IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

DELIVERED ON THE 28TH SEPTEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF

FCT/HC/CV/787/2020

BETWEEN

ABUJA LEASING COMPANY LIMITED ……. CLAIMANT

AND

1. **ALL ROUND CONSULTS & ENGINEERING NIG LTD**
2. **MERCELLIUS ENEJOH AMEH**
3. **BENJAMIN IORCHII IKYANYON**
4. **IBRAHIM MOHAMMED YAHAYA**
5. **MINISTER FEDERAL CAPITAL TERRITORY**
6. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
7. **BEDOCHI GUEST HOUSE LTD**

DEFENDANTS

JUDGMENT

By an amended writ of summons, statement of claim and witness statement on oath dated on the 03/06/2020 but filed on the 9/06/2020, the claimant herein claims against the defendants the following reliefs:-

1. An Order granting judgment against the 1st, 2nd , 3rd and 4th defendants in the sum of #245,203,279.09 (Two Hundred and Forty-Five Million,

Two Hundred and Three Thousand, Two Hundred and Seventy – Nine Naira, Nine Kobo) being its outstanding indebtedness to claimant as at 26th November, 2019.

2. 8% of the sum of #245,203,279.09 (Two Hundred and Forty-Five Million, Two Hundred and Three Thousand, Two Hundred and Seventy – Nine Naira, Nine Kobo) from 1st December, 2019 monthly till the date of Judgment.
3. A Declaration that the claimant is the beneficial owner of that building situate at Plot No 637 (No.55) Cadastral Zone Ao2, Wuse 1, Abuja covered by Certificate of Occupancy No 21a2w-88e4z-69e3r-c3r-c3aau-10 currently numbered as No55, Abidjan street, Wuse Zone 3, Abuja.
4. An Order for specific performance of the contract and undertaking of the 1st defendant to perfect transfer of title and put the claimant into possession.
5. An Order for recovery of possession of building situate at plot No 637 (No.55) Cadastral Zone Ao2, Wuse 1, Abuja covered by Certificate of Occupancy No 21a2w-88e4z-69e3r-c3r-c3aau-10 and its delivery to claimant.
6. An Order for account for all income accruing from the third defendant's use of property from 22nd September, 2018 till date of judgment.
7. Mesne profit at the rate of #50,000 (Fifty Thousand Naira) daily from 1st December, 2019 till date of delivery of possession of the property.
8. An Order directing the 4th and 5th defendants to register the claimant's title in the Abuja Geographic Information System as beneficial title holder of Certificate of Occupancy No 21a2w-88e4z-69e3r-c3r-c3aau-10 currently numbered and described as No. 55 Abidjan street, Wuse Zone 3, Abuja and its delivery to claimant.
9. The sum of #25, 000,000 (Twenty – Five Million Naira) being legal cost of recovery of loan.

10. Post Judgment interest at the rate of 17% per annum from the date of judgment until the judgment debt is fully liquidated.

The defendants were served with the processes and they accordingly filed their statements of defence and counter claims. The 1st, 2nd and 4th Defendants filed their statement of defence and a counter claim. This process was filed on the 12th day of February, 2020. The counter claim against the claimant is as follows:

1. An Order of this Honourable Court directing the claimant to pay the 1st defendant the sum of Eighteen Million Naira (#18,000,000:00) being the excess sum the 1st defendant paid to the claimant.

The 3rd and 7th defendants filed their statement of defence and counter claim on the 30th day of July, 2020. The 3rd and 7th defendants counter claim against the claimant and the 1st, 2nd& 4th defendants jointly and severally as follows:

1. A Declaration that the continuous detention of the 3rd and 7th defendants' Certificate of Occupancy covering their property Plot No 637, Cadastral Zone A02, C of O No 21a2w-88e4z-69e3r-c3r-c3aau-10, No 55 Abidjan Street, Wuse Zone 3, Abuja, being collateral for a loan of #100,000,000:00 (One Hundred Million Naira) only, by the claimant and the 1st, 2nd, and 4th Defendants after payment of the said loan is unlawful and illegal.
2. A Declaration that the use of the 3rd and 7th defendants' Certificate of Occupancy on Plot No. 637 Cadastral Zone A02, C of O No 21a2w-88e4z-69e3r-c3r-c3aau-10, No 55 Abidjan Street, Wuse Zone 3, Abuja as security/collateral for the loan of #150,000,000:00K (One Hundred and Fifty Million Naira) by the claimant and the 1st Defendant without the consent or authority of the 3rd and 7th Defendants is illegal and unlawful and renders the entire loan contract unenforceable.
3. An Order directing the Claimant and the 1st, 2nd, 4th Defendants to immediately and unconditionally return to the 3rdand 7th Defendants their Certificate of Occupancy covering their property Plot No 637, 637 Cadastral Zone A02, C of O No 21a2w-88e4z-69e3r-c3r-c3aau-10, No 55 Abidjan Street, Wuse Zone 3, Abuja.

4. A Declaration that the letters dated the 19th December, 2019 being purported seven (7) days notice of intention to recover possession and notice of sale of 3rd and 7th defendants' property Plot 637 Cadastral Zone A02, C of O No 21a2w-88e4z-69e3r-c3r-c3aau-10, No 55 Abidjan Street, Wuse Zone 3, Abuja by the Claimant together with their filing of a caveat against the 3rd and 7th Defendants' property without their consent or authority constitute blatant acts of trespass by the claimant.
5. Damages in the sum of #200,000,000:00k (Two Hundred Million Naira) only against the Claimant for trespass to the 3rd and 7th defendants' property being Plot No 637 Cadastral Zone A02, C of O No 21a2w-88e4z-69e3r-c3r-c3aau-10, No 55 Abidjan Street, Wuse Zone 3, Abuja.
6. An Order cancelling the purported Deed of Sale and Deed of Assignment of the 3rd and 7th Defendants' Plot 637 Cadastral Zone A02, C of O No 21a2w-88e4z-69e3r-c3r-c3aau-10, No 55 Abidjan Street, Wuse Zone 3, Abuja dated the 21st March, 2018 and an order commanding the claimant to return the cancelled Deeds to the 3rd and 7th Defendants.
7. #10,000,000 (Ten Million Naira) PENALTY against the Claimant for illegally engaging in the business of money lending and for failure to fulfil the requisite conditions for carrying out the business.
8. 10% Post judgment interest on the judgment sum till final liquidation of same by the claimant.
9. Any Other Orders the Honourable Court may deem fit to make in the circumstance of this case.

The claimant filed an amended Reply and defence to the counter claim of the 1st, 2nd and 4th Defendants' statement of defence/ counter claim on the 15/2/2021. Furthermore, the claimant in an amended statement of claim filed on the 04/03/2021 added the following alternative reliefs to relief iv of the earlier amended statement of claim.

The reliefs are:

a). A Declaration that the deposit with the claimant of the certificate of occupancy by the 3rd defendant in respect of Plot No 637 (No.55) Cadastral Zone A02, Wuse 3, Abuja covered by Certificate of Occupancy No 21a2w-88e4z-69e3r-c3r-c3aau-10 as security for the loan obtained by 1st defendant created an equitable mortgage over the property.

b). An Order of foreclosure and sale of Plot No 637 (No.55) Cadastral Zone A02, Wuse 1, Abuja covered by Certificate of Occupancy No 21a2w-88e4z-69e3r-c3r-c3aau-10.

The claimant called two (2) witnesses in prove of its claims and defence to the counter claims. Ebube Nwankwo testified as PW1 on the 1st day of July, 2020 and tendered the following documents which were marked as follows:

i. Certificate of identification marked as Exhibit A.
ii. Demand letter dated 19/12/2019 from Greyfiled to the 1st defendant marked as Exhibit B.
iii. All Round statement of account with the Claimant from 24/5/18 to 26/11/19 marked as Exhibit C.
iv. Claimant's Demand for refund addressed to the 1st defendant dated 19/4/2019 marked as Exhibit D.
v. Deed of Assignment and Deed of Sale between the 3rd defendant and the claimant dated 21/3/2018 marked as Exhibit E.
vi. Certificate of Occupancy granted to the 3rd defendant marked as Exhibit F.
vii. Twelve (12) 1stdefendant's First Bank Cheques with serial 00271946, 00271947, 00271949 to 00271958 covering the total sum of One Hundred and Sixteen Million, Four Hundred and Ten Thousand, Fifty three Naira Sixty three kobo (#116,410,053.63) marked as exhibits G.
viii. 2nd Defendant's Letter of Personal guarantee dated the 24/5/2018 marked as Exhibit H.
ix. 2nd defendant's information form dated 26/3/2018, Indicative Offer for Project Finance (Credit line) addressed to the 1st defendant dated the 21st May, 2018

& Addendum On project Finance Facility addressed to the 1st defendant dated the 20th June, 2018 marked as Exhibits I, Ii & Iii.

x. Valuation Certificate prepared by Osas&Oseji marked as Exhibit J.
xi. Demand for payment from Greyfield to the 2nd defendant dated 12/12/2019 marked as Exhibit K.
xii. 7 day's notice of intention to recover possession dated 19/12/2019 and addressed to the 3rd defendant marked as Exhibit L
xiii. Letter authorization dated 18/12/2018 & legal invoice dated the 25/11/2019 marked as Exhibits M.
xiv. 4th defendant's letter of personal guarantee dated the 24/05/2018 marked as Exhibit N.
xv. All Round Consultant and Engineering Nig. Ltd & Certificate of Identification marked as Pw1

Ibrahim Shelleng testified as PW2 and was cross examined by the defendants. It is important to note at this stage, that the 5th& 6th defendants were given opportunity to cross examine the witnesses of the claimant and put up their defence as well, they however failed and neglected to respond to the court processes served on them. Thus, at the close of the claimant's case, the application of the learned counsel for the claimant to have the 5th& 6th defendants foreclosed from cross examining the claimant's witnesses was granted.

The 1st, 2nd& 4th defendants opened their defence and counter claim on the 29/01/2021. In proving their case they called four (4) witnesses and tendered the following documents as exhibits:

1. Police Extract from Crime Diary dated 5th August, 2019 marked as Exhibit O1.
2. High Court of Justice of Federal Capital Territory General form of Affidavit deposed to on the 5th day of August, 2019 marked as Exhibit O2
3. Letter of consent/Power of Attorney dated 28th August, 2017 signed by the 3rd defendant addressed to the Managing Director Ebiakpo Services Nigeria Limited marked as Exhibit O3.

4. Authority letter to irrevocably transfer the credit fund at the drawdown to B. I. IKYANYON dated the 16th May, 2018 issued by the 1st defendant and signed by the 2nd defendant marked as Exhibit O4
5. Memorandum of Understanding between Ebiakpo Nigeria Services Limited and All Round Consults & Engineering Nigeria Ltd and Memorandum of Understanding between Engr. Ikyanyon Benjamin Iorchii and All Round Consults & Engineering Nigeria Ltd marked as Exhibits O5A & O5B.
6. Certificate of Identification issued by Zenith Bank dated the 14th July, 2020 marked as Exhibits O6.
7. Memorandum and Articles of Association of the Claimant as marked as Exhibit O7.
8. United Bank for Africa's 1st Defendant's statement of account marked as Exhibit O8.
9. Zenith Bank's 1st Defendant's statement of account marked as Exhibit O9

The 3rd and 7th defendants opened their defence and counter claim, called one witness; this document was admitted:

1. Re: Plot 637 Cadastral Zone A02 No55, Abidjan Street, Wuse Zone 3, Abuja Covered by Certificate of Occupancy No. 21a2w-88e4z69e3aau-10 dated the 22nd January, 2020 marked as exhibit DD1.

Furthermore, the claimant's counsel in the course of cross examining the 3rd defendant tendered these documents through him, they are:

1. Customer Profile Form in the name of the 3rd defendant marked as exhibit DD2
2. CTC of the court process with Suit No: CV/693/19 [for service] marked as exhibit DD3

SUMMARY OF THE CASE

It is the case of the claimant that sometime in May 2018, the 1st defendant applied for a loan of #150,000,000.00 (One Hundred and Fifty Million Naira) from the claimant to finance a construction contract it secured with the Delta State Government of Nigeria; that based on the 1st defendant's application, the claimant granted the said sum and same was disbursed to the 1st defendant on the 21/5/18, 22/5/18 and 6/6/18. See Exhibit I indicative offer for project finance (credit line) dated the 21st May, 2018 with transaction amount of One Hundred and Fifty Million Naira (#150,000,000.00) and Addendum on Project Finance Facility dated the 20th June, 2018. The loan was granted at 8% interest rate and was to be repaid within three months. The 2nd& 4thdefendants on the 24th May, 2018 guaranteed the loan and made specific undertaking to indemnify the claimant for the payment of one hundred and seventy – four million, six hundred and fifteen thousand, eighty naira, forty – six kobo (#174,615,080.46k) and all consequential interests accruing there from; that the 2nd& 4thdefendants signed a Guarantor's Information Form. [See exhibits I, H & N]. The guarantee is to acknowledge the debt as well as give assurances of repayment of the loan to the claimant. The 1st defendant issued post dated cheques in favour of the claimant to cover the entire principal and interest. The post-dated cheques are twelve (12) in number.[see exhibit G]

The witnesses stated that part of the security for the loan was that the 3rddefendant provide and assign to the Claimant Plot No 637 (No.55) Cadastral Zone A02, Wuse 3, Abuja exhibit F; that based on the agreed tripartite collateral security structure and arrangement between the claimant and the defendants, the 3rddefendant assigned his property known as Plot No 637 (No.55) Cadastral Zone A02, Wuse 3, Abuja and also executed a Deed of Sale dated 21st March, 2018. The consideration for the assignment and sale of the property was #100,000,000.00 [One Hundred Million Naira] See exhibit E. The witnesses continued further, that by a letter dated 18th May, 2018, the 3rd defendant instructed and authorized the claimant to transfer the proceeds of sale of Plot No 637 (No.55) Cadastral Zone A02, Wuse 3, Abuja into the 1st defendant's Zenith

Bank Account No 1012873879 [see exhibit M of 18th May, 2018]; that pursuant to the agreement, the 3rd defendant delivered to the claimant the original Certificate of Occupancy covering the said property [see exhibit F]; that even though the 1st defendant is the primary debtor, parties agreed that the debt be assigned to the 3rd defendant for a consideration of the assignment of his property in sale and lease back arrangement. See exhibit M-letter of authorization dated 18th May, 2018; that it was agreed that the claimant can take over possession of the property in the event the 1st defendant default in the repayment of the loan.

The consideration for the Deed of Assignment and Deed of Sale is the sum of One Hundred Million Naira (#100, 000,000:00.) The Deed of Assignment and Deed of Sale were executed on the 21st day of March, 2018. The claimant continued that the 1st defendant breached the terms stated in the loan agreement; that the post-dated cheques issued by the 1st defendant were all dishonored upon presentation for lack of fund and same is being investigated by the Economic and Financial Crimes Commission. It is further stated that the letter of 10thApril, 2019 written by the claimant to the 1st defendant for the repayment of the outstanding sum of #177,789,385.76 was ignored by the 1st defendant: see exhibit D; that as at the 26thNovember, 2019 the total indebtedness of the 1st defendant was Three Hundred and Forty Five Million, Two Hundred and Three Thousand Naira and Two Hundred and Seventy Nine Naira nine Kobo (#345, 203,279.09)

The claimant continued that sometime in November, 2019 the claimant acting on a written instruction and letter of authority of the 3rd defendant set off the property stated in Exhibit F which is the sum of One Hundred Million Naira (#100,000,000.00) against the part of the outstanding debt of the 1st defendant; that the notice of set off, correspondences and information concerning the transaction were communicated to the 1st, 2nd, 3rd, 4th& 7thdefendants; that in order to activate possession of the property, the claimant's lawyer issued and served a seven [7]day's notice of owners' intention to recover possession on the 3rd defendant being a director of the 7th defendant see Exhibit L. The 3rd Defendant refused to yield possession despite the notice. The claimant then filed a caveat in the registry of the 5th Defendant. The claimants' witnesses

continued that parties agreed that the legal fees in respect of the recovery of the loan will be paid by the 1st defendant and exhibit M of 25th November, 2019 was produced to show the professional services rendered by the claimant's lawyer.

