

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 28 JABI, ABUJA.  
BEFORE HIS LORDSHIP: HON JUSTICE JOSEPHINE E. OBANOR  
THIS 28<sup>TH</sup> DAY OF JUNE, 2024**

**SUIT NO: FCT/HC/CV/2883/2021**

**BETWEEN:**

**ALHAJI UMAR IDRIS**

**- CLAIMANT**

**AND**

<b>1. MALLAM MOHAMMED ALI</b>	} DEFENDANTS
<b>2. SHEIK YUSUF ZURKAINAINI</b>	
<b>3. CRYSTAL BRICKS MULTI PURPOSE COOPERATIVE SOCIETY</b>	

**JUDGMENT**

Via a Writ of Summons dated and filed on the 1<sup>st</sup> day of November, 2021 the Claimant seeks the following reliefs;

A. A declaration by this Honourablecourt that the deliberate and calculated acts of the Defendants to induce the Claimant to sign a loan agreement of Eight Million Naira (N 8,000,000.00k) and also issue an Irrevocable Power of Attorney to the 3<sup>rd</sup> Defendant with the intention to liquidate the Claimant's property situate at Plot No. G (313) with the 4 bedroom semi-detached duplex (Block SDX/D 74) at system Property Development Consortium Estate

Galadimawa District Abuja with the current market value worth Ninety Million Naira (N90,000,000.00) in two months amounts to unconscionable bargain, inequality Of bargaining and undue influence.

- B. A declaration by this Honourable court that the Claimant's bargaining power was seriously impaired by reason of his ignorance coupled with undue influences and pressure brought to bear on him by the Defendants for their benefit when he signed the loan agreement, issued the irrevocable power of attorney and notice to sell and transfer Plot No. G (313) with the 4 bedroom semi-detached duplex (Block SDX/D 74) at System Property Development Consortium Estate Galadimawa District Abuja to the 3<sup>rd</sup> Defendant.
- C. A declaration by this Honourable Court that the unconscientiously use of power possessed by the Defendants over the Claimant in order to induce him to enter into a contract (Loan agreement) under undue influence, in which terms are very unfair to him renders the contract one sided, null and void.
- D. A declaration by this Honourable Court that the Notice of sale and transfer of Plot No. G(313) with the 4 bedroom semi-detached duplex (Block SDX/D 74) at System Property Development Consortium Estate Galadimawa District Abuja issued by the Claimant to the 3<sup>rd</sup> Defendant was obtained under undue influence and thereby null and void ab initio.
- E. A declaration by this Honourable Court that the Claimant is still the owner and has overriding title to Plot. No. G (313) with the 4 bedrooms semi-detached duplex (Block SDX/D 74) at System Property Development Consortium Estate Galadimawa District Abuja.
- F. A declaration by this Honourable Court that any purported sale of the Claimant property situate Plot. No. G (313) with the 4 bedrooms semi-detached duplex

(Block SDX/D 74) at System Property Development Consortium Estate Galadimawa District Abuja to a 3<sup>rd</sup> party by the 3<sup>rd</sup> Defendant is void ab initio.

- G. A declaration by this Honourable Court that the Claimant is only entitled to pay only the principal sum of Eight Million Naira (N 8,000,000.00) advanced by the 3<sup>rd</sup> Defendant.
- H. An order of this Honourable Court voiding the Irrevocable Power of Attorney issued to the 3<sup>rd</sup> Defendant as same was obtained under indirect pressure and undue influence.
- I. An Order directing the 2<sup>nd</sup> Defendant to refund the sum of N13,080,000.00 being the aggregate sum of money collected from the Claimant under undue influence.
- J. An order of this Honourable Court awarding the sum of N50,000,000.00 (Fifty Million Naira) as general damages against the Defendants jointly and severally.
- K. An order of this Honourable Court awarding the sum of N100,000,000.00 (One Hundred Million Naira) as punitive cost against the Defendants jointly and severally.
- L. An order of this Honourable Court against the Defendants to pay the Claimant the sum of One Million naira (N1,000,000.00) as the cost of this suit.
- M. Any other Order(s) that the Honourable Court may deem fit to make in the circumstance.

