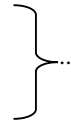


**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/574/12
DATE: 11TH MARCH, 2020**

BETWEEN:

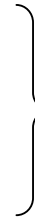
1. ELDER EMMANUEL MBA AKI
2. ELDER MRS CHINYERE UKONU
3. MRS. CHRISTAIN AKI MBA



PLAINTIFFS

AND

1. DAVANDY FINANCE AND SECURITIES LIMITED
2. GP. CAPT. ITA D. IKPEME (RTD)
3. CHIEF ASUQUO EKPENYONG
4. DR. (MRS) IQUO EKPENYONG
5. MR. BASSEY EWA HENSHAW



DEFENDANTS

1st Claimant in court while Defendants absent.

A.H. Egunjobi holding the brief of Emmanuel N. Ukaegbu for the Claimants.

Elvis O. Utulu for the Defendant appearing with Aniebiet-Abasi O. Akpan and Francis O. Olanipekun Esq.

Claimant's Counsel – The matter is for judgment and we are ready.

J U D G M E N T

The Claimants commenced this suit via a writ of summons under the undefended list dated 31/10/2012. Upon the determination of the Defendant's Notice of Intention to Defend and affidavit, the

court in its wisdom transferred the suit to the General Cause List and parties were ordered to file pleadings.

By an amended statement of claim dated 14/11/2016 and filed on 12/1/2017, the Claimants claim against the Defendants as follows:

1. An Order for the payment of the sum of N45,000,000.00 (Forty-Five Million Naira) only being the total amount due to the 1st Claimant on his investments in the Defendant's company.
2. An Order for the payment of the sum of N4,750,000.00 (Four Million, Seven Hundred and Fifty Thousand Naira) being the total amount due to the 2nd Claimant on her investment in the Defendant's company.
3. An Order for the payment of the sum of N2,850,000.00 (Two Million, Eight Hundred and Fifty Thousand Naira) only being the total amount due to the 3rd Claimant on her investment in the Defendant's company.
4. An Order for the payment of 10% interest on the different sums of money due to Claimants from November 2012 when this suit was instituted till judgment is recovered.
5. An Order for the payment of N3,000,000.00 (Three Million Naira) only being cost of prosecuting this suit.

In proof of the above claims the Claimants filed a 60-paragraph Amended Statement of Claim dated 14/11/2016 and filed on 12/1/2017 and called two witnesses.

The first Claimant Elder Emmanuel Mba Aki testified as the PW1. In his evidence-in-chief, he adopted a 9-paragraph witness statement on oath dated 19/2/2016 as his evidence. The gist of the PW1's evidence is that himself, the 2nd and 3rd Claimants deposited with the Defendants the sum of N12,000,000.00, N600,000.00 and N1,000,000.00 respectively making a total of N13,000,000.00 only since 2008 and early 2009 for a share investment agreement.

That the Defendants accepted the money and signed the said share agreement; that the Defendants have failed, refused or neglected to honour the share agreement by paying the agreed profit or return the principal sum that was deposited.

In the cause of PW1's evidence two documents were admitted in evidence as follows:

1. Copy of the Share Investment Portfolio Management dated 3/2/2009 – Exhibit A.
2. The Solicitor's Receipt dated 10/11/2014 – Exhibit B.

Under cross-examination of PW1 by the Defendant's counsel, the PW1 stated that passport photograph in the witness statement on oath was not his ; that the 3 signature in the witness statement on oath, affidavit evidence supporting the undefended list and the Share Investment Agreement are contradictory, but the signature on Exhibit A was his.

On the application of the Defence Counsel, a specimen signature of PW1 was taken and admitted as Exhibit C.

The witness further stated that he deposited money in the account of the 1st Defendant. Some of the deposit was to buy shares. That N12 Million was duly receipted by the 1st Defendant.

No re-examination, PW1 was discharged and the case of the Claimants was closed. However, by an application by the Claimant's counsel, the case of the claimant was re-opened and the PW1 was re-called to give further evidence.

Upon the recall of PW1, he further adopted a 37-paragraph witness statement on oath dated 12/01/17 as his further evidence; the said PW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of PW1's further evidence is that sometimes in 2007, the 1st Defendant staff Loretta B. Emori approached him to invest with the 1st Defendant; that he invested the sum of N5 Million that was paid through Oceanic Bank Cheque dated 16/4/2007 and the 1st Defendant issued a receipt to acknowledged same.

The witness further stated that the 1st Defendant issued him a formal Trading Agreement for the total sum of N5 Million in the form of Shares Investment Portfolio Management setting out the terms and conditions of the agreement.

It is the evidence of PW1 that upon payment of the agreed interest rate of N285,000.00 on the principal sum of N5 Million for a tenor of four months, he rolled over the principal and interest of the investment which brought the total sum of his investment to be N6 Million. Upon receipt of same the Defendants issued a Shares

Investment Portfolio Management in PW1's favour for the said N6 Million.

