IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 24TH DAY OF FEBRUARY, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/0377/17

BETWEEN:

ECOBANK NIGERIA PLC:……..…..CLAIMANT

AND

MRS. NWAMINA GRACE:…….DEFENDANT

AbdulrahmanAliyu for the Claimant.
David A. Akatubafor the Defendant.

JUDGMENT.

The Claimant by a Writ of Summons dated the 29th day of November, 2017 and filed on the 8th day of December, 2017, brought this suit against the Defendant claiming for the following:

1. A declaration that theDefendant's failure to pay the sum of $118,391.83 (One Hundred and Eighteen Thousand, Three Hundred and Ninety One Dollars,Eighteen Thousand, Three Hundred and Ninety One Dollars, Eighty-Three Cents), being the outstanding balance on the facility used to purchase the property known as 4 Bedroom Semi-Detached Duplex at Block A1B, Phase 3, Kings Court Estate, Dakibiyu, Jabi, Abuja by the Claimant despite the repeated demand for same, has amounted to a default of terms as contained in Annexure EC02.

2. An Order of forfeiture of all rights and privileges of the Defendant on the 4 Bedroom Semi-detached Duplex at Block A1B, Phase 3, kings Court Estate,Dakibiyu, Jabi, Abuja to the Claimant, having defaulted in repayment of the facility used to purchase the property, the Claimant being an Equitable Mortgagor on the property.
3. An Order of sale of the property known as 4 Bedroom Semi-Detached Duplex at Block A1B, Phase 3, Kings Court Estate, Dakibiyu, Jabi, Abuja by the Claimant in order to recover the outstanding sum of $118,391.83 (One Hundred and eighteen Thousand, Three Hundred and Ninety-One Dollars, Eighty-Three Cents) being the unpaid balance of the money/facility used to purchase the property by the Claimant, the Defendant having defaulted in repayment of the said facility.

   Alternatively:

4. An Order for theimmediate payment of the sum of $118,391.83 (One Hundred and Eighteen Thousand, Three Hundred and Ninety One Dollars, Eighteen Thousand, Three Hundred and Ninety-One Dollars, Eighty-Three Cents), to the Claimant by the Defendant being the outstanding balance due to the Claimant from the Mortgage Finance facility used to purchase the property known as 4 Bedroom Semi-Detached Duplex at Block A1B, Phase 3, Kings Court Estate, Dakibiyu, Jabi, Abuja.
5. 10% interest on the judgment sum until the total sum is liquidated.
6. An order for payment of the sum of Five Hundred Thousand Naira (N500,000.00) only being cost of this suit.
7. Any other Order(s) or further Order(s) as this Honourable Court may deem fit to make in the circumstance.

The caseof the Claimant, as distilled from its Statement of Claim, isthat the Defendant on the 19th of January, 2012, applied for a mortgage facility of N26,500,000.00 (Twenty-Six Million, Five Hundred Thousand Naira) from the Claimant in order to finance the purchase of a Four Bedroom Semi-Detached Duplex at Block A1, B4, Phase 3, Kings Court Estate, Dakibiyu, Jabi, Abuja, which facility, the Claimant granted vide a Mortgage Finance facility letter dated 30th January, 2012.

The Claimant averred that the facility amount stated on the said letter of 30thJanuary, 2012, is the sum of $153,870 (One Hundred and Fifty-three Thousand, Eight Hundred and Seventy Dollars), which is equivalent to N23,850,000.00(Twenty-three Million, Eight Hundred and fifty Thousand Naira) at N155.00 per 1 Dollar, which was the prevailing market rate at the time of the transaction.

The claimant stated that the Defendant voluntarily consented that the facility attracts pricing interest rate of 8% per annum, which is subject to review from time to time by the Claimant in line with the market condition, management fee of 1% flat per annum, which was payable upon acceptance of the facility and Advisory fee of 0.75% flat payable upon acceptance of the facility.

Furthermore, that the Claimant voluntarily consented to pay annually, the sum of $24,363.80, being the payable principal and interest from her account number 1132014500 for 10 years period commencing from October, 2012.

The Claimant averred that the Defendant only made the due payments from 2012-2015 with the total sum of $90,972.12 being the payable principal and interest for the said period and has since then failed to pay the outstanding sum despite

repeated demands. That the total outstandingbalance is $118,391.83 which has remained unpaid.

The Claimant further stated that some times in 2016, the Defendant requested that the outstanding payable balance on her facility be converted to Naira for her to liquidate the balance in Naira, and despite the Claimant's expressed readiness to grant the Defendant's request, the Defendant refused/failed to provide the Claimant with the required information on the means of funding the account in Naira and has continuously defaulted to pay the outstanding balance on the facility, thus necessitating this action.

Following the filing of defence and counter-claim by the Defendant, the Claimant filed a Reply to the Statement of Defence and Defence to counter-claim wherein it averred that the Defendant's Account No. 1132014500 was not only a salary account. Also, that the facility letter was duly executed by the parties before the disbursement of the facility and that there was no other separate agreement between the parties on the repayment of the facility different from what has been agreed upon in the said facility letter.

In its defence to the Defendant's counter claim, the Claimant stated that it did not/does not make any unauthorised/fraudulent deductions from the counter-claimant's salary account or any other account whatsoever. Also, that it did not/does not deviate from the purport of the letter dated 22nd February, 2017, and particularly, that it did not illegally deduct $14,509.14, $11,422.60, or any amount whatsoever from the account of the counter-claimant.

The Claimant further stated that it did not breach the contract with the counter-claimant, neither did it frustrate the repayment

of the loan nor charge any extra interest apart from what has been jointly agreed by the parties.

At the hearing of the case, one AthoniaUchendu, a Relationship Manager in the employment of the Claimant gave evidence for the Claimant. Testifying as PW1, she adopted her witness statement on oath as well as her additional witness statement on oath in support of the Reply to the Statement of Defence and Defence to counter-claim, wherein she affirmed the averments in the Statement of Claim and Reply to Statement of Defence/Defence to counter-claim respectively. She also tendered the following documents in evidence, namely;

1. Application for a Mortgage Facility – Exh. PW1A.
2. Mortgage Finance-Facility Letter – Exh. PW1B.
3. Defendant's Statement of Account – Exh. PW1C-C1.
4. Fire Insurance Policy – Exh. PW1D.
5. Re: Request for Mortgage Loan Repayment in Naira – Exh PW1E.
6. Defendant's Statement of Account – Exh. PW1F.
7. Upward Review of Interest Rate – Exh.PW1G.
8. Out of Court Settlement Negotiation – Exh. PW1H.

