

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

BEFORE HIS LORDSHIP:	HON. JUSTICE SALISU GARBA
COURT CLERKS:	FIDELIST T. AAYONGO & OTHERS
COURT NUMBER:	HIGH COURT TWO (2)
CASE NUMBER:	FCT/HC/CV/2327/2016
DATE:	27TH MAY, 2020

BETWEEN:

ATULE E. STANLEY ESQ. - CLAIMANT

AND

1. MR. ANDREW BEN AGBO	}	DEFENDANTS
2. RHODAND INVESTMENT LIMITED		

Parties absent.

A.O. Igeh appearing with J.K. Ejiga for the Claimant.

I. Musa appearing with David Otiga Okpanachi for the Defendant.

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

J U D G M E N T

By a writ of summons and statement of claim dated 10/8/2016, the Claimant claim against the Defendants jointly and severally as follows:

1. An Order of court directing the Defendants to pay the Plaintiff the sum of N20,595,000.00 (Twenty Million, Five Hundred and Ninety Five Thousand Naira) only being the Bill of Charges for the service rendered to the Defendants.

2. The sum of N50,000,000.00 (Fifty Million Naira) only being damages for defamation.
3. The sum of N10,000,000.00 (Ten Million Naira) only as general damages.
4. The sum of N2,000,000.00 (Two Million Naira) only being the cost of this action.
5. Post judgment interest at the rate of 10% per annum.

In prove of these claims, the Claimant filed 19-paragraph statement of claim dated 10/10/2016, 13-paragraph Reply to the Defendant's Statement of Defence/Counter Claim; the said Reply is dated 1/2/2017 and called one witness.

The Claimant himself testified as the sole witness PW1. In his evidence-in-chief, the PW1 adopted a 39-paragraph Witness Statement on Oath as his evidence; the said PW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of the PW1's evidence is that the Defendants engaged Plaintiff to render legal services to them with respect to a property transaction between the Defendants and Margif Properties Limited. That the 1st Defendant informed him that he has referred Mr. Ben Magaji and Andrew Obi to him for further discussion, with respect to Plot No. 7 in Kyami District, Abuja which plot the 1st Defendant intended to buy and has negotiation with the owner.

That after meeting with Mr. Ben Magaji and Mr. Andrew Obi, they handed photocopies of the land documents to him. The Claimant then informed the 1st Defendant of the need to conduct

search on all the companies involved in the transaction and a legal search at the Land Registry to authenticate the genuineness or otherwise of the plot.

That the 1st Defendant agreed that the Claimant should conduct search at the Corporate Affairs Commission with respect to Margif Properties Limited and Yakinah Investment Company Limited but declined on the need to conduct legal search at the Land Registry on the strength that Mr. Ben Magaji has taken care of the legal search at the Land Registry.

The PW1 further testified to the effect that the 1st Defendant informed him that his brief is limited to preparing Sale Agreement, Power of Attorney, Deed of Assignment and Memorandum of Understanding. That PW1 prepared Power of Attorney, Deed of Assignment and Memorandum of Understanding.

It is the evidence of PW1 that in all the dealings, the 1st Defendant goes behind to discuss on price and mode of payment before involving or committing the PW1 to do the paper work and follow-up.

That in doing the bidding of the 1st Defendant who is the mind and alter ego of the 2nd Defendant did not in anywhere give a Kobo to him for all the legal work done for the Defendants.

That after much waiting thinking that the 1st Defendant will settle him, he went ahead to prepare bill of charges and also forwarded a Notice of Demand together with the Bill of Charge to the Defendants.

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

1. Copy of Right of Occupancy – Exhibit A
2. Copy of Irrevocable Power of Attorney – Exhibit B.
3. Copy of Memorandum of Understanding – Exhibit C.
4. Copy of Site Plan – Exhibit D.
5. Copy of Land Application Fee Receipt – Exhibit E.
6. Copy of Acknowledgment – Exhibit F.
7. Search Report dated 9/1/14 – Exhibit G.
8. Search Report dated 9/1/14 – Exhibit H.
9. Letter dated 9/7/13 – Exhibit I.
10. Letter dated 3/9/13 – Exhibit J.
11. Bank Deposit Slip dated 23/9/13 – Exhibit K.
12. Memorandum of Understanding dated 21/11/13 – Exhibit L.
13. Letter dated 7/4/16 – Exhibit M.
14. Bill of Charges dated 29/5/14 – Exhibit N.
15. Letter dated 16/5/16 – Exhibit O.
16. Sale Agreement – Exhibit P.
17. Power of Attorney – Exhibit Q.
18. Deed of Assignment – Exhibit R.
19. Memorandum of Understanding – Exhibit S.

The PW1 also filed an additional 13-paragraph witness statement on oath dated 31/10/2017 which was also adopted as part of his evidence-in-chief; the said PW1's additional witness statement on oath is further adopted as forming part of this judgment.

The gist of the PW1's additional statement on oath is that he was only a solicitor to the Defendants and not their company secretary. That he did not extract any promise to be settled from sale price from the Seller or anybody at anytime. That he did not work for the Seller, Margif Properties Limited as alleged.

