IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 28TH DAY OF OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA JUDGE

SUIT NO.: FCT/HC/CV/543/2019

BETWEEN:

MR. DAMIAN NJOKU ------- CLAIMANT

AND

1. MR. EMEKA UKACHUKWU
2. UKAWOOD'S ENTERPRISES (NIG) LTD ----- DEFENDANTS

JUDGMENT

In this Writ filed on the 9th of December, 2019; Damian Njoku sued Emeka Ukachukwu and Ukawood's Enterprises (Nig) Limited claiming the following Reliefs:

(1) ₦2.5 Million as debt admitted in writing through Agreement dated 7th June, 2018.

(2) Three Million Naira (₦3, 000,000.00) being balance of the initial Agency Fee of 5% agreed upon sale of the property worth One Hundred and Sixty Million Naira (₦160, 000,000.00).

(3) Five Hundred Thousand Naira (₦500, 000.00) Special Damages arising from Solicitor's fees.

(4) Five Million Naira (₦5, 000,000.00) as cost of the Suit, Exemplary and Aggravated Damages.

(5) Omnibus.

Upon receipt of the Writ the Defendants filed Statement of Defence and Counter-Claim seeking the following Reliefs:

(1) An Order directing the Plaintiff/Defendant Counter-Claimant to pay the Defendants the sum of Five Million Naira (₦5, 000,000.00) as Exemplary Damages for the embarrassment and ridicule sufferance as a result of the undefended spurious and false allegation instigated by the Claimant against the Defendants.

(2) Perpetual Injunction against the Plaintiff restraining him, his agents, assigns, privies from harassing, disturbing, ridiculing or using any Security Agency to harass, disturb, arrest the Defendants in respect to this sale transaction or any matter thereto.

(3) Payment of One Million Naira (₦1, 000,000.00) by the Plaintiff to the Defendants as Solicitor's

Fees paid by the Defendants to its Solicitor E.U. Anene Esq. of E.U. Anene & Co. as professional fees.

(4) 10% Interest on Judgment sum until its final liquidation.

The Statement of the Claimant shows that the Defendants, through the 1st Defendant orally/verbally engaged the services of the Claimant who is an old time family friend of the 1st Defendant. It was for the sale of land situate at Idu Industrial Area. Since 2013 the Claimant spent money advertising for the sale of the property. The property was entually sold in 2018. After the sale, the buyer settled his Agent. The Defendants were to settle their own Agent. The Defendants were to pay their Agent – the Claimant 5% of the total sale price of the property which was sold at One Hundred and Sixty Million Naira (₦160, 000,000.00). The 5% came to Eight Million Naira (₦8, 000,000.00). The 1st & 2nd Defendants reneged from the payment of the 5%. They offered to pay the Claimant Five Million Naira (₦5, 000,000.00) only. They paid ₦2.5 Million and agreed in writing to pay the remaining balance of ₦2.5 Million. See **EXH 2.** Upon completion of payment of the property, they failed, refused and decided not to honour the Agreement. They used part of the money to build a 5–Star Hotel in Abuja. So in order to get the Defendants pay the said ₦2.5

Million, he filed this action urging Court to enter Judgment for him by granting all his Reliefs.

The Claimant opened his case and testified on the 12th of October, 2020. He tendered five (5) documents marked as **EXH 1 – 5.** He was Cross-examined by the Defendant Counsel on the 13th of January, 2021.

On the 15th day of March, 2021 the Defendants opened its case. They called three (3) Witnesses DW1 – DW3. On the 15th of March, 2021 DW1 testified and was Cross-examined. DW2 and DW3 adopted their Statement on Oath on the 8th day of December, 2021 and were Cross-examined.

The parties filed their respective Final Written Address which they adopted. Hence this Judgment.

In the Final Written Address of the Claimant he raised five (5) Issues for determination which are:

(1) Whether there was an Agreement between the Claimant and the Defendants for the sale of the property at Idu Industrial Area going by the pleading and evidence before this Court?

(2) Whether the Defendants fulfilled their part of the obligation to the Agreement Contract of Sale?

