IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 16TH DAY OF JULY, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/2548/18

BETWEEN:

LAVENDA SPA LTD:……..CLAIMANT

AND

1. TEAKON ENTERPRISES NIG. LTD.
2. TORKULA THOMAS TERLUMUN.
3. DENNIS IORTIM. :…..DEFENDANTS
4. AFROLYK GLOBE NIG. LTD.

Festus Eke for the Claimant.
Charles C. Dauda for the Defendants.

JUDGMENT.

By an amended Writ of Summons dated and filed the 2nd day of April, 2019, the Claimant claimed against the Defendants for:

a. A declaration that the 1st, 2nd and 3rd Defendants, either jointly or severally, have no right to proceed to sell the subject property at No 6. EtangObuli Crescent, Jabi, Abuja to the 4thDefendant or any other person without first receiving a letter or notification from the Claimant declining topurchase same in line with the letters and spirit of the leased tenancy agreement of 12th October, 2016.
b. A declaration that theClaimant is entitled to ensure that all the legal issues surrounding the subject property, especially the suit filed by the 1st Defendant against

NEXIM Bank at the Federal High Court, Lagos, Coram Chikere J., are resolved before proceeding to pay any sum of money to the 1st, 2nd or 3rd Defendants as the consideration for the subject property.

c. A declaration that the 4thDefendant having seen that the Claimant has a vested interest in the subject property and has the inalienable right to decide whether to purchase the subject property or not, has no right to proceed to hold discussions and indeed apply to purchase the subject property in the peculiar circumstance of this case.
d. An order of perpetual injunction restraining the Defendants jointly and severally from committing further breach of the terms of the lease/tenancy agreement between the 1st, 2nd and 3rd Defendants and the Claimant over the subject property known asNo 6. EtangObuli Crescent, Jabi, Federal Capital Territory,Abuja.
e. An order of mandatory injunction commanding the 1st, 2nd or 3rd Defendants to proceed to accept the offer made to them by the Claimant through the Claimant's solicitors or in the alternative, for the 1st, 2nd or 3rd Defendants to proceed to hold meeting and agree with the Claimant on the possible sale of the subject property at No 6. EtangObuli Crescent, Jabi, Federal Capital Territory, Abuja to the Claimant at a price mutually agreeable to both parties as clearly provided under the lease/tenancy agreement of 12th October, 2016.
f. An order restraining the 4th Defendant from interfering with the use, possession and the terms of the lease/tenancy agreement of the subject property pending the hearing and determination of this suit.

In the alternative, the Claimant claimed against the Defendants jointly and severally, the sum of N208,308,222.00 (Two

Hundred and Eight Million, Three Hundred and Eight Thousand, Two Hundred and Twenty-Two Naira) as follows:

i) The sum of N153,308,22.00 (One Hundred and Fifty Three Million, Three Hundred and Eight Thousand, Two Hundred and Twenty-two Naira)being the cost of carrying out renovation works of the main building, building of a state of the art swimming pool and changing room, modern gymnasium, construction of a bar and erecting 2 bedroom staff house, fence elevation and change of entrance gate, carrying out paving stone removal and replacement, garden works, flowers and grass as well as general external works, including clearing and carting away, etc on the property known as No 6. EtangObuli Crescent, Jabi, Federal Capital Territory,Abuja as clearly contained in the agreement between the Claimant and its contractor-Chakadiel Nigeria Limited of No. 72, SaliuObodo Avenue, Ajah, Lagos State of Nigeria and being special damages as follows:

a) A state of the art swimming pool – N50m.
b) A Modern gymnasium – N20m.
c) A modern Bar – N4m.
d) Construction of a 2 Bedroom staff Quarters –N18m.
e) Construction of a changing room –N2m.
f) Fence elevation – N5m.
g) Changing of the main house roof – N10m.
h) Changing of the windows and doors –N15m.
i) Changing or Water Closets –N9m.
j) Changing of the entrance gate – N3m.
k) Paving stone removal and replacement,

Garden works, flowers and grass, general external works, including clearing and carting away, etc – N17,308,222.00.

ii) General damages for breach of contract – N50m.

iii) Cost of this action assessed at N5m.

The case of the Claimant as per its amended statement of claim,is that it entered into a leasehold agreement with the 1st, 2nd and 3rd Defendants in 2016 whereby it leased the1st, 2nd and 3rd Defendants abandoned property situate at No 6. EtangObuli Crescent, Jabi, Federal Capital Territory, Abuja for a period of 10 years. The Claimant stated that it was attracted to the property because of its location coupled with the understanding it had with the 1st, 2nd& 3rd Defendants in 2016 whereby it leased the 1st, 2nd& 3rd Defendants abandoned property situate at No 6. EtangObuli Crescent, Jabi, Federal Capital Territory, Abuja for a period of 10 years. The Claimant stated that it was attracted to the property because of its location coupled with the understanding it had with the1st, 2nd& 3rd Defendants that it would be granted ten year lease of the property bearing in mind that it was going to carry out major repairs including erecting new structures and swimming pool to meet the business needs of the Claimant.

The Claimant averred that part of the understanding and agreement reached with the 1st, 2nd& 3rd Defendants was that during the period under which the property shall be under lease with the Claimant, the Claimant shall exercise the first option to purchase same in the likelihood that the 1st, 2nd and 3rd Defendants desire to sell the property.

The Claimant stated that in line with their agreement, it paid the sum of N16.4m to the 2nd Defendant as the first rent, covering the period of the 1st two years. That the understanding of both

parties was that the lease was for 10 years although rhe Claimant was to pay for 2 years at the point of entry and shall thereafter pay yearly rent at the expiration of the said 2 years.

The Claimant further averred that it was never disclosed in the lease/tenancy agreement or in any other form or medium that the property was ever mortgaged by the lessor/landlord to any mortgageeby whatever means or method. It stated that upon executing the lease agreement, the Claimant carried out extensive renovation works and erected new structures including swimming pool to meet its businessneeds, the nature of which was disclosed to the 1st, 2nd and 3rd Defendants prior to the execution of the lease/tenancy agreement and payments thereof. That in carrying out the said renovation works of the main building, building of the state of the art swimming pool and changing room, modern gymnasium, construction of a bar and erecting 2 bedroom staff house, fence elevation and change of entrance gate, it expended, to the knowledge of the 1st, 2nd and 3rd Defendants, a whopping sum of N153,308,222.00, excluding the sum of N16.4m paid by it to the 1st, 2nd and 3rd Defendants as rent for the initial two years which ran from 12th October, 2016.

The Claimant stated that sometime inOctober, 2017, the 2nd Defendant purporting to act within the terms of the tenancy agreement executed between him and the Claimant, requested the Claimant vide a letter dated 3rd October, 2017,to purchase the subject property, excluding the 2 bedroom bungalow occupied by the 2nd Defendant therein.

