IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA-ABUJA

ON THE 11TH DAY OF FEBRUARY 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/637/2014

BETWEEN:

NATIONAL UNIVERSITIES COMMISSION ……. PLAINTIFF

AND

CHIEF (HON) T.O FATOKUN ……. DEFENDANT
(Practicing under the name and style
Of Dosu Fatokun & Co.)

JUDGMENT

By its amended statement of claim filed on 27th March 2017, the Plaintiff claims against the Defendant as follows:

> "(a) Payment of the sum of ₦28,748,479.83 to the Plaintiff being outstanding rent collected by the Defendant from the tenants of the property of the Plaintiff situate at No. 5 Idowu Taylor Street, Victoria Island, Lagos from 2009 – 2010 which said amount has not been remitted to the Plaintiff by the Defendant despite repeated demands.
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> (b) Payment of interest at the rate of 10% per annum by the Defendant on the said sum of ₦28,748,479.83 from 1st January, 2011 until the date of judgment.

(c) Payment of interest at the rate of 10% per annum by the Defendant on the said sum of ₦28,748,479.83 from the date of judgment until the judgment sum is finally liquidated."

By his further amended statement of defence and amended counterclaim filed on 1st April 2019 the Defendant/Counterclaimant denied the Plaintiff's claim and counterclaimed for:

"(a) An Order of this Honourable Court compelling the Defendant to the Counterclaim to immediately pay the Claimant the sum of ₦20,000,000 (Twenty Million Naira) only being sum of money owe (sic) him by the Defendant to the Counterclaim throughout the management of the Defendant to the counterclaim (sic) property as professional fees and discharging his professional duties and in the course of executing his agreement between him and the Defendant to the Counterclaim.

(b) An Order of this Honourable Court for the payment of the sum of ₦20,000,000 (Twenty Million Naira) only being sum for unlawful arrest, detention and incarceration which was occasioned by the Defendant to the Counterclaim against him with Economic and Financial Crimes Commission.

(c) An Order of this Honourable Court restraining the Defendant to the Counterclaim from further harassment (sic) the Counterclaimant with any security agent in respect of a civil transaction.

(d) Payment of the sum of the sum of ₦1,000,000 (One Million Naira) only for the prosecution of this Defence and Counterclaim."

The Plaintiff filed an amended reply to the further amended statement of defence and defence to counterclaim on 4th September 2018, which was deemed property filed and served on 5th November 2019.
Therein it was contended that the counterclaim is statute barred and the court lacks jurisdiction to entertain same.

At the trial, the Plaintiff's sole witness, its Chief Finance Officer Mr. Samuel Aladejare adopted his amended witness statement on oath of 27th March 2017 and further witness statement on oath of 30th March 2016.
He tendered 12 Exhibits marked Exhibits P1 to P10.
He testified inter alia that the Plaintiff is a corporation and an agency of the Federal Government of Nigeria established by statute with its office at Aja Nwachukwu House, Plot 430 Aguiyi Ironsi Street, Maitama, Abuja.

That the Defendant is an Estate Surveyor, Valuer and Facility Manager practicing under the style of Dosu Fatokun & Co of Suite A39 McLewis Plaza, Blantyre Street off Adetokunbo Ademola Crescent, Wuse 2, Abuja.

That the Plaintiff is the bonafide owner of the building known as Okoi Arikpo House situate and lying at No. 5 Idowu Taylor Street, Victoria Island, Lagos Nigeria – an office complex with five floors situate on a plot of land measuring approximately 0.20 hectares hereinafter referred to as "the property".

That sometime in 1999 the Defendant was appointed by the Plaintiff to manage the said property, collect rents from tenants and pay over same to the Plaintiff.
That the management contract was for an initial period of two years and subject to renewals. That the Defendant's management contract was renewed severally upon expiration up to December 2006.

By an advertisement published in the Guardian Newspaper on Monday, December 4, 2006 the Plaintiff invited tenders and proposals from interested reputable management agents for the management of the aforesaid property. See Exhibit P1.

The Defendant amongst other persons, responded to the advertisement and submitted two bids to manage the property.

The Defendant's first bid letter dated 31st January, 2007 was for the sum of ₦40,000,000. See Exhibit P2 (a).

The Defendant's second bid letter dated 16th February, 2007 was for the sum of ₦43,501,510.00 – See Exhibit P2 (b). The Defendant by a letter, Exhibit P2 (c) dated 19th February, 2007 tried to explain its letter of 16th February, 2007.

