

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON WEDNESDAY, 11<sup>TH</sup> DAY OF NOVEMBER, 2020**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/3006/2015**

**BETWEEN**

**1. AMITECH INTERGLOBAL  
ENGINEERING LIMITED**

**2. PRINCE CHIEMEKA OKONKWO**



**CLAIMANTS**

**AND**

**UNITY BANK PLC.**

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**DEFENDANT**

**JUDGMENT**

The claimants [plaintiffs] filed this suit on 15/10/2015 vide writ of summons. The pleadings in this case are: [i] the claimants' amended statement of claim filed on 14/3/2017; [ii] the defendant's statement of defence and counter claim filed on 22/6/2016; [iii] the claimants' reply to the defendant's statement of defence filed on 14/3/2017; and [iv] the claimants' defence to the defendant's counter claim filed on 14/3/2017. All the pleadings of the claimants were filed pursuant to the leave of the Court granted on 7/3/2017.

In paragraph 62 of the amended statement of claim filed on 14/3/2017, the claimants claim the following reliefs against the defendant:

1. A declaration that the 1<sup>st</sup> plaintiff has paid off the loan of N15M [fifteen million Naira] granted to it by the defendant in addition to accrued interests/charges authorized by law and the agreement between the parties.
2. A declaration that any other charges by the defendant on the loan granted to the 1<sup>st</sup> plaintiff is not in accordance with the agreement between the parties and monetary policy/guidelines issued by the Central Bank of Nigeria.
3. An order directing the defendant to refund excess search fee of N45,000.00 [forty five thousand Naira] at an interest rate of 36% per annum from the date of each excess search fee to the date of judgment and 36% from the date of judgment to the date of refund.
4. An order directing the defendant to refund excess processing/commitment fee of N1,493,166.36 [one million, four hundred and ninety three thousand, one hundred and sixty six Naira, thirty six Kobo] at an interest rate of 36% per annum from the date of each excess processing/commitment fee to the date of judgment and 36% from the date of judgment to the date of refund.

5. An order directing the defendant to refund excess managers cheque fee of N3,255.00 [three thousand two hundred and fifty five Naira] at an interest rate of 36% per annum from the date of each excess managers cheque fee to the date of judgment and 36% from the date of judgment to the date of refund.
6. An order directing the defendant to refund excess LG commission of N4,682,294.65 [four million six hundred and eighty two thousand two hundred and ninety four Naira, sixty five Kobo] at an interest rate of 36% per annum from the date of each excess LG commission to the date of judgment and 36% from the date of judgment to the date of refund.
7. An order directing the defendant to refund excess insurance premium of N1,522,868.01 [one million five hundred and twenty two thousand, eight hundred and sixty eight Naira, one Kobo] at interest rate of 36% per annum from the date of each excess insurance premium to the date of judgment and 36% from the date of judgment to the date of refund.
8. An order directing the defendant to refund excess credit bureau monitoring fee of N4,000.00 [four thousand Naira] at an interest rate of 36% per annum from the date of each excess credit bureau monitoring fee to the date of judgment and 36% from the date of judgment to the date of refund.
9. An order directing the defendant to refund excess Neft commission of N3,400.00 [three thousand four hundred Naira] at an interest rate of

36% per annum from the date of each excess Neft commission to the date of judgment and 36% from the date of judgment to the date of refund.

10. An order directing the defendant to refund excess 1% flat fee of N328,612.20 [three hundred and twenty eight thousand six hundred and twelve Naira, twenty Kobo] at an interest rate of 36% per annum from the date of each excess 1% flat fee to the date of judgment and 36% from the date of judgment to the date of refund.
11. An order directing the defendant to refund excess remote withdrawal fee of N1,112.00 [one thousand one hundred and twelve Naira] at an interest rate of 36% per annum from the date of each excess remote withdrawal fee to the date of judgment and 36% from the date of judgment to the date of refund.
12. An order directing the defendant to refund excess interest charges of N15,499,589.11 [fifteen million four hundred and ninety nine thousand, five hundred and eighty nine Naira, eleven Kobo] at an interest rate of 36% per annum from the date of each excess interest charges to the date of judgment and 36% from the date of judgment to the date of refund.
13. An order directing the defendant to refund excess 1% penal rate charges of N2,942,171.99 [two million nine hundred and forty two thousand, one hundred and seventy one Naira, ninety nine Kobo] at an

interest rate of 36% per annum from the date of each excess 1% penal rate charges to the date of judgment and 36% from the date of judgment to the date of refund.

