IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 2ND DECEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CV/2702/2015

BETWEEN:

A.Y.H. INVESTMENT COMPANY LIMITED ------ CLAIMANT

AND

SKYE BANK PLC ------ DEFENDANT

JUDGMENT

The claimant instituted this action on the 4/9/2015 vide Writ of Summons against the defendant. The defendant upon being served with the Writ filed Statement of Defence and Counter Claim on the 26/11/2015. On the 25/4/2016, the Claimant filed a Reply and Defence to Counter Claim. However, the claimant applied to the Court vide a motion dated 5/10/2018 to amend the Writ of Summons which application was granted.

By the Amended Writ of Summons dated 5/10/2018 the claimant is praying for the following reliefs against the defendant:

"a) A declaration that by receiving and keeping the claimant's sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) paid into its account maintained in the defendant's Grand Square Abuja branch from it, the defendant had combined the claimant's two accounts with it and used the funds therein to offset claimant's indebtedness to it.

b) A declaration that interest on the loan facility granted to the claimant by the defendant abated on the 9/12/2011 being the day the defendant received the claimant's Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) and used same to offset its indebtedness arising from the loan facility granted to it.

c) An order of the Court directing the defendant to release all the title documents relating to the collateral used in securing claimant's loan facility to it having fully paid the said loan.

d) An order of the Court directing the defendant by itself, privies, agents, assigns e.t.c. not to sell, auction, deal in adversely with the said collateral used by the claimant in securing the said loan facility.

e) An order of the sum of Fifty Million Naira (N50,000,000.00) as general damages in detinue for the defendant's refusal to release claimant's title documents to it, as well as all the stress, hardship, embarrassment caused the claimant by the defendant's actions stated above.

f) An order directing the defendant to pay interest of 20% on the sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) received and withheld from the claimant from the 9/12/2011 till

the 4/9/2015 and continuing from the date of judgment as well as damages of Fifty Million Naira (N50,000,000.00) for its negligence in not utilising the said sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) received and withheld from the claimant from the 9/12/2011 till date in offsetting its indebtedness to the defendant as all good bankers are wont to do.

g) An order directing the defendant to re-convey the title of the property back to Alh. Ya'u Haruna Mohammed being the third party mortgagor and the original owner of the two properties used to secure the loan facility."

The defendant by the Counter Claim prayed against the claimant as follows:

"1. A declaration that the claimant by counter claim is entitled in terms of the deed of legal mortgage registered as No. 60 at page 60 in Volume 18 at the

Land Registry, Kano to exercise the power of sale over the defendant by counter claim's property situate, lying and being at plot 35, Suleman Crescent Nasarawa, Kano, which was pledged as security for the facility granted to the defendant by counter claim and apply the proceeds of sale there from to liquidate the defendant's indebtedness as at date and all costs in respect thereof.

OR ALTERNATIVELY

2. *The sum of N9,906,441.51 (Nine Million, Nine Hundred and Six Thousand, Four Hundred and Forty One Naira, Fifty One Kobo) only being outstanding balance (as at 17/9/2015) of the credit facility granted by the counter claimant to the defendant by counter claim and which debt remained unpaid till date despite repeated demand.*

3. *Interest on the said sum of N9,906,441.51 (Nine Million, Nine Hundred and Six Thousand, Four Hundred and Forty One Naira, Fifty One Kobo) only at*

the rate of 25% per annum with effect from 18/9/2015 until judgment and thereafter at the rate of 10% until the whole debt is liquidated.

4. An order granting leave to the claimant to dispose/sell the property situate, lying and being a Block 7, Flat 8 Samsara Street, Wuse Zone 6, Abuja, which was pledged as security for the facility and apply the proceeds of sale there from to liquidate the defendant's indebtedness as at date and all costs in respect thereof.

5. Cost of litigation."

Hearing then commenced. In proof of its case, the claimant called one witness viz; Madu Musa Gwary who testified as PW1. He adopted his witness deposition on 29/11/2016 at the hearing. He tendered the following documents in evidence as follows:

- Letter dated 31/12/2014 admitted and marked as Exhibit A.

- Letters dated 31/12/2014, 8/8/2012 and 9/7/2013 collectively marked as Exhibit A2.
- Letters dated 5/6/2013, 12/7/2013 and 20/8/2015 collectively marked as Exhibit A3.

PW1 was duly cross examined by counsel to the defendant.

