IN THE HIGH COURT OF THE FCT, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON THURSDAY, THE 04TH DAY OF MAY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/064/2022

BETWEEN:

1. THE GUGURU COMPANY LIMITED

2. HAKAN & BAHT LIMITED **CLAIMANTS**

AND:

UNITY BANK PLC **DEFENDANT**

RULING/JUDGMENT

RULING

By a Writ of Summons dated the 15th of December, 2021 and filed on the 13th of January, 2022, the Claimants instituted this action seeking the following reliefs against the Defendant:-

a. *A Declaration that the Defendant owes the Plaintiffs a duty of care in ensuring that precautionary measures were taken to safeguard the Plaintiffs against fraudulent activities notwithstanding the fact that they (the Plaintiffs) are not customers of the Defendant.*
b. *A Declaration that the failure of the Defendant to carry out the said duty of care which ultimately resulted in the loss occasioned by the fraudulent activities of the Jedidiah Cement Industry Ltd (a customer of the Defendant) with account number 0051411536.*
c. *A Declaration that the Defendant was in breach of the duty of care when they negligently permitted the fraudulent withdrawal of the monies deposited*

by the Plaintiffs in the account of Jedidiah Cement Industry Ltd notwithstanding the promise they (the Defendant) made to the Plaintiffs before the lodgments were made by the Plaintiffs.

d. *A Declaration that the defendant is bound by the doctrine of promissory estoppel to honour their email of 9th June, 2021 wherein they promised the Plaintiffs that the account of Jedidiah Cement Industry Limited will be restricted from making withdrawals (PND) until the Plaintiffs conclude their transaction with Jedidiah Cement Industry Limited.*

e. *A Declaration that the refusal and/or failure of the Defendant to refute the claims contained in the Plaintiffs' solicitor's letter of 8th September, 2021 amounts to an admission of the facts stated therein.*

f. *An Order directing the Defendant to refund to the Plaintiffs the total sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira only) being the sum of which they negligently released to Jedidiah Cement Industry Limited notwithstanding their promise to the Plaintiffs.*

g. *An Order directing the Defendant to pay the Plaintiffs the sum of ₦100,000,000.00 (One Hundred Million Naira only) being general damages occasioned as a result of the Defendant's negligent act.*

h. *Cost of this action.*

Accompanying the Writ of Summons are the Statement of Claim, the Witness Statement on Oath, eight exhibits, the Certificate of Pre-Action Counselling, the List of Witnesses and the list of Documents.

Because the Claimants intended this Court to enter summary Judgment against the Defendant, they filed a Motion on Notice which was brought pursuant to Order 11 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of this Court. The Motion on Notice, with Motion Number M/922/2022, dated and filed on the 31st of January, 2022, seeks the following single specific relief and the omnibus relief, to wit:

a. *An Order of this Honourable Court entering summary Judgment in favour of the Plaintiffs/Applicants against the Defendant as per the reliefs contained on the face of the Writ of Summons.*
b. *For such other Order(s) that this Honourable Court may deem fit to grant in the circumstances*.

This Motion on Notice is supported by an affidavit deposed to by one Ibrahim Amusan who described himself therein as the Managing Director of the 1stClaimant and the Project Facilitator for the 2ndClaimant. Also accompanying the Motion on Notice are the same documentary exhibits which were attached to the Writ of Summons. Pursuant to the Rules of this Court, the Plaintiffs/Applicants also filed a Written Address.

In the affidavit in support of the application for summary judgment, the deponent narrated how the Claimants were introduced to a company known as Jedidiah Cement Industry Limited (hereinafter in this Judgment referred to as JCIL) in their quest for United States Dollars. In the course of their discussion, the Claimants

and JCIL agreed that the Claimants would deposit the Naira equivalent of the United States Dollars they sought to purchase into the account of JCIL domiciled with the Defendant at its Faskari Street Branch, Area 3, Garki, Abuja with account number 0051411536.

In order to ensure that their funds were secure, the Claimants sent emails to the Defendant notifying them of the impending transfer of funds into the account of JCIL. They sought assurance that the funds would not be dissipated until a further communication had been sent to the Defendant notifying it of the fulfilment of JCIL's part of the agreement. The Defendant, through its officer known as Bulus Timothy Garkuwa, acknowledged the emails and authorized the transfer. These email communications were attached to the affidavit as **Exhibits A1, A2 and B** respectively. It was on the strength of the Defendant's assurance that the Plaintiffs transferred the sum of ₦440,000,000.00 (Four Hundred and Forty Million Naira only) from the 1st Claimant's First Bank of Nigeria Limited account and the sum of ₦706,490,000.00 (Seven Hundred and Six Million, Four Hundred and Ninety Thousand Naira only) from the 2nd Claimant's Guaranty Trust Bank account, making a total of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira only). The statements of account of the Claimants evidencing those transfers were attached to the affidavit as **Exhibits C1 and C2**.

The deponent averred that the Claimants were shocked when the Defendant, without consulting them, permitted JCIL to withdraw the entire lodgments of funds on the 8th, 10th, 11th and 17th of June, 2021. He also stated that JCIL and its

directors disappeared after these withdrawals, thereby leaving the Claimants with huge debts and constant harassment from the Economic and Financial Crimes Commission.

Pursuant to this development, the Claimants wrote a letter to the Defendant demanding a refund of their funds. The letter dated the 8th of September, 2021 was attached to the affidavit as **Exhibit E**. In response, Defendant wrote **Exhibit F** dated the 23rd of September, 2021, assuring the Claimants that it had commenced investigation into the Claimants' complaint. When the report of the investigation was not forthcoming, the Claimants, on the 30th of September, 2021 wrote **Exhibit G** to the Defendant. The Defendant acknowledged receipt of this correspondence on the 4th of October, 2021 but there was no response from the Defendant to it.

It was the case of the Claimants that they altered their position upon the promise by the Defendant to set in motion internal control mechanism to protect their funds, adding that, though they were not customers of the Defendant, the Defendant ought to have exercised reasonable care towards the protection of the funds they placed in the account of the Defendant's customer pursuant to the promise it made in **Exhibit B**.The deponent added that the action of the Defendant was caught up by the doctrine of promissory estoppel.

In the Written Address in support of the application, Counsel for the Claimants formulated a sole issue for determination, to wit: "*Whether considering the facts and evidence adduced, the Plaintiffs are entitled to a summary judgment?*" In his argument on this sole issue, Counsel referred this Court to Order 11 Rule 1 of the

Rules of this Court and the cases of ***Leaders & Company Ltd v. Kerrie-Dee Industries Ltd & Anor (2018) LPELR-45352(CA)*** and ***Lewis v. UBA (2016) LPELR-40661(SC)***. He submitted that the suit of the Claimants was most suited to be heard and determined under the Summary Judgment Procedure.

It was the argument of the Claimants as made out through their Counsel that the circumstances of this case raised questions of promissory estoppel and negligence. Taking the issue of negligence, Counsel, after exploring the judicial explications of the concept of negligence as evinced in a plethora of judicial authorities, submitted that the facts of the case established negligence against Defendant. He highlighted the facts of the case and the communications between the Claimants and the Defendant, specifically, where the Claimants sought assurance that the Defendant would place the account of the Defendant on a Post No Debit status to the extent of the amount they had transferred pending further clearance from the Claimants. It was the case of the Claimants that the Defendant breached its duty of care to the Claimants when it allowed JCIL to withdraw the entire sum they had deposited into the account of JCIL domiciled with the Defendant, notwithstanding the assurance the Defendant had given to the Claimants prior to the deposit, thereby occasioning financial loss against the Claimants. He maintained that the Defendant was liable to the Claimants for negligence even though they were not its customers. He cited the cases of ***Agbonmagbe Bank Ltd v. CFAO (1966) LPELR-25282(SC) AT 8 – 9, PARAS D – B*** and ***Kareem v. UBN Ltd & Anor (1996) LPELR-1665(SC)*** in support of his submissions on this point.

Counsel further argued that the Defendant's action ran afoul of section 66(1)(b) of the Banks and Other Financial Institutions Act and section 6 of the Money Laundering Prohibition Act, 2011 which both enjoined financial institutions to establish internal control mechanisms that would eliminate fraudulent transactions and also to report suspicious transactions to the relevant law enforcement agencies. He referred to the manner of withdrawals of the said lodgments and concluded that the Defendant was negligent.

Counsel, arguing the question of promissory estoppel, referred to **Exhibit B** and submitted that the Defendant's undertaking in that exhibit created promissory estoppel. After referring to a number of authorities on the subject, Counsel maintained that the Claimants proceeded with the transaction because the Defendant assured them that their funds would be safe. Citing the case of ***Bulet International Nigeria Ltd v. Balogun (2001) LPELR-5418 (CA) at 10 – 11, paras G – E***, He pointed out that the doctrine of promissory estoppel applied irrespective of the existence or otherwise of any contractual relationship between the parties.

On whether the doctrine of promissory estoppel could be employed as a sword in making a case for the Plaintiff, he referred to the case of ***Ogundare & Anor v. Executive Governor of Lagos State & Ors (2017) LPELR-41859 (CA)*** and answered the question in the affirmative. He urged the Court to find that the Defendant's approval of the withdrawals by JCIL was deliberate and contrary to the promise the Defendant made to the Claimants. Counsel also referred to **Exhibit E, F and G** and submitted that the Defendant never denied its culpability.