The PW1 further stated that he increased his investment with the 1st Defendant by investing an additional sum of N2 Million only that will run separately as a different investment from the earlier one. However, rather than operate two different portfolios, the PW1 decided to merge the two investments together.

That he instructed the 1st Defendant to merge his two investments and re-invest a total sum of N10 Million to create Shares Investment Portfolio Management dated 3/10/2008 and excess sum of N400,000.00 was paid to PW1 from the two investments. That at the expiration of the PW1's investment of 3/10/2008, he rolled over the sum of N12 Million only out of the total sum due to him and the sum of N1 Million only was paid to him from the investment.

That after the said payment, the 1st Defendant issued him a new Shares Investment Portfolio Management dated 3/2/2009 for an investment sum of N12 Million only. The investment expired on 4/6/2009 and became due for repayment of principal and interest on 8/6/2009 and the total amount payable to PW1 as at 8/6/2009 was N15 Million only.

It is the evidence of the witness that the Defendants have failed, refused and neglected to pay the due sum upon demand and has continued to trade with his investment and profited out of it.

That the total principal due to him is the sum of N15 Million only as at 3rd February, 2007 while the accrued profit in the investment from 3/2/2009 to 3/9/2012 is N33 Million. The total amount due to him before filing this suit is N45 Million only.

In the cause of PW1's further evidence, the following documents were admitted in evidence as exhibits:

1. Copy of Oceanic bank Cheque dated 16/4/07 – Exhibit D.
2. Receipt dated 17/04/07 – Exhibit E.
3. Purchase Order Form dated 16/4/07 – Exhibit F.
4. Shares Investment Portfolio Management dated 16/4/07 – Exhibit G.
5. Purchase Order Form dated 17/8/07 – Exhibit H.
6. Purchase Order Form – Exhibit I.
7. Shares Investment Portfolio Management dated 31/5/08 – Exhibit J.
8. Oceanic bank Cheque dated 23/1/08 – Exhibit K.
9. Receipt dated 23/1/08 – Exhibit L.
10. Shares Investment Portfolio Management dated 23/1/08 – Exhibit M.
11. Shares Investment Portfolio dated 30/5/08 – Exhibit N.
12. Shares Investment Portfolio dated 3/10/08 – Exhibit O.

PW1 urged the court to grant his claim.

The PW1 also adopted a 25-paragraph witness statement on oath dated 31/10/2018 as part of his evidence; same is adopted as forming part of this judgment.

Under cross-examination of PW1 by the Defendant's counsel he stated that he cannot remember how many times he was paid the sum of N285,000.00 roundly for his investment with the Defendants. That he issued the cheque of N2 Million in the name of the 1st Defendant's Manager because the manager told him that the company needed the money very fast to buy out some shares for the management of the business. The manager signed and received the cheques of N2 Million on behalf of the company.

The witness further stated that he invested the sum of N13 Million and that his total claim before the court as at 2012 was N45 Million and it was still counting.

No re-examination, PW1 discharged.

Elder(Mrs) Chinyere Ukonu, the 2nd Claimant testified as the PW2. In her evidence-in-chief, the PW2 adopted a 20-paragraph witness statement on oath dated 12/1/17 as her evidence; the said PW2's statement on oath is further adopted as forming part of this judgment.

The gist of the PW2's evidence is that sometimes in 2008, she invested in the Share Investment Portfolio of the Defendants in the sum of N1 Million only, which was duly acknowledged by the 1st Defendant.

That the 1st Defendant issued her with Shares Investment Portfolio Management Agreement dated 14/8/2008 for a tenor of 4 (four) months which became due on 19/9/2008.

The PW2 further stated that when the investment became due, the 1st Defendant paid the profit of N250,000.00 only while the principal sum of N1 Million only was rolled over by her.

That following the roll-over of her investment, the 1st Defendant issued her with a Shares Investment Portfolio Management for a tenor of 3 (three) months and at a profit rate of 25%; the said portfolio commenced on 12/12/2008 and became due on 19/3/2009 for re-payment. And that the Defendants have failed, refused and neglected to pay the due sum of N1,250,000.00 only upon repeated demand and has continued to trade with her investment and profited out of it. That the total principal due to the PW2 is the sum of N1 Million as at 12/12/2008 while the accrued profit on the investment from 12/12/08 to 12/10/2012 is N3,750,000.00. The total amount due to the PW2 before filing this suit is N4,750,000.00 only.

In the cause of PW2's evidence, the following documents were admitted in evidence as Exhibits:

1. 1st Defendant's Receipt dated 14/5/08 – Exhibit P.
2. Shares Investment Portfolio Management dated 14/5/08 – Exhibit Q.
3. Shares Investment Portfolio Management dated 12/09/08 – Exhibit R.
4. Shares Investment Portfolio Management dated 12/12/08 – Exhibit S.

PW2 urged the court to grant her claims against the Defendant.

Under cross-examination of PW2 by the Defendants' counsel, the PW2 stated that she made investment orally to the Defendants. The investment was made by her personally through the 1st Defendant marketer Laretta and Abiodun was their manager.