That contrary to the express terms of the lease/tenancy agreement, the 2nd Defendant unilaterally and without any discussion or agreement, imposed the sum of N180m as price/consideration for the property under lease with the

Claimant. That it was at this time that the Claimant for the first time heard that the property in issue was mortgaged to the Nigerian Export-Import Bank (NEXIM BANK) and that NEXIM Bank was already in the process of selling the property to members of the public as a result of the 1st Defendant's failure to service its indebtedness to her. It stated that it made further inquiries which revealed that the 1st Defendant had gone to Court against NEXIM Bank before the Federal High Court, Abuja over the said property and that the1st, 2nd and 3rd Defendants never informed the Claimant about the status of the property.

The Claimant averred that it held series of meetings with both the 1st, 2nd and 3rd Defendantsas well as NEXIM Bank in view of the Claimant's enormous exposure on the property. That sometime in February, 2018, it received a letter dated 2nd February, 2018 from the 2nd Defendant purporting to revoke the Claimant's inalienable right to purchase the property under lease with the Claimant. That inspite of the fact that the suit filed by the 1st, 2nd and 3rd Defendants against NEXIM Bank over the mortgage of the property with the bank by the 1st Defendant was pending at the Federal High Court, Abuja, the 1st, 2nd and 3rd Defendants still expected the Claimant to have concluded purchase of the property notwithstanding which was the suit will go, and notwithstanding the enormous sum of money invested in the property by the Claimant by way of improvements and erection of new structures on the land.

The Claimant further averred that upon hearing that the 1st, 2nd and 3rd Defendants were on the verge of committing a fundamental breach of the terms of the lease/tenancy agreement between it and them, the Claimant directed its solicitors to take necessary steps with a view to ensuring that the 1st, 2nd and 3rd Defendants are made to honour their

obligations in the said lease/tenancy agreement, and the Claimant's solicitors accordingly offered to purchase the property vide their letters of 24th and 30thMay 2018, for the sum of N180m which was the amount the 1st, 2nd and 3rd Defendants had unilaterally agreed to sell the property to the 4th Defendant in breach of the extant terms of the lease/tenancy agreement of 12th October, 2016. That although it was having series of discussions with the 1st, 2nd and 3rd Defendants as well as their appointed solicitor – Mr. Sunday Dickson, on the need for it to receive an acceptance letter from the 1st, 2nd and 3rd Defendants, the Claimant on or about 30th May, 2018 received a letter dated 11th May, 2018 from the 2nd Defendant acting on behalf of the 1st, 3rd and 4th Defendants, notifying the Claimant that the subject matter of this suit had been sold to the 4th Defendant.

The Claimant stated that it has taken various steps with a view to resolving this matter of sale of the subject property with the Defendants through telephone calls and letters by its solicitors on record but that the Defendants have remained uncooperative, intransigent, adamant, and were bent on jointly and severally breaching the fundamental and inalienable terms of the lease/tenancy agreement between it and the 2nd Defendant who acted on behalf of the 1st Defendant. That inspite of the weighty contents of its solicitors aforesaid letters to the Defendants which they have received, the Defendants have not responded to same but have continued to proceed to make various arrangements with a view to selling the subject property to the 4th Defendant in clear breach of the terms of the lease//tenancy agreement and the understanding between the Claimant and the 1st – 3rd Defendants over the property, which thus necessitated this suit.

The Claimant also filed a Reply to the Defendant's amended Joint Statement of defence wherein it literally reiterated the averments in its amended statement of claim, and particularly denied that its General Manager and Head of Legal Services, Ms Chidinma Rosemary Eziefule, was ever informed of any mortgage on the property. It stated that the Claimant only discovered that the property was used as collateral in a loan facility after making payment for the initial two years rent and carrying out several developments on the property amounting to millions of Naira. The Claimant maintained that the understanding between it and the 1st – 3rd Defendants was that the lease was for 10 years although the Claimant was to pay for 2 years at the point of entry and shall thereafter pay yearly rent at the expiration of the said 2 years.

The Claimant further averred that the 1st, 2nd and 3rd Defendants blatantly reneged on the part of their agreement to invite the Claimant to purchase the property at a price mutually agreeable and acceptable to both parties, and unilaterally imposed an unreasonably exorbitant price of N180m on the property so as to overreach the Claimant. That even when the Claimant accepted to purchase the property at the same rate of N180m unilaterally imposed by the1st, 2nd and 3rd Defendants, the 1st, 2nd and 3rd Defendants became uncooperative and eventually surreptitiously sold the property to the 4th Defendant. That contrary to the impression sought to be created by the 1st- 3rdDefendants, it was the 1st - 3rd Defendants that arm-twisted the Claimant into making an offer of N180m for the property.

The Claimant stated that at no time was it agreed between the parties that the Claimant or its CEO, Madam Empress Pat BaywoodIbe was to foot the bill or pay for the flight ticket of the 3rd Defendant to and from Lagos, and that the said Claimant's

CEO, has never invited either of the Defendants for a meeting without attending such meeting or have a representative attend to deliberate on the subject of the meeting.

It further stated to the effect that the several renovations and structural developments it carried out on the property to suit its business in line with the mutual understanding of the parties amounts to millions of Naira were done to the acceptance and approval of the 1st- 3rd Defendants.

The Claimant averred thatit could notrespond immediately to the prompting of the 2nd Defendant for it to accept the price of N180m imposed by the 1st, 2nd and 3rd Defendants as it was taking steps to let the 2nd Defendant understand that he was acting contrary to the clear terms of the lease/tenancy agreement that the Claimant shall have the right of first purchase of the property at a price mutually agreeable and acceptable to both parties.

The Claimant further averred that it has always been communicating and relating with the 1st – 3rd Defendants through either one of its General Managers and Head of Legal Services, Ms Chidinma Rosemary Eziefule or its CEO,Empress Pat BaywoodIbe, and that there was notime the said Ms Chidinma Rosemary Eziefule was incommunicado or at large as to affect the Claimant's dealing with the 1st – 3rd Defendants.

It was the further averment of the Claimant that the 4th Defendant had always been put on notice of the Claimant's interest in the property as the 4th Defendant has always been aware that the Claimant is not an ordinary tenant at the property but a serious contender and a stakeholder by virtue of the extant terms of the lease/tenancy agreement and enormous improvements carried out on the subject property which cost the Claimant millions of Naira to the knowledgeand

"acceptability" of the 1st, 2nd and 3rd Defendants as well as NEXIM Bank.

In its defence to the Defendants' "counter claim", the Claimant averred that the1st – 3rd Defendants never gave it the opportunity of the right of first purchase as provided under the tenancy agreement. That the purported revocation of the inalienable right of first purchase vested on the Claimant under the tenancy agreement was done in contravention of the provisions of the said tenancy agreement, and that the Claimant's tenancy in respect of the property in issue did not expire on the 30th day of October, 2018 as averred bythe Defendants in their amended joint statement of defence.

One Chidinma Rosemary Eziefule, theGeneral Manager and Head of Legal Services of the Claimant, gave evidence for the Claimant at the hearing of the suit. She adopted her Witness Statement on Oath and her additional Statement on Oath wherein she affirmed all the averments in the statement of claim and Reply to the amended Statement of Defence respectively.