14. An order directing the defendant to refund excess legal and bid bond fee of N916,656.67 [nine hundred and sixteen thousand, six hundred and fifty six Naira, sixty seven Kobo] *[sic]* per annum from the date of each excess legal and bid bond fee to the date of judgment and 36% from the date of judgment to the date of refund.
15. An order directing the defendant to fund all excess charges it made against the 1<sup>st</sup> plaintiff's account between June 2015 and September 2015 in the sum of N3,821,833.21 [three million eight hundred and twenty one thousand eight hundred and thirty three Naira twenty one Kobo) at an interest rate of 36% per annum from the date of each excess charge to the date of judgment and from the date of judgment to the date of refund of such excess charges.
16. An order directing the defendant to pay to the 1<sup>st</sup> plaintiff 100% penalty on all excess charges made against the 1<sup>st</sup> plaintiff's account for the defendant's failure to refund the excess charges within 2 weeks of receiving 1<sup>st</sup> plaintiff's complaint against the said excess charges.
17. A declaration that the defendant committed wrongs against the 1<sup>st</sup> plaintiff's account.

18. A declaration that the defendant embezzled the fund of the 1<sup>st</sup> plaintiff in the custody of the defendant.
19. An injunction restraining the defendant by itself, its servants, agents or anybody however from selling, disposing off or in any way tampering with the property known as Block 21, Flat 4, Baure Close, Garki, Abuja.
20. A perpetual injunction restraining the defendant by itself, its servants, agents or anybody however from selling, disposing off or in any way tampering with the property known as Block 21, Flat 4, Baure Close, Garki Abuja.
21. An order directing the defendant to return to the 2<sup>nd</sup> plaintiff through the 1<sup>st</sup> plaintiff the documents of title of the property known as Block 21, Flat 4, Baure Close, Garki Abuja.
22. The cost of this action.

In paragraph 85 of the statement of defence and counter claim, the defendant counter claims against the plaintiffs as follows:

1. A declaration that the 1<sup>st</sup> plaintiff owes the defendant the sum of N43,424,027.24 being the amount due and owing to the defendant in respect of the loan restructure granted to the 1<sup>st</sup> plaintiff on the 27<sup>th</sup> of April, 2012.

2. An order of this Honourable Court directing the 1<sup>st</sup> plaintiff to immediately pay the defendant the sum of N43,424,027.24 being the amount due and owing to the defendant as at the 31<sup>st</sup> of May, 2016.
3. An order of this Honourable Court directing the 1<sup>st</sup> plaintiff to immediately pay the defendant 3% per month of the outstanding sum of N43,424,027.24 from the 30<sup>th</sup> day of June 2016 till the final liquidation of the loan sum.
4. An order of this Honourable Court directing the plaintiffs to immediately pay the sum of N4,900,000.00 being the balance of legal fees charged by the law firm of Alfred James Attorneys in this suit.
5. An order of this Honourable Court directing the 1<sup>st</sup> plaintiff to immediately pay the defendant 10% interest on the judgment sum per month from the date of judgment till the final liquidation of the sum.

At the trial, Lawman Nzenwa, a chartered accountant and auditor, testified as PW1. He adopted his statement on oath filed on 22/7/2017 and tendered Exhibits A, B, C, D, E, F, G, H, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA1, AA2, BB, CC, DD, EE, FF & GG. The evidence in-chief of PW1 and his evidence under cross examination are in the records of the Court.