That Mr. Andrew Obi gave him One Million Naira and N1,900,000.00 respectively but not with respect to the land transaction as alleged. That he gave him the said money to lobby the former Governor of Kogi State to buy land and as a mark of his commitment to settle the PW1 if any of the properties is sold through the PW1. The Claimant urge the court to direct the Defendants to pay him for his services.

Under cross-examination of PW1 by the Defendant's counsel, the PW1 stated that in a land transaction, a legal practitioner is to conduct a legal search on the property. That as at the time of the transaction, he was not the Company Secretary of the Defendants. That his name is in the C.A.C Form as the Company Secretary just to meet the requirement of the C.A.C.

That the search in the Land Registry was conducted by one Ben Magaji.

The witness further stated that he did due diligence by advising the 1st defendant to conduct a legal search on the land. That this was not the first job he did for the Defendants. The Defendants pays for the work he did for them except the one in question.

The Claimant also stated that he was briefed by the defendants on his personal capacity. There is no Letter of Brief but the Defendants called him on phone in respect of this transaction. The PW1 said he called to tell the Defendants that there was need to conduct search at the Land Registry and the 1st Defendant said the PW1's duty and responsibility is to prepare the necessary documents and negotiate with the Seller the mode of payment and that Ben Magaji had taken care of the search at the Land Registry. That he is not aware that the Defendants spent over N800,000,000.00 in trying to perfect his title documents in respect of the land. That he did not know the status of the transaction. That Andrew Obi gave him the sum of N1.9 Million but not in respect of this transaction. That Andrew Obi is the owner of Tideland Properties. That he is not aware that the sum of N5 Million was paid into Tideland Properties Limited by the Margif Properties Limited.

The witness further stated that on 19/6/13 he received the sum of N1 Million from Tideland Properties but it was not in respect of this transaction. And on 24/6/13 he received the sum of N1.9 Million from Tideland Properties.

Under re-examination, the PW1 stated that the defendant did not sign Exhibit S because he was based in Lagos and he elected him (PW1) to prepare it and sent it to the Seller for his signature and he will sign his portion later.

PW1 was discharged and that is the case for the Claimant.

In defence of the claim against the Defendants, the Defendants filed a 38-paragraph statement of defence and counter claim dated 14/9/2016 and called the following witnesses:

Andrew Ben Agbo testified as the DW1. In his evidence-in-chief, the DW1 adopted a 25-paragraph witness statement on oath dated 14/9/2016 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 Defendants never at any point in time engaged the Claimant to render to them legal services in respect to a property transaction between them and one Margif Properties Limited. That the Plaintiff is the Principal Partner of Atule Endemoh & Co. who are the Company Secretary to the 2nd Defendant was briefed by the said 2nd Defendant to advise it on all legal and necessary steps it ought to take to obtain and secure a good title to the property, the subject matter of this suit.

That the Plaintiff failed to conduct due diligence in conducting a search, as a result the defendant encountered problems after the purchase of the property and had incurred expenses in excess of N300 Million in trying to perfect the title of the 2nd Defendant to the property.

It is the evidence of DW1 that the 2nd Defendant Solicitor's letter dated 16/5/2016 to the Plaintiff is not slanderous or defamatory in any way but addressed solely the issues raised by the Plaintiff in his letter to the 2nd Defendant of 7th April, 2016.

In the cause of DW1's evidence, the following documents were admitted in evidence as exhibits:

1. Petition to the EFCC dated 8/4/15 – Exhibit T.
2. Copy of letter dated 19/6/15 – Exhibit U.
3. Receipts dated 19/6/15 – Exhibit U1.
4. Copy of Offer of Statutory Right of Occupancy dated 7/3/12 – Exhibit U2.
5. AGIS Acknowledgment dated 16/9/10 – Exhibit U3.
6. Copy of Site Plan – Exhibit U4
7. Copy of Statutory Right of Occupancy Bill dated 7/3/11 – Exhibit U5.
8. Copy of International Passport of Andrew Ben Agbo – Exhibit U6.
9. Copy of Conveyance of Building Approval dated 1/8/16 – Exhibit V.
10. Copy of FCTA Receipt dated 15/7/16 – Exhibit V1
11. Copies of U.B.A. Deposit Slips – Exhibit V2.
12. Copy of Letters dated 5/11/14 – Exhibit V3.
13. Copy of letter dated 7/7/16 – Exhibit V4.
14. Copy of letter dated 12/2/16 – Exhibit V5.
15. Eco Bank Evidence of Transfer of Cash – Exhibit V6.
16. 2 Copies of AGIS Payment Receipts – Exhibit W1 & W2.
17. Eco Bank Deposit Slip – Exhibit W3.
18. Demand for Ground Rent dated 4/6/15 – Exhibit W4.
19. Statutory Right of Occupancy Bill dated 7/3/11 – Exhibit W5.
20. Copy of Zenith Bank Cheque dated 26/9/14 – Exhibit W6.
21. AGIS Revenue Receipt – Exhibit W7.

DW1 urged the court to dismiss the Claimant's claim.