Under cross examination, the PW1 confirmed that by Exhibit PW1E dated 22/2/2017, the Defendant is only in arrears to the sum of $25,932.03.

The PW1 stated that he would not know if the Defendant opened a Naira account for the repayment of the loan. She admitted that the sum of N25m and not Dollars was credited to the Defendant's account before same was paid to the account of one OlajokoAkinyole for the purchase of the property, the subject matter of the loan transaction.

The PW1 further admitted that the purpose of having a Dollar – Naira exchange rate on the loan facility signed by the Defendant was to determine how much Dollars that would be deducted from the Defendant's pre-existing Dollar account, equivalent to the loan sum in Naira.

On the increase of the interest rate from 8% to 10%, the PW1 maintained that same was communicated to the Defendant vide the offer letter.

On the issue of illegal deductions from the Defendant's account, the PW1 admitted that the Claimant deducted the sum of $3,073.18 on 7/3/12 from the Defendant's account without any authorization. Furthermore, that for each increases of the interest rate on the loan from 8% to 10%, and from 10% to 12.5%, these corresponding increases were usually deducted from the Defendant's account.

The PW1 also admitted that the prevailing interest rate in the year 2012 was 11.5% as against 12.5% stated in the Claimant's letter of 15th August, 2016 – Exh. PW1G. She further admitted that the Defendant complained about the inconsistencies in the outstanding loan balance.

In defence of the Claimant's action, the Defendant relied on the amended Statement of Defence and counter-claim filed on 28th day of November, 2019.

The Defendant in her defence, averred that her account number 1132014500 was solely her salary account where her salary is paid into in US Dollars by her employer, Nigeria-Sao Tome & Principe Joint Development Authority. That in addition to operating a Dollar account, she also operates a Naira current account number 3772036003 with the Claimant.

The Defendant admitted that a loan facility in the sum of N23,850,000.00 was granted to her and stated that there was no time it was agreed to be in US Dollars. That she had concluded payment for the property with the Defendantbefore the Defendant brought a backdated loan facility letter to her to execute and it was then she noticed that the terms of the facility were stated both in Dollars and in Naira.

The Defendant averred that she approach the Claimant through one of its officers named LourettaOgunba, who as at February, 2012, was the Relationship Manager of the Claimant at its NICON Luxury Branch, and sought clarification as to the basis for the loan being expressed in US Dollars, and that the said Louretta told her that the reason was because her Housing Allowance which would fund the repayment of the facility was in Dollars. That she made it clear to the saidLouretta that the loan must be in Naira and not in Dollars; that the sole purpose of the use of her Dollar account would be to convert her Housing Allowance which was in Dollars, to Naira and then use the converted sum to credit her Naira account.

She stated that it was based on the understanding that the loan would be repaid in Naira that she wasasked to open the Naira account number 1130110246202101 to ease repayment of the loan and that it was in the said Naira account that the Claimant deposited the loan facility amount together with her fee for the loan, totalling the sum of N25,000,000.00 to pay for the property on 21st March, 2012.

The Defendant stated that she applied for the loan facility in Naira in a letter dated 19th January, 2012 and was issued a promisory note in the sum of N23,850,000.00 dated 7th February, 2012. That the Claimant forced an insurance cover on the property, dated 20th February, 2012, which was

expressed in Naira, and further coerced her to undertakean insurance in respect of the loan sum with NICON Insurance Ltd.

The Defendant averred that she is not in default of the terms agreed to by the parties. Instead, that the Claimant, contrary to the agreed terms, made several unauthorized and illegal deductions from her Dollar Salary account and when she sought for explanations from the Account Officer concerning some of the deductions she noticed, the Account officer offered none.

She listed the said unauthorized and illegal deductions as follows:

i. March, 2nd 2012…….$3,073.18
ii. March, 15th 2012……$1,154.03, $384.68, $1,538.70, $15.38.
iii. May 24th, 2012……..$760.74.
iv. May 28th, 2012……$19.39, $750.00
v. October 8th, 2012……$700.00, $15.00
vi. October 10th, 2012……..$800.00
vii. October 13th, 2012……$500.00, $1.00
viii. October 16th, 2012……$400.00, $4.00
ix. December, 2012……$1,300.00, $6,50.00
Total = $11,422.60.

The Defendant averred that she had several meetings with the Claimant where different figures were quoted by the Claimant as the balance on the loan, and that she demanded to know the exact balance to be paid and what the several unauthorised deductions from her account were meant for, but the Claimant did not offer any explanation till date.

She stated that she thereafter met with the Claimant when she was placed on administrative leave without pay, to discuss how to repay the facility, and also caused her employer to write the Claimant to confirm her employment status to avoid the Claimant taking any drastic action without reconciling the issues, all to no avail.

She stated further that following her persistent demand for her statement of account, the Claimant wroteher a letter date 22nd February, 2017, informing her that the totality of her indebtedness to the Claimant in respect of the loan facility is $25,932.03. She averred that when the $11,422.60 which the Claimant has so far deducted illegally from her US Dollar account, from the total outstanding sum of $25,932.03, that the total outstanding balance to be deducted from her US Dollar account in repayment of the loan is $14,509.43.

The Defendant averred that the $11,422.60, has since same was illegally deducted from her account by the Claimant, generated interest between 2012 till the time of filing this Defence/Counter-claim, as follows:

a. Period between 2012-2014 at 8% per annum = $2,741.46.
b. Interest generated at the rate of 10% per annum = $1,142.26.
c. Period between 2016-2019 at 11.5% per annum = $5,254.04.
d. Total interest generated on the sum of $11,422.60 between 2012-2019 = $9,137.96.

She stated that when the said accrued interest of $9,137.76 is deducted from the outstanding balance of $14,509.43, that the balance to be deducted from her US Dollar account would be $5,371.67.

