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

ON TUESDAY, 27TH DAY OF SEPTEMBER, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2457/2016

BETWEEN

EBIKABOWEI VICTOR BEN --- CLAIMANT

AND

1. GOVERNMENT OF BAYELSA STATE
2. ATTORNEY GENERAL OF BAYELSA STATE } **DEFENDANTS**

JUDGMENT

The claimant [plaintiff] instituted this suit on 31/8/2016 vide writ of summons. The pleadings in this suit are: [i] the claimant's further and further amended statement of claim filed on 29/6/2021; [i] the defendants' statement of defence filed on 3/4/2017; and [iii] the claimant's reply to the statement of defence filed on 4/7/2017.

In paragraph 43 of the further and further amended statement of claim filed on 29/6/2021, the claimant claims the following reliefs:

I. An Order of this Honourable Court that the plaintiff is entitled to the payment of a total sum of N106,121,880.00 [One Hundred and Six

Million,One Hundred and Twenty-One Thousand, Eight Hundred and Eighty Naira] only from the 1st and 2nddefendants being the total Cost of Renovation, upgrade and Maintenance the plaintiff carried out on the premises lying and situate at No. 2 Marsabit Street, Wuse II, Abuja, Nigeria pursuant to their Contractual tenancy agreement in November 2009.

II. An Order of this Honourable Court that the plaintiff can only deliver up peaceful possession and/or be evicted upon payment of the afore-stated sums of Money and giving reasonable notice as agreed by the parties pursuant to their parol agreement on contractual tenancy on or about November 2009.

III. An Order of this Honourable Court restraining the defendants, either by themselves, their privies, their agents, their solicitors from carrying out any form of eviction proceedings before any court of law of 1st instance in Nigeria pending the fulfilment of the express agreement of the parties.

IV. An Order awarding cost of the proceedings assessed at N11,200,000.00 [Eleven Million, Two Hundred Thousand Naira] only being Solicitors fees and other disbursement.

At the trial, Hon. Henry Ofongo testified orally as PW1 pursuant to a *subpoena* issued by the Court on 23/10/2017and tendered Exhibit A. His Excellency, Chief Timipre Marlin Sylva gave evidence as PW2. He adopted

his statement on oath filed on 20/1/2017 and his further statement on oath filed on 4/7/2017. Engineer Akpo I. Enunuaye wasPW3. He adopted his statement on oath filed on 19/10/2020 and tendered Exhibit B. The claimant gave evidence as PW4. He adopted his statement on oath filed on 19/10/2020 and his additional statement on oath filed on 4/7/2017. The claimant tendered Exhibits C, D, E, F, G, H & H1.

Otoro Kenisuo Austin, a Chief Commercial Officer in the Trade Department of the Bayelsa State Ministry of Trade, Industry and Investment, testified as DW1. He adopted his statement on oath filed on 23/6/2021.

Evidence of the Claimant:

Evidence of Hon. Henry Ofongo - PW1:

The evidence of PW1 is that he was a Special Representative of the Government of Bayelsa State in Abuja; he was appointed on 1/10/2007 and resumed duty on 4/10/2007. He served till October 2010. He knows the plaintiff and the property located at No. 2 Marsabit Street, Wuse II, Abuja, one of the properties which EFCC recovered for Bayelsa State Government from lateDSPAlamieyesagha, former Governor of Bayelsa State.The then Governor of the State, Governor Timipre Sylva directed him to take an inventory of the property.About July 2009, hewent to the property and made an assessment. He reported to the Governor that the property was in a state of disrepair and needed renovation. He raised a Memo to the Governor.

The period coincided with the grant of amnesty by the Federal Government to some indigenes of Bayelsa State and there was need to accommodate them in Abuja; that was why he requested for the renovation of the property. When he reminded the Governor of the need to renovate the property, the Governor said he had already asked the plaintiff to renovate the property and stay there with his boys. He did not know if there was any condition for the renovation but the Governor told him that he asked the plaintiff to renovate the property and he will be reimbursed.

Hon. Henry Ofongofurther testified that the plaintiff renovated the property. Each time he [PW1] went to the property, he saw the plaintiff working there. The Memo from PW1 to the Governor of Bayelsa State was tendered asExhibit A. PW1 read the handwritten endorsement on Exhibit A and stated that same was written by the former Governor of Bayelsa State, Timipre Sylva.

When PW1 was cross examined, he stated that he is not a civil engineer. In order to carry out the instruction in Exhibit A to inspect renovation on the property, it was officially necessary for him to contact Bayelsa State Ministry of Works. He did not get the Ministry of Works of Bayelsa State to carry out the inspection before he left office. In the endorsement on Exhibit A, he was asked to reconcile. He agreed that reconciliation of cost for such construction works will require the input of a technical personnel like a quantity surveyorandhe was to get such personnel from Bayelsa State Ministry of Works.

Bayelsa State Government was not involved in the renovation of the said property.He did not reconcile any cost with the plaintiff. The property did not have a swimming pool in its original state.The cost of renovation was not forwarded to him by the plaintiff.

Evidence of His Excellency, Timipre Marlin Sylva – PW2:

The evidence of PW2 in his statement on oath filed on 20/1/2017 is that he was the Executive Governor of Bayelsa State from 2007 to 2012. Sequel to the Presidential declaration of amnesty to the youths in the Niger Delta by the Federal Government of Nigeria in 2009, he [in his capacity as Governor] facilitated the disarmament of thousands of militants from their various camps in the creeks of Niger Delta. In the course of negotiation towards the disarmament of the plaintiff, he [PW2] was instructed by late President Umaru Musa Yar'Adua GCFRto make arrangements to resettle,and arrange a secured accommodation for, the plaintiff and his top lieutenants in Abuja. The plaintiff [who is from hisState] wasleader of one of the Major Youth Movements in the NigerDelta.

The State Government relocated the plaintiff to Abuja and accommodated him and his top lieutenants at the Protea Hotel, Asokoro. Due to the expenditure incurred and owing to the prevailing economic reality in the State at that time, they resolved as a responsible government to look for a less expensive alternative. They decided to resort to an existing structure belonging to Bayelsa State located at No. 2 Marsabit Crescent, Wuse II, Abuja

for the purpose of discharging the said instructions of thePresident. He instructed the Governor's State Representative in Abuja,Hon. Henry Daniel Ofongo, to make the said premises habitable for the plaintiff's accommodation.Hon. Henry Daniel Ofongo reported back to him vide an official Memo dated 7/7/2009.