Under cross-examination of DW1 by the Plaintiff's counsel, the DW1 stated that the Plaintiff is part of the company as its secretary but he was call to give advice on all the legal processes in respect of the transaction.

That the Plaintiff is the 2nd Defendant company secretary. The Plaintiff was not given a letter appointing him as the Company Secretary but he was appointed by the Company Board's Resolution.

The CTC of Rhoda Asset Management Company Limited Board Resolution dated 16/11/12 and CTC of CAC Form 2.1 was admitted in evidence and marked Exhibits N8 and N9 respectively.

It is the evidence of the witness that the Plaintiff is to advise the company in respect of the transaction up to getting title documents. That the Plaintiff confirmed to him that the property was good and that he should pay.

The DW1 further stated that the Plaintiff stopped working for them in November 2013.

The court disallowed the question put to the witness under re-examination. The DW1 was accordingly discharged.

Obi Andrew testified as the DW2. In his evidence-in-chief, he adopted a 12-paragraph witness statement on oath dated 9/6/17

as his evidence. The DW2's statement on oath is further adopted as forming part of this judgment.

The gist of the DW2's evidence is that the Plaintiff was introduced to him with respect to the transaction as the 2nd Defendant's company secretary who will protect the interest of the Defendants and ensure that they get a good title. That the Plaintiff assured him that the land documents have been verified and confirmed okay.

The DW2 further stated that he paid a total sum of N3 Million to the Plaintiff from his company's account (Tideland Properties Limited). That he also paid the sum of N4 Million to Benjee Investment Limited for the benefit of one Ben Magaji and the Plaintiff.

In the cause of DW2's evidence, a copy of G.T.B. Statement of Account of Tideland Properties Limited was admitted in evidence as Exhibit X.

Under cross-examination of DW2 by the Plaintiff's counsel, the DW2 stated that it was Marjif Properties that asked him to transfer the money to the Plaintiff's account.

That it was the 2nd Defendant that introduced him to the Plaintiff as its company secretary to collect copies of the title documents of the plot in question for search. That when he (the DW2) raised the issue of legal search in the meetings they held with the parties, the Plaintiff said that he should not worry that the title document were OK.

The DW2 further stated that the sum of N4 Million he referred to in paragraph 10 of his statement on oath is rent of the property he is staying in.

The witness also led evidence to the effect that he did not know when Ben Magaji conducted a window search on the property at AGIS. That the only person he knows that work for Marjif is Barrister Stanley. That the N30 Million he paid to Ben Magaji was to blast stone and the sum of N4 Million paid into Ben Magaji's account on 5/9/13 was part of the money for blasting of stone.

No re-examination, DW2 was discharged.

Innocent Ugbede Agula, a subpoenaed SPW1. In his evidence-in-chief, he stated that sometime in October 2013, he was briefed by one Jokanah Marjif on behalf of Marjif Properties Limited, to offer legal advice with respect to criminal trespass by unknown persons on the agent of the 1st and 2nd Defendants; while they were on Plot No. 7 Cadastral Zone E23 Kiyami District, Abuja.

That he advice Marjif Properties to resolve the issue of ownership of the plot by filing a suit at the High Court of the FCT, Abuja which they did.

While the suit was pending, Mr. Lanre who introduced himself as an agent of the 1st Defendant approached him and informed him that the 1st Defendant would like to have a word with him. After discussion with his client (Marjif Properties) the SPW1 was informed by his client that the property had been sold to the 1st and 2nd Defendants.

Upon discussion with the 1st Defendant, the 1st Defendant informed him (the witness) that the Plaintiff in this suit was his lawyer and one Mr. Ben Magaji who is the 1st Defendant's agent had conducted a window search in respect of the plot in issue.

The witness also stated that all the meetings he attended in respect of this matter the Plaintiff was not part of the meeting. That it was the Plaintiff that prepared the Agreement between the 1st Defendant and Marjif Properties Limited. That the 1st Defendant introduced the Plaintiff to him as his lawyer in respect of the property.

Under cross-examination of SPW1 by the defendant's counsel, the witness stated that he did not advise the 1st Defendant to conduct search on the property but he rather asked if he had conducted legal search on the property and the 1st Defendant told him that it was not his brief. That he prepared a fresh document between Marjif and 1st Defendant and that the defendants were to pay his professional fees. But the 1st Defendant never gave him his professional money.

The witness further stated that he prepared 3 documents i.e. Deed of Assignment, Sale Agreement and Contingency Agreement; the said documents were admitted in evidence as exhibits as follows:

1. Power of Attorney – Exhibit Y.
2. Deed of Assignment – Exhibit Z1.
3. Sale Agreement – Exhibit Z2.

4. Contingency Agreement – Exhibit Z3.

The SPW1 was accordingly discharged. The case was adjourned for adoption of final written addresses.

The 1st and 2nd Defendants' counsel filed a final written address dated 13/1/2020 wherein counsel formulated the following issues for determination:

- 1. Whether the Plaintiff has proved his case by cogent and credible evidence for the grant of the reliefs sought.**
- 2. Whether the Defendants/Counter-claimant are entitled to damages for losses incurred as a result of the negligent and unprofessional conducts of the Plaintiff”**

On Issue 1, it is the submission of the Defence counsel that it has been proven by oral and documentary evidence that as at the time of the transaction under reference, the plaintiff's firm was the company secretary of the 2nd defendant. Court is referred to Exhibit W9.