The witness further stated that Exhibit D was issued in respect of investment with the Defendants. Exhibit D was issued by the 1st Claimant one (1) receipt was issued after the issuance of the cheque. That she claim for the sum of N4.7 Million because if she should do a business with this money from 2008 to date it will give her interest more than N4.7 Million.

No re-examination, PW2 was discharged.

Mrs. Christiana Aki Mba, the 3rd Claimant testified as the PW3.

In her evidence-in-chief, she adopted a 28-paragraph witness statement on oath dated 8/5/2018 as her evidence; the said PW3's statement on oath is accordingly adopted as forming part of this judgment.

The gist of PW3's evidence is that sometime in 2007 she invested in the Shares Investment Portfolio Management Agreement of the Defendants and committed the sum of N200,000.00 as an initial sum, which after some roll-over became the sum of N600,000.00. That on her instruction to roll-over the principal sum of N600,000.00, the 1st Defendant issued her with a Shares Investment Portfolio Management Agreement dated 18/12/2008 with its terms and conditions.

The witness further stated that the total amount due to her as at 24/3/2009 being the retirement dated is N750,000.00 only.

That the Defendants have failed, refused and neglected to repay the principal sum and interest due to her after repeated demand and have continued to apply her money to their business and had been profiting from it.

That the total principal due to her is the sum of N600,000.00 as at 18/3/2009 while the accrued profit on the investment from 18/3/2009 to 18/10/2012 is N2,250,000.00 only. The total amount due to her before filing this suit is N2,850,000.00 only.

In the cause of PW3's evidence, the following documents were admitted in evidence as Exhibits:

1. Receipt dated 27/7/07 – Exhibit T.
2. Purchase Order Form dated 27/7/07 – Exhibit U.
3. Purchase Order Form dated 18/12/07 – Exhibit V.
4. Purchase Order Form dated 19/3/08 – Exhibit W.
5. Shares Investment Portfolio Management dated 18/6/08, 18/9/08 and 18/12/08 – Exhibits X¹, X² and X³ respectively.
6. Receipt No. 031 dated 9/5/16 – Exhibit Y.

Under cross-examination of PW3 by the Defendant's counsel, she stated that as at 24/3/09 the amount due to her was N750,000.00 and that was why she is in court. That the sum of N200,000.00 was her initial capital. It generated to N750,000.00 because of the interest.

The PW3 further stated that she made series of verbal request for her money when the transaction came to an end on 08/3/09.

No re-examination, PW3 was discharged and that is the case for the claimants.

In defence of this case, the 1st – 5th Defendant filed a Joint Further Amended Statement of Defence dated 28/3/2019 and called a sole witness.

Charles Egbi testified as the sole witness DW1. In his evidence-in-chief, he adopted a 28-paragraph witness statement on oath dated 28/03/2019 as his evidence; the said DW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of the DW1's evidence is that the Shares Investment Agreement entered into by the Claimants were without the knowledge and approval of the Board of Directors of the 1st Defendant and that the person(s) with whom the Claimants entered into the agreements had no authority of the Defendants to act. That on May 2010, the 1st Defendant received complaints against one Abiodun Abodunde (a former manager of the 1st Defendant) for fraudulently obtaining funds for purposes of investment from some individuals.

That it was subsequently discovered that where funds were lodged into the account of the 1st Defendant by the said Abiodun Abodunde; they were done on the instructions to the stockbroker in Lagos, who was also a signatory to the 1st Defendant's account that they were to be invested on behalf of a person named

Tiamiyu Sola Modinat who he had registered as a client of the 1st Defendant. He afterward gave instructions that the shares be liquidated and paid into the account of this Tiamiyu Sola Modinat with the now defunct Oceanic Bank.

It is the evidence of DW1 that the person with whom the Claimants dealt with acted outside of the scope of their authority in accepting cheques for investment. This is especially so as the 1st Defendant is a stockbroker and not an Investment Portfolio Management Company.

The DW1 further stated that the Defendants never received any of the alleged deposits or roll over investments from the Claimants and was not a party to whatever Shares Investment Scheme the Claimants may have entered into.

That the Defendants do not owe the Claimants any monies as alleged by them. The Internal Memorandum dated 1/6/10 and a letter dated 1/6/10 were admitted as Exhibit Z¹ and Z² respectively.

DW1 urged the court to dismiss this suit.

Under cross-examination of DW1 by the Claimant's counsel, the DW1 stated that Mr. Abiodun Abodunde was a former Abuja Branch Manager of the 1st Defendant. He ceased to be the manager since 2010. DW1 further stated that the Abuja Branch of the 1st Defendant acknowledged payments by issuing a receipt.

That the 1st Defendant was duly registered and was issued with the Certificate of Incorporation, memorandum and Article of

Association and Particulars of Directors. That money was paid into the company's account allegedly from the purchase of Shares in the name of a particular client and not for any Shares Investment Portfolio.