AmbaliAbubakarIsah, a staff of the defendant, testified as DW1. He adopted his statement on oath filed on 22/6/2016 and an additional statement on oath

filed on 18/5/2018. DW1 tendered Exhibits HH1-HH12, JJ1-JJ11, KK, LL1, LL2, MM1-MM6, OO1-OO7, PP, QQ1-QQ5, RR, SS, TT, UU, UU1& VV. The evidence in-chief of DW1 and his evidence under cross examination are in the records of the Court.

From the case presented by the parties, there exists a banker/customer relationship between the defendant and the 1<sup>st</sup> claimant. The 2<sup>nd</sup> claimant is the managing director and chief executive officer of the 1<sup>st</sup> claimant. The defendant granted credit facilities to the 1<sup>st</sup> claimant at different times as shown in the offer letters, Exhibits A, B, C, D, E, F, G, H, I, K, L, M, N, O, P, Q, R, S, T, U, V. The dispute between the parties in this action arose from the loan facilities granted by the defendant to the 1<sup>st</sup> claimant.

The case of the claimants is as stated in their pleadings, which is supported by the 148-paragraph statement on oath of the PW1 filed on 22/2/2017. In paragraphs 37 & 38 of the statement on oath of PW1, he stated that the 1<sup>st</sup> claimant's account was overcharged by the defendant in the sum of N28,291,058.41 as at 28/5/2015 made up of excess interest charges, excess charges of other fees and charges of some fees in violation of Central Bank of Nigeria [CBN] Guide to Bank Charges of 2004 and 2013.

The summary of the alleged excess charges are set out in paragraph 35 of the amended statement of claim and in Table 1 in paragraph 38 of the statement on oath of PW1 made up of 15 items, namely: [a] search fees; [b] management



fees; [c] processing and commitment fees; [d] interest charges; [e] management cheque; [f] VAT on manager cheque; [g] LG commission; [h] insurance debt; [i] NEFT commission; [j] 1% flat fee charge; [k] charge for remote withdrawal; [l] penal charges; [m] legal charges; [n] others; and [o] credit bureau monitoring. The details of the alleged excess charges are in paragraphs 70, 101-118 & 125 and in Tables 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 & 16 of the statement on oath of PW1. The claimants' claims are mainly predicated on the allegation of excess charges.

On the other hand, the case of the defendant is as stated in its statement of defence, which is supported by the 101-paragraph statement on oath of DW1 filed on 22/6/2016. The case of the defendant is that the charges levied against the 1<sup>st</sup> claimant's account were based on the interest rates and charges agreed upon by the parties and contained in all the offer letters for the loan facilities and in accordance with the CBN Guide to Bank Charges of 2004 and 2013. The evidence of DW1 in paragraphs 29, 31-47, 55-65 & 67 of his statement on oath is in support of the above averment.

In paragraphs 30, 48, 49, 50 & 51 of his statement on oath, DW1 stated that the defendant did not overcharge the 1<sup>st</sup> claimant's account in the sum of N28,291,058.41. The DW1 explained that upon the receipt of the interim report from Lawman Nzenwa, the defendant conducted investigation into the 1<sup>st</sup> claimant's account and found that it charged the 1<sup>st</sup> claimant 4% as penal charges for default instead of 1%. The defendant duly reversed the

extra charges of 3% of the penal charges in the 1<sup>st</sup> claimant's account from 10/5/2010 when the first facility was granted till September, 2015 and retained only 1% penal charge authorized by the Guide to Bank Charges. The reversed charges amounted to N1,126,176.08 made up of N907,221.89 [as excess charges] and N212,679.19 [being the accrued interest on the excess charges]. The sum of N1,126,176.08 was credited to 1<sup>st</sup> claimant's account on 8/9/2015.

At the end of the trial, ChineduUdora Esq. filed the defendant's final address on 3/5/2019. Don ChidiAkaegbu Esq. filed the claimants' final address on 24/9/2019. ChineduUdoraEsq. filed the defendant's reply on points of law on 30/9/2019. Learned counsel for the parties adopted their respective final addresses on 30/9/2019.

