

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/2745/2020

DATE: 17THNOVEMBER,2022

BETWEEN:

UNIVERSAL ESTATE LIMITEDCLAIMANT

AND

MR. ABUBAKAR ABDULMALIK.....DEFENDANT

APPEARANCE:

Patience IgbitaEsq for the Claimant.

Ishaq Mohammed Bashir Esq for the Defendant.

JUDGMENT

The Claimant instituted this suit via a Writ of Summons dated 25th of September, 2020 under undefended List Procedure against the Defendant as Claiming as follows:-

- i. An Order of this Honourable Court mandating the Defendant to pay the sum of ₦30,000,000.00 (Thirty Million Naira Only) to the

Claimant as arrears of rent from the 14th day of June 2015 to the 13th day of June 2020.

- ii. The sum of ₦2,000,000.00 (Two Million Naira only) being the sum of money paid to the Claimant's Counsel to institute this action.
- iii. The sum of ₦500,000.00 (Five Hundred Thousand Naira only) being the cost of proceedings.

The Defendant having filed his Notice of intention to defend with Affidavit in support of same, the Court in its considered ruling delivered on 1st March 2021 transferred the suit to the general cause list and parties were ordered to file and exchange pleadings.

In compliance with the order of the Court, the Claimant filed a statement of Claim and a witness statement on Oath of Ikechukwu Ozuegbu on 9th day of March, 2021.

Upon being served with the Claimant's statement of Claim and other processes, the Defendant filed a Notice of Preliminary Objection, statement of defence and Counter Claim wherein, the defendant Counter Claims against the claimant as follows:-

- i. A Declaration that the petition of the Defendant to the Economic and Financial Crimes Commission against the Counter Claimant is false, malicious, unfair, unconstitutional and actionable.
- ii. A Declaration that the petition of the Defendant to Economic and Financial Crimes Commission in a matter that is purely Civil was a breach of the Counter Claimant's Fundamental Right to Civil liberty, freedom of movement as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- iii. A sum of ₦100,000,000.00 as general damages for the embarrassment, pains, and harassments that the Counter Claimant suffered as a result of the action of the Defendant to the Counter Claim.
- iv. Cost of this action.

Trial in this Suit commenced on 14/10/2021 with the Claimant calling it's sole witness, Ikechukwu Uzuebu, who testified as PW1, adopted his

statement on Oath and tendered the following documents in evidence which were admitted and marked as follows:-

1. Tenancy agreement between Universal Estate Ltd and AbubakarAbdulmalik dated 15th day of June 2009, is marked Exhibit A.
2. Photocopies of two U. B. A Receipts of Five Million Naira each dated 10/03/2017 and 11/7/2017 are marked Exhibits A1 and A2 respectively.
3. A cash receipt issued by Amaka Eke & Co. for the sum of Two Million Naira to Universal Estate Ltd dated 24/9/2020 marked Exhibit A3
4. A letter of demand for Arrears of Rent of the sum of ₦30,000,000.00 (Thirty Million Naira only)addressed to Mr. AbubakarAbdulmalik dated 20th of September 2020 is marked Exhibit B.
5. A photocopy of DHL acknowledgment dated 24/09/2020 Exhibit B1
6. Photocopy of a letter issued by Kunle Senior Sulyman& Co addressed to the Chairman, Economic and Financial Crimes Commission dated 23rd July, 2018 is marked Exhibit B2.

PW1 was accordingly cross-examined and Exhibits D and D1 were tendered through him. Thereafter, PW1 was discharged and the Claimant closed their case.

On the other hand, the Defendant opened his defence on 8th day of March, 2022, he testified for himself as DW1, adopted his statement on Oath and tendered some documents in evidence which were admitted and marked as follows:-

1. A photocopy of an E. F.C. C letter of invitation addressed to the Managing Director Malakia Oil and Gas Limited, dated 25th June 2018, is marked Exhibit E.
2. Zenith Bank Plc statement of account of Malakia Oil and Gas Ltd marked Exhibit F.
3. UBA statement of Account of Malakia Oil and Gas Limited is marked Exhibit G.
4. While a letter of demand for arrears of Rent written by Ishaq M. Bashir of Al'Adl law firm dated 5th October, 2020 addressed to the principal partner Amaka Eke & Co is marked Exhibit H.

DW1 was cross-examined accordingly and thereafter discharged.

Evidence having been concluded on both sides the matter was then adjourned for adoption of final written addresses as stipulated by order 33 of the Rules of the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules)2018.

The Defendant's final written address is dated the 26th day of May, 2022 and filed on 27th day of May, 2022. The Defendant equally filed a reply on points of law dated and filed the 23rd day of June, 2022.

The Claimant on the other hand, filed his final written address dated and filed on the 5th day of May, 2022.

In the said Defendant's final written address, Learned Counsel to the Defendant Ishaq M. Bashir, Esq argued the Preliminary Objection first on four grounds to wit:-

1. Whether the law firm of IkechukwuUzuegbu & Co. is a juristic personality that is capable of being authorized to institute this action or to sign anything on behalf of the Claimant?
2. Whether Amaka Eke is a Counsel under IkechukwuUzuegbu & Co. and so not competent to handle this matter and consequently, every process filed by her in this suit is void?
3. Whether a Counsel is competent to testify in a case he is handling; and if not so, whether the incompetence of the Claimant's Counsel to testify in a matter he is handling does not bereave the originating process of the documents statutorily required to accompany same thereof?
4. Whether the entire suit is not a misnomer, abuse of Court process and caught by the doctrine of resjudicate?

On ground one, Counsel submitted that the law firm of IkechukwuUzuegbu & Co is not a juristic personality capable of being authorized to institute this action against the Defendant on behalf of the Claimant. Counsel referred the Court to paragraph 4 of PW1's statement on Oath.

Furthermore, Counsel referred the Court to the question put to PW1 under Cross-Examination as to whether IkechukwuUzuegbu & Co. was registered with the Cooperate Affairs Commission to enable it enter into a contract of Estate management with the Claimant and submitted that it is trite law that once a juristic personality of an artificial person is raised, the party in question can discharge the burden only by providing the certificate of incooperation. In this respect Counsel cited the case of **SOCIO-**

POLITICAL RESERCH DEVELOPMENT VS MINISTRY OF FEDERAL CAPITAL TERRITORY & ORS (2018) LPELR-29721 (SC); ATAGUBA & COMPANY V. GURA NIGERIA LIMITED (2005) 6 NWLR (PT. 927) 429.