The Plaintiff by its letter dated 5th March 2007, Exhibit P3 awarded the contract for the management of the property to the Defendant on these terms-

(a) Payment of annual remittance of ₦43,501,510.00 in 2007 and negotiation for subsequent remittance at the end of each year.

(b) Remittances are to be made in two equal installments each year and payable on or before 30th June and 30th November respectively.

(c) The Defendant to prepare and submit draft Contract Agreement to the Plaintiff on or before 10th April 2007 – (See Exhibit P3).

That on the Defendant's request, the Plaintiff reviewed downwards the annual remittance to the sum of ₦40,000,000 and the other terms in the Plaintiff's letter of 5th March 2007 were left intact. That the payment for the annual remittance of the sum of ₦40,000,000 took effect from 1st January, 2009.

That the Defendant reluctantly in 2009, paid the Plaintiff the sum of ₦20,000,000 leaving a balance of ₦20,000,000 outstanding which the Defendant has refused, and/or neglected to pay despite repeated demands (See Exhibit P4).

The Plaintiff had by a letter dated 10th June 2010 terminated the appointment of the Defendant for the management of the said property, with a demand for the remittance of the outstanding balance of ₦20,000,000 for 2009 and accumulated interest. See Exhibit P6.

Following the Defendant's inability to keep to the terms of the management contract, the Plaintiff resolved to audit the account of its property and by a letter dated 20th January 2010, the Plaintiff advised all occupants of its property to hold on to any rent payment for the year 2010 – see Exhibit P5.

That following the Plaintiff's audit of its property to determine the level of indebtedness of the Defendant to the Plaintiff after termination of the Defendant's contract, the 4 man audit committee comprising Messrs Jide Olukoju, Samuel Aladejare (PWI), Matthew Ihayere and Paschal Eruaga submitted a report to the management of the Plaintiff.

The committee discovered that the Defendant had collected rents from the tenants of the property totaling ₦16, 748,479.83 for the period covering up to 2010 but refused to release same to the Plaintiff. See Exhibits P7 and P8.

That the total sum of ₦16,748,479.83 and ₦20,000,000 are still outstanding, totaling ₦36,748,479.83.

That by a letter dated 9th February, 2011 the Plaintiff lodged a complaint against the Defendant to the Economic and Financial Crimes Commission (EFCC). See Exhibit P9.
Following the intervention of the EFCC, the Defendant paid ₦8,000,000 leaving an outstanding balance of ₦28,748,479.83.

The Plaintiff through his solicitors Chief Solo Akuma (SAN) and Associates by a letter dated 16th July 2014 demanded the outstanding sum of ₦28,748,479.83 from the Defendant. See Exhibit P10.

That the Defendant has since 2010 invested the Plaintiff's funds and has been reaping the return on investment to the detriment of the Plaintiff.
That the Plaintiff is entitled to pre and post judgment interest as claimed.

In his further witness statement on oath of 30th March 2016, PW1 denied any professional fees owed the Defendant. He stated that the Defendant was given a concessional agreement to manage the Plaintiff's property and remit ₦40,000,000 per annum. The concessional agreement entailed any amount in excess of the amount to be remitted should serve as the Defendant's professional fee and the award letter did not stipulate payment of professional fees to the Defendant because it was not a conventional estate management contract. That the audit verification exercise was an independent exercise that did not require the Defendant's presence and the Defendant did not send any letter of appeal to the Plaintiff.

That the ₦8,000,000 paid by the Defendant to the Plaintiff through the EFCC was not full and final settlement of the entire debt owed by the Defendant.

That the Plaintiff did not have control over or direct the EFCC on how it handled the petition or investigation. That the Plaintiff is not responsible for the Defendant's arrest and cannot be liable for damages occasioned therefrom.

He prayed the Defendant's counterclaim be struck out.

The witness was cross examined and discharged. The Plaintiff thus closed its case.

The Defendant testified in his defence and proof of his counterclaim.

He adopted his two witness statements on oath both deposed on 1st April 2019. He tendered 7 Exhibits marked Exhibit D1 to D6B.

He stated inter alia that he did not sign any agreement for the management of the Plaintiff's property to the tune of ₦40,000,000 or ₦43,501,510, but by Exhibit D1 dated February 19, 2007, he clarified the total rent receivable on the property in one year where all the tenants pay their current rent which is different from total rent actually collected and remitted to the Plaintiff.

That the Plaintiff acknowledged Exhibit D1 and never objected by way of reply.