He referred to the case of ***Amber Resources (Nig.) Ltd v. Century Energy Services Ltd. (2018) LPELR-43671(CA)*** and ***Trade Bank Plc v. Chami (2003) 13 NWLR (Pt. 836) 158.*** He therefore urged the Court to enter Judgment summarily in favour of the Claimants.

For all his submissions on the sole issue he formulated, Counsel cited and relied on the following additional authorities: ***Abdullahi & Anor v. Mamza (2013) LPELR-21964(CA); Agi v. Access Bank Plc (2013) LPELR-22827(CA); Bouygues Nig. Ltd/ O. Marine Services Ltd (2012) LPELR-9295(CA); Mothercat (Nig.) Ltd & Anor v. Akpan (2019) LPELR-47158(CA); Abalogu v. SPDC Nigeria Limited (2003) LPELR-18(SC) at 31, paras A – C; BFI Group Corporation v. Bureau of Public Enterprise (2012) LPELR-9339 (SC)*** among other cases.

On the 8th of March, 2022, the Defendant filed its Statement of Defence in answer to the Writ of Summons. It also filed a Counter-Affidavit to which were attached a number of exhibits and an accompanying Written Address. Because it was already out of time in filing its response, the Defendant also filed a Motion on Notice seeking the Order of the Court to regularize its processes before the Court. The Motion on Notice, with Motion Number M/2632/2022 dated the 4th of March, 2022 but filed on the 8th of March, 2022 was moved on the 9th of March, 2022. This Court granted the reliefs sought in the application and adjourned the suit for hearing.

In the Counter-Affidavit which was deposed to by Idris Ibrahim Usman, who described himself as the Branch Manager of the Defendant at the Garki Area 3 Branch, the Defendant denied paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30 and 31 of the affidavit in support of the application. The deponent went on to aver that the Defendant was not aware of any business arrangement between the Claimants and JCIL, adding that JCIL was only its customer and nothing more. It stated that JCIL was not an authorized dealer in foreign exchange as could be seen from **Exhibit 1**, adding that it was not a party to the agreement between the Claimants and JCIL.

It was the case of the Defendant that the Claimants did not reach out to it through official communication channels, but rather chose to exchange emails with Bulus Timothy Garkuwa, who it described as 'a mere accounting officer'. It claimed it only got to know about the transaction on the 3rd of August, 2021 when the EFCC by virtue of **Exhibit 2** notified it of investigation into the accounts of JCIL domiciled in the Defendant. He added that only the account holder, the regulatory institutions and the EFCC had the powers to order the bank to post a no debit status on an account. Though it confirmed that the account of JCIL domiciled with it was credited with the sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira only), the Defendant did not disclose the identity of the payer or payers of the funds. It, however, disclosed that the funds were transferred to another account with account name Jedidiah Universal Company domiciled with Union Bank.

The deponent denied that the Defendant owed the Claimants any duty of care since it was not in any contract with them.He added that the Defendant had always complied with standard regulatory framework in the banking industry. He claimed that the Defendant carried out due diligence when it reported suspicious transactions on the account of JCIL to the regulatory agencies. He also itemized the steps the Defendant took in verifying the information JCIL provided in the account opening procedure. The documents were attached collectively as **Exhibit 5**.He also stated that the Defendant took other steps which led to the apprehension of one Mr Festus Udoh who came to transact on that account. He explained that the reason it did not respond to the letter of 30th September, 2021 was because investigations by the relevant agencies had not been concluded. It attached **Exhibit 7** as evidence of its compliance with standard regulatory practice where suspicious transactions were noted.

It was the case of the Defendant that the doctrine of promissory estoppel could not have applied to the Defendant since it neither knew the Claimants nor did it facilitate its actions. It insisted that it did not owe the Claimants any duty of care. Further to this, it swore that the suit of the Claimants was not suited for the Summary Judgment Procedure. It concluded that the transaction between the Claimants and JCIL was tainted with illegality.

In the Written Address in support of the Counter-Affidavit, Counsel for the Defendant did not formulate any issue for determination. He, rather, argued the case of the Defendant on specific sub-headings. On the issue of whether the claim of negligence could be heard under the Summary Judgment Procedure, Counsel

submitted that the Summary Judgment Procedure was most suited for uncontested and non-contentious suits. He maintained that the facts of this case have removed it from the Summary Judgment Procedure. Counsel listed out the ingredients of negligence and submitted that the Claimants would be required to establish the elements in a full trial which the Summary Judgment Procedure was incapable of.

For his submissions on this point, he cited and relied on ***Lewis v. UBA Plc (2016) 6 NWLR (Pt. 1508) 329 at 34, paras G – H, UBA Plc v. Jargaba (2007) 11 NWLR (Pt. 1045) 247, Akpan v. A.I.P. & Inv. Co. Ltd (2013) 12 NWLR (Pt. 1368) 377 at 400,paras B – D; C.B.N. v. N.D.I.C. (2016) 3 NWLR (Pt. 1498) 1 at 45,paras F – H; ABC Transport Co. Ltd v. Omotoye (2019) 14 NWLR (Pt. 1692) 197*** among other cases in that regard.

On the question of promissory estoppel, Counsel referred the Court to the cases of ***Eze v. Nwaubari (2003) 7 NWLR (Pt. 818) 50 at 69 – 70, paras H – A, Umagba v. Ogbe (1996) 9 NWLR (Pt. 472) 377 at 381 – 382, paras H – A*** and submitted that as a rule of evidence, estoppel was a defence that was available to the Defendant where an issue of fact had been judicially determined in a final manner between the parties. He enumerated the possible contractual relationship that could exist between a banker and a customer and insisted that none of the circumstances existed in the case of the Claimants and the Defendant. He also listed out the conditions that must exist before the doctrine of promissory estoppel would apply. He added that the doctrine of promissory estoppel only prevented a party from insisting on their strict legal right when it would be unjust to allow him to

enforce the right, having regards to the dealings that had taken place between the parties. He added that it did not create a new cause of action. He further cited the case of ***BPS Construction & Engr. Co. Ltd. V. E.C.D.C. (2017) 10 NWLR (Pt. 1572) 1 at 38, paras D – G*** and ***Abalogu v. S.P.D.C. (2003) 13 NWLR (Pt. 837) 308 at 334 – 335, paras G – A***.

On whether the sum claimed was not liquidated damages, Counsel defined the expression 'liquidated money demand' and the factors the Courts must consider in determining whether a sum is liquidated.

On the purchase/trade on US Dollars and the enforceability of illegal agreement, Counsel cited the legal maxim of *ex turpi causa non oritur actio* and submitted that the contract between the Claimants and JCIL offended the provisions of sections 5(1) and 29(1)(c) of the Foreign Exchange (Monitoring and Miscellaneous Provision) Act CAP F34, Laws of the Federation of Nigeria, 2004. He also argued that the law was settled that the Court must not aid a party who was in breach of the law. He cited the cases of ***Olowu v. Building Stock Ltd (2018) 1 NWLR (Pt. 1601) 343 at 394 – 395, paras H – A, 440, para H; Pali v. Addu (2019) 3 NWLR (Pt. 1665) 320 at 331 para C – E*** and submitted that the Court had a duty to protect the law of the land.

On the legal status of the 2nd Claimant and its capacity to sue in Nigeria, Counsel submitted that by virtue of section 567(1) of the Companies and Allied Matters Act, only companies that were incorporated in Nigeria had the capacity to sue and be sued. He, however, acknowledged the exceptions provided for under sections 54,

56 and 59 of that Act. He cited the cases of ***Bank of Baroda v. Iyalabani Co. Ltd (2002) 13 NWLR (Pt. 948) 551 at 558, Enwelu v. Giumex Investment Ltd (2017) LPELR-42777, Corporate Messengers Ltd v. Underwater Engineering (Nig.) Ltd & Anor (2017) LPELR-45216***. He concluded therefore that the capacity of the 2nd Claimant being a subject that was extraneous to the jurisdiction of this Court, the Court should find that the 2nd Claimant lacked the capacity to bring this suit.

On whether declaratory reliefs could be awarded without evidence, Counsel submitted that the Claimant in an action for declaratory reliefs had the onus to place sufficient material particulars before the Court to enable the Court grant judgment in their favour as the claimant must succeed on the strength of their own case and not on the weakness of the case of the Defendant. He also contended that the evidence required to ground declaratory evidence must be oral evidence. He cited the cases of ***Seamarine Int'l Ltd v. Ayetoro Bay Agency (2016) 4 NWLR (Pt. 1502) 313 – 320*** and ***Bulet Int'l (Nig.) Ltd v. Olaniyi (2017) 17 NWLR (Pt. 1594) 260 – 269*** and concluded that the declaratory reliefs sought by the Claimants could not be granted without oral evidence.

The Claimants in answer to the Counter-Affidavit of the Defendant, filed the Applicants' Reply Affidavit and the accompanying Reply Address on the 5th of May, 2022. Because they were out of time in responding to the processes of the Defendant, they filed a Motion on Notice for the Court to extend the time within which they could file their Reply Affidavit and Reply Address and an Order deeming the already filed processes as having being properly filed and served. On the 22nd of November, 2022, the Court heard the application with Motion Number

M/5156/2022 dated and filed on the 5th of May, 2022 and granted the reliefs sought therein. The Court also adjourned the suit for hearing.

