

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT No. 7, APO, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA**

SUIT NO: FCT/HC/CV/2435/2021

BETWEEN:

ABEH SIGNATURE LIMITED ---- CLAIMANT

AND

ASABE WAZIRI ---- DEFENDANT

JUDGMENT
DELIVERED ON THE 17th FEBRUARY, 2022

The Claimant instituted this suit against the Defendant vide an originating summons filed on the 23rd of September 2021. On the face of the originating process, the Claimant presented the following questions for the determination of the Court. To wit:

‘Whether having regard to sections 1, 14 and 15 of the Money Laundering (Prohibition) Act and other relevant laws, the various payments made vide cash and sundry bank transfers made by the Defendant in favour of the Plaintiff in respect of the contract for the purchase of two flats at Abeh Court is not illegal and contrary to money laundering laws.

‘Whether in view of the way and manner or mode of payments employed by the Defendant in the purchase of the two flats at Abeh Court belonging to the Plaintiff, does not render the contract for the purchase of the properties void for violating money laundering laws.

‘Whether the Plaintiff was right in repudiating and/or terminating the contract it had with the Defendant for the purchase of the two flats at

Abeh Court for being void due to the contravention of the Money Laundering (prohibition) Act.

'Whether in the face of the repudiation and/or termination of the contract for the purchase of the two flats at Abeh Court belonging to the Plaintiff, the Defendants can still claim or exercise ownership over the said two flats.'

The Claimants prayed for the following reliefs from the Court, to wit:

'A Declaration that having regard to sections 1, 14 and 15 of the Money Laundering (Prohibition) Act and other relevant laws, the various payments made vide cash and sundry bank transfers made by the Defendant in favour of the Plaintiff in respect of the contract for the purchase of two flats at Abeh Court is illegal and contrary to money laundering laws.

A Declaration that in view of the way and manner or mode of payments employed by the Defendant in the purchase of the two flats at Abeh Court belonging to the Plaintiff, same has rendered the contract for the purchase of the properties void for violating money laundering laws.

A Declaration that the Plaintiff was right in repudiating and/or terminating the contract it had with the Defendant for the purchase of the two flats at Abeh Court and offering a refund of the money paid so far for being void due to the contravention of the Money Laundering (Prohibition) Act.

A Declaration that in the face of the repudiation and/or termination of the contract for the purchase of the two flats at Abeh Court belonging to the Plaintiff, the Defendants can no longer claim or exercise ownership over the said two flats.

An order directing the Defendant to immediately handover possession of the two flats at Abeh Court to the Plaintiff.

An Order of Perpetual Injunction restraining the Defendant, her agents, privies, servants and assigns, or any person howsoever claiming through her from parading herself as the owner of the two flats at Abeh Court or claiming any right in relation thereto.'

In support of the Claimant's case, she deposed to an affidavit of twenty six paragraphs through her Managing Director. Four exhibits, being Exhibits ABEH 1-4 were relied upon and attached thereto. In compliance with the rules of this Court, the Claimant also filed a written address on the same day.

The Claimant, upon the filing of the suit, filed an application on the 11th of November 2021 which prayed the Court granting leave to serve the Defendant the originating processes and other processes by substituted means, that is; by pasting the processes on the door to the Defendant's apartment situate at Flat 3C, Abeh Court, Mekong Close, Maitama, Abuja.

The Claimant also prayed the Court for an Order directing parties in the suit to maintain status quo pending the hearing of the substantive suit.

The Claimant's application was moved by her counsel, Musa Etubi Esq. on the 11th of November 2021 and upon due consideration of the application by this Court, same was granted accordingly.

Upon the service of the originating processes on the Defendant, her counsel, Babatunde Oyefeso Esq. filed a Memorandum of Conditional appearance on the 24th of December 2021. On the same day, the Defendant's counsel filed a Counter Affidavit of Seven paragraphs deposed to by the Defendant, Asabe Waziri. The Defendant relied and attached Exhibits AW1-AW7 to her counter affidavit. The Defendant also filed her written address on the same day.

The Defendant further challenged the jurisdiction of this Court to entertain this suit on grounds of want of jurisdiction and for being an abuse of Court process vide a Preliminary Objection filed on the 24th of December 2021. The Defendant listed eight grounds upon which the Preliminary Objection was predicated. In support of the said Preliminary Objection, the Defendant filed an affidavit of thirty six paragraphs deposed to by the Defendant. The written address containing argument in support of the Preliminary Objection was also filed by the Defendant. The Defendant's counsel filed an application praying for the Order of Court extending the time within which the Defendant may file and serve her processes and also prayed for an Order of this Court to deem the said processes as properly filed and served. In absence of any opposition to the said application from the Claimant, the application was moved and accordingly granted by this Court.

The case of the Claimant as can be gleaned from the affidavit filed in support of the originating summons filed before this Court is as follows; The Claimant herein is a real estate firm and the owner of the property being Abek Court situate at No. 1, Mekong close, Maitama, Abuja. That sometime in February 2021, the Defendant approached the Claimant, introduced and presented herself as Businesswoman. That the Defendant indicated her desire to purchase two of the apartments on the aforementioned property.

That the parties negotiated and settled for the sum of One hundred and thirty million naira each for the apartments. That the parties agreed that the purchase price should be paid in installments and that upon the completion of the payment, a Deed of Assignment and other relevant documents shall be executed between the parties and the title documents over the two apartments will be given to the Defendant.

That the Defendant made several payments to the Claimant vide cash payment, bank transfers worth One hundred thousand dollars and through Bureau de 'change. That the Defendant made a cash payment of the sum of Forty thousand dollars to the Claimant and has paid a total of One hundred and fifty million naira to the Claimant.

That to contrary to the impression given by the Defendant that she was a Businesswoman, the Claimant later discovered that she is a staff of the Nigeria National Petroleum Corporation (NNPC). That upon the discovery, the Claimant consulted with her Compliance Officer and her lawyers who analyzed the entire transaction while considering the regulatory laws alongside the mode of payment by the Defendant and that the Claimant was informed that same violated sections 1, 14 and 15 of the Money Laundering (Prohibition) Act and other related laws.

That in order to comply with SCUML requirement of rendition of Statutory report and to get further information, the Claimant instructed her Solicitor to write to the Defendant to request to be furnished with certain information. A copy of the letter was attached as Exhibit Abeh 1.

That the Claimant further instructed her Solicitors to write to the Defendant's Solicitors drawing their attention to the perceived infractions of the relevant laws and called for the parties to halt the transaction pending the investigation of the transaction by the Economic and Financial Crimes Commission and a copy of the letter was attached as Exhibit Abeh 2.

That rather than supplying the needed information and clear any reasonable doubt revolving around the transaction, the Defendant's Solicitors resorted to blackmail in the response dated the 6th of September 2021. A copy of the Defendant's Solicitors' letter was attached as Exhibit Abeh 3.

That as a law abiding corporate entity, the Claimant instructed her Solicitors to petition the Economic and Financial Crimes Commission (EFCC) to investigate the source of the Defendant's funds. The said petition was attached as Exhibit Abeh 4.

That as a fact, the way and manner the Defendant has made the various payments toward the purchase of the two apartments amount to money laundering and a violation of the Money Laundering (Prohibition) Act. That consequently, the transaction and/or contract for the sale of the apartments is void by reason of illegality inherent in the process.

That upon realizing the invalidity and illegality of the contract, the Claimant communicated the termination/repudiation of same to the Defendant and offered to refund the entire sum paid by the Defendant for the two apartments to her. It is the Claimant's case that despite terminating the contract and offering to refund the funds paid by the Defendant, she has refused to conform and has resorted to blackmail.

According to the Claimant, the contract has not been executed or consummated since the Defendant was yet to pay the purchase price in full. That the Claimant is within her right to terminate the contract in view of the supervening circumstances. That upon the community reading of sections 1, 14 and 15 of the Money Laundering (Prohibition) Act, it is clear beyond peradventure that the said contract is void *ab initio*.

