us.*

Q: *Look at Exhibit 1 and read the paragraph marked default. Is the vehicle still with the Police.*

A: *The Legal Department of the claimant will be in a position to answer that question. For me, I do not know.*

### *Evidence of the Defendants:*

In his evidence, 1<sup>st</sup> defendant stated that he applied for a credit facility from the claimant to enable him upgrade his business facilities i.e. Body Mechanics Physiotherapy Centre. He accepted the claimant's offer letter dated 24/1/2017. On 27/1/2017, the sum of N8,725,000 was transferred to his account; N270,000 and N5,000 were deducted from N9,000,000 as processing and application form fees. By the offer letter, the life span of the facility was 6 months, which started on 27/1/2017 to terminate on 27/7/2017. At the time the claimant repudiated the contract, the loan was still running.

He deposited his Hyundai Santa Fe Jeep [2014 Model] and 6 blank cheque leaves with the claimant as requested to secure the loan. The agreement for the loan contains a default clause. When he realised that the contract was unconscionable and calculated to stifle his business, he approached claimant to vary the contract terms; they were varied in terms of repayment on the principal debt and the interest rate. He was then asked to pay 5% interest instead of 10%. He has been servicing the loan; he repaid a total of N1,700,000 to the claimant in liquidation of the loan facility. The amount outstanding is about N7,300,000; not N16,375,000 as claimed by the claimant.

The 1<sup>st</sup> defendant further testified that in June 2017, the claimant in company of some men barged into his office and took away his Hyundai Santa Fe Jeep [2014 Model] which was used as the collateral for the loan even while the contract was still running. It has been about 1 year since claimant repossessed

the collateral. The claimant sold same without his concurrence and refused to settle accounts. The claimant has not notified him of the amount realised from the said vehicle and how much is due him as balance. The current cost of the said vehicle as at 22/1/2018 is over N17,000,000. The amount realised from the sale of the vehicle will be enough to offset the amount outstanding on the loan *“with any huge amount standing as balance.”* They [the defendants] are not indebted to the claimant to the tune of N16,375,000.

The 1<sup>st</sup> defendant tendered the following documents:

- i. Offer Letter for Trade Finance Facility dated 24/1/2017 from the claimant to him: Exhibit 8.
- ii. The Proforma Invoice dated 1/22/2018 from Hyundai Motors Nigeria Limited to Body Mechanics Physiotherapy and Wellness Centre: Exhibit 9.
- iii. Service Invoice dated 11/5/2017 from Hyundai to Body Mechanics Physiotherapy and Wellness Centre: Exhibit 10.
- iv. 8 cheques: Exhibits 11A, 11B, 11C, 11D, 11E, 11F, 11G & 11H respectively.
- v. Letter dated 3/9/2014 from Diamond Bank Plc. to the managing director of Body Mechanics Physiotherapy and Wellness Centre together with the attached documents: Exhibit 12.
- vi. Statement of account issued to the 1<sup>st</sup> defendant: Exhibit 13.



When the 1<sup>st</sup> defendant was cross examined, the Judgment of the Federal High Court [Coram: *His Lordship, Hon. Justice J. T. Tsoho, as he then was*] in *Suit No. FHC/ABJ/CS/117/2018:Mr.OjetundeAkintomiMayowa v. InspectorGeneral of Police & 3 Ors.* dated 14/12/2018 was tendered as Exhibit 14. DW1 admitted that from paragraph 8 at page 18 of the Judgment [Exhibit 14], he stated that his guarantors dispossessed him of the vehicle. DW1 stated that the Proforma Invoice [Exhibit 9] is the valuation report of the vehicle as at the date he collected the Invoice. The value of the vehicle he bought in 2014 appreciated in 2018 because as at the date he was dispossessed of the vehicle, it had done only 56,000 miles and it was serviced regularly.

**Issues for determination:**

When trial concluded, Anthony AyaoguEsq. filed defendants' final address on 22/1/2021. I. E. UzuegbuEsq. filed claimant's final address on 29/1/2021. On 10/3/2021, Anthony AyaoguEsq. filed the defendants' reply on points of law. On 10/3/2021, Mr.Ayaogu adopted the defendants' final addresses while ChristabelAyukEsq. adopted the claimant's final address.

Anthony AyaoguEsq. formulated two issues for determination, namely:

1. Having regard to the totality of the evidence that has been placed before the Honourable Court in this proceedings, have the claimants proved that they are entitled howsoever to the reliefs sought by them against the defendants as set out in the statement of claim?