That in Exhibit D1 he proposed a feasible total remittance of rent of ₦26,000,000, an improvement on ₦19,500,000 collected for previous years.

That he was never reluctant in any way in remitting ₦20,000,000 or any sum unpaid but employed his professional skills in maximizing rent collection to the tune of ₦26,000,000 in 2009 and remitted same to the Plaintiff.

That on 27th January 2010, he submitted Annual Report of rent collection to the Plaintiff – Exhibit D2 which the Plaintiff acknowledged without response to same.

That he did not owe the Plaintiff ₦20,000,000 or any other sum under their agreement.

That he was not given any opportunity to respond to any of the allegations raised in the audit/verification exercise despite letters of appeal to that effect. See Exhibits D3, D4, D6A, D6B.

That when he handed over documents to one A.M John, they did not object to same. See Exhibit D5. That the audit report/verification was fraught with erroneous figures as most payments had been remitted to the Plaintiff prior, having been paid in advance, and yet were reflected in the Plaintiff's chart.

That the Plaintiff's complaint at EFCC set the law in motion to unlawfully arrest, detain, torture and brutalise him for a civil contract and he was made to refund ₦8,000,000 in final settlement of the dispute.

That the Plaintiff owed him his professional fees of ₦20,000,000 for managing the Plaintiff's property.

That the ₦26,000,000 he received as rent in 2009 was all remitted to the Plaintiff.

He was cross examined and discharged. Thus the Defendant closed his case.

In the final written address of Bibian Akuezue Esq. but argued by Mr Kenneth Osemeha Esq. for the Defendant, the Defendant's learned counsel formulated two issues, each with an alternative issue.

Learned silk, Chief Solo Akuma (SAN) in his final written address for the Plaintiff also raised two issues for the court's determination.

For the sake of brevity and clarity, I shall adopt the two issues raised by the learned silk as follows:

"(a) Whether the Plaintiff has proved its case to be entitled to judgment

(b) Has the Defendant proved his counterclaim to be entitled to judgment".

ON ISSUE 1

Learned defence counsel submitted that the Plaintiff failed woefully to prove its case citing Section 131 Evidence Act 2011, **UNION BANK OF NIGERIA LIMITED V PROF. A.O OZIGI (1994) 3 NWLR (PT 333) 385 Ratio 2.**

He argued that the 4 man audit/verification committee are accountants in the employment of the Plaintiff and are therefore disqualified by virtue of Section 14 (1) & (2) of the Institute of Chartered Accountants of Nigeria Act which regulates the activities of Accountants and Auditors in Nigeria; See also Section 1 Institute of Chartered Accountants of Nigeria Act. It was further argued the Exhibit P7 the audit/verification report equally did not meet the requirements of Section 358 (1) of the Companies and Allied Matters Act 2004. Consequently learned counsel urged that Exhibit P7 be expunged from the court's record.

Learned counsel equally urged that other exhibits tendered by the Plaintiff do not prove the Plaintiff's claim whereas the Defendant's Exhibits D2 and D5 are strong evidence in rebuttal of the Plaintiff's claim showing that only ₦28,000,000 rent was collected in 2009 which was remitted to the Plaintiff.
The said Exhibits D2 and D5 he maintained were not challenged by the Plaintiff and are deemed admitted.
It was further submitted that the Defendant was not given the opportunity to be heard despite his appeals after the audit/verification exercise was completed, thus breaching the golden rule of audi alteram partem. He urged the court therefore to expunge Exhibit P7 if it is found to be relevant. In

addition, the court was urged to expunge Exhibits P1-10 as they did not meet the requirements of certification in accordance with Sections 87 and 104 of the Evidence Act 2011 as no legal fees were paid nor seal of the officer certifying stamped thereon. Citing **TABIK INVESTMENT LTD V. GUARANTEE TRUST BANK PLC (2011) LPELR-3131 (SC)** per Bode Rhodes-Vivor JSC, amongst others.

He urged that the Plaintiff having failed to prove its case, same ought to be dismissed.

The court was further urged to dismiss the claims for prejudgment interest as same was neither contemplated by the parties nor was proved under a mercantile custom.

The claim for post judgment interest was also to be dismissed as the Plaintiff failed to prove its claim.