She also tendered the following documents in evidence:

1. Zenith Bank Statement of Account of PW1 – Exh. PW1A.
2. Claimant's Letter to NEXIM Bank dated 30th January, 2018 – Exh. PW1B.
3. 1st Defendant's Letter to the Claimantdated 2nd February, 2018 – Exh PW1C.
4. Claimants solicitor's letter to 1stDefendant dated 6th February, 2018 – Exh. PW1D.
5. 1st Defendants Reply to ExhPW1D, dated 14th February, 2018 – Exh PW1E.
6. Claimant's Solicitor's letter to 1st Defendant dated 24th May, 2018 – Exh PW1F.

7. Claimant's Solicitor's Letter to 1st Defendant dated 30th May, 2018 – Exh PW1G.
8. 1st Defendant's Letter to the Claimant dated 11th May, 2018 – Exh. PW1H.
9. Claimant's Solicitor's Letter to 1st Defendant dated 22nd June, 2018 – Exh PW1J.
10. Claimant's Solicitor's Letter to NEXIM Bnk dated 22nd June, 2018 – Exh. PW1K.
11. Claimant's Solicitor's Letter to 4th Defendant dated 22nd June, 2018 –Exh PW1L.
12. Agreement between Claimant and One Chakadiel Nig. Ltd – Exh. PW1M.
13. Acknowledgment Letter from Chakadiel Nig. Ltd dated 15th November, 2016 – Exh PW1N.
14. Acknowledgment Letter from Chakadiel Nig. Ltd dated 10th April, 2017 – Exh PW1P.
15. Acknowledgment Letter from Chakadiel Nig. Ltd dated 2nd November, 2017 – Exh. PW1Q.
16. Tenancy Agreement – Exh. PW1R.

Under cross examination, the PW1 admitted that the tenancy agreement between the parties expired by effluxion of time on 1st November, 2018. She further admitted that after the expiration of the tenancy, there was no written notice from the Claimant to the 2nd Defendant to renew the tenancy.

Furthermore, the PW1 admitted that since this matter was filed in 2018, the Claimant has not paid rent on the property in issue.

It was also the admission of the PW1 that all the renovations and alternations done by the Claimant on the property were done at its own risk and cost based on the tenancy agreement, and that the written consent of the landlord was not obtained by the Claimant before embarking on the constructions.

The PW1 also admitted to have prepared the tenancy agreement. She also admitted that the Claimant was put on notice by the 2nd Defendant of his intention to sell the property on 3rdOctober, 2017 in line with the tenancy agreement.

Having admitted that the Claimant offered to pay the sum of N180m for the property, the PW1 admitted that the Claimant did not inform the Defendants that its failure to pay the money was as a result of the pending suit between 1st Defendant and NEXIM Bank.

The Defendants, in defence of the suit filed an amended joint statement of defence on the 5th of April, 2019.

The Defendants admitted that one Miss Chidinma Rosemary Eziefule approached the 1st Defendant through the 2nd and 3rd Defendants for lease of part of the property situate at No. 6, EtangObuli Crescent, Jabi, Abuja for a period of two years only. The Defendants averred that the lease was not for a period of 10 years or any term exceeding 2 years, and that it had an option for renewal, the notice of which must be given to the 1st Defendant not less than 60 days before the expiration of the 2 years.

The Defendants averred that the property in issue has never been in a dilapidated condition since it was built. Also, that the 2nd Defendant executed the tenancy agreement with the Claimant because his consent must be obtained before any alterations/additions will be carried out, and that the Claimant shall bear all the cost and risk of any such alternations and additions.

The Defendants stated to the effect that the clause of giving the Claimant the right of first option to purchase the property was inserted in the agreement consequent upon the 1st –

3rdDefendants informing Miss Chidinma Rosemary Eziefule that the property was used by the original owner, Mr.Alfred AkaweTorkula, the late Tor-Tiv (the 2nd Defendant's father) as collateral for a loan facility of N100,000,000.00(One Hundred Million Naira Only) from NEXIM Bank.

The Defendants averred that the Claimant expressly agreed to bear the risk/cost of any restructuring construction or additions upon obtaining written consent, but that consent was never obtained and no bill/cost of same was given/shown to the Defendants as same was not necessary in view of the express undertaking to bear the risk/cost of such construction and renovation by the Claimant. They stated that in line with the stipulation in the tenancy agreement, the Claimant was given the opportunity to purchase the property, for which the Claimant offered to pay N180m but eventually could not pay same until its right was revoked by the 1st Defendant in view of the urgent need to repay the loan facility obtained from NEXIM Bank whichMiss Chidinma Rosemary (PW1)was fully aware of.

The Defendants further stated that in order to ensure that the Claimant took advantage of purchasing the property, the 3rdDefendant was invited to Lagos to have meeting with Madam Empress Pat BaywoodIbe, the CEO of the Claimant at their Lagos Office, and that the 3rd Defendant suffered many disappointments and fruitless meetings with the said Madam Empress who at three different occasions invited the 3rd Defendant to a meeting but refused to show up at all, and could not even pay the 3rd Defendant's flight ticket.

The Defendants averred that when the Claimant started the construction of the 2 bedroom staff house, the 2nd and 3rd Defendants tried to stop the work as same was never mentioned earlier, or contained in the tenancy agreement,

neither was the 2nd Defendant's written consent obtained, Miss Chidinma Rosemary Eziefule (PW1), drew the attention of the 2nd and 3rd Defendants to the fact that it also includes the additions referred to in the agreement, and that having converted the existing boys quarters into a gymnasium, there was the need to have a staff house and changing room for staff and swimmers and that besides, they are doing that at their own cost and risk, therefore the 1st, 2nd and 3rd Defendants ignored them.

The Defendants denied unilaterally imposing the purchase cost of N180m on the Claimant; stating that the Claimant voluntarily offered to pay the said sum for the property. They averred that the right of first purchase was communicated to the Claimant on 3rd October, 2017, but it took the Claimant almost 2 months to accept the offer after series of meetings and oral promise by the PW1 of the Claimant's readiness to pay. That despite repeated persuasion on PW1 to get the Claimant to settle the Bank loan and pay the balance to 1st, 2nd and 3rd Defendants, the Defendant received no positive response, and when it became obvious that theBank (NEXIM Bank) was serious about selling off the property, the1st, 2nd and 3rdDefendants went to Court to stop the Bank from carrying out the sale while they marketed the property to alternative buyer.That this was after the PW1 became incommunicado and completely left Abuja without any notice or further discussion, and the Claimant's CEO, Madam Empress Pat BaywoodIbe, at their meeting and series of communication with the 2nd and 3rd Defendants exhibited no positive commitment to pay for the property, stating that she must see the PW1 in person before reaching any decision.

The Defendants stated to the effect that when the Claimant failed to take advantage of their right of first purchase, the 1st,

2nd and 3rd Defendants revoked the Claimant'sright and sold the property to the 4th Defendant who was in fact willing to resale same to the Claimant if they so wish. That the 3rdDefendant was invited to Lagos by the husband to the Claimant's CEO to discuss the possibility of repurchasing the property from the 4th Defendant, but no positive step was taken until the institution of this suit.

The Defendants averred that the presence of the Claimant on the property is no longer that of atenant with a valid and subsisting tenancy asits tenancy has elapsed since 30th day of October, 2018, and that the Claimant having failed to notify the landlord 60 days to the expiration of the tenancy, has become a tenant at will and no more.