The defendant on their part also called one witness. Patrick Ojo testified as DW1. He deposed to a witness statement on oath dated 26/11/2015 which he duly adopted at the hearing. He tendered the following documents:

- Third party deed of legal mortgage dated 10/9/2011 marked as Exhibit D.
- An offer letter dated 16/6/2010 marked as Exhibit D1.
- Letter dated 6/1/2012 marked as Exhibit D2.
- Letter dated 31/7/2012 marked as Exhibit D3.
- Statement of account dated 1/1/2010 – 31/12/2013 marked as Exhibit D4.

- Final demand letter dated 5/6/2013 marked as Exhibit D5.
- Letter dated 20/8/2015 marked as Exhibit D6.
- Offer letter dated 16/6/2010 marked as Exhibit D7.
- Letter dated 26/10/2010 marked as Exhibit D8.
- Statement of account marked as Exhibit D9.
- Gwagwalada branch statement spanning from January, 10 – July, 12 marked as Exhibit D10.

At the conclusion of trial, parties filed, exchanged and adopted their respective final written addresses. The defendant's written address is dated 11/7/2018 and **Ifeoma Egwuonwu Esq** of counsel raised two issues for determination as follows:

"1. Whether the claimant has made any case against the defendant from the totality of his pleadings and evidence before the Court.

2. Whether the defendant (counter – claimant) is entitled to judgment as per the counter claim."

The written address for the claimant was settled by **Charles Chimezie I. Esq** and duly adopted. Four issues were raised for determination as follows:

"1. Whether or not the defendant owes the claimant the duty to timorously utilize the contract fee of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) received in December, 2011 and withheld from the claimant by her to offset the loan facility she granted to the claimant.

2. Whether or not by virtue of the defendant being in possession of the claimants contract fee of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) received in December, 2011 and withheld from the claimant by her, she was deemed to have used same to offset the loan facility she granted to the claimant.

3. Whether or not the claimant proved her case and is entitled to the reliefs sought by her.

4. Whether or not the defendant proved her counter claim and is thus entitled to the reliefs sought therein."

On a careful perusal of the evidence led in support, I am of the view that the issues raised by the defendant are sufficient to determine this matter. The issues are:

"1. Whether the claimant has proved its case to be entitled to the reliefs claimed.

2. Whether the defendant has proved its case in the counter claim to be entitled to the reliefs claimed."

In civil cases, proof of a matter is determined by the preponderance of evidence or the balance of probabilities. The claimant who asserts has the burden to prove or establish his case with cogent and credible evidence otherwise his case would fail and it does not matter whether or not the defence of the defendant is weak. He must rely on the strength of his case and not

the weakness of the defence. It is after such proof or establishment of his case that the burden shifts to the opposing party. See Williams vs. Haastrup (2019) LPELR – 47496 (CA), Itauma vs. Akpe – Ime (2000) 7 SC (part 11) 24, Longe vs. FBN Plc (2006) 3 NWLR (part 967) 228. See also Section 131 – 133 Evidence Act, 2011.

Now on the attitude of Court to the issues of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies, the Supreme Court in Duru vs. Nwosu (1989) 4 NWLR (part 113) 24 stated thus:

> *"….a trial Judge ought always to start by considering the evidence led by the claimant to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a prima facie case, in which case the trial judge does not have to consider the case of the defendant at all."*

From the above, the point appears sufficiently made that the burden of proof lies on the claimant to establish its case on a preponderance of credible evidence to sustain the claim irrespective of the presence or indeed the disposition of the defendant. See Agu vs. Nnadi (1999) 2 NWLR (part 589) 131 at 142, Oyewole vs. Oyekola (1999) 7 NWLR (part 612) 560.

It is equally important to add that the substance of the reliefs (1) and (2) of the claim of the claimant on which the other reliefs are predicated are declaratory in nature. In law where such declaratory reliefs are sought, the burden is on the party seeking such reliefs to creditably establish his entitlement to such relief and not the weakness of the defence, if any. Indeed such relief will not be granted even on admission made by the adversary. See Akande vs. Adisa (2002) 14 NWLR (part 1324) 538, Nyesom vs. Peterside (2016) 7 NWLR (part 1512) 452.

From the evidence, the claimant was offered credit facility to the tune of N40 Million. In a bid to repay the loan the claimant domiciled payment of its contract sum from the Federal Ministry of Works in his account at the defendants Gwagwalada branch. The expected sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira and Eleven Kobo (N58,703,672.11 Kobo) from the Federal Ministry of Works was erroneously paid into the claimants account at the defendants Grand Square branch. The claimant's grouse is that the defendant did not utilise the said amount to offset the loan and kept charging him interest.