It is submitted that it was the Plaintiff's duty as the principal partner and sole owner of Atule Enedomoh & Co. to ensure that the decision of the Board of Directors was implemented.

It is further submitted that due to the existing relationship the Plaintiff had with the defendants, there was never a need to specifically re-engage him as now portrayed, to carry out assignments on behalf of the company. See the case of PANORAMA DEVELOPMENT (GUILFORD) LTD v FIDELIS FURNISHING FABRICS LTD (1971) 3 WLR 40.

It is the contention of the Defendants that the bills of charges dated 29th May, 2014 and forwarded with a Notice of Demand dated 7th April, 2016, shortly before filing this suits was an afterthought, orchestrated to manufacture a cause of action against the Defendants.

It is the contention that there are material contradiction in the evidence of the Subpoenaed witness. Court is referred to his evidence and to hold that he is not a witness of truth. See EKE v STATE (2011) 3 LPELR – 1133 (SC); DOMA v INEC (2012) 13 NWLR (Pt 1317) 304.

It is further submitted that the evidence of the subpoenaed witness is hearsay. Court is referred to the subpoenaed witness evidence of 26/3/19. And to hold that the evidence of the subpoenaed witness is inadmissible in law and ought to be expunged. See DOMA v INEC (Supra).

It is the submission that the assertion of the Plaintiff that he was specifically engaged by the Defendants and did not act with recourse to the existing relationship as a company secretary is unsubstantiated and misplaced and there is no molecule of evidence before the court to prove or support same. Court is urged to discountenance same.

It is also the contention of the Defendant that the Plaintiff did not apply due diligence with respect to the transaction in issue.

It is the submission that a solicitor's letter upon brief, cannot amount to slander and defamation for which he Defendants will

attract liability. See case of AYENI v ADESINA (2007) 7 NWLR (Pt 1033) 233 at 260.

It is submitted that the Plaintiff failed to discharge the evidential burden placed on him by law in support of his claim. Court is urged to dismiss the Plaintiff's case.

On Issue 2, I am of the considered view that it is an issue for the counter claim which is distinct from substantive case.

The Claimant Counsel filed a final written address dated 30/1/2020 wherein counsel formulated two issues for determination:

1. "Whether the Claimant has proved his claim on preponderance of evidence as to be entitled to the reliefs sought.
2. Whether the defendants have proved their counter-claim in preponderance of evidence as to be entitled to the reliefs sought".

On Issue 1, it is the submission of the Claimants counsel that the Claimant has proved his claims on preponderance of evidence and entitled to the reliefs sought having regard to the state of the pleadings and the evidence thereon. See PHILIPS v E.O.C & IND. CO. LTD (2013) 1 NWLR 9Pt 1336) 618 at 640 – 641 Paras H – A.

It is submitted that the evidence of the Claimant in paragraph 5 – 15, 17 - 22, 25, 27 – 33, 35 – 38 of his witness statement on oath dated 10/8/2016 were not challenged, controverted or contradicted by the Defendants and are therefore deemed admitted. See HON. MIKE BALONWU v MR. PETER OBI (2007) 5

NWLR (Pt 1028) 388; AKANBI v ALAO (1989) 3 NWLR (Pt 108) 118 at 153.

It is further submitted that the Claimant also filed a Further Witness Statement on Oath dated 2/2/2017 and an additional witness statement on oath dated 31/10/2017. The Claimant denied and rebutted the material allegation of acts contained in the witness statement on oaths of the Defendants' witnesses. The Claimant's material evidence in rebuttal particularly paragraphs 3, 4 and 11 of his further witness statement on oath dated 2/2/2017 demonstrately show that he has proved his claim on the balance of probability or preponderance of evidence as to be entitled to the reliefs sought, the Defendants having not discharged the evidential burden of proof that shifted on them. No further burden is cast on the Claimant having regard to the inability of the Defendants to lead evidence in rebuttal of the claimant's evidence.

It is the submission that the Claimant is not the company secretary of the 2nd Defendant but the Defendant's solicitor. That Exhibits W8 and W9 are not and cannot or does not establish the Defendant's averment that the Claimant is the 2nd Defendant's company secretary.

It is submitted that the submission by the Defendant that the Claimant's bill of charges dated 7/4/2016 is an afterthought is misleading because there is nothing on record to predicate the defendant's submission. It is further submitted that the bill of charges is a condition precedent for the Claimant and any

solicitor to comply with before commencement of action for payment of professional fee. See OYEKANMI v NEPA (2001) FWLR (Pt 34) 404 at 420.

It is the contention by the Claimant that the Defendant's submission with respect to due diligence is of no moment as same cannot be stretched out of context. The due diligence of the Claimant is within the limit of his pleadings and evidence thereon. It is settled law that parties are bound by the pleadings before the court. Legal Search was not part of the Claimant's advice thereon. Court is urged to resolve this issue in favour of the Claimant and enter judgment for the Claimant.