The Claimant prayed the Court in the interest of justice to enter judgment in her favour.

The Claimant adduced legal argument in support of her case in the written address filed in support of the originating summons. The Claimant adopted her issues as formulated in her originating summons for determination of the Court. Learned counsel for the Claimant argued

that a contract is illegal if the consideration involves doing something illegal or contrary to public policy or if the intention of the parties or either of them in making the contract promotes something which is illegal or contrary to public policy. That when the object of either the promise or consideration is to promote the committal of an illegal act, the contract itself is illegal and cannot be enforced. Learned counsel further argued that a contract may be legal at formation but subsequently, its mode of performance may make it illegal and relied on the case of R.M.A & F.C V U.E.S. LTD. (2011) 9 NWLR (PT. 1252) 379. Learned counsel argued that an illegal contract is a void contract and same cannot be the foundation of any legal right.

That it is not in doubt that the parties entered into a contract for the sale of two apartments to the Defendant. And that it is not in doubt that the Defendant made payments to the Claimant. That the said payments made with respect to the purchase of the apartments violate the provision of the law particularly sections 1, 14 and 15 of the Money Laundering (Prohibition) Act. That contrary to section 1 of the said law, the Defendant made payment above the threshold as that same was made in furtherance of the contract and its performance. It was argued that the singular act rendered the performance of the contract illegal. Learned Counsel also referred the Court to sections 14 and 15 of the Money Laundering (Prohibition) Act.

Learned Counsel further argued that when the Claimant consulted her Compliance officer and lawyer to analyze the entire transaction alongside the payments made by the Defendant and the non-disclosure, misrepresentation of the nature of her job and her monthly income, the Claimant was informed that the transaction violates sections 1, 14 and 15 of the Money Laundering (Prohibition) Act. In addition to the above,

learned counsel for the Claimant argued that the discovery that the Defendant is a staff of the Nigeria National Petroleum Corporation (NNPC) puts to bed the nagging issue surrounding the questionable source of the funds of the Defendant contrary to the introduction by her that she was a Businesswoman.

Learned Counsel submitted that the acts of the Defendant amount to money laundering and same rendered the contract for the purchase of the two apartments illegal, void and unenforceable. Counsel relied on the case of *Hein Nebelung Isensee K.G v U.B.A. Plc* (2012) 16 NWLR (Pt. 1326) 357.

It was further argued on behalf of the Claimant that though the contract for the purchase of the two flats is legal. However, the way and manner of its performance made it illegal and as such none of the parties can enforce or take advantage there from. Counsel cited the case of *Modibbo v Usman* (2020) 3 NWLR (Pt. 1712) 470 in support of his argument.

It was also argued by learned counsel for the Claimant that upon realizing the questionable source of the payment, the Claimant, as a law abiding corporate entity, reported the matter to the relevant authority and repudiated the contract and promised a refund of all monies paid thus far. Learned counsel prayed the Court not to lend aid to the Defendant to take advantage of her infraction of the prohibitive provisions of the Money Laundering (Prohibition) Act.

Learned Counsel finally urged this Court to grant the reliefs sought in the originating summons.

As stated earlier, the originating processes filed were served on the Defendant vide substituted means pursuant to the Order of this Court granted on the 11th of November 2021. The Defendant entered

appearance and filed her counter affidavit in opposition. In opposing the case of the Claimant, the Defendant, on the 24th of December 2021 personally deposed to an affidavit of seven paragraphs. The case of the Defendant is as follows;

That she had paid a total of One hundred and thirty million naira to the Claimant since February 2021 in various installments for the purchase of Flat 3C, Abekah Signature Apartments situate at No. 1, Mekong close, Maitama, Abuja pursuant to which the Claimant released the keys to the apartment to her. That she purchased Flat 3C and some of her friends/acquaintances and herself purchased Flat 3B as investment for short stay tenants.

The Defendant averred that she paid the sum of One hundred and thirty million to the Claimant for Flat 3C while her acquaintance and herself have so far paid the sum of Seventy million, five hundred and twenty five thousand to the Claimant for Flat 3B out of the agreed One hundred and twenty five million naira for the said apartment. That she transferred the monies to accounts provided by the Claimant for the purchase of Flat 3C except for the cash dollar payment of \$5,000 which was requested for by the Claimant's alter ego.

That precisely on February 2021, the Claimant forwarded to her mail box copies of the Sales Agreement and Deed of Assignment which were annexed as Exhibit AW1 which were prepared by the Claimant's counsel on record. That all sale price, agency and legal fees were collected upfront by the Claimant, his counsel and other agents. That she perused the agreements and made some corrections and sent same to the Claimant for the needed input/execution. The said correspondence as attached as Exhibit AW2.

That she requested for the purchase receipt, agency and legal fees acknowledging full payment for the sale of Flat 3C and none was issued though payments were made via bank transfers. The Defendant stated that the Claimant refused to execute the transfer documents and issue purchase receipts.

That she made several complaints and demand from the Claimant which she was refused including access to AEDC/Alternate power supply, CCTV to her flat and to install cool cover shade to wit she was refused by the Claimant. That her challenge made the Claimant to lodge a complaint to the Nigeria Police at Maitama Police station pursuant to which she was charged to Magistrate court on two count charges of intentional insult and inciting disturbance contrary to sections 155 and 114 of the penal code respectively. Copy of the criminal summon was attached as Exhibit AW3.

That based on the face-off she had with the alter ego of the Claimant, she was reported to the Economic and Financial Crimes Commission (EFCC) vide a petition and was subsequently invited to the Commission. Copy of the screenshot SMS was attached as Exhibit AW4. That she made herself available and was detained overnight.

That the accounts she paid to were furnished by the Claimant including the account with Well Fargo Bank in US and that one of her acquaintances paid into the said account at the instance of the Claimant. The Defendant also claimed to have spent her money to upgrade flat 3C from the shabby state it was handed over to her and she attached the receipts for repairs as Exhibit AW6. That the Managing Director of the Claimant was fond of repudiating Sale agreement upon receipt of full/deposit payment.

That she has seen a copy of the Money Laundering (Prohibition) Act and that the Claimant was in breach of sections 5 and 10 of the law having not filed its returns for transaction within 7 days of the transaction. That the Claimant used the Police at Maitama Police station to harass and intimidate her in order to repudiate the sale of flat 3C and that the attempt by the said Police to criminalize the civil transaction failed.

In his legal argument in support of the Counter affidavit, learned Counsel on behalf of the Defendant adopted the issues formulated by the Claimant and argued that the allegation that the Defendant paid \$40,000USD to the Claimant must be proved by the Claimant. He referred the Court to section 133 of the Evidence Act and relied on the case of *Shaba Audu v Alh. Jubril Guta & Anor.* (2003) LPELR-7296. Counsel for the Defendant argued that though the Claimant mentioned sections 1, 14 and 15 of the Money Laundering (Prohibition) Act, the Claimant was not vested with the constitutional powers to determine and infraction or investigate any form of crime. That the Claimant failed to state the particulars of such payment. Learned counsel argued that the Claimant's reference to "other relevant laws..." is speculative and relied on the case of *Aina Rachael Banke & ors. V Akure North Local Government* (2013) LPELR-20893.

Learned counsel argued that though the Claimant agreed that there was a contract between the parties, the point of divergence was the call that such contract was illegal and cited the case of *Nicon Insurance Plc V Onigbanjo* (2017) LPELR-50660. Learned counsel highlighted the ingredients of a contract and argued that they were present as at the time the parties consummated the contract and that the Claimant cannot turn round to claim illegal contract when demand for execution

of agreements and issuance of payment receipts. Counsel commended the e-mails correspondences between the parties to the Court. Counsel relied on the case of *Emespo J. Continental Ltd. & anor. V Automotor France S.A* (2016) LPELR-42232 in support of his argument. That the tag of illegality was an afterthought especially when the Claimant was also in contravention of section 5 sub 6 of the Money Laundering (Prohibition) Act.