The defendant on their part admitted that the claimant was availed a loan facility of N40,000,000.00 (Forty Million Naira). The defendant also admitted that the claimant maintains two accounts, one in its Gwagwalada branch and another in the Grand Square branch. DW1testified that the claimant's account at Grand Square branch was credited with the sum of Fifty Eight

Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira and Eleven Kobo (N58,703,672.11 Kobo) from the Federal Ministry of Works, instead of the claimant's account at Gwagwalada branch. The defendant said they did not use the funds received in the Grand Square branch to offset the loan in the Gwagwalada branch because the claimant requested for a renewal of the expired facility, which process was already initiated by the defendant. Meetings were held where the claimant pleaded for a loan work out arrangement that it wants the defendant to renew the facility for 180 days. This was not acceptable to the defendant and its recovery team, therefore it was proposed that the claimant should pay N10,000,000.00 (Ten Million Naira) while the defendant shall renew the remaining N30 Million for another 180 days. The approval for the loan work out took 3 months from January to March, 2012 and same was communicated to the claimant vide a letter dated 16/3/2012. The offer of credit facility is Exhibit D7. Now

it is stating the obvious that parties to an agreement such as Exhibit D7 are bound by the terms of the agreement they entered into freely. See **Artra Industries (Nig) Ltd vs. N.B.C.I (1998) 4 NWLR (part 546) page 357**

A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to operation within its contract with its customer. The ability to exercise reasonable care and skill extend over the whole range of banking business within the contract with the customer. Thus the duty applies to interpreting, ascertaining and acting in accordance with the instruction of the customer. See **Enterprise Bank vs. Denwigwe & ors (2018) LPELR – 46261 (CA), Agbanelo vs. UBN Ltd (2000) 7 NWLR (pat 666) 534 at 550.**

At paragraph 10 of the Statement of Claim, the claimant averred as follows:

"That having frozen the said account and refused the claimant access to it, the claimant then rightly

believed that the defendant had as practiced in the banking industry combined the two accounts and utilized the said fund of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) in offsetting the loan facility which as at then stood at the sum of Thirty Eight Million Naira only as well as the sum of Six Million, Fifty Nine Thousand, Eight Hundred and Sixty Seven Naira and Thirty Four Kobo (N6,059,867.34K) representing the amount of interest on the loan granted to the claimant in account No. 1770939276 which it held with the defendant at its Gwagwalada Abuja branch."

The defendant had a duty to act in the best interest of its customer (the claimant) to utilise the contract sum received in the claimants account at the Grand Square Branch to offset the debt. In the case of **Agi vs. Access**

Bank Plc (2014) 9 NWLR (part 1411) 121 rightly cited by claimant's counsel, the Court held:

> *"A bank must exercise reasonable care and skill in executing a customer's instruction in his banking business. The banker has a duty to protect the interest and money of the customer…The rationale for the duty of care on a banker is that a banker's customer falls within the ambit of the banker's neighbour. That is a person who is closely and directly affected by the acts of the banker that the banker ought reasonably to have the customer in contemplation as being likely to be affected when the banker is considering the acts and omission which are called in question…"*

It is instructive to note that the claimant by its letter dated 8/8/2012 had clearly requested for reversal of interest charges of N9,431,438.18 (Nine Million, Four Hundred and Thirty One Naira, Four Hundred and Thirty Eight Naira and Eighteen Kobo) and the return of the

collaterals. Reasons given are stated in paragraph (3(a – c) of the letter above in Exhibit A2.

"....

(a) Payment of N58,703,672.11 received from the Federal Ministry of Works in our favour and meant for our account domiciled at your Gwagwalada Branch was however erroneously sent to your grand square branch central business district.

(b) The anormally prompted discovered by you, and you could have rightly transferred same for the credit of our account, which was overdrawn by N6,059,867.34.

The amount received in our favour was also enough to liquidate our bridging facility account with a balance of N38,000,000.00 (Thirty Eight Million Naira) then.

(c) Although we had earlier applied for the renewal of the bridging facility to a new limit of N30,000,000.00 (Thirty Million Naira) it is our

candid opinion that the old facility should have been crushed from the payment received in our favour, and which was lying idle in your Grand Square branch in Abuja."