(3) **Whether the evidence of the Defendants Witnesses are reliable and truthful?**

(4) **Whether the Claimant is not entitled to the Reliefs sought in his Statement of Claim?**

(5) **Whether the Counter-Claim of the Defendants is not liable to dismissal for being unmeritorious, frivolous and an abuse of Court Process?**

On Issue No. 1, on whether there was Agreement between the Claimant and Defendants on the issue of sale of the property in issue, the Claimant submitted that there was Agency Agreement/Contract between the parties since 2013 for the sale of the said property as shown in **paragraphs 5 – 7 & 7 Statement of Claim** and also in **EXH 1 & 2** tendered by the Claimant. That those facts are not disputed. That the contract can be in writing or orally or implied by conduct. That in this case, in 2013, it was orally made. That part of the Agreement was made in writing as shown in EXH 2 in 2018. That the parties are bound by the said oral and written Agreement. That DW1 confirmed that He also agreed that he handed over the title document to the Claimant. DW1 did not admit but stated that he handed over the document to another person for the sale of the said property. That even if the Defendants handed over the document to several Agents, he must be ready to honour the Agreement with each of

them. That DW2 and DW3 were not engaged by the Defendants when they engaged the Claimant. They did not know the Claimant either when the agency relationship with the Defendants started in 2013. The oral and written Agreement between the Claimant and Defendants were made without their knowledge. Though the Defendants called them as Witnesses in this Suit. The evidence of the Claimant that he was agent to Defendants was not challenged and therefore it was established. He urged Court to resolve the Issue No. 1 in his favour.

On Issue No. 2, whether the Defendants fulfilled their part of the obligation, he submitted that the Defendants did not fulfill their own obligation under the contract. That they failed to pay the 5% agreed in 2013 and failed to pay the balance of ₦2.5 Million which they agreed to pay in writing vide **EXH 2** in 2018. That the Defendants sold the property for One Hundred and Sixty Million Naira (₦160, 000,000.00) but the Defendants found it difficult to pay the Claimant as agreed. That the DW2 is agent of the buyer who got to know the Claimant during the sale of the property in 2018. The Defendants paid him Three Million Naira (₦3, 000,000.00). The 1st Defendant saying that he paid part of the Agency Fee to the DW1 is an admission of breach of contract between the Defendants and the Claimant as the DW1 said in his testimony that he was not part to the Contract Agreement between the Claimants and Defendants. That there was evidence of payment of ₦2.5 Million as contained in **EXH 2** made in 2018.

That there is no evidence of full payment of the 5% which was verbally agreed upon by the parties in this case. The Eight Million Naira (₦8, 000,000.00) Agency Fee agreed by the parties has not been paid by the Defendants. Parties are bound by the agreement they have entered into whether written or orally made. That Defendants has failed to perform their obligation in this case. He urged Court to resolve Issue No. 2 in his favour.

On Issue No. 3, whether the evidence of the Defendants is reliable and truthful, he submitted that the Defendants' witnesses are not Witnesses of truth as their evidences are inherently and materially contradictory going by the way they claimed they got to know about the property. They never showed that Defendants agreed on any Agency Fee before the property was sold without any of the persons, the DW2 and DW3 mentioned in their Statement of Oath/Defence. But DW2 and others had meetings with the Claimant who was representing the Defendants before the buyer and the Defendants met at Sheraton Hotel, Abuja. That the DW2 who came into the deal in 2018 never wanted the Claimant's Agency Fee to be paid by the Defendants but he wanted to benefit and had mischievously succeeded to benefit from both parties – buyer and seller going by **paragraph 6 (f) of the Statement of Defence.** Claimant had a deal with the Defendants and not with any other person. Besides, he is not a party to any agreement that might have been reached by the Defendants and other person(s) after the

sale of the property. That from the contradictory testimony of the DW2, he claimed to have worked for the buyer and the seller of the property in Issue. Meanwhile, he conducted search for the buyer and wants the Court to believe that he is Agent of the seller.

It is well known fact it is the buyer that does the search to determine the genuineness of the property. They referred to paragraph 6 (d) of the Statement of Defence.

In the Cross-examination, the DW2 stated that it was Chika that brought the buyer. The DW3 contradicted him that he was the person who brought the buyer and not Chika. That evidence of the two (2) Witnesses, DW2 and DW3 should be treated as unreliable as the Court cannot pick and choose which of the Witnesses to believe. That under Cross-examination, the DW3 stated that he never know the Claimant. But the DW1 stated that Njoku was in the meeting with the buyer before payment was made. He referred to **paragraph (b) of the DW1 Statement on Oath** and **paragraph 6 (c) of the Statement of Defence** which reveals that the meeting was held with the Claimant before the buyer and the seller met. He referred to **paragraph 3 & 4 of the DW2 Statement on Oath.**