Therefore, Counsel contended that the law firm of IkechukwuUzuegbu& Co. could not competently act as the property manager of the Claimant and to institute this action on her behalf without being clothed with corporate personality in that regard. Reliance was placed on the case of **BANK OF BAODA V. IYALABANI COMPANY LIMITED (2002) 12 SCM 7.**

Consequently, counsel urged the Court to hold that the purported agent of the Claimant (IkechukwuUzeugbu& Co) does not have the legal capacity to institute this action on behalf of the Claimant.

On ground two, Counsel submitted that Amaka Eke is a Counsel under IkechukwuUzuegbu& Co. thereby not competent to handle this matter.

Counsel contended that Amaka Eke was a Counsel who signed and endorsed Exhibit D and it is the same Amaka Eke who signed and endorsed the Writ of Summons and the Statement of Claim filed in this suit maintaining the same status and office address. Therefore, counsel stated that there is no proof before this Court to show that Amaka Eke is not operating under the Law Firm of IkechukwuUzuegbu& Co.

Moreso, Counsel stated that the Claimant has failed to lead evidence to establish that Amaka Eke & Co is different and distinct in operation and practice from IkechukwuUzuegbu& Co.

The learned Counsel contended that it is trite that neither IkechukwuUzuegbu & Co. nor Amaka Eke & Co. is competent to conduct trial in this case. Reference was made to rule 20(1) & (3) of the Rules of professional conduct for legal practitioners, **2007; AND the cases of OKATTA V. REG'D TRUSTEES OF ONITHSA SPORTS CLUB (2007) LPELR-834 (CA); UNIVERSAL ESTATE LIMITED V. MR. ABUBAKAR ABDULMALIK (2020) SUIT NO. CV/2693** delivered on the 23rd September, 2020 per Hon. Justice A. I. Kutigi at page 12.

Consequently, Counsel urged the Court to hold that neither IkechukwuUzeugbu nor Amaka Eke is legally competent.

On ground three, Counsel submitted that IkechukwuUzuegbu is the Claimant's sole witness and also act as the Claimant's Counsel using Amaka Eke, Esq, a lawyer under his employment to handle the case which contravenes Rule 20(1), (3) of the Rules of Professional conduct for legal practitioners, 2007. Reference was made to the cases of **BALA V. DIKKO (2013)4 NWLR (PT. 1343) P. 52 at 60; ANYIKA V. UZOR (2006) 15 NWLR (PT. 1003) P. 560 at 573; F. R. N V. MARTIN (2012) 14 NWLR (PT. 1320)P 287 at 311.**

Therefore, Counsel urged the Court to hold that Counsel to the Claimant is incompetent to depose to the witness statement on Oath. In that regard, Counsel submitted that it follows logically that there is no witness statement on Oath accompanying the Originating processes, as such, the irregularity is so substantial as to robed this Honourable Court of jurisdiction to entertain the substantive suit for substantial non-compliance

with the provision of the Rules of this Honourable Court in commencing this Suit. Reference was made to order 4 Rule 15 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004.

In another submission, Counsel stated that the claimant's statement on Oath is grossly defective and the evidence of the PW1 must be discountenanced as the Claimant's Claims are not supported by evidence. To this extent, Counsel submitted that it is trite that where pleadings are not supported by evidence they are deemed abandoned and same must be struck out. In support of this, Counsel cited the cases of **OLANIYAN V. OYEWOLE (2010) LPELR-9109 (CA). EGBUNIKE V. ACB (1996) 2 SCNJ.58 at 78; AMOBI V. AMOBI (1996) 9-10 SCNJ.P. 207.**

On ground four, Counsel submitted that the entire suit of the Claimant is a misnomer, abuse of Court process and caught with the doctrine of res judicata. Counsel contended that the Claimant's Claims in this suit has the same parties, subject matter and reliefs similar to the ones in the previous suit as exhibited by Exhibit D.

In his further submissions, Counsel stated that it is trite law that once a matter between the same parties on the same subject matter and issues are determined by a Court of competent jurisdiction having gone through the rigors of a full trial, neither the parties nor their agents, privies, or representatives would be allowed in law to relitigate the same matter again. Counsel referred the Court to Section 169 of the Evidence Act, 2011 and the case of **OLOKUBO V OMONI (1999) 8 NWLR (PT. 61) 647 at 659-661.**

Consequently, Counsel urged the Court to dismiss the Claims of the Claimant as same is caught up by the principle of estoppel per resjudication and is an abuse of Court process.

After arguing the Preliminary Objection, learned Counsel formulated (3) three issues for determination of the substantive suit.

The issues are as follows:-

1. Whether the Claimant has successfully established before this Honourable Court that the Defendant's rent was increased from the sum of ~~₦4,000,000.00~~ to ~~₦5,000,000.00~~ to the extent that the Defendant's arrears of rent is to the tune of ~~₦30,000,000.00~~ from 14th day of June, 2015 to 13th day of June 2021.
2. Assuming without conceding the fact that this Honourable Court sees merit in the claims of the claimant in this case, whether the Judgment of this Hon. Court would not amount to double jeopardy on the Defendant who has paid the sum of ~~₦2,750,000.00~~ which constitutes part of the Claims of the Claimant without amending the claims pending before this Honourable Court?
3. Whether it will be reasonable in law for this Honourable Court to direct the Defendant to pay the sum of ~~₦2,000,000.0~~ being the professional fees paid by the Claimant to her counsel and the sum of ~~₦500,000.00~~ being the cost of proceedings respectively as prayed by the Claimant in this suit?