The claimant in an amended reply and defence to the counter claim of the 1st, 2nd& 4th defendants states that in the course of granting the loan to the 1st defendant, 3rd defendant & guarantors to the loan, the claimant never had any transaction with Bode Olajide, Mathew Nwokocha, Willy Akposeye and Ebiakpo Services Nigeria Ltd; that the claimant is a stranger to the alleged transactions between the 1st defendant, 3rd defendant and the aforementioned names; that the 1st to 4th defendants are the persons liable for the loans stated in the statement of claim. The summary of how the loan was disbursed to the 1st defendant and how the defendant repaid part of the money was enumerated; see exhibit Pw1. Based on the default of the 1st defendant to repay the loan, the claimant instituted this matter.

The defence and counter claim in this proceeding are two. One was filed by the 1st, 2nd and 4th defendants [hereinafter called the 1st set of defendants/counter claimants] and the 3rd and 7th defendants/counter claimants [henceforth called the 2nd set of the defendants/counter claimant].

The case of the 1st set of Defendants is that the 2nd defendant is the managing director and a shareholder of the 1st defendant; that the 2nd defendant didn't personally guarantee any loan. It further states that the 4th defendant is a director of the 1st defendant and that he did not guarantee any loan as the claimant lacks the capacity to give loan; that the 1st defendant secured a contract with the Delta State Government and was in need of money to execute the contract. The 2nd& 4thdefendants approached the claimant for funds specifically the sum of One Hundred Million Naira (#100,000,000.00) and that the claimant demanded for a collateral to secure the sum.

The 4th defendant in a bid to provide the collateral, met one Bode Olajide who took him to the 3rd defendant; that the 3rd defendant told him he has given a letter of consent/power of attorney to one Mathew Nwokocha and Willy Akposeye, who are directors of Ebiakpo Service Nig. Ltd to use his property known as Plot No 637 (No.55) Cadastral Zone A02, Wuse 3, Abuja to secure a loan [see exhibit O3]; that after the meeting of the 4th defendant with the directors of Ebiakpo Service Ltd, Mathew Nwokocha, Willy Akposeye; that the claimant valued the property and said it can only be used as security for a loan of #100,000,000.00. The 1st set defendants agreed among themselves that Ebiakpor Service Nig. Ltd and its directors shall take the sum of #60,000,000:00 (Sixty Million Naira) while the 1st defendant takes the sum of #40,000,000:00(Forty Million Naira) from the #100,000,000:00k (One Hundred Million Naira); that the money was disbursed by the claimant and the original copy of the 3rd defendant's title document was deposited with the claimant by the 3rd defendant to secure the loan.

The 1st set of defendants admits that the claimant on the 21st and 22nd of May 2018 paid the sum of One Hundred Million Naira (#100,000,000.00) into the 1st defendant's bank account; that the 3rd defendant instructed the 1st defendant to transfer the sum of #10,000,000.00 (Ten Million Naira) to the 3rd defendant, #42,000,000.00 (Forty Two Million Naira) to Ebiakpo Services Nig. Ltd and #8,000,000.00 (Eight Million Naira) was the processing and agency fees. The 1st set of defendants continued that there was an agreement between the 1st& 3rd defendants and another agreement between Ebiakpo Services Nigeria Limited and the 1st defendant. The agreement is to the effect that each party shall refund the amount received by it to the claimant. [See exhibits O5A & O5B].It is stated further that the 1st defendant in less than two months that it collected the money, paid the sum of Forty Million Naira (N40,000,000.00) to the claimant; that the 1st defendant has discharged its own obligation.[See exhibit O8]

The 1st set of defendants admits that they collected the sum of One Hundred Million Naira (#100,000,000.00) as initial disbursement on the 21st to 22nd May, 2018 from the claimant which according to them, they have repaid the sum of Forty Million (#40,000,000:00) and the unpaid balance shall be paid by the 3rd defendant and Ebiakpo Services Nigeria Limited. The 1stset of defendants admits that from the 6th - 20th June 2018[see exhibit O9] the claimant gave the 1st defendant another Sixty Million Naira (#60,000,000:00). The 1st set of defendants states that the claimant not being a financial institution certified by the Central Bank of Nigeria cannot give loan and also collect interest from members of the public [Exhibit O7]. It is stated further that the documents signed by the 2nd & 4th Defendants were formalities; that the 2nd and 4th defendants did not personally agree to pay the sum of One Hundred Million Naira (#100,000,000.00) since the money advanced to the 1st set of defendants was secured with Exhibit F. The 1st set of defendants' states that Exhibits G i.e the cheques were issued in respect to the sum of #60,000,000:00 given to the 1stdefendant. The 1stset of defendants states that they are not the owner of Exhibit F thus cannot transfer any valid interest to the claimant; that the 3rd defendant only gave the claimant Exhibit F as security for the sum of One Hundred Million Naira (#100,000,000.00) given in the name of the 1st defendant. The 1st set of defendants continued that the deed of sale executed was not meant to transfer interest in the property to the claimant, that it was only used to secure the sum of (#100,000,000.00) given in the name of the 1st defendant; that it was not agreed that the claimant shall take over the property covered by Exhibit F in the event the 1st defendant failed to pay the sum of One Hundred Million Naira (#100,000,000.00).

It is further stated that the claimant is not entitled to 8% interest or any interest since it is not a financial institution duly registered by Central Bank of Nigeria or a private lender. The 1stset of defendant admits that the 1st defendant has paid part of the loan that the balance of Sixty Million Naira (#60,000,000) was/is to be paid by the 3rd defendant in line with the terms stated in Exhibits O5A & O5B.

The 1st set of defendant stated that they have paid the sum of Seventy Eighty Million Naira (#78,000,000:00) which is more than the Sixty Million Naira (#60,000,000:00) given to them by the claimant; that with the payment of Seventy Eighty Million Naira #78,000,000:00 the claimant ought not to have presented exhibit G, because the sum of #60,000,000.00 given to the 1st defendant by the claimant was secured with exhibit G; that the exhibit G were dated by the claimant and presented without the consent of the 1st defendant. The 1st set of defendants admits receiving Exhibit D but that they are no longer indebted to the claimant; that the balance of Sixty Million Naira (#60,000,000:00) is to be paid by the 3rd defendant and Ebiakpo Service Nigeria Ltd to the claimant.

The 1st set of defendants admitted that it received exhibit B but denied liability of the content of the letter; they admit that the notice, correspondence and information were duly communicated to them; that they did not agree to offset the legal expenses that shall be incurred in this matter. The 1stset of defendants then concluded that they have so far paid the sum of #118,000,000:00 [One Hundred and Eighteen Million Naira] to the claimant which is more than the sum of One Hundred Million Naira (#100,000,000) borrowed from the claimant. The 1st set of defendants counter claimed that they are entitled to the sum of Eighteen Million Naira (#18,000,000:00) being the excess sum paid by the 1st defendant to the claimant.

The case of the 2nd set of the defendant is that they are only aware of the loan of One Hundred Million Naira (#100,000,000.00) guaranteed by the 2nd& 4th defendants; that they are not aware of the purported offer and grant of loan of One Hundred and Fifty Million Naira (#150,000,000:00) by the claimant to the other parties; that the 3rd defendant did not assign or agree with the 1st defendant or anybody to assign their interest in Exhibit F to the claimant.

The 2nd set of defendants maintained that they did not agree with anyone to assign their interest in Exhibit F; that the Deed of Assignment and Deed of Sale

(Exhibit E) were not executed by them. They continued that Exhibit E being an unregistered land document, same offends Sections 2 & 15 of Land Registration Act, thus it is illegal and unenforceable. It is stated further that they did not and have never received any consideration from the claimant on account of any deal, transaction or agreement whatsoever. The 2nd set of defendant wondered why they will sell exhibit F when the loan of One Hundred & Fifty Million Naira (#150,000,000:00) was not in existence as at the 18th May, 2018; that the due date for repayment of the purported loan was three (3) months away from the 21st May, 2018 and that the collateral for same was not and could not have been sold to offset the loan.

The 2ndset of defendant reiterates that they did not authorize anyone to execute or enter into any agreement with the claimant or any other person in respect of Exhibit F. They admit that the deposit of Exhibit F with the claimant was only on account of One Hundred Million Naira (#100,000,000:00) as security for the repayment of the said loan in case of default by the 1st defendant. It is further stated that the 1st defendant has paid the One Hundred Million Naira (#100,000,000:00) with interest to the claimant; that the 1st defendant and the claimant have failed to return their title document to them as earlier agreed. The 2nd set of defendants states that they are not aware of any sum of money remaining unpaid by the 1st defendant with regards to the sum of One Hundred Million Naira (#100,000,000:00).The 3rd defendant states that the #100,000,000.00 was solely collected by the 1st defendant; that he was given the sum of Ten Million Naira (#10,000,000:00) for the use of his title document (Exhibit F) as security.

It is further stated by the 2nd set of defendants that they are not aware of the additional of Sixty Million Naira (#60,000,000:00) advanced to the 1st defendant by the claimant. The 2nd set of defendant states that the use of their title document (Exhibit F) for One Hundred and Fifty Million Naira (#150,000,000) instead of One Hundred Million Naira (#100,000,000) is illegal and renders the

entire loan agreement unenforceable. The 2nd set of defendant state that they are not aware of any offer letter dated 18th May, 2018 as same was never delivered or shown to them.

The 2nd set of defendant stated further that the offer letter dated 18th May, 2018,Deed of Assignment dated 21st March, 2018 are all recipe of fraud being practiced by the claimant, the 1st, 2nd& 4th defendants against them; that the 2nd set of defendant are not shareholders or directors of the 1st defendant. He states that the 2nd set of defendant could not have assigned or sold their property as security for a loan that was to be offered two months later to a third party; that there is no loan agreement known to them where it was agreed that the 1stdefendant shall repay the principal with 8% per month interest within 3 months; that the claim of 8% per month interest is speculative, ambiguous and confusing as there are two different purported loan offers and grant of loans by the claimant. The 2nd set of defendant in defence of the 1st defendant states that the 1st set of defendants have repaid the sum of One Hundred Million (#100,000.000.00) guaranteed by the 3rd defendant; he relied on the 1st set of defendants Zenith and UBA Bank accounts statement. The 2nd set of defendant testified further that they are not aware of any set off as they did not authorize any sale or set off of their property contained in Exhibit F.

The 2nd set of defendants stated that they are not aware or have not seen any letter be it the letter dated 10th April, 2019 for repayment of outstanding loan by the 1st defendant or anybody; that the only loan arrangement they are aware of is the #100,000,000.00 between the 1st defendant and the claimant, which has been repaid by the 1st defendant. The 2nd set of defendants that the issue of set off was first brought solely by the claimant in the letter of 19th December, 2019 after the 1st defendant had repaid the loan of #100,000,000.00 with interest. They continued further that they didn't receive any notice or correspondent from the claimant or any person before or after depositing exhibit F for the loan sum of #100,000,000.00 until December 2019 when they received from the claimant

two letters both dated 19th December, 2019. They confirmed receipt of exhibits B & L [see paragraphs 51- 55 of 3rd defendant statement of defence] and stated further that they instructed their counsel to reply the letters. See exhibit DD1. The 2ndset of defendant confirmed that Bode Olajide, Mathew Nwokocha, Willy Akposeye and Ebiakpo Services Nigeria Ltd acted as agents between the claimant, the 1st, 3rd and 7th defendants in facilitating the loan of One Hundred Million Naira (#100,000,000:00).

The 2nd set of defendant further stated in their pleadings and evidence that the claimant is not a registered money lender thus cannot carry out the business of money lending; that the action is statute bar having instituted same outside the limitation period; that the 8% interest per month charged is excessive, unconscionable and unenforceable; that the expression of the rate of interest by the claimant in the various loans ought to be per centum per annum and not per month as stated on the face of the offer letters and the claimant's pleadings; that the claim of #245,203,279.09 (Two Hundred and Forty – Five Million, Two Hundred and Three Thousand, Two Hundred and Seventy- Nine Naira, Nine Kobo) by the claimant constitutes unauthorized interest on loan which renders the whole transaction illegal and unenforceable with penalties against the claimant; that the failure of the claimant to issue receipts for every repayment made to them by the 1st defendant made the whole transaction unenforceable with penalties against the claimant. He states that the court lacks jurisdiction to entertain the suit and urged the court to dismiss the claims of the claimant with substantial cost.

The counter claim of the 2nd set of defendant is that the conversion and refusal to return Exhibit F within the stipulated time constitute a breach of the agreement; that the issuance of exhibits B & L by the claimant without their consent or authority constitute acts of trespass to their property.

Upon conclusion of the trial, the two set of defendants filed their respective written addresses. Learned counsel for the 1st set of defendant, Kenechukwu

Okide Esq. filed a written address on the 30/03/2021 wherein he formulated six issues for determination:

I. Whether the action of the Claimant by giving loan to the Defendants is illegal having given same without a valid license from Central Bank of Nigeria.
II. Whether the Claimant is entitled to interest and the sum it claimed as contained in the prayers before the Court having failed to properly plead them.
III. Whether the Power of Attorney the 3rd Defendant gave to Ebiakpor Services Nig. Ltd is valid in law.
IV. Whether 1st, 2nd, and 4th Defendants discharged their responsibilities in the loan transaction as not to be liable to the claim of the Claimant, 3rd and 7th Defendants.
V. Whether failure on the part of the Claimant to pay the loan of ₦100,000,00 to the 3rd Defendant's Bank account as agreed by the party through a letter amount to breach of contract.
VI. Whether the 1st, 2nd, and 4th Defendants are entitled to a counterclaim of ₦18,000,000 against the Claimant.

Emmanuel O. Chur Esq. on behalf of the 2nd set of defendants filed their written address on the 28/06/2021 and same was deemed as having properly filed on the 8/07/2021. He also filed a reply on point law on the 6/7/2021. The following issues were formulated for determination:

1. Whether the Claimant has proved any agreement by the 3rd and 7th Defendants to guarantee the loan of ₦150,000,000.00.
2. Whether the failure to put into writing the tripartite arrangement of guarantee for loan between the Claimant, 1st Defendant and the 3rd Defendant renders the transaction invalid and unenforceable.

3. Whether the Deed of Assignment and the Deed of Sale, i.e. Exhibit E in this suit, are not vitiated for failure of consideration.
4. Whether or not by the evidence on record and the circumstances of this case, the Claimant has rebutted the presumption that 'any person who lends money in consideration of a larger sum being repaid shall be presumed to be a money lender until the contrary is proved'.
5. Whether the interest charged on the loans granted by the Claimant in this suit is not excessive.
6. Whether or not the 3rd and 7th Defendants/Counter-Claimants have proved their case on the preponderance of evidence as to be entitled to the grant of their Counter-Claim in this suit.
7. Whether or not the 1st Defendant solely applied for and collected loans from the Claimant in this suit.

Also learned counsel for the claimant Olugbenga Owa Esq. filed a written address on the 31/03/2021 wherein he nominated four issues for determination; they are as follows:

1. Whether the Claimant has proven and established the existence of a loan Agreement as require by law and if it has, whether the 1st, 2nd, and 4th Defendants are liable for the sums as claimed?
2. Whether having regards to the surrounding circumstances the interest rate component of the loan Agreement is illegal and therefore unenforceable in law.
3. Whether from the established evidence the Claimant has established its right of title to Plot No. 637 (No. 55) Cadastral Zone A02, Abidjan Street, Wuse Zone 3, Abuja as against the 3rd and 7th Defendants or in the alternative a relief for foreclosure, Order for sale and Possession of the property.
4. Whether from the mere deposit of title deed by the 3rd Defendant to secure the loan of ₦100 Million, the breach of the loan Agreement by the

1st Defendant entitles the Claimant to order of foreclosure, of the equity of redemption and Order for sale and possession of plot No. 637 (No. 55) Cadastral Zone A02, Abidjan Street, Wuse Zone 3, Abuja.

I note that some of the issues are the similar, while some appear to be in form of objections. I therefore find it appropriate to reformulate the issues for effectual and effective determination of this case.