The DW1 further stated that they discovered that the funds that were paid into the company's account went along with an instruction from the manager Mr. Abiodun Abodunde. That they were for the purchase of shares in the name of another client (Mr. Tiyanmiu Shola Modinat) and subsequently Mr. Abodunde issued a counter instruction that the shares purchased with the funds should be sold and the proceeds should be paid into an account in Oceanic Bank Account belonging to the said customer. That account was later discovered to have been opened by Mr. Abiodun Abodunde in his wife's medium name and was being operated by him.

The witness further stated that the Claimants in this matter were not initially amongst the clients of Abiodun Scheme earlier known to the 1st Defendant.

In the cause of the cross-examination of DW1, the following documents were admitted in evidence:

1. Memorandum of Association – Exhibit Z³
2. Article of Association of 1st Defendant – Exhibit Z⁴.

No re-examination, DW1 was accordingly discharged and that is the case for the Defence.

The Claimant's Counsel filed a 13-page final written address filed on 12/11/19 wherein counsel distilled two (2) issues for determination:

- 1. "Whether the Claimants have proved their case to entitle them to the reliefs sought.**
- 2. Whether a disclosed principal is bound by the act or omission of his agent or his manager conferred with authority"**

On Issue 1, it is the submission of counsel that it is the law that he who asserts must prove. See *OMIYALE v WEMA BANK PLC* (2017) 13 NWLR (Pt 1582).

In the instant case, the 1st, 2nd and 3rd Claimants testified as PW1, PW2 and PW3 respectively and tendered exhibits. From the exhibits tendered, the Claimants were able to establish that they paid money to the 1st Defendant and it was duly acknowledged. See Exhibits D, K, L, P and T. A formal contract entered into between the Claimants and the 1st Defendant. See case of *AGOMA v GUINNESS (NIG) LTD* (1995) 2 NWLR (Pt 380) 672.

It is submitted that the Claimants has credible documentary evidence shown that sequel to the various sums of money paid to the 1st Defendant, for purchase of shares/stock, they 1st Defendants made various offers to the Claimants and the Claimants accepted the offer of the 1st Defendant which shows that there were meeting of minds by the parties at the time they entered into the contract. It is therefore submitted that the

Claimants has fully established by credible evidence that they had agreement with the Defendants. See *ORJI v ANYASO* (2000) 2 NWLR (Pt 643) Pg 1 at 34 Para F.

It is further submitted that the Agreement between the Claimants and the 1st Defendant which were entered into by them freely should bind them on its terms so long as same is lawful. See *OMEGA BANK (NIG) PLC v O.B.C. LTD* (2005) 8 NWLR (Pt 928) 547. Court is urged to hold that the Claimants has discharged the burden of proof placed on them and hold that reliefs found in paragraphs 60 (a) (b) and (c) in the Amended Statement of Claim succeeds.

On the claim of 10% interest on the different sums of money due to the Claimants, starting from November, 2012 when this suit was instituted till judgment is fully liquidated. Court is referred to Order 39 Rule 4 of the Rules of this court and the case of *ABUJA TRANS-NATIONAL MARKET v ABDU* (2007) All FWLR (Pt 376) 657 at 687 Paras E – G. Court is urged to grant the 10% interest as claimed.

On the issue of cost, it is submitted that cost follows event. The expenses incurred in prosecuting this suit would have been avoided. Court is referred to the case of *OLOKUNLADE v SAMUEL* (2017) 17 NWLR (Pt 1276) 2010 and urged the court to grant the cost; more so it was never challenged by the Defendants.

On this issue, it is the submission that the Claimants have discharged the burden of proving the various amounts of money the Defendants owe the Claimants and the evidence of the

Claimants were neither debunked or contradicted by the Defendants. See *MONKOM v ODILI* (2010) 2 NWLR (Pt 1179) 41.

On Issue 2, it is the submission that the Defendants sole witness in his evidence has established the fact that the Defendants were aware of the various transactions carried out by their Agents/Manager. It is the law that a company can only act through its staff, agent or servant. See *FIRST BANK OF NIGERIA PLC v TSOKWA* (2004) 5 NWLR (Pt 866) 271 at 312 Paras D – F.

It is also trite that the acts of Directors and Managers are binding on the company. See *DELTA STEEL (NIG) LTD v AMERICAN COMP. TECH. INC* (1999) 4 NWLR (Pt 597) 53 at 66 Paras C – D.

It is the contention of the Claimant's counsel that the Defendants did not show nor tender to this court what was the schedule of duties their staff (particularly the Abuja Branch Manager) is to follow. It is submitted that the negligence of a Branch Manager of any company is the negligence of the company and makes the company vicariously liable. See *BELLO v DADAH & ANOR* (2016) LPELR – 40337 (CA).

It is submitted that the duty of care owed to the Claimants by the Defendants is to exercise reasonable care and skill. See *AGHANELO v UNION BANK OF NIG. LTD* (2000) 7 NWLR (Pt 666) 534 at 549 – 550 Paras G – H.