The Defendants averred that the Claimant has by its wicked intent of this suit, forced them to incurunnecessary cost of engaging solicitors to represent them and have paid the sum of N5million to the solicitor. They thus claimed against the Claimant as follows:

1. A declaration that the Claimant was given the opportunity of the right of first purchase of part of the property situate at No 6. EtangObuli Crescent, Jabi, Abuja where she occupied as a tenant and offered to pay but refused to take advantage of same.
2. A declaration that the revocation of the Claimant's right of first purchase by the 1st, 2nd and 3rd Defendants was proper and valid.
3. A declaration that the sale of the property to the 4th Defendant after the revocation is valid and subsisting.
4. A declaration that the Claimant's rent in the property has expired by effluxion of time since the 30th day of October, 2018.

5. An order mandating the Claimant to renew their yearly rent to commence from 1st November, 2018 to 31st October, 2019, or to pay mesne profit to the 4th Defendant to be calculated from the 1st day of November, 2018 until vacant possession is given to the 4th Defendant.
6. An order that the Claimant pay to the 1st, 2nd and 3rd Defendants the sum of N5million Naira jointly as special damages for cost of professional fees paid to Dickson & Co. Solicitors, being cost of professional fees unjustly incurred as a result ofthis suit.
7. An order that the Claimant pay to the 1st, 2nd and 3rd Defendants jointly the sum of N100million General damages for the humiliation, emotional trauma, embarrassment suffered by them in the course of this suit.
8. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances of this suit.

At the hearing of the case, the 2nd Defendant gave evidence for the Defendants in defence of the suit. Testifying as DW1, he adopted his witness statement on oath wherein he affirmed all the averments in the amended Joint Statement of Defence. He also tendered the following documents in evidence;

1. Medical Certificate of Death – Exh. DW1A.
2. Application for consent to mortgage property – Exh. DW1B.
3. 1st Defendant's letter to Claimant dated 3rd October, 2017 – Exh. DW1C.
4. 1st Defendant's Letter to Claimant dated 20th December, 2017 – Exh. DW1D.
5. 1st Defendant's Letter to Claimant dated 2nd December, 2018 – Exh. DW1E.

6. Defendants' Solicitors' letter to the Claimant dated 28th November, 2018–Exh DW1E.
7. Defendants' Solicitors' Cash receipt – Exh DW1G.
8. NEXIM Bank Letter to the 1st Defendant dated July 23, 2014 – Exh. DW1H.
9. Irrevocable Power of Attorney – Exh. DW1J.
10. Sales Agreement – Exh. DW1K.
11. Claimant's Letter of Offer dated 2nd December, 2017 – Exh. DW1L.
12. NEXIM Bank's Letter to 1st Defendant dated October, 20, 2017 – Exh DW1M.
13. Deed of Assignment – Exh DW1N.
14. Affidavit of fact – Exh DW1P.
15. Photocopy of Certificate of Occupancy – Exh DW1Q.

The DW1 was duly cross examined by the Claimant during which he stated that the additional structures erected on the premises by the Claimant were not part of what was sold to the 4th Defendant because the said additional structures were insignificant.

At the close of evidence, the parties filed and exchanged final written addresses.

In his final written address, learned Defendants' counsel, Sunday Dickson, Esq, raised five issues for determination, namely;

1. Whether from the facts of this case vis-à-vis the pleadings and evidence before this Court, the Claimant is aware of the mortgage of the property to NEXIM Bank by the 1st Defendant?
2. Whether the Claimant was given the right of first purchase of the property as contained in the tenancy agreement?

3. Whether the tenancy was for a period of 2 years certain or ten years and whether the Claimant carried out its business activities for the period of 2 years term as contained in the tenancy agreement successfully?
4. Whether the Claimant has proved their (sic) case on the balance of probability to be entitled to therelieves (sic) and alternativereliefs sought?
5. Whetherthe Defendants have successfully established their defence against the Claimant to be entitled to their counter claim?

Proffering arguments on issue one, learned counsel contended that the Claim of the Claimant to being unaware of the mortgage on the property, is an afterthought and an effort to run away from the direct consequences of their voluntary act and omission.

While submitting that parties are bound by their pleadings before the Court, he argued that by the express pleadings of the Claimant in paragraph 11 of the amended statement of claim and paragraph 13 of the Witness Statement on Oath, it is unequivocally clear that the Claimant is fully aware of the mortgage of the property to NEXIM Bank by the 1st Defendant. He contended to the effect that the acknowledgement of the interest of the 1st Defendant in the property by the Claimant when the title of the property is not in the 1stDefendant, is an evidence that the Claimant knew about the 1st Defendant's loan facility which was secured by the property.

He referred to Exhibit DW1P, an affidavit pledging the property to 1st Defendant as collateral for the loan granted by NEXIM Bank, which the PW1 under cross examination admitted to have been shown to her before drafting the tenancy agreement. He argued that the PW1 having admitted being shown the said

affidavit among other documents for her due diligence, cannot turn around to deny knowledge of the existing mortgage before entering into the tenancy agreement.

He relied on **Onwe v. State (2018) All FWLR (pt 924) 1 at 47** to submit that party cannot approbate and reprobate on the same issue; as he contended that any attempt to deny knowledge of the mortgage of the property in favour of the 1st Defendant, is a clear case of speaking from both sides of the mouth.

Arguing issue two, on whether the Claimant was given the right of first purchase of the property; learned counsel contended that from the documentary evidence, to wit; exhibits DW1C, DW1D and DW1L, it is unequivocally clear that the Claimant was duly given the right of first purchase of the property but could not take advantage to do so, hence the issuance of exhibit DW1F revoking the Claimant's right of first purchase and consequently selling the property to the 4th Defendant.

He argued that the Claimant having been given the right of first purchase as provided for in the tenancy agreement, Exhibit PWIR; where the parties could not agree on a price for the sale of the property, that nothing in the tenancy agreement or in law or fact, shall bar/stop the 1st and 2nd Defendants from selling the property to an interested party who is willing and ready to pay the agreed price.

He posited that no law shall compel a seller to sell his property for a lesser price than what he feels, and that no law can compel a buyer to buy a property for a price higher than what the buyer has or is willing to pay.

He urged the Court to invoke the doctrine of estoppel by deed and estoppel by conduct against the Claimant and resolve issue two in favour of the Defendants.

On whether the tenancy was for a period of 2 years certain or ten years (issue 3); learned counsel argued to the effect that the foundation of the relationship between the Claimant and 1st – 3rd Defendants is the tenancy agreement Exhibit PW1R, and that by the said Exhibit PW1R, it is clear that the tenancy is for a period of two years certain, with a defined commencement date and a definite termination date. He referred to **NPA vs. Ahmed (2017) All FWLR (Pt.892) 1059 at 1079** on the point that the content of a document speaks for itself, and that where the words of a document are clear and unambiguous, the Court are compelled to accord them their plain and ordinary meaning.

