IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT GWAGWALADA

THIS THURSDAY, THE 25TH DAY OF FEBRUARY, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1101/2017

BETWEEN:

EMMA ONUORAH
(Doing business in the name and style of Emma Onuorah & Co.) } **…… PLAINTIFF**

AND

NDUBUISI PRINCESS UDUAK ..... DEFENDANT

JUDGMENT

This matter was originally filed under the undefended list procedure. This court however on 12th April, 2017 having carefully gone through the processes filed transferred the matter to the General Cause List and ordered for pleadings to be filed.

By a statement of claim dated 25th April, 2017 and filed same date in the Court's Registry, the plaintiff seeks for the following Reliefs:

a. **The outstanding professional fee balance of N300, 000. 00 (Three Hundred Thousand Naira) only being balance of the N700, 000 (Seven Hundred**

Thousand Naira) only professional fees agreed between the Defendant and the Plaintiff for the prosecution of the case against Clobek Nig. Ltd.

b. 21% interest from July, 2016 when the agreement was reached and thereafter 20% interest until the final liquidation.

c. N1, 000, 000. 00 (One Million Naira) only cost of this suit.

The Defendant filed a statement of defence and set up a counter-claim against plaintiff as follows:

i. The sum of N400, 000 (Four Hundred Thousand Naira) being an advance payment paid to the Plaintiff/Defendant to counter claim.

ii. 21% interest from June, 2016 when the sum of N400, 000 (Four Hundred Thousand Naira) was paid to the Plaintiff/Defendant to counter-claim until final liquidation.

iii. The sum of N5, 000, 000 (Five Million Naira) as general damages for pysco-emotional instability and nervous shock cost the defendant/counter claimant as a result of this suit.

iv. N1, 000, 000 (One Million Naira) only as the cost of this suit.

The plaintiff in Response filed the following processes, to wit:

1. Plaintiff's Reply to Defendant's statement of defence dated 27th November, 2017 and filed on 29th November, 2017.

2. Plaintiff's defence to the counter-claim dated 5th March, 2018.

In proof of his case, the plaintiff testified in person as PW1. He deposed to two (2) witness depositions dated 27th April, 2017 and 29th November, 2018 which he adopted at the hearing. He tendered in evidence the following documents to wit:

1. Certified True Copy (CTC) of writ of summons, statement of claim and accompanying processes in suit no. FCT/HC/CV/2165/2016 between

NDUBUISI PRINCESS UDUAK (Suing through her Attorney Grace Friday) AND CLOBEK NIGERIA LTD filed on 14th July, 2016 was admitted as **Exhibit P1**.

2. Certified True Copy (CTC) of Record of Proceedings before Honourable Justice C.U. Ndukwe (now late) in Suit No. FCT/HC/CV/2165/16: NDUBUISI PRINCESS UDUAK V CLOBEK NIG. LTD was admitted as **Exhibit P2**.

3. Letter of Demand dated 8th December, 2016 by the Law Firm of Emma Onuorah & Co. to Princess Uduak Ndubuisi was admitted as **Exhibit P3**.

PW1 was then cross-examined by counsel to the defendant and with his evidence, the plaintiff closed his case.

The defendant on her part also called only one witness, **Grace Friday** who testified as DW1. She adopted her witness deposition date 27the July, 2017. She did not tender any documentary evidence. DW1 was similarly cross-examined by counsel to the plaintiff and with her evidence, the defendant closed her case.

At the close of the case, parties filed, exchanged and adopted their final written addresses. The final written address of defendant/counter-claimant is dated 11th March, 2020 and filed on 3rd June, 2020.