It is submitted that the Claimants have made out a case against the Defendants to entitle them to the judgment of this court.

The Defendant's counsel filed a 22-page final written address stated 19/11/2019 wherein counsel formulated a sole issue for determination, thus:

“Whether the Claimants have proved their case before this Honourable Court to warrant the grants of the reliefs sought as contained in their statement of claim”

On this singular issue, it is the submission of learned counsel to the Defendants that the Claimants have not prove their case before this Honourable Court and are accordingly not entitled to the reliefs sought having not discharged the burden placed on them by Section 131 – 133 of the Evidence Act.

It is submitted that Exhibits D and K which the Claimants claim were their investments in the 1st Defendant's company carries the name of Elim-Manne Technical Services Limited who is a stranger to this proceedings.

It is further submitted that the right of action resides on the company – Elim-Manne Technical Services Limited and not the 1st Claimant. See Section 299 CAMA and the case of ADEWUMI v ADEBESI TELECOMMUNICATIONS NIG. LTD (2011) LPELR – 9087 (CA).

It is the contention that this Honourable Court is not in a position to come to a finding that the 1st Claimant is entitled to a relief which by the Claimants own case, incurs in favour of a company which is not a party to this proceedings.

It is the submission that Claimants have not proved their case and this is premised on the fact that it is a settled law that a case is circumscribed by the reliefs claimed. In other words, the pleadings and evidence must relate strictly to the reliefs claimed. See *ATIVIE v KABELMETAL (NIG) LTD* (2008) 10 NWLR (Pt 1025) 399.

With respect to Relief one (1), it is the contention that the 1st Claimant tendered various exhibits in proof of his case against the Defendants, but could not lead evidence to show that 1st Claimant has any business relationship or an agreement with the Defendants. See *BONGO v GOV, ADAMAWA STATE* (2013) 2 NWLR Pt 1339 at 409.

It is the contention that there was no contract between the 1st Claimant and the Defendants for the payment of interest on the due sum. And there is no contract between the 1st Claimant and the Defendant after the purported investment was terminated on 3/2/2009. See *BALOGUN v E.O. CIB (NIG) LTD* (2007) All FWLR 9Pt 382) 1952 at 1972 Paras A – C.

It is the 1st Claimant's claim that the total accruals to him as at 2009 was N15 Million, his claim in the Amended Statement of Claim is for N45 Million. The same pattern follows the case of the 2nd and 3rd Claimants. It is submitted that the court cannot overlook these manifest contradictions; the case is speculative and same must be dismissed. See *NWOKORO v ONUMA* (1999) 9 SC 59 at 64.

On Relief two (2) for the payment of N4,750,000.00 due to the 2nd Claimant, it is the submission that the exhibits tendered by the 2nd Claimant does not establish any legal relationship between the 2nd Claimant and the Defendants in this case. The 2nd Claimant led no evidence of a formal agreement between her and the Defendants. In her bid to prove her case, she tendered Exhibits P, Q, R and S but no evidence was led to the issuance of the official receipt alleged to be that of the 1st Defendant.

It is submitted that there are evidence of inconsistencies on the part of the 2nd Claimant as to the exact sum she is due for. On one breath she stated that the total principal due to her is the sum of N1 Million as at 12/12/2008 on another breath she stated that the accrued profit on the investment from 12/12/2008 to 12/10/2012 is N3,750,000.00 only and the total amount due to her before filing this case is N4,750,000.00 only.

It is submitted that the failure of the 2nd Claimant to prove her entitlement to the sum of N4,750,000.00 is fatal.

With respect to Relief three (3), it is the submission that the evidence and exhibits tendered by the 3rd Claimant does not establish any legal relationship between the 3rd Claimant and the Defendant in this case.

It is also submitted that the failure of the 3rd Claimant to prove her entitlement to the sum of N2,850,000.00 is fatal. There is no foundation upon which the claim for N2,850,000.00 can stand as

there is no proof that the said sum was re-invested. Court is urged to dismiss the suit for want of merit.

With respect to Relief Four (4), it is submitted that the inability of the Claimant to prove Reliefs 1, 2 and 3 has rendered Relief Four unenforceable. See *NIGERIAN AGIP OIL CO. LTD v AKPATI & ORS* (2018) LPELR – 45146 (CA).

With respect to Relief Five (5), it is the submission of learned counsel to the Defendants that the Claimant never tendered or led evidence to prove the averment as stated. See *FHOMO NIGERIA LIMITED v ZENITH BANK PLC* (2016) LPELR – 42233 (CA).

It is the contention that by virtue of the query letter (Exhibit Z1) against Abiodun Abodunde and his response in Exhibit Z2 wherein he admitted to have carried out the unauthorized transaction solely without the knowledge of the Defendant and therein agreed to pay back the money, the Defendant cannot therefore be liable for the unauthorized act of the said Abiodun Abodunde. See case of *FBN PLC v EXCEL PLASTIC INDUSTRY LTD* (2002) LPELR – 10280 (CA).