On issue one, Counsel submitted that the testimony of PW1 could not establish before the Court that the annual rent of the Defendant was

increased from the sum ~~₦4,000,000.00~~ to ~~₦5,000,000.00~~ as claimed by the Claimant in her statement of Claim as the Claim was not supported by evidence. Counsel stated that the effect of failure to lead evidence in support of any averment in a pleading is that such pleading is deemed to have been abandoned. Reliance was placed on the cases of **COBRA LTD & ORS V. Omole ESTATES & INVESTMENT LTD (2000) LPELR-6809 (CA); JOVINCO NIGERIA LTD & ANOR V. IBEOZIMAKO (2014) LPELR-23599 (CA); AHMED V. REG'D. TRUSTEES OF A. K. R . C. C(2007) ALL FWLR (PT. 347) 623 at 654 PARAS F-G (CA) F. C. D. A VS. UNAIBI (1993) 3 NWLR (PT. 138) P. 270.**

Therefore, counsel contended that the Claimant must have consulted the Defendant for any increase in rent which the Defendant must have accepted or denied. To this extent, Counsel urged the Court to resolve issue one in favour of the Defendant.

On issue two, Counsel submitted that it is trite law that the Defendant cannot be made to suffer by making double payments to the Claimant. Counsel referred the Court to Exhibits A1 and A2 and stated that the Defendant paid the Claimant through her solicitor the sum of ~~₦2,750,000.00~~ which formed part of her Claim before this Court and the claimant did not deduct that from his Claim nor did she amend her claims.

Consequently, Counsel contended that the ~~₦30 Million~~ Claim against the Defendant has no basis and same ought to be struck out.

On issue three, Counsel submitted that such reliefs cannot be granted and same should be refused and dismissed. He contended that the Solicitor's

fees of the outrageous sum of ₦2 Million and the sum of ₦500,000.00 being cost of proceedings claimed by the Claimant does not form part of cost of action. He cited in support the cases of **BLUENEST HOTEL LIMITED V. AEROBELL NIGERIA LIMITED (2018) LPELR-4368 (CA); MICHAEL V. ACCESS BANK PLC (2017) LPELR-41981.**

To this end, counsel urged the Court to dismiss the Claim for solicitor's fees.

On the Counter Claim, Counsel formulated a lone issue for determination to wit:-

"Whether the Counter Claimant has established his case to entitled him to the relief sought in the Counter Claim?"

Counsel referred the Court to Exhibits A1, A2, and B and contended that the harassment and embarrassment suffered by the Counter Claimant as a result of the Defendant to Counter Claimant's petition grossly constitutes a breach of his fundamental Rights. Reliance was placed on the case of **AKINTERINWA & ANOR V. OLADUNJOYE (2000) LPELR-358 (SC).**

Finally, counsel urged the Court to grant the Counter Claimant's reliefs as prayed in his Counter Claim and dismiss the substantive suit with substantial cost.

On the other hand, the learned Counsel to the Claimant, Amaka Eke Esq, arguing the issues for determination in their final written address submitted on issue one that it is trite law that for a Claimant to succeed in an action before a Court of law, he must proffer credible and quality evidence to entitle him to judgment since the evidential burden of proof is cast upon

him. In this respect, Counsel cited Sections 135-137 of the Evidence Act, 2011 and the cases of **OLADIPO VS MOBA L.G.A(2010) 5 NWLR (PT.1186) P 125-126; NWOKIKE V. NWOJU (2021) LPELR-55893 (CA) PP. 28-28, PARAS A-D).**

The learned Counsel referred the Court to paragraphs 1, 5 & 6 of the statement of Claim, paragraph 2 of the statement of Defence and Exhibit A and submitted that the main contention between the parties is whether or not there was an increment to the rent of the Defendant from the Sum of ~~₦~~4,000,000.00 (Four Million Naira only) to the Sum of ~~₦~~5,000,000.00 (Five Million Naira only) at the renewal of the tenancy which commenced from 14th June 2014 and expired on 13th June 2015 and also whether the Defendant is in arrears of the total sum of ~~₦~~30,000,000.00 (Thirty Million Naira) or any Sum of money at all to the Claimant or not.

In her further submission, Counsel stated that it is very clear from all the evidence presented by both parties at the trial that the Defendant was very much aware of the increase in his annual rent. Counsel referred the Court to Exhibits A1 and A2 and urged the Court to hold that the increase in the annual rent of the Defendant of ~~₦~~4,000,000.00 to ~~₦~~5,000,000.00 was to his acknowledge.

On the claim for ~~₦~~30,000,000.00 as arrears of rent, Counsel submitted that the Defendant is indebted to the Claimant having refused to pay his accumulated arrears of rent from 2015 to 2020, when this suit was instituted. Counsel referred the Court to Exhibit B.

In addition, Counsel submitted that the issuance of Exhibits A1 and A2 by the Defendant to PW1 is a prima facie evidence of indebtedness on the part of the Defendant and urged the court to so hold.

The Learned Counsel stated that there is no evidence before the Court to show that the Defendant has indeed paid all his accumulated arrears of rent and urged the Court to so hold.

On the two statements of account from the United Bank of Africa and Zenith Bank admitted as Exhibits, Counsel submitted that the said statements of account which are secondary evidence being entries on a banker's book ought to be expunged from the records of this Court for failure to comply with the evidence Act. Reference was made to sections 89(h) and 90(1) (e) of the Evidence Act, 2011 as amended.

Therefore, Counsel submitted that the two statements of account ought not to be admitted in evidence in the first place for failure to comply with the provisions of the Evidence Act and urged the Court to so hold. In a similar submission, Counsel stated that the invitation letter from the Economic Financial Crimes Commission (EFCC) ought to be struck out from the records of the Court for non-compliance with the relevant provision of evidence Act as same is a public document and in absence of the original copy, it is only the certified true copy that will be admitted. Reference was made to Sections 102 & 104 of the Evidence Act.

To this extent, Counsel submitted that it is trite law that a Court can expunge from its record(s) evidence or documents wrongly admitted in evidence whether with or without any objection from the defence Counsel

in so far as the court discovered that the said documents ought not to have been admitted in evidence in the first instance. In support of this. Reliance was placed on the case of **NIGERIA BOTLING COMPANY LIMITED V. PAULLY JOE & CO (NIGERIA) LIMITED (2018) LPELR-46587 (CA) (PP. 8-11) paras D-A**

Consequently, counsel submitted that this Court has a duty to expunge the said Exhibits from its record for not being legally admissible evidence due to non-compliance with the provision of the Evidence Act and urged the Court to so hold.