This court finds solace in the decision of the Supreme Court in **EMMANUEL IKEAJA MPAMA v. FIRST BANK OF NIGERIA PLC (2013) LPELR-19896(SC)** where the Supreme Court re-stated its position on formulation of issues by the Court thus;

> ***UNITY BANK PLC. v. MR. EDWARD BOUARI (2008)7 NWLR (PART 1 086) 372****, this*
> *Court per* ***Ogbuagu,JSC*** *said as follows:****"It is now firmly settled that a Court can and is entitled to reformulate issue or issues formulated b y***
> ***a party or parties or counsel in order to give it precision and clarity."***
>
> See ALSO AWOJUGBAGBE LIGHT INDUSTRIES LTD v. 3 P. N. CHINUKWE & ANOR (1995) 4 NWLR (PART390) 379; *OGUNBIYI v. ISHOLA* (1996) 6 NWLR(PART 452) 12, 24.

The preliminary issues are:

1. Whether the action of the claimant by giving loan and collecting interest on the loan granted to the defendant is illegal having given same without a valid license from the Central Bank of Nigeria.
2. Whether the Power of Attorney the 3rd defendant gave to Ebiakpor Services Nig. Ltd is valid in law.

The main issues shall be determined as follows:

1) Whether on the preponderance of evidence placed before this court, the claimant has proven and established it claims to be entitled to the reliefs sought.

2) Whether the counterclaimants to the suit have placed the necessary materials before the court to be entitled to the reliefs sought.

I shall first determine the objections before proceeding with the substantive issue.

ISSUE 1

Whether the action of the claimant by giving loan and collecting interest on the loan granted to the defendants is illegal having given same without a valid license from the Central Bank of Nigeria.

Kenechukwu Okide of counsel submits that any person or group of persons who intends to engage in banking business and other financial business shall first seek and obtain a valid license from the Central Bank of Nigeria save for insurance companies or stockbrokers. He referred to sections 2(1) & 58(1) of Banking and other Financial Institutions Act LFN 2004; Section 258 Evidence Act 2011. He argued that the claimant's witnesses admitted before this court that the claimant did not obtain any license from the Central Bank of Nigeria or registered as a private money lender before it lent money to the 1st and 3rd defendants with interest. He argued that the claimant's act of lending money for an interest without having a valid license from the Central Bank of Nigeria runs contrary to the provisions of Sections 2 & 58 of the Central Bank of Nigeria Act, that it is an illegal transaction which the court cannot enforce based on the fact that it was void ab initio. He made reference to exhibit O7 that is, the Memorandum and Articles of Association of the claimant. Counsel cited the cases of **BALOGUN V EOCBNIG LTD (2007) 5 NWLR (PT 1028) 584; HEINNEBELUNG KG V UBAPLC (2012) 16 NWLR (PT.1304) 60**. He submits that the claimant is not entitled to receive interest on the loan granted to the 1st& 3rd defendants.

Also learned counsel for the 2nd set of defendants, submits that any person who lends a sum of money in consideration of a large sum being repaid is deemed to be a money lender until the contrary is proved. He referred to **VERITAS INSURANCE CO. LTD V CITI TRUST INVESTMENT LTD. (1993) 3 NWLR (PT. 28) P. 349; NEBE CHINNAMDI V PHILEMON NDULUE& 2 OTHERS (2018) 22 W. R. N 75 AT**

(PP. 96 - 97) LINES 35 -25 to support his argument that the claimant in this case does not come under the exception provided under Section 2 and 4 **MONEY LENDERS ACT 2007**. He submits that the claimant has held out itself as carrying on business of money lending by its use of customer profile forms, guarantor forms as well as accounting software for calculating interest; that this constitutes a degree of system, consistency and continuity of the money lenders business by the claimant. He stated further that the claimant has failed to rebut the presumption that by giving money for interest it is not engaged in the business of money lending; that the mere fact that the claimant's business is that of vehicle leasing, automobile and transportation is not sufficient rebuttal of that presumption and urged the court to so hold.

He further submits that the high rate of interest charged on the loans under consideration shows that the claimant is out to make gain and not just involved in a one off/friendly loan transaction as the claimant wants this court to believe. He argued that the claimant having failed to produce any license to justify its engagement in money lending for profit, the court should declare the transaction illegal and unenforceable.

RESOLUTION

Exhibit I is the loan agreement dated the 21st May, 2018 with reference number ALC/FS/2018/May/___ it was addressed to the 1st defendant, accepted and signed by the 2nd and 4th defendants for the 1st defendant.The terms and conditions of contract are clearly stated in the 4 paged documents. The transaction amount is #150, 000,000.00, the purpose is for the *"provision of funds for the performance of Government Stadium construction contracts awarded to the client by the Delta state Government"* at the rate of 8% per month and the tenor of the loan is three (3) months. The initial disbursement was One Hundred Million Naira (#100,000,000:00.) The 2nd& 4th defendants further guaranteed the loan sum and the accrued interest via Exhibits H & N.

The claimant here is a registered company under the Companies and Allied Matters Decree 1990 whose objects are as stated in exhibit 07 and having combed the objects of the claimant, I am unable to see where it is stated that the claimant is into the business of money lending or a licensed bank. It is equally

not in evidence that the claimant put itself out to be in the business of receiving deposit on any kind of account and or operating current or saving accounts on behalf of its customer or that the claimant is into money lending business.

Also a careful perusal of the claimant's statement of claim, paragraph 1 state:

The claimant is a company registered under the Companies and Allied Matters Act. It carries on business within the jurisdiction of this Honourable court.

The contention of the 1st to 4th defendants is that the transaction between the claimant and defendants is illegal and therefore unenforceable because the claimant is not a licensed Money Lender in line with the provisions of the Money Lenders Act. I am afraid that the argument of the 1st to 4th defendants is far from the law. Section 2 of the Money lenders Act in all the thirty six (36) states is similar and our courts have interpreted it to a level of certainty. In determining who qualifies as a money lender within the provisions of the Money Lenders' Law, the Court of Appeal stated thus in **LUBCON LIMITED v. CLASSMATE TECHNOLOGIES COMPANY LIMITED (2019) LPELR-47414(CA):**

"I now proceed to agitate on whether the transaction violently offended the Money Lenders Law of Kwara State, as submitted by the learned counsel for the respondent. My agitation is however short lived in view of the decision of the Supreme Court in the case of Chidokavs FCFC Ltd (2013) 5 NWLR (pt. 1346) 144, commonly called the money lenders case. In the case just cited, which is similar to the instant case, the parties therein, contracted amongst themselves, wherein the respondent as the lender and the appellant as borrower, agreed to lend the appellant the sum of money agreed upon with an attracting interest standing at 132% per annum. The respondent in the case was not a licensed money lender, just like in the case at hand. It was contended in that case, that the agreement was illegal on the ground that the respondent was not a licensed money lender, and therefore could not operate as such under the money lenders laws of Lagos state. Coomassie JSC, in the lead judgment in adopting the reasoning of Okoro JCA (as he then was) in the case of AlhajiAbdullahi Ibrahim vs. MallamZanginaAbubakarBakori (unreported) in suit no. CA/K/299/2006 delivered on the 2/7/2009: "A person engaged in other businesses who out of

sympathy or pressure as in this case lends money to his friend to resuscitate his ailing business should not by any stretch of imagination be termed money lender under the law aforesaid. I seem to agree with the view expressed by Farewell J., in Lintch Filed vs. Dreyful (1906) 1 KB 554 @ 559 that: The act was intended to apply only to persons who are really carrying on the business not to person who lend money as incidental business or to a few friends." The learned jurist proceeded to adopt the reasoning of my Lord of the Court of Appeal in length: "though not binding authority, I agree that the view so expressed represents the correct position of the law in this matter. I am always not comfortable at the practice where a party after seeking and obtaining money from a friend for resuscitation of his ailing or dwindling business will turn around to rely on technicalities or loopholes in the law as a cover to absolve himself from contractual obligations by putting up a defense under Money Lenders Law. As done by the appellants in this case this is pes-simi exempli of business relations and this Court would not lend support for such a party to bite the finger that fed him and deprive him of his hard earned money. A man who, with his eyes open and without the other party committing any fraud against him, enters into an agreement with another, should be prepared to abide by the terms of the agreement illegal or otherwise un-enforceable in law. I cannot allow the appellants, after collecting money from the respondent to do business, to now turn around to plead the Money Lenders Law in order to escape the refund of the said money as governed by Exhibit 'A' between them. It is on this note that I agree with the learned trial Judge that based on the pleadings and the evidence before the Court, the respondents are not Money Lenders under the Money Lenders Law of Kaduna State (Supra). According to Exhibit 'A' is not governed by the Law. My Lords, though I am not bound by the above exposition of the law, I agree that the statement represents the law and as such permit me to adopt same as mine. As earlier pointed out, the appellants have stated that the respondent is not a money lender, how can the provisions of the money lenders law be applicable to him. In his concurring contribution, Peter - Odili JSC, had this to say: "Also a nonstarter, assuming the condition precedent for raising the matter of the contract's illegality was in place, is the fact that the appellants having effectively derived the benefit of the transaction leading to the suit subject matter of this appeal are estopped from disclaiming their non-obligation on account of the transaction being an illegal one. Apart from the reprehensible

nature of the denunciation by them at this late hour, the law of contract has not given them the leg to be so favored. I rely on Veritas Insurance Co. Ltd vs. Citi Trust Investments Ltd (1993) 3 NWLR (pt. 281) 349; Ibrahim vs. Osim (1998) 3NWLR (pt. 82) 257." I adopt the reasoning and the conclusions reached by their Lordships, in determining the question in the present appeal. I hold the humble but firm view that the transaction between the appellant and the respondent was a simple contract in the nature of the business akin to the case now generally referred to as the money lenders case."

Also in **MAX BLOSSOM LTD V. VICTOR & ORS (2019) LPELR-47090 (CA)** the Court of Appeal per Jumbo-Ofo, JCA held thus:

> ***In AlhajiAbdullahi Ibrahim vs. MallamZanginaAbubakarBakori , (unreported) suit No. CA/K/299/2006.*** *The learned Justice of the Court of Appeal (as he then was) held as follows:*
> ***I am always not comfortable at the practice where a party after seeking and obtaining money from a friend for resuscitation of his ailing or dwindling business will turn around to rely on technicalities or loopholes in the law as a cover to absolve himself from contractual obligations by putting up a defenceunder Money Lenders Law, as done by the appellants in this case. This is pes-simi exempli of business relations and this Court will not lend support for such a party to bite the finger that fed him and deprive him of his hard earned money. A man who, with his eyes open and without the other party committing any fraud against him, enters into an agreement with another, should be prepared to abide by the terms of the agreement illegal or otherwise un-enforceable in law. I cannot allow the appellants, after collecting money from the respondent to do business, to now turn around to plead the Money Lenders Law in order to escape the refund of the said money as governed by Exhibit A between them.***

Furthermore, the Supreme Court stated clearly in **BEN E. CHIDOKA & ANOR v. FIRST CITY FINANCE COMPANY LIMITED (2012) LPELR-9343(SC)** the Supreme Court held thus;

"A person engaged in other businesses who out of sympathy or pressure as in this case lends money to his friend to resuscitate his ailing business should not by any stretch of imagination be termed Money Lender under the law aforesaid. I seem to agree with the view expressed by Farewell J. In Lintch Filed vsDreyful ***(1906) 1 K.B 554 at 559*** *that-*
The Act was intended to apply only to persons who are really carrying on the business not to person who lend money as incidental business or to a few friends".
He continues and says: - "though not binding authority, I agree that the view so expressed represents the correct position of the law in this matter. I am always not comfortable at the practice where a party after seeking and obtaining money from a friend for resuscitation of his ailing or dwindling business will turn around to rely on technicalities or loopholes in the law as a cover to absolve himself from contractual obligations by putting up a defence under Money Lender Law as done by the appellants in this case. This is pes-simi exempli of business relations and this Court would not lend support for such a party to bite the finger that fed him and deprive him of his hard earned money. A man who, with his eyes open and without the other party committing any fraud against him, enters into an agreement with another, should be prepared to abide by the terms of the agreement illegal or otherwise un-enforceable in law. I cannot allow the appellants, after collecting money from the respondent to do business, to now turn around to plead the Money Lenders law in order to escape the refund of the said money as governed by Exhibit 'A' between them. It is on this note that I agree with the learned trial Judge that based on the pleadings and the evidence before the Court the respondents are not Money Lenders under the Money Lenders Law of Kaduna State (Supra). Accordingly, Exhibit 'A' is not governed by the Law".
My lords, though I am not bound by the above exposition of the law, I agree that the statement represents the law and as such permit me to adopt same as mine. As earlier pointed out, the appellants

have stated that the respondent is not money lender, how can the provisions of the Money Lenders law (supra) be applicable to him?"

Flowing from the above authorities, it is clear that the loan agreement between the claimant and the 1st defendant, guaranteed by the 2nd and 4th defendant and secured by the property of the 3rd defendant is a valid and enforceable contract between the claimant and the defendants. The defendants who benefited from the loan cannot be indulged by this court to use the Money Lenders Act as a sword instead of a shield. For the defendant to benefit from the shield provided in the Money Lenders' Act against a lender, they must present cogent and credible evidence that they did not benefit from the loan or that the claimant is into the business of money lending as its primary objectives, this is not the case here as a simple look at Exhibit O7 it is not stated that the claimant has money lending as part of its object. In the absence of any contrary evidence before this court, I am of the firm view that the contract between the claimant and the 1st defendant did not contravene the provisions of the Money Lenders Act.

I therefore find as a fact that the issue of illegality of the contract does not arise in this suit; exhibit I is legal and same is enforceable. I so hold.

This issue is resolved against the defendants in favour of the claimant.

ISSUE 2

Whether the Power of Attorney the 3rd defendant gave to Ebiakpor Services Nig. Ltd is valid in law.

It is the argument of the 1st set of defendant that parties to an agreement are bound by the content of the agreement save the agreement is tainted with fraud, illegality or misrepresentation. He argued that the DD1 admitted under cross examination that he gave a letter of consent/power of attorney exhibit O3 to Ebiakpor Service Nig. Ltd to use exhibit F to secure a loan. He argued that the duration of the authority was for a year, that is 28th August, 2017 to 27th August, 2018. He states that exhibit O3 was effective at the time the exhibit I-Loan Agreement was entered into; thus, the 3rd defendant should be bound by exhibit O3.

RESOLUTION

The only issue, the 1st set of defendant tried strenuously to argue is that based on the exhibit O3 issued to Ebiakpo by the 3rd defendant, the 3rd defendant knew and or ought to have known that exhibit F was to be used to secure a loan. There is no doubt about this! Exhibit O3 states thus:

The 3rd defendant under his hand and consent wrote thus in **Exhibit O3**.

28th August, 2017

The Managing Director,
EBIAKPO SERVICES NIGERIA LIMITED,
76 Elelewon GRA,
Port Harcourt, River State.

Dear Sir,

LETTER OF CONSENT/POWER OF ATTORNEY

I Engr. IKYANYON BENJAMIN IORCHI whose address is located at No. 55, Abidjan Street, Zone 3, Wuse District, FCT Abuja with Certificate of Occupancy No: **21a2w-88e4z-69e3r-c3aau-10** with File No. **BN10104**, FCT Abuja, hereby grant Consent/Power of Attorney to **EBIAKPO SERVICES NIGERIA LIMITED** of No. 76 Elelewon GRA, Port Harcourt, River State for the utilization of the property with Certificate of Occupancy **21a2w-88e4z-69e3r-c3aau-10** with File No. **BN10104**, FCT Abuja, FCT for the specific purpose of placing same property as security for a loan-able fund of ₦150,000,000.00 with a private Lender.

I authorize you to conduct the legal search of Certificate of Occupancy **21a2w-88e4z-69e3r-c3aau-10** with File No. BN10104, FCT Abuja, with Abuja Geographical Information System (AGIS)

The original Title Documents of the property shall be deposited with the Lenders Bank alongside a valid identification of **IKYANYON BENJAMIN IORCHI** respectively.

The property is hereby engaged on a third party mortgage for 1 (one) year at 30% per annum.

The lease agreement shall remain in force for the period of one year.

This agreement shall not be terminated or void without a mutual resolution from all parties concerned.

This Consent/Power of Attorney is hereby given this day 30th of August, 2017.