Counsel for the Defendant argued further that though the Claimant argued that the Defendant made cash payment above the required limit, all the payments were via Claimant nominated bank accounts. He also argued that despite the allegation of money laundering against the Defendant, she is to be presumed innocent until proven otherwise by due process of the law and relied on section 36 sub 5 of the 1999 Constitution. Furthermore, in view of the Administration of Justice Act, the Claimant lacked the power to investigate an allegation of crime and relied on the case of *Zurumba Auta V The State* (2018) LPELR-44490.

The Learned counsel queried when the contract became illegal or void and cited the case of *Alhaji Awalu A.B. Bashir & anor V Mr. Fidelix Nwaocha* (2015) LPELR-24752. Learned counsel argued on behalf of the Defendant that she had made improvements on the property worth millions of naira on the strength that she had a valid contract with the Claimant and that the law works on substantial justice and not technicalities and relied on the case of *Zenith Bank Plc. V H.R.H. Eze Dr. Sir. M.O. Kanu & anor.* (2020) LPELR-51136. It was also argued that parties are bound by the terms of the contract.

In conclusion, learned counsel for the Defendant submitted that courts do not write or re-write agreements entered into by parties but enforce

same and that the tag of illegality is only known to the Claimant which is not a statutory investigative agency. That the Claimant has violated the rules of natural justice by constituting itself into a court by declaring the Defendant guilty of the offence of money laundering.

The Learned counsel further submitted that in view of the order of this Court on parties to maintain status quo, the letter from another counsel written on behalf of the Claimant to the Defendant and attached as Exhibit AW7 was tantamount to self-help and an infringement on the Defendant's fundamental rights. Counsel relied on the case of S.O Bello &ors. V Ihuoma Doris (2016) LPELR-41298.

This Court was urged to dismiss the entire suit with cost and to order specific performance in favour of the Defendant.

I must state here that the Defendant also filed a Preliminary Objection to dismiss the suit for want of jurisdiction and for being an abuse of court process. The said objection which was filed on the 24th of December 2021 was supported by an affidavit of thirty six paragraphs deposed to by the Defendant.

The affidavit in support of the Preliminary objection is very similar to the one filed in opposition to the affidavit in support of the originating summons. I see no reason to reproduce or repeat the averments here but I shall make reference to them when and where the need arise in the course of this judgment.

The Defendant's written address in support of her objection was filed on the same day. The crux of the argument of the Defendant is that having authored a petition to the Economic and Financial Crimes Commission (EFCC) pursuant to which she was invited, the Claimant ought to have waited for the conclusion of investigation of the agency before

instituting this suit. According to the learned counsel for the Defendant, the Claimant was not vested with the powers to determine the commission of a crime especially money laundering and relied on the case of Orji Uzor Kalu V Federal Republic of Nigeria &ors. (2012) LPELR-9287.

It was also submitted by the learned counsel that the trite position is that money laundering offence must be accompanied with a predicate offence and relied on the case of Ibrahim Shekarau V FRN (2000) LPELR-52029. Learned counsel listed the fundamental features of money laundering to include the concealment of funds and that such funds would not pass through a financial institution. That, however, in this instant case, the Defendant passed all the funds through Nigerian financial institutions as requested by the Claimant.

Learned counsel for the Defendant further argued that the suit be dismissed for being an abuse of court process and relied on the case of Dannel-Owoo&anor. V Effiong (2020) LPELR-50079 and Umeh v Iwu (2008) 8 NWLR (Pt. 1089) 225.

Learned counsel also raised a preliminary issue wherein he argued that certain paragraphs of the affidavit in support of the originating summons, particularly paragraphs 4,5,6 and 7 offend the provisions of section 115(2) of the Evidence Act 2011. That the deponent can only depose to statement of facts within his personal knowledge or from information available to him which he verily believe to be true.

Similarly, learned counsel argued that the aforementioned paragraphs of the affidavit in support of the originating summons contain legal conclusions and ought to be struck out. Learned counsel cited host of authorities including the case of Procter &Gamble Nigeria Limited V

Nwanna Trading Stores Ltd. (2011) LPELR- CA/A/251/M/2009 in support of his argument.

In reaction to the Defendant's Preliminary objection, the Claimant filed a counter affidavit containing nineteen paragraphs deposed to be one Miracle Udejaja, the litigation Secretary in the law firm of counsel representing the Claimant.

In response to the affidavit in support of the Preliminary objection, the deponent averred he has been informed by Cecil Osakwe, the Managing Director in the Claimant that he has seen the Defendant's Preliminary objection and he knows that same constitutes falsehood and misrepresentation of facts. That the instant suit borders on the interpretation of the Money Laundering (Prohibition) Act with regards to the transaction between the parties. That the payment made for the properties contravenes the provision of the said Act and therefore renders the whole transaction void.

That the money disclosed by the Defendant in her affidavit is less than the actual amount paid by her and he knows that facts surrounding the transaction and/or contract for the sale of the two flats at Abeh Court is void by reason of the illegality inherent in the process. That this instant suit is not predicated on or related to the investigation of the Economic and Financial Crimes Commission (EFCC). That the facts surrounding the transaction are well known to the parties thus not contentious. The Claimant urged the court to dismiss the objection in the interest of justice.

In his written address in support of the Counter affidavit in opposition to the Preliminary objection, learned counsel for the Claimant argued that this instant suit is not an abuse of court process and as such, this court

is clothed with the requisite jurisdiction to entertain the suit. Learned counsel enumerated the requirements that a court must fulfill to assume jurisdiction over a matter and relied on the *locus classicus* case of *Madukolu V Nkemdilim* (1962) 2 SCNLR and *Umanah V Attah* (2006) LPELR- 3356.

He argued further that the suit sought the interpretation of sections 1, 14 and 15 of the Money Laundering (Prohibition) Act. Learned counsel contended that the Defendant lacked the right to determine when and how a suit amounts to abuse of court process and that it was the settled principle of law that a party who alleges an abuse of court process must prove same and relied on the case of *Nweke v F.R.N* (2019) 10 NWLR (Pt. 1679) 51.

The learned counsel submitted that in view of the fact that the suit was initiated simply to interpret certain provisions of the Money Laundering (Prohibition) Act, it was proper to commence same by an originating summons. He relied on the case of *Sani v Kogi State House of Assembly* (2019) LPELR- 46404. He concluded his argument by urging this Court to dismiss the Preliminary objection filed by the Defendant for being incompetent and lacking in merit.

The Defendant filed a further affidavit deposed to by the Defendant herself on the 14th of January 2022. It is an affidavit of eight paragraphs with one exhibit being Exhibit AW 8 attached thereto. The Defendant denied making payment of \$40,000 cash to the Claimant. That she made the payment to the Claimant via the nominated banks and that the deponent to the counter affidavit was not a party to the entire transaction. The Defendant also averred that she has made great improvements on the property.

In his response on reply on points of law, learned counsel for the Defendant argued that paragraphs 5e,f,g,h,j, 6,7,10,11,13,15 and 16 of the counter affidavit filed by the Claimant offend the provisions of section 11592) of the Evidence Act and that the deponent deposed to extraneous issues and as such should be struck out completely.

Learned counsel argued that in view of the pending criminal matter against the Defendant, this instant suit is an abuse of court process. He therefore prayed this court to uphold the preliminary objection of the Defendant.

In an attempt to correct an error occasioned in the counter affidavit filed by the Claimant, a further affidavit was filed by the Claimant. The further affidavit of eight paragraphs filed on the 17th of January 2022 was deposed to by one Miracle Udeaja, the Litigation Secretary in the law firm of the counsel representing the Claimant. It was averred that the deposition in paragraph 12 of the counter affidavit was a typographic error which stated that the Claimant's Motion Ex-parte was substituted service was filed on the 11th of June 2021 whereas same was filed on 11th November 2021 while the main suit was filed on 23rd September 2021.