It is the submission that the Claimants have failed to prove their claims against the Defendants. Court is urged to dismiss the case.

The Claimant counsel filed a reply on points of law dated 25/11/2019 wherein counsel submitted that the Claimants have proved their case in this suit and the Defendants did not counter or contradict the claimant witnesses in their evidence. See *SOLOMON v MONDAY* (2015) All FWLR Pt 762 Pg 1695.

In response to paragraphs 4.06 to 4.16 of the Defendant's final written address, it is submitted that the arguments made therein are misconceived and not tenable in law. The contract was between the 1st Claimant and the 1st Defendant. Court is referred to Exhibits E, F, G, I, N, O and A and the case of C.R.S.W.B. v N.C.E. LTD 2007 WRN VOL. 18. 132 at 152 Lines 5 – 15.

In response to paragraphs 4.17 to 4.25 of the Defendant's address, it is submitted that the Defendants never denied the averments on the various payments of interest made to the Claimants by the Defendants. Therefore no burden was on the Claimants to prove whether the various amounts were actually paid or not. See ADIKE v OBIARERI (2002) 14 NWLR (Pt 758) 537.

In response to paragraphs 4.26 to 4.31 of the Defendant's address, it is submitted that parties are bound by their terms of contract. See OILSERV. LTD v L.A.I. & CO (NIG) LTD (2008) 2 NWLR (Pt 1083).

In response to paragraphs 4.32 to 4.37 of the Defendant's address, it is submitted that the Claimants claims are combination of the principal and accrued interest therefrom.

It is further submitted that the Defendants having argued that the case of the Claimants are plagued with inconsistency and contradictions, the onus is on them to point out the inconsistencies and contradictions. Having failed to do that, counsel's argument cannot take the place of evidence. See ONU OBEKPA v C.O.P. (1980) 1 NCR 113.

In response to paragraphs 4.56 to 4.58 of the Defendant's address, it is submitted that the Claimant's Relief 4 is statutorily provided by Rules of this court and it requires no proof. See Order 39 Rule 4 of the Rules of this Court and the case of PEUGEOT AUTOMOBILE (NIG) LTD & ANOR v ABUBAKAR (2016) LPELR – 41602 (CA).

In response to paragraphs 4.64 to 4.70 of the Defendant's address, it is submitted that the purported Exhibit Z¹ does not relate to the investments of the Claimants. It is the onus of the Defendants to tie their documents to the part of the case it relates. See the case of NWOLE v IWUAGWU (2006) All FWLR (Pt 316) 325 at 344.

In response to paragraphs 4.68 to 4.70 of the Defendant's address, it is submitted that the Defence of the Defendant does not fall within the exceptions of liability of an Agent of a disclosed principal. The circumstance of this made the Defendants liable to any wrong done by the Branch Manager. See the case of ARAROMI & ORS v FOLARIN (2018) LPELR – 44279 (CA). Court is urged to enter judgment for the Claimants.

I have carefully considered the processes filed, evidence of PW1, PW2, PW3, DW1 and the submission of learned counsel on both sides, I am of the view that the sole issue that calls for determination is:

“Whether the Claimants have proved their case to entitle them to the reliefs sought?”

It is the law that whoever desires court to give judgment as to any legal right or liability dependent on the existence of facts which

he asserts must prove that those facts exist. See Section 131, 133 and 136 of the Evidence Act and the case of OMIYALE v WEMA BANK PLC (2017) 13 NWLR (Pt 1582).

In the instant case, the 1st Claimant testified as PW1 and led evidence to the fact that the sum of N45 Million was the total sum of money that the Defendants owe the 1st Claimant. In prove of this fact, the PW1 tendered various exhibits of important as Exhibit D an Oceanic bank Cheque of N5 Million dated 16/4/2007 and also Exhibit K an Oceanic Bank cheque of N2,109,962.00 dated 23/1/2008.

It was the strong contention of the Defendant's counsel that the said cheque bears the name of a certain company called Elim-Manne Technical Services Limited who is not a party before this Honourable Court.

In paragraph 8 and 20 of PW1's statement on oath dated 12/1/17 he stated that the said sum in Exhibit D and K respectively were paid by him through his company; Elim-Manne Technical Services Limited.

It is not in doubt that a registered company has separate and distinct entity from its directors and other natural persons who act on behalf of the company. See ROYAL PETROLEUM COMPANY LTD v FIRST BANK OF NIGERIA LTD (1998) 6 NWLR (Pt 510) 584 at 589.

And that it is only the company that can sue for any wrong done to it. However, in the instant case by virtue of the Exhibits

tendered particularly Exhibits A, E, F, G, I, L, N and O, it is clear that the contract was between the 1st Claimant and the 1st Defendant.

Accordingly I hold the firm view that the submission of learned counsel to the Defendant to the effect that the 1st Defendant did not contract with the 1st Claimant but Elim-Manne Technical Services Limited is of no moment.

Now, it is important at this stage to x-ray the Claimant's reliefs.