The 2nd issue as formulated by the Claimant's Counsel will be treated under counter claim.

I have carefully considered the processes filed, evidence of both Claimant and Defendant's witnesses on both side, I agree with the Claimant's counsel that the sole issue that begs for determination is whether the Claimant has proved his claim on preponderance of evidence as to be entitled to the reliefs sought.

It is settled law that in civil cases, the burden of proof rests upon the party who asserts, the Claimant in this case and would not shift until it has been duly discharged. See the case of INTERCONTINENTAL BANK LTD v BRIFINA LTD (2012) 13 NWLR (Pt 130).

The Claimant's claim is predicated on the fact that the Defendants engaged him to render legal services to the

Defendants with respect to the purchase of Plot No. 7 in Kyami. Mr. Ben Magaji and Andrew Obi handed over photocopies of some land documents with respect to the plot in issue to him.

It is the evidence of the Claimant that he informed the 1st Defendant of the need to conduct search on all the companies involved in the transaction and a legal search at the Land Registry to authenticate the genuineness or otherwise of the document in respect to the said plot of land. The Defendants only considered to conducting search at the CAC with respect to the companies but decline on the need to conduct legal search at the Land Registry on the strength that Mr. Ben Magaji has taken care of the Legal Search at the Land Registry.

It is the further evidence of the Claimant who testifies as PW1, that the 1st Defendant informed him that the PW1's brief is limited to preparing Sale Agreement, Power of Attorney, Deed of Assignment and Memorandum of Understanding. See paragraph 12 of PW1's statement on oath of 10/8/16.

Now in paragraph 19(a) of the Statement of Claim, the Claimant claim inter alia from the Defendants the sum of N20,595,000 being the bill of charges for the services rendered to the Defendants.

In prove of the above claim, the Claimant tendered the Bill of Charges (Exhibit N). For want of doubt the said Exhibit N is here-in-under reproduced as follows:

OJ CHAMBERS

ATULE ENEDOMOH & COMPANY

(LEGAL PRACTITIONER, CONSULTANTS & NOTARY PUBLIC)

Suite A20, Ibro Hotel Complex

P.O. Box 13936, Wuse Zone 5, Abuja

Tel: 08035884750, 07056352114

07082488390

Suit 1 & 2 4th Republic

Housing Estate, Kabba

Okene Road, Lokoja

Kogi State.

BILL OF CHARGES

29th May, 2014

To: The Managing Director,
Rhodand Investment Ltd,
No. 1 Adewale Adeleke Close,
Off Oshogbo Street, Ogudu
Lagos.

Attention Mr. Andrew Ben Ago

Nature of Service	Professional Fee
• Search on the Company name – Margif Properties Limited and	N20,000

<ul style="list-style-type: none"> • Search on the Company name – Yakinah Investment Development Co. Ltd. 	
<ul style="list-style-type: none"> • Letters of Compensation to Gbagi Community dated 9th July, 2013 and 3rd September, 2013 in the sum of N15,000,000 (Fifteen Million Naira) only. 	N75,000
<ul style="list-style-type: none"> • Preparation of Sale Agreement between Margif Properties and Rhodand Investment Ltd, Power of Attorney and Deed of Assignment between Yakinah Investment Dev. Co. Ltd and Rohdand Investment Ltd. (Consideration N200,000,000) 	N10,000,000 (5%)
<ul style="list-style-type: none"> • Preparation of Memorandum of Understanding between Margif Properties and Rhodand Investment Ltd on the mode of further payment of the sum of N200,000,000 (Two Hundred Million Naira) only given the total transaction to be N400,000,000 (Four Hundred Million Naira) only. 	N10,000,000 (5%)
<ul style="list-style-type: none"> • Meeting held on the 21st November, 2013 at Sani Abacha's Barrack between the hours of 9 – 10.30 p.m. with Ambassador Yohana, Andrew Obi with relation of Agbo. 	N300,000
<ul style="list-style-type: none"> • Meeting held on the 19th January, 2014 with Margif Property – Ambassador Yohana, Agbo Ben Andrew, Ben Magaji and Andrew Obi between 4 – 7 p.m. 	N200,000

Total due to us = N20,595,000

Thank you for the opportunity to serve you.

Yours faithfully,

Atule Enedomoh & Co

(Sgd)

S.E. Atule (Esq)”

I am of the considered view that the Claimant has a duty to adduce credible and cogent evidence before this court on how he came about the breakdown of the Bill of Charges. For instance in Clause (iii) on the Bill of Charges (Exhibit N). The Nature of Service is Letter of Compensation to Gbagi Community dated 9th July, 2013 and 3rd September, 2013 in the sum of N15,000,000 (Fifteen Million Naira) only. The professional fee on that item is N75,000. The Claimant failed to adduce evidence on how he arrived at the sum of N75,000 as his professional fees.