She further averred that the Claimant manipulated several of her statements of account thus resulting in the statements of account later issued to her showing grave inconsistences and serious contradictions, such as:

a. The Claimant by a letter dated 15th August, 2016, informed the Defendant that interest on her loan had been increased from 8% to 12.5%, whereas the repayment schedule from the Claimant dated 2nd April, 2019 reflected the interest rate as at 2016 as 11.5%.
b. The Defendant's US Dollar statement of account showing transactions of 2012 has several missing/deleted transactions between 28th October, 2012 to 28th October, 2014.
c. The said Defendant's US Dollar statement of account shows suspicious transactions between 30th September, 2013 and 31st December, 2014, with the purpose/description completely and suspiciously missing.
d. The sum of $3,000.00 was missing from the first deposit of $20,000.00 made by the Defendant from which her contribution of $17,000.00 was deducted.

The Defendant averred that following the realization of the foregoing manipulation of her account by the Claimant, she wrote her employers to stop payment of her salary into her Dollar account with the Claimant pending the reconciliation of the fraudulently conflicting figures represented to her as the outstanding balance of the said loan.

She stated that the repayment for October, 2016 (the annual repayment due dates) was not due at the time the issues bothering on repayment of the facility in Naira and that of issuance of statement of account was brought to the notice of the Claimant and that the said issues still stand till date. That

the Claimant's actions made it impracticable to repay the facility as the Claimant refused to abide by the agreement, issue statement of account and explain the secret deductions and quoted conflicting figures as balance to be paid.

The Defendant stated that she did not at any time refuse to repay the facility but for the duplicitous conduct of the Claimant.

In respect of her counter-claim, the Defendant reiterated the averments in her statement of defence and thus counter-claimed against the Claimant as follows:

a. A declaration that the mortgage transaction between the Claimant and the Defendant in respect of the Claimant's acquisition of the property at Plot A, Phase 3, Kings Court Estate, Dakibiyu, Jabi District, Abuja, Federal Capital Territory, is a loan transaction in Naira and not in US Dollars.
b. A declaration that the loan transaction in question, being in Naira, the act of the Claimant in booking the said loan on the Defendant's US Dollar account was illegal and in gross breach of the loan contract between the Claimant and the Defendant.
c. A declaration that the loan transaction being in Naira and not in US Dollars, the Claimant upon debiting the Defendant's US Dollar account with the Claimant, is bound to convert each US Dollar so debited at the prevailing market rate at the time of the debit and credit the sum converted to Naira, into the Defendant's Naira account with account number 1130110246202101, in repayment of the said loan, till the loan is fully repaid.
d. A declaration that the Claimantbreached the loan contract with the Defendant when the Claimant failed to convert each US Dollar so debited from the Defendant's US Dollar

account, at the prevailing market rate at the time of the debit, and credit the sum converted to Naira, into the Defendant's Naira account with account number 1130110246202101, in repayment of the said loan.

e. A declaration that the Claimant frustrated the Defendant's repayment of the loan, when the Claimant refused, in 2016, to release to the Defendant, the Defendant's statement of claim and further presented to the Defendant, conflicting figures of the Defendant's outstanding balance of the loan, between 2016 till the time of this action.
f. A declaration that the Claimant having frustrated the Defendant's repayment of the loan, the Defendant is not liable to pay for any supposedly accrued interest, debit interest of $9,605.07 charged between 31st October, 2016 – 1st November, 2018, and any form of chargers/interest whatsoever, as a result of Defendant's supposed/purported "default" in repayment of the said loan, between 2016 till the time of instituting and determining this action.
g. A declaration that the increase of interest rate on loan facility from 8% to 10% in 2015 is null and void and in breach of the Central Bank of Nigeria Directive on Bank Charges.
h. A declaration that the only outstanding sum the Claimant was to deduct from the Defendant's US Dollar account in 2016 is the sum of $5,371.67 as at the time of this action, which when converted at the CBN prevailing exchange rate of Three Hundred and Five Naira, Five Kobo (N305.05) and credit the converted sum to the Defendant's Naira account, would completely discharge the said loan.
i. An Order of this Honourable Court, mandating the Claimant to book the loan in question on the Defendant's

Naira account with accountnumber 1130110246202101 and to debit the Defendant's aforesaid US Dollar account, covert the debited Dollar sum into Naira at the prevailing market rate at the time of debit, and credit the sum so converted to Naira, into the Defendant's Naira account with account number 1130110246202101, in repayment of the said loan, on the 28th day of October of every year, from the date of judgment of this Court, until the loan is fully repaid by the Defendant.

j. An Order of this Honourable Court directing that the Defendant pay the Claimant only sum of $5,371.67, into her UD Dollar account with the Claimant; with account number 1132510246202101 and that the Claimant should withdraw the said sum, convert same into Naira at the prevailing market exchange rate at the time of debit, and credit the converted sum into the Naira account of the Defendant, in full repayment of the said loan.

k. An order awarding the sum ofTwenty Million Naira (N20,000,000.00) as General, Punitive and Exemplary damages, against the Claimant for breach of the loan contract, as claimed in relief (e) above and for the inconveniences the Claimant caused the Defendant for illegal deductions done against the US Dollar account of the Defendant.

l. An order of this Honourable Court, mandating the Claimant to refund to the Defendant, the 2% increase in the interest rate by which the Claimant raised the interest rate of the said loan in 2015, the said interest rate increase being null and void and in breach of the Central Bank of Nigeria Directives on Bank Charges.

m. An Order of this Honourable Court, restraining the Claimant, its agents, assigns, privies or persons/personalities acting on its behalf from taking

possession of and selling the property described as Plot A, Phase 3, Kings Court Estate, Dakibiyu, Jabi District, Abuja, Federal Capital Territory.

n. An order awarding the sum of N2,000,000.00 (two Million Naira) against the Claimant, being the cost of this suit.
o. Any other Order or Orders as this Honourable Court may deem fit to make in the circumstance.