SIGNED, SEALED & DELIVERED by the within named:

.....SIGNED.....
ENGR. IKYANYON BENJAMIN IORCHI
Landlord of the property

In the instant case, it appears the 1st defendant failed to understand or admit that there is/was no relationship between the claimant and Ebiakpo Service Nigeria Ltd. It was not Ebiakpo Service Nigeria Ltd or any of its directors that signed exhibit I, neither was any of Ebiakpo Service Nigeria Ltd document deposited with the claimant nor the beneficiary of the loan advanced by the claimant. It is also not stated in exhibit O3 that the claimant is aware of the letter of consent/power of attorney given to the Managing Director of Ebiakpo Service Nigeria Ltd by the 3rd defendant.

As far as this proceeding is concerned, I do not hesitate to state that Ebiakpo Service Nigeria Ltd is a stranger in this suit and I so hold.

Thus, exhibit O3 is of no moment in this proceeding, in effect no probative value shall be accorded to the document in determining this case.

Now, I proceed to deal with the substantive issues.

1) Whether on the preponderance of evidence, the claimant has proven and established it claims to be entitled to the reliefs sought.
2) Whether the counterclaimants to the suit have placed the necessary materials before the court to be entitled to the reliefs sought.

ISSUE 1

1) *Whether on the preponderance of evidence, the claimant has proven and established it claims to be entitled to the reliefs sought.*

Learned counsel for the 1st set of defendants argued that the initial loan given to the defendants by the claimant was #100,000,000.00 and same was secured with the Exhibit F. He states that the subsequent loan of #60,000,000.00 given by the claimant to the 1st defendant was secured with undated cheques of the 1st defendant; that the two offer letters tendered by the claimant i.e#150,000.00 and #100,000,000 were the offers made by the claimant to the defendants. He states that parties prepared and executed an agreement on how the initial #100,000,000 given by the claimant to the 1st, 3rd defendant and Ebiakpor Services Nig. Ltd should be disbursed and the responsibility of each party was stated therein. He states that the 4th defendant during examination in chief tendered the agreement between the 3rd defendant and the 1st defendant, the agreement between the 1st defendant and Ebiakpor Services Nig. Ltd, i.e exhibits O5A & O5B respectively. He submits that parties to an agreement are bound by the content of the document and thus cannot be allowed to withdraw from the said agreement. He relied on **ADEFUA V BAMGBOYE (2013) 10 NWLR (PT. 1363) 352; CAREFULL VENTURES LTD V COASTAL SERVICE NIG. LTD (2012) 9 NWLR (PT. 1304.) 60** to support his argument

He made reference to exhibit O5B the agreement between the 1st and 3rd defendants that it was agreed that the claimant shall pay the sum of #100,000,000.00 into the bank account of the 3rd defendant. He states further that the same agreement exhibit O5A was executed between the 1st defendant and the Ebiakpor Services Nig. Ltd, the agent of the 3rd defendant. He states that the denial of the 3rd defendant that he did not sign or was not aware of exhibits O5A & O5B goes to no issue; that the signature and handwriting of the 3rd defendant are the same. He states that based on the exhibits O5A & O5B it is shown that the 1st defendant received the loan of #40,000,000.00 while the 3rd defendant and Ebiakpor Services Nig. Ltd, shared the remaining balance of #60,000,000.00.

He states that parties agreed that once the 1st defendant pays back the sum of #40,000,000 within 3 months, then it has fulfilled its obligation with regards to the loan. Learned Counsel further submits that the DW1 gave evidence to the fact that the 1st set of defendants repaid the sum of Fifty Million #50,000,000.00 to the claimant. He referred to exhibit O8 and stated that the 1st defendant received the sum of #40,000,000.00 on the 22nd of May 2018 and repaid the sum of #50,000,000.00 to the claimant on the 16th of July, 2018 in five (5) tranches of N10,000,000.00 each and another extra #10,000,000.00 on the 16th July, 2018; that the 1st set of defendant refunded its own part of the loan within 65 days which was less than the 90 days tenor stated in exhibit I. Learned counsel for the 1st set of defendant argued that the loan of #60,000,000.00 given to the 1st defendant was not secured with any agreement except exhibit G; that there is no agreement specifying any interest to be paid by the 1st defendant, thus the 1st defendant is not liable to pay interest on the #60,000,000.00; that the claimant admits that the total sum it had received from the 1st defendant is the sum of One Hundred and Eighteen Million Naira (#118,000,000.00) thus the 1st defendant is not liable to the claimant.

Learned counsel for the 1st set of defendant argued that the claimant only made a claim for the sum of #245,203,279.09 in its prayer before the court; that it is the duty of the claimant to prove how the total debt of the defendants increased to the said amount based on the fact that the defendants had paid the sum of #118,000,000.00. He states further that the burden is on the claimant to plead the accrued interest per month with respect to the loan; that the failure of the claimant to do so in this instance is fatal to its case. He relied on **CHIDIOKA V FIRST CITY FINANCE COMPANY LIMITED (2013) 5 NWLR (PT. 1346) 144** to support his argument that the claimant has the duty to specifically plead how the interest accrued on the loan.

He states further that the pleading of the statement of account of the 1st defendant by the claimant is not satisfactory evidence of the total indebtedness of the defendants, if any. He referred the court to **HABIB NIG. BANK LTD V GIFT UNIQUE NIG. LTD**. Learned counsel asked whether the claimant led evidence on how it arrived at the amount claimed by the claimant and in answering the question, he stated that the claimant failed woefully to prove same and submits

that he who asserts must prove; that the statement of account tendered by the claimant did not state clearly how the amount claimed by the claimant was arrived at. He urged the court to discountenance the claim of the claimant with cost.

Learned counsel for the 2nd set of defendant agreed with the 1st set of defendant that it was the 1st defendant who applied for and collected all the loans under contemplation in this suit. He referred the court to exhibit I & paragraph 21 of the claimant's further amended statement of claim, exhibits B, C & PW1 statements of account of the 1st defendant to support his argument on how the loans were disbursed by the claimant to the 1st defendant. Learned counsel for the 2nd set of defendants argued that the evidence of the DW1, DW2 & DW3 stating that the 3rd defendant agreed to a drawdown of the loan facility of #100,000,000.00 to be shared among the 1st defendant, Ebiakpo Services Nig. Ltd and the 3rd defendant is not true; that he is/was not a party to exhibit O5A. He argued further that exhibit O5B purportedly signed between the 3rd defendant and the 1st defendant is also inconsistent; that it does not contain any clause where the 3rd defendant agreed that the 1st defendant should give any sum of money to anybody including Ebiakpo Service Nig. Ltd. He submits that the contents of a document cannot be contradicted, altered, added or varied by oral evidence. He relied on Section 128 (1) Evidence Act and urged the court to focus on the loan granted by the claimant to the 1st defendant which was guaranteed by the 2nd& 4th defendants.

It is further the submission of counsel that he who asserts a fact must prove same. He referred to Section 131(1) Evidence Act; BULLET INTERNATIONAL NIG. LTD AND 1 OTHER V DR. OMONIKE OLANIYI AND 1 OTHER. (2017) 49 W.R.N 43 AT (P.77). He states that it is the duty of the claimant to prove the existence of the agreement made by the 2nd set of defendants to guarantee the loan of #150,000,000.00 as pleaded in paragraphs 8-17 of the claimant's further amended statement of claim.

It is the argument of counsel that exhibits G, H and N are inconsistent with the evidence of the claimant; that there is no nexus between the sums stated in exhibits H & N and the sum of #150,000,000.00 allegedly guaranteed by the exhibits. He states that the PW1 under cross examination testified that

applicants fill application forms, but in this case failed to produce the application form for the loan of #150,000,000.00; that PW1 said that there was no agreement between the claimant, 3rd and 7th defendants to secure or guarantee the loan of #150,000,000.00. He stated that the exhibit E covered the sum of #100,000,000.00 and not #150,000,000.00. He argued that the claimant in its pleadings and evidence agreed that the loan for which the 3rd and 7th defendants deposited their C of O and the execution of exhibit E is the sum of #100,000,000.00. He referred the court to paragraph 18 of the claimant's further amended statement of claim, paragraphs 21 and 22 of the witness statements of PW1 & PW2. He submits that there are contradictions in the claimant's case and that the duty of the court is to reject the entire evidence adduced by the claimant. he relied on HUSSAINI ISA ZAKIRAI V SALISU DAN AZUMI MUHAMMAD AND OTHERS (2017) 39 W. R. N 1 AT (P.54); REV. PROF. PAUL EMEKA V REV. DR CHIDI OKOROAFOR AND OTHERS (2017) W.R.N 1 AT (PP. 98 -99) in urging the court to disbelieve the evidence of the two witnesses presented by the claimant.

He argued further that the claimant's witness under cross examination testified that the claimant didn't inform the 3rd defendant that his C of O will be used to secure the loan of #150,000,000.00; that the additional loan of #10,000,000.00 and the offer letter of same were never pleaded or frontloaded by the claimant. He relied on ORDER 15 RULE 2 (1) HCR 2018; UNITED BANK FOR AFRICA PLC V MAGE LTD AND ONE OTHER (2017) 25 W.R.N 98 AT (119) amongst others. He submits that since the claimant arbitrarily collaterized the loan of #150,000,000.00 by using the document of the 3rd and 7th defendants without their consent, such arbitral action constitutes an alteration of the 3rd& 7th defendants' original agreement for #100,000,000.00. He submits that the 3rd and 7th defendants are entitled to protest based on the fact that the contract is no longer that which they agreed to surety. Reference was made to GURANA SECURITIES AND FINANCE LTD V T.I.C LTD (1999) 2 NWLR (PT. 589) 29 AT 31 (CA)

Furthermore, counsel argued that the mere deposit of exhibit F does not qualify as a legal or equitable mortgage of the property for the sum of One Hundred and Fifty Million Naira (#150,000,000.00) purportedly guaranteed by the exhibit F. It is the argument of counsel that no memorandum was signed by the 3rd& 7th defendants for the sum of One Hundred and Fifty Million Naira (#150,000,000.00); that none of the documents signed by the 3rddefendant

contains the sum of One Hundred and Fifty Million Naira (#150,000,000.00). He listed the documents as Exhibits E, M, O3, O5B, DDW2 and offer letter attached to exhibit DD3, paragraph 21 of the claimant's further amended statement of claim. Counsel urged the court to examine all contractual documents before the court in order to determine whether there exists a contract between the parties. i. e the claimant, 1st, 3rd, and 7th defendants for the guarantee of the loan of One Hundred and Fifty Million Naira (#150,000,000.00) or One Hundred and Sixty Million Naira (#160,000,000.00)

He submits further that the 3rd and 7th defendants should be discharged from their obligation under the loan transaction since parties are in consensus that the 1st defendant has repaid the sum of One Hundred and Eighteen Million Naira (#118,000,000.00) to the claimant which is more consistent with the principal and interest of the loan of #100,000,000.00 guaranteed by the 3rd and 7th defendants.

The 2nd set of defendants submits further that any person who lends money for interest other than a money lender must comply with the law as to the requirement relating to the interest chargeable. He referred to **OJIKUTU V AGBONMAGBE BANK LTD (1966) NCLR 246; SECTIONS 15, & 16 OF THE MONEY LENDERS ACT 2007**.

He submits that charging of unauthorized interest is not only an offence but same renders the Money Lenders contract illegal and unenforceable. Reference was made to **NWANKWO V NERIBE (2004) 13 NWLR (PT. 890) 422; OKONKWO V OKORO (1962); DAWODU V TINUBU (1959).** He argued that the claimant in this suit charged the interest of 8% per month for a tenure of 3 months for various loans; that a multiplication of 8 by 12 would be 96% per annum; that this is excessive putting into consideration the relevant laws and judicial authorities governing interest rate. He urged the court to hold that the rate of interest charged by the claimant on the loan transaction is excessive and as such the loan contract is illegal and unenforceable.

Learned counsel for the claimant on the other hand submits that the claimant has discharged the legal burden placed on it in proving the existence of a loan agreement. He made reference to exhibit I. He argued that the 1st defendant

having breached the loan agreement, the 2nd and 4th defendants being guarantors are liable and urged the court to so hold. He argued that the defendants took a loan of One Hundred and Sixty Million Nair (#160,000,000.00) to refund same within 90days with 8% interest per month. The claimant admits that the sum of One Hundred and Eighteen Million Naira (#118, 000,000.00) has been repaid by the defendants. He referred to section 123 (1) Evidence Act to support the argument that facts admitted need not be proved. Counsel queried if the defendants have discharged their obligations under exhibit I and responded that the defendants have not been able to pay the principal loan as well as the interest and that the time of payment of the loan is material.

He states that the loan agreement stipulates the tenure of 90 days; that once payment was not received at the end of the tenure; the legal consequence was that interest would continue to run. He submits that the 1st, 2nd& 4th defendants are liable and bound by the loan agreement. Reference was made to exhibit C to show that the defendants breached the terms stated in exhibit I. Counsel referred the court to UNION BANK (NIG) LTD V OZIGI (1994) 3 NWLR (PT. 333) 385 to support his argument that parties are bound by the agreement they entered into.

He states further that the 1st defendant is liable for the totality of the loan; that the argument of the 1st defendant in their pleading on how they shared the loan with a third party called Ebiakpo Services Ltd and the 3rd defendant under an agreement between them is absurd and preposterous; that the defence is not valid in law. He submits that the claimant did not enter into any contract with Ebiakpo Services Ltd; that since there is/was no privity of contract between the claimant and Ebiakpo Services Ltd, the claimant has no right or benefit whatsoever in exhibits O5A and O5B. He argued that a contract or an agreement cannot bind a person who is not a party to it; that neither can a party take or accept liabilities under the contract nor benefit from same. Reference was made to REBOLD IND. LTD V MAGREOLA (2015) NWLR (PT.1461) to support his argument that a person who is not a party to a contract cannot sue on it, let alone benefit from the contract. Reference was made to LSDPC & ANOR V NIGERIAN LAND & SEA FOODS LTD (1992) LPELR – 1744 (SC) amongst others.

Again, he argued that exhibit I was between the 1st defendant and the claimant with the 3rd defendant's property used as security; he submits that the 1st, 2nd& 4th defendants are bound by exhibit I. He relied on ODURE V NIG AIRWAYS LTD (1987) 2 NWLR (PT.55) 126 and some other authorities; that the 1st set of defendants having benefitted from the loan, the law does not allow them to resile from the agreement. He states that parties must adhere to the Latin maxim "pacta sunt servanda" that is, the agreement must be kept and on that note he referred the court to MASCOT OKORONKWO V MR CHIMA ORJI (2019) LPELR 46515 (CA).

The Claimant argued that the 1st defendant's protest as per the outstanding on the loan account and the computation of the interest is untenable and an afterthought; that they are in law estopped from setting up such argument having signed the loan agreement. Learned counsel referred the court to exhibit D, the letter dated 10th April, 2019 that the claimant had demanded the outstanding sum. He submits that the defendants in their statement of defence admits receipt of the letter; that they had the opportunity of denying the interest stated in exhibit D but chose to keep mute. He states that the DW1 during cross examination admitted receipt of exhibit D; hence the issues raised in the statement of defence cannot be a valid defence to the defendants' liability; that the silence of the defendant constitutes an admission. He referred the court to REMATION SERVICE LTD V NEM INSURANCE PLC. (2019) LPELR – 49330 (CA); GWANI V EBULE (1990) 5 NWLR [PT.149] 201; ALH. GARBA ABUBAKAR BAGOBIRI V UNITY BANK PLC (2016) LPELR – 41161 (CA); BARCLAYS BANK DCO V HASSAN (1961) ALL NLR 836 to support his arguments.

On the issue of the legality of the interest, counsel for the claimant argued that it was wrong and inequitable for the 1st defendant to benefit from a loan and then turn around to say that the court should absolve it from its duty under the contract they voluntarily entered into. He cited CHIDOKA & ANOR V FIRST CITY FINANCE CO. LTD (SUPRA) amongst other cases. He urged the court to hold that the loan agreement is binding on the 1st, 2nd& 4th defendants and grant the claims against them.