Further in Clause 6 and 7 of Exhibit N the Claimant is claiming the sum of N500,000 as professional fees for meeting held on 21/11/2013 between the hours of 9 – 10:30 p.m. and another held on 19/1/2014 between 4 – 7 p.m. There was no evidence before this court on when the Defendants briefed him to hold such meeting. More fundamental and fatal to the case of the Claimant is that the Claimant failed to adduced evidence and/or produce any Letter of Instruction to him from the Defendants. The Defendants on the other hand had stated that they never at any point in time whatsoever engaged the Claimant to render to them legal services in respect to a property transaction between them and one Margif Properties Limited. It is then on the Claimant

to prove with positive evidence that there was such an instruction, that the Claimant has failed to do so.

If there was such Letter of Instruction, it would have clearly spelt out the terms of engagement and the duties and liabilities of parties. It would have also clearly set out what the legal fees for the particular assignment would have been, upon due completion of the duties imposed.

The Claimant in his statement of claim, particularly in paragraph 6 and 8 stated that he carried out due diligence on behalf of the Defendants with respect to the transaction under reference. If that averment is correct, the due diligence would have revealed adverse title and competing claims to the said property and would have saved the Defendants the humiliation and embarrassment of an arrest by the EFCC, loss of finances.

In paragraph 19(b) of the Statement of Claim, the Claimant claim the sum of N50 Million being damages for defamation. I am of the considered view that facts flowing from the conduct of the Claimant in the transaction under reference, represented in solicitor's letter upon brief, cannot amount to slander and defamation for which the Defendants will attract liability.

A defamatory statement must necessarily be false and calculated to disrepute a person and also must be published to a 3rd person.

In the instant case, the solicitor's letter referred to as slanderous was addressed only to the Claimant and only represented facts flowing from the transaction under reference.

It is the law that in order to succeed in an action for defamation, a Plaintiff must prove that the libel or slander has been published that is communicated to some other person or persons other than the Plaintiff himself. See AYINI v ADESINA (2007) 7 NWLR (Pt 1033) 233 at 260.

In the instant case, the Claimant failed to discharge this evidential burden as nothing was put before the court in support of his claim for defamation.

In conclusion, I am of the considered view that the Claimant has failed to adduce credible and cogent evidence to warrant judgment in his favour. Accordingly the case of the Claimant must fall as a pack of card. This case is hereby dismissed for want of credible evidence.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/05/2020

JUDGMENT IN THE COUNTER CLAIM

The Defendants/Counter Claimants claimed against the Plaintiff/Defendant to the Counter Claim as follows:

1. A Declaration that the Plaintiff/Defendant to the counter claim breached the duty he owes the Defendants/Counter Claimants thus occasioning them serious financial losses and loss of business partners, opportunities and reputation.
2. General damages in the sum of N350 Million in favour of the Defendant/Counter Claimants against the Plaintiff/Defendant to the Counter Claim which occasioned them serious financial losses and loss of business partners, opportunities and reputation.
3. N1,000,000,000.00 being the cost of defending this suit and prosecuting the counter claim.

In prove of this counter-claim, the Defendants/Counter Claimant filed a 15-paragraph counter claim i.e. paragraph 24 to 38 of the Statement of Defence/Counter Claim dated 14/9/2016 and called the following witnesses:

Andrew Ben Agbo testified as the DW1. In his evidence-in-chief, he adopted a 25-paragraph witness statement on oath dated 14/9/2016 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 Plaintiff/Defendant to the Counter Claim is the principal partner of Atule Enedomoh & Co who are the Company Secretary to the Defendant/Counter Claimant and was briefed by the 2nd Defendant/Counter Claimant to advise it on all legal and necessary steps it ought to

take to obtain the secure a good title to the property, the subject matter of this suit. That the Plaintiff/Defendant to the Counter Claim failed to conduct due diligence in procuring the title documents with respect to the purchase of the plot in issue, as a result the counter claimant incurred further expenses in excess of N300 Million in trying to perfect the title of the 2nd Defendant to the property, the subject matter of this suit.

In the cause of DW1's evidence, documents were admitted in evidence as Exhibits T, U, U¹ – U⁶, V, V¹ – V⁶, W¹ – W⁷ respectively.

Under cross-examination of DW1 by the Plaintiff/Defendant to Counter Claim Counsel, the DW1 stated that the Plaintiff is part of the company as its secretary. That he was appointed Company Secretary sometime in 2012.

The CTC of Rhodand Asset Management Company Limited Board Resolution dated 16/11/12 and CTC of CAC Form 2.1 was admitted in evidence as Exhibits W⁸ and W⁹ respectively.

The DW1 further stated that it was Timothy Achimugu that presented Exhibit W⁹ for filing as stated in the Exhibit. That there is no attendance list attached to Exhibit W⁸ (the Board Resolution).

That the Plaintiff is to advise the company in respect of the transaction up to getting title documents. The Plaintiff has no limit as regard to his advice to the company. DW1 was discharged.

Andrew Obi testified as DW2. In his evidence-in-chief, he adopted a 12-paragraph Witness Statement on Oath dated 9/6/17 as his evidence; the said DW2's statement on oath is further adopted as forming part of this judgment.

The gist of DW2's testimony is that the 1st Defendant/Counter Claimant introduced him to the Plaintiff/Defendant to the Counter Claim as the Company Secretary of the 2nd Defendant/Counter Claimant. That during some of the meetings they held with the Plaintiff/Defendant to counter claim, the DW2 emphasized the need for a Legal Search as it ought to be the first step in the entire transaction.