ALTERNATIVELY:

p. An Order of this Honourable Court directing that the Defendant pay the Claimant only sum of $25,932.03 into her US Dollar account with the Claimant,with accountnumber 1132510246202101, the said $25,932.03 being the total outstanding balance to be deducted from the Defendant's US Dollar account by the Claimant, and that the Claimant should withdraw the said sum from the said US Dollar account of the Defendant, convert same to Naira at the prevailing market exchange rate, at the time of debit and credit the converted sum into the Naira account of the Defendant, in full repayment of the said loan.
q. And Order of Court directing the Claimant to refund to the Defendant, all the unauthorized/unapproved deductions, so far totalling the sum of $11,422.60, which the Claimant deducted from the Defendant/Counter-Claimant's US Dollar account maintained/operated with the Claimant, as well as the accumulated interest of $9,137.76, on the said deductions, as calculated in paragraph 16 above.

Giving evidence as DW1 in support of her Statement of Defence and Counter-Claim, the Defendant/Counter-Claimant adopted her witness statement on oath wherein she affirmed all the averments in her statement of defence and counter claim.

She also tendered the following documents in evidence, namely;

1. Promisory Note dated 7th February, 2012 – Exh. DW1A.
2. Mutual Benefit Insurance Receipt – Exh. DW1B.
3. NICON Insurance Renewal Notice – Exh. DW1C.
4. 2nd Request to convert the Mortgage Loan from Foreign currency to local currency – Exh. DW1D.
5. Scaling Down of Operations Due to Serious Financial Constraints. – Exh. DW1E.
6. Payment of Certain Allowances – Exh. DW1F.
7. Re:Payment of Certain Allowances – Exh. DW1G.
8. Re:Confirmation of Employment Status – Exh. DW1H.
9. Request to Revert Salary Account – Exh. DW1J.

Under cross examination,the DW1 stated that the loan was meant to be repaid within a period of 10 years from 2012. She stated that the annual due date for the repayment is October of each year, but that the Claimant went ahead to collect yearly deduction in December 2015 and January, 2016.

At the close of evidence, the parties filed and exchanged final written addresses which they adopted on the 29th day of November, 2021.

The learned Defendant/Counter-Claimant's counsel, D.A. Akatugba, Esq., in his final written address, raised two issues for determination, namely;

i. Whether or not the Claimant has proved her case on the preponderance of evidence against the Defendant, to be entitled to the claims sought?
ii. Whether or not, the Defendant/Counter-Claimant has proved her counter-claim against the Claimant on the

preponderance of evidence, so as to be entitled to the reliefs sought against the Claimant?

Proffering arguments on issue one, learned counsel posited that the plank upon which the Claimant places her case is Exhibit PW1C-C1, the US Dollar statement of account of theDefendant/Counter-Claimant, which the Claimant relies upon as proof of her claim of the sum of $118,391.83 against the Defendant/Counter-Claimant. He contended thatthe said Exhibit PW1C-C1 does not suffice to establish the Claimant's claims against the Defendant/Counter-Claimant as the said exhibit was merely dumped on the Court by the Claimant without showing the Court by way of Oral evidence how by virtue of the said Exhibit PW1C-C1, the sum so claimed was arrived at.

He referred to **Wema Bank PLC v. Osilaru (2007) LPELR-8960(CA),** and urged the Court to discountenance Exhibit PW1C-C1 as it is not the prerogative of the Court to rummage through the said exhibit in order to be able to arrive at the sum claimed by the Claimant as the purported outstanding loan balance.

Learned counsel further argued that by Exhibit PW1E, the content of which the PW1 admitted under cross examination, the Defendant/Counter-Claimant's total outstanding on the loan facility as at 22nd February, 2017, was $25,932.3 and not $118,391.83 as claimed by Claimant. He referredto**Ozomaro&Ors v. Ozomaro&Anor (2014) LPELR-22663 (CA)** and**Bichi Investment Nig. Ltd v. Sybroon Medical Centre Ltd &Ors (2020) LPELR-51194(CA),** on the point that a document speaks for itself and no one can read into the text what is not contained therein.

He contended that the Claimant is therefore not entitled to reliefs I & IV of the statement of claim, and urged the Court to so hold.

Furthermore, learned counsel contended that theDefendant/Counter-Claimant, both during the cross examination of PW1 and during her evidence in chief, adduced evidence further depleting the outstanding sum of $25,932.3. He argued that the piece of evidence adduced by the Defendant/Counter-Claimant in paragraph 9(b) of her witness statement on oath remained unchallenged and uncontroverted, despite cross-examination by the Claimant'scounsel. He relied on **Ayakndue&Ors v. Ekprieren&Ors (2012) LPELR-20071(CA),** to submit that the law is trite that unchallengedevidence is evidence deemed admitted by the party who failed to challenge such piece of evidence.

He further referred to **Kayili v. Yilbuk&Ors (2015) LPELR-24323,** and Section 123 of the Evidence Act, 2011 on the point that the Court can act on an unchallenged piece of evidence.

He contended that the Claimant has woefully failed to prove her case against the Defendant/Counter-Claimant, and urged the Court to dismiss the Claimant's claims in this suit.

Arguing issue two, learned counsel posited that the Defendant/Counter-Claimant has successfully put forth a solid defence and has proved her counter-claim against the Claimant.

On the Defendant/Counter-Claimant's assertion that the mortgage facility is in Naira and not in US Dollars, learned counsel argued that Exhibit PW1A tendered by the Claimant, as well as Defendant's Exhibits DW1B, DW1C and DW1D, all support this claim by the Defendant. He noted that even the

PW1, under cross-examination, admitted that the currency used to purchase the property in question was in Naira,paid in managers cheque to the Naira account of the property owner.

Also, that the PW1 further admitted that the reason the exchange rate of Dollar to Naira was made part of the clauses/terms of the loan contract was to enable the Claimant determine the amount of US Dollars to be deducted from Defendant's US Dollars account that would be equivalent to the loan sum in Naira.

He contended that the Defendant/Counter-Claimant has thus proved her claims that the loan facility was in Naira and not US Dollars. He submitted that on the strength of Section 123 of the Evidence Act, 2011, the Claimant having admitted that the loan sum in Naira was credited into the Defendant's Naira account, no further proof is required on this piece of evidence.

He urged the Court to so hold and to enter judgment in favour of the Defendant/Counter-Claimant as per reliefs (a)-(d) of the Counter-claim.