RESOLUTION

In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See *Section 133(1) of the Evidence Act 2011*. Again *Section 132 of the Evidence Act 2011* provides:-

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

*See **MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA**)*

The issue to be determined here is encompassing and its success determines the fate of the suit of the claimant and possibly the life of the counter claims of the defendants. For the claimant to succeed in this action, he must establish the three (3) ingredients of a valid contract. The ingredients of a valid loan agreement are offer & acceptance, consideration and intention to create legal relation. In **BALIOL NIGERIA LIMITED v. NAVCON NIGERIA LIMITED (2010) LPELR-717(SC) Pp. 16-17** the Supreme Court per Aloma Mukhtar, JSC later CJN state the law thus:

> *"The position of the law is that for a contract to exist and be valid there must be offer, acceptance and consideration. According to Halsbury's Laws of England Fourth Edition Re Issue page 628 under the title 'Formation of contract', "A valid contract requires: (1) an agreement; (2) an intention to create legal relations; and (3) consideration. There must be a mutual intention of creating a legal relationship which will emanate from an unqualified acceptance from the offer, and a legal consideration must follow. See N.B.B.B. & Co. Ltd. v. A.C.B. Ltd 2004 1 SC pt I page 52, M. V. Caroline Maersil v. Wokoy Investment Ltd. 2000 7 NWLR part 666 page 587, and Okechukwu v. Onuorah 2000 15 NWLR part 691 page 597 cited by learned counsel for the appellant."*

In the instant case, it is not in dispute that the claimant and the 1st set of defendant entered into a loan agreement via exhibit I of 21st May, 2018. See

paragraph 9 claimant's further amended statement of claim, paragraph 13 of the 1st set of defendant statement of defence and paragraph 3 of the 2nd set of defendant statement of defence. Thus parties are ad idem that the claimant had a loan agreement with the 1st set of defendant and same was accepted and signed by the 2nd& 4th defendants. i.e director and managing director of the 1st defendant.

The 2nd & 4th defendants also guaranteed the loan agreement of 21st May, 2018 via exhibit H. It is equally not in dispute that exhibit F the C of O of the 3rd defendant was used as collateral for the loan borrowed by the 1st set of defendant from the claimant. See exhibit I of 21st May, 2018. The other offer letter before the court is exhibit I of 20th June, 2018 wherein an additional Ten Million Naira #10,000,000 was granted to the 1st set of the defendant. There is no dispute to that; as the claimant and the 1st set of defendant are in agreement that the principal and interest accrued thereon has been settled.

The question is, upon default of the terms stated in exhibit I of 21st May, 2018 who is liable for the refund of the unpaid loan and the accrued interest claimed by the claimant.

The burden of proving this case lies squarely on the claimant, even where no evidence is called by the defendant, not until same is proven before it can shift on the other side. **See Sections 131 – 133 of the Evidence** states that;

131. (1) whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person who would fail if no evidence at all were given on either side.

132(1) In Civil cases, the burden of first proving the existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleading.

It is pleaded in paragraphs 8, 9, 10, 11, 12, 13, 14 & 15 of the amended statement of claim thus:

8. It is Claimant's case that sometime in May, 2018, the first Defendant applied for a loan of ₦150,000,000.00 (One Hundred and Fifty Million Naira) from the Claimant to finance its construction contract it secured with the Federal Government of Nigeria.
9. Based on the said application, the Claimant granted the loan for the said sum of ₦150,000,000.00 (One Hundred and Fifty Million Naira) which was disbursed to the first Defendant on the 21/5/2018 and 6/6/2018 upon execution by parties of written agreement embodying the terms. Claimant shall rely on the offer letter for trade finance facility dated 21st May, 2018 signed by the first Defendant.
10. The loan was granted at 8% interest rate and was to be repaid within three months.
11. It was a further condition for disbursing the loan that the first Defendant must provide credible guarantors who must undertake personal liability for the loan in the event of failure to pay.
12. By letter dated 24th May 2018, the second Defendant guaranteed the loan and made specific undertaking indemnifying Claimant for the payment of the said sum of (One Hundred and Seventy-Four Million, Six Hundred and Fifteen Thousand, Eighty Naira, Forty-Six Kobo) and all consequential interests accruing there from. Second Defendant also signed a Guarantor Information Form where similar assurances where made. Claimant shall rely on the said letter and guarantor's information form during hearing of this case.
13. By letter dated 24th May, 2018, the fourth Defendant guaranteed the loan and made specific undertaking indemnifying Claimant for the payment of the said sum of (One Hundred and Seventy-Four Million, Six Hundred and Fifteen Thousand, Eighty Naira, Forty-Six Kobo) and all

consequential interests accruing therefrom. Second Defendant also signed a Guarantor Information Form where similar assurances where made. Claimant shall rely on the said letter and guarantor's information form during hearing of this case.

14. To acknowledge the debt and also to give assurances of repayment, the first Defendant issued post-dated cheques in favour of the Claimant to cover the entire principal and interest as agreed. Claimant shall rely on all the said post-dated cheques drawn on its Zenith Bank Account at trial.
15. It was also part of the security for the loan that the first Defendant provides and assign to the Claimant, Plot No. 637 (No. 55) Cadastral Zone A02, Abidjan Street, Wuse Zone 3, Abuja.

See also the evidence of Pw1 as stated in paragraphs 11, 12, 13, 14, 15, 16, 17 &18.

Also the Dw1 Yahaya Ibrahim, the 4th defendant stated thus in his witness statement on oath thus: 10, 11, 12, 13, 14, 15, 16, 17, 18 & 19.

10. That the 1st Defendant secured a contract with Delta State Government and was in need of money to execute the contract and when the 2nd and the 4th Defendants approached the Claimant to borrow them the sum of ₦100,000,000.00 (One Hundred Million Naira) for execution of the contract, the Claimant demanded for a collateral and the 1st, 2nd, and 4th Defendants does not have collateral.
11. That I met one Bode Olajide, who informed me that he, has someone, who can give his house as collateral for the money to be given to 1st Defendant by the Claimant.
12. That Bode took me to the 3rd Defendant and the 3rd Defendant said that he has given a letter of consent/Power of Attorney to one Mathew Nwokocha and Willy Akposeye directors of Ebiakpo Service Nigeria Limited to use his property known as at No. 55 Abidjan Street, Wuse Zone

3, Abuja to secure a loan and the 3rd Defendant referred me to Mathew Nwokocha and Ebiakpo for discussion. The letter of consent dated 28th August, 2017 signed by the 3rd Defendant is hereby attached and marked exhibit A.

13. That I and Bode Olajide met with Mathew Nwokocha and Willy Akposeye, directors of Ebiakpo Services Nigeria Limited for a meeting and after the meeting, the parties went to the Claimant, who valued the property for a sum of ₦300,000,000.00 (Three Hundred Million Naira) only. The Claimant said that he can only give us 1/3 of the value of the property which is ₦100,000,000.00 only.
14. That I on behalf of the 1st Defendant agreed with the 3rd Defendant and Ebiakpo Services Nigeria Limited that Ebiakpor and the 3rd Defendant shall take ₦60,000,000 (Sixty Million Naira) while the 1st Defendant shall take the remaining ₦40,000,000 (Forty Million Naira) only and an agreement was signed by the parties to that effect and the original copy of the 3rd Defendant title document over No. 55 Abidjan Street, Wuse, Abuja was deposited to the Claimant to secure the money given.
15. That the sum of ₦100,000,000 was disbursed by the Claimant to the 1st Defendant's Bank Account on the 21st and 22nd day of May, 2018 even though there was a specific instruction by the 1st Defendant that the money be paid to the 3rd Defendant, the 1st Defendant transferred ₦10,000,000 (Ten Million Naira) only to the 3rd Defendant, ₦42,000,000 (Forty Two Million Naira) only to Ebiakpo Service Nigeria Limited and the remaining ₦8,000,000 (Eight Million Naira) was for processing fee and agency fee. The letter of instruction dated 16th May, 2018 is hereby marked exhibit B. Page 2 of the 1st Defendant Zenith Bank Account shall be relied on.

16. That it was agreed that any party, who pays the sum it collected back to the Claimant does not have any obligation in the agreement and the agreement signed between the 1st and 3rd Defendant and the agreement signed by the 1st Defendant and Ebiakpo Services Limited are hereby marked as Exhibit C and D.
17. In less than two months the 1st Defendant collected its ₦40,000,000, the 1st Defendant paid its money to the Claimant, which was on the 16th day of July, 2018. Page 8 and 9 of the 1st Defendant UBA, account No. 1020791545 statement shall be relied on during trial.
18. That the 1st Defendant has discharged his own obligation in this transaction.
19. The 1st, 2nd, and 4th Defendants state that the Claimant paid to the 1st Defendant Bank Account the sum of ₦100,000,000 (One Hundred Million) at the first instant on 21st to 22nd May, 2018, which the 1st Defendant has discharged his obligation on as the amount remained unpaid shall be paid by the 3rd Defendant and Ebiakpo Services Nigeria Limited.

The DW1 during cross examination by the claimant, stated thus:

Q: You signed the agreement on behalf of the company

A: I did not sign the agreement on behalf of the company

Q: Take a look at Exhibit I, you signed the Exhibit I

A: Yes it is my signature

Q: The other signature is that of the 2nd defendant

A: Yes

Q: It was a condition from the onset that the loan was N150m

A: Yes

Q; The purpose of the loan is for a project to complete the Delta State stadium

A: That was the purpose of the loan

Q: Can I have exhibit I; for how long is the loan

A: The entire tenure of the loan was for 90 days

Q: So N8m monthly in 3 months is the interest agreed. Am I correct?

A: Yes

Q: So the property of the 3rd& 7th defendants formed part of the agreement which you signed. Is true or false

A: The property was a requirement for the loan and it was given. The 3rd defendant was invited.

Q: Take a look at Exhibits O5A & O5B from these two exhibits the claimant is not a party to any of those two agreements.

A: The claimant is not a part of Exhibits O5A & O5B.

Also under cross examination by the 3rd& 7th defendant's counsel, the DW1 said thus:

Q: Will it be right to say that the only thing the 3rd defendant knows about the transaction is the loan of #100M that he used his C of O as security and then the commission of #10M that was given to him for the use of his property. Is that correct?

A: No.

The 2nd defendant Mercellinus Enejoh Ameh testified as DW4. He adopted his witness on oath and testified thus under cross examination.

Q: Take a look at the exhibit I again, the 1st page. How much is the loan on the 1st page (indicative offer for project invoice 21st May, 2018)

A: Yes, it is my signature amongst others.

Q: Take a look at the 1st page what is the transaction amount

A: An application of #150,000,000.00

Q: The total amount the 1st defendant took was #160,000,000.00 from the claimant

A: Yes

Q: It was paid to you in 3 tranches of N100m, N50m &N10m.

A: Yes

Going by the above facts, that is, the examination in chief, cross examination and exhibit I of 21st May, 2018 it is obvious some facts are settled between the parties and none of the parties will be allowed in law to escape from the effect and consequence of their agreement. It is clear from exhibit I of 21st May, 2018 that the claimant entered into a loan agreement with the 1st set of the defendant for a loan sum of One Hundred and Fifty Million Naira (#150,000,000.00) See paragraphs 8 & 9 of the claimant amended statement of claim and Exhibit I of 21st May, 2018 and the initial disbursement is stated as One Hundred Million Naira (#100,000,000.00.) The collateral used for this loan is exhibit F, the C of O of the 3rd defendant. It is not true for the 3rd& 7th defendants to aver that they were not aware the loan was One Hundred and Fifty Million Naira (#150,000,000.00) or that they only used Exhibit F to secure One Hundred Million Naira (#100,000,000.00). The reason is not farfetched, Exhibit I dated 21st May, 2018 is a four paged document, and it can be gleaned on page 1 of the document that the transaction amount is One Hundred and Fifty Million Naira (#150,000,000.00). The scope of work is stated thus *"disbursements under the project finance line shall be made to the client in tranches, the sum of which shall not exceed #150,000,000".*

On page 2 of the same document it states that the initial disbursement was #100,000,000.00; tenor per tranche is 3 months at 8% per month. The repayment plan is also stated therein. The security per tranche is stated as follows:

a.

b.

c.

d. Issuance of Irrevocable Standing Payment Order (ISPO) OF N1, 281,201,590.00 in favour of Abuja Leasing Company in respect to the Contract for the completion of outstanding works at Asaba Township Stadium awarded to All Round Consult and Engineering Nigeria Limited.

e. **PROVISIONALLY IN LIEU OF (D) ABOVE**; Certificate of Occupancy in favour of Engr. IkyanyonBejaminIorchil, with respect to Plot 637, Abidjan Street, Wuse Zone 3, Abuja.

It is trite that once there is documentary evidence reflecting the intention of parties, the courts are stopped from varying or reviewing same. There is no other document from the claimant or any of the defendants showing that an agreement was made in respect to the sum of #100,000,000.00 and that exhibit F was used as collateral for same. I therefore find as a fact that the claimant proved via exhibit I of 21st May, 2018 that the loan of #150,000,000.00 was given to the 1st defendant and same was guaranteed by the 2nd & 4th defendant via exhibit H and also exhibit F was used in securing the sum of #150,000,000.00.

It is trite law that oral evidence will not be allowed to contradict the content of a document. In **ASHAKACEM PLC v. ASHARATUL MUBASHSHURUN INVESTMENT LIMITED (2019) LPELR-46541(SC) pp15-16** The Supreme Court per Odili

> *"In **EZENWA v K.S.H.S.M.B.** (2011) 9 NWLR (Pt.1251) 89 at 118 paras B-C.*
> ***"Where a case is fought on pleadings supported by documentary evidence, oral evidence should not be allowed to contradict the clear terms of the documents since the task before the Court is to interpret or construct the terms of the said exhibits".***
> *It is now trite in law that oral evidence is inadmissible either to add to or subtract from the contents of a document as a document speaks for itself with the result that parties cannot give evidence contrary to its contents. It follows therefore that no burden of proof rests on the appellant to discharge on the interpretation of contractual documents since the primary duty*

in interpretation of documents is placed squarely on the Court and the Court discharges that duty without the aid of oral evidence. The task is carried out by the Court within the case fought on pleadings supported by documentary evidence which precludes oral evidence beclouding or contradicting the clear terms of the documents. See Bongo v Governor Adamawa State (2013) 2 NWLR (Pt.1339) 403 at 444, ***Uzamere v Urhoghide*** *(2011) All FWLR (Pt.558) 839;* ***Ezenwa v K.S.H.S.M.B.*** *(2011) 9 NWLR (Pt.1251) 89 at 118."*

Again, another clog against the defendants is on pages 2 & 3 clauses (d) & (e) The clauses are to the effect that exhibit F be deposited in lieu of the **ISPO** of One Billion, Two Hundred and Eighteen Million, Two Hundred and One Thousand, Five Hundred and Ninety Naira N1,218,201,590.00 in favour of the claimant. The 1st set of defendant instead complied with clause (E) thus entitling them to the loan sum stated in exhibit I of 21st May, 2018. I find as a fact that the claimant proved via Exhibits C & PW1 to show how the sum of One Hundred and Fifty Million Naira #150,000,000.00 was disbursed to the 1st defendant and same was not contradicted by the 1st set of defendants.

As stated, it is clear that the content of Exhibit I of 21st May, 2018 is to the effect that Exhibit F be used as security for the loan of #150,000,000.00, rescinding from it now is too late for the defendants to deny the content of the document. The 1st, 2nd, 3rd, 4th & 7th defendants therefore cannot exonerate themselves from the content stated in pages 1, 2, 3 & 4 of exhibit I of 21st May, 2018. They are therefore bound by the content of exhibit I of 21st May, 2018 and I so hold.

Again, the contention of the 1st set of defendant that the claimant failed to comply with the instructions stated in exhibit O4; thus cannot escape liability is not arguable. It is not in dispute that the loan sum was credited into the 1st defendant's bank account. The starting point on this issue; what is the relationship of the exhibit O4 made on the 16th May, 2018 with exhibit I of 21st May, 2018? It can be gleaned from exhibit I of 21st May, 2018 that the parties to the loan agreement are the Claimant and the 1st defendant; there is/was no

mention of the 3rd defendant as the beneficiary of the loan in exhibit I of 21st May, 2018.