For the Plaintiff on issue 1, the learned silk, Chief Solo Akuma (SAN) answered in the affirmative. It was submitted that in response to Exhibit P1, the Defendant wrote Exhibits P2 (a), P2 (b) and P2 (c) pursuant to which the Plaintiff awarded the Defendant the contract vide Exhibit P3. Exhibit P3 therefore is the agreement between the parties from 5th March 2007 until when the amount to be remitted was reduced from the initial sum of ₦43,501,510 in 2007 to ₦40,000,000 per annum in 2009. See paragraphs 11 of PW1's witness statement on oath of 27th March 2017.

It was submitted that the Defendant did not reject Exhibit P3 but accepted its terms and operated same from ₦43,501,510 in 2007 and 2008 to ₦40,000,000 reduction in 2009.

It was further submitted that as Exhibit P2(c) preceded Exhibit P3, it could not have been written to reject Exhibit P3.

The Defendant is therefore bound by the terms of Exhibit P3. **ARJAY LIMITED V. AIRLINE MANAGEMENT SUPPORT LTD (2003) 7 NWLR (PT 820) PAGE 577 AT 634 (SC)** and **ETIEMONE V. APINA (2019) 15 NWLR (PT 1696) PAGE 557 AT 584 (CA)** were relied upon.

It was further submitted that the Defendant did not deny collecting rent from tenants in 2009 and 2010. Receipts attached to Exhibit P7 for payment of rent collected by Defendant in 2010 from Greenstone Projects Ltd, US Wheat, Genie NG and World Travel Shop were relied upon; which rent the Defendant did not remit.

See also Exhibit P8 for details of rent collected by the Defendant in 2010.

Learned silk maintained that the Defendant deliberately neglected and failed to account for the rent collected in 2009 in the 2009 Annual Report Exhibit D2. So also did the Defendant deliberately neglect to present account for rent collected up to June 2010 before his contract was terminated on 10th June 2010 vide Exhibit P6.

The Defendant it was submitted, also failed to tender evidence to rebut the testimony of PW1 that the Defendant collected rent totaling ₦16,788,479.84 vide Exhibit P8, Defendant's mere denial being insufficient with regard to receipts attached to Exhibit P7.

Learned silk noted that these receipts though frontloaded, did not attract the attention of the Defendant. He submitted that the Defendant was bound to remit the rent collected in the absence of any reason to the contrary.

With regard to the Defendant's two witness statements on oath, of 1st April 2019, it was submitted that both are incompetent and inadmissible and

contravene Section 112 Evidence Act 2011, the Defendant having admitted in cross examination that they were brought to him by his lawyer to sign, rather than sworn before the Commissioner for Oaths. See **NKEIRUKA V. JOSEPH (2009) 5 NWLR (PT 1135) PG 505; BUHARI V. INEC (2008) 19 NWLR (PT 1120) PAGE 246,** amongst others.

Flowing from the above he urged that there is no evidence presented by the Defendant to rebut the evidence of the Plaintiff. Therefore the evidence of the Plaintiff being unchallenged the onus on the Plaintiff is discharged on minimal proof. See **NWABUOKU V. OTTIH (1961) 2 SCNLR PAGE 232** and others.

It was submitted that Exhibit P7 is not the Financial Statement of the Claimant that requires the appointment of External Auditors under Section 375(1) Companies and Allied Matters Act 2011 and which the qualifications of the Auditors must satisfy the requirement of Section 358(1) Companies and Allied Matters Act 2011. See also Sections 346(1) and 355(2) and (3) Companies and Allied Matters Act 2011.

It was submitted that Exhibit P7 is an Executive Summary on Tenant Verification visit to Okoi Arikpo House, 5 Idowu Taylor Street, VI Lagos, an exercise handled by internal (in house) staff of the Plaintiff and properly admitted and ought not to be expunged. See also Exhibit P8. That it is described as an audit/verification report is not sufficient to render it inadmissible.

It was further argued that Exhibit P7 being an internal exercise of the Plaintiff to verify the Defendant's Exhibit D2, hearing the Defendant was not necessary following the Defendant's submission in Exhibit D2.

On non-certification of Exhibits P1 to P10, learned silk submitted that the onus is on the Plaintiff to prove that the Plaintiff charges a fee for certified true copy of public documents in its custody and that it must charge itself the said fee in this circumstance and that the certifying officer had a seal which he failed to attach to the said exhibits.

Learned silk urged that Exhibits P1 to P10 met the requirements of Section 104 (1) and (2) of the Evidence Act 2011.

On prejudgment interest, learned silk submitted that a judgment for the return of money is usually accompanied by an award of interest for the period which it is claimed.

He urged the court to award pre judgment and post judgment interest.