In the address, two issues were raised as arising for determination, to wit:

1. **Whether this Honourable Court has jurisdiction to entertain this case?**

2. **Whether the plaintiff has earned the sum of N400, 000.00 (Four Hundred Thousand Naira) given by the defendant and the balance of N300, 000.00 (Three Hundred Thousand Naira) being claimed by him?**

On the part of the plaintiff, his final address is dated 21st July, 2020 and filed on 11th September, 2020. In the address two issues were also raised as arising for determination, to wit:

1. **Whether the defence presented by GRACE FRIDAY allegedly on behalf of the Defendant and the counter-claim are valid in law, considering that she lacks the authority and locus standi to defend the suit.**

2. **Whether based on the evidence provided by the plaintiff at trial, the plaintiff has not proved his case to be entitled to the redress he seeks.**

Now there is no doubt that there is a claim and a counter claim in this case. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant like the plaintiff in an action must prove their case against the person counter claimed before obtaining judgment on the counter-claim. See **Jeric Nig. Ltd V Union Bank (2001) 7 WRN 1 at 18, Prime Merchant Bank V Man-Mountain Co. (2000) 6WRN 130 at 134.**

In view of this settled position of the law, both the plaintiff and the defendant have the burden of proving their claim and counter-claim respectively. This being so, the issues for determination can be more succinctly accommodated under the following issues formulated by court to wit:

1. **Whether the plaintiff has fulfilled necessary legal requirements to entitle him to all or any of the Reliefs sought.**

2. **Whether the defendant has proved her counter-claim on a balance of probabilities to entitle her to all or any of the Reliefs sought.**

The above issues are not raised as alternatives to the issues raised by parties but the issues canvassed by parties can and shall be cumulatively considered under the above issues. See **Sanusi V Amoyegan (1992) 4 NWLR (pt.237) 527**. The jurisdictional or threshold issue raised by defendant on compliance by plaintiff of the streamlined steps for recovery of professional fees can be taken in the context of issue 1 raised by court. Similarly the complaint by plaintiff with respect to whether the evidence of the sole witness for defendant can be countenanced can be taken conveniently under issue 2. The issues thus raised by court has in the courts considered opinion brought out with sufficient clarity and focus the pith of the contest which has been brought for adjudication.

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issues I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

ISSUE 1

Whether the plaintiff has fulfilled necessary legal requirements to entitle him to all or any of the Reliefs sought.

I had at the beginning stated the claim and counter-claim of parties. On the pleadings and evidence, the case of plaintiff is fairly straight forward. The plaintiff as principal partner of his law firm stated that he was engaged by defendant to offer legal services inclusive of filing a court action to seek redress for the defendant against a certain company by name **Clobek Nig. Ltd**. Parties agreed orally on fees for professional services in the sum of N700, 000 and he was paid the sum of N400, 000 leaving a balance of N300, 000. Plaintiff then took steps to

file a court action and appeared in court. The matter was then subsequently withdrawn when parties settled the matter out of court and he then wrote to defendant demanding for the balance of his fees. The failure to pay the balance resulted in this extant action. This case therefore is predicated on a precisely agreed, determined or ascertained sum. There is absolutely no dispute on that as I will soon show. The case is simply about whether plaintiff and counsel qua advocate has earned the balance? The plaintiff contends he has earned the right to the balance; the defendant argues to the contrary.

Now it is trite principle of general application that a legal practitioner, like every professional in practice is entitled to be remunerated for his services. Indeed **Rule 48 (1) of the Rules of Professional Conduct for Legal Practitioners (RPC)** makes it abundantly clear that a lawyer is entitled to be paid adequate remuneration for his services to the client. **Rule 48 (2)** of RPC however cautions against charging or collecting an illegal or clearly excessive fee.

As a logical corrollary, a legal practitioner has a right to be remunerated. How he is remunerated could however be a function of agreement or a consequence of the application of the provisions of the Legal Practitioners Act on remuneration for services. A lawyer may either be paid in advance upon agreed fees or rely on the terms of any agreement reached for fees. Where he has not received his professional fees and no agreement was reached as to what would be his fees, he must then submit his bill of charges and if he then must ventilate his grievance in court, he must comply with the Legal Practitioners Act.

It is now critical to situate the precise parameters of the relationship of parties as we address the crux of the issues raised by parties and there is no better template to do so than the pleadings of parties.