In the defendant's final address, ChineduUdora Esq. formulated these two issues for determination:

1. Whether in view of the circumstances of this case the claimants are entitled to judgment as regards their statement of claim.
2. Whether the defendant has proved his *[sic]* counter claim against the claimants to be entitled to judgment as per her *[sic]* counter claim.

For his part, Don ChidiAkaegbu Esq. also distilled two issues for the Court's determination, namely:

1. Whether in all the circumstances of this case, the claimants have proved their case to entitle them to the reliefs sought as per their statement of claim.
2. Did the defendant/counter claimant prove its case to entitle it to its counterclaim having regard to the state of pleadings and evidence led at trial?

On 11/12/2019 when the matter came up for judgment, the Court, after due consideration of the case presented by the parties and the submissions of learned counsel in their final addresses, issued a Direction in which it remarked *inter alia* that:

*“It is evident from the case presented by the parties that the issues in this suit are somewhat technical and involve the calculation of figures; reconciliation of figures and credit/debit entries in 1<sup>st</sup> claimant’s statement of account. The Court is of the considered opinion that in order to determine the claimants’ claims and the defendant’s counter claims, it will require the opinion of an official referee on some issues of fact arising from the suit. This is an appropriate case for the Court to apply the provisions of Order 29 of the Rules of the Court, 2018. Order 29 rule 1 of the Rules of the Court, 2018 provides:*

*“In any legal proceeding the court may at any time order the whole cause or matter or any question or issue of fact arising, to be tried before an official referee or officer of the court, notwithstanding that it may*

*appear that there is a special or other relief sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.”*

*In the light of the issues of fact which have arisen in this matter, the Court is of the opinion that the appropriate official referee in this case is the CBN and in particular, the Consumer Protection Department of CBN. ...”*

The Court, in exercise of its powers under Order 29 rule 1 of the Rules of the Court, 2018 appointed the Director of Consumer Protection Department of CBN as the Official Referee to conduct an inquiry in respect of the issues of fact in this case and thereafter send a report of the findings to the Court. The Court directed the Official Referee or any officer[s] that he may appoint to conduct an inquiry into and make findings of fact on the following:

- i. Whether the loan facilities granted to the 1<sup>st</sup> claimant by the defendant were term loans or overdraft facilities.*
- ii. Whether the defendant applied the agreed interest rates stated in the offer letters in charging interest in respect of the loan facilities as shown in the statement of account of the 1<sup>st</sup> claimant.*
- iii. Are the claimants’ allegations of excess and unauthorized bank charges in the 1<sup>st</sup> claimant’s account and violation of CBN Guide on Bank Charges 2004 and 2013 made against the defendant correct?*

- iv. *From the findings in [c] above, is the 1<sup>st</sup> claimant indebted to the defendant or is the defendant indebted to the 1<sup>st</sup> claimant? If so, what is the amount of indebtedness to the 1<sup>st</sup> claimant or to the defendant?*

On 8/6/2020, Justina Azoro, the Assistant Manager in the Consumer Protection Department of CBN presented the Report of the Official Referee dated 5/6/2020, which was signed by M. A. Bello [for: Director, Consumer Protection Department of CBN] to the Court.

In paragraph A of the Report titled: *Transaction Dynamics*, the finding of the Official Referee was that:

*“The petitioner was granted various contract finance facilities and term loans of N15 million as well as Advance Payment Guarantees [APGs] and Bid Bonds from 2010 to 2014. The facilities were granted to execute contracts awarded by Federal Roads Maintenance Agency [FERMA]. The contract finance facilities and term loans were renewed and restructured from 2010 to 2014. It was confirmed that the petitioner was not granted any overdraft facilities as the loan amounts were disbursed into the account which is synonymous with the transaction dynamics of a term loan.”*

In paragraph B titled: *Interest on Loan Facilities*, the finding of the Official Referee is that *“in all but two instances, the bank applied the agreed interest rates stated in the executed offer letters.”* The details of the debit interest in respect of

the loan facilities were stated in Table B. From Table B, the defendant applied interest rate of 26% - 27% instead of 24% in respect of the term loan of N15 million granted to the 1<sup>st</sup> claimant on 5/4/2011. The defendant also applied interest rate of 32% instead of 30% in respect of the term loan of N16,463,907 granted to the 1<sup>st</sup> claimant on 7/9/2012.