Furthermore, Counsel referred the Court to Exhibit C and submitted that the contention of the Defendant that PW1 ought not to have presented the cheques given to him by the Defendant because of the purported undertaking made by PW1 is a mere after thought which will not avail the Defendant from any liability in the instant case and urged the Court to so hold.

On the 2nd relief, Counsel submitted that it is trite law that Solicitor's fee can be Claimed provided it is pleaded and proved. In this respect, reference was made to the case of **MAIBORKONO V. ABUBAKAR (2017) LPELR-44413 (CA) (PP. 38-38, PARAS C-E)**.

As such counsel stated that the Claimant pleaded and during the trial presented the receipt of payment issued to it by the law office of Amaka Eke & Co. Evidencing the payment of ₦2,000,000.00 (Two Million Naira only) being claimed in relief 2 as endorsed in the statement of Claim. Therefore Counsel submitted that the claimant has fulfilled the required

conditions to warrant the grant of its 2nd relief and urged the Court to so hold.

On the Claim for ₦500,000.00 as cost, Counsel submitted that cost follows events, a successful party is ordinarily entitled to cost as a matter of course and a trial Court has an ultimate discretion when it comes to the issue of granting/awarding cost at the end of a trial. In this respect, counsel cited the case of **CAVENDISH PETROLEUM(NIG) LTD & ANOR V. DERIBE (2018) LPELR-45540 (CA) (PP 30-32, PARAS B-A)**.

Finally on issue one, Counsel urged the Court to enter judgment in favour of the Claimant.

On issue two which is whether the Defendant/Counter Claimant has proved his Counter Claim and is entitled to the reliefs he is seeking for in his Counter claim, Counsel stated that it is trite law that a counter claim is an independent action and a Counter Claimant has an onus to establish his Claim. He cited in support, the case of **ATIBA IYALAMUS SAVINGS & LOANS LTD V. SUBERU & ANOR (2018) LPELR-44569 (SC) P. 34, PARAS B-F**.

Counsel further submitted that the Defendant/Counter Claimant has failed to discharged the burden of proof placed on him in respect of the Counter claim and that he never denied issuing post dated cheques to the Claimant/Defendant to the Counter Claim which was dishonoured due to lack of funds when one of the said cheques was presented to his bank for payment.

Again, Counsel submitted that the Defendant/Counter Claimant did not lead any evidence to show when and how PW1 was able to convince him to issue the cheques which were dishonoured upon presentation for payment. That the law is trite that issuance of dud/dishonoured cheques is a Criminal offence in Nigeria. In this regard, Counsel cited the cases of **ARABAMBI V. ADUANEED BEVERAGE IND. LTD (2005) 19 NWLR (PT. 959) 1 SC; KZN OILS LTD V. F. R. N (2018) LPELR-50556 (CA)** and dishonoured cheques (offences) Act.

Therefore, Counsel submitted moreso that the petition of the Claimant/Defendant in the Counter Claim to the Economic and Financial Crimes Commission which borders on the issuance of dud cheques is not in any way or manner false, malicious, unlawful, unfair, unconstitutional and/or actionable as alleged by the Defendant/Counter Claimant and urged the Court to so hold.

In another submission, Counsel stated that it is trite law that a Citizen of this Country has a duty to report cases of Commission or reasonable suspicion of commission of Crimes to the security agencies and that the act of the Claimant/Defendant to the Counter Claim of making report against Defendant/Counter Claimant to the relevant authorities does not in any way constitute an infringement of the Defendant/Counter Claimant's fundamental Rights as alleged. On this, Counsel relied on the cases of **FAJEMIRON V. C. B. N LTD (2009)2, WRN 1 at 10 (SC); EJIOFOR V. OKEKE (2000) 7 NWLR (PT. 665) 377.**

Consequently, Counsel urged the Court to hold that the petition of Claimant/Defendant to the Counter Claim to the Economic and Financial Crimes Commission is quite meritorious and to dismiss the 1st and 2nd claims of the Defendant/Counter Claimant for lacking in merit.

On the Claim of ₦100,000,000.00 as general damages, Counsel submitted that the Defendant/Counter Claimant is not entitled to the reliefs being sought by him since his invitation was not unlawful in any form but was rather based on a reasonable suspicion of him having committed a Criminal offence, to wit: the issuance of a dud cheques to the claimant/Defendant in the Counter Claim.

Finally on issue two, Counsel urged the Court to hold that the Defendant/Counter Claimant is not entitled to any of the reliefs being sought by him in his Counter Claim on the ground that he was not able to prove that any of his Fundamental human Rights was infringed upon by the Claimant/Defendant to the Counter Claim.

On the whole, Counsel urged the Court to enter judgment in favour of the claimant having proved his case and to dismiss the Counter Claim with substantial cost.

I have carefully perused the Writ of Summons, the statement of Claim and the reliefs sought. I have equally gone through the statement of defence and the Counter Claim as well as the reply to same. I have evaluated the entire evidence adduced before the Court by the parties both oral and documentary in proof of their case. In the same vein, I have studied

extensively the final written address of the parties and the reply on points of law.

Having done all these, it is therefore my humble view that the issues that call for determination in this suit are as follows:-

(1) Whether the claimant has proved his case on the preponderance of evidence to be entitled to the reliefs sought.

(2) Whether the Defendant/Counter Claimant has proved his Counter Claim as required by law to be entitled to grant of same.

Before I dwell on the issues for determination, it is germane to state that the Defendant raised in both his statement of defence and the final written address a preliminary objection that borders or touches on the jurisdiction of this Court to hear and determine this Suit.

Since the said Preliminary objection borders on jurisdiction, I shall focus on it first and decide it in one way or the other before, if need be, to proceed to determine the substantive suit.