In the Amended Statement of Claim, which is akin to the Witness Statement on Oath of the Claimant adopted before this Court by the Claimant who testified as CW2, the brief fact of the case is that the Claimant became financially incapacitated after the 2019 elections due to his participation. He approached the

1st Defendant who was his former driver and someone close to him, to inform him of his predicament. The 1<sup>st</sup> Defendant informed him that the 2<sup>nd</sup> Defendant could solve his problem spiritually and facilitated the Claimant's meeting with the 2nd Defendant. The 2<sup>nd</sup> Defendant prayed for him, aware that the Claimant was unable to obtain the items required for the spiritual fortification.

Subsequently, the 2nd Defendant began inquiring if the Claimant owned any property and invited him to his house for prayers. During this visit, the 2nd Defendant mentioned a Local Purchase Order (LPO) for the supply of AGO (diesel) worth N30,000,000 (Thirty Million Naira) and suggested that the Claimant provide the money. The Claimant stated that he informed the 2nd Defendant he did not have such funds and was only there for prayers to resolve his financial misfortune.

The 2nd Defendant prayed for the Claimant, made some incantations, and instructed him to use his 4-bedroom duplex to secure a loan, which he would repay from the anticipated profit. The 2nd Defendant assured the Claimant that he had a contact who would purchase the AGO. The Claimant asserted that he frantically began searching for money, while the 2nd Defendant continuously pressured him to find the funds within one week. When the Claimant was unable to raise the money, the 2nd Defendant informed him that he could advance half of the required amount, which was N15,000,000 (Fifteen Million Naira), and the other half could be paid upon the sale of the AGO. Subsequently, the 1st and 2nd Defendants introduced him to the 3rd Defendant. The 1st and 2nd Defendants negotiated and concluded the loan arrangement, and the 2nd Defendant instructed the Claimant to take the title documents to the 3rd Defendant for documentation. The Claimant was made to sign an Irrevocable Power of Attorney

without being given the opportunity to read the document and was not provided with a copy. Additionally, they made him issue a Notice of Sale and Transfer of the same 4-bedroom duplex. The Claimant stated that the 3rd Defendant transferred the sum of N7,000,000 (Seven Million Naira) to him, and he signed the Re: application for loan dated 22/9/2021 with the 1st Defendant as his witness. Shortly thereafter, the 2nd Defendant instructed him to return to the 3rd Defendant to sign another loan application form because the 3rd Defendant had transferred N1,000,000 (One Million Naira) directly to the 2nd Defendant. Consequently, he signed a new loan application for the sum of N8,000,000 (Eight Million Naira) dated 22/9/2021. This time, the 1st Defendant was unavailable to sign as his witness, so Mr. Onuh Stanley signed as his witness instead. The Claimant stated that he later discovered that the 1st – 3rd Defendants were working together to dispossess him of his property. He stated that he transferred a total of N12,080,000 (Twelve Million Eighty Thousand Naira) to the 2nd Defendant. Initially, he transferred N4,400,000 (Four Million Four Hundred Thousand Naira), followed by N110,000 (One Hundred and Ten Thousand Naira) on 23/9/2021 from his Zenith Bank account to the 2nd Defendant. On 24/9/2021, he transferred N60,000 (Sixty Thousand Naira) from his Zenith Bank account to the 2nd Defendant. On 28/9/2021 and 29/9/2021, he transferred N1,000,000 (One Million Naira) and N500,000 (Five Hundred Thousand Naira) respectively from his Zenith Bank account to the 2nd Defendant. In total, he transferred N6,170,000 (Six Million One Hundred and Seventy Thousand Naira) from his Zenith Bank and First Bank accounts into the 2nd Defendant's GTB account. Additionally, on 27/9/2021, he transferred N70,000 (Seventy Thousand Naira) from his First Bank account to the 2nd Defendant, and on the same date, he had