The PW2 further testified that about AugusttoSeptember 2009, theplaintiff *"confirmed to me his willingness to accept our offer to relocate to the premises with the agreement that we will reimburse him on the renovations and upgrade carried out in the property."* Hewas reliably informed by Hon. Ofongo that the property was in a deplorable state and unfit for human habitation. Due to the strategic location of the property and the prevailing economic reality at that time, the State Government proposed to the plaintiff to renovate the property at his own expense, which sum will be refunded to him anytime the government is desirous of using the property or he is desirous to leave the property.

The further evidence of His Excellency, Chief Timipre Marlin Sylva is that on 12/9/2009, he*"approved the tenancy and gave prior written consent on behalf of the government to Mr.Victor Ben to renovate the premises to a habitable state and same will be reimbursed at the appropriate time."* He instructed Hon. Ofongo to take a proper inventory of the state of the property and supervise the renovation for onward reimbursement.Bayelsa State Government handed over legal and peaceful occupation of the premise to the plaintiff on or about September, 2009 on the condition that he will carry out substantial renovation on the

property and the total sum expended will be refunded to him upon relocation or when the State government is desirous to use the property after issuance of the necessary statutory and/or reasonable notice.

The tenancy was to commence on 12/9/2009 upon his approval and *"was due to expire when we were ready to recover possession and reimbursing the relevant expenditure."* The plaintiff accepted the terms and conditions. During his visits to the property up until 2012, the plaintiff carried out massive improvement of the premises.PW2 identified the Memo dated 7/7/2009 [Exhibit A] upon which he gave approval on 12/9/2009.

In his further statement on oath filed on 4/7/2017, PW2 stated that in 2009 when the contract between the plaintiff and the 1st defendant was entered into, there was no Ministry of Trade, Industry and Investment in Bayelsa State.There was no formality for prior approval of quotation for upgrade or renovation work by the State Ministry of Works as a condition for reimbursement of funds to the plaintiff. The *"only condition put in place for reimbursement was a joint assessment of the amount of work done by an independent appraiser to ascertain the cost to be reimbursed."* The plaintiff is entitled to the sum expended for the renovation and upgrade of the premises.

During cross examination, PW2 stated that by the Memo [Exhibit A], claimant was to reconcile cost with the Government. The claimant was supposed to do the reconciliation with the Governor's Special Representative

in Abuja.Beyond his endorsement in Exhibit A, Bayelsa State did not enter into any other agreement with the claimant.

Evidence of Engineer Akpo I. Enunuaye– PW3:

In his evidence, PW3 stated that he is a civil engineer and the head of the project consortium contracted by the plaintiff to carryout renovation, maintenance and upgrade works in the said propertysince 2009 to date. He personally undertook substantial part of the works in the said premises and procured the services of other technicians to assist in the works. He was involved in the purchase of substantial materials for the upgrade, maintenance and renovation works which were in the name of the plaintiff's company [Bensam Maritime Oil & Gas Ltd.], some in his name, some in the name of other technicians who facilitated the works and some in the name of Jabi Site or project.

PW3 further stated that he has presented a comprehensive summary of the upgrade and maintenance he carried out with his team in the premisessince 2009 to 2016. In paragraph 9 of his statement on oath, PW3 set out the details of the renovation, maintenance and upgrade workscarried out in the property. The document titled: *Summary of Bills for Renovation, Maintenance and Upgrading Works [Residential Property] at No. 2 Masabit Street, Wuse II Abuja* prepared by AB Consult and signed by J. O. Ehiozee is Exhibit B.

During cross examination,PW3 stated that the cost collation in Exhibit B was predicated on receipts submitted by the claimant. The reason is that *"after subsequent approvals have been given for work by the Bayelsa State Government officials, we went ahead to purchase materials that we used and labour and kept receipts of payment. We did not expect a litigation with the Government. Itis with the receipts that we did the collation."*

Evidence of the Claimant – PW4:

The evidence of the claimant in his 42-paragraph statement on oath filed on 19/10/2020 is that he has been in peaceful occupation of the said property since 2009. The property was lawfully handed over to him by 1st defendant.Before 2009, he was a Niger Delta agitator. Sequel to the Presidential declaration of amnesty to the youths in the Niger Delta in 2009, he and his lieutenants were accommodated at Protea Hotel, Asokoro at the expense and advice of the 1st defendant.As a result of his continuous stay at Protea Hotel at great expense to the 1st defendant, it offered to transfer him to one of its properties in Abuja. Due to the huge expenditure incurred, he accepted to move to an alternative accommodation as part of the amnesty deal.

Sometime in July, 2009, he was accompanied by Hon. Henry Daniel Ofongo, who was the Governor's State Representative, to inspect the property. The property was in a deplorable state. The 1st defendant proposed that he should renovate the premise to a habitable condition at his own expense and

maintain possession until the Government is willing to use the premises at which time, he would be refunded all the monies expended in upgrading the facility. He was assured by the then Executive Governor of the 1st defendant, Chief Timipre Marlin Sylva, that government is a continuum and that the State government will keep to itspart of the bargain.Chief Timipre Marlin Sylva also assured him that the 1st defendant will give him reasonable notice when it intends to recover possession of the premises.

The claimant further testified that he was handed with an inventory of the state of the premises before renovation and was given a prior written consent by the 1st defendant. The tenancy commenced on 12/9/2009 upon the approval of the 1st defendant through the Executive Governor *"incorporated in the inventory"* dated 7/7/2009and *"will elapse anytime the government is willing to recover their premises upon reimbursement of the accrued expenses on the property."* He has carried out substantial renovation and massive upgrade of the premises including additional structures. He has a comprehensive cost review of the works done in the said premises prepared by AB Consult, a construction team headed by Engineer Akpo I. Enunuaye.He purchased items for the renovation and maintenance works,which comprise of bundle of receipts.

The further evidence of Ebikabowei Victor Ben is thatcontrary to the agreed terms of his occupation of the premises, he received a purported notice to quit dated 18/8/2016 from the Senior Magistrate Court, FCT Abuja, giving him 7 days to vacate the property.7 days' notice to quit is not a reasonable

time after 7 years of continuous residence in the premises. 40 persons reside in the premises which comprise of his lieutenants and their families.The government had not discussed any plan with him to evaluate the works done on the property in order to refund him the expenses as agreed.

By the notice to quit, the defendants are planning to illegally evict him from the premises without fulfilling their end of the bargain. He is ready to deliver up peaceful occupation of the premise upon fulfilment of the express and implied terms as agreed between the parties and when given reasonable notice to relocate. He had to procure the services of the law firm of Karina Tunyan [SAN]& Co. at the cost of N11,200,000to prosecute and enforce his claim, which would have been unnecessary if not for the action of the defendants.