ON ISSUE 2

Learned defence counsel submitted that the Defendant had proved his counterclaim on a preponderance of evidence as follows:

1. That the Plaintiff owed him ₦20,000,000 as professional fees as none was paid to him for his services to the Plaintiff. That the Plaintiff who claimed the agreement did not provide for professional fees did not produce the said agreement referred to.
2. That the Plaintiff admitted reporting the Defendant to the EFCC for a civil transaction therefore the Defendant need not prove admitted facts. He urged that the Plaintiff aided the unlawful arrest and detention of the Defendant and should be restrained from further harassing the Defendant with security agents over a civil transaction.

Finally, he urged that the Defendant is entitled to the sum of ₦1,000,000 for prosecuting the counterclaim. Several authorities were relied upon, in urging the court to grant the counterclaim and dismiss the Plaintiff's claim.

PRELIMINARY OBJECTION TO THE COUNTERCLAIM.

For the Plaintiff the learned silk contended that the Defendant's counterclaim is statute barred and incompetent, therefore the court lacks jurisdiction to entertain same.

Precisely, that the Plaintiff is established by National Universities Commission Act CAP N81 LFN 2004, and a public body established by an Act of the National Assembly. That a public officer is not limited to a natural person but includes a public body such as the Plaintiff. See **IBRAHIM V. JUDICIAL SERVICE COMMITTEE, KADUNA STATE & ANOR (1998) 14 NWLR (PT 584) PAGE 1 AT 38** per Iguh JSC (as he then was).

That Section 2 (a) of the Public Officers Protection Act CAP P41 LFN 2004 provides for a limitation period of 3 months for an action brought against a public officer from the date the cause of action arose.

It was submitted that on the Defendant's claim for professional fees, that the cause of action arose on 10th June 2010 when the Defendant's contract was terminated vide Exhibit P6.

And for the claim for unlawful arrest and detention of the Defendant by EFCC, the cause of action arose in 2011 or 2012 (according to the Defendant). Both causes of action having arisen more than 3 months from when the counterclaim was filed, that the Defendant's counterclaim is stale, statute barred and incompetent. Indeed, that the court lacks jurisdiction to entertain same.

ARGUMENTS ON THE MERIT OF THE COUNTERCLAIM

It was submitted that the Defendant failed to lead evidence in support of his counterclaim, the witness statements on oath deposed on 1st April 2019 being incompetent and inadmissible.

Further, that the Defendant could not prove his entitlement to professional fees or that his agreement with the Plaintiff was not a concessional arrangement which does not attract a separate payment of professional fees. The Defendant did not produce any document in proof of the ₦20,000,000 claimed having failed to prepare the contract agreement as he was supposed to do by Exhibit P3. The Defendant again never mentioned his professional fees in Exhibit P2(a), P2(b), and P2(c) or Exhibits D3, D4, D6A and D6B. He urged the court to hold that the claim is an afterthought.

On Defendant's counterclaim for ₦20,000,000 for unlawful arrest and detention, it was submitted that the claim must fail as the EFCC who allegedly made the arrest was not made a party to the suit, nor did it testify. EFCC being a proper party to this suit, its presence cannot be dispensed with and the court will lack the jurisdiction to entertain the suit. See **PLATEAU STATE OF NIGERIA & ANOR V. ATTORNEY GENERAL OF THE FEDERATION & ANOR (2006) 3 NWLR (PT 967) PAGE 346 AT 423 (SC).** Besides, there is no evidence that the Plaintiff did anything else apart from lodging a complaint with the EFCC, to set the law in motion against the Defendant.

He urged that the counterclaim be dismissed.

DEFENDANT'S REPLY ON POINT OF LAW

In the Defendant's reply to the Plaintiff's final written address, learned defence counsel submitted that the Defendant did not accept Exhibit P3 as acceptance

is not signified by mental assent or mere silence, citing **ORIENT BANK PLC V. BILANTE INTERNATIONAL LTD (1997) 8 NWLR (PT 515) 37 Ratio 1 AT PAGE 76 PARAGRAPH B-C.**

That the tenants never paid ₦40,000,000 in 2009 but ₦26,000,000 as guided in Exhibit D2 Page 5 which has been remitted to the Defendant.

On Defendant's witness statements on oath, it was submitted that same are admissible and in compliance with Section 112 of the Evidence Act.
That the witness having taken an oath before adopting his witness statement on oath cured all the defects. See **ALHAJI ALIYU V. BELLO BULAKI (2019) LPELR-46513 (CA).**
That the objection of learned silk to same is based on technicality, which should give way to substantial justice.