Also in exhibit O4 the 1st defendant referred to the 3rd defendant as their landlord; I am unable to relate the content of exhibit I or this proceedings to the issue of tenancy. It does not appear that at the point of depositing exhibit F with the claimant, the 3rd defendant was introduced as the landlord of the 1st defendant. More worrisome, is that exhibit O4 the letter of the 1st defendant to the claimant was written on the 16th May, 2018, whilst exhibit I is dated the 21st May, 2018 and there is no evidence that a loan agreement exists amongst parties on or before the 16th May, 2018.

It is also clear that the exhibit I of 21st May, 2018 was between the claimant and 1st defendant which is for the advancement of the sum of One Hundred and Fifty Million Naira #150,000,000.00. The next question is; did the claimant advance the sum of One Hundred and Fifty Million Naira #150,000,000.00 to the 1st defendant, the answers are in Exhibits Pw1, C & O9 and as it can be seen, the loan sum was advanced to the 1st defendant.

Therefore the issue of breach of exhibit O4 will not arise in this case as there was/is no loan agreement between the claimant and the 3rd defendant as at the date exhibit O4 was made by the 1st defendant to the claimant. Therefore, exhibit O4 has no probative value in this proceeding and is discountenanced.

Also in respect to **Exhibits O5A & O5B** upon which the 1st set of defendants are raising the dust of receiving only the sum of Forty Million Naira #40,000,000.00 from the initial disbursement of One Hundred Million Naira #100,000,000.00. The law is on this; he who asserts a certain fact must produce credible evidence before the court to prove the existence of such fact.

The Dw4 under cross examination stated thus:

Ques: How much were you supposed to pay?
Ans: On the whole the #100,000,000.00 it was only #40,000,000.00 that got to us.
Ques: Where did the other go to

Ans: The #60m went to the owner of the collateral 3rd defendant; #42m went to his team as instructed by him [Ebiapko services ltd]; #10m to his personal self, another #5m & #3m to his agents. So we took only #40m
Ques: I believe what you are saying is based on an agreement. Exhibit O5a
Ans: yes
Ques: So you were acting based on exhibit O5A
Ans: Yes
Ques: You didn't tell the claimant about this agreement
Ans: They are fully aware of it
Ques: Take a look at it, is the claimant part of the agreement exhibit O5A
Ans: Everything was done in their presence, but they couldn't have signed
Ques: Was the 3rd defendant there when exhibit O5A was signed

Ans: Yes

Ques: Take a look at Exhibit E, the 3rd defendant was also there when this document was signed

Ans: This is the signature of the 3rd defendant. He was there all through the process

Going by the evidence above, I do not hesitate to state that the 1st set of defendants have not discharged their obligations. It is obvious that the sum of #60,000,000.00 and the accrued interest thereon is hanging on its neck. The agreement entered into by the 1st defendant and the claimant via exhibit I of 21st May, 2018 was for the sum of #150,000,000.00 and same was disbursed to the 1st defendant on the 21st May, 2018, 22nd May, 2018 and 6th June, 2018; this piece of evidence as well as the exhibits were not denied by the 1st defendant. See exhibits C & Pw1. In fact, exhibit O9 tendered by the 1st set of defendant buttressed the above evidence; instead, the 1st set of defendant, 2nd set of defendant and some others chose to execute exhibits O5A & O5B without the knowledge of the claimant.

See **MR. SAMUEL ASONIBARE v. MOHAMMED MAMODU & ANOR (2013) LPELR-22192(CA) p.25**, the Court of Appeal per Daniel-Kalio, JCA

> *"A covenant is an agreement, and it is elementary law that an agreement is only binding on the parties to it. From this purview, it is difficult to see how the "covenant" between the parties in Exhibit B1 will bind the holder of Exhibit B who is a stranger to Exhibit B1."*

The burden therefore, is on the 1st defendant to ensure that the loan was repaid in accordance to the terms and conditions stated in exhibit 1 of 21st May, 2018 and having admitted that it was only #40,000,000.00 that they repaid from the initial #100,000,000.00 disbursed into the account of the 1st defendant, I find as a fact that the 1st defendant is liable to refund to the claimant the sum of #60,000,000.00 and the accrued interest thereon. There is no evidence that the claimant was/is a party to exhibits O5A & O5B. The document speaks for itself! The claimant is a complete stranger to **Exhibits O5A & O5B,** therefore whatever covenants contained in **Exhibits O5A & 05B** is not binding on the claimant.

This leads me to the issue of the interest rate. The starting point to determine the legality or otherwise of the 8% interest per month as argued by the claimant or 8% per annum as suggested by the defendants is to have recourse to the loan document Exhibit I of 21st May, 2018 where the interest was captured. I must state here that the duty of this court is to interpret the agreement between the parties and nothing more.

In **MR. DEBO O. ENILOLOBO v. NIGERIAN PETROLEUM DEVELOPMENT COMPANY LIMITED & ANOR (2019) LPELR-49512 (SC) pp34-35**the Supreme Court held thus:

> *Now, it is a settled position of law that when construing contractual documents, the duty of the Court is to interpret it and give meaning to its ordinary and grammatical meaning. This is to give effect to the wishes of the parties as expressed in the contract document. It is not the duty of the Court to re-write the contract or agreement for the parties. See* ***Ajagbe V. Idowu (2011) 17 NWLR (Pt. 1276) 442; BFI Group Corporation V. Bureau of Public***

Enterprises (2012) 18 NWLR (1332) 209; Nika Fishing Co. Ltd V. Lavina Corporation (2008) 16 NWLR (Pt. 1114) 509; Hillary Farms Ltd. V. M/V Mahtra (Sister Vessel Tom/V Kadrina)" (2007) 14 NWLR (Pt. 1054) page 210. *The duty of the Court is to give effect to the true meaning of the words in the contract. In the case of* ***Nika Fishing Co. Ltd. V. Lavina Corporation (supra),*** *this Court, per Tobi, JSC (of blessed memory) observed at page 543 as follows: -*

It is the law that parties to an agreement retain the commercial freedom to determine their own terms. No other person, not even the Court, can determine the terms of contract between parties thereto. The duty of the Court is to strictly interpret the terms of the agreement on its clear wordings."

Exhibit I of 21st May, 2018 executed by the claimant and the 1st set of defendant is the document titled INDICATIVE OFFER FOR PROJECT FINANCE (CREDIT LINE) dated the 21st May, 2018 with reference number: ALC/FS/2018/May/ addressed to the Managing Director of the 1st Defendant. The relevant portion to this issue is on page 2 of the exhibit I.

It reads thus:

Pricing per tranche 8% per month

Tenor per tranche 3 months

The DW1, Ibrahim Yahaya while being cross examined on the 29/01/2021 stated thus:

Ques: As at the date when the #100m you 1st took matured, which is June, July & August you had not paid the N100m
Ans: It is not true
Ques: Can I have exhibit I, for how long is the loan
Ans: The entire tenure of the loan was for 90 days
Ques: Can you tell the court when the 90 days matured
Ans: The expiration of the 90 days that is 3 months. We paid our own part of the money before 90 days

Ques: From exhibit I calculate 3 months from the date you received the N100m; what date did you sign the exhibit I
Ans: June
Ques: Look at the exhibit I again, when did you sign exhibit I
Ans: This one is 21st May, 2018 but the document is ready in June
Ques: 3 months after that you are supposed to pay both the principal and interest on the #100m. Am I correct?
Ans: Yes
Ques: 3 months expired either 21st or 24th August. Am I correct?
Ans: Yes
Ques: How much is 8% of N100m
Ans: #8,000,000,000.00
Ques: So #8,000,000.00 monthly in 3 months is the interest agreed. Am I correct
Ans: Yes
Ques: I would be correct that #8,000,000.00 multiply by 3 months is #24,000,000,000.00
Ans: I wouldn't know how they calculated with the MD…
The Dw4 is the Managing Director of the 1st defendant and while being cross examined in respect of the interest charged stated thus:
Ques: take a look at the transaction amount
Ans: an application of #150,000,000.00
Ques: The total amount the 1st defendant took was #160,000,000.00 from the claimant
Ans: yes
Ques: it was paid to you in 3 tranches #100,000,000.00, #50,000,000.00, #10,000,000.00
Ans: yes
Ques: you were supposed to pay back the #100,000,000.00 with interest in 3 months from exhibit I. Am I correct
Ans:
Ques: you didn't pay the capital and interest in 3 months
Ans: we had paid the money we were supposed to pay

In the present case, it is an established fact that the 1st defendant failed to pay the balance of #60,000,000.00 from the initial disbursement of #100,000,000.00; what this means is that the 1st defendant has defaulted in repaying the accumulated interest on the unpaid loan sum; the agreement on 8% per month rate is expressly stated on page 2 of exhibit I made on 21st May, 2018. The defendants having benefitted from the loan contract, to allow them alter the interest rate at this stage will amount to a renegotiation of the contract or rewriting an already concluded transaction.

The cry of the defendants that the interest rate is above the Central Bank of Nigeria is inconsequential for the singular reason that they voluntarily entered into the contract with their eyes opened. If the interest is above the Central Bank's rate and they voluntarily agreed to go ahead with it at the point of taking the loan, then they must be prepared and ready to pay the accrued interest, in any event, interest is a matter of agreement between the parties.

In **ZEDISCO INTERNATIONAL INVESTMENT LIMITED & ANOR v. ACCESS BANK PLC (2017) LPELR-45225(CA)**

> *"The law therefore, is that the rate of interest is dependent on the agreement between the parties or established custom or consent of the customer. See:* ***ALH. AMINU ISHOLA V SGB (NIG.) LTD (1997) (PT. 488) PG. 405 (1997) 6 SCNJ PG. 116, AGBABIAKA V FBN PLC (2006) ALL FWLR PG. 326, A.T. (NIG.) LTD. V UBN PLC (2010) 1 NWLR (PT. 1175) PG.360. ABIB BANK LTD. V GIFTS UNIQUE NIG. LTD. (2005) ALL FWLR (PT. 241) PG. 234, EDILCO NIG. LTD. V UBA (2000) FWLR (PT. 21) PG. 792"***

There is no doubt that the 1st set of defendants breached the terms stated in exhibit I of 21st May, 2018 and therefore indebted to the claimant based on the remaining balance on the loan and accrued interest claimed. It is further established by the admission of the 1st defendant that they only repaid the sum of One Hundred and Eighteen Million Naira #118,000,000.00 out of the One Hundred and Fifty Million Naira advanced to it without minding the accumulated interest and the period of repayment. The fact that the 1st defendant has paid the sum of One Hundred and Eighteen Million Naira #118,000,000.00 out of the

One Hundred and Fifty Million Naira was not denied by the claimant. Facts admitted need no proof. In **CHIEF DENNIS AFOR OGAR & ORS v. CHIEF J.I. IGBE & ORS(2019) LPELR-48998(SC) p. 10**. The Supreme Court restated the age long position of the law thus:

> *"The Plaintiffs, now Appellants, failed to join issues on these adverse facts. The law is trite: facts not disputed are taken as admitted, and facts admitted are taken as established. They need no further proof. Therefore the averments (including Exhibits JA2 & JA3) in paragraphs 3 & 4 of the affidavit in support of Defendants' preliminary objection are no longer in controversy. Those facts are deemed to have been admitted, and therefore established."*

Indeed, the Claimant reckoned with the sum of One Hundred and Eighteen Million Naira #118,000,000.00 paid by the 1st set of defendants in Exhibits PW1 & C; the claimant's grouse is the demand for the balance since the repayment was not done within three months period of each tranche, the amount paid did not offset the total debt due on the facility and the interest continued to accrue thereon and it is for this reason that the claimant issued exhibits D of 10th April, 2019 & B of 19th December, 2019 and this was confirmed by the defendant in paragraph 36 of the witness statement on oath of Dw1 wherein he stated thus:

The 1st defendant received a letter dated 10th April, 2019 from the claimant, but the 1st defendant is not indebted to the claimant to any amount except the sum of N60,000,000,000.00 the 3rd defendant and Ebiakpo Services Nig. Ltd are obliged to pay to the claimant but because Wilson Akposeye and Mathew Nwokocha directors of Ebiakpo Services Nig. Ltd who are the persons the 3rd defendant gave a consent letter and power of attorney to use his property to secure the loan are nowhere to be found and are yet to pay their own part of the money.

Paragraph 37: The 1st defendant received a letter dated 19th day of December, 2019 from the claimant, but deny liability of the content of the said letter as the 1st defendant is not indebted to the claimant to the tune of #345, 203, 279, 09 (Three Hundred and Forty Five Million, Two Hundred and Three Thousand, Two Hundred and Seventy Nine Naira, Nine kobo) or any amount.

The 1st set of defendant, failed to respond to the exhibits D & B issued on them by the claimant. Exhibit B of 19th December, 2019 & D of 10th April, 2019 were issued by the claimant's counsel stating the indebtedness of the 1st defendant and the statement of account of the 1st defendant were attached to the exhibits; these facts were not denied by the 1st set of the defendant when they had the opportunity to do so. The 1st set of defendant confirmed receipt of exhibits B & D; see also paragraphs 38 & 41 of the 1st, 2nd & 4th defendants' statement of defence. There was no complaint and/or protest lodged by the 1st defendant when it received the exhibits; therefore I find the contents of exhibits B & D true/correct. If truly the 1st set of defendants were not in agreement with the content of the letters, they ought to have denied liability of the content by responding to same.
See **ALH. GARBA ABUBAKAR BAGOBIRI v. UNITY BANK PLC (2016) LPELR-41161(CA)**

"It is trite law that where a party fails to respond to a business letter which by the nature of its contents requires a response or a refutal of some sort, the party will be deemed to have admitted the contents of the letter."

The argument of the 3rd and 7th defendants on this issue does not hold water as I already held that the claimant is not a money lender, thus the Money Lender Act is inapplicable in this instance. As rightly stated by counsel to the claimant it is too late in the day for the defendants to resile on the agreement they entered into voluntarily**.**

In **EDILCON NIGERIA LIMITED v. UNITED BANK FOR AFRICA PLC (2017) LPELR-42342(SC) pp25-26,** The Supreme Court held thus:

> ***"The passages quoted from Exhibits 19, 20 and 21 above clearly show that the Appellant impliedly adopted the agreement contained in the exhibit by its subsequent conduct in dealing with the Respondent. Where that happens as in this case, the parties will be bound by the terms of the agreement as if they executed it. See McDonald v. John Twiname Ltd (1953) 2 QB.304 at 314.***

This is a clear manifestation that the Appellant participated in the meetings that gave rise to Exhibits 16A, 17A and 18, and endorsed the agreement to sell the pipes and share the proceeds in accordance with the formula agreed upon. The lower Court was therefore right when it held that the appellant is bound bythe contents of Exhibit 17A which was duly signed by the chairman of the meeting. This is so, because, it is the Law that where parties have entered into agreement voluntarily and there is nothing to show that such agreement was obtained by fraud, mistake, deception or misrepresentation they are bound by the terms of the agreement. See A.G. Rivers State v. A.G. Akwa-Ibom State (2011) 8 NWLR (Pt.1248) 31 at 81."

On this note, based on the evidence placed before this court, I find as a fact that the interest rate stated in exhibit I of 21st May, 2018 is legal and same is enforceable.

Reliefs 1 & 2 are hereby granted in favour of the claimant and against the 1st, 2nd & 4th defendants.

This leads me to the issue of whether the claimant is entitled to claim any right of title over Exhibit F. The 3rd defendant argued that for there to be a valid contract, these factors must be present that is offer, acceptance, consideration, intention to create legal relationship and capacity to contract. He relied on ITOMO EMORI EMORI V. EFOLI ESUKU (2013) 4 WRN; ATIBA IYALAMU V. MR. SADIKU AJALA SUBERU (2018) 48 WRN to argue that parties must be at consensus ad idem and failure in reaching a consensus ad idem, the contract is unenforceable. He urged the court to strike down the agreement as contained in the Deed of Sale and Deed of Assignment for failure of consideration.