In the claimant's 36-paragraph additional statement on oath filed on 4/7/2017, he stated thatthe defendants' liaison officers frequently visited the property and approved all renovations and upgrade works carried out in the premises. The 1st defendant's Ministry of Works was never invited by the defendants to supervise the renovation works he did. The defendants never requested prior quotations to be submitted to the Ministry of Works before renovation and upgrade work will be carried out, rather the 1st defendant routinely inspected the property and commended the upgrade of the premises. The *"only agreed protocol was to jointly evaluate the amount of work done or by independent appraiser before reimbursement."*

As I said earlier, the claimant tendered Exhibits C, D, E, F, G, H1 & H2, the details of which are in the record of proceedings. For clarity however, ExhibitCis the Notice to Quit dated 18/8/2016; while Exhibit D is the Bill of Charges dated 20/5/2016 from the firm of Karina Tunyan [SAN] & Co.] to the claimant.

During cross examination, the claimant wasasked the length of time he would consider reasonable for him to leave the property. He said: *"If the State wants to take the property from me, they would have first reconciled what I spent and reimburse same to me as per the agreement."* Exhibit B was prepared just before he came to Court; it was from the record of renovation kept so far.As at the time he moved into the property, Police officers and squatters were there.The Bill of Charges [Exhibit D] was based on the personal appearance of Karina Tunyan, SAN in the case.

Evidence of Otoro Kenisuo Austin – DW1:

The evidence of DW1 is that the Ministry of Trade, Industry and Investment is the custodian and manager of all Bayelsa State Government properties, including the property in issue. He has conducted a search of all relevant files dealing with properties in the custody and management of the said Ministry and there is no tenancy agreement between the plaintiff and the government of Bayelsa State. The Federal government granted amnesty to the plaintiff, his lieutenants and other NigerDelta militants and they are paid by the Federal

government through the Amnesty Office.There is no written consent from the government of Bayelsa State to the plaintiff permitting him to expend money on the property.

The government of Bayelsa State was not party to any expenditure incurred by the plaintiff on the property. The government of Bayelsa State has a Ministry of Works which handles or supervises all its civil engineering works.The Ministry of Works was not involved in the process leading to the plaintiff's accumulation of the bills he now seeks to impose on government to pay. The plaintiff never forwarded any of his quotations to the defendants' Ministry of Works or any of its agencies for prior approval. The imposed figures are not acceptable to the government of Bayelsa State as they areproduct of the plaintiff's unilateral action for his own convenience.

DW1 further testified that although the plaintiff's entry into the property was without any due process, the government has no desire to take possession of same without following appropriate procedure; that is why the government caused a notice to quit to be issued and served on the plaintiff.There is no documentgranting the plaintiff a tenancy or lease of the said property by the government of Bayelsa State. The plaintiff's stay in theproperty for the past 7years is more than reasonable time for him to move to his own accommodation.

During cross examination, DW1 stated that he visited the property in 2009. Prior to the plaintiff's occupation of the property, Bayelsa State government had an inventory of the state of the property; but he did not have the inventory. In 2009, there was a Ministry of Trade and Investment in Bayelsa State. He is not aware that the plaintiff has been paying tenement rate for the property and has been submitting evidence of payment to Bayelsa State government.

Issues for Determination:

At the end of the trial, Preye Agedah Esq., Solicitor-General of Bayelsa State, filed the defendants' final address on 14/2/2022. M. J. Numa Esq. filed the final address of the claimant on 22/2/2022. On 28/2/2022, Preye Agedah Esq. filed the defendants' reply on points of law. On 30/6/2022, the learned counsel for the parties adopted their respective final addresses.

In the defendants' final address, Preye Agedah Esq.formulated two issues for determination, to wit:

1. Whether the claimant can legitimately file further written statements on oath in support of the Reply to the statement of defence and whether Exhibit B is admissible as proof of its contents.

2. Whether the claimant has discharged the burden of proof on him to be entitled to the grant of any or all of the reliefs sought in this suit.

On the other hand, M. J. Numa Esq. distilled one issue for determination in the claimant's final address, which is:

> Whether from the material facts pleaded, the evidence led and the prevailing circumstances of this case, the claimant has established the existence of a binding agreement between the parties and is entitled to reimbursement as contemplated in the underlining contract.

From the case presented by the parties, the Court is of the opinion that there are three issues for determination. These are:

1. Whether the claimant is entitled to file further [or additional] written statements on oath of witnesses in support of the reply tothe defendants'statement of defence.
2. Whether the*Summary of Bills for Renovation, Maintenance and Upgrading Works [Residential Property] at No. 2 Masabit Street, Wuse II Abuja* prepared by AB Consult and signed by J. O. Ehiozee [Exhibit B] tendered by Engineer Akpo I. Enunuaye[PW3] is admissible.
3. Is the claimant entitled to the reliefs sought?

ISSUE 1

> ***Whether the claimant is entitled to file further [or additional] written statements on oath of witnesses in support of hisreply to the defendants'statement of defence.***

The background to Issue 1 is that when His Excellency, Timipre Marlin Sylva, testified on 25/6/2019 as PW2, he adopted his statement on oath filed on 20/1/2017 and his further statement on oath filed on 4/7/2017. The learned defence counsel objected to the adoption of the further statement on oath of PW2 and stated that he will canvass his ground of objection in his final address.

Also, on 10/11/2020 when the claimant [as PW4] adopted his statement on oath filed on 19/10/2017 and his additional statement on oath filed on 4/7/2017, learned defence counsel raised the same objection to the claimant's additional statement on oath. It is worthy of note that the further statement on oath ofPW2 and the additional statement on oath of the claimant[PW4] were filed along with the claimant's reply to the defendant's' statement of defence filed on 4/7/2017.

Submissions of Learned Counsel for the Defendants:

Preye Agedah Esq. posited that the Rules of this Court do not make provision for the claimant to file a furtherstatement on oath in support of a reply to the statement of defence. Thus, the said processes cannot be relied upon in support of the claimant's case and ought to be expunged from the records of the Court. He relied on the case of**Nkpa v. Champion Newspapers Ltd. & Anor. [2016] LPELR-40063 [CA]** where the Court of Appeal held that:

> *"Having earlier found that the High Court of Lagos State [Civil Procedure] Rules 2004 did not provide for a Claimant's reply to be accompanied by*

written statement on oath and list of witnesses and documents and going by the authorities earlier cited on the limited nature of a reply, I hold as very sound and correct, the Ruling of the lower court to the effect that:-

> *"There is no provision whatsoever in the Rules, which state that Reply shall be accompanied by additional front loaded processes."*

Consequently, this appeal is found to be lacking in merit and it is accordingly dismissed."