In the Reply Affidavit deposed to by the same Ibrahim Amusan, the deponent swore that the 2nd Claimant was a registered entity with registration number 1629326. He averred that it was not necessary to bring out the relationship between the Claimants and JCIL as such information was not relevant to the present suit. He insisted that the promise by the Defendant to restrict access to the account of JCIL was cardinal to the Claimants' transfer of the said sum into JCIL's account and, therefore, made the Defendant a party through the operation of the doctrine of promissory estoppel. He noted that the Defendant had not denied that Bulus Timothy Garkuwa was a member of its staff. He added that it was standard practice for customers of banks to communicate with the account officer of the bank. He also insisted that the communication was made *via* the officer's official email address of bgtimothy@unitybanking.com. He asked the Court to take note of the fact that the Defendant admitted that the officer did send out the email assuring the Claimants of the Defendant's capacity to protect the funds being transferred, but sought to avoid liability by claiming that the email was sent without authorization. The Claimants stated they were not in the position to know the administrative set-up of the Defendant.

It was the further response of the Claimants that the Defendant breached the duty of care it owed the Claimants in the manner it allowed the funds to be dissipated without raising any red flag. He also observed that the Defendant should have informed the Claimants that it lacked the power to place the account on a Post No

Debit status instead of assuring it to proceed to transfer the sum in question. He also highlighted other aspect of carelessness on the part of the Defendant in its relationship with JCIL to include lack of proper verification of the address of JCIL before opening the account for it. He also pointed out that the correspondence between the Defendant and law enforcement agencies had no relevance to the present suit. He concluded that the suit did not call for full trial as the Defendant had admitted the relevant averments of the Claimants material to the present suit.

In the Reply Address, Counsel submitted that the facts which the Defendant had raised were different from the case the Claimants had set up, since the case before the Court had nothing to do with the validity or otherwise of the agreement between the Claimants and JCIL, but resolved around the negligence of the Defendant in allowing JCIL to move the funds the Claimants transferred to JCIL's account domiciled with the Defendant after the Defendant had assured the Claimants that it would ensure the funds remained secure. He cited the case of ***Modebe v. Nwankwo (2015) LPELR-40688(CA)***.

Counsel also maintained that the Defendant's designation of Mr Bulus Timothy Garkuwa as 'a mere accounting officer' could not save the Defendant from liability as the said officer exchanged the email with the Claimants in the course of his official duties and, as such, the Defendant was vicariously liable to the Claimants. He also argued that since the parties were *ad idem* on the actual controversies between them, to wit, whether the Defendant was bound by the actions of Mr Bulus Timothy Garkuwa, there was no need for a full-blown trial. He referred the Court to the cases of ***Agi v. Access Bank Plc (2013) supra and Abdullahi &***

Anor v. Mamza (2013) supra. He also cited the case of ***Iyere v. Bendel Feed and Flour Mill Ltd (2008) LPELR-1578(SC), Dantata & Sawoe Construction Co. (Nig.) Ltd & Anor v. Ajayi (2013) LPELR-20492(CA)*** and ***Ifeanyi Chukwu (Osondu) Co. Ltd v. Soleh Boneh (Nig.) Ltd (2000) LPELR-1432(SC)*** where the Court held that a company could be liable for the negligent actions of its servant.

It was the case of the Claimants that the Defendant was under a misapprehension of the law when it contended that the Summary Judgment Procedure was for only liquidated money demand. Citing Order 11 Rule 1 of the Rules of this Court, Counsel submitted that the procedure was not limited to only liquidated money demand, but also applicable where the Claimant believed the Defendant had no defence to its action. He cited the case of ***Project Ninetheen Ltd & Anor v. Aziz/Stacons & Associates (2014) LPELR-23736(CA)***.

He also submitted that even if the account officer lacked the power to place a Post no Debit on an account, he should have been reasonable enough to inform his superior on the peculiar nature of the transaction and for the officers with the necessary authority to act on his recommendations, adding that the Claimants were right to have acted on the assurances of the account officer for JCIL that it would secure the funds in that account until the Defendant received further instructions from the Claimants. He cited the case of ***Dindi v. Ekeson Brothers Transport Co. Ltd & Anor (2020) LPELR-49523(CA)***.

On the submissions of Counsel for the Defendants that the Claimants were not entitled to any relief sought because the agreement between them and JCIL was

founded on illegality, Counsel for the Claimants contended that the Defendant had not established any crime against the Claimants. He pointed out that the Claimants entered into a business relationship with JCIL because of the latter's representation of its capacity to procure the foreign currency and not because the Claimants were desirous of executing a criminal intent. He added that the settled position of the law was that an innocent party should not be held liable for the actions of a guilty party. he referenced the cases of ***Liman v. State (2016) LPELR-40260(CA)*** and***Pan Bisbilder (Nig.) Ltd v. FBN Ltd (2000) LPELR-2900(SC)***. Citing the provisions of section 29(1)(e) of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Counsel contended that the Defendant's Counsel misapplied the law. He commented on the case of ***Olowu v. Building Stock Ltd (2018) supra*** cited by Counsel for the Defendant by observing that the Court held that the only ground for determining whether a party would recover under an illegal contract depended on whether the party was aware of the illegality.

Counsel reiterated his submissions that the Defendant was bound by the doctrine of promissory estoppel, adding that the Claimants disbursed the funds based on the assurance the Defendant gave them. On whether the Claimants were entitled to the declaratory reliefs they sought; Counsel cited the case of ***Dumez (Nig.) Ltd v. Nwakhoba & Ors (2008) LPELR-965(SC)*** where the Court held that it would grant the declaratory reliefs sought if it was satisfied with the evidence before it. He also invited the Court to take note of the fact that the Defendant did not traverse the argument of the Claimants on the effect of the failure of a party to

respond to a business letter. He cited the case of ***Ugboaja v. Akintoye-Sowemimo (2008) 16 NWLR (Pt. 1113) 278 at 292, para A*** in this regard. He urged the Court to discountenance the submissions of the Defendant and enter judgment in favour of the Claimants.

On the 8th of February, 2023, Counsel for the parties adopted their respective processes on behalf of their respective parties. The Court, after taking arguments on the parties, adjourned for either Ruling and/or Judgment.

In resolving the dispute before me, I hereby formulate the following sole issue: "***Whether upon a consideration of the facts and circumstances of this case it is not appropriate to hear and determine this suit under the Summary Judgment Procedure?***"

The *terminus a quo* in the determination of this issue is a consideration of the provisions of Order 11 of the Rules of this Court 2018. This Order provides as follows:-

1. ***Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application.***

2. *A claimant shall deliver to the registrar as many copies of the processes and documents as referred to in Rule 1 of this Order for the use of the court and service on the defendants.*

3. *Service of processes and documents referred to in Rule 1 of this Order shall be effected in the manner provided under Order 7.*

4. *Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he shall, not later than the time prescribed for defence, file:*

   (a) His statement of defence;

   (b) Depositions of his witnesses;

   (c) The exhibits to be used in his defence;

   (d) Counter affidavit; and

   (e) A written brief in reply to the application for summary judgment.

5. *(1) Where it appears to the court that a defendant has a good defence and ought to be permitted to defend the claim he may be granted leave to defend.*

   (2) Where it appears to the court that the defendant has no good defence the court may enter judgment for a claimant.

(3) Where it appears to the court that the defendant has a good defence to part of the claim, the court may enter judgment for that part of the claim and grant leave to defend that part to which there is a defence.

6. ***Where there are several defendants and it appears to the court that any of the defendants has a good defence and ought to be permitted to defend the claim and other defendants have no good defence and ought not to be permitted to defend the former may be permitted to defend and the court shall enter judgment against the latter.***

7. ***Where provision is made for written briefs under this rule, each party shall be at liberty to advance before the court oral submission to expatiate his written brief.***

The remit of the Summary Judgment Procedure has been pronounced upon in a number of judicial authorities.See ***National Bank of Nigeria Ltd. v. Savol West Africa Ltd. (1994) 3 NWLR (Pt. 333) 435 C.A. at 461 – 462, paras H – A;Lewis v. U.B.A. Plc (2006) 1 NWLR (Pt. 962) 546 C.A. at 567, paras C – D; Nnabude v. G.N.Godiscoy (WA) Ltd. (2010) 15 NWLR (Pt. 1216) 365 C.A. at 379, para G;Resort Savings Loans Ltd. v. Skye Bank Plc (2015) 17 NWLR (Pt. 1488) 225 C.A. at 239, paras D – E; Nig. Breweries Plc v. National Union of Food Beverages and Tobacco Employees (2020) 7 NWLR (Pt. 1724) 499 C.A. at 525, paras C – E.***In***Matab Oil & Gas Ltd. & Anor v. Fundquest Financial***

Services Ltd. & Anor (2020) 17 NWLR (Pt. 1752) 1 C.A. at Pp. 16-17, paras. F-A, the Court held that

> "***The provision of Order 11 of the High Court of Lagos State (Civil Procedure) Rules 2012, summary judgment procedure is a procedure whereby the court gives judgment in favour of a party without a full trial. In a summary judgment procedure, pleadings, hearing of witnesses and addresses are usually by-passed. The judgment is usually based on the writ of summons and the statement of claim. The purpose of a summary judgment is to save time and cost where the defendant obviously has no defence to the action. It is for disposing, with dispatch, virtually uncontested cases. The procedure is for plain and straightforward cases, not the devious and crafty***."

