IN THE DISTRICT COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT WUSE ZONE 2- ABUJA (COURT 14)
BEFORE HIS WORSHIP OLUMIDE BAMISILE.
DATED THIS 15TH DAY OF SEPTEMBER, 2023.

BETWEEN SUIT NO: SC/01/2023

IRONBRAND INVESTMENT DEV. LTD.....CLAIMANT

AND

ATTAHIRU MOHAMMED HALIRU.....DEFENDANT

JUDGMENT

This suit was instituted by the claimant under the Small Claims procedure via small claims complaint form SCA2 dated 15/8/2023 wherein the claimant claims against the defendant a debt in the sum of ₦306,000 (Three Hundred and Six Thousand Naira) being a rent refund of the claimant's terminated tenancy.

Hearing commenced in this suit on the 1/9/2023, the claimant opened its case by calling one Ms. Elsy Okekpe who testified as PW1, the witness in her adopted witness statement on oath dated 30/8/2023 stated that she is a staff and representative of the claimant and conversant with facts of this case. She stated that the defendant is their former landlord of a One (1) bedroom apartment which tenancy was to expire on the 31st of December, 2022 but the defendant asked them to move out on the claim that they sublet the apartment and that the defendant lodged a complaint at the police station. The witness stated that the defendant invited her to the police station at Area 11 Garki, Abuja and a compromise was reached between the parties which it was agreed that the tenancy should be terminated with a deal to the effect that the defendant will refund the total sum of ₦306,000 (Three Hundred and Six Thousand Naira) to the claimant as balance of its remaining rent and deposit for diesel consumption immediately the claimant moves out of the property and that an undertaking was signed by both parties. The

witness stated that it was mutually agreed that the claimant should move out on the 18th of November, 2022 and that the refund will be made same day. That the claimant had moved out and the defendant refused to make a refund payment till date. The witness further stated that on the 21st of November, 2022, the defendant further wrote an undertaking and signed with a promise to pay the money on the 28/11/2022 but failed to honour the said undertaking. That this caused the claimant to engage the services of Emilia Uzoamaka Okonji Esq of Seasoned Legal Practitioners to serve on the defendant a letter of demand dated 28th November, 2022, that the defendant refused to accept the letter of demand. That the defendant has refused to refund the said sum till date, as the claimant is in need of the money to enable it look for an alternative accommodation.

The claimant through the PW1 tendered the following documents in evidence;

1. Copy of terms of settlement dated 17/11/2022 admitted as Exhibit AM.
2. Copy of letter of undertaking dated 21/11/2022 admitted as Exhibit AM 1.
3. Copy of letter of demand dated 28/11/2022 together with affidavit of service dated 9/2/2023 admitted as Exhibit AM 2.

During cross examination of PW1, the witness maintained that she is a staff and a manager of the claimant, she maintained that the claimant via a power of attorney donated the power to institute this action to the lawful attorney. The witness maintained that the power of attorney document is between the claimant and her lawyer, that she is not aware if same is before this Court. The witness confirmed that Exhibit AM & AM1 were written at the police station. The witness stated that she cannot remember when she vacated the premises but that the defendant inspected the premises

after they were done packing. The witness maintained that the letter of demand in Exhibit AM 2 was served by the claimant's counsel on the defendant upon the claimant's instruction. The witness stated that the company informed her that Exhibit AM2 was served on the defendant but conceded to not having any signed acknowledgment copy before this Court. The cross examination of PW1 was concluded and the witness was discharged in the absence of any re-examination. The claimant closed his case.