In paragraphs 3 – 6 of the statement of claim, the plaintiff, averred thus:

"3. Sometime in June, 2016 just before the annual vacation of courts, the defendant approached the plaintiff at the plaintiff's new office of No. 4 Misratah Street, Off Parakou Crescent, Wuse II Abuja and right in the presence of the Plaintiff's Associate – O.C. Onwuekwe Esq. instructed the

plaintiff to file a law suit against Clobek Nig. Ltd., the Estate Developer and Manager of the estate where the Defendant's said House D9 is located.

4. **In her instruction, the Defendant requested, among other things that the Plaintiff seek redress in court against Clobek Nig. Ltd's highhandedness in the management of the Estate and arbitrary imposition of unjustifiable bills and charges on the Defendant and her co-house owners.**

5. **After the briefing/instructions session, the plaintiff and the defendant negotiated the fee payable to the plaintiff for his professional services, whereupon the sum of N700, 000.00 (Seven Hundred Thousand Naira) was agreed by them as the plaintiff's fee for the action.**

6. **Sequel to this agreement which was reached orally by the defendant and the plaintiff, the defendant paid using a First Bank Cheque to the Plaintiff the sum of N400, 000.00 (Four Hundred Thousand Naira) only leaving a balance of N300, 000 (Three Hundred Thousand Naira) only. The cheque was later lodged into the plaintiff's firm's Zenith Bank Account on June 23, 2016 and full value received thereon."**

In response the defendant pleaded as follows in paragraph 1 thus:

"1. The defendant admits paragraphs 1, 2, 3, 4, 5 and 6 of the statement of claim."

Now from the pleadings above, while there may not be a precise document streamlining terms of any agreement, there is no dispute or controversy as to the engagement of plaintiff by the defendant to carry out legal services. There is equally no disagreement that parties have agreed on a defined fees of **N700, 000** with **N400, 000** paid leaving a **balance of N300, 000**. These inevitable deductions or conclusions flow directly from the above admission in paragraph 1 of the defence confirming in all material particulars the averments in paragraphs 1 – 6 of the claim. Paragraph 1 of the Defence is a clear admission that parties have agreed unequivocally on fees or remuneration regulating the relationship and the basis for the mutual reciprocity of legal obligations between parties. An admission is a statement, oral or written (expressed or implied) which is made by a party or his

agent to a civil proceedings and which statement is adverse to his case. It is admissible as evidence against the maker as the truth of the fact asserted in the statement. See **Cappa & D'alberto Ltd V Akintilo (2003) 9 NWLR (pt.824) 49 at 69 paras. C-F**. Admissions such as made here by **defendant** in her pleadings must be accepted without further proof. See **Oceanic Bank Inc. Plc V C.S.S Ltd (2012) 9 NWLR (pt.1305) 397**.

Now in law where a claimant has pleaded facts upon which his right in dispute in the suit hinges and the defendant admits those facts, it is not such a case necessary for any evidence to be called and the court would be entitled to give judgment on the pleadings. When a fact is pleaded by the claimant and admitted by the defendant, evidence on the admitted fact is irrelevant and unnecessary. There is no dispute on a fact which is admitted. See **Bunge V Governor of Rivers State (2006) 12 NWLR (pt.995) 573 at 599 – 600 paras. H-A**.

The **bottom line** is once there is a positive and clear admission as done here by defendant, there is no dispute and so the need for proof does not arise. The admission acts as a short cut in the judicial process as they save so much valuable litigation time. Indeed, since proof, where required, presupposes a dispute, admission on the other hand, drowns the element of dispute and proof accordingly becomes superfluous in the circumstances. See **Wema Bank Plc V I.I.T Ltd (2011) 6 NWLR (pt.1244) 479; Anason Farms Ltd V N.A.C Merchant Bank Ltd (1994) 3 NWLR (pt.331) 241**; **Akaninwo & ors V Nsirim & ors (2009) 9 NWLR (pt.1093) 439**.

Now in view of this clear agreement on remuneration or fees, is there any legal requirements for compliance with the provisions of **Section 16 of the Legal Practitioners Act (LPA)** before the plaintiff can validly sue for the balance of the **agreed fees** here? I don't think so. As I will explain in some detail later in this judgment, this for me is one of such situations that precludes the necessity for a bill of charges.