Relief 1 is for the payment of the sum of N45 Million only being the total amount due to the 1st Claimant on his investments in the Defendant's company.

In prove of the above claim, the PW1 tendered Exhibit D and K which are Cheques of Elim-Manne Technical Services Limited issued in favour of 1st Defendant and Mr. Abodunde Abiodun respectively. However, the PW1 failed to lead credible and compelling evidence to prove that he is an agent of Elim-Manne Technical Services Limited. There was also no evidence of formal agreement between the PW1 and the Defendants.

It is of note that in paragraph 29 of the Amended Statement of Claim and paragraph 29 of PW1's statement on oath, the 1st Claimant averred that his N12 Million investment with the Defendants expired on the 4/6/2009 and became due for repayment on principle and interest on the 8/6/2009 and that the total amount payable to him as at 8/6/2009 is N15 Million. Then in paragraph 55 of the same Amended Statement of Claim and in paragraph 33 of PW1's statement on oath, it was averred that the

principal due to the 1st Claimant is the sum of N15 Million only as at 3/2/2009 while the accrued profit on the investment from 3/2/09 to 3/9/12 is N33 Million. The total amount allegedly due to him before filing this suit is stated to be N45 Million.

Under cross-examination of PW1 on 24/3/2016 when he first gave evidence, he stated as follows:

“As at the time the tenor was entered to, my claim against the Defendants was N12 Million plus interest”

Still under cross-examination of PW1 on 7/5/2018, the PW1 stated as follows:

“My total claim before the court as at 2012 was N45 Million and it was still counting”

As rightly posited by the defendant's counsel in paragraph 4.26 of his final written address, the question that begs for answer is whether there is a contract between the 1st Claimant and the Defendants for the payment of interest on the due sum?

It is the averment of the 1st Claimant that his investment terminated on 3/2/2009. There is no pleadings nor evidence before this court to show that the sum of N15 Million which became due for payment was re-invested. Accordingly I hold that the claim for interest on the said amount cannot stand and must fall like a pack of card.

In BALOGUN v E.O.C.B (NIG) LTD (2007) All FWLR (Pt 382) 1952 at 1972, it was held that a party who claims interest has the duty to plead and proffer credible evidence in proof thereof.

Also in the case of STABILINI VISINOMI LTD v METALUM LTD (2007) LPELR – 8661 (CA) it was held as follows:

“...for a claim of interest to properly exist for determination in a court of law, it must be stated in the endorsement of the claims to the writ of summons or in the statement of claim whether the claim of interest is based on contract or statute and the grounds upon which the claim is based; Also the law is now clear that a claim for interest must be specifically pleaded”

In the instant case, it is without doubt that the claim for interest was never pleaded nor supported with any credible evidence.

As earlier stated in this judgment, the 1st Claimant seem confused as to the exact amount he is claiming against the Defendant on one hand he claimed that the total accruals to him as at 2009 was N15 Million, on another hand in his Amended statement of claim he claims N45 Million under cross-examination of PW1 on 24/3/2016, he said it was N12 Million his claim was against the Defendant.

The law is that a party cannot be heard to approbate or reprobate; he will not be allowed to base his action or defence, whether by pleadings or affidavit, on a set of fact and then depart from the set of facts on which issues has been joined to

meet the case of the other side. See JADESIMI v OKOTIE EBOH; IN RE LESSEY (1989) 4 NWLR (Pt 113) 125 Paras B – C.

In the instant case the inconsistencies in the 1st Claimant's case shows that the principal and interest of N15 Million was already due before the expiration of the investment. Also the claim of N33,000,000.00 by the 1st Claimant is unknown to law and ought to be proved by him.

In the light of the above, I am of the considered view that the 1st Claimant has not adduced credible evidence to warrant the grant of N45 Million in his favour.

With respect to Relief Two (2) where the 2nd Claimant claim the sum of N4,750,000.00 being the total amount due to her on her investment in the defendant's company.

The 2nd Claimant testified as PW2 and led evidence to the fact that the sum of N4,750,000.00 only was the total sum of money that the Defendants owe her. In prove of this fact, the PW2 tendered Exhibits P, Q, R and S respectively.

In paragraph 36 of the Amended Statement of Claim, the 2nd Claimant averred that investment portfolio commenced on 12/12/2008 and became due on 19/3/2009 while in paragraph 16 of her statement on oath dated 12/1/17, she stated that the total principal due to her is the sum of N1 Million as at 12/12/2008; she further stated that the accrued profit on the investment from 12/12/2008 to 12/10/2012 is N3,750,000.00 only and the total amount due to her before filing this case is N4,750,000.00.

Under cross-examination of PW2 she stated as follows:

“I claim for the sum of N4.7 Million. I arrived at this figure because if I should do a business with this money from 2008 to date it will give me interest than N4.7 Million”

From the evidence of PW2, the total principal due to her is the sum of N1 Million as at 12/12/2008. There was no evidence or document to suggest that she re-invested or roll-over same.