The defendant on the same day opened his defence, wherein he testified as DW1, the defendant in his adopted witness statement on oath dated 31/8/2023 stated that he is the former landlord to the claimant whose tenancy expired at one bedroom apartment on the 31/12/2022. The defendant stated that he rented the one bedroom apartment to Mr. Michael of IRONBRAND INVESTMENT DEVELOPMENT CO. LTD for residential purpose in December 2021. That while the tenancy was still running, he received several complaints from neighbourhood about strange activities that were taking place in the said one bedroom occupied by the claimant. The defendant stated that the guard on the premises also complained to him about how he always opened gate for people who visits the apartment let to the claimant at different odd times at nights and early mornings, that the guard also complained about a video shot done in the apartment and how a fight also broke out. That sometime in October 2022 a squad of the NDLEA stormed the compound in search of someone, that after he introduced himself to the officers, he was asked to step aside to enable them do their job. The defendant stated that he eventually found out that the one bedroom apartment rented to Mr. Michael was being used as a hotel, bed and breakfast. That he also got a strange call one day from a person claiming to be a tenant in the compound, that this made him come to the conclusion that the said one bedroom apartment was being used as a bed and breakfast. The defendant also stated that

the said lodger of the claimant forwarded to him bank transactions to show payments which he has been making to Ms. Elsy Okepeke. That based on all above, he confronted Mr Michael will all the activities going on in the said apartment which is meant for residential purpose and thereafter informed Mr. Michael that he would not allowing him renew his rent. That Mr. Michael denied that the said apartment was being used for commercial purpose and that the said activities continued. The defendant stated that this made him instruct his lawyer to make a formal petition to the Nigeria Police Force on the issues happening in the apartment in a bid to put an end to same. That Mr. Michael did not show up at the Nigeria Police Force FCT Command office but Ms, Elsy Okepeke was present with one Mrs Ngozi of Ironbrand. That it was at the Force Command that the claimant agreed to move out of the one bedroom apartment on the 18/11/2022 and same was reduced into written settlements. That contrary to the agreement reached on the 17/11/2022 before the Nigeria Police Force, the claimant refused to move out of the premises until the expiration of the term. The defendant stated that he had no contact with the claimant or any of her agent since their last meeting at the Nigerian Police Force Command office. The defendant also stated that he did not receive any letter or any other information whether written or verbal from the claimant informing him of their vacating the apartment or a date of when they will intend to do so for his inspection of the apartment. The defendant stated that he did not evict the claimant or try to evict her but only insisted that he would not be renewing their rent which ended in December 2022. That the one bedroom apartment rented to the claimant was in a pristine condition but however that was not the case when the claimant moved out of the apartment without notice. The defendant further stated that the written terms of settlement and his undertaking to refund the sum of ₦306,000 to the claimant on vacating the premises on the 18th November 2022

has been overtaking by events of the claimants' refusal to deliver up vacant possession of the premises. The defendant stated that he was not served with the letter of demand dated 28th November 2022 or any other sorts whatsoever in respect of the subject matter. That the claim of the claimant that the said demand letter was pasted on the wall or any part of the apartment is not true as there is no snap photograph attached to the affidavit of service of the said demand letter.

The defendant tendered the following documents in evidence;

1. Printout of account statement admitted as Exhibit AM3
2. Copy of letter of petition dated 11/11/2022 admitted as Exhibit AM4.

The defendant also deposed to a counter affidavit of service dated 31//8/2023.

During the cross examination of the defendant (DW1), the defendant admitted knowing Mr. Michael of Ironbrand, the defendant admitted that Mr. Michael moved into the apartment as a tenant in December, 2021 but stated that he does not have any tenancy agreement or document to show that Mr. Michael moved in December 2021. The defendant maintained that it was an oral agreement he had with Mr. Michael in respect of the premises, the defendant maintained that the premises was let out to Mr. Michael for residential purpose. The defendant maintained that NDLEA officers visited the compound in search of someone. He stated that the name of the claimant's lodger who contacted him is one Mr. Dozie. The defendant admitted to signing the terms of settlement in Exhibit AM, as well as the undertaking in Exhibit AM1. The defendant stated that the Exhibit AM1 was signed by him on the condition that the claimant will only be paid after they have vacated the premises. The defendant maintained that he does not know when the claimant moved out but stated that he visited the premises sometimes in January and let

same out in February. The cross examination of DW1 was concluded; the defendant closed its case.

Both parties waived their right to file final written address and this matter was subsequently adjourned to today for judgment.