2. Considering the admitted facts of receiving the sum of N1,700,000.00 from the 1<sup>st</sup> defendant and the repossession of the Hyundai Sante Fe 2015 Model belonging to 1<sup>st</sup> defendant valued at over N17,000,000.00, vis a vis the amount claimed by the claimant in their statement of claim, can it be rightly said that the 1<sup>st</sup> defendant has not discharged his obligation under the loan agreement as it were?

On the other hand, I. E. UzuegbuEsq. posed one issue for determination, which is:

Whether the claimant has established or proved its claims/reliefs as contained in the pleadings.

In the light of the evidence adduced by the parties, the Court is of the opinion that there are three issues for determination. These are:

1. Whether the claimant has established that the defendants are indebted to it on account of the loan facility it granted to the 1<sup>st</sup> defendant.
2. Whether the claimant is entitled to its claims against the defendants.
3. Is the defendant entitled to its counter claim against the claimant?

### **ISSUE 1**

*Whether the claimant has established that the defendants are indebted to it on account of the loan facility it granted to the 1<sup>st</sup> defendant.*

It is not in dispute that on 24/1/2017, the claimant granted a loan facility of N9,000,000 to the 1<sup>st</sup> defendant. The tenor of the loan was 6 months [i.e. 180 days] from the date of the grant of the facility with an interest of 10% per month. The terms of the loan facility are stated in the document titled: *Offer Letter For Trade Finance Facility* dated 24/1/2017. This document was tendered by the PW1 as Exhibit 1 and also tendered by DW1 as Exhibit 8. Some of the terms of the loan facility stated in the said Offer Letter are:

*Default:*

*Where the client defaults in the payment of debt for one month period, the company shall be entitled to repossess the collateral asset[s], without notice and all expenses incurred in repossessing and resale will be borne by the client.*

*Enforcement of debt:*

*The cost of enforcing this debt agreement and or recovery, resale and repossession of the collateral assets shall be borne/paid by the client.*

It is also not in dispute that as part of the conditions for the grant of the loan, the 1<sup>st</sup> defendant deposited the title documents of his Hyundai Santa Fe Jeep [2014 Model] with the claimant as collateral or security for the repayment of the loan. Also, the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> defendants signed as guarantors to repay the loan in the event of default by the 1<sup>st</sup> defendant; their respective Letters of Guarantee are Exhibits 4A, 4B & 4C. The parties also agree that 1<sup>st</sup> defendant paid the sum of N1,700,000 out of his total liability to the claimant.

Learned counsel for the defendants referred to the case of **A. I. Investment Ltd. v. Afribank [Nig.] Plc. [2013] 9 NWLR [Pt. 1359] 380** to support the principle that parties are bound by the terms of the contract or agreement they freely entered into and the duty of the court is to give effect to their agreement. He argued that the case of the 1<sup>st</sup> defendant is that the claimant had taken possession of, or repossessed, the Hyundai Santa Fe SUV 2014 Model, which is the collateral for the loan. Thus, the defendants have satisfied their obligation and indebtedness to the claimant under the loan transaction.

Anthony Ayaogu Esq. emphasized that the moment the Hyundai Santa Fe vehicle used as collateral for the loan was submitted to the claimant by the defendants or repossessed by the claimant as stipulated in the agreement, the defendants were discharged from their indebtedness to the claimant, unless the sum generated from the sale of the collateral was not enough to satisfy the loan, which is not the case. This is because the Letter of Offer contemplates that after the collateral has been repossessed, it would be sold by the claimant without notice to, or consent of, the client [i.e. 1<sup>st</sup> defendant]. He submitted that when the claimant repossessed the 1<sup>st</sup> defendant's vehicle, it was under obligation to sell it and appropriate the proceeds to satisfy the debt. As at today, there is no information as regards the whereabouts of the vehicle.

The learned defence counsel relied on the Proforma Invoice dated 22/1/2018 [Exhibit 9] and argued that the value of the 1<sup>st</sup> defendant's Hyundai Santa Fe vehicle as at 22/1/2018 was the sum of N17,795,000. He also relied on the

Service Invoice [Exhibit 10], which shows that the vehicle had done 56,522 miles as at 2018 when the claimant repossessed it. It was submitted that the Proforma Invoice [Exhibit 9] qualifies as a valuation report of 1<sup>st</sup> defendant's vehicle repossessed by the claimant as at 22/1/2018. Mr. Anyaogu concluded that the claimant did not adduce any evidence to show how it arrived at the sum of N16,375,000 claimed; and it failed to prove that the defendants are indebted to it.