That before the buyer and seller met the Claimant was having meetings with Agents of the buyer on behalf of the seller. The DW2 and others were always in the meeting negotiating for buyer whereas the Claimant was the only person for the seller. That it was after the Claimant

showed the representatives of the buyer the property that a meeting between the buyer and the seller was convened at Sheraton Hotel, Abuja. That the evidence has shown that DW1 – DW3 are not Witnesses of truth and therefore not reliable as they claimed that Claimant did nothing and the same time enumerated the various roles played by the Claimant in their written depositions. That in paragraph 4 of his Oath, the DW3 who denied knowing the Claimant had under Cross-examination stated thereon thus:

> **"That was the first time Mr. Njoku got to see the buyer."**

He urged Court to resolve the Issue No. 3 in favour of the Claimant.

On Issue No. 4, whether the Claimant is entitled to his Reliefs as sought, they submitted that the Claimant has proved his case and as such is entitled to his claim and Judgment entered in his favour. That Claimant's case was not disputed by Defendants. Again that none of the Defendants' Witnesses were privy to the transaction except the 1st Defendant and that this case is contractual and governed by Rules of Contract. That the Agreement between the Claimant and the Defendants in 2013 and 2018 were made without the DW2 and DW3. He urged Court to hold that the Defendants has an unreliable Defence in this case.

That from his testimony, DW2 was not agent with the Claimant for the Defendant before the sale was conducted.

Because, if he was, he would have agreed on Agency Fee with Defendant before going into the transaction. That from evidence on record , the DW2 conducted search for the buyer, related with the Agents of the buyer who were calling him because he was spokesman for the buyer whereas Njoku, the Claimant was from all indication, the spokesman for the Defendant as can be seen in paragraph 5 D (c), (d), (e) and (f) of Written Deposition of DW1.

That DW2 and his group entered the meeting with Claimant to know the status of the property. In the meeting with DW2 and his team and the Claimant for the seller and the buyer and were brought together. He referred **paragraph 1 – 5 of DW2** deposition on Oath.

That from the evidence, the Claimant did not directly bring the buyer and the buyer came indirectly through him. That the people who brought the buyer cannot be agent to both the Buyer and Agents to the Seller at the same time. That it is clear that the Claimant never acted as a joint Agent with anyone. So the dealings of the Defendants with other people as their Agents would not affect independent Agreement or Contract that existed between them prior to the sale of the property in issue.

That by doctrine of Privity of Contract, the Claimant was not a party to the Agency Commission Agreement the Defendants had with DW2 and others. That DW2 and others were also not parties to the oral Agreement the Claimant had with the Defendants since 2013 and the one

in 2018 as contained in **EXH 2.** He urged Court to so hold and resolve the Issue No. 4 in his favour against the Defendants.

On Issue No. 5 – whether the Counter-Claim of the Defendants is not liable to be dismissed as being frivolous, unmeritorious and abuse of Court Process, he submitted that the Counter-Claim should be dismissed. That the Counter-Claim arose after the Claim was filed in Court in this case. That it is an independent action which must be proved before the Relief sought would be granted. That the principal Relief in the Counter-Claim is not established by evidence by the Defendants and that it is for General Damages arising from alleged Tort of Harassment and Embarrassment for false allegation. That there is no Investigation Report from Police to show that the allegations against the 1st Defendant were unfounded, spurious and false. That the main claim in the Counter Affidavit is incompetent because it cannot be suitably and appropriately brought as a Relief in a Counter-Claim under a claim of Recovery of Debt and Enforcement of Contract Breach. That evidence of DW1 shows that his claim against the Claimant is Three Million Naira (₦3, 000,000.00) which is contradictory to the case put forward in the pleadings. That the DW1 also admitted under Cross-examination that the Claimant is not indebted to him. That based on the contradiction in the testimony of DW1, his entire evidence becomes unreliable and should

be treated as such and his Counter-Claim destroyed. He relied on the case of:

Orojah V. Adeniyi
(2017) All FWLR (PT. 883) 1433 @ 1456 Paragraphs A – E

That the Counter-Claimant did not tender any Exhibit or pleaded anything to particularize or substantiate the Counter-Claim of the Defendants.