This is in line with the decision in the case of **AKERE VS GOVT OF OYO STATE & ORS (2012) LPELR-7806 PP 45 PARAS E Per Peter Odili JSC**. Where the Court held thus:-

"However vague or minute a Preliminary Objection is, it must be first considered before the Court can go forth since as in this instance the competence of the process is questioned. It must be resolved so that the Court is not made to embark on a futile adventure into an appeal or suit

that it ether has no power to do or the matter being already dead. Whatever one does changes nothing”

The Defendant’s Preliminary Objection was predicated upon four grounds to wit:

1. Whether the law firm of IkechukwuUzeugbu& Co is a juristic personality that is capable of being authorized to institute this action or to sign anything on behalf of the Claimant?
2. Whether Amaka Eke is a Counsel under IkechukwuUzuegbu& Co. and so not competent to handle this matter and consequently, every process filed by her in this suit is void?
3. Whether a Counsel is competent to testify in a case he is handling; and if not so, whether the incompetence of the Claimant’s Counsel to testify in a matter he is handling does not bereave the originating process of the documents statutorily required to accompany same thereof?
4. Whether the entire suit is not a misnomer, abuse of Court process and caught by the doctrine of resjudicata?

On ground one which is whether the law firm of IkechukwuUzeugbu& Co is a juristic personality that is capable of being authorised to institute this action or to sign anything on behalf of the Claimant, it will be appropriate to begin by considering what a juristic personality means.

Juristic personality is defined by Blacks Law Dictionary Ninth Edition at page 1259 to mean thus:-

"The legal status of one regarded by the law as a person, the legal conception by which the law regards a human being or an artificial entity as a person."

Furthermore, juristic personality was described by the Court of Appeal in the case of **ONYUIKE VS THE PEOPLE OF LAGOS STATE & ORS (2013) LPELR-24809 (CA) PER DONGBAN-MENSEM J.C.A AT PAGE 8 PARA D** to mean thus:-

"Juristic person is a legal entity through which the law of a particular legal system serves to permit group of natural persons to get as if they were a composite individual for certain purposes. It is a legal fiction which does not mean that this specific entities are human beings but rather that the law allows them to act as people for certain limited purposes, usually law suits, property ownership etc."

Having considered what a juristic personality means and from the evidence before the court, there is no dispute as to whether Ikechukwu Uzuegbu and co is a registered law firm. What in my opinion appears to be in dispute is whether the said Ikechukwu Uzuegbu can be authorised to institute this action?

From the PW1 deposition on Oath, it is clear that he is acting for a disclosed principal and has also sued in the name of the said principal. Moreso, this suit is in the name of a disclosed principal and the claims is for the principal as well. In other words, Ikechukwu Uzuegbu & Co. is acting as

a general agent to a disclosed principal, that is, Universal Estate Limited (The Claimant in this suit). I so hold.

In that regard, I overrule this ground of Objection raised by the Defendant.

That takes me to groundtwo, which is whether Amaka Eke is a Counsel under IkechukwuUzeugbu& Co and so not competent to handle IkechukwuUzuegbu& Co and so not competent to handle this matter and consequently, every process filed by her in this suit is void.

It was the submission of learned Counsel to the defendant that Amaka Ike is a Counsel under IkechukwuUzuegbu& Co thereby not competent to handle this matter..

However, the claimant averred in paragraph (6) of the reply to statement of defence which for ease of reference, I shall reproduce same hereunder. It reads thus:-

Paragraphs (6)

"The Claimant further states that Amaka Eke Esq, is the principal partner of the law firm of Amaka Ike & Co. and she is very much qualified to institute and handle this matter contrary to the assertions made by the Defendant (The claimant pleads the certificate of registration of AmakaIke & Co. and shall rely on same during the trial of this suit)."

I have studied the paragraph quoted above and the document pleaded therein, it is clear that Amaka Ike & Co was registered with Corporate

Affairs Commission as shown by the certificate of Registration of Business name annexed to the said reply.

In this respect, I refer to the case of **ABIODUN VS F. R. N (2018) LPELR-43838 (SC) PER GALINJE JSC at PP 12-13, PARA F-C** where the Court held thus.

"The lower Court was entitled to look into any document in its record and make use of it in order to arrive at a just decision. When a document is in the record of the Court it cannot be a new issue on which a Judge is precluded from looking at. This Court has in a number of decided cases held that a Court of law is entitled to look into its record and make use of any document it considers relevant in determining issues before it."

Similarly, it was held by the Court of Appeal in **SA'AD & ANOR VS MAIFATA & 2 ORS (2008) LPELR-4915 (CA) PER OREDOLA J.C.A AT pp 18-19, paras D-A** where the Court held thus:-

"It is trite that a Court or Tribunal can suo motu make reference to the case file. In a proceeding or matter before it and raise or make use of any document it finds thereon. I do not think that the Tribunal did anything wrong when it took it upon itself and perused its record of proceedings and also took judicial notice of its contents, even in the absence of an application in that regard by either of the parties before it. It

is firmly established that a Court or tribunal can do exactly that.”

See also the cases of **AYEMI VS PEOPLE OF LAGOS STATE (2016) LPERL-41440 (CA); WAHE VS NASARAWA STATE UNIVERSITY KEFFI (2013) LPELR-22840 (CA).**

Consequently therefore, it is my considered opinion that Amaka Eke is not a Counsel under IkechukwuUzuegbu & Co and as such is competent to handle this matter. I so hold

In the light of the above, I equally overrule this ground of objection.

That also takes me to ground three which is whether a Counsel is competent to testify in a case he is handling, and if not so, whether the incompetence of the Claimant's Counsel to testify in a matter he is handling does not breach the originating process or the documents statutorily required to accompany same thereof, I think I do not need to belabour myself on this third ground of the preliminary objection having held earlier that Amaka Eke is not a Counsel under IkechukwuUzuegbu & Co, there's nothing on the record of this Court to show that Counsel which Counsel handling this matter also testified as a witness.

For clarity, PW1 on record is IkechukwuUzuegbu while DW1 is AbdulmalikAbubakar Ali while Counsel to the Claimant is Amaka Eke Esq and that of the Defendant is Ishaq Muhammad BashirEsq.

Therefore, from the record of this Court referred above, there is no Counsel who testified as a witness. In that regard, this ground of preliminary objection has no basis and is accordingly overruled.

That takes me to the fourth and last ground which is whether the entire suit is not a misnomer, abuse of Court process and caught by the doctrine of res judicata.

The learned defendant's Counsel submitted inter-alia that the Claimant's suit is a misnomer, abuse of Court process and caught with the doctrine of res judicata. He contended that the Claimant's claims in this suit have the same parties, subject matter and reliefs similar to the one in the previous suit. He relied on Exhibits D and D1.