Learned counsel further argued that it was the assertion of the Defendant/Counter-Claimant that the Claimant arbitrarily levied interest rates on the loan facility without communicating same to the Defendant and that the interest rates even communicated to her, were exploitative, arbitrary and irregular. He contended that contrary to the assertion of PW1 under cross examination that the increase in the interest rates were duly communicated to the Defendant, that there is no scintilla of evidence before this Court to show that the Claimant communicated the said increase from 8% to 10% in 2015, to the Defendant/Counter-Claimant.

He contended that Section 2 Subsection 2.1 paragraph 2.1.1 of the Revised Bank Charges, 2013, makes it mandatory that the Claimant communicates any change in an agreed interest rate to the Defendant-within 5 working days before such increase takes effect.

He referred to **Owena Mass Transporttaion Co. Ltd v. Enterprise Bank (2014) LPELR-22100 (CA); Intercontinental Bank PLC v. Mukhis Intercontinental services Ltd &Ors (2017) LPELR-46207(CA)** on the power of the Central Bank to regulate interest rates chargeable on loans in Nigeria, and submitted that that the said increase in interest rate from 8% to 10% on the loan by the Claimant is null and void, same being in violation of Section 2, Subsection 2.1, paragraph 2.1.1 of the Revised Bank Charges, 2013, and that the Defendant/Counter-Claimant is therefore entitled to a refund of the respective interest deductions on the loan.

Learned counsel further relied on **OwenaMass Transportation Co. Ltd v. Enterprise Bank (supra)** to submit that it is the duty of a bank claiming a particular rate of interest, to prove it.He argued that the Claimant has woefully failed to prove the interest rates charged on the loan sum in the face of the conflicting interest rates in Exhibits PW1G and PW1H. Relying on **Kayili v. Yilbuk&Ors (2015) LPELR-24323,** he urgedthat the entire interest rates from the year 2015 to the time of filing this suit, and any other claim for interest by the Claimant, be rejected, the said interest rates being radically conflicting.

He contended that the Defendant/Counter-Claimant has proved her case on the preponderance of evidence and is therefore entitled to judgment as per the counter-claim before the Court. Also, that the Claimant has failed to prove her claims against the Defendant/Counter-Claimant and is therefore liable to have

all her claims against the Defendant/Counter-Claimant dismissed with substantial cost.

He urged the Court to so hold and to enter judgment in favour of the Defendant/Counter-Claimant.

The Defendant/Counter-Claimant also filed a Reply on points of law to the Claimant's final written address.

Learned Defendant's counsel relied on **Esorae v. Omoregie (2013) LPELR-20315(CA)** to submit that a document tendered by a witness for a particular purpose cannot be used for any other purpose besides the purpose for which it was tendered. He argued that Exhibit PW1H was tendered in evidence by the Defendant (through PW1) to show the inconsistencies of the interest rates charged by the Claimant on the loan facility advanced to the Defendant, and nothing more. He contended that for the Defendant to therefore argue that Exhibit PW1E contains outstanding amounts that are inconsistent with Exhibit PW1H, is to progress in error.

Placing reliance on **Buhari v. INEC &Ors (2008)LPELR-814(SC),**he further submitted that it is the duty of a Court to ascribe probative value to a piece of evidence in weighing its evidential value. He posited that a cursory look at the Repayment Scheme attached to Exhibit PW1B, shows the date thereof to be 2017, which was not the year the loancontract was executed by the parties. He contended that the supposed breakdown of the repayment of the loan facility contained in the said document cannot be looked at by this Court as the said document is a product of an afterthought, and one made in anticipation of litigation, same having been made the same year in which this suit was filed, and therefore, inadmissible in evidence.

He referred to section 83(3) of the Evidence Act, 2011, and urged the Court to so hold and to attach no probative value on the purported repayment scheme attached to exhibit PW1B.

Regarding the learned Claimant's counsel's submissions in respect of Exhibit PW1E, the learned defence counsel relied on **Ikemefuna&Ors v. Iliondior&Ors (2018)LPELR-44840(CA),**to submit that the law is trite that a document speaks for itself. He posited that the only meaning this Court can infer from Exhibit PW1E is that the sum mentioned therein is the total balance of the entire loan facility and the interest therein. Relying on **Oloruntoba-Oju&Ors v. Abdulraheem&Ors(2009)LPELR-2596,**he submitted, on the Claimant's counsel's arguments in respect of the unauthorised deductions, that the law is trite that address of counsel can never take the place of evidence. He contended that the Defendant/Counter-Claimant's allegations on the unauthorised deductions remained unassailed, and thus, established.

He thus, further urged the Court to enter judgment in favour of the Defendant/Counter-Claimant.

In his own final written address, learned Claimant's counsel, AbdulrahmanAliyu, Esq, also raised two issues for determination, namely;

a. Whether the Claimant herein has made out his (sic) case upon the balance of probabilities and is entitled to the reliefs sought as encapsulated in its statement of Claim?
b. Whether the Defendant is entitled to the relief sought in her counter-claim?

Proffering arguments on issue one, learned counsel contended that it is an established fact, which was also admitted by the Defendant in paragraph 1 of her witness statement on oath and

of her pleadings, thatthe facility was granted to the Defendant subject to the contractual terms and conditions stated in Exhibit PW1B. He relied on **Owena mass Transport Co. Ltd v. Okonogbo (2018) LPELR-45221(CA)** to submit that the law is trite that a fact admitted by a defendant is regarded as established and needs not be proved.

Placing further reliance on **PDP v. Sani Ali (2015) LPELR-40370 and Titilaye v. Olupo (1991)9-10 SCNJ pg.122,** he urged the Court to find and hold that Exhibit PW1B is the contractual terms and conditions upon which the loan was granted to the Defendant by the Claimant.

He urged the Court to so find and hold that the agreed repayment terms as stated in the schedule attached to exhibit PW1B, and corroborated by Exhibit PW1H, are the established repayment terms as agreed upon by the parties.

Learned counsel further relied on **Ayemwnre v. Evguomwan (2019)LPELR-47213 and Elili v. Adebomi (2009)LPELR 4351,**tosubmit that Exhibit PW1B having clearly and conclusively provided for the facility repayment pattern, duration and the repayment source, the DW1's oral account in respect of the same issue, should not be ascribed with any probative value.