That where the claim succeeds, the Counter-Claim dies a natural death. That life of a Counter-Claim is not tied to the survival or death of the Claimant's action. He referred to the case of:

Chindo Worldwide Limited V. Total Nigeria PLC
(2002) All FWLR (PT. 115) 750 @ 774

That there is no evidence to support the Reliefs of the Counter-Claim in this Court. There is no Police Investigation Report. He relied on the case of:

BMNL V. Ola Ilemobola Limited
(2007) All FWLR (PT. 379) 1340 @ 1378

He urged the Court to dismiss the Counter-Claim for lacking in merit and constituting an abuse of Court Process and frivolity.

In their Reply to the Defendants' Final Written Address, the Claimant Counsel responded thus:

That the Defendants attack on the EXH 2 is unfounded as it is not supported by evidence and was tendered and admitted in evidence in evidence without any objection by the Defendants who refused to avail Court the original copy. That the interpretation of EXH 2 by the Defendants' Counsel as Njoku & Co. is unknown to legal construction which is a business appropriated by Njoku and no other. He relied on the case of:

Odutola V. Papersack (Nig) Limited

That it is only signatories to an agreement that can be bound by such agreement. That the Agents who were not named in the document as signatories in EXH 2 should not be recognized. That the EXH 2 was not attacked in the pleading or in evidence and DW1 who is the 1st Defendant in the Suit admitted under Cross-examination that he was not forced to sign EXH 2. He relied on the cases of:

Atiba Iyalanu Savings & Loan V. Subery
(2019) FWLR (PT. 1008) 978 – 979

C.I. Co Limited V. S.B Nigeria Limited
(2017) FWLR (PT. 891) 900 @ 921 Paragraphs F – G

Okoli V. Movecab Fin Limited
(2007) All FWLR (PT. 369) 1164 – 1179 – 80

Where Supreme Court discountenanced the allegation of fraud raised against a document without particulars of fraud like in this case on allegation of intimidation and force raised against EXH 1 without any particulars.

That in this case, the 1st Defendant/Counter-Claimant admitted under Cross-examination that he was not forced to sign EXH 2 or any other Exhibit in this case. That the Defendants' Counsel never Cross-examined the Claimant on the authenticity of EXH 2 during trial or discredited same. He relied on the cases of:

NITEL V. Okeke
(2017) All FWLR (PT. 899) 196 @ 220

Bunge V. Government of Rivers State
(2006) All FWLR (PT. 325) 1 @ 49

That the argument of the Defendants' Counsel in their Final Written Address contrary to the evidence before the Court lacks relevancy and judicial endorsement. He relied on the case of:

UBA PLC V. Johnson
(2010) All FWLR (PT. 525) 312 @ 337 C – E

He urged Court to hold that the Defendant did not fulfill their contract agreement as contained in EXH 2 kin favour of persons who are not parties to the contract even if it was entered for their benefit. That contract need not be in writing to be enforced.

That the claim of Three Million Naira (₦3, 000,000.00) which was not reduced into writing in this case is enforceable as the 1st Defendant admitted that he engaged the Claimant in 2013 as Agent for the sale of the property in question. He relied on the case of:

A-G Rivers State V. A-G Akwa Ibom State (2011) FWLR (PT. 579) 1023 @ 1077

That Court should dismiss the Defence of the Defendants who refused to present the original Agreement and used thugs to forcefully collect EXH 2 from the Claimant so as to make it impossible for the Claimant to collect the Agency Fee of Eight Million Naira (₦8, 000,000.00) he agreed in 2013 to pay the Claimant.

That Claimant's case is founded on EXH 2 not EXH 1. That there is nowhere in EXH 2 that shows that the Defendants attacked the EXH 2. That the other Agents are not parties or signatories to the present Suit.

That the Defendants abandoned the claim on Tort of Harassment and Embarrassment but argued on judicial decision on Enforcement of Fundamental Right and false imprisonment. He urged Court to discountenance the argument the argument of the Defendant.

He urged Court to grant all the Reliefs of the Claimant and dismiss the Defence and Counter-Claim for lacking in merit. That as it stands, the Claimant's claim is undefended going by the pleadings and evidence adduced.

On their part, the Defendants called three (3) Witnesses – DW1 to DW3. In the testimony they tendered one (1) document marked EXH 6 which was tendered by the Defendants through the Claimant during Cross-examination of the Claimant.

In their Final Written Address they raised two (2) Issues for determination which are:

(1) Whether on the Preponderance of Evidence the Claimant has proved his claim to be entitled to the Judgment of this Court.

(2) Whether the Counter-Claimants/Defendants are entitled to the Reliefs sought in the Counter-Claim.