It must be understood that while the Summary Judgment Procedureprovided for under Order 11 of the Rules of this Court is similar to the Undefended List Procedure provided for under Order 35 of the Rules of this Court in the sense that both procedures are resorted to when the Claimant believes that the Defendant has no good defence to their suit, both procedures are, nonetheless, remarkably different. While the Undefended List Procedure is suited for actions for liquidated money demand where the Claimant believes that the Defendant does not have any defence on the merit, the summary judgment is apt for all categories of suits where the Claimant believes that the Defendant does not have a good defence to his suit. In other words, while the Undefended List Procedure is strictly for

liquidated money demand, the province of the subject matter jurisdiction of summary judgment procedure is not closed. See ***Ibrahim v. Gwandu (2005) 5 NWLR (Pt. 1451) 1 C.A. at 27, paras F – G; N. P. A. v. A. I. Co. (2010) 3 NWLR (Pt. 1182) 487 C.A. at 499, paras F – G; Grand Systems Petroleum Ltd. v. Access Bank Plc (2015) 3 NWLR (Pt. 1446) 317 C.A. at 352, para G***.

The Claimants have brought this suit seeking for the reliefs I have set out earlier in this Judgment. Beyond the declaratory reliefs contained in Reliefs Numbers 1, 2, 3, 4 and 5, the Claimants seek an Order of this Court directing the Defendant to refund to the Claimants the total sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira Only) being the sum the Claimants transferred to the account of JCIL domiciled with the Defendant and which funds the Defendant negligently permitted JCIL to withdraw contrary to the promise to secure the funds the Defendant made to the Claimants prior to the deposit of those funds.

The Defendant, expectedly, has denied liability, throwing the buck on one Mr Bulus Timothy Garkuwa who it described as a mere accounting officer. It has also raised certain legal defences to the suit of the Claimants. These legal defences are that a claim that is based on negligence cannot be brought under the Summary Judgment Procedure; that evidence is required to sustain a claim that is founded on promissory estoppel; that the sum claimed is not liquidated damages; that the purchase and trade in United States Dollars was illegal and therefore the reliefs sought arenot grantable on the basis of the Latin maxim, *ex turpi causa oritur actio* (that is, from an immoral consideration an action does not arise); that

the 2nd Claimant is not registered in Nigeria and therefore has no legal capacity to sue and that declaratory reliefs cannot be awarded without evidence.

In order to determine whether this suit can be determined under the summary judgment procedure, it is important to streamline the controversy between the parties. What is the actual dispute between the parties? The gravamen of the Claimants' claims revolves around the sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira only) which they transferred to the account of JCIL domiciled with the Defendant. The understanding between the Claimants and the Defendant, according to the Claimants, is that the Defendant would secure the funds until they have given the Defendant the permission to release the funds. The Claimant's grouse is that the Defendant negligently allowed its customer, JCIL, to dissipate the entire sum even when the Claimants had not given it the green light to so do. The Defendant, on the hand, claimed it was not aware of the transaction between the Claimants and JCIL, adding that it could not be responsible for the conduct of its officer who was in constant communication with the Claimants.

In order to resolve this conundrum, I considered all the documentary exhibits attached to the application for summary judgment and the counter-affidavit filed in opposition thereto.The Claimants attached **Exhibit A**. These are email communications between the Claimants and the Defendant. The first of these emails was sent by one Oluwasegun Idris from the email address oluwasegun.a.idris@firstbanknigeria.com to bgtimothy@unitybanking.com and

copied to one Oyesanya Abayomi Michael. It was sent on the 8th of June, 2021 at 1:13pm. It reads thus:

> *"JEDIDIAH CEMENT INDUSTRY LTD (UNITY BANK ACCOUNT NO. 0051411536)*
>
> *Dear Bulus,*
>
> *At the behest of our* (sic) *who is about to enter into a transaction with your above named customer, we are transferring the sum of N440M. Our customer has requested some form of comfort to enable him move the funds to your customer and also wants the fund to be lien till the 4days transaction cycle is concluded.*
>
> *Kindly write to us confirming the transferred sum is lien in your (subject client) account with your bank till the transaction is consummated and concluded with."*

Oluwasegun Adebayo Isaiah Idris signed off the email as "Business Manager CBG Energy 5, Abuja".

The second email in this bundle of exhibits was from one Ayoola Fagbemi. It was sent to sheilupeju@gtbank.com and bgtimothy@unitybanking.com and copied to ibrahimamusan@gmail.com and edwardnyiter@gmail.com. It was sent on the 9th of June, 2021 at 10:40am. The email reads:

> *"Transfer to Jedidiah Cement Industry Limited*

Please reach out to the banking account officer for Jedidiah Cement Industry Limited.

He is to confirm that the funds being transferred to their companies will be on PND/lien till we conclude our transaction. I have copied both him and the MD.

I have also attached the transfer instruction.

Please initiate the transfer once he acknowledges."

Underneath this email is the following:

"9th June, 2021,
The Manager,
GTBank,
Ilupeju Branch,
Lagos."

The last email was from Bulus G. Timothy. It was sent to Ayoola Fagbemi and sheilupeju@gtbank.com and copied to ibrahimamusan@gmail.com and edwardnyiter@gmail.com. It was sent on the 9th of June, 2021 at 11:28am and reads:

"Dear Ayoola,

Mail acknowledged, kindly proceed with the transactions.

Thank you.

Bulus Timothy Garkuwa

Team Member."

Exhibits C1 and **C2** are evidence of transfer of the funds. **Exhibit C1** is the 1st Claimant's statement of account from FirstBank of Nigeria Limited. It shows that the 1st Claimant transferred the sum of ₦440,000,000.00 (Four Hundred and Forty Million Naira only) from its account to the account of Jedidiah Cement Industry Limited domiciled with the Defendant on the 8th of June, 2021. **Exhibit C2** is the 2nd Claimant's statement of account from Guaranty Trust Bank Limited. It reveals that the sum of ₦706,490,000.00 (Seven Hundred and Six Million, Four Hundred and Ninety Thousand Naira Only) was transferred from its account to the account of Jedidiah Cement Industry Ltd domiciled with the Defendant.

From **Exhibit A1**, Oluwasegun Adebayo Isaiah Idris, a member of staff of FirstBank Nigeria Limited who signed off the email as the Business Manager, CBG Energy 5, Abuja, specifically requested that the Defendant should place a lien on the fund for four days until the transaction with JCIL is consummated. **Exhibit A2**from Ayoola Fagbemi from GTBank specifically requested that the Defendant should place a lien on the funds until the Claimants' transaction with JCIL was concluded. Ayoola further wrote that "*I have copied both him* (obviously referring to the Defendant's Mr Bulus Timothy Garkuwa) *and the MD*".

In paragraph 15 of the affidavit in support of the application for Summary Judgment, the Claimants averred that "*The entire lodgments made into the account of JCIL were moved on the 8th, 10th, 11th and 17th of June, 2021 after*

which JCIL and their directors disappeared into thin air, leaving the Plaintiffs with the responsibility of such huge debts."

What is the answer of the Defendant to this averment of fact and the exhibits highlighted above?

In paragraph 15 of its Counter-Affidavit to the affidavit in support of the application for Summary Judgment, the deponent of the Defendant swore that: "*The Defendant admits as stated in paragraph 14 above of her statement of defence that Jedidiah Cement Industry Limited immediately moved the funds to another account with Union Bank Jedidiah Universal Company. It further states thatit does not know the Plaintiffs and neither did it promise the Plaintiffs that the sums would not be withdrawn.*" In paragraph 16, the deponent averred as follows: "*That the Defendant denies paragraph 15 of the Affidavit in support and states that the Defendants was never aware of any arrangement the Plaintiffs had with Mr Bulus Timothy. That it only got to know about the issue when the Economic and Financial Crimes Commission (EFCC) showed them the email correspondents* (sic) *between Bulus Timothy and the Plaintiffs upon investigation and states further that Bulus Timothy was invited by the EFCC for investigation. The Defendants shall rely on the letter from EFCC dated 2nd September, 2021 in the trial.*"

I do not think that the depositions in these two paragraphs sufficiently answered the statement of fact contained in paragraph 15 of the affidavit in support of the application. First, the depositions failed to address **Exhibit A1 and A2** where the

Claimants through their respective account officers at FirstBank and GTB respectively specifically requested that the funds they were about to transfer be placed on a lien until after four days when their transaction with JCIL was expected to mature. The law is settled that documents attached to an affidavit also form part of the affidavit. So, when such documents are not challenged, they are deemed to have been admitted by the other party. In ***SIL Estate Development Limited & Ors v. Hon. Ignatius Amodu (2022) LPELR-58701(CA) at 28-31, paras. B-A***, the Court of Appeal, per Ige, JCAquoted with approval the dictum of the Supreme Court per Augie, JSC in ***Mathew Iyeke & Ors v. Petroleum Training Institute & Anor (2019) 2 NWLR (PART 1656) 217H to 218 A - D***where the apex Court stated that "***It is settled law that documents attached to an affidavit as exhibits, form part of the affidavit in question.***" In the same case of ***Matthew Iyeke & Ors v. Petroleum training Institute & Anor (2019) supra***, the Supreme Court per Augie, JSC also referred to the case of ***S.E.S.N C. & Ors v. Anwara (1975) 9-11 SC 55***, wherein Fatayi- Williams, JSC (as he then was) observed: "***In Re Hinchcliffe (1895) 1 Ch. 117, it was held that such an exhibit is part of the affidavit, and any person, who is entitled to inspect the affidavit has a right to demand inspection of the exhibits referred to in it. In the view of Lord Herschel, L.C. at 120:- "They form as much part of the affidavit as actually annexed to and filed with it"***".