That the Plaintiff/Defendant to Counter Claim assured him that the land document have been verified and confirmed okay.

The witness further stated that the Seller, Marjif Properties Limited made several deposits to Tideland Properties Limited, GTB Account for the benefit of those that worked for him. That the Plaintiff/Defendant to counter claim was paid the sum of N1 Million, N1.9 Million and N100,000.00 respectively pursuant to the Seller's instruction.

The DW2 company G.T.B. Statement of Account was admitted in evidence as Exhibit X.

Under cross-examination by the Plaintiff/Defendant to the Counter Claim Counsel, the DW2 stated that it was Marjif Properties that asked him to transfer the money to the Plaintiff/Defendant to the Counter Claim's account.

The DW2 also stated that it was the 2nd Defendant/Counter Claimant that introduced him to the Plaintiff as its Company Secretary to collect copies of the title documents of the plot for search.

The witness further stated that the people that were working for Marjif Properties in respect of this plot were the Plaintiff and

Innocent. DW2 was discharged accordingly and that is the case for the Counter Claimants.

In defence of the counter claim, the Plaintiff/Defendant to the counter claim filed a 5-paragraph defence to counter claim i.e. paragraphs 9 – 13 to the Reply to Statement of Defence/Defence to Counter Claim dated 1/2/2017 and called a sole witness.

The Plaintiff/Defendant to counter claim testified as the PW1. In his evidence –in-chief he adopted a 14-paragraph Further Witness Statement on Oath dated 2/2/2017 as his evidence; the said PW1's further statement on oath is accordingly adopted as forming part of this judgment.

The gist of the PW1's testimony is that his dealings or legal services rendered to the Defendants/Counter Claimant with respect to the property in question was not in his capacity as the 2nd Defendant/Counter Claimant company secretary but as solicitor to the defendants. That he was specifically instructed by the 1st Defendant/Counter Claimant to render the said legal service.

That he did not breach any of his duty to the Defendant/Counter Claimant.

Under cross-examination of PW1 on 15/11/18 he stated that as at the time of the transaction, his law firm was called Tule Enedomoh & Co C.O.J Chambers). He is the Principal Partner of the Chambers. That by Exhibits W8 and W9 it was Atule Endomoh & Co that was the Company Secretary of the Defendant.

The PW1 further stated that the only sum paid to him which was not in respect of the transaction is N2.9 Million on 5/9/13. He also receipted the sum of N100,000.00 as per Exhibit X.

No re-examination, PW1 was discharged.

Innocent Ugbede Agula a subpoenaed witness testified on 21/1/2019 as SPW1. His evidence in the substantive case in the judgment just delivered is adopted as forming part of this judgment.

The Defendants/Counter Claimant filed a final written address dated 13/1/2020 wherein counsel formulated on issue for the counter claim i.e. Issue 2 on his final written address as follows:

Whether the Defendants/Counter Claimants are entitled to damages for losses incurred as a result of the negligent and unprofessional conducts of the Plaintiff.

On this issue, it is the submission that the negligent and unprofessional conduct of the Plaintiff/Defendant to counter claim in the transaction under reference has caused the Defendant/Counter Claimant's huge pecuniary losses, loss of reputation and business opportunities and serious psychological and emotional trauma. See the case of *ABI v CBN* (2012) 3 NWLR Pt 1286 Pg 84.

It is the contention that the Plaintiff/Defendant to counter claim as a Company Secretary of the 2nd Defendant/Counter Claimant, mandated to oversee the purchase of the property under reference and ensuring that a good title is obtained certainly has a duty of care. He breached that duty when he failed to carry out necessary due diligence to ensure an unencumbered title and rather became compromised after collecting monies from the adverse party without disclosure. The conduct of the Plaintiff/Defendant to counter claim has cause the

Defendant/Counter Claimant huge losses, pursuant to which the Defendant/Counter Claimant claims general damages. See MOBIL PROD (NIG) UNLIMITED v UDO (2008) 36 WRN Pg 53 at 107 Paras 15 – 35.

It is submitted that the Counter Claimant have placed cogent, credible and positive evidence before this Honourable Court in support of their counter claim. Court is urged to enter judgment in favour of the Defendants/Counter Claimant.

The Plaintiff/Defendant to the Counter Claim also filed a final written address dated 30/1/2020 wherein counsel in respect to the counter claim formulated an issue for determination as follows:

“Whether the Defendants have proved their counter claim on preponderance of evidence as to be entitled to the reliefs sought”

On this issue, it is the submission of counsel that the Defendants/Counter Claimants failed to prove their counter claim and therefore not entitled to judgment thereon having abandoned their counter claim. See OKORO v OKPARA (1018) 16 NWLR (Pt 1646) 506 at 515 Para G.

That the only thing the Defendants did with respect to their counter claim was to reproduce the reliefs sought in their counter claim at paragraph 24 of the 1st Defendant's witness statement on oaths without more.