On Issue No. 1 – whether the Claimant has proved its case on preponderance of evidence in this case, they submitted that the Claimant is not entitled to be granted the Reliefs sought. That EXH 2 is inadmissible and has no probative value based on the circumstance under which it was made. That as shown in **paragraphs 7, 8, 9 & 10 of the Defendants Statement of Defence,** that the 1st Defendant was intimidated and compelled to make **EXH 2** in view of the Claimant using military personnel to recover the purported debt. That EXH 2 was not voluntarily made. He referred to the case of:

Ken Uche Oraka V. Lizzy Oraka
(2019) LPELR – 47675 (CA)

That the Claimant did not deny or controvert the pleadings in paragraphs 7 & 8 of the 1st and 2nd Defendants Statement of Defence. That the pleading of intimidation is deemed admitted. He referred to the case of:

Phillips V. Eba Oda Commercial & Industry Company Limited
(2012) LPELR – 9718 (SC) @ 25 Paragraphs D – F

That the Claimant did not debunk or call the Brigadier General to debunk the allegation. That Court ought to admit the evidence of DW1 as unchallenged and as establishing the fact pleaded by the Defendants. He relied on the case of:

Chief Sunday Ogunyade V. Solomon Oluyemi Osunkeye (2007) LPELR – 2355 (SC) @ 16 Paragraphs B – D

That EXH 2 should not be admitted in evidence as it is not credible and ought not to have any probative value since it was signed in the presence of Brigadier General, not willfully.

That the Claimant did not act as a lone Agent for the Defendants. That the Defendants wanted to preclude the other Agents for the Defendant from receiving their commission having procured the buyer. That the DW2 corroborated evidence of DW1 and the DW3 who acted as Agent for the Purchaser of the property. That their testimonies were consistent with facts pleaded by the Defendants. That the Claimant does not know the Purchaser.

That the ₦2.5 Million paid was not only for the Claimant. He referred to the paragraph in the EXH 2 where the 1st Defendant stated about payment of the ₦2.5 Million for

"Mr. Damian & Co." That the Claimant is not entitled to the said ₦2.5 Million or any additional Three Million Naira (₦3, 000,000.00). They urged Court to so hold.

That the Claimant's pleading and claim of Five Million Naira (₦5, 000,000.00) and Three Million Naira (₦3, 000,000.00) are inconsistent, contradictory and ungrantable. That the Claimant did not discharge the onus on him. That paragraph 6 of the claim was inconsistent as it shows that the Claimant and 1st Defendant orally agreed on 5% of total price as Agency Fee and was negotiated subsequently to Five Million Naira (₦5, 000,000.00). He also tendered EXH 2. In paragraphs 30, 31 & 32 he claim that the Agency Fee is Eight Million Naira (₦8, 000,000.00) being the 5% of the sum of total sale of the property. He urged Court to discountenance the Claimant's claim as it is contradictory. That his claim for additional Three Million Naira (₦3, 000,000.00) is contradictory with the pleading in paragraph 37 (a) of the Statement of Claim. That Order 15 Rule 8 of the High Court Rules forbids inconsistent pleading. That paragraphs 11 – 19 of the Statement of Claim as it relates to ₦2.5 Million in paragraph 37 (a) are clearly inconsistent with the facts in paragraphs 30 – 32 as it relates to Three Million Naira (₦3, 000,000.00) in paragraph 37 (b). He referred to the case of:

NYAM Co. PLC V. All Motors Nigeria PLC
(2011) 14 NWLR (PT. 1269) 108 @ 132

That grant of paragraph 37 (d) as sought would amount to double compensation which is forbidden in law. He referred to the case of:

Kusfa V. United Bawo Construction Company Limited (1994) 4 NWLR (PT. 336) 1 @ 16 – 17

That no evidence was led in proof as to the Claimant's head claim. That paragraph 37 (d) of the Statement of Claim should therefore be dismissed.

On Issue No. 2 – whether the Defendants are entitled to their Reliefs in the Counter-Claim as contained in paragraphs 8 – 10 of the Defendants Joint Statement of Defence and Counter-Claim, they submitted that they are entitled to their Counter-Claim. That DW1 gave evidence in support of the Counter-Claim in paragraphs 21 – 22 (a) – (g) and paragraph 23 of the DW1 Witness Statement on Oath. That the averments in the said paragraphs corroborates the Defendants Counter-Claim as it aims at harassing the Defendants as seen in the Claimant's letter to the Police which led to the 1st Defendant's invitation to the Police on the 16th of January, 2019. So also the letter of the Claimant to Chairman, Public Complaint Commission dated 20th March, 2019. So also the Court case in the District Court which the Claimant abandoned – **EXH 8.** He referred to **EXH 3, 6 & 7.** That the letter and complaint was based on breach of Agreement which is civil issue. That the Claimant never followed up to prosecute the Suit against the 1st Defendant. That 10 out of 11 claim