On the total outstanding indebtedness of $25,932.03 as contained in Exhibit PW1E, learned counsel argued that in view of the fact that repayment was to span from 2012-2021, and given the fact that repayment for the remaining years of 2017-2021 had not become due as at the date of Exhibit PW1E; that the only true meaning of the content of Exhibit PW1E, is that the sum of $25,932.03 stands for the payment due for the year 2016 and the accrued interest thereof.

The learned counsel in paragraph 4.23 of his final written address, referred the Court to Exhibit PW1B, and proceeded to explain the purport of the unauthorised deductions as alleged by the Defendant/Counter-Claimant.

He posited that the alleged unauthorised deductions are part of Exhibit PW1B as well as the account opening and maintenance contract between the parties as admitted by the Defendant. He argued that having earlier agreed/consented to the terms and conditions in Exhibit PW1B and the account opening and maintenance agreement, that the Defendant cannot be allowedto turn around and tag those contractual terms as "unauthorised" or "illegal". He submitted that it is not acceptable for a party to deny the terms of contract to which she had voluntarily consented –**Sunday v. Chief of Air Staff (2016) 1 NWLR (Pt.1494).**

In relation to the claim for the forfeiture of the Defendant's property to the Claimant, learned counsel argued that by virtue of Subsection (ii) of the operating condition clause of Exhibit PW1B, the Claimant is entitled to its relief in relation to the sale of the property, the Defendant having defaulted in repaying the facility.

He referred to **ZTE (Nig) Ltd v. Abyel (Nig) Ltd (2018) All FWLR (Pt.962)1608** on the points that parties are bound by their agreements and that the Court must always be ready to give effect to the terms of the parties' contract.

On issue two, on whether the Defendant is entitled to the reliefs sought in her counter-claim, learned counsel contended, relying on **Ola v. UNILORIN (2014)15 NWLR (Pt.1431)453,** that the Defendant having tendered Exhibits PW1E and PW1H, (through PW1), she is bound by the entire contents of the said Exhibits. He urged the Court to hold that the amounts quoted in

Exhibits PW1E and PW1H both represent the total indebtedness of the Claimant to the Defendant according to their respective dates of issuance.

He further argued that juxtaposing the two contradictory amounts quoted as the Defendant's outstandingindebtedness to the Claimant in exhibits PW1E and PW1H upon which the Defendant's counter-claim is rooted, that the counter-claim cannot thrive on this premise. He contended that the contradictions on material facts as contained in Exhibits PW1E and PW1H, entails that the Court would not attach any probative value to such evidence, and that same translates to the fact that the counter-claimant has failed to present before the Court, an anchor to which her counter-claim would be tied.

Learned counsel further argued that since the Claimant has denied and joined issues with the Defendant/Counter-Claimant on the issue of $25,932.03 as her outstanding indebtedness, that the onus shifted to the Defendant to prove to the Court how she has managed to pay her debt to that point, and that the Defendant has failed to do so. He urged the Court to hold that the Defendant's counter-claim lacks concrete facts and evidence, and is laden with conjectures, and that same is an attempt to leave the Court in a state of speculation.He referred to **Ali v. Ahmed (2019) AllFWLR (Pt.990)1444 at 1474.**

He urged the Court to hold that having rooted her counter-claim on evidence that lacks probative value, the Defendant has failed to discharge the burden of proof placed on her as a counter-claimant.

Hefurther urged the Court to hold that the counter-claim has no merit; that same is nebulous and a calculated attempt to rob the Claimant of depositors' monies, and to dismiss same with cost.

On the Defendant's contention that Exhibit PW1C was dumped on the Court by the Claimant, learned counsel posited that the Claimant's argument is misconstrued. He argued that a document is said to be dumped on a Court when such document is tendered without tying it to the evidence of a witness. He referred to **Ladoja v. Ajimobi (2016) LPELR-40658.**

He urged the Court to hold that the PW1's statement on oath, having been accompanied by, and spoken about Exhibit PW1C; that the said Exhibit is not dumped on the Court, and that the Court should attach enough probative value to it.

He further contended that the Claimant's case is not built around Exhibit PW1C as the said document only shows what transpired in the Defendant's account up to the last date of its computation. That same does not provide information on what is booked for the future, and thus that the case of **Wema Bank PLC v. Osilanu** relied upon by the Defendant, does not help her argument. He argued that the Claimant in the instant case, has adduced further documentary evidence to support her claims, such as Exhibits PW1B, PW1D and PW1H, among others.

He urged the Court to discountenance the Defendant's argument and to hold that the Claimant has supported her claims with enough evidence.

On the alleged contractions in the evidence of theClaimant, learned counsel contended that there are no contradictions in Exhibit PW1C and PW1E as both documents speak about the outstanding indebtedness of the Defendant at different times.

He urged the Court in conclusion, on the premise of the arguments canvassed in his final written address as well as the

facts and evidence before the Court, to grant the claims of the Claimant in this suit, and to refuse and dismiss the counter-claim with cost as same is unmeritorious.

In the determinationof the case of the Claimant in this suit, the issue to be considered is **whether considering the facts of this case and evidence adduced before this Court, the Claimant's action is competent?** This entails the examination of what constitutes the cause of action in this case, and whether same had crystallised at the time of institution of this case.

In defining a cause of action, the Court of Appeal, per Garba, JCA, in **F.U.T. Minna&Ors v. Okoli (2011) LPELR-9053(CA),** held thus:

> "***Acause of action in law put simply, is the fact or combination of facts which if proved would entitle a party to a judicial remedy against another. A cause of action is the entire set of facts giving rise to an enforceable claim, a factual situation on which a party relies to support his claim recognised by law against another."***

In the instant case, from the claims of the Claimant and the averments in its pleadings, the facts or circumstances on the basis of which the Claimant took out this action against the Defendant.In other words, the cause of action giving rise to this suit,is the alleged failure of the Defendant to paythe sum of $118,391.83,being the alleged outstanding balance on the loan facility granted the Defendant by the Claimant.

It is trite that a Claimant cannot initiate action against a Defendant against whom no cause of action has arisen. In other words, before a Claimant can competently and validly

maintain an action in Court against a Defendant, he must have a cause of action which has fully crystallised against the Defendant.