Second, the averments did not challenge the specific averment contained in paragraph 15 wherein the Claimants swore that the entire funds were dissipated on the 8th, 10th, 11th, and 17th of June, 2021. The Defendant attached an

avalanche of documentary exhibits in support of its averments in its Counter-Affidavit; yet, it did not supply the statement of account of JCIL which only it had the power to produce. Having pleaded the fact in paragraphs 14 and 15 of its Counter-Affidavit that JCIL moved the funds to another account it operated with Union Bank of Nigeria, it should have provided JCIL's statement of account to enable this Court determine whether the withdrawals were, indeed, made on the 8th, 10th, 11th and 17th of June, 2021 as the Claimants claimed. It is my considered view, and I so hold, that the failure of the Defendant to furnish the said statement of account, after it pleaded the fact of the withdrawal of the sum, is detrimental to its defence on this point, in view of the statutory provision contained in section 167(d) of the Evidence Act, 2011 which provides that "***The Court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationshipto the facts of the particular case, and in particular the Court may presume that – evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it***."

Third, the Defendant struggled valiantly to avoid its undertaking to secure the funds of the Claimants as evidenced in **Exhibit B** where its officer, Mr, Bulus Timothy Garkuwa, acknowledged receipt of the Claimants emails, **Exhibits A1 and A2**, and asked them to proceed with the transaction. The attempts of the Defendant in this regard can be seen in paragraphs 6, 7, 8, and 9 of the its Counter-Affidavit where the deponent denied knowledge of the agreement

between the Claimants and JCIL, and paragraphs 10, 11, 12, 16, 18, 20 and 24 of its Counter-Affidavit where it denied ever communicating with the Claimants over the impending transfer of the sum into JCIL's account. Specifically, the Defendant claimed that the Claimants couldnot hold it liable since they dealt with Mr Bulus Timothy Garkuwa who it described as 'a mere accounting officer' in paragraph 10 of its Counter-Affidavit. Incidentally, the Defendant was quick to state in paragraph 11 that the said Mr Bulus was 'the account officer of Jedidiah Cement Industry Limited', the beneficiary of the Claimants' funds.

I find the averments of the Defendant interesting for a number of reasons. First, the Defendant never denied that the said Mr Bulus was a member of its staff. In fact, it acknowledged that he was its officer, just that "*Bulus Timothy Garkuwa does nothave an authority to issue an outgoing mail on behalf of the bank*". See paragraph 12of the Counter-Affidavit. Second, the Defendant denied knowledge of the email communications between Mr Bulus, the Claimants through their respective account officers, Mr Oluwasegun Adebayo Isaiah Idris of FirstBank and Mr Ayoola Fagbemi of Guaranty Trust Bank even though the emails were sent from the official email addresses of the concerned bank officials. Third, the Defendant in paragraph 12 of its Counter-Affidavit denied the existence of the email communications and averred that "*the emails between Bulus Timothy Garkuwa and Oluwasegun Idris and Ayoola Fagbemi were not found in the data bank of the Defendant*". I wonder how this could be possible considering that the emails were sent from the official email addresses of the parties concerned which

were hosted on the domain names of Unity Bank, that is, the Defendant, FirstBank of Nigeria Limited and Guaranty Trust Bank respectively.

In all of these denials, the Defendant acknowledged that Mr Bulus Timothy Garkuwa was a member of its staff, even though it struggled to diminish his status by describing him as 'a mere accounting officer'. The corollary is that the Defendant is bound by the actions of the said Mr Bulus Timothy Garkuwa, its official, and cannot therefore avoid the implications of **Exhibit B**. In ***Conoil Plc v. Solomon (2017) 3 NWLR (Pt. 1551) 50 C.A. at 82, paras C – F***, the Court, citing with approval the case of ***Ifeanyi Chukwu (Osondu) Ltd. v. Soleh Boneh Ltd. (2000) 5 NWLR (Pt. 656) 322***, held that "***Where it is sought to make a master liable for the conduct of his servant, the questions to be established are whether the servant was liable and whether the employer must shoulder the servant's liability. Consequently, to succeed against the master, the plaintiff must prove three things, viz: (a) the liability of the wrongdoer; (b) that the wrongdoer is a servant of the master; and (c) that the wrongdoer acted in the course of his employment with the master***."

The Court went on to hold ***at 81 -82, paras H – B*** of the law report that "***Where an employer expressly authorises his employee to do a particular act which is in itself a tort, the employer is liable in an action in tort at the suit of the person injured. His liability is equally clear where he ratifies a tort committed by his employee without his authority. Where the act which the employee is expressly authorised to do is lawful, and the employee does the act in such a manner as to occasion injury to a third party, the employer cannot***

escape liability on the ground that he did not actually do the injurious act or omission himself." By virtue of this pronouncement, the Defendant cannot avoid liability merely because it did not authorize **Exhibit B**, when it is obvious from the records before me, that it proceeded to allow JCIL, without question, to withdraw the entire sum.

Considering that the Claimants transferred the funds upon the assurance of the officer of the Defendant that it would protect the funds until the transaction between the Claimants and JCIL was consummated, but failed to perform its obligation, thereby leading to the loss the Claimants suffered when JCIL mysteriously transferred the entire sum between the 8th of June, 2021 and the 17th of June, 2021, the Defendant cannot avoid its undertaking contained in **Exhibit B** by such specious denials. I cannot but agree with the Claimants that promissory estoppel was created by virtue of **Exhibit B**.The Defendant had argued in paragraph 1.02 of its Written Address that estoppel exists only when there is a judgment of a court that has determined conclusively the rights of the parties in relation to each other. That, I hold, is only specie of estoppel and it is known as estoppel per rem judicata. That is covered by section 173 of the Evidence Act, 2011. That is not the nature of estoppel before this Court in this suit. What is before this Court is promissory estoppel and it is among the circumstances covered by Section 169 of the Evidence Act, 2011. The said section provides that "***When one person has, either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such***

belief, neither he nor his representative in interest shall be allowed, in any proceeding between himself and such person or such or person's representative in interest, to deny the truth of that thing."

Black's Law Dictionary (8th edition, 2004) at page 1665 defines promissory estoppel as "***The principle that a promise made without consideration may nonetheless be enforced to prevent injustice if the promisor should have reasonably expected the promisee to rely on the promise and if the promisee did actually rely on the promise to his or her detriment***." The same legal lexicon ***at page 1664*** defines estoppel by negligence as "***An estoppel arising when a negligent person induces someone to believe certain facts, and then the other person reasonably and detrimentally relies on that belief***".

In ***Access Bank Plc v. Nigeria Social Insurance Trust Fund (2022) 16 NWLR (Pt. 1855) 143 S.C. at 166 – 167, paras H – C***, the Supreme Court explained that "***Estoppel, in nature, is a conclusion creating a disability, which precludes a party from contending or proving in any legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. There are four kinds of estoppel, viz: estoppel by matter of record, estoppel by deed, estoppel in pais, and promissory estoppel.***" It further adumbrated at *167-168, paras. E-C* of the law report that "***By its operation, a person ought not to be allowed to blow hot and cold, to affirm at one time and deny at another time. That is to say, to approbate and reprobate. Indeed, by estoppel, a person is not permitted to mislead another***

person into believing a state of affairs, only to turn around to deny the existence of such state of affairs to the disadvantage of that other person."

In ***Atungwu v. Ochekwu (2000) 1 NWLR (Pt. 641) 507 C.A. at 518, paras A – B***, the Court held that "***Originally, estoppel could be classified into three categories namely:(a)*** *estoppel in pais;* ***(b)estoppel in writing; and (c)estoppel by matter of record.However, estoppel has been broadened by modern classification to include: (a) estoppel*** *per rem judicatam;* ***(b) estoppel by deed; (c) estoppel by representation; (d) promissory estoppel…***" Speaking further ***at page 518, paras. C-G*** of the law report,Umoren, JCA elucidated further that

> "***The growing nature of estoppel has however, made it difficult to appreciate its typology and I am sure even Lord Denning was no longer very sure of his count. As he put it in*** *McIlkenny v Chief Constable of West Midlands Police Force & Anor* ***(1980) 2 All ER 227 at 235:-***
>
> ***'From that simple origin, there has been built up over the centuries in our law, a big house with many rooms. It is the house called Estoppel. In Coke's time it was a small house with only three rooms, namely: estoppel by matter of record, by matter in writing, and by matter*** *"in pais".* ***But by our time we have so many rooms that we are apt to get confused between them. Estoppel*** *per rem judicatam,* ***issue estoppel, estoppel by deed, estoppel by representation, estoppel by conduct, estoppel by acquiescence,***

estoppel by election or waiver, estoppel by negligence, promissory estoppel, propri- etary estoppel and goodness knows what else'.

He continued:

'These several rooms have this much in common: they are all under one roof. Someone is stopped from saying something or other, or doing something or other, or contesting something or other. But each room is used differently from the others. If you go into one room, you will find a notice saying "Estoppel is only a rule of evidence". If you go into another room you will find a different notice, "Estoppel can give rise to a cause of action". Each room has its own separate notices. It is a mistake to think that what you find in one room you will also find in the others'.