Learned counsel for the defendants referred to Order 18 rule 1 of the Rules of this Court 2018, which provides that *"Where the claimant desires to make a reply, he shall file it within 7 days."*He remarked that the said provision - which makes no provision for a further statement on oath - is *in pari materia*[or the same] with the Lagos State [Civil Procedure] Rules 2004 under which the above case was decided.He also relied on **J.I. Efemini Sons [Nig.] Ltd. v. UBA Plc. [2018] LPELR-44153 [CA]** where the Court of Appeal held that:

> *"There is no rule of procedure prescribing the condition that a plaintiff should file a separate witness statement on oath to establish his averments in his reply to the statement of defence. The evidence given to prove the statement of claim can by extension take care of the averment contained in the reply to the statement of defence."*

The learned Solicitor General of Bayelsa State submitted that flowing from the above decision, the only situation in which the claimant can benefit from

any further facts in the reply to the statement of defence is where the evidence in support of the statement of claim can be extended to support the reply. The remedy is not to file a further or additional statement on oath. Where the evidence in support of the statement of claim cannot be extended, any new matter sought to be introduced through the reply is deemed to be beyond the scope of a reply and ought to be discountenanced. Based on the above submissions, counsel also urged the Court to expunge Exhibits E, F, G & H, which were front-loaded with the additional statement on oath of the claimant.

Submissions of Learned Counsel for the Claimant:

The standpoint of M. J. Numa Esq.is that where a new issue was introduced for the first time by the defendants in the statement of defencewhich requires a rebuttal by the claimant by filing a reply, it requires corresponding evidence otherwise the reply will go to no issue. He referred to **Oba Sule Odu-Alabe v. Alhaji Suraji Olugunebi [2015] LPELR-25746 [CA].** It was submitted that the defendants raised new allegations/issues in their statement of defence hence the reply supported by the further statements on oath of PW2 and the claimant and the attachment of Exhibits E, F, G & H. Also, a court cannot foreclose a party's right to file a pleading which is authorized by the Rules of the Court and by parity of reasoning, evidence in support of such pleading cannot be foreclosed as that will amount to breach of the right to fair hearing.

Learned counsel for the claimant relied on the case of **Alhaji Isiaka Garba & Anor. v. Alhaji Aremu Banna [2014] LPELR-24308 [CA]**where it was held that a reply statement on oath is sworn evidence made to prove facts contained in a claimant's reply to the defendant's statement on oath. It is only necessary and allowed in proceedings to enable the claimant prove facts in response to the defendant's fresh issue raised outside the claimant's pleadings. He urged the Court to give full effect to the further additional witness statements on oath of PW2 and the claimant as well as theevidencetendered through them.

Decision of the Court:

There is no doubt that thedecisions of the Court of Appeal relied upon by learned counselon both sides of the divide arein conflict on the issue whether the claimant is entitled to file further [or additional] witness statements on oath in support of his reply to the defendants' statement of defence.

In paragraphs 6.5 & 6.6 of his final address, learned counsel for the claimant submitted that the decision in**Alhaji Isiaka Garba & Anor. v. Alhaji Aremu Banna [supra]***"represents good law, which is fair and equitable and in tandem with the fair hearing doctrine enshrined in our Constitution"*. He further submitted that it is settled law that when a trial court is faced with two conflicting decisions of the Court of Appeal, it is at liberty to choose from either of them, unlike in

the case of the decision of the Supreme Court where the latter in time will overrule the former.M. J. Numa Esq. urged the Court to follow this decision.

In his reply on points of law, learned counsel for the defendants submitted that the trial court does not have the discretion to choose which of two conflicting decisions of the Court of Appeal to rely on. He reasoned that the view of Mr. M. J. Numa *"is a trap that might lure this Honourable Court into judicial insolence, which must be avoided by all means."* He cited the case of **Adejugbe & Ors. v. Aduloju & Ors. [2015] LPELR-24916 [CA]** to support the view that a lower court faced with two conflicting decisions of a superior court has to follow the latter or more recent of the two. Preye Agedah Esq. urged the Court to follow the decisions in **Nkpa v. Champion Newspapers Ltd. & Anor. [supra]** and **J.I. Efemini Sons [Nig.] Ltd. v. UBA Plc. [supra],** which are latter in time than the case of**Alhaji Isiaka Garba & Anor. v. Alhaji Aremu Banna [supra].**

I agree with Preye Agedah Esq. that the position of the law is that when a lower court is faced with two conflicting decisions of a superior court on an issue, as in the instant case, the proper procedure or approach is to follow the most recent decision on the issue or subject. See the cases of **Mujakperuo & Ors. v. Ajobena & Ors. [2014] LPELR-23264 [CA]** and **Fabunmi v. University of Ibadan [2016] LPELR-41132 [CA].**

In the course of writing this judgment, I was privileged to read the decision in **Johnbull Ebundon v. Incorporated Trustees of Redeemed Christian Church of God & Ors. [2020] LPELR-50756 [CA]** delivered on 22/5/2020, which is relevant to the issue under consideration. In that case, the Court of Appeal considered Order 18 rule 1 of Delta State High Court Rules, 2009[among other provisions in the said Rules],which reads: *"Where the claimant desires to make a reply, he shall file it within 14 days from the service of the defence."*

The provision of Order 18 rule 1 of Delta State High Court Rules, 2009 is similar to Order 23 rule 3[1] of the former Rules of this Court, 2004 which was in force when the claimant's reply to the statement of defence was filed on 4/7/2017. The said provision is also similar toOrder 18 rule 1 of the Rules of the Court, 2018.The Court of Appeal [Per *Obaseki-Adejumo, JCA*]held at ***pages 13-15, F-B***as follows:

> ***"The said Appellant/Claimant's reply was not accompanied by a Statement on oath as required by the rules of Court, Order 17 Rule 1 and 18 Rules 1 & 2 of Delta State High Court Rules, 2009. …***
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> ***In GARBA & ORS v. BANNA (2014) LPELR-24308, this Court held on importance of a statement on oath thus;***
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> > ***"On its own, a Reply Statement on Oath rests on the word reply. It follows a Claimant's reply in response to issues and arguments raised in an opponent's statement which are fresh. A Reply Statement on Oath is a sworn evidence made to prove facts***

contained in a Claimant's reply to Defendant's Statement of Defence. The Reply Statement on Oath does not add nor revise the Claimant's Statement on Oath. It is only necessary and allowed in proceedings to enable the Claimant prove facts in response to the Defendant's fresh issue raised outside the Claimant's pleading. Accordingly, a Reply Statement on Oath is that sworn evidence of a Claimant which seeks to prove facts in his Reply Statement as a result of the fresh, unique, novel and further averments introduced to the Defendant's Statement of Defence outside the Claimant's Statement of claim. …"

The decision in **Johnbull Ebundon's case,** which adopted the earlier decision in **Alhaji Isiaka Garba & Anor. v. Alhaji Aremu Banna** cited by M. J. NumaEsq.effectively resolves the issue under focus. Thus, the position of the law is that a claimant is entitled to file further witness statement[s] on oathin support of the averments in the reply to the statement of defence.