The Defendant's counsel vehemently objected to the said process. The validity or otherwise of the said further affidavit filed by the Claimant will be addressed in the course of this judgment.

The identified processes are the processes filed by the parties before this Court in this suit. These are the processes adopted by the respective parties before me on the 18th of January 2022 when the matter came before me for hearing.

When a preliminary objection is raised in an action such as the present one commenced by originating summons, it is always better to take the preliminary objection with the substantive case so that if the objection to the action succeeds, the case or action is terminated *in limine*. If the objection fails however, then the court will proceed to determine the substantive action on its merit. See the case of DAPIANLONG V DARIYE (2007) 8 NWLR (PT. 1036) 332.

I have carefully considered the entire processes filed before me to assist the Court arrive at a just determination of this matter.

As stated earlier, the Defendant filed an objection to the Claimant's action. The importance of jurisdiction of the Court to adjudicate over a matter cannot be over-emphasized. The Court must be clothed with the requisite jurisdiction to entertain and adjudicate over any matter.

Jurisdiction is the authority given to the Court by the Constitution or other legislation to decide matters that come before it. It is the *fons et origo* and threshold of judicial power and Judicialism. It is the very lifeline, livewire and spiral cord of a Court of law. See the case of A-G KWARA STATE V. ADEYEMO (2016) LPELR-41147) 1 at page 13.

It is therefore imperative and in line with numerous judicial authorities to resolve the issue of jurisdiction first.

In the case of A.G. LAGOS STATE V. A.G. FEDERATION (2014) 9 NWLR (PT. 1412) 217 AT PG. 275, PARAS. C-D, the Supreme Court, per Fabiyi JSC while reiterating the need to determine the issue of jurisdiction at the earliest possible opportunity held as follows:

"It is basic that jurisdiction is very fundamental in adjudicatory process. Whenever it is raised, as herein, it should be determined

at the earliest opportunity. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity *ab initio* no matter how well conducted and decided. A defect in competence is not only intrinsic, but extrinsic to the entire process of adjudication. See *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; *Oloba v. Akereja* (1988) 3 NWLR (Pt. 84) 508.”

The Defendant sought the order of Court to dismiss the suit for want of jurisdiction and that the suit constitutes an abuse of Court process. The grounds upon which the Defendant premised his objection to this suit are that the suit is predicated on the petition written to the Economic and Financial Crimes Commission (EFCC) to wit the agency has not concluded its investigation and no report has been issued to that effect. Secondly, that the matter, being a contentious one, should not have been initiated by an originating summons.

The Defendant argued strenuously that this instant suit was predicated on the petition written by the Claimant to the Economic and Financial Crimes Commission (EFCC) and that the Claimant ought to have waited for the report of the investigation before instituting this suit. It was argued in behalf of the Defendant that while the suit was instituted on the 23rd of September 2021, the Defendant was invited to the office of the Commission on the 4th of October 2021. Learned Counsel also submitted that the Claimant lacked the powers to determine the commission of crime especially money laundering.

Now, from the processes filed before this Court, can it be said that the Claimant’s suit is predicated on her petition to the Economic and Financial Crimes Commission? I have once again considered the originating summons alongside the affidavit in support and I cannot find

myself to agree with the objector's argument that this suit is predicated on her petition to the anti-graft agency. One, it is not in dispute that the Claimant's Solicitors wrote a petition to the said Commission as instructed by the Claimant. I cannot find any impediment in law that forbids any person from petitioning the agency. The objector has not referred this Court to any law that prohibits the Claimant from writing to the Commission.

By virtue of section 38 of the Economic and Financial Crimes Commission Act, the Commission is empowered to receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under the Act. Therefore, the fact that the Claimant has petitioned the Economic and Financial Crimes Commission is not a bar to the institution of this suit. To my mind, the Claimant possesses the right to report any perceived wrong doing to the Commission for the purpose of investigation. The issues for determination as presented by the Claimant in the originating summons are not tied to the petition and I so hold.

Furthermore, I find fault in the argument of the objector that the Claimant ought to have awaited the report of the Commission before instituting this suit. The argument of the Defendant is illogical and same is hereby discountenanced. It remains the duty of the Commission and not the Claimant to investigate the alleged offence.

Learned counsel on behalf of the Defendant has also argued that the offence of money laundering must be accompanied with a predicate offence and cited host of authorities to support his argument. The instant suit before this Court is a civil suit commenced by an originating summons. Thus, I have no doubt in my mind that this suit is not a

criminal case where arguments on the ingredients of an offence can be entertained. As sound as the argument of the Defendant might be, it is inapplicable in his instant suit which is purely a civil case and not a criminal case. This explains why the entire cases relied upon by the Defendant on this score are all criminal cases. They are not helpful to the argument of the Defendant. I so hold.

The first leg of the objection of the Defendant is hereby discountenanced.

On the ground of the objection of the Defendant that the matter is contentious and should not have been initiated by an originating summons, I have had cause to revisit and peruse the affidavit in support of the originating summons. Contrary to the argument of the learned counsel for the Defendant, the facts are not contentious but rather straight forward. In fact, the facts contained in the Claimant's affidavit in support of the originating summons were close or similar to those deposed by the Defendant with just minor variance. In the case of **ESENE & ORS. VS. THE SPEAKER, EDO STATE HOUSE OF ASSEMBLY & ORS.(2012) LPELR-19775(CA)** the Court of Appeal held that:

"In an action began by originating summons, even if the defendants file a counter-affidavit, disputing some facts against the facts filed in support of the action, it does not necessarily mean that the matter is contentious and hostile, in so far as the live and real issues in the action border principally on the construction of documents and/or statutes placed before the court by the plaintiffs. The apex court still in Pam v. Mohammed supra at page 88 of the report, aptly and instructively held, inter alia: "It

is not the law that, once there is dispute on facts, the matter should be commenced by writ of summons. No. This is not the law. The law is that the dispute on facts must be substantial and material affecting live issues in the matter. Where dispute are peripheral, not material to the live issues an action can be sustained by originating summons. After all, there can hardly be a case without facts, facts make a case and it is the dispute in fact that gives rise to litigation."

I therefore hold, that these minor variations do not render the suit contentious.

The issues presented by the Claimant seek the interpretation of certain sections of the statute, that is, the Money Laundering (Prohibition) Act. Thirdly, I have gone through the affidavit in support of the preliminary objection and I cannot find any credible evidence to convince this Court to uphold the submission of the Defendant. The objector has failed to demonstrate that this instant suit is contentious and I so hold.

On the last ground of the objection that this suit constitutes an abuse of court process on the ground of multiplicity of suit, the Defendant has relied on the criminal case commenced against the Defendant before the magistrate Court by the Police. According to the Defendant, the Claimant's alter ego lodged a complaint against her at the Maitama Police station pursuant to which she was charged to court. The Defendant herself deposed in paragraph 22 of the affidavit in support of the objection that she was charged to **"Magistrate Court 8- zone 6 on 2 count charges of (1) intentional insult contrary to section 155 and (2) inciting disturbance of peace contrary to section 114 all of the penal code"**. It is thus evident that the offence for

which she was charged has no nexus to this instant suit. She was charged for intentional insult and inciting disturbance which have no connecting with interpretation of provisions of the statute.

Therefore, to rely on the criminal case before the magistrate court and cry to the heaven about multiplicity of suit is erroneous and same is discountenanced.

The learned counsel raised a preliminary point in his address and argued that paragraphs 4,5,6 and 7 of the affidavit in support of the originating summons offend section 115(2) of the Evidence Act. He urged the Court to accordingly strike out the offending paragraphs. I have given due consideration to the submission of the learned counsel and I do not agree with his argument. I have considered the said paragraphs and I do not find them offensive to section 115(2) of the Evidence Act. The said paragraphs do not contain legal conclusions but facts from the Managing Director of the Claimant.