I have studied Exhibits D and D1, indeed the parties and the reliefs sought in the said Exhibits are the same with the ones in this present suit. However, the order made in Exhibit D1 was that of striking out and not dismissal.

Therefore, it is trite law that where a matter was struck out, parties are at liberty to refile same. This position of law was re-echoed in the case of

**ONYEKAONWU & ANOR VS UDEGBUNAM (2009) LPELR-8344 (CA)
PER SANUSI JCA PP 19-20 PARA E-E** where the Court thus:-

"In the first place, my lord permit me to draw distinction between order of dismissal of a matter or suit and striking out of a suit. An order striking out a matter clearly gives the parties the right to relitigate the matter as such matter has not been properly determined on the merits. On the other hand, dismissal of case by a Court has a very serious consequence in that where a case/matter is dismissed by a

Court the party whose case is dismissed has no right to relitigate on the same matter again.”

See the cases of **EMEMBOLU& ANOR VS ADINWERUK& ORS (2017) LPERL-43784 (CA); REGISTERED TRUSTEES OF IFELOJU VS KUKU (1991) 5 NWLR (PT. 189) 65 AND OBASI BROS. CO. LTD VS MBAS LTD (2005) 9 NWLR (PT. 929) 117.**

Consequently, the contention of the learned defendant’s counsel that this present suit was caught up with the doctrine of res-judicata is to say the least, misconceived. I so hold.

To this end, it is my considered opinion that this suit is not a misnomer nor an abuse of Court process. I so hold.

On the whole, the forth ground of preliminary objection is equally overruled. To that extent, I hold very strongly that this preliminary objection lacks merit and it is hereby dismissed in its entirety. On that note, I equally hold that this honourable Court has unfettered jurisdiction to hear and determine this suit.

Having dismissed the Preliminary Objection for lacking in merit and also having held that this Honourable Court has unfettered jurisdiction to hear and determine this suit, I shall now proceed to dwell extensively on the issues for determination I formulated.

On issue one which is Whether the claimant has proved his case on the preponderance of evidence to be entitled to the reliefs sought.

It is necessary to begin by stating that it is the case of the Claimant as distilled from the Writ of Summons and statement of Claim briefly that, the Claimant is the owner of a property situate at No. 20 Nike Street, Maitama, FCT, Abuja. the said property is being managed by the law office of Ikechukwu Uzuegbu & Co. and sometime in 2009, the Defendant entered into a tenancy agreement with the Claimant, commencing from the 14th day of June 2009 and ending on the 13th day of June, 2011 for a consideration for the sum of ₦4,000,000.00 (Four Million Naira) as annual rent.

The tenancy was subsequently renewed on the same terms and conditions as contained in the first tenancy agreement between both parties and the last renewal commenced on the 14th day of June 2014 and expired on the 13th day of June 2015 at an increased rent of ₦5,000,000.00 (Five Million Naira only) however, since the expiration of the Defendant's last tenancy in 2015, he has refused to renew his tenancy which means that he is in arrears of rent to the tune of ₦30,000,000.00 (Thirty Million Naira only) calculated from 2015 when the last payment he made as rent expired to 2020 when this suit was instituted.

Having stated briefly the case of the Claimant, it is trite law that the burden of proof lies on the party who asserts. To put it in other words he who asserts must prove with credible and admissible evidence. In this respect. See Section 131(1) of the Evidence Act 2011 which provides thus:-

"Whoever desires any Court to give Judgment as to any legal right or liability Dependant on the existence of facts which he asserts shall prove that those facts exist."

See also the case of **OKEKE VS OKEKE (2019) 17 NWLR, PART 1701 at P 288 PARAS B-E PER UMAR J.C.A** where it was held thus:-

"Under Section 131 of the Evidence Act 2011 (as amended), the burden of proof lies on the party whose claims will fail if no evidence is adduced. In essence, in civil actions, the initial burden of proof lies on the party against whom would be given Judgment if evidence was not produced oneither side."

Similarly, it was held in the case of **MUSTAPHA V. ZARMA & ORS (2018) LPELR-46326 (CA) at PAGES 36-44 PARAS F-D THAT:-**

"As rightly stated by the lower Court, the legal burden of proof in civil cases is on a Claimant to prove to the satisfaction of the Court the assertions made in the pleadings of the contention upon which he meets his case and he has the onus of proving his case by preponderance of evidence, the refusal of the Defendant to testify cannot alleviate the primary burden on the Claimant."

See also the case of **NSEFIK V. MUNA (2007) 10 NWLR (PT. 10) 502.**

At the trial, the Claimant called his sole witness by name IkechukwuUzuegbu, who testified as PW1 during examination in chief, PW1

tendered in Evidence several document which were admitted and marked accordingly.

From the totality of testimony of PW1, and the documentary evidence tendered, it is clear that the Claimant and the Defendant entered into a tenancy agreement over a property situate at No. 20 Nike Lake Street, Maitama FCT Abuja. It is equally clear that the annual rent of the said tenancy was initially ~~₦4,000,000.00~~ (Four Million Naira only) annually.

However, what appears to be in dispute is the increased rent from ~~₦4,000,000.00~~ to ~~₦5,000,000.00~~ annually and whether the Defendant is in arrears of rent.

PW1 in his evidence in-chief testified that the rent was increased to ~~₦5,000,000.00~~.

PW1 was asked under cross-examination inter alia thus:-

QUESTION: In paragraph 7, you mentioned increase of Rent. Did you tender anything to show the increase and whether the Defendant was aware and he consented to it?

ANSWER: The facts speaks for itself. He issued me two Cheques of 5 Million. Res ipso loquitor.

QUESTION: So, as a senior Lawyer, is Rent increased impliedly or by express communication to the Tenant?

ANSWER: In the statement of Claim I mentioned that the Rent was increased and he issued me a Rent of 5 Million

twice. He can't be a father Christmas whose rent is 4Million and for him to issue me with a Cheque of 5 Million twice.

QUESTION: You agree that you did not serve him a Notice of increase of rent?

ANSWER: No you are wrong with respect. I did.

QUESTION: Where is the copy of the rent increase notice?

ANSWER: The notice can be oral, it can be written. But, we served him the notice and he complied with the notice.