I only need to add that it is necessary for the claimant to file further witness statement[s] on oath along with the reply to the statement of defence in order to adduce evidence in proof of the averments therein in response to the fresh or new averments in the statement of defence. This is because it is trite law that where an averment in a pleading is not supported by evidence, such averment is deemed abandoned and goes to no issue. See the case of**Abang v. Ndoma [2020] LPELR-50223 [CA].**

The decision of the Court on Issue 1 is that the claimant is entitled to file further [or additional] written statements on oath of witnesses in support of the reply to the defendant's statement of defence. Therefore, the further statement on oath of PW2 and the additional statement on oath of the claimantfiled with the reply to the statement of defence on 4/7/2017 are proper before the Court.

ISSUE 2

> ***Whether the Summary of Bills for Renovation, Maintenance and Upgrading Works [Residential Property] at No. 2 Masabit Street, Wuse II Abuja prepared by AB Consult and signed by J. O. Ehiozee [Exhibit B] tendered by Engineer Akpo I. Enunuaye [PW3] is admissible.***

On 9/11/2020 whenExhibit B i.e. *the Summary of Bills for Renovation, Maintenance and Upgrading Works* of the property in issue was tenderedthrough the PW3, Preye Agedah Esq. objected to its admissibility and informed the Court that he will put forward argument on his objection in the final address.

Submissions of Learned Counsel for the Defendants:

Preye Agedah Esq.argued that Exhibit B is inadmissible as it was tendered through thePW3 who is not the maker and no foundation was laid for the document to be admissible. He pointed out that the document was signed by

J. O. Ehiozee who was not called as a witness. There is nothing in Exhibit B linking it with PW3. He referred to**FRN v. Samuel [2017] LPELR-43417 [CA]** to support the submission that section 83[1] of the Evidence Act, 2011 envisages that a document must be tendered and admitted through the maker, since it is only the maker who can be cross-examined on the contents of the document and answer to its contents. There was no explanation as to the whereabouts of J. O. Ehiozee who signed the document. Learned defence counsel urged the Court to reject Exhibit B.

Submissions of Learned Counsel for the Claimant:

The submission of M. J. Numa Esq. is that proper foundation was laid by PW3 in his statement on oath for the admissibility of Exhibit B through him. PW3 established that his firm comprising of different professionals were engaged for the work which he superintended as the head engineer. AB Consult is the author of the document and the seal of the quantity surveyor is affixed on it. He submitted that it is not out of place for the document to be signed by a member of the team who is a registered surveyor [i.e. J. O. Ehiozee].Counsel posited that for the learned defence counsel to insist that the quantity surveyor whose stamp is on the document must be called before the document could be admitted *"will amount to simply stretching the law to technical realm …".*

Learned counsel for the claimant argued in the alternative that the absence of the maker of a document *"will not impair its admissibility, it at best goes to*

weight. The law is trite that the fact that the maker of a document was not called as a witness cannot render the document inadmissible." He referred to the case of**Abadom v. State [1997] 9 NWLR [Pt. 479] 1** in support.

Decision of the Court:

The position of the law is that the maker of a document is the proper person to tender it in evidence. If a person who did not make the document tenders it, he is permitted to tender it in evidence but no probative value would be attached to such document since the witness cannot be cross examined on it. See the case of**Nweke v. Okorie & Ors. [2015] LPELR-40660 [CA].** In **Guinness [Nig.] Plc. v. Nwoke [2000] 15 NWLR [Pt. 689] 135,** it was restated that while the court has the power to admit documents in evidence in the absence of their makers, it also has the duty to consider the weight to be attached to such documents before coming to the conclusion as to whether or not the documents established the facts stated therein.

In the instant case, the evidence of PW3 in paragraphs 3-6 of his statement on oath is that: [i] he has been engaged by the claimant since 2009 to carry out several renovation, maintenance and upgrade works in the property in issue; [ii] he also procured the services of other technicians to assist in the said works; and [iii] he was involved in the purchase of substantial materials used for the said work. In paragraph 9 of his statement on oath, PW3 set out the details of the renovation, maintenance and upgrade works carried out in the

property and the costs thereof prepared by their project quantity survey AB Consult. I note that thedetails in paragraph 9 of the statement on oath of PW3 are the same as the contents of Exhibit B.

The Court is in agreement with learned counsel for the claimant thatPW3 has laid proper foundation for the admissibility of Exhibit B. The Court holds that PW3 has established a link between him and the works carried out in the property as set out in Exhibit B and between him and AB Consult. The Court also agrees with Mr. M. J. Numa that the absence of J. O. Ehiozee who signed Exhibit B as a witness will not affect its admissibility but may affect the weight to be attached to it by the Court after due consideration of the evidence before it.

The decision of the Court on Issue 2 is that Exhibit B is admissible and having been admitted in evidence, there is no basis to expunge it from the records of the Court as urged by learned counsel for the defendants.

ISSUE 3

Is the claimant entitled to the reliefs sought?

The claimant's 4 reliefs have earlier been set out. Reliefs I, II & III will be taken together before relief IV.

Reliefs I, II & III:

Submissions of Learned Counsel for the Defendants:

Learned counsel for the defendants stated that by sections 131, 132 & 133 of the Evidence Act 2011, the burden of proof lies on the claimant as he is the one who would fail if no evidence is called on either side. Until the claimant tenders sufficient evidence, the burden of proof would not shift and the claimant's case must fail. He referred to **Nduul v. Wayo & Ors. [2018] LPELR-4515 [SC].**He submitted that the evidence proffered by the claimant is insufficient to entitle him to judgment.