Furthermore, the learned counsel for the Defendant has failed to explain how the aforementioned paragraphs in the affidavit offend the provision of section 115(2) of the Evidence Act. This is in tandem with the position held by the Supreme Court in the case of STANBIC IBTC BANK PLC. V L.G.C. LIMITED (2017) 18 NWLR (PT. 1598) PG. 431 AT 449, PARA. C where it was held that:

"...where a party alleges that certain paragraphs offend the provisions of section 115(2) of the Evidence Act, the responsibility is on that party to explain how the paragraphs of the affidavit are inconsistent with the section of the Evidence Act. It is not enough for a party to allege that certain paragraphs are inconsistent with the provisions of the Evidence Act. Learned counsel for the respondent has failed to explain how

paragraphs 8 (c) and (d) constitute argument and conclusion. I therefore discountenance learned senior counsel's argument on that score."

Learned counsel for the Defendant in this case has failed to explain how paragraphs 4,5,6 and 7 of the affidavit offend section 115(2) of the Evidence Act. I therefore discountenance the entire submission of the Defendant on his preliminary point.

Finally, the Defendant made a mountain out of the mole hill about the typographic error inherent on the face of the order granted by this Court where June was written instead of November 2021. The typographic error is due to the inadvertence of the Court registry and ought not to have been elevated by the learned counsel for the Defendant. On the face of the motion ex-parte filed and moved by the Claimant's counsel, it was filed on the 11th of November 2021 hence the order should have read filed on 11th November 2021 and not "11th June, 2021". Counsel for the Claimant erroneously referred to the date as captured on the order and filed a 'further affidavit' on the 17th of January 2022 to correct the error. The said further affidavit filed by the Claimant on the 17th of January 2022 is incompetent and same is hereby struck out.

On the whole, the Preliminary objection filed by the Defendant is unmeritorious and fails. Same is hereby dismissed for lacking in merit.

Having dispensed with the preliminary objection, I shall now proceed to determine the substantive suit filed before this Court.

Now, the claimant filed this suit vide an originating summons and presented four issues for the determination of this Court. The questions are as follows:

'Whether having regard to sections 1, 14 and 15 of the Money Laundering (Prohibition) Act and other relevant laws, the various payments made vide cash and sundry bank transfers made by the Defendant in favour of the Plaintiff in respect of the contract for the purchase of two flats at Abeh Court is not illegal and contrary to money laundering laws.

'Whether in view of the way and manner or mode of payments employed by the Defendant in the purchase of the two flats at Abeh Court belonging to the Plaintiff, does not render the contract for the purchase of the properties void for violating money laundering laws.

'Whether the Plaintiff was right in repudiating and/or terminating the contract it had with the Defendant for the purchase of the two flats at Abeh Court for being void due to the contravention of the Money Laundering (prohibition) Act.

'Whether in the face of the repudiation and/or termination of the contract for the purchase of the two flats at Abeh Court belonging to the Plaintiff, the Defendants can still claim or exercise ownership over the said two flats.'

And in answering the questions, the Claimants prayed for the following reliefs from the Court, to wit:

'A Declaration that having regard to sections 1, 14 and 15 of the Money Laundering (Prohibition) Act and other relevant laws, the various payments made vide cash and sundry bank transfers made by the Defendant in favour of the Plaintiff in respect of the contract for the purchase of two flats at Abeh Court is illegal and contrary to money laundering laws.

A Declaration that in view of the way and manner or mode of payments employed by the Defendant in the purchase of the two flats at Abeh Court belonging to the Plaintiff, same has rendered the contract for the purchase of the properties void for violating money laundering laws.

A Declaration that the Plaintiff was right in repudiating and/or terminating the contract it had with the Defendant for the purchase of the two flats at Abeh Court and offering a refund of the money paid so far for being void due to the contravention of the Money Laundering (Prohibition) Act.

A Declaration that in the face of the repudiation and/or termination of the contract for the purchase of the two flats at Abeh Court belonging to the Plaintiff, the Defendants can no longer claim or exercise ownership over the said two flats.

An order directing the Defendant to immediately handover possession of the two flats at Abeh Court to the Plaintiff.

An Order of Perpetual Injunction restraining the Defendant, her agents, privies, servants and assigns, or any person howsoever claiming through her from parading herself as the owner of the two flats at Abeh Court or claiming any right in relation thereto.'

In support of the originating summons, the Managing Director of the Claimant deposed to affidavit which was filed on the 23rd of September 2021. Paragraphs 5,6,8,9,10,11,16 and 19 are useful and are reproduced here. According to the Managing Director of the Claimant;

5. "That I know as a fact that the Defendant herein sometimes in February 2021 approached the Plaintiff and introduced and/or presented herself as a Business Woman and consequently

- indicated her interest in buying two apartments out of the fifteen apartments owned by the Plaintiff at the said Abeh Court.
6. That after preliminary negotiations between the parties, the Plaintiff agreed to sell the said two flats to the Defendant at the sum of N130,000,000 each.
 8. That the Defendant have made several payments to the Claimant through different mode, to wit cash payments, bank transfers worth One Hundred Thousand Dollars to the Claimant's foreign account, through Bureau De Change operators and bank transfers to the Plaintiff's Nigerian account.
 9. That the Defendant made cash payment of the sum of Forty Thousand Dollars (\$40,000.00) to the Claimant in her attempt to pay for the said properties.
 10. That the Defendant has paid the total of One Hundred and Fifty Million Naira (N150,000,000) to the Claimant.
 11. That the Claimant later discovered that contrary to the representation by the Defendant that she is a Business woman, the Defendant is indeed a staff of the Nigeria National Petroleum Corporation (NNPC).
 16. That the plaintiff as a law abiding corporate entity, on the 31st day of August, 2021 through its Solicitors petitioned the Economic and Financial Crime Commission (EFCC) to investigate the source of the Defendant's funds.
 19. That the Claimant on realizing the invalidity and illegality of the contract has communicated the termination/repudiation of same to the Defendant and has consequently offered to refund the total sum paid by the Defendant in respect of the two properties.

I have placed to above averments alongside the averments of the Defendant. The Defendant averred thus:

Paragraph

2. That prior to this present case, I had paid a total of N130,000,000.00 (One Hundred and thirty Million Naira) to the Claimant and its Alter ego, Cecil Osakwe, a PROPERTY DEVELOPER as far back as February 2021 in various installments for flat 3C, Abeh signature Apartments, No. 1, Mekong Close, off Mekong Crescent, Maitama, Abuja.
- 5a. That the Claimant is the Developer of Abeh signature Apartments, No. 1, Mekong Close, off Mekong Crescent, Maitama- Abuja comprising of about 15 flats of which I purchased Flat 3C and some of my friends/Acquaintances AND I purchased Flat 3B as investment for short stay tenants.
- 5d. That I made payments totally N130,000,000.00 (One hundred and thirty million Naira) to the Claimant's account for Flat 3C while I know of a fact that my Acquaintance/I have so far paid N70,525,000.00 (Seventy Million, Five Hundred and Twenty Five Thousand Naira) to the claimant for Flat 3B out of a total amount of N125,000,000.00 (One Hundred and Twenty Five Million Naira) as agreed as the purchase price.
- 5e. That every Account I made transfer into were accounts nominated to me by Claimant's Alter ego for the outright purchase of Flat 3C except for the cash dollar payment of \$5,000 to wit Mr. Osakwe requested for.

From the above affidavit evidence, certain facts are not in contention.

One, there was a contract of sale of property being 2 Apartments at Abeh Court, situate at No. 1, Mekong close, Maitama, Abuja between the parties. Two, the Defendant has paid monies well over One Hundred and Fifty million to the Claimant for the said apartments being Flat 3C and Flat 3B at Abeh Court, situate at No. 1, Mekong close, Maitama, Abuja.

Three, that the monies were paid both in local currency and in dollars. Fourth, that the Defendant is a civil servant working with the Nigeria National Petroleum Corporation (NNPC).