It is true that the recovery of a legal practitioners charges, **where it is necessary to rely on a bill of charges**, is subject to Sections 16 – 19 of the LPA. Section 16 (1) and (2) of the LPA provides as follows:

"16(1) Subject to provisions of this Act, a legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction.

(2) Subject as aforesaid, a legal practitioner shall not be entitled to begin an action to recover his charges unless –

(a) a bill for the charges containing particulars of the principal items included in the bill and signed by him, or in the case of a firm by one of the partners or in the name of the firm, has been served on the client personally or left for him at his address as known to the legal practitioner or sent by post addressed to the client at that address; and

(b) The period of one month beginning with the date of delivery of the bill has expired." See **NBA V Gbemoba (2015) 15 NWLR (pt.1483) 585. Oyekanmi V Nepa (2000) 15 NWLR (pt.690) 414**.

Counsel to the defendant has argued that there was non-compliance with the above provision which deprives the court of the jurisdictional competence to entertain this action in that **Exhibit P3**, the bill of charges relied on by plaintiff is incompetent for failing to provide requisite particulars as envisaged by the above provisions. The defendant further stated that this requirement is mandatory whether fees was agreed to or not. The plaintiff however argued to the contrary submitting that the Bill of charges he sent has fulfilled all necessary requirements. I have considered the submissions of parties on the issue. I have equally examined Exhibit P3. For ease of understanding, I reproduce the entirety of the contents:

"Dear Madam,

RE: SUIT NO. FCT/HC/CV/2165/2016: BETWEEN NDUBUISI PRINCESS UDUAK (SUING THROUGH HER ATTORNEY GRACE FRIDAY) AND CLOBEK NIG. LTD – DEMAND NOTICE FOR OUTSTANDING PROFESSIONAL FEE.

Please recall that sometime around July this year, just before the annual vacation of the courts, you consulted us, with specific instructions to us to take out a civil action in the FCT High Court against the Defendant in the aforementioned lawsuit (Clobek Nig. Ltd).

Recall that the fee agreed for the said services was N700, 000.00 (Seven Hundred Thousand Naira) only, out of which amount the sum of N400, 000.00 (Four Hundred Thousand Naira) only, was paid to us as deposit, leaving a balance of N300, 000.00 (Three Hundred Thousand Naira) only.

Recall that about three weeks ago you had, sequel to the out-of-court settlement you eventually reached with the Defendant (Clobek Nig. Ltd) further instructed us to discontinue the action.

Be therefore informed that the case has on Monday, December 5, 2016 been duly discountenanced in line with your said later instructions. With this, we have thus effectively, effectually and conclusively discharged our obligations as per the brief.

Accordingly, we demand that you forthwith proceed to remit our said outstanding professional fee balance of N300, 000.00 (Three Hundred Thousand Naira) to us. We hereby further demand that you take hastened steps to pay this balance within Seven days of receipt of this letter (inclusive of the date of receipt of the same) and not later, otherwise you leave us no further choice than to approach the court for redress.

It is our hope that your actions and/or inactions in the coming days do not lead us on this not-too-pleasant but sure path.

FOR: EMMA ONUORAH & CO

SIGNED

E.O. ONUORAH WSQ.
(PRINCIPAL) ”

The requirement of Section 16 (2) has been interpreted in the case of **Owena Bank V Adedeji (2001) 1 WRN 10 at 17**, where Aderemi, JCA (as he then was) stated as follows:

> **“… a legal practitioner would be debarred from recovering his fees unless he fulfils a condition precedent. He must first prepare a bill of charges which contains particulars of the principal items of services**

rendered with the fees payable on each. Such a Bill must be signed by the legal practitioner personally and if he practices in a firm then one of the partners can sign or in the name of the firm. The bill must then be sent to the client personally or left for him at his last address as known to the legal practitioner or it could be sent by post to that address. Upon service of the bill on the client, a period of one month from that date of service must expire before he can commence an action for the recovery of the professional fees."