He submitted that from the clear and unambiguous provisions of Article II, Sections 2 & 3 of Exhibit PW1R, and the evidence of PW1 elicited under cross examination, the tenancy agreement was for 2 years and that same has terminated by effluxion of time since 1/11/18. He argued that despite the failure of the Claimant to give notice of its intention to renew the tenancy to the 2nd Defendant, the 4th Defendant who is the new owner of the property magnanimously gave the Claimant notice to renew its rent vide Exhibit DW1F but the Claimant blatantly refused for its obvious bad faith.

Proffering arguments on issue 4, on **whether the Claimant has proved its case on the balance of probability as to be entitled to the reliefs sought**; learned counsel contended that the Claimant has not proved any of its claims or alternative claims on a preponderance of evidence as to be entitled to any of the reliefs sought. Heposited that the Court is a Court of law and justice based on evidence placed before it, and not a

Father Christmas and do not grant reliefs based on pity, sentiment, emotions or ignorance of the parties.

In urging the Court to refuse all the alternative reliefs with substantial cots, learned counsel referred the Court to Article V of Exhibit PW1R.He submitted that the construction of improvements such as swimming pool, gymnasium and any alteration done by the Claimant were expressly done at its own cost. Hereferred to**Interdrill (Nig. Ltd) v. U.B.A (2017) All FWLR (Pt. 904) 1177 at 1181**on the point that parties are bound by the contents of their agreement.

On issue 5,***"whether the Defendants have successfully established their defence against the Claimant to be entitled to their counter claim";*** learned counsel contended that a perusal of Exhibits DW1C, DW1L, PW1C and PW1E, will reveal without any doubt that the Defendants have satisfactorily established their defence and proven their counter claim and are thus entitled to reliefs 1-3 of their counter claim. He posited that in proving reliefs 4 and 5 of the counter claim, the Defendants relied on Exhibit PW1R, being the tenancy agreement that created relationship between the Claimant and the 2nd Defendant wherein the term of the tenancy was clearly and unequivocally stated. He referred to Article II, Section 2 & 3 of Exhibit PW1R.

He contended that the tenancy of the Claimant having been determined by effluxion of time without renewal of same or delivery of vacant possession to the Defendants, that the law entitles the landlord (2nd Defendant) to recover mesne profit for all the period the Claimant remain on the property at will, and that the Defendants are thus entitled to relief 5 of their counter claim.

He further contended that the Defendants have proved relief 6 of the counter claimby the tendering of ExhibitDW1G. he argued to the effect that the institution of this suit by the Claimant rather than renewing its rent or quitting the property upon its failure to purchase same peacefully, has resulted in mandating the Defendants to engage the services of legal practitioner, Dickson & Co., thereby occasioning the landlord and other Defendantsloss for paying for professional fees as per Exhibit DW1G, and appearance fees for each appearance in Court. He placed reliance on the maxim, 'Ubi jus ibiremdedium' to urge the Court to grant relief 6 of the Defendants counter claim.

In conclusion, the Defendants urged the Court to dismiss the Claimant's claims with substantial cost against the Claimant, and to grant all the counter claims of the Defendants.

The Defendants also filed a joint Reply on Points of law to the Claimant's Final Written Address.

Regarding the Claimant's assertion in paragraph 2.4 of its final written address to being unaware of the mortgage on the property, the learned defence counsel submitted that the law is sacrosanct that facts admitted need no further proof, and that an admission by a party against his own interest is at best the most appropriate evidence in favour of his opponent and the Court should comfortably rely on such evidence.

He referred to **Adeboye v. Baje (2016) All FWLr (Pt. 845) 78 at 120.**

To buttress his point, he relied on the admission of the PW1 under cross examination and the averments in paragraphs 11 and 13 of the Claimant's amended statement of claim and witness statement on oath respectively.

Relying on **H.N.I.R.G. v. UBA PLC (2014) All FWLR (Pt.719) 1137 at 1161,** he posited that by the express admission by the Claimant of lack of approval from the Development Control before constructing any structure on the property, this Court cannot help the Claimant in its attempt to enforce a claim tainted with illegality. He submitted that the judicial authorities cited and relied upon by the Claimant at pages 15, 16, 17 and 18 of its final written address are not applicable and cannot assist in any way to convince this Court to grant a relief tainted with such illegality.

The learned Claimant's counsel in his own final written address raised the following two issues for determination to wit;

(a) Whether the Claimant has proved its case as required by law?
(b) Whether the Defendants are entitled to appropriate the Claimant's enormous improvements in the subject property without returning to the Claimant its financial exposure in the subject property as clearly shown during the trial in this case?

Proffering arguments on issue one, learned counsel submitted that civil cases are proved on a balance of probability. He argued to the effect that the Claimant has by credible evidence proved its case as required by law.

He contended that Exhibit PW1R tendered by the Claimant, in its Article XVI, conferred on the Claimant, the inalienable right to decide whether to purchase the subject property or not, and that the price for the property must be something mutually agreeable to both parties. He argued that the intent of the said Article XVI ofExhibit PW1R is that the 1st -3rd Defendants can only offer the subject property to a third party, including the 4th Defendant, after the Claimant must have declined or refused to

purchase the property. He contended that there is no scintilla of evidence before this Court to the effect that the Claimant has declined or refused to purchase the property. Thaton the contrary, there is avalanche of evidence that the Claimant is willing and ready to purchase the property at a price mutually agreeable to both parties in compliance with the terms, conditions and stipulations of the tenancy agreement, Exhibit PW1R.

He thus contended that the Claimant has indeed established its claim that the 1st – 3rd Defendants have no right to proceed to sell the property at No. 6 EtangObuli Crescent, Jabi, Abuja to the 4th Defendant or any other person without first receiving a letter or notification from the Claimant declining to purchase the property.

Learned counsel further argued that the allegation by the Defendants that the Claimant delayed in making payment for the property, was clearly thwarted by the evidence that the property was under mortgage and a subject of litigation between the 1st – 3rd Defendants and NEXIM Bank, and that there was therefore a great need for the Claimant to conduct due diligence.

He contended that the Claimant notified the 4th Defendant of its inalienable right in the property vide Exhibit PW1K, and that although the Defendants claimed that the 4th Defendant has purchased the property even while this suit was pending, that this Court has the power to restore both parties to the status quo antebelis by ordering the Claimant and the 1st – 3rd Defendants to proceed to conclude their negotiation with respect to the purchase of the property in line with Article XVI of Exhibit PW1R.

He referred to**Bass & Matt (Nig) Ltd v. Keystone Bank Ltd (2015) 1 NWLR (Pt 1441) 609 at 629** and submitted that this Court has the power to undo an act that was contemptuously done with a view to frustrate or truncate the administration of justice.He further referred to **Atake v. A.G. of the Federation (1982) 13 NSCC 444 at 474.**

It was further contended by learned Claimant's counsel that both parties had clear intention and understanding from day one that the Claimant shall carry out the enormous works that gulped millions of Naira and that the Defendants, especially the 2nd Defendant who witnessed the construction works, indeed consented to the said works as evident in his own testimony in Court. He argued that the 1st – 3rd Defendants cannot in the peculiar circumstance of this case be heard to complain about consent in carrying out the enormous renovation of the property by the Claimant as a party to a proceeding is not allowed to approbate and reprobate at the same time.