Five, that the Claimant has authored a petition against the Defendant to the Economic and Financial Crimes Commission. Lastly, that the Claimant has notified the Defendant of her intention to terminate the contract between them.

The Claimant has presented sections 1, 14 and 15 of the Money Laundering (Prohibition) Act for interpretation. Section 1 of the extant law provides thus:

'No person or body corporate shall, except in a transaction through financial institution, make or accept cash payment of a sum exceeding-

- (a) N5,000,000.00 or its equivalent, in the case of an individual;
or
- (b) N10,000,000.00 or its equivalent in the case of a body corporate.'

The above provision is not difficult to comprehend. In clear words, the law prohibits the payment of cash in excess of 5,000,000 or N10,000,000 to individual and body corporate respectively except through financial institution.

It is trite that a cardinal rule of interpretation of statute is that where the words of a statute are clear and unambiguous, the Courts are to give them their plain and ordinary meaning. See *OLANREWAJU V GOVERNOR OF OYO STATE* (1992) 9 NWLR (PT. 265) PG. 335.

In view of the affidavit evidence before this Court, it is equivocally clear that the Defendant made payment in excess of the threshold to the Claimant in her effort to purchase the two apartments. Paragraph 9 of the affidavit in support of the originating summons states thus:

That the Defendant made cash payment of the sum of Forty Thousand Dollars (\$40,000.00) to the Claimant in her attempt to pay for the said properties.

From the affidavit evidence presented before me, I do not find it difficult to hold that the Defendant has made the payment above the threshold permitted by the law to the Claimant. Again, the evidence before me is that the parties met for the first time sometime in February 2021. Surprisingly, the entire transaction with respect to Flat 3C was concluded in the same February 2021. Paragraph 5 of the affidavit in support of the originating summons as well as paragraphs 2, 3, 5d, 5e and 5h of the Defendant's counter affidavit are all helpful here.

It is also instructive to note that there was no frontal denial by the Defendant to the Claimant's averment in paragraph 9 that she paid the sum of Forty Thousand Dollars (\$40,000.00) to the Claimant. I have carefully read the Defendant's counter affidavit in opposition to the originating summons and I cannot find any such denial.

In the case of *JUKOK INTERNATIONAL LTD. V DIAMOND BANK PLC.* (2016) 6 NWLR (PT. 1507) 55 AT PAGE 98, PARAS. E-F, the Court held thus:

“It is the law that specific depositions of facts in an affidavit cannot be controverted by sweeping or general denials in a counter affidavit. To be weighty considerations, the denials must be by facts which must be credible and capable of being believed and if so believed, it will sway the mind of the court from accepting the facts in the main affidavit it is opposing or countering. Put differently, the denials must be clear, emphatic, pointed and specific.”

On the other leg of the argument with respect to the legality or otherwise of the source of the monies paid to the Claimant, I am mindful of the fact that this instant case is not a criminal case. I am also mindful that the Defendant is not standing a criminal trial before this court on allegation of money laundering. Similarly, no charge has been preferred against her in that regard before me or any other court over money laundering charges. Consequently, no witness has been led and no evidence has been given. Hence, I shall restrict myself to the matter presented before me in the processes filed by the parties.

Now, as mentioned earlier, the Defendant has paid to the Claimant well over One hundred and fifty million naira for the two flats at Abekah Apartments situate at No. 1, Mekong close, Maitama, Abuja. The Claimant suspicion arose when it was discovered that the Defendant was a staff of the Nigeria National Petroleum Corporation (NNPC) contrary to the impression she gave that she was a Businesswoman (paragraph 11 of the affidavit in support of originating summons). I have again perused the counter affidavit deposed to by the Defendant and I find no denial to that effect. The position of the law on unchallenged/uncontroverted

evidence is that the Court can act on such evidence. See the case of OGOEJEFO V. OGOEJEFO (2006) 1 SC (PT.1) PAGE 157.

Having established that the Defendant is a staff of the Nigeria National Petroleum Corporation at all material time of the transaction, I need no soothsayer to convince me that the entire of monies paid by the Defendant is way above her pay grid. It is not in contention that the Defendant has paid over One hundred and fifty million naira to the Claimant for the purchase of the two flats. The Defendant has not adduced evidence to prove to source of the monies paid to the Claimant. The attempt by the Defendant at paragraphs 5a, 5b, 5d and 5z of her counter affidavit to draft in and hide behind the veil of 'friends/Acquaintances' into the transaction is an afterthought and same is hereby discountenanced.

I therefore have no problem in finding that the said monies could not have derive from a legal or legitimate source. In fact, when the Claimant queried the Defendant on the source of her funds and the need to provide further information, the Defendant refused bluntly.

Now, section 15 of the Money Laundering (Prohibition) Act provides thus:

Section 15(1) 'Any person who

(a)converts or transfers resources or properties derived directly from

(i).....

(ii) participation in an organized criminal group and racketeering, terrorism, terrorist financing, trafficking in human beings and migrants smuggling, tax evasion, sexual exploitation, illicit arms trafficking in stolen and other goods, bribery and corruption, counterfeiting currency, counterfeiting and piracy of products,

environmental crimes, murder, grievous bodily injury, kidnapping, illegal restraints, hostage taking, robbery or theft, smuggling, extortion, forgery, piracy, insider trading and market manipulation and any other criminal act specified in this Act or any other legislation in Nigeria relating to money laundering, illegal bunkering, illegal mining, with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved to evade the illegal consequences of his action;

- (b) collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources, property or right thereto derived directly or indirectly from the acts specified in paragraph (a) of this subsection commits an offence under this section and is liable on conviction to imprisonment for a term not less than 5 years but not more than 10 years.

The Claimant, having the above provision at the back of his mind quickly reported the matter to the relevant agency through her petition of 31st August 2021 (attached as Exhibit Abeh 4). To my mind, the decision of the Claimant to petition and report the suspicion to the Economic Financial and Crimes Commission (EFCC) is commendable and laudable. The Claimant saw problem ahead and acted timeously. The duty owed by the Claimant is to report to the relevant anti-graft agency.

The corresponding duty of the agency is to investigate the matter and take every the necessary action(s). The Claimant's action is not and does not constitute a breach to the fundamental right of the Defendant. See the case of *FAJEMIROKUN V. COMMERCIAL BANK OF NIGERIA LTD & ANOR.* (2009) 5 NWLR (Pt. 1135) 558 where Ogebe JSC held as follows:

"Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation, and what happens after such report is entirely the responsibility of the Police. The citizens cannot be held culpable for doing their civic duty, unless it is shown that it is done malafide."

One of such actions taken by the Claimant thereafter was to notify the Defendant of her decision to terminate the contract. The rationale behind the decision of the Claimant to terminate the contract is not unconnected to the questionable source of funds provided by the Defendant. From the affidavit evidence before me, it is apposite to state at this juncture that the Claimant decision to terminate the contract is not hinged or dependent on the outcome of the investigation of the EFCC and I do not agree with the Defendant's counsel that the Claimant should have waited for the EFCC report on the investigation before instituting this suit. The duration of any investigation is not easily ascertainable by anyone, even the investigator.

The Claimant's several demands to the Defendant to provide further information including her occupation and source of income were rebuffed. Having held that the total sum paid by the Defendant was above and beyond her pay grid as a civil servant at all material time of the transaction, I have no doubt in my mind that the funds is from proceed of questionable, albeit illegal origin.

On the back drop of the above, I have no difficulty in holding that the entire transaction between the parties is tainted and blemished in illegality. It is the position of the law that the Court will not enforce an

illegality. This is captured in the Latin maxim ***ex turpi causa non oritur actio***.

The Supreme Court had occasion to consider this legal principle in the case of PAN BISBILDER (NIG) LTD V F.B.N. LTD (2000) 1 NWLR (Pt. 642) pg. 684 at 697 paras. G-H where it held per Ogwuegbu J.S.C as follows:

“I agree with the above conclusion of the court below. The general principle which is founded on public policy is that any transaction that is tainted by illegality in which both parties are equally involved is beyond the face of the law as no person can claim any right or remedy whatsoever under an illegal transaction in which he has participated. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.”