On when a cause of action is said to have arisen, the Court of Appeal, per Pemu, J.C.A, held in **Jaiyesinmi V. ICAN (2012) LPELR-19668 (CA),**that :

> ***"Every fact constituting a cause of action in a cause or matter, has to be crystallised before a cause of action is said to arise against a person".***

Also in **F.U.T. Minna&Ors v. Okoli (supra),** the Court held thus:

> ***"… a cause of action is said to arise and/or accrue when the fact or combination of facts had happened or come into being and would enable a party to make an enforceable claim in law based on such facts. A cause of action accrues when the facts or combination thereof are complete for the party to be able to commence or initiate his action against another predicated on the facts."***

It is therefore, the happening or crystallization of the fact or combination of facts that constitute a cause of action, that would enable a party to make an enforceable claim in law against another.

From the records of this Court, the Claimant instituted this action against the Defendant on the 29th day of November, 2017. The question therefore, is whether the outstanding balance on the loan facility agreement between the parties, had become due and payable at the time the Claimant commenced this action alleging that the Defendant failed to pay same?

From the pieces of evidence before this Court and the oral evidence of PW1 and DW1, it is an established fact that the loan transaction was entered into by the parties in the year 2012. The parties are also ad idem that the tenure of the facility is 10 years, commencing from 2012 and terminating in 2021.

It follows therefore, that the "outstanding balance" on the facility willonly become due and payable as per the agreement of the parties, in October, 2021; without prejudice to the annual repayments that are payable on October of each year.

The basis of the Claimant's claim, to wit, its cause of action, is not the outstandingbalance as at the date of the commencement of this action, but the entire outstanding balance on the facility which the parties had agreed would be due and payable in 2021.

It is therefore, clear, that the Claimant's cause of action in this suit hadnot arisen or crystallised at the time the Claimant instituted this action in 2017.

This Court is not unmindful of that fact that by Exhibit PW1B, under the "Availability" clause, the Claimant at its discretion, may decide that the facility had become payable at any time. But for that to happen, it has to make a demand on the Defendant for the repayment.

The said clause provides thus:

> ***"… notwithstanding anything in this facility letter to the contrary, the facility is regarded as repayable on demand at any time at the discretion of the Bank."***

There is nothing before this Court to show that the Claimantmade a demand on the Defendant to pay the outstanding balance on the facility before it commenced this

action. The averments in paragraphs 16 and 18 of its statement of claim and witness statement on oath respectively, to the effect that it requested the Defendant to pay the outstanding balance, was not substantiated by any credible evidence, by way of documentary evidence.

The law is trite that parties are bound by their agreement. The apex Court made this abundantly clear in **Ogun State Government v. Dalami Nigeria Ltd (2007) All FWLR (Pt.365) 439 at 438,** where it held, per Onnogghen, JSC, that:

> ***"Parties are bound by their agreement freely entered into. No party would therefore be permitted to go outside it for remedy."***

The agreement of the parties herein as per Exhibit PW1B, is that the tenor of the facility is 10 years, and the Claimant cannot go outside that agreement to purport to seek to enforce the payment of the outstanding balance on the facility, without first clearly making a demand for same as required by Exhibit PW1B.

From the foregoing, it is the finding of this Court that the Claimant's cause of action had not crystallised at the time it instituted this action against the Defendant. The Claimant cannot institute an action, in anticipation of the accrual or crystallization of the cause of action in the course of the proceedings, particularly given the fact that by the doctrine of lispendis, all actions on the subject matter of the suit is put on hold by the institution of the action. In the circumstances therefore, this Court holds that the Claimant's action is incompetent, and same is accordingly struck out.

……
HON. JUSTICE A. O. OTALUKA.

Now, to the Defendant's counter-claim. The law is trite that a counter-Claimant, like all other Claimants in an action, must prove his claim against the person counter-claimed against before he can obtain judgment on the counter-claim. See **Jeric (Nigeria) Ltd v. UBN PLC (2000) LPELR-1607(SC).**

The question therefore, to be considered is **whether the Defendant/Counter-Claimant has proved her counter-claim on a preponderance of evidence as to be entitled to her counter-claim?**

The case of the Defendant/Counter-Claimant in summary,is that she entered into a Naira-denominated loan facility agreement with the Claimant, in breach of which the Claimant booked the said loan on the Defendant/Counter-Claimant's U.S. Dollar account.

The Defendant/Counter-Claimant also alleged a manipulation of her account by the Claimant, several unauthorised deductions from her account by the Claimant, as well as refusal to issue to her, her statement of account, and conflicting figures of her outstanding balance of the loan between 2016 till the date of this action.

To prove that the mortgage/loan transaction was in Naira andnotDollars, the Defendant/Counter-Claimant relied on Exhibit PW1A, her application letter for the mortgage facility by which she specifically applied for the sum of Twenty-six Million, Five Hundred Thousand Naira from the Claimant. She also led evidence, which was admitted by the Claimant, to the effect that the payment for the property, the subject matter of the mortgage agreement, was made in Naira.

To controvert this assertion by the Defendant/Counter-Claimant, the Claimant tendered and relied on Exhibit PW1B, the "Mortgage Finance-Facility Letter", which embodies the agreement between the parties.

It is however the contention of the Defendant/Counter-Claimant, that she was tricked into signing the said Exhibit PW1B after the loan had been disbursed and that the basis of expressing the loan in Dollars, according to the information given to her by the Claimant's representative, is because the repayment of the loan was charged to her Housing Allowance Dollar Account.

A cursory look at Exhibit PW1B, shows that the cost of the property was stated as $170,967 or N26,500,000 and facility amount was stated as $153,870 or N23,850,000. (underlining mine, for emphasis).

It is an elementary understanding that the word "or" as used in the said clauses of Exhibit PW1B, denotes connection between at least, two alternatives, each of which could be true.

The implication is that the facility amount has been agreed by the parties to be either $153.870 or N23,850,000. In other words it is either in U.S. Dollars or in Naira.In the Blacksmith Law Dictionary 5th Edition, 'OR' as a disjunctive particular can be used to define an alternative or to give a choice of one expressionamong two or more things,see**Annie &Ors v. Uzorka&Ors (1993) LPELR 490(SC).**

The said Exhibit PW1B was duly signed by the parties, and there is nothing on the face of it that suggests same to be invalid, as alleged by the Defendant/Counter-Claimant.