He referred to **Skye Bank PLC v. Akinpelu (2010) 8 NWLR (Pt.1198) 179 at 298, Ezemo V. A.G. Bendel State (1986) 4 NWLR (Pt. 36) 448.**

He submitted that the evidence of the 2nd Defendant on the issue of consent given to the Claimant to carry out enormous construction and renovation works in the property is tantamount to admission against interest.On this point he referred to**Fayemi v. Oni (2010) 17 NWLR (Pt. 1222) 326 at 395**, **Ojukwu v. Onwudiwe (1984) 1 SCNLR 247** and **Nwawuba v. Enemuo (1988) 2 NWLR (Pt.78) 582.**

Learned counsel also argued that in order to prove the alternative reliefs sought in this suit, the Claimant tendered evidence of the contract it had with the contractors that carried out the renovation and construction works on the property, as

well as receipts issued by the said contractors. He contended that these agreement and receipts having been tendered without any objection, it is too late in the day for the Defendants to complain about the admissibility of the said agreement and receipts or to query their relevance to this case.

Relying on **Chabasaya v. Anwasi (2010) 10 NWLR (Pt. 1201) 163 at 178-179,** heposited that evidence that is relevant to the issue in controversy and that is not successfully challenged, contradicted and discredited is good and reliable evidence to which probative value ought to be ascribed and which ought to influence the judex in the determination of the case before it.

He contended that the Claimant in the instant case has overwhelmingly established its claim that it expended the sum of N153,308,222.00 in carrying out renovation and construction works on the property.

On issue two, learned counsel argued that there cannot be justice in a case where the Defendants who acknowledged the enormous renovation and construction works carried out in a property are allowed to appropriate such improvements and chase away the party that carried out such works without offering compensation to the later. He contended that justice and equity would only be done if the Defendants are ordered to return to the Claimant its exposure in the property by way of moneys it expended in carrying out renovation and construction works.

He thus urged the Court to order the Defendants to jointly and severally pay the Claimant the established exposure it incurred in carrying out renovation and construction works on the property as well as pay damages and cost of this suit assessed at N208,308,222.00 made up of N153,308,222.00 special

damages, N50m general damages and N5m as cost of this action.

Regarding the claim for mesne profit by the Defendants, learned Claimant's counsel argued that the Defendants at the trial of this suit did not lead any scintilla of evidence in proof of their alleged claim for mesne profit.

He argued that the Defendants did not file any written statement on oath verifying the alleged facts in the counter claim and that no evidence whatsoever was adduced in support of the said alleged facts in the counter claim.

He submitted that the Defendants having led no evidence in support of their counter claim, the said counter claim are deemed abandoned. He referred to **Guiness (Nig) PLC v. Onegbedan (2012) 15 NWLR (PT.1322) 31 at 52-53.**

Relying on **Aminu&Ors v. Hassan &Ors (2014) LPELR-2008 (SC),**on the principle that for material facts to be admissible in evidence, they must be pleaded, learned counsel posited that there is no pleading for mesne profit by the Defendants in this case. He urged the Court to dismiss the Defendant's counter claim with substantial cost as there was no scintilla of evidence in support of same.

Regarding the Defendants' claim for professional fees, learned counsel contended that it is unethical and an affront to public policy for a litigant to pass his solicitor's fees in an action to his opponent, as solicitors fees do not form part of cause of action. He referredto **Bluenest Hotels Ltd v. Aerobell Ltd (2018) LPELR-43568(CA)**; **Ibe&Anor v. Banum (Nig) Ltd (2019) LPELR-46452(CA)** and **Michael v. Access Bank (2007) LPELR-41981(CA).**

He further urged the Court to dismiss the claim for solicitor's fees and the entire counter claim with substantial cost in favour of the Claimant.

The claims in this suit bother solely on the construction of the tenancy agreement between the Claimant and the 2nd Defendant admitted in evidence in this case as Exhibit PW1R.

The parties are ad idem on the fact that the said Exhibit PW1R is the basis and foundation of their relationship inter se.It is the embodiment of the contract between the parties evidencing their respective rights duties and obligations.

The duty of the Court in construing or interpreting documents or agreements between parties has been succinctly stated in a plethora of cases.

In this regard, the apex Court in the case of **AdetounOladeji (Nig) Ltd v. Nigeria Breweries PLC (2007) 1 SC (Pt.II) 183),** held per Tobi, J.S.C. thus;

> ***"The meaning to be placed on a contract is that which is plain, clear and obvious result of the terms used in the agreement. When constructing a document in dispute between the parties thereto, the proper course is to discover the intentionor contemplation of the parties and not to import into the contract, ideas not potent from the face of the document. Where there is a contract regulating any arrangement between the parties, the main duty of the Court is to interpret that contract to give effect to the wishes of the parties as expressed in the contract document. In the construction of documents, the question is not what the parties to the documents may have intended to do by entering into that document, but what is the***

meaning of the words used in the document. However, where the meaning of the words used are not clear, the Court will fall back on the intention behind the words."

See also **P.T.F. v. W.P.C. Ltd (2007) 14 NWLR (Pt.1055) 478 at 495.**

The duty of the Court in construing the agreement between parties is to give effect to the wishes of the parties as expressed in the contract document. The Court cannot import into the contract, ideas that are not potent from the face of the document, and it not the duty of Court to make agreement for parties or to change their agreement as made.

It is also a settled principle of law that where the parties have embodied the terms of their contract, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written document. See **Obajimi v. Adediji (2008) 3 NWLR (Pt.1073) 1 at p.14.**

In the determination of this case therefore, the task before this Court is to discover the intention of the parties as evidenced by the terms of their written contract, Exhibit PW1R.

From the pleadings and nature of evidence led by the parties in this suit, the specific areas of dispute between the parties relate to the term of the tenancy created by exhibit PW1R; whether the Claimant has "inalienable" right to purchase the property in issue in the event of its sale by the landlord, and whether the expenses incurred by the Claimant in the improvement of the property are recoverable in the event of a sale of the property to a third party.

The contention of the Claimant is that the parties agreed per Exhibit PW1R for a 10 years lease, in which the Claimant was to pay for two years at the first instance.

That the tenancy agreements gives it "inalienable right" of first purchase of the property which right cannot be revoked or extinguished unless and until the Claimant communicates its refusal to purchase the property in writing to the Defendants. Also, that the Defendants being aware of the constructions and renovations carried out on the property by the Claimant, have thus consented to those improvements and are therefore liable to refund to the Claimant, the expenses incurred in those construction and renovation works.

The Defendants on the other hand, contended that the tenancy agreement, Exhibit PW1R, created a two year term certain. That the Agreement permitted the Claimant to effect some renovations at its on cost, to suit it business needs, and that requirement to give the Claimant the first right of purchase was duly complied with by the 1st – 3rd Defendants.

To resolve these divergent views, this Court will invite Exhibit PW1R to speak for itself.