To that end, I hold that the entire transaction between the Claimant and the Defendant with respect to the sale and/or purchase of the two flats being flat 3C and flat 3B is void, illegal, null and void. It is the position of the law that you cannot build something on nothing and expect same to stand. MACFOY V. UAC LTD (1962) A.C.152. The entire transaction for the two flats, being flat 3C and flat 3B having been built on illegality is bound to fail and same is hereby set aside.

The learned counsel for the Defendant has submitted further that there exists a valid contract between the parties and went further to highlight the ingredients of the contract and submitted that all the elements were present as at the time the parties consummated the contract. It thus appears to me that the learned counsel is completely oblivious of the vitiating factor that has rendered the contract between the parties

illegal. While it is correct that parties can voluntarily enter into a contract, the Court will not enforce an illegal contract.

It is important to emphasize that where a contract is *ex-facie* illegal, that is as formed and completely prohibited by the law, neither party can derive any right or interest from it. This is because an illegal contract is not a contract at all. It is void *ab initio*. Hence, where a contract is *ex-facie* illegal and once the Court becomes aware, it is the duty of the Court to dismiss the claim for being void and unenforceable. It is settled in law that where a contract is *ex-facie* illegal, even where the illegality is not pleaded, a Court is duty bound to take cognizance of such illegality and refuse to enforce such agreement. This principle of law is ancient and ancestral.

In **NWOKORO VS. ONUMA (1990) 3 NWLR (PT. 136) 22 AT 32.**
Karibi Whyte JSC held as follows:

“it is a fundamental principle of legality that where an act or course of conduct fails to meet with the requirements prescribed by law, such that non – compliance, renders the act or course of conduct devoid of legal effect, no legal consequences flow from such acts or course of conduct”.
See also Achineku vs. Ishagba (1988) 4 NWLR (Pt. 89) 411; F. G. N. Vs. Zebra Energy Ltd (2002) 18 NWLR (Pt. 798) 162,.

In this instant case, the contract itself was lawful as formed but was performed in an illegal manner. Consequently, I refuse to close my eyes to the illegality apparent in the manner the contract was performed.

In the case of CORPORATE IDEAL INSURANCE LIMITED V AJAOKUTA STEEL COMPANY LIMITED & 2 OTHERS (2014) 7 NWLR (PT. 1405) 165 AT PAGES 189-190, PARAS. D-A, the Supreme Court held as follows:

“In the instant case, both the appellant and the respondents’ counsel are in agreement that where a contract is *ex-facie* illegal, that the illegality need not be pleaded. Whereas the appellant contends that the contract of insurance between it and the 1st respondent was not illegal, the respondents hold otherwise. The question may thus be asked. How does one identify or recognize an illegal contract or transaction? This question has been answered by this court in a plethora of authorities. In *Alao v. A.C.B. Ltd.* (1983) 3 NWLR (Pt. 542) 339 at 370, paragraphs B-C, per Iguh, JSC, this Court held as follows:

“It is trite that a transaction or contract, the making or performance of which is expressly or impliedly prohibited by statute is illegal and unenforceable. Where a contract made by the parties is expressly forbidden by statute, its illegality is undoubted and no court ought to enforce it or allow itself to be used for the enforcement of alleged obligations arising there under if the illegality is duly brought to the notice of the court...”

It is crystal clear that any contract or transaction entered into by parties, which contract or transaction is either expressly or impliedly prohibited by statute, is illegal and unenforceable. It is my view therefore that any contract or transaction which seeks to circumvent the provisions of a statute is *ex-facie* illegal and no party can take benefit from it. For me, the contract of insurance between the parties herein, which was made in clear contravention

of section 50(1) of the Insurance Act 1997, is ex-facie illegal and unenforceable...”

Continuing at page 194, paras. B-E, the Supreme Court held as follows:

“A contract which violently violates the provisions of a statute as in this case, with the sole aim of circumventing the intendment of the law maker is, to all intents and purpose, illegal, null and void and unenforceable. Such a contract or agreement is against public policy and makes nonsense of legislative efforts to streamline the ways and means of business relations. This court, and any other court for that matter would not be allowed to be used to enforce any obligations arising there from. The summary of all I have endeavored to say above is that parties cannot be allowed to enter into a contract or transaction to circumvent the clear and unambiguous provisions of a statute. It has been the view of this court and I reiterate it here that a transaction or contract, the making or performance of which is expressly or impliedly prohibited by statute is illegal and unenforceable. See *Alao v A.C.B. Ltd.* (supra); *Eimskip Ltd. v Exquisite Industries (Nig.) Ltd.* (2003) 4 NWLR (Pt. 809) 88 at 118-119 paras. H-A”

The above decision of the Supreme Court by virtue of the doctrine of *stare decisis*, is binding on this Court. I need not add or state more.

I have carefully considered the written address filed on behalf of the Defendant particularly paragraph 5.5 where it was submitted that Claimant also contravened certain provisions of the statute and as such, both parties were *in pari delicto* (equally guilty).

However, I do not share the submission of the learned counsel for the Defendant. From the evidence presented before this Court, it is

established that the Claimant, as at the time of entering the contract, was not aware of the occupation of the Defendant and was thus unaware of the illegality. To the Claimant, the Defendant was a business woman as represented by her.

The Defendant has argued that the two flats belong to her more so that she has paid for the flats. According to the Defendant, at paragraph 5d of her counter affidavit, she has paid the sum total sum of N130,000,000.00 (One hundred and thirty million naira) for flat 3c while the sum of N70,525,000.00 (Seventy million, five hundred and twenty five thousand naira) has been paid for flat 3B to the Claimant out of the agreed N125,000,000.00 (One hundred and twenty five million naira.)

One thing is very clear, that is, the Defendant has not completed payment for flat 3B before the dispute arose between the parties. I do not agree with her that flat 3B is hers. And I so hold.

On the rightful ownership of flat 3C, it is not in dispute that the purchase price is N130,000,000.00 (One hundred and thirty million naira) which has been paid fully by the Defendant to the Claimant. Unfortunately for the Defendant, the title document and other relevant agreements are yet to be handed over to her. To my mind, the contract is at best still executory, that is, not fully performed.

On her part, the Claimant hinged her decision not to consummate the agreement on the information given to her by her Compliance officer and lawyers, after analyzing the entire transaction that same might have been built on misrepresentation, non-disclosure and illegality. Clearly, the Claimant's decision to put the transaction on hold until due diligence is completed did not go down well with the Defendant.

At this point, can the Defendant claim ownership of the flats? I do not think so. The position of the law is clear especially with respect to ownership of property and the need to perfect title documents.

The Supreme Court has settled the issue on the need to pay the entire purchase price before there can be a valid sale in plethora of cases. In the case of *ACHONU V OKUWOBI* (2017) 14 NWLR (PT. 1584) 142 AT PAGE 177, PARAS. G-H, it was held as follows:

“...The lower court was therefore right when it held that time was of the essence in the execution of the contract. The law is settled that where a purchaser of land makes part payment of the purchase price, but defaults in paying the balance, there can be no valid sale even where the purchaser is in possession. Such possession is incapable of defeating the vendor’s title.”

Similarly, in the earlier decision of the Apex Court in the case of *NIDOCCO LIMITED V. GBAJABIAMILA* (2013) 14 NWLR (PT. 1374) 350 AT 382-383, PARAS. G-A, where it was held that:

“The law is trite that failure to pay the purchase price under a contract of sale of land constitute a fundamental breach which goes to the root of the contract and upon which the court cannot decree specific performance. See *Nlewedimv Uduma* (1995) 6 NWLR (Pt. 402) 383 at 400-401.”