On the other hand, learned counsel for the claimant stated that the post-dated cheques which were issued by the defendants were dishonoured; hence the claimant is in Court to recover its money. The 1<sup>st</sup> defendant claimed that the claimant forcefully took his vehicle but by virtue of Exhibit 14 [i.e. Judgment of the Federal High Court], it was "*exposed*" that the guarantors took his vehicle. The 1<sup>st</sup> defendant also claimed that the valuation report of his vehicle was about N17,000,000 but there was never a valuation report tendered before the Court. It was submitted that DW1 is not a witness of truth having provided false and inconsistent testimonies on material facts. He referred to the cases of **Ezema v. Ibeneme & Anor. v. [2004] 4 NWLR [Pt. 894] 617** and **Anyi & Ors. v. Akande & Ors. [2017] LPELR-41973 [CA]** to support the view that no witness who has given inconsistent testimonies on a material fact is entitled to the honour of credibility.

I. E. Uzuegbu Esq. further submitted that the unchallenged facts before the Court are that the claimant granted a loan facility to the 1<sup>st</sup> defendant, the

loan has not been liquidated and the 1<sup>st</sup> defendant issued a dud cheque to the claimant. Thus, equity and justice will not allow a party to profit from his or her illegal act. He concluded that the claimant has successfully proved its claims against the defendants.

I had earlier set out the agreement of the claimant and the 1<sup>st</sup> defendant in the Default Clause contained in the Offer Letter for the loan facility to the effect that where the client [i.e. the 1<sup>st</sup> defendant] “*defaults in the payment of debt for one month period*”, the company [i.e. the claimant] “*shall be entitled to repossess the collateral asset[s], without notice ...*”. It seems to me that in the light of the Default Clause, the critical issue of fact to be resolved by the Court is whether the claimant repossessed the 1<sup>st</sup> defendant’s Hyundai Sante Fe [2014 Model] vehicle used as collateral/security for the loan.

In paragraph 12 of the statement of defence, it was averred that the claimant “*has repossessed the collateral to the loan and as agreed between them under the heading “default” ...*” In paragraph 13 thereof, the defendants further averred that “*the time lag between June 2017 when the collateral was repossessed till date is approximately two years. The claimant having possessed the Hyundai Sante Fe used as collateral for the loan; has kept them in the dark as to the actual situation and circumstances of the vehicle.*” In paragraph 1[g] of the 1<sup>st</sup> defendant’s counter claim, he averred that the claimant “*in compliance with terms of the offer seized the Hyundai Sante Fe SUV being the collateral.*” The claimant did not specifically deny these averments in its defence to counter claim filed on 17/6/2020.

In paragraphs 14, 15 & 16 of his statement on oath, the 1<sup>st</sup> defendant stated:

14. *That in June 2017, the claimant in company of some men I reasonably suspected to be their hirelings barged into my office and took away my Hyundai Sante Fe 2014 Model which was used as the collateral for the loan even while the contract was still running.*
15. *That it has been about one year since the claimant repossessed the collateral, sold same without my concurrence and refused vehemently to settle accounts.*
16. *That till date, the claimant has not notified me the amount realized from the sale of the Hyundai Sante Fe 2014 Model and how much is due me as balance.*

Learned counsel for the claimant relied on the deposition of the 1<sup>st</sup> defendant [as applicant] in *Suit No. FHC/ABJ/CS/117/2018:Mr.OjetundeAkintomiMayowa v. InspectorGeneral of Police & 3 Ors.*, which was set out at page 18 of the Judgment[Exhibit 14] thus:

*That at the meeting with his guarantors on the 14/6/2017, they caused the Applicant to do a letter to the 3<sup>rd</sup> Respondent releasing them from their obligations to the 3<sup>rd</sup> Respondent. Also, the guarantors dispossessed the applicant of his vehicle - a Hyundai Santa Fe SUV Car with registration number: YAB 874 PK and valued at N17,795,000 and handed the keys to the 3<sup>rd</sup> Respondent as additional collateral for the loan.*

Let me pause to remark for clarity that the claimant was the 3<sup>rd</sup> respondent in *Suit No. FHC/ABJ/CS/117/2018*. Now, based on the above deposition of the 1<sup>st</sup> defendant, Mr. I. E. Uzuegbu argued that his evidence in paragraph 14 of his statement on oath that “*the claimant in company of some men I reasonably suspected to be their hirelings barged into my office and took away my Hyundai Sante Fe 2014 Model*” is false and inconsistent.