With regard to the requirement of particulars, Uwaifo, JSC had held in **SBN Plc V Opanubi (2004) 15 NWLR (pt.896) 437 at 458** as follows:

"He ought to have indicated in the bill of charges the nature of the various aspects of the services rendered; his experience at the bar which matched the skill the particular legal matters demanded; … A legal practitioner should be able to present a bill which, among other facts, should particularize his fees and charges, e.g. (a) perusing documents and giving professional advise; (b) conducting necessary (specified) inquiries; (c) drawing up writ of summons and statement of claim; (d) number of appearances in court and the dates; (e) summarised statement of the work done in court indicating some peculiar difficult nature of the case (if any) so as to give insight to the client as to what he is being asked to pay for; (f) standing of the counsel at the bar in terms of years of experience and/or rank with which is invested in the profession. It is necessary to indicate amount of fees against each of these items."

See also **Oyekanmi V Nepa (2000) 15 NWLR (pt.690) 414** particularly at pages 426, paragraph H and 427, paragraph G.

If this case was to be decided on the basis of the provisions of Section 16 (1) and (2) of LPA, the case would have being compromised.

From the above excerpts, it is clearly evident that **Exhibit P3** served by plaintiff on defendant do not satisfy the condition precedent as to the particulars required by **Section 16 (2) of LPA** for commencement of an action for Recovery of

Professional Fees, but as stated earlier, the key point is simply whether this position of the law has application where fees were agreed by parties, more than half of which have already been paid with an acknowledgment that there is a fixed balance to be paid? I incline to the view that this requirement does not arise or will not apply in such clear situations such as presented here where there is a positive and unequivocal admission nay agreement as to remuneration governing the relationship; not only that, commitments made on fees have already been met in not insignificant respect. The balance to be paid is equally fixed and known. Here at the risk of prolixity, there is no controversy on fees to be paid. Indeed, you have paid more than half of the fees, so what logically will be the need for bill of charges at this point for the balance which you know of? To ask for the self evident? I just wonder.

The point to underscore at the risk of prolixity is that a legal practitioner is entitled to make an agreement with his client with respect to charges. See Section 15 (3) d of the Legal Practitioners Act. Such Agreement should appear fair and ought to be such that was not made under circumstances of suspicion of an improper attempt by the solicitor to benefit himself at the clients expense. See **Oyekanmi V Nepa (2000) 12 SC (pt.1) 414; (2000) LPELR – 2873 (SC); Savannah Bank of Nig. V Oladipo Opanubi (2004) 15 NWLR (pt.896) 437**.

There is no case here made of any improper attempt to benefit the solicitor at the clients expense. Agreements of this nature freely entered must therefore be jealously guided by our Courts and enforced.

Our courts remain courts of justice and the mantra that propels courts nowadays is the pursuit of doing substantial justice unfettered by technical considerations. See **Ojah V Ogbon (1996) 6 NWLR (pt.454) 272 at 292**. As the Apex Court rightly pointed out in **Oyekanmi V Nepa (supra),** adjudication will only be beneficial if it is in pursuit of the justice of a case and this ought to be the abiding ethos of a court of justice and equity whenever a lawful remedy is available for a wrong. The provisions of the LPA cannot therefore be used as a cover to deny the obvious agreement or used as an excuse to shirk from the responsibilities of an agreement freely entered into by parties. Where however there is no written agreement or agreement, then the lawyer must then comply with the relevant provisions of LPA before he can validly sue as streamlined under 16 (1) and (2) of the LPA.

Compliance with these provisions in such situation then becomes a condition precedent to the exercise of jurisdiction by a trial court. See **Evong V Messrs Obono, Obono & Assoc. (2012) 6 NWLR 389**.

This scenario as I have repeatedly stated did not play out in this case. There is therefore absolutely no feature preventing the court from exercising jurisdiction to entertain the action.

Now on the pleadings and evidence, following this clear precisely defined relationship of parties, the plaintiff clearly on the evidence then took steps to file an action in court against **Clobek Nig. Ltd. Exhibit P1**, the Certified True Copy of the writ of summons and statement of claim filed on behalf of the defendant showed or expressed a clear manifestation that action was taken to implement the directives of defendant and to seek redress for and on her behalf in the said action.