Exhibit E is the documents paraded by the claimant to prove title and right over 55 Abidjan Street, Wuse Zone 3, Abuja; these documents were made on the 21st March, 2018. The 3rd defendant also pleaded fraud that he at no time executed either of the two Deeds. He queried and challenged the claimant to provide evidence of the consideration paid to him by the claimant. Again, exhibit M dated

18th May, 2018 directed the claimant to pay the consideration to the 1st defendant.

In the present case, the claimant did not produce any evidence of payment for the sum of One Hundred Million Naira (#100,000,000:00) stated as consideration in the Deed of Sale and Deed of Assignment made the 21st March, 2018. The only money paid in this suit was paid into the account of the 1st Defendant and not the 3rd Defendant.

As at the date the Deed of Sale and Deed of Assignment were made, which was, the 21stMarch, 2018, the claimant had not advanced any loan sum to the 1st defendant or as consideration for the sale of No 55, Abidjan Street to the 3rd defendant. It is unheard of, that the 3rddefendant, who is not a direct beneficiary of the loan of 21stMay, 2018 will execute a Deed of Sale in March, 2018. The claimant has failed to show any evidence of consideration paid to the 3rd defendant for the sale of the property known as 55, Abidjan Street, Wuse Zone 3, Abuja as evidenced in Exhibit F. What is more worrisome is the fact that the loan upon which Exhibit F was deposited was granted on the 21st May, 2018; even the authority to pay the One Hundred Million Naira (#100,000,000.00) to the 3rd defendant issued by the 1st defendant was dated and received by the claimant on the 16th May, 2018!

The claimant also testified that it did not pay the sum of One Hundred Million Naira (#100,000,000.00) to the 3rd defendant. Where then is the consideration of One Hundred Million Naira (#100,000,000.00) stated in Exhibit E? I need not say further that where there is no consideration there is no sale at all. See **AUGUSTINE ABBA v. SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED (2013) LPELR-20338(SC) (Pp.32-33)** The Supreme Court held thus:
"Before there is a contract there must be a definite offer by the offeror (the appellant) and a definite acceptance by the offeree (the respondent), and contracts are enforceable when there is consideration. Consideration is something that indicates conclusively that the promisor intended to be bound. Consideration is thus mandatory for enforceability. Consideration must move from the promisee and it need not be adequate but must have some value in the eyes of the law."

It is also not in evidence that the claimant complied with the instruction of the 1st defendant as contained in exhibit M of 18th May, 2018; since there is/was no consideration from the claimant to the 3rd defendant, I am of the firm view that the Deed of Sale and Deed of Assignment contained in Exhibits E are unenforceable against the 3rd defendant and I so hold.

In as much as I agree with the 2ndset of defendants that exhibits E are unenforceable, I must state that I do not agree with them that the failure of the claimant to produce a tripartite agreement makes exhibit I of the 21st May, 2018 unenforceable. The 3rddefendant admitted that he voluntarily gave the 1st defendant exhibit F to use as collateral, as a result of which he received the sum of N10m as commission. The established facts between the claimant, 1st defendant and the 3rd defendant is that Exhibit F was deposited as collateral for the loan contained in Exhibit I of 21st May, 2018 advanced to the 1stdefendant and this can be gleaned from exhibit I of 21st May, 2018; Exhibit F was deposited with the claimant as collateral for the loan of #150,000,000.00 given to the 1st defendant, hence creating an equitable mortgage on exhibit F. Exhibit B of 19th December, 2019 and exhibit D of 10th April, 2019 were issued by the claimant's counsel stating the indebtedness of the 1st defendant and the statement of account of the 1st defendant was attached to the letters; this fact was admitted by the 1st set of defendants. See paragraphs 38 & 41 of the 1st, 2nd & 4th defendants' statement of defence.

See **ALHAJI SAULA OGUNDIMU & ORS v. MR. AKINOLA AKINYEMI (2020) LPELR-49681(CA)**

"...where a party fails to respond to a business letter which by its nature requires a response, it will amount to an admission if the party does not respond. See Enterprise Bank Ltd v. Meens Nigeria Limited (2014) LPELR - 23503 (CA); Trade Bank Plc v. Chami (2003) 13 NWLR (pt.336) 158 at 219 - 220 and Vaswani v. Johnson (2000) 11 NWLR (pt.679) 582. See also Zenon Pet & Gas v. Idrisiyya Ltd (2006) 8 NWLR (pt.982) 221."

Also in paragraphs 51, 52 & 53 of the 3rd & 7th defendants' statement of claim, the 2nd set of defendants admits exhibits B & L were served on them on the 20th

January 2020; that the letters were made in bad faith and also during the pendency of this suit. The 2nd set of defendants however failed to tender the acknowledged copies of those letters so as to show the date they received exhibits B & L.

It is on record that this suit was filed on the 10th January, 2020; the exhibit DD1 of 22nd January, 2020 is the response of the 2nd set of defendant to exhibits B & L of 19th December 2019. The burden is therefore on the 3rd & 7th defendants to prove that Exhibits B & L were made during the pendency of this suit or that it received them on the 20th January, 2020. The exhibit DD1 cannot take the place of an acknowledgment. I so hold.

Also in paragraphs 23 of the 3rd and 7th defendant statement of defence:

The loan sum of #100,000,000.00 (One Hundred Million Naira) was collected solely by the 1st defendant and the 1st defendant gave a fee of #10,000,000,000.00 (Ten Million Naira) only to the 3rd defendant for the use of his title document for the loan.

The 3rd defendant who testified as DD1 stated thus under cross examination:

Q: Take a look at Exhibit F, C of O, You deposited this with the claimant?

A: Yes

Q: There were documents you signed to show the condition under which the original C of O was deposited

A: Yes

Q: you saw the document of offer that was used to collect the loan

A: No

Q: so you handed over the C of O without seeing the agreement between the 1st defendant and the claimant

A: I didn't see

Q: you also didn't ask for it

A: No

Q: you received money from the 1st defendant for giving your C of O to the claimant

A: what money

Q: you received N10m from the 1st defendant for giving your C of O to the claimant

A: yes…

Ques: did you monitor if the 1st defendant paid the loan as agreed
Ans: I know that they were paying
Ques: did you know if they were paying as agreed
Ans: that was not for me to know

Also under cross examination by the 1st set of defendant's counsel; the DD1 stated thus

Q: In your testimony you said the money was given to you as commission for using your C of O

A: yes

Q: Is there anywhere it is written that the N10m is a commission

A: it's there in the document you are holding

See **OYEBISI AFOLABI USENFOWOKAN v. SULE SALAMI IDOWU & ANOR (1975) LPELR-3426(SC)**

"It must be appreciated that once an equitable mortgage has been created on a property the mortgagor's interest is only to demand by way of right to an equity of redemption that the title deed be released to him on payment of the loan advanced so that if any interest was ever sold to the plaintiff/appellant it could

only be the interest which at the material time the mortgagor himself has. We wish to draw attention to this statement of the law:- "147. The charge created by a deposit of deeds and extends to every estate and interest possessed by the depositor at the time of the deposit, every interest which he afterwards acquires, and all incidental rights, such as the goodwill of a business carried on upon the premises. A limited owner can charge only his own estate by a deposit; but parol evidence of the assent of the remainderman is admissible to charge the inheritance. The deposit cannot create an equitable mortgage on property to which the deeds do not relate, notwithstanding that by a misapprehension the creditor believes that they relate to the property". - (Halsbury's Laws of England Vol. 21, 1st Edition). In Kadiri vs. Olusoga (1956) 1 FSC. the Federal Supreme Court decided:- "It is the case, as stated by the learned trial Judge, that the security given was not in the form of a legal mortgage" that is to say by deed, transferring the legal estate to the respondent, but the deposit of title deeds as security for a loan is an equitable mortgage, and I am unable to agree that the loan was an unsecured one within the meaning of the legislation in question. As Lord Macnaghten said when delivering the Judgment of the Board in Bank of New South Wales v. O'Connor, (1). It is a well established rule of equity that a deposit of a document of title without either writing or word of mouth will create in equity a charge upon the property to which the document relates to the extent of the interest of the person who makes the deposit. In the absence of consent that charge can only be displaced by actual payment of the amount secured." In support of that judgment reliance was placed on the case of Bank of New South Wales v. O'Connor (1889) 14 Appeal Cases (A.C.) page 273 at page 282:- "The bank was no doubt bound to deliver up the deeds on payment of the sum secured, with interest and costs, if any. But, in their Lordships' opinion, there is no foundation for the proposition that a tender properly made and improperly rejected is equivalent to payment in the case of a mortgage. The proposition seems to be founded on a mistaken analogy. If a chattel be pledged, the general property remains in the pledgor. The pledgee has only a special property. According to the doctrines of common law, that special property is determined if a proper tender is made and refused. The pledgee then becomes a wrongdoer. The pledgor can at once recover the chattel by action at law. But it is not so in the case of a mortgage, where the mortgagor's estate is gone at law, nor is it so in the case of an equitable mortgage. A mortgagor coming into equity to redeem,

must do equity and pay principal, interest, and costs before he can recover the property which at law is not his. So it is in the case of an equitable mortgage. It is a well established rule of equity that a deposit of a document of title without either writing or word of mouth will create in equity a charge upon the property to which the document relates to the extent of the interest of the person who makes the deposit. In the absence of consent that charge can only be displaced by actual payment of the amount secured. Before the fusion of law and equity a Court of Equity would undoubtedly have restrained the legal owner of the property from recovering his title deeds at law so long as the charge continued, and now when law and equity are both administered by the same Court if there be any conflict the rules of equity must prevail. In Postlethwaite v. Blythe (1), where property had been conveyed to secure a debt of a comparatively small mount, the Lord Chancellor refused to direct a release upon payment into Court of the largest sum to which the debt would in probability amount. Lord Eldon said: "I take it to be contrary to the whole course of proceeding in this Court to compel a creditor to part with his security till he has received his money. Nothing but consent can authorise me to take the estate from the plaintiff before payment."

Also the 1st set of defendant stated that they have only repaid the sum of #40,000,000.00 received by them; that the balance of the #60,000,000.00 is to be repaid by the beneficiaries. The 3rd defendant testified that he voluntarily deposited exhibit F; that he also received the sum of #10,000,000.00 as commission. He however failed to ensure that the 1st set of defendant comply with the terms stated in exhibit I of 21st May, 2018. Learned counsel for the 3rd defendant strenuously argued that the Statute of Fraud should apply to these cold facts. I completely disagree with the counsel; let me remind learned counsel for the 3rd defendant that no matter how beautiful and enticing his argument and address are; they cannot take the place of evidence. The evidence from the vocal cord of the 3rd defendant that he deposited Exhibit F as a security for a loan and was given the sum of Ten Million Naira (#10,000,000.00) as commission for the use of his C of O as collateral; how then is the claimant expected to recover the unpaid balance and the accrued interest?

The 3rd defendant who willingly released Exhibit F albeit with a fee of Ten Million Naira (#10,000,000.00) to the 1st set of defendant to use as a collateral, not until the debt is liquidated, exhibit F cannot be released to him.

In **CHIEF D.S. YARO v. AREWA CONSTRUCTION LIMITED &ORS (2007) LPELR-3516(SC)** Pp.63-63, Oguntade, JSC said:

> *"On the admitted facts of this case, there could be no doubt that the 1st respondent had by depositing the title deeds in respect of his property with the 2nd respondent, created an equitable mortgage in favour of the 2nd respondent over the property. It is now settled that a mere deposit of title deeds as security for a loan constitutes an equitable charge over the land or property. See* ***Mathews v. Good day*** *(1861) 31 L.J. ch.282".*

See also **FIRST BANK OF NIGERIA PLC v. M. O. NWADIALU & SONS LIMITED & ORS (SUPRA**)

> *"The law is trite that deposit of title deeds with a Bank as security for a loan creates an equitable mortgage as against legal mortgage which is created by deed transferring the legal estate to the mortgagee. See: CHIEF D.S. YARO VS AREWA CONSTRUCTION LTD & ORS, 30 NSCQR (PT.2) 1193 at 1228 per CHUKWUMA-ENEH JSC. In the same Law Report OGUNTADE JC had this to say on pages 1244-1245 thereof: It is now settled that a mere deposit of title deeds as security for a loan constitutes an equitable charge over the land or property."*

It is therefore established that the 1st, 2nd, 3rd, 4th and 7th defendants are united that Exhibit F was deposited with the Claimant as a security for loan. The dichotomy as per the amount secured with Exhibit F, the counsel sought to introduce has been resolved in the earlier part of the judgment and I further reiterate my earlier findings and position.

The 3rd defendant claimed he only deposited Exhibit F as a security for One Hundred Million Naira (#100,000,000.00). The claimant claimed that the 3rd defendant deposited Exhibit F as a security for One Hundred and Fifty Million (#150,000,000.00) all the parties are in unison that Exhibit F was deposited as a

security for loan. The only difference is the amount and it is trite that documentary evidence is used as a hanger to measure the truth in oral evidence. Exhibit I of 21st May, 2018 states #150,000,000.00 as the transaction amount.

In **MR. MOSES BUNGE & ANOR v. THE GOVERNOR OF RIVERS STATE & ORS (2006) LPELR-816(SC) Pp.74-75**The Supreme Court held thus:

> *It is also settled that the importance ofdocumentary evidence is that it could be used toresolve an issue or conflicting evidence. It could b eused as a hanger from which to test the veracity of The oraltestimonies.See the cases of **Fashanu v. Adekoya** (1974) 1All NLR (Pt. 1) 35; (1974) 6 S.C. 83 – per Coker, JSC; **Awote v. Owodunni (No.2)** (1987) 2 NWLR (Pt. 57) 366 and Armels Transport **Ltd. v. Martins** (1970) 1 All NLR 27 at 32.*
>
> *In the case of **Alhaji Ibrahim v. Galadima S. Barde & 9 Ors** (1996) 12 SCNJ 1; (1996) 9 NWLR (Pt. 474) 513, in his dissentingjudgment atpage 52,Ogundare,JSC, (of blessed memory), referred to the cas e of **Adeseye v. Taiwo** (1956) 1 FSC 84; (1956) SCNLR 265 as to an admissible relevant book authority, and stated that it is not conclusive. He reproduced part of the statement of Nnaemeka Agu, JSC, in the case of **Kimdey & 11 Ors v. Military Governor of Gongola State &Ors**(1988) 1 NSCC 827 (it is also reported in (1988) 2 NWLR (Pt.7 7) 445 and (1988) 5 SCNJ 28 citing **Fashanu v. Adekoya** (supra) and stated as follows:*
>
> *"No doubt the legal proposition that where there isoral as well as do cumentary evidence, documentary evidence should be a hanger from which to assess oral testimony is a sound one"*

Having held that exhibit F was deposited with the claimant as security for the loan of One Hundred and Fifty Million Naira (#150,000,000.00) as stated in exhibit I, I therefore find as a fact that exhibit F was used in creating an equitable mortgage in favour of the claimant; unless and until it is proven that the 1st defendant has fully liquidated the loan sum, exhibit F cannot be redeemed by any of the 1st to 4th defendants. I so hold**.** Relief 4 (a) succeeds.

See TIJANI JOLASUN v. NAPOLEON BAMGBOYE (2010) LPELR-1624(SC)

"A mortgagor has a legal right to redeem his property once the mortgaged debt is fully paid. When this is done the mortgagee should issue the mortgagor a Deed of release. A Deed of release is affirmative evidence that the property was redeemed."

The 1st set of defendants admitted in evidence that the sum of #60,000,000.00 has not been repaid; they however passed the burden on the 2nd set of defendants. The burden is on the 1st, 2nd, 3rd, 4th & 7th defendants to ensure that the loan sum was/is paid as and when due and since the 3rd defendant has failed to exercise his right of redemption on his property in exhibit F. i.e paying debt owed, the claimant is entitled as a matter of law to hold on to the exhibit F until the loan sum is liquidated.

On the issue of foreclosure and sale of the property, for the claimant to be entitled to these reliefs, it has the burden to produce evidence of demand for the repayment of debt served on the 3rd defendant. The claimant pleaded in paragraph 29 of the further amended statement of claim thus:

Sometime at the end of November 2019, acting on the said written instruction and letter of authority of the third defendant, the claimant set off the proceeds of the sale of the said property which is the sum of #100,000,000 (One Hundred Million Naira) against the part of the outstanding indebtedness of the first defendant. This is reflected in the statement of loan account of the first defendant

The above paragraph was denied by the 3rd defendant in their paragraphs 44, 45 & 46 of the 3rd and 7th defendants' statement of defence.