From the Above testimonies both in-chief and under Cross-Examination vis-à-vis an x-ray of Exhibits A1 & A2 (cheques to the tune of 5 Million Naira each), will show that there was increase in the rent of the tenancy agreement entered into between the Claimant and the Defendant.

Moreso, from the evidence before the Court, the Defendant did not deny issuing Exhibits A1 and A2. To that extent, it is trite law that documents speak for themselves. In support of this I refer to the case of **AIKI V. IDOWU (2006) 9 NWLR (PT. 984) 47 at 65 para A-C** where it was held thus-

"Documents when tendered and admitted in Court are like words uttered and do speak for themselves. They are even more reliable and authentic than words from the vocal cord of man because they are neither transient nor subject to

distortion and misinterpretation but remain permanent and indelible through the ages."

See also the case of **AKINBISADE V. STATE (2006) 17 NWLR (PT. 1007) 184.**

At this juncture it should be reinstated that the law is settled that the burden of proof in civil cases is not static, it shifts from side to side depending on the evidence led. In this respect, see the case of **S. P D. C (NIG) LTD V. EMELUM (007) 5 NWLR (PT. 1027) 347 at 372-373 PARAS D-B** where it was held thus:-

"It must be stressed herethat in Civil cases unlike in criminal matters, the burden of proof is not static, it does shifts....."

From the foregoing, I am of the considered opinion that the burden of proof in this case has shifted from the Claimant to the Defendant to prove that the rent has not been increased from 4 Million to 5 Million Naira and/or is not in arrears from 2015 to 2020 and not in arrears to the total sum of 30 Million naira or any amount.

As pointed out earlier, from the totality of the evidence before the Court, the defendant did not deny issuing Exhibits A1 and A2 reflecting 5 Million Naira each which is the exact amount PW1 said in his testimony that the rent was increased to.

In addition Dw1 was asked under Cross-Examination inter alia thus:-

QUESTION: How much in total did you pay the Claimant from your evidence before the Court?

ANSWER: It is Two Million Seven Hundred and Fifty Thousand Naira.

QUESTION: Will I be correct to say that since 2015 to date, the only evidence you presented to the Court is that you only made a Total payment of ₦2,750,000.00 Naira only?

ANSWER: Yes.

In the light of the above it is my considered opinion that the Defendant has failed to adduce any credible evidence to prove that the rent has not been increased from 4 Million Naira to 5 Million Naira annually in view of Exhibits A1 and A2 and that he is not in arrears of rent. I so hold.

On the Claimant's Claim for 2 Million Naira as Solicitor's fee, the Claimant pleaded it in his pleadings particularly at paragraph 11 of both the statement of Claim and witness statement on Oath and at the trial, PW1 tendered Exhibit A3 in prove of same.

Therefore, I refer to the case of **NAUDE & ORS V. SIMON (2013) LPELR-20491 (CA) PER AKOMOLAFE WILSON JCA at PAGE 24-28 PARA A** where it was *held thus:-*

"The principle of law is that a successful party is to be indemnified for cost 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 claim can be maintainable in favour of the claimant."

See also the case of **MAIBORKONO V. ABUBAKAR (Supra)** cited by Claimant's Counsel. See also

AJIBOLA V. ANISERE & ANOR (2019) LPERL-48204 (CA) Per MOHAMMED, JCA PP 29-30 PARA C.

In the circumstance, the Claimant having proved the Claim of solicitor's fee and the amount, in my opinion is not unreasonable, I think the Claimant is entitled to grant of same. I so hold.

Before I conclude, it should be noted that the Defendant averred in paragraphs 8 and 9 of the statement of defence to the effect that he paid the sum of ₦2,750,000.00 to the firm of PW1. And, at the hearing, DW1 tendered in evidence Exhibits F and G. in proof of the said payment.

Also, in the testimony of DW1 under Cross-Examination referred to above, it is clear that the Defendant paid ₦2,750,000.00 to the law firm of PW1.

However, the Claimant in his reply to the statement of defence did not challenge and/or controvert the averment in paragraphs 8 and 9 of the statement of defence. To that extent, it is settled law that the said averments are deemed admitted. In this respect, see the case of **MUOGHALU & ANOR VS MOUGHALU & ORS (2019) LPELR-47257 (CA) PP 18-19 PARA E PER BOLAJI-YUSUF J.C.A held thus:-**

"First where a Plaintiff fails to file a reply to a material averment in the statement of defence which raised a new issue of fact not arising from the statement of Claim, he is deemed to have admitted the averment."

See also the case of **ODIGBO & ORS VS EZEMEGBU & ORS (2013) LPERL-21254 (CA)**.

Nevertheless, the claimants counsel in his final written address urged the Court to expunge from its record Exhibits F and G for being entries in a bankers book and failure to comply with Section 90(1) (e) of the Evidence Act 2011 as amended.

I do not think this line of argument of the Claimant's counsel is tenable because the said Exhibits are relevant and the Claimant never denied receiving the sum contained therein nor objected when they were tendered. In the circumstance, I refer to the case of **U. B.N PLC VS JASE MOTORS (NIG) LTD (1997) 7 NWLR (PT. 513) at PG 399 PARAS E-H PER MOHAMMED J.C.A** held thus:-

"Where a private document is admitted in evidence without any objection from the adversary, the issue of admissibility of same document, cannot be re-opened by the Court since the adversary is deemed to have waived the Right to object same. Furthermore, an Exhibit being admissible in evidence and having been duly admitted without any objection from the Counsel remains a relevant part of the evidence for the determination of the Claim."

Consequently, I hereby distance myself with that line of argument of the Claimant's Counsel and hold that Exhibits F. and G were properly admitted in evidence.

To this end therefore, I am of the considered opinion that the evidence of DW1 to the effect that the Defendant paid ₦2,750,000.00 to the Claimant remained unchallenged. I so hold. To that extend, I refer to the case of **NASIR V. C.S.C KANO STATE (2010)10 NWLR (PT. 1190) 253 at 267 PARAS C-F** where it was held thus:-

"Evidence that is relevant to the matter in controversy and has not been challenged or debunked remains good and credible evidence that may be used in the just determination of a dispute."