In respect of the claim for N106,121,880, Preye Agedah Esq. noted that the claim is for special damages and requires to be strictly proved. He referred to **UBN Plc. v. Chimaeze [2014] LPELR-22699 [SC]** and **B. B. Apugo & Sons Ltd. v. OHMB [2016] LPELR-40598 [SC]**. He referred to the evidence of PW3 that Exhibit B was made from receipts for the itemspurchased for the renovation. Based on the fact that the receipts were not tendered, counselsubmitted that Exhibit B amounts to documentary hearsay. With the existence of the receipts, the oral evidence tendered by the claimant is excluded and cannot be used to provecosts allegedly incurred on the property. The mere *ipsi dixit* of PW3 cannot prove the alleged costs and items amounting to the sum claimed. The defence counsel further argued that Exhibit B is hearsay evidence and lacks probative value as it was tendered by PW3who is not the maker.

In paragraphs 5.7 & 5.8 of his final address, learned defence counsel referred to the evidence of DW1 that the claimant never forwarded any of his quotations to the defendants' Ministry of Works or any of its agencies for prior approval. He submitted that the claims are not acceptable to the defendants as they are the product of the claimant's unilateral action for hisown convenience. The handwritten endorsement on Exhibit A neither gave the claimant a tenancy of the premises nor did it confer on him the right to unilateral action.

Preye Agedah Esq. stated that what Exhibit A *"talks about is reconciliation of costs.Unfortunately, there was no attempt to reconcile costs before the Claimant rushed to court. … The PW1 confirms that no cost reconciliation was ever made."*He submitted that the implication is that claimant did not fulfil the fundamental condition precedent for payment of any money allegedly spent, which is prior reconciliation of cost. The failure to fulfil this fundamental condition precedent rendered the claimant's reliefs *"premature and unmaintainable. …"*He referred to the case of**Oloja & Ors. v. Gov., Benue State & Ors. [2015] LPELR-24583 [CA]**.He concluded that any right which the claimant may have to any refunds is yet to crystalize as the condition precedent has not been fulfilled.

Submissions of Learned Counsel for the Claimant:

Learned counsel for the claimant stated that from the totality of the evidence adduced, there were offer, acceptance, consideration, capacity to contract and intention giving rise to the contractual tenancy agreement which is binding on the claimant and 1st defendant. The 1st defendant, through its Chief Executive at the material time [PW2], offered the claimant the said property which he accepted with a consideration to renovate same to a habitable state and be reimbursed afterwards. He relied on Exhibit A and the testimonies of PW1 & PW2 on the circumstances that led to Exhibit A. Counsel urged the Court to take cognizance of the *"compelling testimony of PW2, the contracting authority and Chief Executive of the 1st defendant at the material time."*

M. J. Numa Esq. posited that an agreement can be written or oral depending on the circumstances in which the contracting parties find themselves. The case of **Attorney General of Rivers State v. Attorney General of Akwa Ibom State & Anor. [2011] 3 SC 1**was cited in support. He maintained that from Exhibit A and the evidence of the PW1, PW2 & PW4, there was a contractual tenancy between the parties. He relied on**A. P. Ltd. v. Owodunni [1991] LPELR-213 [SC]**to supportthe principle that a tenant who enters upon premises by reason of a contract with the landlord is a contractual tenant.

The claimant's counsel pointed out that the defendants at no time objected to the renovation and upgrade of the property carried out by the claimant and there was no requirement or request for prior approval from the defendants' Ministry of Works before the discharge of the claimant's obligation to

maintain the premises.Therefore, the defendants'contention that there was no valid tenancy agreement owing to the absence of a deed is misconceived and the alleged unilateral renovation is unavailing to exculpate them from liability.

Learned claimant's counsel further stated that the defendants are not disputing the renovation carried out by the claimant or questioning the existence of the items listed in Exhibit B and they did not put any counter valuation before the Court.It was submitted that without any reasonable challenge to the content of Exhibit B setting out the expenditure on the said premises, the Court must give effect to the minimal evidence before it. He referred to the case of**Chami v. UBA Plc. [2010] 6 NWLR [Pt. 1191] 474.**

In response to the argument of learned defence counsel that Exhibit B has no probative value, M. J. Numa Esq. argued that the receipts and Exhibit B are independent documents and the court has inherent power to attach the required weight to each document as it deems fit. It suffices to tender Exhibit B as against tendering numerous receipts. The submission that Exhibit B is a mere documentary hearsay is misconceived. He urged the Court to hold that Exhibit B is relevant, credible and primary evidence to establish the summary of the claimant's expenditure in the renovation of the property.

With respect to the issue of reconciliation of the cost of renovation of the premises, Mr. M. J. Numa argued that Exhibit A is an internal memo by which PW1, an officer of the defendants, was given directiveby PW2 to

reconcile cost or account. Thus, the duty of reconciliation is that of the defendants. Having failed to discharge that executive directive, the defendants cannot turn around to contend that the renovation was unilateral. From Exhibit A and the evidence of PW1 & PW2, the Court can safely draw the relevant inference that indeed, there was a contract for reimbursement and the defendants' failure to reconcile costs of renovation before issuance of the quit notice [Exhibit C] gave the claimant a right to end the transaction as same has been breached by the defendants.

In response to the argument of learned defence counsel that the claimant did not fulfil the condition precedent of cost reconciliation and therefore his reliefs are premature and unmaintainable, Mr. M. J. Numa submitted that it was the issuance of the quit notice [Exhibit C] by the defendantswithout discharging their obligation of reconciliation of cost for reimbursement that was premature. This breach on the part of the defendants triggered this suit. The claimant was at liberty to treat the contract as having been discharged and sue for damages.Learned counselconcluded that the claimant has established the liability of the defendants to reimburse the entire sum as claimed in relief I.

Decision of the Court on Reliefs I, II & III:

In the determination of Reliefs I, II & III, Exhibit A and the testimonies of PW1 & PW2- who were officers or agents of the 1st defendant at all times

material to this suit - are relevant. In Exhibit A, i.e. Memo dated 7/7/2009, the PW1 wrote to PW2, the Executive Governor of Bayelsa State at that time, on the state of disrepair of the property, subject matter of this suit. PW2 gave a directive on 12/9/2009 to PW1 thus:*"Pls inspect renovation work by Victor Ben. Reconcile cost and forward for reimbursement."*

In his evidence, PW2 narrated the circumstances that led to the approval which he [on behalf of the 1st defendant] granted to the claimant to renovate and occupy the said property. The PW2 stated that the propertywas to serve as accommodation for the claimant and his lieutenants. Before then, the claimant and his lieutenants were in the various creeks of Niger Delta. Consequent uponAmnesty granted by the Federal government to the youths in the Niger Delta, Bayelsa State government relocated the claimant to Abuja and accommodated him and his top lieutenants at Protea Hotel, Asokoro. There was need for the 1st defendant to get a less expensive accommodation for them.