Exhibit P2, the Certified True Copy of the court proceedings in the said action show clearly that the case proceeded before my late brother, Honourable Justice C.U. Ndukwe. The matter was mentioned on 1st November, 2016 and the matter adjourned for hearing on 5th December, 2016. On the Record, the court was informed on 5th December, 2016 that the matter had been resolved and the case was struck out. It is also clear on the record that the defendant in the said case had even filed a **counter-claim** which was withdrawn consequent upon the discontinuance of the action by plaintiff.

These certified processes unequivocally point to the actions taken by the plaintiff to protect the interest of defendant. These processes were not challenged or impugned in any manner.

Now in the statement of defence, the defendant pleaded as follows:

"2. The Defendant admits paragraph 7 of the statement of claim but states further that, even in the face of urgency of the need to have the defendant house reconnected with light and water in the estate, the plaintiff in clear breach of the defendant's instruction took no step whatsoever to file the suit as instructed by the defendant in early June, 2016 until 14th July, 2016.

3. **That after the Defendant had paid the sum of N400, 000 (Four Hundred Thousand Naira) to the Plaintiff, she became aware that other co-landlords of the Estate had instituted similar actions against Clobek Nigeria Limited which led to the reconnection of the light and water to the houses of all the affected landlords including the Defendant.**

5. **That after the Defendant had instructed the Plaintiff not to file the action the plaintiff suddenly woke up from his slumber and instituted an action that never came up for mention on 1st November, 2016, after over 5 months of the receipt of instruction and the sum of N400, 000 (Four Hundred Thousand Naira) from the Defendant.**

6. **The Defendant denies paragraph 9 and wish to state that the matter came up for mention on 1st November, 2016 and the Plaintiff was not in court but only sent a representative and the matter was subsequently adjourned to the 1st December, 2016 and the Plaintiff was not in court and did not send a representative.**

7. **That the Plaintiff only appears in court for the matter the first time on 5th December, 2016 wherein he filed the notice of discountenance without a term of settlement. Notice is hereby given to the Plaintiff to produce the record of proceeding of the court on the 1st November, 2016, 1st December, 2016 and 5th December, 2016.**

8. **That the Plaintiff did not put the defendant or her Attorney on notice of the entire transaction of the proceeding of the court in respect of the suit.**

9. **The Defendant Denies paragraph 10 of the statement of claim and unequivocally states that, the cause of action (which is the disconnection of the Defendant's light and water) was solved by Clobek Nigeria Limited via reconnecting her light and water before the institution of the suit No. FCT/HC/CV/2165/2016 by the Plaintiff in clear disregards to the instruction of the Defendant not to file the suit.**

10. That the entire alleged out-of-court settlement with Clobek Nigeria Ltd by the plaintiff is without the knowledge and blessing of the Defendant and her Attorney, as the plaintiff has since been instructed not to institute the case anymore."

Now it is important to state that averments in pleadings are not evidence. Without evidence been led at trial in proof of these averments, the pleadings completely lack value. Indeed it is trite law that pleadings, however strong and convincing the averments may be, without evidence thereof, go to no issue. Through pleadings people know exactly the points which are in dispute with the other. Evidence must then be led to prove the facts relied on by the party or to sustain the allegations raised in pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27**.

Now what is strange in this case is that the **defendant** herself did not give evidence in support of the above critical averments particularly since she was the one who dealt directly with plaintiff. The sole defence witness in this case, stated under cross-examination that the defendant is her sister and further added as follows:

"I am aware of the problems she had with Clobek Nig., the owners of the Estate that she was occupying before she left. I won't know when my sister came to your office to brief you. I was pregnant so I can't know everything about her movement."

It is clear that this witness was not present when defendant briefed plaintiff so where is the evidence to situate that the plaintiff was given instructions to file the case within a specific time frame? No evidence whatsoever.