I have carefully considered the testimonies of the witnesses, the exhibits tendered in evidence and two judicial authorities supplied by the defendant's counsel to the Court after parties closed their case. The authorities are as follows;

i. ***UNITED NIG CO. LTD V. NAHMAN (2000) 9 NWLR PT 671 AT 187-188.***
ii. ***OMMAN V. EKPE (2000) 1NWLR PT 641 @ 368 PARA 8.***

I shall address the principles in the above judicial authorities as it relates to the issues in this present suit as the need arise in the course of this judgment.

The principle in the case of ***UNITED NIG CO. LTD V. NAHMAN (2000) 9 NWLR PT 671 AT 187-188*** being one that bothers on the jurisdiction of this Court in relation to the competency of this suit shall be foremost addressed. The position of the law as held in this above mentioned case is that an agent acting under a power of attorney should as a general rule act in the name of the principal. If he is authorised to sue on the principal's behalf, the action should be brought in the principal's name.

What is the relation of the above cited case to this present case as hand? The claimant in this case is no doubt a juristic entity in abstract that operates through its alter ego and has the capacity to sue and be sued. A glance at the title of this suit indicates the name of the claimant as Ironbrand Investment Development Co. Ltd (Suing through his lawful attorney Emila Okonji Esq).

It is trite law that where a Plaintiff claims to protect the interest of its principal under a power of attorney, the suit must be brought in

the principal's name or at least in the agent's name acting on behalf of the donor of the power of attorney but certainly not by the done in his own right.

Furthermore, an agent acting under a power of attorney should as a general rule, act in the name of the principal. If he is authorized to sue on the principal's behalf, the action should be brought in the principal's name.

In the case of ***VULCAN GASES LTD V. GESSELLSCHAFT FUR INDUSTRIES (2001) 87 LRCN 1577*** the Supreme Court held that where a donee fails to reflect the name of its principal in a suit then such suit is in competent. See also ***NWEKE & ANOR V. NWEKE (2014) LPELR-23563(CA), UDE V. NWARA (1993) 2 NWLR (PT 277) 638.***

The question to ask at this juncture is whether Emilia Okonji Esq the lawful attorney to the claimant instituted this suit solely in her name? The answer to the above question is in the negative, as this present suit was instituted in the name of Ironbrand investment Development Co. Ltd as the claimant who is the principal of Emilia Okonji Esq.

This suit having been instituted in the name of Ironbrand Investment Development Co. Ltd as the claimant is properly instituted in the name of the proper party, it would have been the other way round had it been that this suit was initiated solely in the name of the lawful attorney without any reference to the principal's name.

Flowing from the above said, this Court holds that this suit is competent having been initiated in the name of the claimant, to this end this present suit has not violated the principle of law in the case of ***UNITED NIG CO. LTD V. NAHMAN (SUPRA),*** I so hold.

Forging ahead, the sole issue for determination by this Court is;

"*Whether the claimant has proved its case to be entitled to the sum claimed against the defendant*"

Generally, in civil cases, the ultimate burden of establishing a case is as disclosed in the pleadings. The burden is therefore on the person who will fail, if upon completion of pleadings no evidence is led thereon on either side. In other words, the general or legal burden of proof is upon the party, whether plaintiff or defendant who asserts the affirmative of the issue. It is a trite law that he who asserts must prove. It is also trite law that a party who desires Judgment to be given in his favor on the basis of the existence of certain facts must prove that those facts exist. See ***OKONKWO V. OKOLO (2016) LPELR-40931(CA)***.

The gamut of this whole suit bothers on the claim of debt in the sum of ₦306,000 (Three Hundred and Six Thousand Naira) against the defendant, the case of the plaintiff is hinged on the terms of settlement dated 17/11/2022 and letter of undertaking dated 21/11/2022 admitted in evidence as **Exhibit AM & AM1** which was purportedly executed between the parties. A perusal of **Exhibit AM** indicates that the claimant and defendant mutually agreed to terminate the tenancy of the claimant at the defendant's one bedroom apartment and that upon the claimants' vacation of the premises; the defendant shall refund to the claimant the sum of ₦306,000 (Three hundred and Six Thousand Naira) being balance of rent and the deposit for diesel.