The PW2 said he instructed PW1 to make the said property habitable for the claimant's accommodation pursuant to the presidential directives. PW1 then reported back to him vide the Memo [Exhibit A] on the deplorable state of the property.In paragraphs 13, 16, 18& 19 of his statement on oath filed on 20/1/2017, His Excellency, Chief Timipre Marlin Sylva [PW2] stated:

13. *That on or about August – September 2009, Mr. Victor Ben confirmed to me his willingness to accept our offer to relocate to the premises with*

the agreement that we will reimburse him on the renovations and upgrade carried out in the property.

16. *That on the 12th day of September, 2009 I approved the tenancy and gave prior written consent on behalf of the government to Mr. Victor Ben to renovate the premises to a habitable state and same will be reimbursed at the appropriate time.*

18. *That the Bayelsa State government handed over legal and peaceful occupation of the premise to Mr. Ebikabowei Victor Ben on or about September, 2009 on the condition that he will carry out substantial renovation on the property and the total amount of monies expended will be refunded to him upon relocation or when the government is desirous to use the property after issuance of the necessary statutory and/or reasonable notice.*

19. *That the tenancy was due to commence on the 12th day of September 2009, upon my approval and was due to expire when we were ready to recover possession and reimbursing the relevant expenditure.*

PW2 confirmed that claimant *"carried out massive improvement of the premises."* The evidence ofPW1 is that the then Governor informed him that he asked the claimant to renovate the property and he will be reimbursed. Each time he [PW1] went to the property, he saw claimant doing work there. The defendants were unable to impugn the credibility of the evidence of PW1 and PW2.

The evidence of DW1 is that: [i] there was no written consent by 1st defendant for the claimant to expend money on the property; [ii] the Ministry of Works and other Ministries of 1st defendant were not involved in the process leading to the claimant's expenses on the property; [iii] the claimant did not forward any of his quotations to the 1st defendant's Ministry of Works or any of its agencies for prior approval; and [iv] there is no document granting the claimant a tenancy or lease of the said property.

The Court holds the view that the evidence of DW1 is not sufficient to discredit, undermine or weaken the evidence of PW2, who was the ultimate approving authority in the State as at 2009. Exhibit A clearly shows that PW2 on behalf of the 1st defendant granted approved for the claimant to renovate the property. If the defendants failed or neglected to document the handing over of the *"legal and peaceful occupation of the premises"* to the claimant asconfirmed by the PW2, the claimant is not to blame -and will not suffer - for the failure or neglect.I must point out that there is no requirement in Exhibit A for the claimant to submit or forward his quotation for the renovation works to the 1st defendant's Ministry of Works or any of its agencies for prior approval.

There is no doubt that the claimant was entitled to believe the declarations made byPW2 on behalf of the 1st defendant on the terms and conditionsupon which he was to carry out renovation of the property. The claimant indeed acted on the said declarations of PW2. In the circumstance, the Court holds

the humble opinion that by section 169 of the Evidence Act 2011, the defendants are estopped from denying theterms and conditions upon which the property was handed over to the claimant as stated by PW2.Section 169 of the Evidence Act 2011 provides:

> *"When one person has either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person's representative in interest, to deny the truth of that thing."*

In **Unity Bank Plc. v. Olatunji [2013] LPELR-20305 [CA],** it was held that estoppel,by its very nature, is so important, so conclusive, that the party whom it affects is not allowed to plead against it, or adduce evidence to contradict it. Estoppel prohibits a party from providing anything that contradicts his previous acts or declarations to the prejudice of a party who, relying upon them, has altered his position. It shuts the mouth of a party.See also the case of **Bank of the North Ltd v. Yau [2001] 10 NWLR [Pt. 721] 408.**

In the light of the foregoing, the Court finds as a fact,and therefore holds,that 1st defendant acting through the PW2 *"handed over legal and peaceful occupation"* of the said property to the claimant in September 2009*"on the condition that he will carry out substantial renovation on the property and the total amount of monies expended will be refunded to him".* Therefore, the Court agrees Mr. M. J. Numa

that there was a contractual tenancy agreement between the 1st defendant and the claimant.

The Court also believes the evidence of the PW2 and holds that the contractual tenancy agreement between the 1st defendant and theclaimant *"was due to commence on the 12th day of September 2009 … and was due to expire when we are ready to recover possession and reimbursing the relevant expenditure"*for the renovation carried out by the claimant.

In Relief 1, the claimant seeks an order that he is entitled to the payment of the sum of N106,121,880 from the defendants being the total cost of renovation, upgrade and maintenance which he carried out on the said property.Let me consider the submission of Mr. Preye Agedah that reconciliation of costs of renovationof the property is a condition precedent for this claim.

As I said earlier, PW2 directed PW1 in Exhibit A to inspect renovation work by Victor Ben [the claimant], reconcile cost and forward for reimbursement. In paragraph 13 of his further statement on oath filed on 4/7/2017, PW2 stated:*"That the only condition put in place for reimbursement was a joint assessment of the amount of work done by an independent appraiser to ascertain the cost to be reimbursed."* Similarly, in paragraph 28 of his additional statement on oath filed on 4/7/2017, claimant stated: *"That the only agreed protocol was to jointly evaluate the amount of work done or by an independent appraiser before reimbursement."*

From the evidence of the claimant and PW2, the Court holds that reconciliation of the cost of renovation incurred by the claimantis a conditionprecedent forreimbursement by thedefendants.Learned counsel for the claimant did argue that the duty of reconciliation is that of the defendants as the directive of PW2 in Exhibit A was to the PW1. My considered opinion is that even though the directive of PW2 was to PW1, claimant relied on it as the basis for renovating the property. Thus, after the renovation, the claimant ought to have taken steps to request the defendants to reconcile the cost he incurred in order for him to be reimbursed.

The Court is in agreement with learned defence counsel that the non-fulfilment of this condition precedent renders relief 1 premature. In the circumstance, the Court holds that the proper order to make is to strike out Relief 1. Therefore, Relief I is struck out. In the light of this decision, the consideration of the evidential weight to be attached to Exhibit B becomes unnecessary.

In Relief II, the claimant seeks an order that he can only deliver possession of the property or be evicted upon payment of the afore-stated sum and upon being given reasonable notice as agreed by the parties pursuant to their agreement on contractual tenancy.