On preliminary objection to the counterclaim, learned counsel submitted that the Public Officers Protection Act does not apply to cases of breach of contract or recovery of debt. See **ROE LTD V. UNIVERSITY OF NIGERIA NSUKKA (2018) LPELR-43855 (SC)** and others.

On non-joinder of EFCC it was submitted that the EFCC need not be a party as it is clear that the Plaintiff by lodging a civil matter before the EFCC, set the law in motion for the Defendant's unlawful arrest and detention.
He urged that the Plaintiff ought to succeed on the strength of his own case, not on the weakness of the defence.

RESOLUTION OF PRELIMINARY ISSUES

I have considered the evidence and arguments of the learned silk and learned defence counsel before me.

Before I proceed to the resolution of Issue (1), let me address some preliminary issues raised by learned counsel to the Defendant.

That the 4 man audit/verification committee appointed by the Plaintiff to verify the rent account are accountants in the employment of the Plaintiff and are therefore disqualified by virtue of Section 14(1) and (2) of the Institute of Chartered Accountants of Nigeria Act; and that Exhibit P7 did not meet the requirement of Section 375(1) CAMA 2004.

Learned silk, Chief Solo Akuma (SAN) responded that Exhibit P7 is not the financial statement of the Plaintiff that requires the appointment of external auditors under Section 358 (1) Companies and Allied Matters Act 2004 and which qualification of auditors must satisfy the requirement of Section 358 CAMA 2004.

I agree with the learned silk that Exhibit P7 is an Executive Summary on Tenant Verification visit to Okoi Arikpo House, 5 Idowu Taylor Street, V.I Lagos, an exercise handled by in-house staff of the Plaintiff and properly admitted in evidence. It is not the financial statement of the Plaintiff that needs to comply with the provisions of the Companies and Allied Matters Act mentioned above. Exhibit P7 was therefore properly admitted in evidence.

Another issue raised by learned defence counsel is that Exhibits P1 to P10 did not meet the requirements of certification as provided for in Section 104 of the Evidence Act 2011, as there is no evidence of fees paid and no seal of the certifying officer is on the exhibits.

The learned silk responded that the onus is on the Defendant to prove that the Plaintiff charges a fee for the certification of public documents in its custody

and that it must charge itself the said fee and that the certifying officer had a seal which he failed to attach to the said exhibits.

I am again persuaded by the argument of the learned silk. There is nothing before this court to indicate that National Universities Commission charges fees for certified true copies and that the certifying officer is authorised to use a seal which he failed to use. I therefore overrule the objection and hold that the Exhibits P1 to P10 are admissible in law and properly admitted in evidence in accordance with Section 104 (1) and (2) of the Evidence Act 2011.

I shall now proceed to address the objection to the counterclaim raised by Chief Solo Akuma (SAN) for the Plaintiff, that the counterclaim is statute barred.

Learned counsel to the Defendant responded that Public Officers Protection Act does not apply to cases of breach of contract or recovery of debt.

I agree with learned silk that the Plaintiff falls under the definition of public officers covered by the Public Officers Protection Act. However, I am also in total agreement with the learned defence counsel that the counterclaim for the sum of ₦20,000,000 for professional fees is a claim for breach of contract/recovery of debt and is not caught by Section 2 Public Officers Protection Act. See **CIL RISK AND ASSET MANAGEMENT LTD V. EKITI STATE GOVERNMENT & ORS (2020) LPELR- 49565 (SC).**

The claim for professional fees is also not caught by Section 7 (1) of the Limitation Act CAP 522 Laws of the FCT. The reason is that the Defendant's cause of action arose on 10th June 2010 (not in 2007) when the Plaintiff terminated his contract for the management of the Plaintiff's property, and according to the Defendant, he was not paid his professional fees for the

period he had managed the property. The counterclaim was first filed on 9th November 2015, a period within the 6 years limitation period imposed by Section 7 (1) Limitation Act. See **CHARTERED BRAINS LIMITED & ANOR V. INTERCITY BANK PLC (2009) LPELR- 8697 CA PAGE 7 PARA C-E; PAGE 9-10 PARA A-C** per Bada JCA.

However the counterclaim for ₦20,000,000 for unlawful arrest, detention and incarceration which was occasioned by the Plaintiff against the Defendant with EFCC is caught by Section 2 (a) Public Officers Protection Act. The said section provides:

> "Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, law, duty or authority, the following provisions shall have effect-
>
> (a) the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect, or default complained of, or in case of a continuance of damage or injury within three months next after the ceasing thereof."