On the term of the tenancy, Exhibit PW1R provides in its Article II, sections 2 and 3 as follows:

> ***"Section2.Term of Tenancy.***
>
> ***The term of this Tenancy shall begin on the Commencement Dates, as defined in Section 2 of this Article II, and shall terminate on the Termination Date, provided, however, that at the Option of Tenant, and with the express consent of the landlord, Tenant may renew this tenancy for an additional successive two year term at a Yearly rent of 8,200,000, provided that***

notice of such renewal is given in writing no less than 60 days prior to the Termination Date.

Section 3.

Commencement Date. The "Commencement Date" shall mean 01/11/2016.

Termination Date. The "Termination Date" shall mean 01/11/2018."

From the above provisions of Exhibit PW1R, I agree with learned defence counsel that the tenancy agreement between the parties created a term of two (2) years certain with a definite termination date being the 1st day of November, 2018. There is nowhere in exhibit PW1R where 10 years lease was either mentioned or contemplated. The tenancy agreement stated in no uncertain terms that the tenancy was to commence on 1/11/2016 and terminate or expire on 1/11/2018.

There is no way, by any stretch of imagination, that the period between 01/11/2016 and 01/11/2018 can amount to 10 years. The term or lifespan of the tenancy between the parties is the period between 01/11/2016 and 01/11/2018, which is clearly two years.

I have no difficulty in making a finding that the term of the tenancy between the parties is two years certain. From the clear wordings of the tenancy agreement, the document did not contemplate a ten years lease.

Regarding the construction of improvements on the demised premises, the question of obtaining necessary governmental permits, to my mind, are not germane to the issues at stake in this suit. The critical question from the contention of the Claimant, **is whether the Defendants are liable under any**

circumstances to refund to the Claimant, the expenses incurred on the improvements carried out on the demised premises?

The tenancy agreement, Exhibit PW1R, is not silent on this. Under Article V, it provides thus:

> ***"Section 1.Improvements by Tenant.***
>
> ***Tenant may have prepared plans and specifications for the construction of improvements (Swimming pool, Gymnasium). Tenant shall obtain all certificates, permits, licenses and other authorizations of governmental bodies or authorities which are necessary to permit the construction of the improvements on the demised premises and shall keep the same in full force and effect at Tenant's Cost.***
>
> ***Tenant shall negotiate, let and supervise all contracts for the furnishing of services, labour and materials for the construction of the improvements on the demised premises at its cost…….***
>
> ***Nothing herein shall alter the intent of the parties that Tenant shall be fully and completely responsible for all aspects pertaining to the construction of the improvements of the demised premises (apart from fence to be built for demarcation by landlord) and for the payment of all costs associated therewith.***
>
> ***Moreover, neither Tenant nor any third party may construe the permission granted Tenant hereunder to create any responsibility on the part of the landlord to pay for any improvements alterations or repairs occasioned by the Tenant."***Underlining mine, for emphasis.

The clear intention of the parties lucidly expressed in the section of the tenancy agreement reproduced above, is simply put, that whatsoever expenses incurred by the tenant (the Claimant) in the construction of improvements on the demised premises, is at its own cost and cannot be recovered from the landlord.

The PW1, who incidentally prepared the tenancy agreement (according to her testimony under cross examination), admitted that by the provisions of the tenancy agreement, the improvements constructed by the Claimant were done at its own risk and cost.

Why then, one may be compelled to ask; is the Claimant claiming for the refund of the costs it incurred in the construction of the improvements on the demised premises contrary to the clear terms of the tenancy agreement?

The contention of the learned Claimant's counsel in this regard in his final written address is that the Defendants, being aware of the works carried out by the Claimants, gave their consent to same; that the evidence of the expenses incurred by the Claimant on the works it carried out on the property, were not contradicted or impugned by the Defendants; and that the enormous works carried out by the Claimant have enhanced the value and status of the property. He thus posited that the only way justice would be served in this case, is for the Defendants to be subjected to the responsibility of compensating the Claimant by refunding the moneys it spent on the property.

Contrary to the position canvassed by the learned Claimant's counsel however, the expressagreement voluntarily entered into by the parties clearly speaks:

"Moreover, neither Tenant nor any third party may construe the permission granted Tenant hereunder to create any responsibility on the part of the landlord to pay for any improvements, alterations or repairs occasioned by the Tenant."

This Court does not have the latitude to depart from the clear intention of the parties expressed in their written contract. The contract between the parties states that the landlord (1st – 3rd Defendants) cannot bear the responsibility to pay for any improvements, alterations or repairs effected by the Claimant on the demised premises. This Court cannot do otherwise than to give effect to the express intention of the parties, and it bears repeating here, that from the evidence elicited from PW1 under cross examination, the Claimant through PW1, drafted or preparedthe contract, Exhibit PW1R, which without any ambiguity, clearly states that the construction of improvements on the property by the Claimant would be atits own cost.

It is therefore my finding, and I so hold, that from the clear terms of the contract between the parties, the Claimant is not entitled to recover from the Defendants, the costs expended on the works or improvements effected on the demised property.

The next issue is that of the Claimant's right of first purchase under the contract which the Claimant alleges was breached by the 1st - 3rd Defendants.

Article XVI of Exhibit PW1R provides thus:

"ARTICLE XVI – OPTION TO PURCHASE.

During the Term of this Tenancy, Tenant shall have the right to purchase the Rented Premises at any time for a purchase price to be mutually agreed upon by both parties."

The contention of the Claimant is that the above clause of the agreement confers on it the inalienable right to purchase the property from the 1st - 3rd Defendants at a price mutually agreeable to the parties and therefore, that the said right cannot be extinguished or revoked unless the Claimant declines in writing to purchase the property.

This contention is however, not borne out by the tenancy agreement. There is no clause in the tenancy agreement that supports this claim by the Claimant.

It remains a trite law that extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of a written document. See **Obajimi v. Adediji (supra).**

The right or option of purchase which enures on the Claimant under the contract only entails that at anytime the landlord intends to sale the property, the property would be first offered to the tenant (Claimant). It does not in any way connote that as long as the tenant was interested in buying the property, the landlord cannot sell to any other person unless and until the tenants in writing declines to buy the property.

From the terms of the contract, the landlord may sell to a third party where the tenant and the landlord could not reach a mutually agreeable price or where the tenant declines the offer to purchase the property, and that decline could, as in this case, be by conduct.

From the evidence before this Court, the time eventually came for the 1st – 3rd Defendants to sell the demised property and the 1st Defendant in line with the tenancy agreement, offered same to the Claimant to purchase for the sum of N250m. This offer was made vide Exhibit DW1C dated 3rd October, 2017. Two months later, on 2nd December, 2017 the Claimant made a

counter offer to the 1st Defendant, vide Exhibit DW1L, to purchase only part of the property they leased from the 1st - 3rd Defendants, for the sum of N180m.

On 20th December, 2017, the 1st Defendant accepted the counter offer made by the Claimant and advised the Claimant on the modalities to make the payment vide Exhibit DW1D.

From the pleadings and evidence before the Court, the Claimant did not make any payment for the property as advised by the 1st Defendant. Rather, the Claimant on 30th January, 2018, wrote to NEXIM Bank vide Exhibit PW1B, appealing to the Bank to grant it the option of first refusal in the purchase of the property, and requested that the Bank allow it to make initial payment of N20m and to spread the balance across twelve months.