In addition to the above, the inability of the Defendant to produce and present any title documents with respect to the flats clearly shows that the Defendant cannot prove legal ownership of the flats under reference. What the Defendant has or possess, at best, is mere

equitable interest in the flats which cannot override the legal interest that the Claimant has.

On the strength of the above, this Court holds that the Defendant is not the owner of the flats being flat 3C and 3B and as such cannot exercise any right over the flats. I so hold.

In support of her case, the Defendant relied on the agreement purportedly sent to her mail box by the Claimant as Exhibits AW1 and also relied on several correspondences between the parties. I have carefully considered the exhibits relied upon by the Defendant.

Exhibit AW1 is the purported Deed of Assignment and the Sale agreement for flat 3C which the Defendant purpose was sent to her mail box by the alter ego of the Claimant. (paragraph 5h of the Defendant's counter affidavit). It is important to note that the said agreements are not signed by any of the party. The position of the law on unsigned document is now elementary. Such unsigned document is inadmissible in evidence.

In the case of OMEGA BANK (NIG.) PLC. V O.B.C. LTD. (2005) 8 NWLR (PT. 928) 547 at 577, the Supreme Court held that:

“The law is settled that a court can only act upon evidence that is legally admissible. It cannot and has it has no discretion to admit and act upon evidence which is legally inadmissible, even with the consent of the parties.”

Therefore, a document that is unsigned is a worthless document which does not have the efficacy of law. The Court has been enjoined not to attach any probative value to such document. Exhibit AW1 is therefore discountenanced.

Secondly, the Defendant stated in the same paragraph 5h that the agreements were forwarded to her mail box. It is thus easy to decipher that the document sought to rely on originated from her mail box. For a computer generated evidence to be admitted, it is now mandatory that same must fulfill the requirements in section 84 of the Evidence Act. Amongst other, the party seeking to rely on computer generated evidence must lay the necessary foundation regarding the condition of the computer used in that regard and must also produce a certificate of authenticity in satisfaction of the conditions listed in section 84(2) of the Evidence Act. It is when these conditions are met that computer generated evidence is admissible.

This position was established in the case of KUBOR V DICKSON (2013) 4 NWLR (PT. 1345) PAGE 534 AT 577-578, PARAS. C-B where His Lordship, Onnoghen JSC. (later CJN) held thus:

“Granted, for the purpose of argument, that exhibits “D” and “L” being computer generated documents or e-documents down loaded from the internet are not public documents whose secondary evidence are admissible only by certified true copies then it means that their admissibility is governed by the provisions of section 84 of the Evidence Act, 2011. Section 84(1) provides thus:

‘84(1) In any proceeding, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in sub-section (2) of this section are satisfied in relation to the statement and the computer in question.’

The conditions are:

- (a) That the documents containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;
- (b) That over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
- (c) That throughout the material part of that period the computer was operating properly, or, if not that in any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) That the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

There is no evidence on record to show that appellants in tendering exhibits "D" and "L" satisfied any of the above conditions. In fact, they did not as the documents were tendered and admitted from the bar. No witness testified before tendering the documents so there was no opportunity to lay the necessary foundations for their admission as e-documents under section 84 of the Evidence Act, 2011.

No wonder therefore that the lower court held, at page 838 of the record thus:

“A party that seeks to tender in evidence a computer generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of the computer must be called to establish the conditions set out under section 84(2) of the Evidence Act, 2011”

I agree entirely with the above conclusion. Since the appellants never fulfilled the pre-conditions laid down by law, exhibits “D” and “L” were inadmissible as computer generated evidence documents.”

Furthermore, section 84(4) of the Evidence Act provides for the requirement of production of a certificate of authenticity in order to satisfy the conditions set out in section 84(2). I have perused the entire processes filed by the Defendant in support of her case and I cannot find any certificate of authenticity to that effect. It is now mandatory that by the provision of section 84(4) of the Evidence Act, a certificate must accompany the electronically generated document sought to be tendered in evidence. I therefore hold that the Defendant has failed to comply with the mandatory requirements stipulated in section 84 of the Evidence Act, 2011. The failure of the Defendant to comply renders Exhibit AW1 inadmissible. I so hold. See also the case of OMISORE V AREGBESOLA (2015) 15 NWLR (PT. 1482) 205 AT PAGE 295, PARAS. D-F.

Sadly, the same virus has infested the entire correspondences relied upon by the Defendant in support of her case. In the absence of the certificate of compliance, the authenticity, genuineness and credibility of the documents are in doubt. Consequently, I declare the exhibits inadmissible in evidence. Therefore, exhibits AW1, AW2, AW4, AW5, AW6 are inadmissible and are rejected for failing the test of

admissibility. Courts have no discretion to act on evidence made inadmissible by the express provision of a statute even with the consent of the parties.

In the recent case of WASSAH & ORS V. KARA & ORS (2014) LPELR-24212(SC), His Lordship, Okoro JSC opined as follows:

"In fact, no Court is allowed to go outside the gamut of evidence before it to shop for materials upon which to decide a case before it".

Admissibility of evidence in any judicial proceedings before any court of law established in the Federal Republic of Nigeria is governed by the Evidence Act. It is trite law that a Court is not allowed to act on any document not tendered or admitted in evidence before it. A court of law is expected to admit and act only on evidence which is admissible in law. See the case of FRANCIS SHANU & ANOR V. AFRIBANK NIGERIA PLC. (2002) LPELR-3036(SC).

Finally, the learned counsel for the Defendant urged in his address to give effect to the contract and also order for specific performance in favour of the Defendant. It is the position of the law that specific performance will not be granted where the contract is founded on illegality or same is affected by other extrinsic situation. See the case of OLOWU V BUILDING STOCK LTD. (2018) 1 NWLR (PT. 1601) PG. 343 AT PAGE 412, PARAS. A-C.

In view of the decision of this Court earlier in this judgment and the prevailing breach on the part of the Defendant, this Court is disinclined to granting such order. Doing otherwise will be an exercise in futility and Courts do not grant an order in vain. The legal maxim is *Lex non cogitadimpossibilia*, that is "The law does not compel to impossible

ends". It was held in the case of BULUNKUTU VS. ZANGINA (1997) 11 NWLR (PT. 529) 526 AT 539 - 540, that Courts should desist from making Orders in vain and not make Orders that are impossible to be obeyed or implemented. See also the case of C. C. B. (NIGERIA) PLC. VS. OKPALA (1997) 8 NWLR (PT 518) 673 AT 694.

On the whole, I find merit in the Claimant's case. This Court resolves the issues presented before this Court in this case in favour of the Claimant and grants the reliefs as contained in the originating summons.

THEREFORE, THIS COURT DECLARES;

'That having regard to sections 1, 14 and 15 of the Money Laundering (Prohibition) Act and other relevant laws, the various payments made vide cash and sundry bank transfers made by the Defendant in favour of the Claimant in respect of the contract for the purchase of two flats at Abeh Court is illegal and contrary to the aforementioned provisions of the money laundering laws.

That in view of the way and manner or mode of payments employed by the Defendant in the purchase of the two flats at Abeh Court belonging to the Claimant, same has rendered the contract for the purchase of the properties void for violating money laundering laws.

That the Claimant was right in terminating the contract it had with the Defendant for the purchase of the two flats at Abeh Court and offering a refund of the money paid so far for being void due to the contravention of the Money Laundering (Prohibition) Act.

That in view of the termination of the contract for the purchase of the two flats at Abeh Court by the Claimant, the Defendant can no longer claim or exercise ownership over the said two flats.

Consequently, this Court orders the Claimant to immediately refund the entire monies paid to it by the Defendant (including the legal and agency fees) and further orders Defendant to immediately handover possession of the two flats, being flats 3C and 3B at Abeh Court to the Claimant.

Parties are to bear their respective cost.

This is the judgment of this Court in this matter. And I so hold.

APPEARANCE

Musa Etubi Esq. for the Claimant.

B. A. Oyefeso Esq. for the Defendant.

Sign

Hon. Judge

17/02/2022