The claim for ₦20,000,000 for unlawful arrest and detention is therefore barred having occurred in 2011 or 2012, more than 3 months before the filing of the counterclaim and the court lacks jurisdiction to entertain it.

Furthermore, the EFCC is a proper party who should have been joined in this suit, without whose presence the claim cannot be effectively and effectually

determined. Failure to join the EFCC as a party is therefore fatal to the claim of the Defendant.

The claim for unlawful arrest having failed, the injunction sought to restrain the Plaintiff from further harassing the Defendant with respect to civil transactions will also fail for lack of evidence.

Learned silk also opposed the admissibility of the witness statement on oath of the Defendant.

On the two witness statements on oath of the Defendant deposed on 1st April 2019 and adopted by the Defendant, the Defendant in cross examination was asked the following questions and he gave the following answers:

> "Q: You were not in Abuja on the 1st day of April 2019.
>
> A: I will need to check my diary which I don't have here.
>
> Q: Your counsel brought your witness statement in respect of this matter to you to sign.
>
> A: Yes, there is some truth there."

It is clear from the above exchange that the Defendant was not in Abuja on 1st April 2019 (as he could have clearly remembered if indeed he was and had signed his witness statement on oath on 1st April 2019 before the commissioner for oath in the High Court of the FCT, Abuja and he admitted his counsel brought the witness statement on oath for him to sign). It therefore means that his witness statements on oath were not signed before the commissioner for oaths.

In **MOHAMMED & ORS V. GANI (2019) LPELR-47190 CA** decided 5th April 2019 by Jos Judicial Division of the Court of Appeal, the court held that a witness

statement on oath signed in counsel's office and not before a commissioner for oaths is not legally acceptable in court.

The court adopted the decision in **BUHARI V. INEC (2008) 12 SCNJ 1 AT 91; ONYECHI EROKWU V. JACKSON N. EROKWU(2016) LPELR-41515** and **CHIDUBEM V. EKENNA (2009) ALL FWLR (PT 455)1692.**

In **ALIYU V. BULAKI (2019) LPELR – 46513 CA,** relied upon by the Defendant**,** decidedon 8th January 2019 by the Sokoto Judicial Division of the Court of Appeal, the court held that a witness statement on oath not signed before a commissioner for oaths is defective and worthless.

On the above authorities therefore, I am bound to hold, and I do hold, that the two witness statements on oath of the Defendant which were not signed before the commissioner for oaths are therefore worthless. Both are hereby discountenanced. This means that the Defendant did not proffer any evidence in defence of the Plaintiff's claim or in support of his counterclaim. The onus of proof on the Plaintiff is therefore discharged on minimal proof.

Minimal proof however does not mean no proof at all.

The Plaintiff is required to prove his case on the balance of probabilities with cogent and compellable evidence.

RESOLUTION OF ISSUE 1

Whether the Plaintiff has proved its case to be entitled to judgment.

The case of the Plaintiff is that it appointed the Defendant to manage its property known as Okoi Arikpo House situate at No 5 Idowu Taylor Street Victoria Island Lagos, Nigeria. That the Defendant was awarded the contract for the management of the property vide Exhibit P3 dated 5th March 2007 on terms contained therein which the Defendant accepted.

That on the Defendant's request the Plaintiff reviewed the annual remittance from ₦43,501,510 to ₦40,000,000 starting from 1st January 2009. The Defendant on the other hand contended that he did not sign any agreement to remit ₦40,000,000 or ₦43,501,510 and did not accept Exhibit P3 and its terms, rather that he had made this clear in Exhibit P2(c) that a feasible sum of ₦26,000,000 is collectable as annual rent.

The Defendant made Exhibit P2(a), P2(b), and P2(c) before the Plaintiff responded vide Exhibit P3 awarding the contract for the management of the property to the Defendant.

The Defendant was to prepare a draft contract agreement and submit to the Plaintiff on or before 10th April 2007. The Defendant did not prepare or submit the draft contract. Rather the Defendant proceeded to engage in the management of the Plaintiff's said property.

I do not buy the argument of the Defendant that he proceeded to manage the Plaintiff's property in the terms in Exhibit P2(c) and that Exhibit P2(c) made on February 19 2007 which preceded Exhibit P3 made on 5th March 2007, could have cancelled Exhibit P3.