The position of the law is that in civil matters, parties are bound by their agreement. The Courts generally do not interfere in the manner that parties choose to do business with each other as long as it is not criminal. When contracts are voluntarily entered into by parties, they become binding on them based on the terms they have set out for themselves. It is trite that where there is a valid agreement, parties must be held to be bound by the agreement and

its terms and condition. See ***ENEMCHUKWU V. OKOYE (2016) LPELR – 40027 (CA).***

It is also trite that an agreement is a bilateral affair which needs the ad idem of the parties. See ***BILANTE INTERNATIONAL LIMITED V. NDIC (2011) LPELR (781) 1 AT 23-24***

The above settled position of law as regards consensus between parties for an agreement to be binding brings me to the case of ***OMMAN V. EKPE (2000) 1NWLR PT 641 @ 368 PARA 8.*** Cited and supplied by the defendant's counsel after this matter was adjourned for judgment. The purport of the authority so supplied by the defendant's counsel is to the effect that the letter of undertaking dated 21/11/2022 in **Exhibit AM1** written by the defendant was made at the police station. I have read the Ekpe's case, the position of their Lordships on the treatment of admission obtained by duress before the police is that any document that seeks to establish the existence of a contractual relationship which takes place under the watchful eyes of the police to whom a purely civil matter is brought to its attention to enforce or put fear into the other side will not be enforced as there is no consensus and the document is voidable.

In the said judgment ***Per Acholonu J.C.A*** had this to say

"Now Nwanedo the learned counsel for the respondent derided Exh.1 which he submitted was made in the police form and the contents was made 4 full years before the action, under duress as it was made while the respondent was in police custody. It is most unfortunate that our citizen now use the army and police personnel to collect debts from fellow business associates whether the debt is real or imaginary. Any document signed in the presence of the police and relating to a civil claim shall be viewed with suspect particularly if the person against whom it will affect was in custody or under some detention or handicap that he cannot freely enter into a contract- with enforcement officers breathing down his neck. Any document that

seeks to establish the existence of a contractual relationship which takes place under the very watchful eyes of the police to whom a purely civil matter is brought to its attention to enforce or put a fear into the other side will certainly not be enforced as there is no consensus and is voidable. Exhibit 1 does not therefore avail the appellant"

At this point it is necessary to compare the facts in *Ekpe's* case and this very suit involving the claimant and the defendant. There is no dispute that both **Exhibits AM and AM1** were both made at the police station. The defendant particularly in paragraphs 11, 13, 15 & 19 of his adopted witness statement on oath which are reproduced as follows stated thus;

Paragraph 11

"That *Mr Michael continued to deny the fact that the one bedroom apartment is being used for commercial purpose. And same activities continued in the apartment, that i was prompted to instruct my lawyer to make a formal petition to the Nigeria Police Force on these issues so as to stop the activities that were happening in the apartment".*

The defendant in the same vein also tendered the said petition written by his lawyer to the police in evidence marked as **Exhibit AM4.**

Paragraph 13;

"That it was at the force command that the claimant agreed to move out of the one bedroom apartment on the 18th November, 2022. And same was reduced into written settlements."

Paragraph 15;

"That I have had no contact with the claimant or any of her agents whatsoever since our last meeting at the Nigeria Police Force FCT Command Office".

Paragraph 19

"That the written terms of settlements and undertaking to refund the sum of ₦306,000 to the claimant on vacating the premises on the 18th November 2022 was overtaking by events of the claimant's refusal to deliver vacant possession of the premises"

Without any doubt from the above extracts from the evidence of the defendant as contained in his adopted witness statement on oath dated the 31/8/2023, it is glaring and precise that it was the defendant who caused his lawyer to write a petition to the police as contained in **Exhibit AM4.** The defendant was never arrested by the police, threatened or put under any form of duress to make any of the documents in **Exhibit AM & AM1** as particularly he was the complainant. The fact that the said documents were made within the four (4) walls of a police station and in the presence of police officers is not alone sufficient to invalidate the said Exhibits particularly **Exhibit AM1** as the major determinate factor to void such agreement as held in *Ekpe's* case is that, if such person against whom it will affect was in custody or under some detention or handicapped then such will not be enforceable. The question to now ask is "*Whether the defendant was under any of the conditions stated in Ekpe's case at the time of making Exhibit AM1*". The answer of course is in the negative, as the facts of *Ekpe's Case* is quite distinguishable from the facts of this present suit, **Exhibit AM1** sought to be enforced against the defendant does not appear to be a product of duress or intimidation. Based on the above findings, this court is of the firm view that the defendant voluntarily agreed to refund the sum of ₦306,000.00 to the claimant, I so hold.