Defendant replied to claimant's letter only on the 5/6/2013. By the claimant's letter dated 9/7/2013, the claimant reiterated that it was not owing the defendant any amount of money as the defendant by implication had recovered its money by refusing to allow the claimant access to the contract sum of N58,703,672.11 (Fifty Eight Million, Seven Hundred and Three Thousand Naira, Six Hundred and Seventy Two Naira and Eleven Kobo).

Futhermore, the defendant in the pleadings paragraph 14 of the Statement of Defence stated thus:

"That it was in the course of the meeting that it was agreed by both parties that the bank would renew (on a loan work out basis), upon review of what the claimant was owing the bank; that the claimant would withdraw the sum of N13.5 Million

while the remaining balance of N45.3 Million would be placed on hold funds."

In paragraph 16 it was stated thus:

"The claimant's application to renew the facility was amended to renewal/loan work out of the N30 Million based on the agreement reached at the meeting. That the approvals from management for the claimants loan work out renewal took about 3 months from January to March, 2012 and same was communicated to the claimant through the offer letter dated 16/3/2012 but the offer was rejected on the basis that the penal charges should be reversed."

DW1 under cross examination emphatically stated:

"The claimant was not allowed to utilize the money after the payment i.e. the sum of N58 point something Million. It was an agreement between the claimant and defendant that the money will

not be utilised. I do not have the agreement herein Court. The bank has the right to transfer money from one account to the other belonging to one customer."

From the pleadings and evidence, the defendant did not deny the fact that out of the sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira and Eleven Kobo (N58,703,672.11 Kobo) domiciled in the claimants account at its Grand Square branch, the sum of N45.3 Million was placed on hold. However it was only on the 3/5/2012 that the defendant utilised the said amount to offset the loan.

The defendant had maintained that parties agreed that the credited sum in claimants account should be withheld pursuant to a loan work out before offsetting the loan. The said letter/agreement dated 16/3/2012 was however not tendered in evidence. It is my view that the defendant ought to have tendered the purported letter/agreement with the claimant. In **The People of**

Lagos State vs. Mohammed Umaru (2014) SC.455/2012, the Supreme Court **per Mohammed JSC** (as he then was) stated thus:

> *"Where a party claims to have evidence that goes to show the existence of a document in proof of his case, the document should be tendered. Where such evidence could be produced, it is presumed to be against the interest of the party withholding it."*

The law is that in the absence of an express agreement between parties, an agreement regulating the relationship of banker and customer can be implied from the ordinary course of business between them. See Linton Industrial Trading Co. Nig. Ltd vs. CBN & anor (2013) LPELR – 22036 (CA), Angyu vs. Malami (1992) 9 NWLR (part 264) page 242.

There is nothing to show any agreement reached by the parties on the amount to be withheld and the reason for the delay in offsetting the loan. It is noted that Exhibit

D8 Renewal of N40,000,000.00 (Forty Million Naira) advance facility was written or the 26/10/2010 even before the claimant's account was credited with the contract sum in December, 2011.

DW1 in his evidence stated that the defendant has the right to move the money of a customer from one account to another. The claimant alluded to the fact that the defendant did exercise that right when it withheld the claimants money. In **Fidelity Bank Plc vs. Okwuowulu & anor (2012) LPELR – 8497 (CA)** the Court held:

> *"…I think that it is now trite that once, a customer is indebted to his bankers, the bankers right to dishonour and refuse to obey any order to withdraw on the account is obvious. In that state of affairs, therefore, the customer cannot be said to still be seized of the right to withdraw from the account as contended. Whether the accounts were merged or not merged, the customer/debtor has*

no unlimited right to withdraw or deal with the account as such 'real' owner any longer."

Even by the defendant's Exhibits D and D7 the defendant was empowered to use claimant's money to defray the indebtedness without waiting for any instruction or consent of the claimant. Exhibit D is the Third Party Deed of Legal Mortgage dated 10/9/2011. And both the Mortgagor and Mortgagee have rights therein; Clause 3.03 reads as follows:

"The Borrower and the Mortgagor hereby agree that the bank may at any time without notice after an event of default or in making demand notwithstanding any statement of account or other matter whatsoever combine or consolidate all or any of his/her/its then existing accounts including accounts in the name of the bank or of the mortgagor jointly with others (whether current, deposit, loan or of any other nature whatsoever whether subject to notice or not and whether in

naira or in any other currency) wheresoever situate and set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any obligations and liabilities of the Borrower and the Mortgagor to the Bank whether such liabilities be present, future, actual, contingent, primary, collateral, several or joint. Where such combination set-off or transfer requires the conversion of one currency into another such conversion shall be calculated at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the bank) for purchasing the currency for which the Borrower and the Mortgagor are liable with the existing currency."