So far so good, one can appreciate that estoppel is not just static but has metamorphosed into different varieties and is applicable according to the facts of a particular case."

The Courts have pronounced on the principle of promissory estoppel in a number of judicial authorities. In the case of ***Trans Bridge Co. Ltd v. Survey International Ltd (1986) 4 NWLR (Pt. 37) 576 at 617, paras F – G***, the Court held that

"***1. There must be in existence, two contracting parties who are contractually bound, or who but for the representation could have been contractually bound.***

"2. There must be a representation, relied upon resulting in something different from what was agreed between the parties. It is not necessary that there should be detriment in the sense of loss or damage.

"3. The representation is not necessarily supported by valuable consideration. It is sufficient merely if it is a promise which has been relied upon."

The Supreme Court enunciated this principle in the case of ***Abalogu v. SPDC Nigeria Limited (2003) LPELR-18(SC) at 31, paras A – C*** per Iguh, JSC in the following effulgent dictum:

"***It is now settled that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party had taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him. He must accept their legal relations as modified by himself,***

even though it is not supported in points of law by any consideration, but only by his word."

In ***Ogundare & Anor v. Executive Governor of Lagos State & Ors (2017) LPELR-41859(CA)***, the Court explained that

"***The nature of promissory estoppel is where by words or conduct, a party to a transaction freely to the other makes an unambiguous promises or assurance which is intended to affect the legal relations between them and the former acts upon it by altering his position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it.***"

Counsel for the Defendant has argued the general principle of law that the doctrine of estoppel cannot be used as a sword by a Plaintiff, but can only be used as a shield by a Defendant. I agree with him in so far as his contention relates to only the general principle of law on the subject. The Courts have, however, distilled exceptions to this general principle; and the doctrine of promissory estoppel, and estoppel by negligence, are the exceptions to this general principle.

The long and short of my elucidatory disquisition on the subject of promissory estoppel simply is that having made the Claimants to alter their positions by virtue of **Exhibit B**, the Defendant cannot be heard denying the existence of **Exhibits A1, A2 and B**. This is particularly so as the Defendant admitted in its Counter-Affidavit that the sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira Only) was transferred to the

account of JCIL domiciled with it, though, for whatever reason, it failed to disclose the identity of the person that transferred the said sum to the account of JCIL. It also admitted that JCIL moved the entire sum to another account domiciled with another bank.

I have reflected on the submissions of learned Counsel for the Claimants on the issue of negligence and the counter-submissions of learned Senior Counsel for the Defendant on the subject. I have also consideredthe averments in both the affidavit in support of the application for summary judgment and the Counter-Affidavit in opposition to same. In challenging the suitability of this suit under the summary judgment procedure, the Defendant has maintained that the claim for damages ought to be heard in a full trial, adding that such cannot be decided on the basis of affidavit evidence.

The Claimants' position that the Defendant was negligent in its dealings with the funds of the Claimants which they transferred to the account of JCIL domiciled with the Defendant could be found in its depositions in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the affidavits in support of the application for summary judgment and paragraphs 3(o), (p), (q), and (s) of the reply affidavit. On the other hand, the Defendant denied it was negligent in the entire event in paragraphs 18, 19, 20, 21, 22, 23, 24, 25, and 29 of the Counter-Affidavit. Both parties attached documentary exhibits to buttress their entrenched positions.

I have reviewed these documentary exhibits. First, in **Exhibits A1 and A2**, the Claimants sought assurances from the Defendant that it would secure the funds

they were about to transfer to the accounts of JCIL domiciled with it. The Defendant gave the assurance in **Exhibit B**. Yet, according to the Claimants in paragraphs 13, 14 and 15 of their supporting affidavits and as conceded by the Defendant in paragraphs 13, 14 and 15 of its Counter-Affidavit, the Defendant allowed JCIL to withdraw the entire sum on the 8th, 10th, 11th and 17th of June, 2021.

Second, the Defendant claimed it conducted due diligence on JCIL before it opened the account with account number 0051411536 into which the Claimants transferred the sum in issue. It attached **Exhibits 1 and 5G**which are the documents of incorporation of JCIL. **Exhibits 1 and 5G**contained the memorandum and articles of association, the particulars of first directors, the statutory declaration of compliance with the requirements of CAMA by a legal practitioner, the names and addresses of the subscribers, the allotment of shares and the particulars of the secretary. The directors, who are the same as the subscribers, both have their addresses as 7th Floor, Churchgate Plaza, Abuja. Curiously, the particulars of registered address of the company was not among the documents of incorporation the Defendant exhibited. However, a search report on JCIL dated the 9th of February, 2021 and attached as **Exhibit 5E** showed that the address of JCIL is 7th Floor, Churchgate Plaza, FCT, Abuja. This is consistent with **Exhibit D** attached to the Claimants supporting affidavit. **Exhibit D** is the search result from the portals of the Corporate Affairs Commission. It depicts the address of JCIL as 7th Floor, Church gate Plaza, FCT, Abuja. Meanwhile, the Defendant attacheda Verify Me Verification Report as **Exhibit 4**. In **Exhibit 4**, the Defendant

verified Suite A07 Peace Plaza A35 Ajose Adeogun Street, Utako, FCT, Abuja as the address of JCIL. A neighbor's comment on the report reads: "*The exact address was located and it is the client's business address*." The name of the neighbor was not provided in the report. The report was submitted to https//verifyme.ng on the 17th of March, 2021. Remarkably, the address on **Exhibit 4** is different from JCIL's address on **Exhibits D and 5E**.Curiously, there is no document from the Defendant that explained this discrepancy or, at least, justified why it continued to maintain the account of JCIL in the face of such manifest contradictions.

Exhibits 5A, 5B and 5C are the particulars of identification of the directors of JCIL comprising their Bank Verification Number (BVN), the National Identification Number (NIN), their international passports as well as the screenshots of their details as captured on the Defendant's computer system. I do not see how these exhibits are relevant to the facts in issue in this case.**Exhibit 5F** which is a reference form incidental to the opening of a current account is of a mere tangential value to this suit.

It is a notorious fact that financial institutions have been known to place a lien on any account whenever suspicious activities occur on that account. Financial institutions do this routinely without being directed so to do by the owner of the account or, even, by the law enforcement agencies. This is standard banking practices and is incumbent on them by virtue of extant statutory provisions that regulate financial institutions and which are directed towards the prevention of

financial crimes. For instance, section 3(1) of the Money Laundering (Prohibition) Act 2011 provides that

> ***"(1) A Financial Institution and a Designated Non-Financial Institution shall – (a) verify its customer's identity and update all relevant information on the customer – (i) before opening an account for, issuing a passbook to, entering into fiduciary transaction with, renting a safe deposit box to or establishing any other business relationship with the customer, and (ii) during the course of the relationship with the customer; (b) scrutinize all on-going transactions undertaken throughout the duration of the relationship in order to ensure that the customer's transaction is consistent with the business and risk profile.***"

Further to this, section 6 provides thus:

> "***(1) Where a transaction – (a) involves a frequency which is unjustifiable or unreasonable; (b) is surrounded by conditions of unusual or unjustified complexity; (c) appears to have no economic justification or lawful objective; or (d) in the opinion of the Financial Institution or Designated Non-Financial Institution involves terrorist financing or is inconsistent with the known transaction pattern of the account or business relationship, that transaction shall be deemed to be suspicious and the Financial Institution involved in such transaction shall seek information from***

the customer as to the origin and destination of the fund, the aim of the transaction and the identity of the beneficiary."

Also, section 10 provides that

"***(1) Notwithstanding anything to the contrary in any other law or regulation, a Financial Institution or Designated Non-Financial Institution shall report to the Commission in writing within 7 and 30 days respectively any single transaction, lodgment or transfer of funds in excess of – (a) N5,000,000.00 or its equivalent, in the case of an individual; or (b) N10,000,000.00 or its equivalent in the case of a body corporate.***"

The Defendant has not furnished any evidence to show that it complied with these statutory requirements in respect of the transactions involving the Claimants' funds. if it had, JCIL could not have dissipated that huge sum of money immediately it was transferred to its account.