The fact is that the Defendant accepted the management contract on the terms in Exhibit P3. If nothing else, the Defendant accepted Exhibit P3 by conduct.

He therefore cannot resile from it at this time. It is too late (and upon it he began to manage the Defendant's property). Parties are bound by the terms of their contract, Exhibit P3.

According to PW1, the annual remittance on the Defendant's request, was reduced to ₦40,000,000 effective January 1, 2009.

However, the onus is on the Plaintiff to prove that the remittance of ₦43,501,510 in 2007 was negotiated to ₦40,000,000 in 2009 in accordance with the terms in paragraph 1 of Exhibit P3.

The Defendant denies that ₦40,000,000 was agreed. In fact the Defendant insisted that no amount was agreed upon as annual remittance.

I do not find any evidence to convince this court that the annual rent remittance was agreed at ₦40,000,000 from January 2009. PW1's mere ipse dixit is not sufficient. As a matter of fact, there is nothing before this court to show that the Defendant collected ₦40,000,000 in 2009 out of which he paid the Plaintiff ₦20,000,000 and kept ₦20,000,000 to himself. It is however clear that the Defendant collected ₦27,959,310.92 for 2009 which has been remitted to the Plaintiff. See Exhibit D2.

The claim for ₦20,000,000 owed for 2009 is therefore not proved as there is no evidence to sustain same.

Then there is the claim for ₦16,748,479.83 claimed as annual rent collected by the Defendant in 2010 but not remitted by him. Exhibit P7 shows a table for this ₦16,748,479.83 and Exhibit P8, which is an extract of Exhibit P7 shows a chart for this sum.

From the receipts attached to Exhibit P7, payments made in 2010 to the Defendant are as follows:

S/N	NAME OF TENANT	AMOUNT PAID	PERIOD	DATE PAID
1	GREENSTONE PROJECTS LIMITED	₦2,000,000	1/4/2010 to 31/03/2012	15/3/2010
2	US Wheat	₦1,200,000 but ₦600,000 demanded by Plaintiff in Exhibit P8	1/1/2010 to 31/12/2010	4/5/2010
3	Genie NG	₦893,000 paid but ₦688,208.33 demanded by Plaintiff in Exhibit P8	7/9/2009 to 6/9/2010	21/01/2010
4	World Travel Shop	₦500,000	1/1/2010 to 31/12/2010	28/12/2009 (already paid in 2009 to Plaintiff. In Table I in Exhibit D2 therefore not included)

The amount covered by receipts attached to Exhibit P7 to have been paid by tenants to the Defendant in 2010 amount to:

₦2,000,000 + ₦600,000 + ₦688,208.33 = ₦3,288,208.33

Other sums on the chart are not covered by receipts and since the tenants did not testify, the said sums not covered can only be speculative.
I therefore hold that the Plaintiff has proved the sum of ₦3,288,208.33 only as amount collected by the Defendant in 2010 which the Defendant has not remitted to the Plaintiff. The sum of ₦27,959,310.92 collected in 2009 has since been remitted to the Plaintiff.

2) On payment of prejudgment interest, I hold that a case has not been made out for it as it was not in the contemplation of parties.

3) On post judgment interest pursuant to Order 39 Rule 4 of the Rules of this court, I award 10% post judgment interest on the judgment sum of ₦3,288,208.33 in favour of the Plaintiff from today till the judgment sum is fully liquidated.

RESOLUTION OF ISSUE 2

I have already held that the Defendant has no valid witness statement on oath before this court. Therefore there is no evidence in support of his counterclaim. Same ought to be summarily dismissed.

However, just in case I am wrong in my finding and the witness statements on oaths are admissible, there is no evidence led by the Defendant to support the claim for professional fees claimed by the Defendant. It is not in Exhibit P3, nor in any of the Exhibits tendered before the court.

I am therefore bound to agree with the unchallenged evidence of PW1 that the contract between the Plaintiff and Defendant was a concessional agreement which entailed that any amount in excess of the amount to be remitted should serve as the Defendant's professional fee and that no separate professional fee was agreed upon. The claim for professional fees is hereby dismissed.

The claim for ₦20,000,000 for unlawful arrest is statute barred and therefore not justiciable. Same is also dismissed.

Prayer for restraining order is dismissed, the claim for unlawful arrest being statute barred.

Claim for payment of ₦1,000,000 for prosecution of defence and counterclaim is dismissed for lack of evidence.

In conclusion, all the claims in the counterclaim are hereby dismissed in their entirety.

Parties to bear their own costs.

Hon. Judge