The claimant didn't reply to the defence stated by the 2nd set of defendants and also the claimant failed to produce the letter of authorization and or written instruction said to have been written by the 3rd defendant. The claimant pleaded and testified in evidence that parties agreed that the debt be assigned to the 3rd defendant for a consideration of the assignment of his property and relied on

exhibit M of 18th May, 2018. This agreement was however not presented to the court.
The exhibit M states:

Plot 637, Abidjan Street,
Wuse Zone 3,
Abuja
18th May, 2018

The Managing Director
Abuja Leasing Company Limited
8A Dar es Salaam Street,
Off Aminu Kano Crescent Wuse II
Abuja.

Dear Sir,
LETTER OF AUTHORIZATION
Kindly take this as an instruction to transfer proceeds from the sale of my property situated at plot 637, Abidjan Street, wuse Zone 3 Abuja which was sold to Abuja Leasing Company Limited; to All Round Consult and Engineering Nigeria Ltd.

Account Name: All Round Consult and Engineering Nigeria Ltd
Account Number: 1012873879
Bank: Zenith Bank Plc

Yours Faithfully,
Signed
Engr. Ikyanyon Benjamin Iorchii

I have read the content of Exhibit M of 18th May, 2018 it clearly contradicts the evidence of the claimant; exhibit M of 18th May 2018 was made before exhibit I of 21st May, 2018. There is no other evidence linking the exhibit to the loan agreement entered into by the claimant and the 1st defendant on the 21st May, 2018.

I therefore hold that the claimant is not entitled to an Order of foreclosure and sale of Plot No 637 (No.55) Cadastral Zone A02, Wuse 1, Abuja covered by Certificate of Occupancy No. 21a2w-88e4z-69e3r-c3r-c3aau-10.
Thus the issues are partly resolved in favour of the claimant against the defendants. Reliefs 3, 4, 4 (b), 5, 6, 7 & 8 fails.

On the issue of legal cost; the Claimant claims the sum of Twenty Five Million Naira #25,000,000.00 being the legal cost of recovery of loan. The claimant in prove of this relief tendered exhibit M of 25th November, 2019 as evidence of the legal cost incurred; see paragraph 38 of the further amended statement of claim. I have calmly looked at exhibit M of 25th November, 2019, which is the legal service invoice from the claimant's solicitor; it is settled that solicitor's fee is recoverable from the adverse party upon pleading and production of evidence. See JALBAIT VENTURES NIGERIA LTD & ANOR V UNITY BANK PLC (2016) LPELR – 41625 (CA)
In the instant case, the success of the claim of the solicitor's fee will depend on whether there is an agreement between the 1st defendant and the claimant.

It is stated in page 2 of Exhibit I of 21st May 2018 thus:

> (g). All legal fees and other professional fees, cost and expenses arising from the facility or of enforcing the terms and conditions herein in the event of such occasion shall be claimed from the client.

What I can deduce from the above is that the 1st defendant voluntarily agreed with the claimant to be responsible for the legal fees, professional fees, cost and expenses incurred in the event of enforcing the terms and conditions stated in exhibit I; this averment was not challenged by the 1st set of defendant. See **BLUENEST HOTELS LIMITED v. AEROBELL NIGERIA LIMITED (2018) LPELR-43568(CA)**

"It is the duty of a Court to interpret and give effect to the agreement between the parties. The Court is not to rewrite the contract."

Thus, in the absence of any documentary evidence stating otherwise, relief 9 is granted to the extent that the claimant is entitled to 10% of the recovered debt and cost of filing fee of Four Hundred and Eighty Thousand Naira #480,000.00.

ISSUE 2

WHETHER THE DEFENDANTS ARE ENTITLED TO THEIR COUNTER CLAIMS.

Learned counsel for the 1st set of defendant [now 1st counterclaimant] argued that they only received the sum of One Hundred Million Naira #100,000,000.00 from the claimant and that they have repaid the sum of One Hundred and Eighteen Million Naira (#118,000,000.00); that the amount paid is more than the One Hundred Million Naira #100,000,000.00 given to them by the claimant; that the 3rd defendant and Ebiakpor are liable to the claimant in the sum of #60,000,000.00.

It is trite that a counter claim is a separate and independent claim; it put the counter claimant in a position of the claimant and he must prove his case to entitle him to judgment. In the instant case, the burden rest squarely on the 1st counterclaimants to prove the assertion with credible evidence that they are entitled to the Eighteen Million Naira (#18,000,000.00).

In **APOSTLE PETER EKWEOZOR & ORS v. THE REGISTERED TRUSTEES OF THE SAVIOURS APOSTOLIC CHURCH OF NIGERIA (2020) LPELR-49568(SC) (p.39)** The Supreme Court re-echoed the law on burden of proof thus:

> *"To untie the puzzle, it needs reiteration that the burden of proof in civil cases has two distinct facets; the first is the burden of proof as a matter of law and the pleadings normally termed as the legal burden or the burden of establishing a case; the second is the burden of proof in the sense of adducing evidence usually described as the evidential burden. While the legal burden of proof is always static and never shifting, the other type being evidential burden of proof shifts or oscillates constantly as the scale of evidence preponderates. In resolving the first question, the primary*

onus of proof in a civil case such as the present one lies on the plaintiff who happens to be the now respondent".

It appears the 1st counterclaimants fail to understand that time was of essence in the exhibit I of 21st May, 2018 signed by them. They have also failed to place credible evidence to show that the loan sum stated in exhibit I of 21st May, 2018 was paid as and when due. It is also admitted by the 1st counterclaimant that there is an outstanding balance of #60,000,000.00 on the first disbursement of One Hundred Million (#100,000,000.00); that they have only repaid the sum of Forty Million Naira (#40,000,000.00).

It is in evidence that the 1st counterclaimant received exhibit B; demand for settlement of debt dated 19th December, 2019. See also paragraph 41 of their statement of defence and upon receipt they didn't deny liability or disagree with the claimant as per the content stated in exhibit B. Therefore, the silence or neglect of the 1st defendant to respond to Exhibit B connotes that they are in agreement with the un-liquidated sum stated in exhibit B.

At this stage, the 1st set of defendant cannot orally contradict exhibit B! It is the law that where a party is not in agreement with the content of a letter, it is the duty of the party to respond to the letter by either admitting or denying the content of same. This, the 1st defendant failed to do!

The debt in exhibit B is far above the sum of #18,000,000.00 being claimed as excess payment; if truly the counterclaimant were not in agreement with the content of exhibit B, they should have responded to the letter and also state their position.

I therefore, find the counter claim of the 1st set of defendant unproven, unmeritorious and same is dismissed.

The 2nd set of defendant in their counter claim [now known as 2nd counterclaimant] relied on paragraphs 1 to 69 of their statement of defence and further averred that the failure of the claimant and 1st counterclaimant to return exhibit F within the stipulated period of 3 months constitutes a breach of agreement after repayment of the loan of One Hundred Million Naira (#100,000,000.00) with the interest. It is further stated that the issuance of the letter dated the 19th December, 2019 Exhibit L i.e seven days notice to recover possession, notice of sale of their property/set off and the filing of a caveat with

the 5th defendant in respect of exhibit F without their consent or authority by the claimant constitutes blatant acts of trespass to the said property.

Learned counsel for the 3rd defendants submits that a counter claim is a separate action and as such the claims in a counter claim should be given same treatment as the main action. He further relied on the evidence of the 3rd defendant filed on the 1/7/2020 that he only guaranteed the sum of One Hundred Million Naira (#100,000,000.00) and that it has been repaid by the1stdefendant. He posited that the service of a 7 days' Notice and caveat on their property were unlawful and constitute an act of trespass on the property. He states that the claimant has not proved any legal title in the 3rd defendant's property, hence not entitled to any attempt to enter and take possession of same. He argued that exhibit E cannot confer the legal title of the 3rd defendant on the claimant based on the fact that exhibit E are unregistered document. He relied on sections 2 & 15 of the Land Registration Act, Cap 515 Laws of Federation of Nigeria 1990. He argued that the mere deposit of the title document only confers equitable title and same cannot be taken without the order of a Court. He referred to **OKUNEYE V F. B. N PLC (1996) 6 NWLR (PT.457) CA.**

He argued further that since there is no witness statement on oath attached to the defence to the Counter claim; such defence is deemed abandoned, he called in aid of **SPLINTER NIG. LTD & 1 ORS V. OASIS FINANCE (2013) 39 WRN 145 AND UBA V. MAGE LTD & 1 ORS.**

RESOLUTION

The basis of this counter claim is the assumption of the 3rd defendant, that the 1st defendant repaid the sum of One Hundred Million Naira (#100,000,000.00) and the accrued interest to the claimant within the three (3) months stated in the loan agreement; this issue has already been dealt with in the main suit and I still maintain my decision that exhibit I of 21st May, 2018 shows that the loan sum agreed to by the claimant and the 1st counterclaimant was One Hundred and Fifty Million Naira (#150, 000,000.00).

The 2nd counter claimant failed to present any other document showing that exhibit F was used in securing the loan sum of One Hundred Million Naira (#100, 000,000.00). The law is that he who asserts must prove; it is the duty of the 2nd counterclaimant here to present credible evidence to show that he is right and the claimant is wrong.

Also assuming I agree with the counterclaimant that exhibit F was used as security for a loan of One Hundred Million Naira (#100,000,000.00) [which I do not agree], it is the evidence of the 1st defendant that they only repaid the sum of Forty Million Naira (#40,000,000.00) given to them by the claimant; that it is the responsibility of the 2nd counterclaimant to repay the balance of Sixty Million Naira (#60,000,000.00).

The 2nd defendant testified in paragraphs 11, 19, 20, 21 & 22 of his witness statement on oath filed on 9/2/2021 as follows:

11. That it was agreed that out of the #100,000,000.00 the claimant shall give as a loan, that the 1st defendant shall take only #40,000,000.00 while the 3rd defendant and Ebiakpor Services Nig Ltd shall take the remaining #60,000,000:00.

19. That the 1st defendant paid its own part of the loan to the claimant even before the agreed period of 3 months and the 3rd defendant and Ebiakpor Services Nig. Ltd failed to pay their own part of the money after expiration of 3 months.
20. That the 3rd defendant trusted Mathew and Wilson of Ebiakpo Service Nig. Ltd so much that he believed that they will pay back their own part of the loan until after one year period when they failed to do so.
21. That when the claimant reported the case to EFCC the 1st defendant paid further sum of #18,000,000.00 (Eighteen Million Naira) only which the claimant acknowledged receipt of at EFCC. The two bank drafts containing the sum of #10,000,000.00 and N8,000,000.00 each in the name of the claimant and they are hereby marked as exhibits H & I
22. That the total money the 1st defendant has paid to the claimant is the sum of #118,000,000.00

Furthermore, the 2nd counterclaimant stated in their evidence thus:

Paragraph 23:

23. That the deposit of our title document covering plot no. 637 (no.55)… with the claimant was only on account of the loan of #100,000,000.00 (One Hundred Million Naira) as security for the repayment of the said loan in the case of default by the 1st defendant.

24: That the 1st defendant has since paid back the loan of #100,000,000.00 (One Hundred Million Naira) together with the requisite interest to the claimant.

25: That despite the repayment of the loan of #100,000,000.00 (One Hundred Million Naira) for which we deposited our title document covering plot No… as security, the claimant and the 1st defendant have blatantly refused and/or out rightly neglected to return our title document to us as earlier agreed despite repeated demands.

26: That we are not aware of any sum of money remaining unpaid by the 1st defendant with regards to the loan sum of #100,000,000.00 (One Hundred Million Naira) we guaranteed to the 1st defendant.

27: That the loan sum of #100,000,000.00 (One Hundred Million Naira) was collected solely by the 1st defendant and the 1st defendant paid a fee of #10,000,000.00 (Ten Million Naira) only to us for the use of our title document for the loan.

The 3rd defendant testified thus under cross examination:

Q: Take a look at Exhibit F, C of O, You deposited this with the claimant?

A: Yes

Q: There were documents you signed to show the condition under which the original C of O was deposited

A: Yes

Q: you saw the document of offer that was used to collect the loan

A: No

Q: so you handed over the C of O without seeing the agreement between the 1st defendant and the claimant

A: I didn't see

Q: you also didn't ask for it

A: No

Q: You received money from the 1st defendant for giving your C of O to the claimant

A: What money

Q: You received #10m from the 1st defendant for giving your C of O to the claimant

A: Yes

Also under cross examination by the 1st set of defendant's counsel; the DD1 stated thus

Q: In your testimony you said the money was given to you as commission for using your C of O

A: Yes

Q: Is there anywhere it is written that the #10m is a commission

A: Is there in document you are holding

The question now is, if the sum of Sixty Million Naira (#60,000,000.00) remains unpaid from the One Hundred Million Naira (#100,000,000.00) - is the counter

claim of the 2nd counterclaimant competent or proven? The answer is NO! The 2nd counterclaimant also stated in evidence that he received the sum of Ten Million Naira (#10,000,000.00k) as commission for the release of Exhibit F.

At this stage, I am of the view that the 3rd defendant owes himself a duty in ensuring that the 1stset of defendant offset the balance of Sixty Million Naira (#60,000,000.00) loan received from the claimant. If not for anything, the fact that his title document served as a condition before the loan was granted should be of concern to him.

Also the issue of the tenor of the loan is important here. It is contained in exhibit I of 21st May, 2018 that the tenure of the loan per tranche is 3 months at 8% per month. There is no evidence that the 1st defendant repaid the loan sum and the accrued interest thereon as agreed or that it has repaid the balance of #60,000,000.00. It can be gleaned from exhibits C and O9 that the 1st set of defendants did not abide by the terms of repayment stated in exhibit I of 21st May, 2018. The 3rd defendant who voluntarily deposited his title document as security for the loan must therefore be ready to bear the consequence where there is default in payment of the loan granted the 1st defendant.

Based on the evidence before me, I find that the 2nd counterclaimants failed to prove their counter claim and same is dismissed accordingly.

I have come to a conclusion that the claims of the claimant succeed in part and the counter claims of the 1st, 2nd, 3rd, 4th& 7th defendants' lacks merit and are dismissed.

It is hereby ordered against the 1st, 2nd, 3rd 4th & 7th defendants jointly and severally as follows:

1. An Order is made against the 1st, 2nd, 3rd, 4th & 7th defendants jointly and severally to pay the claimant the sum of Two Hundred and Forty Five Million, Two Hundred and Three Thousand, Two Hundred and Seventy Nine Naira, Nine Kobo #245,203,279.09 being the outstanding debts of the 1st defendant guaranteed by the 2nd& 4th defendants and secured by the property of the 3rd defendant forthwith.

2. 8% of the sum of Two Hundred and Forty Five Million, Two Hundred and Three Thousand, Two Hundred and Seventy Nine Naira, Nine Kobo #245,203,279.09 monthly from 1st December 2019 till date.
3. A Declaration is hereby made that the deposit of the Certificate of Occupancy number **21a2w-88e4z-69e3r-c3r-c3aau-10** belonging to the 3rd defendant in respect of property called Plot 637, Cadastral Zone A02, Wuse 1 District contained in File No BN 10104 granted to IKYANYON BENJAMIN IORCHI now known and called No 55 Abidjan Street, Wuse Zone 3, Abuja amount to an equitable mortgage in favour of the claimant.
4. Reliefs 3, 4, 4 (b), 5, 6, 7 & 8 fails
5. The claimant is entitled to 10% of the recovered debt and Four Hundred and Eighty Thousand Naira #480,000.00 as cost of filing the suit
6. 15% post judgment sum per annum (summation of reliefs 1 & 2) from today until the entire judgment sum is liquidated.

ASMAU AKANBI – YUSUF
(HON. JUDGE)

APPEARANCES:
Gbenga Owa, Esq. O.E Omobhude Esq. for the Claimant
Kenechukwu Okide Esq. for the 1st, 2nd and 4th Defendants
3rd and 7th Defendants absent and not represented
5th and 6th Defendants absent and not represented