I must not fail to note that the Defendant attached **Exhibit 7** which is a form for reporting suspicious activity/transaction. In paragraph 29(a) of the Counter-Affidavit, the deponent averred that "*The Defendant provided all necessary precautionary measures to prevent fraudulent activities. The Defendant never knew of any arrangement, there was never any communication between the Plaintiffs and the Defendant. The Defendant even though*(sic)*does not owe the Plaintiffs a duty of care yet it owes the duty to comply with the provisions of the law and regulatory agencies by reporting suspicious transaction to the regulatory*

authorities. This it did by filing Suspicious Transaction Report when huge sums where (sic) *paid into the account of Jedidiah Cement Industry Limited a customer to its bank. The STR is herein attached and marked as Exhibit 7.*"

I have examined the said **Exhibit 7**. Apart from the name of Jedidiah Cement Industry Limited and its address stated as Suite A07 Peace Plaza No. 35 Ajose Adeogun Street, Utako, Abuja, the RC number of JCIL stated as 1487143, the branch of the bank stated as Garki and the reason for suspicious activity/transaction stipulated as huge cash inflow, and the signatures of the Compliance Monitoring and Enforcement Officer and the Branch Service Manager.There is nothing on the face of the document to indicate that it relates to the transaction in respect of which this suit was filed. The name of the person that paid the money into JCIL was not mentioned. The exact amount paid was not stated. The date of the transaction was not expressed. The date the form was purportedly filled was not seen on the form. The names of the Compliance Monitoring and Enforcement Officer and the Branch Service Manager were not provided on the form. In fact, considering that officers of banks could be transferred from one branch to another, and from one office to another within the same branch, the absence of date on the form to enable whoever that picks up the form to determine the persons who occupied those offices on that date and to attach responsibility accordingly leaves a lot to be desired. In fact, I will be charitable to describe **Exhibit 7** as lacking probative value. It is evidentially worthless. Though there is no date on **Exhibit 7**, it is safe to infer that it seems to have been made as an afterthought in view of the pendency of this suit and is,

therefore, caught in the web of section 83(3) of the Evidence Act which provides that "***Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.***"

It is my considered view, and I so hold, that upon a dispassionate evaluation of the evidence before me as disclosed in the affidavit evidence and the documentary exhibits annexed thereto, there is nothing new this Court will be expected to unearth in a full-blown trial. The depositions in the affidavit in support of the application for summary judgment and the Counter-Affidavit in opposition thereto and the exhibits attached thereto support the allegations of negligence as asserted by the Claimants. Moreover, the Court has laid down the principle a very long time ago that it is not in all cases that particulars of negligence must be pleaded and proved in a full-blown trial. What matters is that the Court can see the facts of negligence from the evidence before it. See **Eseigbe v. Agholor (1990) 7 NWLR (Pt. 161) 234 C.A. at 246 – 247, paras G – A** where the Court held that "***Failure to supply particulars, important to proper pleading as it is, is neither a bar to relying on other evidence of negligence nor is it necessarily fatal to a claim in negligence***."

This is more so as the Defendant did not deem it fit to reply to **Exhibit G**. The law is settled that a party who fails to respond to an official correspondence is deemed to have admitted the content of that correspondence. Its defense that it was waiting for the report of the investigation by the law enforcement agencies is of no

moment. In ***Thompecotan & Sons Nigeria Limited v. Jos South Local Government Council (2021) 4 NWLR (Pt. 1766) 277 C.A. at 289, paras A – B***, the Court held that "***The failure by a party to reply a business letter which by its contents requires a response amounts to an admission of what is contained therein.***" Similarly, in ***Kabo Air Ltd. v. Mumi Bureau De Change Ltd. (2020) 4 NWLR (Pt. 1715) 488 C.A. at 506 paras G – H***, the Court held that "***The law allows an inference to be drawn that the failure or refusal of a person to reply to a demand letter amounts to admission of liability. However, itis not conclusive***."

I agree with learned Counsel for the Claimants in their argument in paragraph 2.10 of their Reply Address that the cases of ***Agi v. Access Bank Plc (2013) LPELR-22827(CA) and Abdullahi & Anor v. Mamza (2013) LPELR-21964(CA)*** have simplified the tort of negligence. As pontificated by the Courts in a long line of judicial authorities, the tort of negligence is founded once the Plaintiff has established the existence of these three ingredients: first, that the Defendant owed the Plaintiff a duty of care; second, that the Defendant breached that duty of care; and, third, that as a result of that breach, the Plaintiff suffered injury or damages. See, for instance, the case of ***ABC Transport Co. Ltd v. Omotoye (2019) 14 NWLR (Pt. 1692) 197***. It is my considered view, and I so hold, that these elements have been made out from the affidavit evidence before me. It is immaterial that the Claimants are not customers of the Defendant. See ***Agbonmagbe Bank Ltd v. CFAO (1966) supra*** and ***Kareem v. UBN Ltd & Anor (1996), supra***.

Quickly, I shall touch on the contention of the Defendant that the present suit of the Claimants is not for a liquidated damage, that the agreement between the Claimants and JCIL was illegal, that the 2nd Claimant is not registered in Nigeria and therefore lacks the legal capacity to sue and be sued in Nigeria and that declaratory reliefs cannot be awarded without evidence. I have pointed out earlier that the Summary Judgment Procedure is for actions where the Claimant believes that the Defendant does not have a good defense to his claims. See Order 11 Rule 1 of the Rules of this Court. I have also noted that Order 35 of the Rules of this Court regulates the Undefended List Procedure where the claims of the Claimant are for a liquidated money demand. Order 35, therefore, would have been unnecessary and otiose if the intendment of the draftsmen of the Rules of this Court is for Order 11 to apply to claims for liquidated money demand. Though it may be argued that the Summary Judgment Procedure under the Rules of Court of other jurisdictions such as Lagos State for instance may deal with liquidated money demands, same is not the case under the Rules of this Court.Under the Rules of this Court, the provisions of Order 11 are unambiguous and the extent of its application determinate. I agree with the Claimants' submissions in paragraphs 2.11 and 2.12 of their Reply Address that the Defendant misconstrued the provisions of Order 11 of the Rules of this Court. It is in view of this, therefore, that I discountenance all the arguments of the Defendant on this subject.

The Defendant dedicated paragraphs 8, 9, 10, 11, 16, 23, 24, 28, 33 and 34 of its Counter-Affidavit and paragraphs 4.00, 4.01, 4.02, 4.03, 4.04 and 4.05 of its Written Address to contend that the Claimants entered into an illegal contract with

JCIL and, therefore, should not be heard to complain. It also argued that the 2nd Claimant in fact, lacks the legal and equitable standing to approach the court for reliefs. It also attached a number of exhibits in support of its claims.

First, it must be noted that it is the claim of the Claimant that determines the jurisdiction of a Court. In ***Skypower Exp. Airways Ltd. v. U.B.A. Plc (2022) 6 NWLR (Pt. 1826) 203 S.C. at 242 paras B-G***, the Court held that "***It is the claimant's case that vests jurisdiction on the court. A valid writ of summons is sine qua non to the assumption of the requisite jurisdiction by a court to entertain or adjudicate over a matter commenced by that process. The court will not look at a defendant's processes to determine whether it has jurisdiction. The onus is on the claimant to ensure that his action at the trial court was originated by due process of law. That duty has never been that of the defendant.***"

What the Defendant has sought to do in its Counter-Affidavit is to set up a case entirely different from the case of the Claimants. The claim before this Court does not border on the agreement between the Claimants and JCIL as the Defendant has strenuously contended. The live issues before this Court is whether the Defendant did not breach the duty of care it owed the Claimants when it ought to have secured the sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira only) being the funds of the Claimants which they transferred to a customer of the Defendant upon the promise and assurance it gave in **Exhibit B** and which entire funds it allowed its customer to withdraw on the 8th, 10th, 11th and 17th of June, 2021 without

exercising the requisite internal control mechanisms expected of a financial institution. In setting up an entirely different case as part of its defense, the Defendant committed the logical fallacies of the Strawman and the Red Herring.

Second, where crime is alleged in a civil proceeding, the standard of proof is no longer that on a balance of probability; the standard of proof in this case is proof beyond reasonable doubt. Section 135(1) of the Evidence Act, 2011 provides that "***If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt***." The Defendant did not adduce any evidence that shows that the Claimants entered into any agreement in order to perpetrate illegality. It is obvious that the intendment of the Defendant is to draw this suit out of the Summary Judgment Procedure into protracted hearing. As I have pointed out, the agreement between the Claimants and JCIL is not in issue in this suit. This Court will therefore not be drawn into that bait.

What I have seen from the affidavit evidence before me is a case of persons who needed to purchase foreign currency and they entered into an agreement with another person who represented that it had the capacity to supply the said foreign currency. The Claimants acted on this representation by JCIL and transferred the sum to its account domiciled with the Defendant. To make assurance doubly sure, in the words of Macbeth, in William Shakespeare's eponymous play, the Claimants sought an undertaking from the Defendant that the Defendant would place a lien on the funds until they had concluded their transaction with its customer. The Defendant agreed and sent an email to that effect. Sadly, the

Defendant failed to fulfil its undertaking, but, without any checks, allowed its customer to dissipate the entire sum within four days. This action of the Defendant gave rise to the cause of action which culminated to this suit. If the Defendant had kept to its undertaking in **Exhibit B**, JCIL could not have dissipated the funds, the cause of action bordering on promissory estoppel and negligence would not have arisen, and this suit would not have been necessary.