Similarly where is the evidence to support the averment that the plaintiff was instructed not to file the case and that despite the instructions, he still belatedly filed the case? Again, there is absolutely no evidence to support this averment. What is strange here is that the defence witness who stated that plaintiff was instructed not to file the case and went ahead to file the case was the same person who signed the witness deposition in the said action vide **Exhibit P1**. The point to underscore is that this deposition was signed by her on 14th July, 2016.

If it is true that the plaintiff filed the action against the expressed wishes of defendant, why then did she append her signature? It is clear and I have no doubt that DW1 is not a witness of truth and is not forthcoming with respect to the clearly limited role, if any at all, that she had with respect to the instructions given by defendant to plaintiff which she was not privy too. As she herself stated she was "pregnant" at the material time.

There is equally nothing on the evidence situating how or who the alleged other co-landlords of the Estate are and the cases they allegedly filed and where it was filed and which led to the reconnection of light and water to the houses of all affected landlords including the defendant.

The defendant has equally made heavy whether of the cause of action in the case against **Clobek** as relating to only disconnection of defendants light and water, but Exhibits P1, the writ of summons and statement of claim and the extensive Reliefs sought by plaintiff in the case on behalf of defendant; infact, **eleven (11) Reliefs** in number shows clearly that the case filed by plaintiff goes beyond mere disconnection of light and water. Exhibit P1, the originating processes filed in the action speaks for itself and there cannot be any additions or interpolations to it at this stage to suit a particular purpose. See **Section 128 of the Evidence Act**. There is no doubt a lot of work and industry must have gone into preparation of the said court processes and this cannot be taken for granted or lightly.

Finally the contention that the plaintiff did not appear in the case is again empty speculative posturing completely lacking in evidence. From the Record of proceedings vide **Exhibit P2**; on the two days the case came up, the plaintiff (the defendant in this case) was represented by counsel. The contention that the plaintiff did not appear for her in the said case clearly lacks foundation. The key point is not whether he was there physically or in person but one of due and proper representation on behalf of plaintiff in the said case. Again on the Record, plaintiff was represented. The defendant did not certainly appear for herself in the case and did not instruct whoever appeared in the case and so it does not lie in their mouth to seek to impugn the representation made on her behalf as clearly appears on the said Record of proceedings.

On the whole, the defendant has not in any way creditably impugned or challenged the case made by the plaintiff that he was instructed by the defendant; they agreed on fees, a substantial portion was paid with the balance to be paid subsequently, and the plaintiff took practical steps on the evidence to protect the interest of the defendant as instructed.

On the evidence, this agreement was reached as far back as **2016**. Agreements will be useless if parties do not adhere to what was agreed particularly here where the defendant has enjoyed the benefits of the agreement but is now actively seeking to shirk from the burden or the commitments under the agreement.

The dictates of justice demands that the defendant pays the balance of N300, 000 without **further delay**. Relief (a) is availing.

Relief (b) is for 21% interest from July 2016 when the agreement was reached and thereafter 20% interest until final liquidation. There is no real clarity on what the plaintiff wants in this Relief. Now ordinarily interest is not payable on ordinary debt in purely commercial transaction, in the absence of a term to that effect expressly or impliedly in the contract, or mercantile usage or custom of the parties, or as may be contained in a statute. It may also be in place through a fiduciary relationship between parties. Where there is no evidence whatsoever as in the present situation situating the basis of the claim of interest whether founded upon a particular rationale, such as mercantile custom or trade usage known to the parties, the claim will be without foundation and must be disallowed. See **A.I.B. Ltd V I.D.S. Ltd (2012) 17 NWLR (pt.1328) 1; Himma Merchants Ltd V Aliyu (1994) 5 NWLR (pt.374) 657 and UBN Ltd V Ozigi (1994) 3 NWLR (pt.333) 385.**

In this case, the plaintiff did not demonstrate in evidence the basis of this 21% interest claim. Equally true is that the basis for this arm of claim was not delineated in the pleadings.

Now if the 20% interest claim until final liquidation is from the date of Judgment until final liquidation, this was not properly formulated and claimed. There is nothing in Relief (b) situating that the 20% interest claim is from judgment until liquidation and it is no duty of court to formulate a relief for a party. A Relief in

law is granted on the basis of what was formulated and creditably established or proven in evidence. **Relief (b)** thus fails.