The contention of the Defendants at the trial of this case is that rather than paying the sum it offered for the property, which the 1st - 3rd Defendants magnanimously accepted, the Claimant opted to deal directly with NEXIM Bank without putting the 1st - 3rd Defendants in the know; and indeed, there is no evidence that the Claimant's correspondence to NEXIM Bank, exhibit PW1B, was copied to 1st - 3rd Defendants.

Thus, from the evidence of the Defendants; having waited for the Claimant from December, 2017 until February, 2018 without any sign that the Claimant was prepared to pay for the property, the 1stDefendant vide Exhibit DW1E (also PW1C), revoked the Claimant's right of first refusal on 2nd February, 2018 in order to enable the 1st - 3rd Defendants sell the property to a willing party to forestall a foreclosure by NEXIM Bank.

I am of the firm view that by the terms of the tenancy agreement,the Claimant's right of first refusal was not breached by the Defendants.

The tenancy agreement, Exhibit PW1R neither envisaged nor stipulated that the landlord would wait ad infinitum for the tenant to make up its mind or to decide if and when to purchase the property.

The Claimant slept on its right and the law is trite that equity does not aid the indolent.

The claim by the Claimant that it needed to do due diligence before paying for the property having suddenly discovered in 2018 that the property was encumberedflies in the face, of the overwhelming evidence before this Court.

First the PW1 admitted under cross examination that all the documents relating to the property, and particularly, Exhibit DW1P, were made available to the Claimant before they entered into the tenancy agreement. Exhibit DW1P is an Affidavit of Fact, which clearly states that NEXIM Bank granted a N100m facility to the 1st Defendant, and that the property at No 6. EtangObuli Crescent, Jabi, Abuja (the demised premises) was pledged as collateral for the loan.

Secondly, the insertion of the clause on the option of first purchase or properly put; first refusal, into the tenancy agreement by the Claimant, only points to one thing; that the Claimant was aware that the property may be sold during its occupation of same as tenant thereof.

Furthermore, in its letter, Exhibit DW1C, whereby the 1st Defendant offered the property to the Claimant to purchase, the fact that the sale became necessary in order to offset the loan facility on the property, was clearly stated by the 1st Defendant.

The Claimant did not raise any issue to that fact in its counter offer of 2nd December, 2017.

There is therefore, no doubt in my mind that the Claimant was fully aware from the onset of their relationship, of the existence of the mortgage facility on the demised premises. It is therefore an afterthought, which only amounts to playing the ostrich, for the Claimant to deny knowledge of the encumbrance on the property when it entered into the tenancy agreement.

From the totality of the foregoing, it is the finding of this Court that the Claimant has failed, and that woefully, to prove its case against the Defendants. The Claimant's case therefore fails in its entirety, and same is accordingly dismissed with cost of N200,000.00 (Two Hundred Thousand Naira) against the Claimant.

……
HON. JUSTICE A. O. OTALUKA

At the end of the averments in the Defendants' Amended Joint Statement of Defence, the Defendants endorsed the following reliefs:

1. A declaration that the Claimant was given the opportunity of the right of first purchase of part of the property situate at No 6. EtangObuli Crescent, Jabi, Abuja where she occupied as a tenant and offered to pay but refused to take advantage of same.
2. A declaration that therevocation of the Claimant's right of first purchase by the1st, 2nd or 3rd Defendants was proper and valid.

3. A declaration that thesale of the property to the 4th Defendant after the revocation is valid and subsisting.
4. A declaration that theClaimant's rent in the property has expired by effluxion of time since the 30th day of October, 2018.
5. An ordermandating the Claimant to renew their yearly rent to commence from 1st November, 2018 to 31st October, 2019 or to be calculated from the 1st day of November, 2018 until vacant possession is given to the 4th Defendant.
6. An order that the Claimant pay to the 1st, 2nd, 3rd and 4th Defendants the sum of N5million jointly as special damages for cost of professional fees paid to Dickson & Co. Solicitors being cost of professional fees unjustly incurred as a result of this suit.
7. An order that the Claimant pay to the 1st, 2nd, 3rd and 4th Defendants jointly, the sum of N100million General damages for the humiliation, emotional trauma, embarrassment suffered by them in the course of this suit.
8. And for such order or further orders as this Honourable Court may deem fit to make in the circumstance of this suit.

It is a trite law that a counterclaim is a separate action from the substantive suit. Therules only allow the defendant to join a counter claim to his defence for purposes of convenience and speed. See**Usman v. Garke (2003) LPELR-3431(SC).**

The fact that a counter claim is joined to the statement of defence does not change its character as a separate action. The averments relating to the counter claim in the defendant's pleading must therefore, be separate, distinct and distinguishable from the averments relating to the defendant's defence to the main action. In other words, the paragraphs of the Defendants' pleading relating to his defence to the

Claimant's action must be distinct from the paragraphs relating to his counter claim.

Thus in **B.R.P. Co-operative Mkt. Union Ltd v. Ojo&Anor (1997) LPELR-772(SC)** the Supreme Court, per Iguh,JSC, held that;

> ***"Material facts but not evidence relied upon in proof of the counter claim must be pleaded. However, such facts, where appropriate, must as a rule in the settlement of pleadings, be divided into paragraphs numbered consecutively. Where the defendant pleads both a defence and a counter-claim, the paragraphs of the counter-claim are usually numbered as a continuation of the paragraphs of the Statement of Defence."***

In the instant case, the Defendants merely claimed some reliefs on the amended joint statement of defence. There are no particular paragraphs specifically pleaded as averments in respect of the purported counter claim. The Defendants' pleadings ismerely headed "Amended Joint Statement of Defence", without the inclusion of "Counter Claim".

The import of the foregoing is that there are no proper pleadings in respect of the counter claim supporting the reliefs sought by the Defendants on the amended joint statement of defence.

I also agree with the learned Claimant's counsel that the DW1 did not give any evidence on the purported counter claim in his witness statement on oath.

The position therefore, is that the Defendants have placed the reliefs which they have sought on nothing, and the inevitable consequence is that the said reliefs must fall like a pack of

cards as one cannot place something on nothing and expect it to stand. See **Nzidee&Ors v. Kootu&Ors (2006) LPELR-5519(CA).**

The said reliefs claimed bythe Defendants as per the counter claim are therefore,struck out being incompetent. With particular reference to the claim for N5m as solicitor's professional fees in respect of which the Defendants tendered Exhibit DW1G, pleaded in paragraph 50 of their amended joint statement of defence and paragraph 48 of the Witness Statement on Oath, the Court of Appeal has held per Ibeyeye, JCA, in **Guiness (Nig) PLC v. Nwoke (2000) LPELR-6845(CA),** that it is unethical and an affront to public policy to pass on the burden of solicitor's fees to the other party.

Accordingly, the purported counter claim and its reliefs fail and are hereby struck out for being incompetent. Cost award is N50,000.00 (Fifty Thousand Naira).

HON. JUSTICE A. O. OTALUKA
16/7/2021.