In paragraph C, the Official Referee considered the 1<sup>st</sup> claimant's claims on excess charges of N84,465,152.16 from pages 2 to 11 and found that:

*"Based on the above, the petitioner is entitled to a refund of N50,789,645.18 being established excess charges of N29,413,136.98 and accrued interest of N21,376,508.21. The bank is also entitled to recoup the sum of N1,242,200.74 being recovery/previous refunds. At the end of the exercise, it was established that the closing balance on the account as at 29th December, 2017 is a debit balance of N28,095,788.36."*

As I said before, one of the issues which the Court directed the Official Referee to make a finding on reads: *"... is the 1<sup>st</sup> claimant indebted to the defendant or is the defendant indebted to the 1<sup>st</sup> claimant? If so, what is the amount of indebtedness to the 1<sup>st</sup> claimant or to the defendant?"* The finding of the Official Referee on this issue is stated in the conclusion thus:

*"The total amount refundable to the petitioner in line with the investigation is N49,547,444.44 [net] as against the claim of N84,465,152.16 as excess charges."*

*In line with the reconstructed account, its closing balance on the account after refund of excess charges and accrued interest totaling N49,547,444.44 is an outstanding balance of N28,095,788.36 as at 29<sup>th</sup> December, 2017."*

Upon receipt of the Report on 8/6/2020, the Court adjourned the matter to 29/6/2020 to afford the parties the opportunity to make their observations on the findings of the Official Referee.

On 29/6/2020, Toluwa Odekhe Esq. who appeared for the claimants, informed the Court that the claimants filed their observations on 23/6/2020. He urged the Court to direct the Official Referee to conduct further investigation into the matter in the light of the claimants' observations. Chinedu Udora Esq. had no objection to the findings of the Official Referee in the Report.

Based on the observations of the claimants, the Court, pursuant to the provision of Order 29 rule 5[3][d] of the Rules of the Court, 2018, directed the Official Referee to conduct further investigation or inquiry into the matter and the further inquiry shall consider the observations of the claimants filed on 23/6/2020 or any other observation/complaint that may be raised by any of the parties. For the avoidance of doubt, Order 29 rule 5[3][d] of the Rules of the Court, 2018 provides that: *"On the receipt of a referee's report, the court may:*

*[d] Remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee."*

On 17/9/2020, Ibrahim Tuggar, a staff of CBN, presented the additional Report of the Official Referee signed by M. A. Bello [for: Director, Consumer Protection Department of CBN] dated 2/9/2020 to the Court. From pages 1-6 of the additional Report, the Official Referee addressed or responded to the observations/concerns made by the claimants and concluded as follows:

*“Please note that at the end of the reconstruction exercise, it was determined that the outstanding balance as at 29<sup>th</sup> December, 2017 was a debit balance of N28,095,788.36 as against N76,384,049.84 previously reported by the bank.*

*Consequent upon the above, please be informed that our position remains unchanged as earlier stated in our report to the Court via our letter dated 5<sup>th</sup> June, 2020. Accordingly, our response would also be communicated to the Court.”*

In his reaction to the additional Report on 17/9/2020, learned counsel for the claimants, Don Akaegbu Esq., referred to the claimants’ further observations filed on 16/9/2020. He stated that the Official Referee refused to apply the 2012/2013 CBN Guideline applicable to the transaction; the CBN Guideline applied is that of 2018/2019. He posited that if the Official Referee had applied the 2012/2013 Guideline, the findings would have been different to the extent that the mode of interest charges is *“reducing balance method”* as stated in Item 4 of the additional Report dated 2/9/2020. Mr. Don Akaegbu stressed that even if the facilities were term loans, the *“reducing balance method”* ought to have been the mode of charging interest.