in the letter is on civil complaint while only one is on criminal complaint. That by the content of **EXH 3, 6 & 7** it is obvious that the Claimant has made abusive use of the Police to oppress the 1st Defendant/Counter-Claimant. That though the 1st Defendant was not detained, there is illegal liability against the Claimant. That the Defendants/Counter-Claimants has made out their claim against the Claimant to Counter-claim. He urged Court to resolve this Issue in Defendants' favour. He urged Court to dismiss the Suit of the Claimant in the main for lacking in merit. He also wants Court to uphold the Counter-Claim and grant all the Reliefs sought therein accordingly.

In the Defendants/Counter-Claimants Reply to the Claimant's Final Written Address, they submitted that the Counter-Claim is not tied to the main claim in the Suit as it is separate and distinct and an independent action. They referred to the case of:

Hassan V. Registered Trustees of Baptist Convention (1993) 7 NWLR (PT. 308) 679 @ 690

That the Defendants particularized the complaints in the Counter-Claim at **paragraphs 1, 2, 3 (a) – (g)** and at **paragraphs 8 – 10 of the Statement of Defence/Counter-Claim.** That the Exhibits attached in support also proves the Counter-Claim – **EXH 3, 6 & 7.** They referred to the case of:

Chindo Worldwide Limited V. Total Nigeria (2002) FWLR (PT. 115) @ 770

He urged the Court to so hold.

In reply to paragraphs 4.4 – 4.8 of the Claimant's Final Written Address and the case cited thereon, they submitted that they are not applicable in this case. That the Defendants did not deny signing the **EXH 2** rather, the complaints in paragraphs 7 – 9 of the Statement of Defence is that **EXH 2** was not made willingly. Hence, it ought to be voided. That the content of **paragraph 4.16 of the Claimant's Final Written Address** has no basis in the pleadings of the parties in this Suit. He referred to the case of:

Nigeria Airways V. Akinbode
(2007) LPELR – 4603 (CA) 14 – 15

He urged the Court to deprecate the language of the Claimant Counsel in the said paragraph. He urged the Court to grant the Counter Affidavit and dismiss the Claimant's claim.

COURT

Having summarized the stances of all the parties in this case, the question is, should this Court grant the claims sought by the Claimant and has the Claimant established his case to warrant the grant of his claims as sought? Or is there merit in the Counter-Claim and as such the Court should grant the Reliefs sought therein by the Defendant/Counter-Claimant?

It is the humble view of this Court that the Claimant had established his claims in this Suit and he is therefore entitled to his Reliefs. There is merit in the case of the Claimant.

The Defendants had not proved or established their Counter-Claim which is based on allegation of harassment and intimidation. They did not lead any evidence to that effect. They did not also tender any document to support such claim. Besides, such claims which are predicated on harassment are not brought under claim for breach of contract, recovery of debt owed and enforcement of contractual relief. The Counter-Claim is on crime and issue of violation of one's right. It is supposed to come up on a separate matter if at all there is any element of truth in it or any good ground to establish same.

In this case, no evidence was laid towards establishing the Counter-Claim on the harassment as the Defendants alleged. That claim has no place in this case. So the Counter-Claim was not established. Hence, the Defendants are not entitled to any Relief in that regard. So this Court boldly holds.

As stated earlier, the Claimant had established his claim in that by the evidence of PW1, the Claimant himself, it is not in doubt that there was an agreement between the Claimant and the 1st Defendant. This the 1st Defendant confirmed. There was an agreement for the 1st Defendant to pay the Claimant the Agency Fee for the sale of the

property. Though that Agreement was not penned down in writing, it could be deciphered from the action and correspondence of the Claimant and the 1st Defendant. That action was confirmed in the Cheque issued in EXH 1 and most importantly, in the Agreement to pay the remaining balance to the Claimant – Damian Njoku. The Agreement in EXH 2 puts no one in doubt as to who to be paid and who agreed to pay and the purpose of the payment as well as the source of the payment. It was simply payment of remaining part of Agency Fee which the 1st Defendant in his own handwriting and his volition agreed to pay to the Claimant. The amount is certain – ₦2.5 Million. In the words of the 1st Defendant and for and on behalf of the 2nd Defendant, the Exhibit stated thus:

> **"I, Emeka Ukachukwu (1st Defendant) on behalf of Ukawoods (2nd Defendant) has agreed to pay ...."** (emphasis mine)

By the use of the word/phrase **"... have agreed to pay"** shows voluntariness and that there is agreement and such agreement is binding and consential. In the same document, the 1st Defendant also stated that he agreed thus:

> **"... to pay balance of N2.5 Million."**

The above confirms what the Claimant had in the said EXH 2 stated on the same day being 7th June, 2018 and in the same Agreement where the Claimant stated thus:

"I, Damian Njoku (the Claimant) collected Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) from Chief Emeka Ukachukwu (1st Defendant) being part-payment of my Agency Fee of Five Million Naira (₦5, 000,000.00) ... Idu Industrial."

The above shows not only the amount paid. It shows the balance outstanding – Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) which the 1st Defendant had agreed to pay to the Claimant when the Buyer pays the balance of the purchase price for the land. It also shows that both the money paid and the balance were all for the Agency Fee the 1st Defendant owes to the Claimant who is his Agent. Also it shows that the Agency is for the sale of the land at Idu Industrial Layout and not for any other property. Again, in the Agreement by the 1st Defendant to pay the balance of Two Million, Five Hundred Thousand Naira (₦2, 500,000.00), it clearly shows that the word **"my Agent"** was used which shows that it is one (1) Agent that the payment was meant for. This is so notwithstanding the use of the phrase **"Damian Njoku & Co."** This shows that by the context of the phrase **Damian Njoku & Co. my Agent** is used as a sole proprietor and nothing more. That document was signed same day – 7th June, 2018 in the presence of Brigadier General N.L. Ibrahim.

It is the humble view of this Court that the unsubstantiated allegation by the Defendants that the 1st

Defendant was cowered and intimidated into signing the Agreement. This is because the 1st Defendant is the Seller of the land and most probably the owner of the land in question. There is no how the lowly Agent whom he had engaged to sell the land would have harassed, intimidated and had lured the 1st Defendant to the house or the presence of the said Brigadier General and cowered the 1st Defendant to sign and pay the Claimant the Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) and make promise to pay the remaining balance of Two Million, Five Hundred Thousand Naira (₦2, 500,000.00).

By the total calculation of the amount paid – Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) in EXH 1 and the promise or agreement to pay the remaining balance of Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) shows that the claim of the Clamant that the 1st Defendant agreed to pay Five Million Naira (₦5, 000,000.00) was substantiated and established. With **EXH 2,** the Claimant backed up his claim overwhelmingly. He discharged the onus on him and shifted the onus to the Defendants who obviously were stocked with the said onus.

By the content of Exhibit 2, it shows that the Claimant is the Agent of the Defendants as far as the payment made in Exhibit 2 is concerned. If the Defendants had any other Agents, those are different and distinct from the Claimant. So this Court holds.

Again, if the Defendants decided, as the 1st Defendant stated, to pay any person any amount of money {Three Million Naira (₦3, 000,000.00)} as they claimed, that payment is distinct from the Defendants' agreement with the Claimant. Since the Claimant and Defendants had agreed as to the renegotiated Agency Fee of Five Million Naira (₦5, 000,000.00), the payment of Three Million Naira (₦3, 000,000.00) to DW2 and DW3 is not part of the Agency Fee agreed between the Claimant and the Defendants. So this Court holds.

To start with, the amount that the Claimant is claiming and which the Defendants agreed as outstanding is Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) and NOT Three Million Naira (₦3, 000,000.00). so the claim of Three Million Naira (₦3, 000,000.00) paid to the DW2 & Co. is not and can never be interpreted to be part of the payment of the said Agency Fee owed to the Claimant. So this Court holds. The amount, Three Million Naira (₦3, 000,000.00) is distinct and different. The payment to the DW2 and DW3 is not what was agreed. So such payment to DW2 and DW3 being different and distinct in amount is not part of the Agreement as captured by the parties in EXH 2. Besides, the Defendant Counsel did not challenge the admissibility of the said **EXH 2.**

It is a well known secret, it is also trite and has been held in plethora of cases that parties are bound by the agreement they have entered into whether written, oral or

by body language and action and inaction of parties over time. Any established violation, breach or disobedient to the terms of a contract attracts civil penalty in form of payment of Damages and compensation for the breach. It is captured in the latin maxim:

> **"Pacta Sunt Servanda – Parties are bound by the contract they have entered into."**

The Defendants paying the DW2 and DW3 is their right. But the payment of Three Million Naira (₦3, 000,000.00) to DW2 and DW3 is not the payment of the balance which the 1st Defendant on behalf of the 2nd Defendant agreed to pay to the Claimant when the Buyer of the property at Idu Industrial Layout pays the balance of the purchase price as he agreed in writing in **EXH 2.** So the Three Million Naira (₦3, 000,000.00) paid is not the balance he agreed to pay to the Claimant as his Agent. So this Court holds. Having not paid the said Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) as agreed, the Defendants are liable to pay the Claimant the said outstanding balance. So this Court holds.

It is trite that documents speak for itself and the content of an Agreement need no further interpretation by the Court. Parties are bound by the contents, terms and conditions as spelt out in a Contract Agreement. See the cases of:

Fagbenro V. Awbadi
(2006) All FWLR (PT. 310) 1575

Bunge V. Gov. Rivers State
(2006) All FWLR (PT. 325) 1 @ 49

Again, any person who is not party to any Agreement cannot benefit once he is not privy to the contract. Such person cannot complain on the Agreement he is not party to. This refers to the DW2 and DW3. Aside from the fact that their testimony and evidence are highly contradictory to each other and full of inconsistencies, they are not privy in any way with the contract between the Claimant and the Defendants as far as the payment of the Agency Fee as spelt out in EXH 2 is concerned. They have no business with the Claimant as far as his Agency Fee is concerned. They are mere meddlesome interlopers. They are hired Agency mercenaries in this case as far as the issue of the payment of the remaining balance of the Agency Fee – Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) as agreed by the Defendants in EXH 2 is concerned. So any payment made to them by the Defendants is NOT payment made by the Defendants to the Claimant as agreed. So the laborious contention of the Defendants on that holds no water at all. Their effort to justify their action and entitlement to the money holds no water and is of no moment in this case.

No Court gives credence to any contradictory and inconsistent evidence as the evidence of the DW2 and DW3 in this case. So also the evidence of the DW1 in trying to justify the payment he claim to had made to the DW2 and DW3 as payment to Claimant is also full of

inconsistency and of no moment. The content of **EXH 2** puts no one in doubt as to the claims of the Claimant and its proof. I totally agree with the submission of the Claimant Counsel in this case.

Without further ado, there is an Agreement of payment of Agency Fee between the Claimant and the Defendants in respect to the said landed property at Idu Industrial Layout as shown in EXH 1 & 2.

The Defendants woefully failed to fulfill their part of the Agreement to pay the Agency Fee as agreed in EXH 2.

The Defendants' Witnesses are not Witness of truth as their evidence and testimonies are full of contradictions.

The Claimant is entitled to his Reliefs having established his claim on the preponderance of his evidence – testimony and the documents tendered before this Court in this case. He is therefore entitled to the Judgment being entered in his favour.

The Counter-Claim is not established or proved. It is therefore liable to be dismissed. This Court therefore DISMISSES the said Counter-Claim as it without any iota of merit. It is also an abuse of Court Process. The Counter-Claimant is not entitled to the Counter-Claim.

By the content of **EXH 8** which is the Record of Proceeding in the matter at the District Court CV/59/2019. It is clear that the claim of the Claimant who is the Defendant in that matter is Eight Million Naira (₦8, 000,000.00). This

confirms that ab initio the agreement for the Agency Fee payable to the Claimant is Eight Million Naira (₦8, 000,000.00). This is justified by the EXH 8 and the Claimant's claim for the outstanding balance of Three Million Naira (₦3, 000,000.00). He is therefore entitled to the said Three Million Naira (₦3, 000,000.00) as claimed in Relief No. 2. So this Court holds. This Court hereby Order as follows:

1. The Defendants are to pay to the Claimant the Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) outstanding balance of the Agency Fee as per the Agreement of the parties made on the 7th day of June, 2018 without further delay.

2. The Defendants are to pay to the Claimant the sum of Two Hundred Thousand Naira (₦200, 000.00) as fee arising from the Solicitor's fee charged.

3. The Defendants are also to pay to the Claimant the sum of One Million, Five Hundred Thousand Naira (₦1, 500,000.00) as aggravated and exemplary damages.

This is the Judgment of this Court.

Delivered today the ___ day of __________ 2022 by me.

____

K.N. OGBONNAYA

HON. JUDGE