And in Exhibit D7, the Offer Letter dated 16/6/2010 Clause 4, it reads:

"Right of Setoff

The Obligor covenants that in addition to any general lien or smaller right to which Skye Bank as lender may be entitled to by law, the Bank may at any time and without recourse to the customer, combine or consolidate all or any of the Obligors account without any liability to the Bank and setoff or transfer any sum or sums standing to the credit of any one of such accounts in or towards satisfaction of the Obligors liabilities to the Bank or any other in respect of whether such liabilities be actual or contingent, primary or collateral and several or joint."

Generally, where parties to an agreement have set out the terms thereof in a written document, extrinsic evidence is not admissible to add to, vary from, or contradict the terms of the written instrument. See **B.O.N. Ltd vs. Akintoye (1999) 12 NWLR (part 631) 392.**

In the instant case, the wordings of the Mortgage Deed and the Offer Letter are clear and unambiguous. It

is therefore not necessary to add or subtract from them. The contents are binding on the parties and the defendants cannot therefore resile from it. It was well within the rights of the defendant to have combined the claimants two accounts at Gwagwalada and Grand Square Branch and utilised same to offset the claimant's indebtedness.

Again the claimant's counsel is on point while making reference to the case of S.A.F. & U vs. UBA (2010) 17 NWLR (part 1221) 192 at 209 where the Court held:

> *"Any money paid into a bank account belongs to the banker from the moment of such payment..."*

In this instance, the Court is at one with Mr. Chimezie that the defendant had no justifiable reason for withholding the claimants money, be it the Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) or N40,300,000.00 (Forty Million, Three Hundred Thousand Naira) as alleged, for five months without using

the money to offset the claimants indebtedness and continued to charge interest on same.

Having reviewed the evidence in this case, and found that the defendant by keeping the claimants contract sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K), had combined the claimants two accounts to offset claimants indebtedness together with the interest, for that reason, reliefs (a) and (b) are meritorious and granted as claimed.

For relief (c), the evidence is that the defendant had received the claimants contract sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) and eventually used same to liquidate claimants indebtedness. At paragraphs 10 and 11 the claimant averred that as at the time the amount was paid into its account, the outstanding indebtedness stood at N38,000,000.00 (Thirty Eight Million Naira) while the

interest stood at N6,059,867.34K (Six Million, Fifty Nine Thousand, Eight Hundred and Sixty Seven Naira and Thirty Four Kobo).The amount received was enough to conveniently off-set the entire in debt. This much was not denied.

DW1 under cross examination confirmed to this Court that the claimants account was credited with the sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) in December, 2011 and the amount was used to offset the loan owed by the claimant. The witness further stated that the claimant was not allowed to utilise the said amount. It therefore behoves on the defendant to release the title deeds used as collateral for the loan in its (defendant) possession. Having said this the defendant cannot exercise the power to sell, auction or deal adversely with the collateral used in securing the loan. It is the law that once the right of a mortgage to exercise the power of sale of a mortgaged

property arises, the mortgagee cannot be stopped from exercising his power of sale, unless the amount owed is paid in full. See Ihekwoba vs. African Continental Bank Ltd (1998) 10 NWLR (part 571) page 590. The loan amount in this case has since been paid in full together with the accrued interest, therefore I find and hold that Reliefs (c) and (d) are meritorious.

For Relief (e), the claimant claimed the sum of N50,000,000.00 (Fifty Million Naira) as general damages in detinue for refusal by the defendant to release claimant's title documents. By Exhibit A2 dated 8/8/2012, the claimant had requested for release of the documents used as collateral. The defendant maintained that the claimant did not meet all the obligations and is still substantially indebted to the defendant to the tune of N9,906,441.51 (Nine Million, Nine Hundred and Six Thousand, Four Hundred and Forty One Naira and Fifty One Kobo) being the balance and accrued interest and still holding unto the claimant's title documents.

This Court earlier held that the claimant was not indebted to the defendant having repaid the loan in full, together with the interest.