It follow that the inconsistency in paragraph 36 of the Amended Statement of Claim and paragraph 16 of PW2's witness statement on oath shows that the principal and interest of N1 Million was already due on the same date that the investment was alleged to have been entered. Also, the claim of N4,750,000.00 by the 2nd Claimant is not supported with credible and compelling evidence, the claim therefore must be bound to fail. The law is sacrosanct that he who assert must prove.

With respect to Relief 3 an order for the payment of the sum of N2,850,000.00 only being the total amount due to the 3rd claimant on her investment in the Defendant's company. The 3rd Claimant testified as PW3 and led evidence to the fact that the sum of N2,850,000.00 only was the total sum of money that the Defendant owe her and tendered various exhibits. The 3rd Claimant in paragraphs 40, 42, 44 and 49 of the Amended Statement of Claim and paragraphs 9, 11, 13, 15 and 18 of her witness statement on oath averred that the 1st Defendant complied with the terms and conditions of the Purchase Order by paying the interest of

N60,000.00, N50,000.00, N50,000.00, N50,000.00 and N250,000.00 respectively but failed to lead positive evidence of the said payment to ascertain that the payment came from the 1st Defendant.

Under cross-examination of PW3 on 3/7/18, the PW3 stated as follows:

***“Exhibit X3 is the last transaction I had with the 1st Defendant. The Agreement came to an end on 18/3/09. As at 24/3/09 the amount due to me was N750,000.00.*”**

The 3rd Claimant went further to state thus:

“The reason why I am in court is because the said sum of N750,000.00 was due but not paid to me”

In the light of the above that came from the vocal cord of the PW3, her claim against the defendants is for the sum of N750,000.00 only and not N2,850,000 as contained in the Amended Statement of Claim.

With respect to Relief Four, being post-judgment interest, I am of the view that the claim is at the discretion of the court only if the principal claim before the court succeeds.

With respect to Relief Five i.e. An order for the payment of N3 Million being cost of prosecuting this suit.

The law is settled that a claim for solicitor's fees is outlandish and should not be allowed as it did not arise as a result of damage

suffered in the course of any transaction between parties. See GUINNESS NIG. PLC v NWOKE (2000) NWLR (Pt 689) 135 at 150.

In the light of the above decision, I am of the considered view that Relief Five (5) as claimed by the Claimant is of no moment.

Earlier in this judgment I have stated to the effect that it is only company and nobody else can sue on wrong done to the company. However, in the instant case, the company Elim-Man ne Technical Services Limited did not enter into any contract with the Defendants but the 1st Claimant. Therefore the submission of learned counsel to the Defendant on this issue goes to no issue.

From the evidence of PW1, the total amount due and payable to him as at 4/6/2009 when the investment expired is N15,000,000.00. See paragraph 29 of PW1's evidence on oath.

Also in paragraph 13 of PW2's statement on oath, she stated thus:

“That my investment with the Defendants has long become due for repayment of the principal and the profit, however, the defendants have failed, refused and neglected to pay the due sum of N1,250,000.00 (One Million, Two Hundred and Fifty Thousand Naira) only and has continued to trade with the 2nd Plaintiff's investment and profited out of it”

In the light of the above assertion, I hold the view that the 2nd Claimant is only entitled to what is due to her as stated by her.

Furthermore, the 3rd Claimant who testified as PW3, in paragraph 24 of her statement on oath stated that the total principal due to

her as at 18/3/2009 is N600,000.00 (Six Hundred Thousand Naira) only. However, under cross-examination she stated the sum of N750,000.00 as what is due to her.

I am also of the considered view that the defence of the Defendants that its Branch Manager does not have authorization to operate and run the investment portfolio scheme is of no moment by the decision in the case of ARAROMI & ORS v FOLARIN (2018) LPELR – 44279 (CA) where the court held inter alia:

“...Equally relevant is the law to the effect that the act of an agent done within the implied or apparent scope of his employment is deemed to be the act of his principal...”

In conclusion, I am of the considered view that there are iota of evidence adduced by the Claimants to enter judgment in their favour. Accordingly judgment is entered in favour of the Claimants against the Defendants as follows:

1. The Defendants are ordered to pay the sum of N15,000,000.00 (Fifteen Million Naira) only being the total amount due to the 1st Claimant on his investments in the Defendant's company.
2. The Defendants are ordered to pay the sum of N1,250,000.00 (One Million, Two Hundred and Fifty Thousand Naira) only being the total amount due to the 2nd Claimant on her investment in the Defendant's company.

3. The sum of N750,000.00 (Seven Hundred and Fifty Thousand Naira) only being the total amount due to the 3rd Claimant on her investment in the Defendant's company.
4. The sum of N4,130.00 as cost.
5. The Defendants are ordered to pay 10% interest on the judgment sum per annum from the date of the judgment until final liquidation of same.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
11/03/2020

Claimant's Counsel – We are grateful for the judgment.

Defendant's Counsel – We thank the court for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
11/03/2020