The second observation of the claimants' counsel is that the penalty payable for the established excess charges ought to be paid by the defendant to the claimants or to CBN. This is in line with paragraph 3.2.4[g] of the Monetary Policy Guideline of 2012/2013. The defendant ought to pay penalty of 100% of the established excess charges of N49,547,444.44 as found by CBN. Counsel urged the Court to either adopt the Report or further refer the issue to the Consumer Protection Department of CBN in conjunction with other relevant departments of CBN especially the Legal Department and the Financial Policy Regulation Department.

For his part, learned counsel for the defendant, Chinedu Udora Esq., stated that the defendant aligns itself with the Report of the Official Referee. He referred to the offer letters which were accepted by the claimants and stressed that the parties agreed on a term loan with a specific tenor. Thus, whichever, monetary policy was applied - whether that of 2012/2013 or 2018/2019 - the outcome would have been the same as the facility was a term loan.

On the issue of penalty, the defence counsel submitted that CBN is the appropriate body or person to demand the payment of penalty. Since CBN is not a party to this case, the Court cannot make an order in favour of a person that is not before it. He further posited that it is in evidence that when the claimants complained to defendant, they also complained to the Customer Protection Department of CBN. At that time, CBN did not make any finding of excess charges. It was recently that the finding was made pursuant to the

referral of the matter to the Official Referee. In its Report, the Official Referee has set-off the total excess charges in the 1<sup>st</sup> claimant's account from its debit leaving a balance of N28,095,788.36.

The defence counsel then submitted that penalty is payable after 2 weeks of discovery of excess charges. The excess charge in this case was discovered on 5/6/2020 [i.e. the date of the Report of the Official Referee] and returned to the 1<sup>st</sup> claimant immediately. The penalty can only be based on the date of complaint if there was no hearing of the complaint or where the complaint was ignored by the bank. Mr. Chinedu Udora urged the Court to uphold the Report of the Official Referee and enter judgment accordingly.

The Court has considered the claimant's observation/complaint that the mode of interest charges on the facilities that gave rise to this suit ought to be "reducing balance method". The claimant's counsel relied on the 2012/2013 CBN Monetary Policy Guideline, which is Exhibit DD in this proceeding. Paragraph 3.2.4 deals with Interest Rate Policy. It reads in part:

*Interest rates in 2012/2013 shall continue to be market-driven with the level and direction of their movement being indirectly influenced by CBN's adjustments to the anchor rate [MPR].*

*Accordingly, interest rates posted by banks in 2012/2013 shall comply with the following approved guidelines:*

- a) .....

*b) The reducing balance method shall be used for calculating interest charges on loans repayable instalmentally. The use of any other method for calculating interest on loans payable in agreed installments, such as the discount method of the simple interest straight line method; that would result in the payment of higher effective rates of interest than the contracted rate is not allowed.*

The argument of the claimants' counsel is that the facilities that gave rise to this suit were overdraft facilities and not term loans. The defendant's position is that the facilities were term loans. As I said earlier, the finding of the Official Referee on this issue is that the facilities were term loans as the loan amounts were disbursed into the 1<sup>st</sup> claimant's account, "*which is synonymous with the transaction dynamics of a term loan.*" I have read the offer letters, each of which stated the facility amount granted and the tenor of the facility. The Court adopts the finding of the Official Referee that the facilities were term loans. The Court also adopts the finding of the Official Referee that the reducing balance method of calculating interest is not applicable to the term loans in this case. Paragraph 3.2.4 of the 2012/2013 CBN Monetary Policy Guideline does not support the position of the claimants.