At this juncture, it should be emphasized that the standard of proof in civil cases is on the balance of probability. On that note, see the case of **NNADI & ANOR V. ODIKA & ORS (2017) LPELR-43448 (CA)at PAGE 20-21 PARAS E-F** where it was held thus:-

"It is not in doubt that the standard of proof in civil cases is on the preponderance of evidence or balance of probability after parties to an action have presented their cases to the Court, it is the duty of the Court to place such process of evidence on either side of the imaginary scale and see which side the balance tilts to....."

See also the case of **EHWARUDJE V. WARRI LOCAL GOVT. & ANOR (2016) LPELR-40052 (SC) (PP 35, PARA A)**.

On the whole and without necessarily repeating myself it is my considered opinion that the Claimant has proved its case as required by law. I so hold.

Therefore and without further ado I hereby resolve issue one in favour of the Claimant against the Defendant and hold very strongly that the Claimant based on the evidence adduced has proved its case on the preponderance of evidence.

That takes me to issue two which is Whether the Defendant/Counter Claimant has proved his Counter Claim as required by law to be entitled to grant of same.

It is trite Law that a Counter Claim is to all intents and purposes a separate action. It is an independent and separate action triable with the main Claim for reason of convenience. See the cases of **USMAN VS GARKE (2003) LPELR-3431 (SC), ODUBAWO VS FSDH SEC LTD (2020), 8 NWLR (PT. 1725) P 34 PARAS D-H (CA).**

The onus of proof which lies on the Claimant to prove the averments in his Claim is also on the defendant to prove the averments in his Counter Claim before it can succeed. The Counter Claimant can only succeed on the strength of his case and not on the weakness of the defence. See **ACCESS BANK PLC VS OGBONA (2022) 1 NWLR (PT. 1812) PG 581, UNOKAN ENT LTD VS OMUVWIE (2005) 1 NWLR (PT.907) PAGE 293. GARBA VS KUR (2003) 1 NWLR (PT. 831) PAGE 280.**

Before I proceed, it is germane to state at the onset that a careful study of the Counter Claims before the Court will show inter alia that the Counter Claimant is seeking for declaration that the petition to the Economic and

Financial Crimes Commission by the Defendant to Counter Claim in a matter that is purely civil was a breach of the Counter Claimant's Fundamental Human Rights to civil liberty, freedom of movement as guaranteed by the 1999 constitution of the federal republic of Nigeria (as amended).

Having said that this the question that comes to mind is, is it proper for an action for breach of fundamental rights to be brought under a counter claim?

It is trite law that in determining whether a cause of action comes under fundamental Rights Enforcement procedure Rules, the Court is to closely examine the reliefs sought by the Applicant as well as the grounds for seeking such reliefs and the facts predicated upon. This position was re-echoed in the case of **A.T.A POLY V. MAINA (2005) 10 NWLR (PT.931) 487 AT 502, Paragraphs E-G** Where it was held thus:-

".....It is trite law however, that in order to determine whether a cause could come under the fundamental Rights (Enforcement Procedure) Rules of 1979, the proper approach is to closely examine the reliefs sought by the Applicant, the grounds for such reliefs and the fact relied upon. If such facts disclose that a breach of Fundamental Right is the main plank, then redress may be sought through the Rules....."

See also the cases of **EGBE V. BELGORE (2004) 8 NWLR (PT. 875) 336; SEA TRUCKS NIGERIA LTD. V. ANIGBORO (2001) 2 NWLR (PT. 696) 159.**

Furthermore, it should be noted that the law is settled that Enforcement of Fundamental Rights is a special type of proceedings which is sui generis. And by its nature, it has some conditions precedent to be complied with in filing same. Failure of which, will rob the Court of its jurisdiction to entertain same. In this respect, see the case of **USMAN VS C. O. P (2020) 10 NWLR(PT. 1732) at p 284 parasB-C PER ONIYANGI J.C.A** where the Court held thus:-

"An application for enforcement of fundamental rights must be competent and all the conditions precedent to the filing of the application must be complied with. By order 2 Rule 1 (4) of the Fundamental Rights (Enforcement Procedure) Rules an application should be accompanied with an Affidavit. The Affidavit evidence constitutes a condition precedent to the enforcement of the right. It must happen or be performed before a right which is to be performed dependant thereon accrues."

See also the case of **LOVEDAY V. COMPTROLLER FED.PRISONS, ABA (2013) 11 NWLR (PT. 1386).**

In the instant case, the Counter Claimant did not file any Application which should be accompanied with an Affidavit as required by law for the Enforcement of his Fundamental Rights. This simply means that a condition precedent to the enforcement of fundamental right has not been fulfilled.

In that respect, it is settled law that where a condition precedent to the exercise of Court jurisdiction is not fulfilled, the Court will lack jurisdiction

to entertain the suit. See the case of **MODUKOLU V. NKEMDILIM (1962) ALL NLR 587 at 590**

It is also noteworthy to state here that in such instance where there's an alleged breach of any Fundamental Rights under chapter iv of the CFRN 1999 (As Amended), where a prosecutorial/law enforcement agency is allegedly involved in the breach. It must of necessity be joined as a necessary party in the suit, without which the Court cannot effectively or effectually determine the issues or this case the alleged breach.

In the light of the above, it is my considered opinion that this Honourable Court lacks the requisite jurisdiction to hear and determine the Counter Claim. I so hold.

Therefore, issue two is hereby resolved against the Counter Claimant in favour of the Defendant to Counter Claim.

In the final analysis and based on the totality of the evidence before the Court as well as the interest of justice, I hereby enter judgment in favour of the Claimant against the Defendant and orderas follows:-

(1) That the Defendant shall pay the Claimant the sum of **₦30,000,000.00** (Thirty Million Naira Only) less **₦2,750,000.00** (Two Million Seven Hundred and Fifty Thousand Naira only) being arrears of rent from the 14th day of June, 2015 to the 13th day of June 2020.

(2) That the Defendant shall pay the Claimant the sum of **₦2,000,000.00** (Two Million Naira Only) being the sum of money paid to the Claimant's Counsel to institute this action.

(3) That the Defendant shall pay the Claimant the sum of **₦100,000.00** (One Hundred Thousand Naira only) as cost.

(4) The Counter Claim is hereby dismissed in its entirety.

Signed

Hon. Justice Samirah Umar Bature.

17/11/2022.