The evidence adduced before the Court shows that the rationale for stating the facility amount in Dollars, the loan itself

having been advanced in Naira in the first place, is because of the repayment source, the Defendant/Counter-Claimant's Housing Allowance, was dominated in Dollars. When therefore, the Defendant's employment was terminated in 2016 and she no longer earned the Dollarized Housing Allowance, the natural recourse, in line with Exhibit PW1B, would have been for the repayment to revert to the alternative currency which is the Naira.

The Defendant/Counter-Claimant took step in this direction by notifying the Claimant as per Exhibit PW1D and requested a conversion of the mortgage loan from foreign currency to local currency. The Exh PW1D requesting for conversion of mortgage loan to local currency was replied to by Claimant admitting that the Defendant owed $25,932.3 in Exh PW1E.

I therefore, agree with the Defendant/Counter-Claimant, that the Claimant frustrated the repayment of the loan from 2016. Recourse must be had to the Exh PW1A,application for loan of N26.5m which was in naira and PW1B being the mortgage facility letter stated the facility at $170.967 or N26.5m. The Defendant during examination said that the PW1A date was back dated. I do not believe this piece of evidence. I am convinced that the agreement was consensually signed by both parties on 30th January, 2012 after the application for the loan was written on 19th January, 2012.

Regarding the allegation of unauthorised deductions from the Defendant/Counter-Claimant's account, it is not only that the Claimant merely offered a general traverse to the allegation, but the PW1 under cross examination on 8/7/20 on page 307 of volume 30 of the records admitted the unauthorised deductions of $770 and $3,073.18, totalling $3,843.18. The law is trite that what is admitted need no further proof. See **Oguanuhu&Orsv.**

Chiegboka (2013) LPELR-19980(SC). Unfortunately the Claimant failed to lead evidence as to any other deduction made. Exh PW1C more or less was dumped on the Court by the Claimant. However, the Defendant/Counter-Claimant took advantage of it during cross examination to prove the unauthorised deductions of $3,073.18.

The attempt by learned Claimant's counsel to give evidence explaining the alleged deductions in his final written address, is discountenanced as it is settled law that counsel's address cannot be a substitute for evidence, no matter how eloquent and brilliant. See **Tafida&Anor v. Garba (2013) LPELR-22076(CA).**

The allegation of the Claimant presenting conflicting figures of the Defendant's outstanding balance of the loan, is not supported by evidence.

The only document before this Court wherein the Claimant stated the outstanding balance of the loan is Exhibit PW1E, dated February 22, 2017, wherein the Claimant unequivocally informed the Defendant thus: ***"Your total indebtedness to the Bank as at date stands at $25,932.3 which comprises of the outstanding principal plus unpaid interest resulting from your inability to service the facility."***

What this means is that as at 22nd February, 2017, the Defendant's total indebtedness to the Claimant on the loan facility, is the sum of $25,932.3, which if the Defendant paid then, she would no longer be indebted to the Claimant on the loan facility.

On the other hand, Exhibit PW1H, is anin house correspondence by the Claimant on 2nd April, 2019 addressed to Claimant's lawyer, while this matter was on going. The

Defendant is oblivious of the content of the letter and therefore, it cannot be used against her. The letter is discountenanced.

From the totality of the foregoing, it is the finding of this Court that the Defendant/Counter-Claimant has on a preponderance of evidence, proved partly the alternative reliefs of her counter-claim.

The law is that where a claim is in the alternative, the Court would first consider whether the principal or main claim ought to have succeeded, and where the Court finds that for any reason, it could not grant the principal or main relief, then it would consider the alternative claim. See **GKF Investment Nig. Ltd v. NITEL PLC (2009) LPELR1294(SC).**

It is the finding of this Court that Exhibit PW1B stated the loan sum granted to the Defendant/Counter-Claimant, both in U.S. Dollar and Naira currencies and was duly signed and dated 7th December, 2012 by both the Claimant and the Defendant/Counter-Claimant. Also, from 2012 to 2015, and until the commencement of this suit, the Defendant/Counter-Claimantwas duly repaying the loan from her Dollar Account. She never complained about the booking of the loan on her Dollar account norconversion of theDollars debited from her account to Naira before channelling same to the repayment of the loan. She simply acquiesced to the procedures adopted by the Claimant. Defendant/Counter-Claimant is caught with the doctrine of acquiescence.

Relying on **GKF Investment Nig. Ltd (supra)** held;

> ***"Where a claim is in the alternative, a Court should first consider whether the principal or main claim ought to have succeeded. It is only after the Court may have found that it could not grant the principal or***

main claim that, it would now consider the alternative claim."

For these reasons, this Court considers that the principal or main reliefs of the Defendant/Counter-Claimant, cannot, in the circumstances,be granted by this Court. Accordingly, the reliefs(a-o) of the main reliefs are refused and dismissed.

Having found that the Defendant/Counter-Claimant has partly proved her alternative reliefs, this Court enters judgment in part for the Defendant/Counter-Claimant as follows:

1. (p) The Defendant/Counter-Claimant is ordered to pay the Claimant, the sum of $25,932.03 into her U.S. Dollar account with the Claimant, with account number 1132510246202101, the said $25,932.03 being the total outstanding balance to be deducted from the Defendant's U.S. Dollar account by the Claimant (as per Exhibit PW1E), and the Claimant is ordered to withdraw the said sum from the said U.S. Dollar account of the Defendant, convert same into Naira at the prevailing market exchange rate at the time of the debit, and credit the converted sum into Naira account of the Defendant in repayment of the said loan.
2. In respect of relief 2(q) evidence showed that the Defendant/Counter-Claimant was only able to prove $3,843.18 as against the $11,422.60 claimed.Since the Defendant/Counter-Claimant was unable to prove the total sum of $11,422.60 as the unauthorised/unapproved deductions, incidentally the $9,137.76 interest was not proved and therefore fails.
3. (q) The Claimant is ordered to refund to the Defendant, all the unauthorised/unapproved deductions, so far totalling the sum of $3,843.18, which the Claimant deducted from

theDefendant/Counter-Claimant'sU.S. Dollar accountmaintained/operated with the Claimant.

4. Court orders interest of 10% on the judgment sum with a cost of N500,000.00(Five Hundred Thousand Naira) against the Claimant.

HON. JUSTICE A. O. OTALUKA
24/2/2022.