As earlier mentioned that the burden of prove rests solely on the party that asserts the position of certain facts. The claimant seeks to enforce the undertaking in **Exhibit AM1** for the payment of ₦306,000.00 against the defendant, the burden of proof equally lies on the defendant while asserting the existence of some facts to rebut the claims of the claimant, the defence of the defendant in refusal to refund the said sum is that the claimant did not move out of the said premises on the 18/11/2022 and that he did not receive any communiqué from the claimant informing him whether they have vacated the premises. The defendant also did admitted under cross examination that he notice that the claimant had vacated the premises by January, 2023 and then rented out the apartment in February, 2023.

A glimpse back at the letter of undertaking to payback the said sum in **Exhibit AM1** reveals that same was written and signed by the defendant on the 21/11/2022 which is about four (4) days after 18/11/2022 being the date contained in **Exhibit AM** agreed by the claimant to move out of the premises. It definitely beats the imagination of this Court that the defendant would commit himself to make refund payment to the claimant on the 28/11/2022 where the claimant has not moved out on the 18/11/2022 as agreed in **Exhibit AM**.

It can be inferred that letter of undertaking in **Exhibit AM1** written by the defendant on the 21/11/2022 was made after the claimant had vacated the premises as promised in **Exhibit AM**. The position of the law is that the Court is entitled to draw inferences from the oral and documentary evidence before it. See ***MTN V. CORPORATE COMMUNICATION INVESTMENT LTD (2019) LPELR-47042 SC.***

Be that as it may, the defendant never at any point in his evidence specifically stated whether he was forced or coerced into making

Exhibit AM1 before the claimant moved out, the defendant also did not put forth in evidence the status of the premises as at the 18/11/2022 that the claimant promised to move out or any other period after such time he claimed the claimant was still in possession. The defendant merely stated that it was in January, 2023 that he discovered that the claimant as vacated the premises. The status of the said premises from the period of 18/11/2022 to January, 2023 was not also drawn to light during cross examination of the PW1, as the claimant through PW1 maintained that the claimant vacated the premises. There was no evidence from the defendant establishing or suggestive that the claimant over stayed beyond 18/11/2022 on the said property to render **Exhibit AM1** unenforceable.

It is trite law that if it is intended to impeach the credit of a witness or a party he is bound to be confronted with such evidence in the witness box so as to allow him to explain. It is improper for a defendant not to cross-examine a plaintiff or his witnesses on a material point but simply to wait to call oral or documentary evidence on the issue after the plaintiff has closed his case. See **Nwobodo V. Onoh (1984) 1 SC 98-100.**

Without losing focus, the letter of undertaking written by the defendant in **Exhibit AM1** specifically stated that he would refund the sum of ₦306,000.00 to the claimant on 28/11/2022, and the defendant did not make the said refund as promised; that is the agreement of the defendant with the claimant, and Courts of law are expected to respect the sanctity of agreements voluntarily entered into by parties; no Court will rewrite such an agreement for the parties, when it was evidently entered into voluntarily. See ***PRINCE OIL LTD V. GTB PLC (2016) LPELR-40206(CA).***

This Court is also mindful of **Exhibit AM2** which is a letter of demand dated 28/11/2022 and the certificate of service of same dated 9/2/2023 deposed to by Emilia Uzoamaka Okonji Esq. The averments of the deponent as contained in the affidavit of service is that Exhibit AM2 was served on the defendant on the 28/11/2022 by pasting same at his main entrance located at No. 15 Mekong Street Maitama, Abuja. In Opposition the defendant filed a 7 paragraphs counter affidavit dated 31/8/2023 wherein the defendant denied being served with **Exhibit AM2.** The defendant stated that the photograph of the said pasted letter of demand was not attached to the affidavit of service and as such that the averments contained in the said affidavit of service are false.