The earlier decision of the Court is that the 1st defendant acting through the PW2 *"handed over legal and peaceful occupation"* of the property to the claimant

in September 2009 on the terms stated by the PW2 in paragraphs 18 & 19 of his statement on oath filed on 20/1/2017; and that thecontractual tenancy agreement between 1st defendant and claimant was dueto expire when the 1st defendant is ready to recover possession after reimbursing the relevant expenditure for the renovation carried out by the claimant.

The decision of the Court in respect of Relief II is that by virtue of the contractual tenancy agreement between the 1st defendant and the claimant, the former can only deliver possession of the said propertyto the latter or be evictedfrom the propertyby due process of law after reconciliation of the cost of renovation and upon payment of the reconciled cost by the 1st defendant.

In Relief III, claimant seeks an order restraining the defendants from carrying out any form of eviction proceedings before any court of first instance in Nigeria pending the fulfilment of the express agreement of the parties. It seems to me that it will be against public policy for the Court to restrain a party from instituting a suit in court; whether the suit will succeed or not is a different thing. Besides, I hold the opinion that the grant of relief II renders the grant of this relief unnecessary. For these reasons, relief III is refused.

Relief IV:

The claimant claims costs of the proceedings assessed at N11,200,000.00 being Solicitor's fees and other disbursements. The claimant tendered the bill of

charges from the law firm of Chief Karina Tunyan [SAN] & Co. dated 20/5/2016 for N11,200,000 [Exhibit D] in proof of this claim.

Submissions of Learned Counsel for the Defendants:

The learned Solicitor General of Bayelsa State stated that the bill of charges is based on the personal appearance of Chief Karina Tunyan, SAN but the better part of the proceedings was conducted by M. J. Numa Esq., a fact which the Court can take judicial notice of.He submitted that Exhibit D cannot be relied upon to found for the claimant even if his action succeeds. Also, the bill of charges envisaged under section 15 of the Legal Practitioners Act cannot be applied to a lawyer other than the legal practitioner upon whose age and experience at the Bar the bill is prepared.

Submissions of Learned Counsel for the Claimant:

Learned counsel for the claimant argued that the claim for solicitor's fee as special damages has been given credence by our courts. He cited the case of **Naude v. Simon [2014] All FWLR [Pt. 753] 1879**in support of the grant of the claim.M. J. Numa Esq. further submitted that the claim is for a specific and peculiar loss suffered by the claimant at the prompting of the defendants. The contention that the cost in Exhibit D is not justifiable because it was made for the personal appearance of Chief Karina Tunyan, SAN is an extraneous matter that cannot vary the content of Exhibit D. Learned counsel noted that the bill of charges was from the law firm of Karina Tunyan [SAN] & Co.;not from Chief Karina Tunyan, SAN in person.

Decision of the Court:

The crucial question that arises from this claim is whether a party in litigation can pass the burden ofhis solicitor's fee to the other party. In **Guinness Nig. Plc. v. Nwoke [2000] 15 NWLR [Pt. 689] 135,**the Court of Appeal held that it is unethical and an affront to public policy to pass on the burden of solicitor's fee to the other party. It was also held that this type of claim is outlandish to the operation of the principle of special damages and it should not be allowed.

On the other hand, in the case of **Naude v. Simon [supra]; [2013] LPELR-2049 [CA],** the Court of Appeal [Per *Akomolafe-Wilson, JCA*] held:

> *"The principle of law is that a successful party is entitled to be indemnified for costs of litigation which includes charges incurred by the parties in the prosecution of their cases. It is akin to claim for special damages. Once the solicitor's fee is pleaded and the amount is not unreasonable and it is provable, usually by receipts, such a claim can be maintainable in favour of the claimant. … the decision of this Honourable Court in the cited cases of IHEKWOABA v. ACB LTD [supra] and GUINNESS [NIG] PLC v. NWOKE [supra] where this Court held that the payment of solicitor's fees as damages is not supported in this country does not represent the present state of the mind of the Courts in this country. In more recent times, it is common for solicitors to include their fees for prosecution of cases and pass same to the other party as part of claims*

for damages, which have been awarded by the Courts once the claims are proved."

However, the recent decision of the Court of Appeal on the issue is the case of **Ibe & Anor. v. Bonum [Nig.] Ltd. [2019] LPELR-46452 [CA]** delivered on 6/2/2019 where *Ugochukwu Anthony Ogakwu, JCA* held:

"… In GUINNESS NIGERIA PLC. vs. NWOKE [PT. 689] 135 at 159 this Court held that a claim for Solicitors fees is outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any transaction between the parties. Similarly, in NWANJI vs. COASTAL SERVICES LTD. [2004] 36 WRN 1 at 14-15, it was held that it was improper, unethical and an affront to public policy, to have a litigant pass the burden of costs of an action including his Solicitors fees to his opponent in the suit. … This remains the legal position as I know it. The Appellant's cause of action was for libel. The claim for legal cost is not part of the said cause of action. Therefore, it cannot be granted."

It is instructive to note that the decision of the Supreme Court in **Nwanji v. Coastal Services Nig. Ltd. [2004] LPELR-2106 [SC]** does not support the grant of the claim for solicitor's fee by a party in litigation from his opponent. In that case, the apex Court considered the question whether claim for solicitor's fees in an action for damages is proper in Nigeria. It was held that:

"… it is an unusual claim and difficult to accept in this country as things stand today because as said by Uwaifo, J.C.A. in lhekwoaba v. A.C.B. Ltd [1998] 10 NWLR [Pt. 571] 590 at 610-611: "The issue of damages as an aspect of solicitor's fees is not one that lends itself to support in this country. There is no system of costs taxation to get a realistic figure. …" …"

This Court is bound to follow the latter decision of the Court of Appeal. Moreover, the decision of the Supreme Court supportsthe decision. Therefore, the claim of N11,200,000 being the claimant's solicitors' fee is refused.

Conclusion:

The claimant's suit succeeds in part. The Court makes the following order:

I. By virtue of the contractual tenancy agreement between the 1st defendant and the claimant, the claimantcan only deliver possession of the property lying and situate at No. 2 Marsabit Street, Wuse II, Abuja to the1stdefendantor be evicted from the said property by due process of law after reconciliation of the cost of renovation and upon payment of the reconciled cost by the 1st defendant.

The parties shall bear their costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Learned Counsel:

1. K. B. Ebitibituwa Esq. holding the brief of M. J. Numa Esq. for the claimant.
2. Pretty P. A. Ekpe Esq. for the defendants; with Karina Awo Tari Walton Esq.