In the defendants’ reply on points of law, Mr. Anthony Ayaogu cited the case of **Wachukwu v. Onwunwanne [2011] 14 NWLR [Pt. 1266] 27** to support the principle that it is not all contradictions that will result in the rejection of the evidence of a witness. It is only material contradictions that would warrant the rejection of such evidence. He submitted that what matters is that the 1<sup>st</sup> defendant’s vehicle which he used as collateral for the loan is in possession of the claimant. It does not matter who took the vehicle to the claimant. He therefore argued that there was no material contradiction in the evidence of DW1 that would lead to the rejection of his testimony.

For the avoidance of doubt, let me reiterate the point that the issue of fact which the Court is dealing with is whether the claimant repossessed the 1<sup>st</sup> defendant’s Hyundai Sante Fe [2014 Model], which he used as collateral or security for the loan facility. In the 1<sup>st</sup> defendant’s said deposition in *Suit No. FHC/ABJ/CS/117/2018*, he stated that when the guarantors dispossessed him of the vehicle, they “*handed the keys to the 3<sup>rd</sup> respondent.*” To my mind, the material fact is that the claimant was in possession of the vehicle; therefore,



there is no material contradiction in the 1<sup>st</sup> defendant's evidence to the effect that his vehicle used as collateral for the loan was/is with the claimant. I agree with the learned defence counsel that what matters is that the 1<sup>st</sup> defendant's vehicle used as collateral for the loan was/is with the claimant; it does not matter how the vehicle got to the claimant.

During cross examination, the PW1 stated that the guarantors brought the vehicle to the claimant and the claimant took it to the Police in a report they made about dud cheques. When the cross examiner asked PW1 whether the vehicle is still with the Police, he prevaricated and feebly answered: *"The Legal Department of the claimant will be in a position to answer that question. For me, I do not know."* It is pertinent to point out that in the Counter Affidavit of PW1 in *Suit No. FHC/ABJ/CS/117/2018* [i.e. Exhibit 7], he did not state that the claimant took the vehicle to the Police. In paragraph 6 of Exhibit 7, PW1 admitted that the 1<sup>st</sup> defendant's said vehicle is in the custody of the claimant [i.e. the 3<sup>rd</sup> respondent in that Suit]. Paragraph 6 reads:

*"That the 3<sup>rd</sup> Respondent admits paragraph 22 of the affidavit in support of the Originating Motion on Notice only to the extent that the Applicant's car is in the custody of the 3<sup>rd</sup> Respondent."*

Having carefully evaluated the evidence of the parties, the Court finds as a fact that the claimant repossessed the 1<sup>st</sup> defendant's Hyundai Sante Fe [2014 Model] vehicle, which he used as collateral for the loan facility in line with the Default Clause in the Offer Letter for the loan.

Now, in the light of the fact that the claimant repossessed the 1<sup>st</sup> defendant's said vehicle, did the claimant prove that the defendants are indebted to it on account of the loan facility? As rightly posited by learned defence counsel, parties are bound by the terms of the agreement they freely entered into; the duty of the court is to give effect to their agreement. See **Abaa v. Eke & Anor. [2015] LPELR-24370 [CA]**. The Default Clause is clear and unambiguous; the parties agreed that claimant was entitled to sell the Hyundai Sante Fe 2014 Model vehicle it repossessed from the 1<sup>st</sup> defendant upon his default "in the payment of debt for one month period".

The claimant did not adduce any evidence to show how much it realised from the sale of the vehicle. The claimant did not also allege that the amount it realised from the sale of the vehicle was not sufficient to settle or satisfy the debt owed by the 1<sup>st</sup> defendant. In this regard, let me refer to the letter dated 23/11/2018 [Exhibit 6] tendered by PW1. The letter was written by Wellspring Chambers on behalf of Maurice Ebere [the 2<sup>nd</sup> defendant] and addressed to the claimant's managing director. The letter reads in part:

*... Recall also that our client had prior to the understanding recited above assisted your office to recover a Hyundai Sports Utility Vehicle belonging to the said Dr. Akintomi Mayowa Oyetunde, which value when disposed should count in the settlement of the guaranteed liability of our client.*

*Recall also that our client has made some payments towards the full and final settlement of his liability under the guarantee.*

The said letter [Exhibit 6] demanded *inter alia*: [i] a status report on the loan, including if any amount and how much has been recovered from Dr. Akintomi Mayowa Oyetunde; and [ii] a status report on the SUV recovered from Dr. Akintomi Mayowa Oyetunde. There is no evidence that the claimant responded to this letter.