It is settled that an affidavit of service deposed to by the person effecting the service, setting out the fact, place, mode and date of service and describing the process or document served shall be prima facie proof of the matters stated in the endorsement or affidavit. See the case of ***OKOYE & ANOR V. CENTRE POINT MERCHANT BANK LTD (2008) LPELR – 2505 (SC)***

The position of the law is that a defendant who intends to challenge the affidavit of service deposed to by any person who claims to have effected the service of any process or document must file an affidavit denying service and detailing specific facts, which show that he could not have been served on the date, or at the time, or at the place or in the manner deposed to. It would then be for the Court to determine whether or not the party complaining was indeed served accordingly. See the case of ***EMEKA V. OKOROAFOR & ORS (2017) LPELR-41738(SC)***

It is a trite principle, that an affidavit is a statement of fact which the deponent thereof swears to be true to the best of his knowledge,

information and belief. An affidavit must thus contain only those facts of which the deponent has personal knowledge, or based on information which he believes to be true: Section 86 of the Evidence Act. In that case, the deponent is required to state the grounds of his belief; the name and full particulars of the informant thereof. See ***Sections 88 & 89 of the Evidence Act.*** See also the case of ***KEYSTONE BANK LTD V. A. O. S. PRACTICE (2013) LPELR-20357(CA)***

It is apposite to state that there is no such law that mandates the attachment of a picture printout to an affidavit of service.

Be that as it may, a perusal of the counter affidavit of the defendant reveals that the defendant only stated that he was not served with the letter of demand in **Exhibit AM2** or any other demand document and that there was no photograph printout of the said pasted letter of demand attached to the affidavit of service tendered in evidence, these are the only denial facts contained in the said counter-affidavit. The defendant however failed to specifically state in details specific facts, which would have shown that he could not have been served on the 28/11/2022, or at 10:30am, or at No.15 Mekong Street Maitama or in the manner of service which is all stated in the affidavit of service of **Exhibit AM2.** The Counter affidavit of the defendant having failed to state the above detail is as such of no rebuttal weight, thus this Court therefore holds that the averments contained in the affidavit of service is the true and correct position of facts in respect of the service of **Exhibit AM2** on the defendant, I so hold.

Without further ado, this Court find affirmation in the fact that the claimant moved out of the premises and despite the service of the letter of demand in **Exhibit AM2**, the defendant neglected and

refused to refund the sum of ₦306,000.00 to the claimant on the 28/11/2022 as undertaken in **Exhibit AM1** , the claimant is hereby entitled to the sum of ₦306,000.00 being debt owed by the defendant.

COUNTERCLAIM

On the counterclaim of the defendant for the sum of ₦100,000 as damages, it is trite law that a counterclaim is a separate and distinction action. The fate of a counter claim being an independent action does not depend upon the outcome of the plaintiff's claim. See ***OROJA & ORS V. ADENIYI & ORS (2017) LPELR-41985(SC).***

General damages is the kind of damages which the law presumes to be the consequence of the act complained of and unlike special damages a claimant for general damages does not need to specifically plead and specially prove it by evidence, it is sufficient if the facts thereof are generally averred. See ***FELIX GEORGE AND COMPANY LTD v. AFINOTAN & ORS (2014) LPELR-22982(CA)***

The defendant has indeed made this claim but however this court cannot see any justification arising from the facts or evidence in this case to award or grant same. This Court does not think that the defendant has suffered any harm or hardship in this case to entitle him to same, thus this claim is hereby dismissed.

In final, the defendant is hereby order to immediately pay to the claimant the sum of ₦306,000.00 being balance of rent and deposit for diesel.

No order as to cost.

Olumide Bamisile, Esq
District Judge
F.C.T. Judiciary Abuja
Sign. ....Date. 15/9/2023

Signed
Olumide Bamisile
District Judge
15/9/2023.

HIGH COURT OF JUSTICE
CERTIFIED TRUE COPY
NAME Saddiq Bala Muhammad
DATE 6/10/2023
SIGN.