In Nutri Food & Beverages Ltd vs. Access Bank (2019) LPELR – 47291 (CA) the Court held that a successful claimant in an action in detinue is entitled to damages in the nature of general damages which by law requires no strict proof. It follows naturally and flows from a company wanting to sell the very asset whose title was withheld. And all the claimant need to prove is wrongful detention of his chattel by the defendant after demand and refusal of the return of his chattel in the statement of claim. See Fidelity Bank Plc vs. Kates Associated Ind. Ltd (2012) LPELR – 9790 (CA), U.B.A Ltd vs. Ademuyiwa (1999) 11 NWLR (part 62) page 570 at 589.

Therefore failure to release the clamant's title documents shall attract general damages.

By Relief (f) the claimant seeks interest of 22% on the sum of Fifty Eight Million, Seven Hundred and Three

Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) received and withheld by the defendant from 9/12/2011, as well as damages for negligence of N50,000,000.00 (Fifty Million Naira).

The claim for interest of 22% is not predicated on any agreement. The claim for N50,000,000.00 (Fifty Million Naira) general damages for negligence also has no basis, as the claimant had earlier claimed damages in relief (e). Both claims are unavailing and are hereby dismissed.

Relief (g) has considerable merit having held that the claimant was no longer indebted to the defendant. It shall be granted accordingly.

As stated in the beginning, the defendant filed a Counter Claim on the 26/11/2015 Patrick Ojo testified for the defendant as DW1. He adopted his witness statement on oath of 26/11/2015. The witness testified that the claimant was availed credit facility of N40,000,000.00 (Forty Million Naira) to part finance the

purchase of Asphalt and the facility was secured with legal mortgage of the claimant properties known as Block 7, Flat 8 Samsara Street, Wuse Zone 6 and Plot 35, Suleman Crescent Nasarawa Kano. The facility was renewed for another 90 days upon its expiration. That the claimant diverted the expected proceeds to its account at Grand Square branch in clear breach of the documentation agreement to domicile payment at the defendants Gwagwalada branch. By the time the defendant came to a decision to offset the claimants fund in account No. 1770006009 at Grand Square branch with the loan facility in claimants account No. 1770939276 at Gwagwalada branch, penal charges had accrued.

That the claimant has not met its obligations in accordance with the terms of the credit facility and now substantially indebted to the defendant to the tune of N9,906,441.51 (Nine Million, Nine Hundred and Six Thousand, Four Hundred and Forty One Naira and Fifty One Kobo).

In this instance however, this Court has earlier held that the claimant is not indebted to the defendant in anyway having paid the facility together with the interest, and further held that the defendant shall release the title documents belonging to the claimants used as collateral to secure the loan. In the circumstance, Relief (a) which is for a declaration that the defendant is entitled to give effect to the legal Mortgage, to sell the claimants property and use the proceeds to liquidate the claimants indebtedness is refused and accordingly dismissed.

The counter claimant also seeks alternative reliefs. A trial Court has a duty to consider the principal relief claimed where there is enough evidence to support the grant of the principal relief. In such case, the alternative would therefore not be considered. The Court can only consider the alternative relief where the principal relief cannot be supported by the evidence adduced and therefore not grantable. See Lamurde Local Govt. vs. Karka (2010) 10 NWLR (part 1203) p[age 574 at 597.

Sequel to my findings and judgment in favour of the claimant, reliefs (b), (c) and (d) are unavailing and are hereby dismissed.

On the whole and in the final analysis, the claimant's action partly succeeds and I accordingly make the following orders:

(1) It is hereby declared that the defendant by receiving and keeping the claimants contract sum of Fifty Eight Million, Seven Hundred and Three Thousand, Six Hundred and Seventy Two Naira, Eleven Kobo (N58,703,672.11K) paid into its account maintained in the defendant's Grand Square branch, had combined the claimants two accounts to offset claimants indebtedness.

(2) It is further declared that the interest on the loan facility abated on the 9/12/2011 the day the defendants received the claimants contract sum stated above.

(3) An order is granted directing the defendant to release all the title documents relating to the collateral used in securing the loan.

(4) A further order is made directing the defendants not to sell, auction or deal adversely with the said collateral and the defendant shall re-convey title of the property to the 3rd party mortgagor Alh. Ya'u Haruna Mohammed.

(5) I award the sum of N5,000,000.00 (Five Million Naira) as damages against the defendant for failure to release the claimant's title documents.

(6) Relief (f) is dismissed.

(7) Counter claim is also dismissed.

Signed

Honourable Judge

<u>Appearances:</u>

Charles Chimezie Esq – for the plaintiff

A.J. Apera Esq – for the defendant