Third, the depositions in the Counter-Affidavit indicate that the Economic and Financial Crimes Commission stepped in after the illegal withdrawals had been made and not prior to or after the Claimants had transferred the sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira Only) to the account of JCIL domiciled with the Defendant. I have scrutinized all the exhibits which relate to the investigation activities on all the bank accounts of JCIL by the Economic and Financial Crimes Commission, the relevant departments of the Nigerian Police Force, the Orders of the Federal High Court (Lagos Division), the Magistrate Court of the Federal Capital Territory, Abuja, and the High Court of Oyo State. Some of these documents were marked as **Exhibits 2 and 3**, while others were unmarked. Those unmarked are a letter from the Office of the Commissioner of Police, the Nigeria Police Special Fraud Unit (FCID), Lagos dated the 15th of November, 2021, a letter from the Assistant Commissioner of Police Special Enquiry Bureau/Public Ethics and Procurement Fraud, Force Criminal Investigation Department, the Nigeria Police Force headquarters, Area 10, Garki, Abuja to the Defendant dated the 21st of September, 2021, a letter from the Assistant

Inspector-General of Police, Force Criminal Investigation Department Annex to the Defendant dated the 13th of September, 2021, a letter of invitation from the Commissioner of Police, Financial Malpractices Investigation Unit of the Nigeria Police Special Fraud Unit Annex, Lagos to the Defendant dated the 16th of September, 2021, a letter from Interpol to the Defendant dated the 17th of August, 2021, a suspicious-looking order from the Magistrate Court of the Federal Capital Territory, Abuja with no name of the Magistrate and no date on the face of it directed at the Defendant, a letter from the Commissioner of Police Financial Malpractices Investigation Unit of the Nigeria Police Special Fraud Unit Annex, Lagos to the Defendant dated the 5th August, 2021, Banker's Order from the High Court of Oyo State dated the 16th of August, 2021, a letter from the Assistant Inspector-General of Police, Force Criminal Investigation Department Annex, Lagos to the Defendant dated the 30th of July, 2021, and an *exparte* order of the Federal High Court sitting in Lagos dated the 22nd of October, 2021. Instructively, none of these documentary exhibits related to, referred to, or, even, mentioned the Claimants. It is my considered view that the Defendant has failed to establish *primafacie*criminal culpability on the part of the Claimants. Accordingly, the Latin maxim *ex turpi causa non oritur actio* ("froman immoral consideration an action does not arise") is inapplicable. I so hold.

On whether the 2nd Claimant can sue in Nigeria since it is not a company registered in Nigeria, it remains to be said that the Claimants, in their Reply Affidavit, swore in paragraph 3(a) that "*the 2nd Plaintiff is a registered legal entity under Nigeria law with RC number 1629326*". This deposition contains information

that is readily verifiable. The fact that the Defendant did not challenge this fact by filing a Further Counter-Affidavit is conclusive proof that the deposition is true. See ***Kayili v. Yilbuk (2015) 7 NWLR (Pt. 1457) 26 S.C. at 57 – 58, paras H – A, 70, paras C – E; Haruna v. State (2022) 15 NWLR (Pt. 1855) 1 S.C. at 23, para B; Onwuta v. State of Lagos (2022) 18 NWLR (Pt. 1863) 701 S.C. at 721, paras. E-H; First Bank of Nigeria Plc v. Standard Polyplastic Ind. Ltd. (2022) 15 NWLR (Pt. 1854) 517 S.C. at 550, paras. G-H; Mohammed v. State (2023) 3 NWLR (Pt. 1870) 157 S.C***. In any case, section 84(b) of the Companies and Allied Matters Act provides that "***nothing in this Chapter shall be construed as affecting the rights or liability of a foreign company to sue or be sued in its name or in the name of its agent***." I therefore discountenance all the arguments of the Defendant on this subject, as well as the authorities learned Counsel cited to advance his arguments on this subject.

Finally, on the question of whether the Claimants are entitled to the reliefs they are seeking in this suit, the Defendant through its Counsel contended that a Plaintiff who sought declaratory reliefs must establish his entitlement to same through cogent evidence. This Court agrees with him, as that position represents the current status of the law on declaratory reliefs. He however contended that declaratory reliefs cannot be granted without oral evidence. This cannot be entirely true, otherwise, Courts will not hear and grant reliefs in suits commenced by way of Originating Summons and Originating Motion which are determined on the basis of affidavit evidence.It is important to note that declaratory reliefs are in the nature of equitable reliefs. In ***Dagazau v. Bokir Int'l Co. Ltd. (2011) 14 NWLR***

(Pt. 1267) 261 C.A. at 340, para B, the Court held that "***declaratory remedies are equitable in nature and a claimant who seeks declaratory remedies must do so with clean hands***."

On when declaratory reliefs may be granted, the Supreme Court held in ***U.T.C. (Nig.) Plc v. Peters (2022) 18 NWLR (Pt. 1862) 297 S.C. at 313, paras A – B***, that "***A declaratory relief will be granted where the plaintiff is entitled to relief in the fullest meaning of the word***." On how a Plaintiff can establish his entitlement to the reliefs "***in the fullest meaning of the word***", the Court answered the question in the case of ***Nduul v. Wayo (2018) 16 NWLR (Pt. 1646) 548 S.C. at 586,paras E – G*** where the apex Court held that

> "***Where a claimant seeks declaratory reliefs, the burden is on him to prove his entitlement to those reliefs on the strength of his own case. A declaratory relief will not be granted even on admission. The claimant is also not entitled to rely on the weakness of the defence, if any. The rationale for this position of the law is that a claim for declaratory reliefs calls for the exercise of the court's discretionary powers in favour of the claimant. Therefore, the claimant must place sufficient material before the court to enable it exercise such discretion in his favour***."

This principle, which was established long before this case was decided, has been reiterated and followed in a number of decisions such as ***Oni v. Gov., Ekiti State (2019) 5 NWLR (Pt. 1664) 1 S.C.; Adamu v. Nigerian Airforce (2022) 5 NWLR***

(Pt. 1822) 159 S.C. at 177, paras F –G; 178, paras E – G; 183 – 184.; and ***Amobi v. Ogidi Union Nigeria (2023) 1 NWLR (Pt. 1864) 153 S.C. at 182-183, paras. F-C*** where the Court held, in the last case, that

> "***A claimant seeking declaratory reliefs has the legal burden to establish his claim. He must succeed on the strength of his case and not on the weakness of the defendant's case. In other words, the claimant must plead and prove his claims for declaratory reliefs on the evidence called by him without relying on the evidence called by the defendant. The burden of proof on the claimant in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant, where the plaintiff fails to establish his entitlement to the declaration by his own evidence. A claimant must prove to the satisfaction of the court that he is entitled to the declaratory relief sought. He cannot point fingers at any weakness, omission, or default on the part of the defendant. He stands or falls on the strength of his case; if his case is strong, he wins, and if his case is weak, he loses.***"

In view of these authorities, I hasten to disagree with learned Senior Counsel for the Defendant that the Claimants ought to adduce oral evidence in proof of their claims. This contention is at variance with the law. What is required is that the evidence be cogent, compelling and compelling "***in the fullest meaning of the word***".

For the above reasons, therefore, the specific relief sought in the Motion on Notice with Motion Number M/922/2022 dated and filed on the 31st of January, 2022, to wit, "*An Order of this Honourable Court entering summary judgment in favour of the Plaintiffs/Applicants against the Defendant as per the reliefs contained on the face of the writ of summons*" is hereby granted as prayed.

JUDGMENT

In view of the foregoing reasoning of this Court as set out in the Ruling above, this Court hereby finds that the Defendant has no good defense to the suit of the Claimants. There is no reason, therefore, for this Court to go into a full-blown trial in this suit. The facts and evidence before this Court are enough to enable this Court determine this suit under the Summary Judgment Procedure. Accordingly, Judgment is hereby entered in favour of the Claimants and against the Defendant on the following terms:-

1. **THAT the Defendant is bound by the doctrine of promissory estoppel to honour their email of 9th June, 2021 wherein it promised the Claimants that the funds the Claimants would transfer to the account of Jedidiah Cement Industry Limited domiciled with the Defendant would be restricted until the Claimants had concluded their transaction with Jedidiah Cement Industry Limited.**
2. **THAT the Defendant owes the Claimants a duty of care in ensuring that precautionary measures consistent with standard banking practices were taken to safeguard the Claimants against fraudulent**

activities notwithstanding the fact that the Claimants are not customers of the Defendant.

3. **THAT the Defendant was in breach of the duty of care when it negligently permitted its customer Jedidiah Cement Industry Limited to withdraw on the 8th, 10th, 11th and 17th of June, 2021 the entire sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira only) which the Claimants had deposited in its account domiciled with the Defendant notwithstanding the promise the Defendant made to the Claimants before the lodgments were made by the Claimants that the fund would be secure until the Claimants otherwise direct.**
4. **THAT the failure of the Defendant to exercise that duty of care by complying with standard banking practices especially where huge cash inflows and outflows are involved ultimately resulted in the loss occasioned the Claimants by the withdrawals of the funds of the Claimants by Jedidiah Cement Industry Ltd (a customer of the Defendant) with account number 0051411536.**
5. **THAT the refusal and/or failure of the Defendant to respond to the Claimants' solicitor's letter of 8th September, 2021 amounts to an admission of the facts stated therein.**
6. **An Order of this Court is hereby made directing the Defendant to refund to the Claimants the total sum of ₦1,146,490,000.00 (One Billion, One Hundred and Forty-Six Million, Four Hundred and Ninety Thousand Naira only) being the Claimants' funds which the Defendant**

negligently released to Jedidiah Cement Industry Limited notwithstanding its promise to the Plaintiffs to place a lien on the said sum until the Claimants had consummated their transaction with Jedidiah Cement Industry Limited.

7. **An Order of this Court is hereby made directing the Defendant to pay the Claimants the sum of ₦10,000,000.00 (Ten Million Naira only) as general damages for the loss of reputation, loss of business opportunities and the loss of clientsthe Defendant's negligent act has occasioned the Claimants.**
8. **This Court hereby award the sum of ₦1,000,000.00 (OneMillion Naira only) against the Defendant and in favour of the Claimants as cost of this action.**

This is the Judgment of this Court delivered today, the 04th day of May, 2023.

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HON. JUSTICE A. H. MUSA
JUDGE
04/05/2023

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