Relief (c) is for N1, 000, 000 cost of this action. There is absolutely nothing furnished in evidence providing a basis for **N1, 000, 000** claimed as cost. Since the case of plaintiff has partially succeeded, he will be entitled to reasonable cost of action pursuant to the provision of **Order 56 Rule 1 (3) of the Rules of Court** but certainly not to the value or amount claimed.

On the whole issue 1 is resolved partially in favour of plaintiff.

ISSUE 2

Whether the defendant has proved her counter-claim on a balance of probabilities to entitle her to all or any of the Reliefs sought.

The above issue is predicated on the counter-claim of the defendant. As stated in the consideration of the substantive claim, the counter claim is a distinct and separate course of action which must equally be established by the defendant to entitle her to the reliefs sought. I had earlier streamlined the reliefs sought in the counter-claim.

Now the key question here is where is the evidence to situate the claims of defendant in the counter-claim. In the consideration of the substantive claim, we had found that the agreement for rendering of professional legal service was between plaintiff and defendant. The sole witness for the defendant was no party to the agreement and was not privy to what was agreed. Infact at the material time, she stated that she was not at the office of the plaintiff when defendant held meetings with plaintiff as she was pregnant.

It is therefore difficult to therefore situate the legal and factual basis for the claim for refund of the N400, 000 part payment made by defendant particularly in the context of the unchallenged evidence that the plaintiff executed the mandate of defendant as earlier demonstrated vide **Exhibits P1** and **P2**. As stated earlier, these processes were not challenged or impugned in any manner.

It is correct that the defendant's sole witness may have said that she is the attorney of the defendant in the pleadings but there is absolutely no evidence to support or situate her appointment as an attorney. Even without going into the merits of the arguments with respect to the validity of the evidence of DW1, what is clear is that the defendant has not creditably established by evidence why any refund should be made to her. The largely speculative and hear say evidence of DW1 provides absolutely no basis for any refund. **Relief (i)** of the counter-claim fails.

With the failure of **Relief (i)**, **Relief (ii)** for interest is clearly compromised. Even if Relief (i) has succeeded, there is here too absolutely no demonstration of any basis for the claim of interest. I adopt the principles on modalities for award of interest earlier highlighted in the substantive judgment. I need not repeat myself. There is really no legal or factual basis for this relief. It fails.

Relief (iii) is for N5, 000, 000 (Five Million Naira) as general damages for psycho-emotional instability and nervous shock cost the defendant/counter claimant as a result of this suit.

This Relief is outlandish in the extreme and fails without much ado. There is absolutely no evidence of any kind by the defendant to situate the alleged personal damages she suffered. DW1 is certainly not the defendant and is not a medical practitioner and is in no position to give evidence of any psycho-emotional instability and nervous shock suffered by defendant as alleged. No medical report was tendered to situate these ailments and how it is linked to this case or actions of plaintiff.

With the failure of Reliefs (i) – (iii), the Relief for cost of action must necessary fail. You can't put something on nothing and expect it to stand.

On the whole, the single issue raised in respect of the counter-claim fails.

In the final analysis and for the avoidance of doubt, I accordingly make the following orders.

ON PLAINTIFFS CLAIMS

1. **The plaintiff is entitled to the outstanding professional fee of N300, 000.00 (Three Hundred Thousand Naira) only, being balance of the N700, 000 (Seven Hundred Thousand Naira) professional fee agreed between the defendant and plaintiff for the prosecution of the case against Clobek Nigeria Ltd.**

2. **Relief (b) fails.**

3. **I award cost assessed in the sum of N25, 000 payable by defendant to plaintiff.**

ON DEFENDANTS COUNTER-CLAIM

The defendants counter-claim fails in its entirety and is hereby dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. **I.D. Njoku, Esq., for the Plaintiff.**

2. **A.M. Saadu, Esq. with A.A. Muhammed, Esq., for the Defendant.**