Since the claimant neither disclosed the amount it realised from the sale of the 1<sup>st</sup> defendant's vehicle nor responded to the demands in the letter [Exhibit 6], one wonders how it arrived at the sum of N16,375,000 claimed in this action. This is a claim for special damages. The law requires the claimant to specially or specifically plead same and to prove the claim strictly. See the case of Gyang v. Maigadi [2012] LPELR-20100 [CA]. I agree with the defence counsel that the claimant did not adduce any evidence to show how it arrived at the sum claimed. Moreover, the claimant did not tender the statement of account pleaded in paragraph 17 of the statement of claim. The decision of the Court on Issue 1 is that the claimant did not prove that the defendants are indebted to it on account of the loan facility.

## **ISSUE 2**

*Whether the claimant is entitled to its claims against the defendants.*

I adopt the decision of the Court under Issue 1 and resolve Issue 2 against the claimant. I hold that the claimant is not entitled to any of its claims against the defendants.

### ISSUE 3

#### *Is the 1<sup>st</sup> defendant entitled to its counter claim against the claimant?*

The 1<sup>st</sup> defendant's counter claims against claimant are the sum of N7,000,000; pre-judgment interest; and post judgment interest. From the 1<sup>st</sup> defendant's pleadings and evidence, the claim for N7,000,000 is predicated on two grounds. The first ground is that out of the loan sum of N9,000,000 granted to him by the claimant, he has repaid N1,700,000 and the outstanding balance is "about N7,300,000.00". The second ground as averred in paragraph 1[h] of the counter claim is that at the time his said Hyundai vehicle was seized by the claimant/defendant to the counter claim, "the prevailing market value of a fairly used Hyundai Santa Fe was N15,000,000".

In support of the counter claim, learned counsel for the defendants argued that since the repossessed collateral was sold by the claimant, the agreement of the parties was that the proceeds shall be appropriated to satisfy the 1<sup>st</sup> defendant's indebtedness. Therefore, the debtor [i.e. the 1<sup>st</sup> defendant] has the right to ask for a refund of the balance since it was proved that the value of the collateral is more than enough to satisfy the balance of the debt.

The 1<sup>st</sup> defendant's counter claim of N7,000,000.00 is a claim for special damages. The law requires the counter claimant to specifically plead same and to prove the claim strictly. See the case of Gyang v. Maigadi [supra]. The 1<sup>st</sup> defendant did not prove that the unpaid balance of the loan facility is

N7,300,000.00 especially in the light of the agreed interest rate of “10% per Month” of the sum borrowed and “penalty of 5% flat per week on any debt payment delayed for any reason whatsoever” as stated in the Letter of Offer.

Secondly, the 1<sup>st</sup> defendant did not adduce any cogent or credible evidence to prove that the value of his Hyundai Santa Fe 2014 Model vehicle - which by the Service Invoice [Exhibit 10] had done 56,522 miles as at 11/5/2017 - is the sum of N15,000,000. Mr. Anthony Ayaogu argued that the Proforma Invoice dated 22/1/2018 [Exhibit 9] is the valuation report of 1<sup>st</sup> defendant’s Hyundai 2014 Model vehicle and is proof of its value. With due respect, this argument cannot be correct for obvious reasons, one of which is that the Proforma Invoice stated the cost or value of a new Hyundai Santa Fe vehicle while the 1<sup>st</sup> defendant’s Hyundai Santa Fe vehicle was used for about 3 years and had travelled 56,522 miles as at 11/5/2017. Without further assurance, I hold that the 1<sup>st</sup> defendant failed to prove his counter claim.

**Conclusion:**

The claims of the claimant lack merit; they are dismissed. Also, the counter claims of the 1<sup>st</sup> defendant lack merit; they are dismissed. The parties shall bear their costs.

---

HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of counsel:xc*

ChristabelAyukEsq. for the claimant.