The second observation/complaint raised by the claimants is that it is entitled to payment by the defendant of penalty of 100% of the amount found as excess charges by the Official Referee; that is 100% of the total excess charge

of N49,547,444.44. Learned counsel for the claimants relied on paragraph 3.2.4[g] of the Monetary Policy Guideline of 2012/2013, which reads:

*[g] The Inspectorate Department of each bank shall continue to be responsible for cross-checking bank charges and interest rates payable on deposit accounts. Where the Department discovers a non-payment or under-payment of interests on deposits, other entitlements, excessive interest and bank charges, a return thereon shall be made to the Central Bank within two weeks from the date of discovery by the Inspectorate Department of the bank or date of receipt of customer complaint. Under-payment and/or excessive interest and other charges shall be refunded within two weeks of the discovery/customer complaint to the CBN, with interest at the bank's maximum lending rate on the date of refund, along with a letter of apology to the customer. Any bank that fails to comply with this provision shall, in addition to the refund to the customer, be liable to a penalty amounting to 100.00 per cent of the amount involved.*

The Court agrees with the reasoning of the learned defence counsel that in the circumstances of this case, penalty envisaged under paragraph 3.2.4[g] of the Monetary Policy Guideline of 2012/2013 is payable after 2 weeks of discovery of excess charges. In this case, the total excess charges discovered by the Official Referee i.e. the sum of N49,547,444.44 has been returned to the 1<sup>st</sup> claimant. The decision of the Court is that the claimants are not entitled to penalty under the above provision from the defendant.

Having considered the observations of the claimants, I adopt the Report of the Official Referee and the findings therein pursuant to Order 29 rule 5[3][a] of the Rules of the Court, 2018. It remains to determine the claimants' reliefs and the defendant's counter claims, which shall be taken together.

In the claimant's reliefs 3-15, they seek orders of the Court directing the defendant to refund the excess charges set out in paragraph 35 of the amended statement of claim. In line with the findings of the Official Referee, the Court holds that the total amount refundable to the 1<sup>st</sup> claimant is the sum of N49,547,444.44.

The monetary claims of the defendant are in paragraph 85[[a], [b], [c] & [d] of the counter claim. In line with the findings of the Official Referee, the Court holds that the closing balance on the account of the 1<sup>st</sup> claimant after refund of N49,547,444.44 being excess charges and accrued interest thereon is an outstanding debit balance of N28,095,788.36 as at 29/12/2017.

In the light of the foregoing, the declaratory orders sought by the claimants are refused. Relief 16, which is the payment of 100% penalty on all excess charges made against the 1<sup>st</sup> claimant's account, is refused. The orders for injunction sought in reliefs 19 & 20 are refused. Relief 21, which is an order directing the defendant to return to the 2<sup>nd</sup> claimant through the 1<sup>st</sup> claimant the documents of title of the property known as Block 21, Flat 4, Baure Close, Garki, Abuja, is refused since 1<sup>st</sup> claimant is still indebted to the defendant.

In relief [e] of the counter claim, the defendant counter claims for an order of the Court directing the 1<sup>st</sup> claimant to pay to the defendant 10% interest on the judgment sum per month from the date of judgment till same is finally liquidated. This is a claim for post-judgment interest. In **Berende v. Usman [2005] 14 NWLR [Pt. 944] 1**, it was held that post-action or post-judgment interest is grounded in the rules of court. By Order 39 rule 4 of the Rules of the Court, 2018, the Court has power to grant post-judgment interest “*at a rate not less than 10% per annum to be paid upon any judgment.*” I grant interest on the judgment sum of N28,095,788.36 at the rate of 10% per annum from today [11/11/2020] until the sum is paid.

### **CONCLUSION**

Judgment be and is hereby entered for the defendant against the 1<sup>st</sup> claimant for the sum of N28,095,788.36. It is further ordered that the 1<sup>st</sup> claimant shall pay interest on the sum of N28,095,788.36 at the rate of 10% per annum from today [11/11/2020] until the judgment sum is paid.

The parties shall bear their costs.

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**HON. JUSTICE S. C. ORIJI**  
**[JUDGE]**

*Appearance of Counsel:*

1. Don AkaegbuEsq. for the claimants; with ToluwaOdekheEsq.
2. Chinedu G. UdoraEsq. for the defendant.