It is further submitted that the counter claim of the Defendants is for a declaratory reliefs which are not granted even on admission of party or failure to file defence. Declaratory reliefs must be proved with cogent and credible evidence. It is now settled law

that declaratory reliefs are not granted as of a right or for the asking even if no evidence is adduced by the opposing party. See ABDULLAHI v MILITARY ADMINISTRATOR, KADUNA STATE & ORS (2004) 5 NWLR (Pt 866) 282 at 253.

It is contended that the defendants have not be able to demonstrate or prove that the Plaintiff is their company secretary and acted as such and not as a solicitor. Court is urged to dismiss the counter claim.

I have carefully considered the processes filed, evidence of witnesses on both sides and final written addresses of counsel on both sides, I am of the firm view that the sole issue that begs for determination is whether the Defendants/Counter Claimants have proved their counter claim on preponderance of evidence as to be entitled to the reliefs sought.

It is not in doubt that counter claim is a separate, distinct and independent action to that of the substantive suit. Neither of the two claims depends on the other for its success. As each must be separately proved by credible evidence, none is defence to the other. See the Supreme Court case of OKORO v OKPARA (2018) 16 NWLR (Pt 1646) 506 at 515 Para G.

In the instant case, the counter claim of the Defendants/Counter Claimants is for a declaratory reliefs which are not granted even on admission of party or failure to file defence. Declaratory reliefs must be proved with cogent and credible evidence. See ABDULLAHI v MILITARY ADMINISTRATOR, KADUNASTATE & ORS (2004) 5 NWLR (Pt 866) 232 at 253.

The material pleadings of the Defendant/Counter Claimants predicated their counter claim is contained at paragraph 25 of their Statement of Defence/Counter Claim which is to the effect that the Plaintiff/Defendant to the counter claim is the principal partner of Atule Enedomoh & Co who are the Company Secretary to the 2nd Defendant/Counter Claimant and were briefed by the 2nd Defendant/Counter Claimant to advise it on legal and necessary steps it ought to take to obtain and secure a good title to the property, the subject matter of this suit.

The Counter Claimants in prove that the Plaintiff/Defendant to the counter claim was their Company Secretary at the time of the transaction tendered Board Resolution of Rhodand Asset Management Company Limited RC 1696,594 Exhibit W⁸ and CAC Form 2.1 of Rhodand Asset Management Company Exhibit W⁹.

A close look at the said Exhibits reveals that Messrs Atule Enedomoh & Co was appointed the Company Secretary of Rhodand Asset Management Company Limited.

In the processes filed before this court the name of the 2nd Defendant/Counter Claimant is Rhodand Investment Limited which is distinct from Rhodand Asset Management Company Limited. There is no evidence before the court as to the relationship between Rhodand Investment Limited and Rhodand Asset Management Company Limited. Furthermore, on the face of Exhibit W⁸ and W⁹ the Company Secretary to Rhodand Asset Management Company Limited is Messrs Atule Enedomoh & Co and not Atule Stanley who is the Plaintiff/Defendant to the Counter Claim.

It is settled law that an incorporated company is a creature of law clothed with independent legal personality from the moment of incorporation, distinct and separate from those who labored to give birth to it. See SALOMON v SALOMON & CO. LTD (1897) A.C. 22 at 51.

It is also the law that a holding company and its subsidiaries are each distinct and separate legal person. Each owns its own assets and property separately. See M.O. KANU, SONS & CO v F.B.N. PLC (1998) 11 NWLR (Pt 572) 116 at 121.

It must be noted that the separate personality which a company acquires on its incorporation makes it mandatory that whenever a wrong is done to the company only the company is harmed by the wrongful act and therefore only the company can sue to remedy it. See N.I.B. INVEST. W/A v OMOSORE (2006) 4 NWLR (Pt 969) 172.

In the instant case, I am of the considered view that the 2nd Defendant/Counter claimantgggggggggggggggggggggggggggggg do not have the *locus standi* to sue the Plaintiff/Defendant to the Counter Claim on the ground that the later was never the Company Secretary to the former, I so hold.

It is without doubt that the foundation of the counter claim is that the Plaintiff/Defendant to the counter claim was the Company Secretary to the 2nd Defendant/Counter Claimant (Rohdand Investment Ltd). From the evidence adduced both oral and documentary, it is clear as crystal that the Defendants/Counter Claimant have not been able to demonstrate or prove with positive evidence that the Plaintiff/Defendant to the counter

claim is their company secretary and acted as such in the transaction, the subject matter.

It is also the law that this court has the powers to look at documents/processes filed before it. A close/cursory perusal of the counter claim dated 14/9/2016 show clearly that the appropriate and or no filing fees was paid in line with the Rules of this court and as such the counter claim is incompetent.

In conclusion, I am of the considered view that the counter claim of the counter claimant must also fall like a pack of card, as the counter claimants have failed to adduce cogent and material evidence to warrant this court enter judgment in their favour. Accordingly, the counter claim fails and it is hereby dismissed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/05/2020

Claimant's Counsel – On behalf of the Claimant, we thank the court for the judgment.

Defendant's Counsel – May I adopt the submission of the Claimant's counsel.

We are grateful to the court for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/05/2020