his wife (Abubakar Zuweretu) transfer N1,000,000 (One Million Naira) from her First Bank account to the 2nd Defendant. He also had his sister transfer N1,140,000 (One Million One Hundred and Forty Thousand Naira) from her FCMB account to the 2nd Defendant and personally collected N3,700,000 (Three Million Seven Hundred Thousand Naira) from his sister's shop to give to the 2nd Defendant.

The Claimant stated that the 2nd Defendant informed him that the agent with the LPO insisted on dealing only with the 2nd Defendant and not directly with the Claimant. Despite collecting the monies, there has been no supply of diesel, no meeting with the LPO agent, nor any refund of the monies collected from him. On 30/9/2021, the 2nd Defendant requested a transfer of N1,500,000 (One Million Five Hundred Thousand Naira) from the Claimant, which the Claimant asked his sister to transfer to the 2nd Defendant. The 2nd Defendant and the Claimant's sister met at the Claimant's house, where she inquired about the delay and demanded a call to the agent. This led to an argument that attracted neighbors, including Mallam Yahaya Ibrahim, an Islamic cleric, who mediated the issue. Ultimately, the 2nd Defendant, through an agreement, acknowledged receiving N9,380,000 (Nine Million Three Hundred and Eighty Thousand Naira) via transfer and N3,700,000 (Three Million Seven Hundred Thousand Naira) in cash from the Claimant, totaling N13,080,000 (Thirteen Million and Eighty Thousand Naira). The 2nd Defendant made a part payment of N1,400,000 (One Million Four Hundred Thousand Naira) through Hauwa Isa Yakubu's (Claimant's sister) account and undertook to pay the remaining N11,680,000 (Eleven Million Six Hundred and Eighty Thousand Naira). However, the 2nd Defendant has refused to pay back the remaining sum.

Under cross-examination, he stated that the 1st Defendant used to be his private cab driver and stopped working with him in 2020. He does not have the 2nd Defendant's number and communicates only through the 1st Defendant. The prayers conducted by the 2nd Defendant were done in the presence of the 1st Defendant, and he consented to these prayers. He further stated that the 1st Defendant was also present when the 2nd Defendant introduced the LPO to him. He did not sign any AGO documents and was unaware of signing the documents referred to in paragraph 38 of his statement on oath. He acknowledged receiving N7,000,000 but clarified that he did not receive the N1,000,000 as it was sent directly to the 2nd Defendant not at his instance. He stated that he collected the money for AGO and that when he was taken to the 3rd Defendant, he was not himself. The transaction took place at the 3rd Defendant's office, and one of the representatives of the 3rd Defendant was involved in the transaction before they went to the 3rd Defendant's office. The 2nd Defendant claimed to be the Chairman of the company and stood as a guarantor. He stated that he did not make any verifications because he trusted both the 1st and 2nd Defendants.

CW1, Hauwa Isa Yakubu, the Claimant's sister, stated under oath that the Claimant informed her about the AGO business. Although she was initially skeptical, she trusted the involvement of a renowned Islamic Cleric and felt assured of their safety. She mentioned that the Claimant pleaded with her, and she subsequently transferred N1,140,000.00 to the 2nd Defendant. On another occasion, when the Claimant urgently needed N4,000,000.00, she gave him the money from her safe. His behavior that day aroused her suspicion, prompting her

to visit the Claimant's house on 30/9/2021. There, she encountered the 2nd Defendant, which led to an argument and the subsequent undertaking, as previously detailed in the evidence of CW2.

Under cross-examination, CW1 stated that the 1<sup>st</sup> Defendant is the former driver to her brother whom she has known for almost 6 years. She also stated that she had never met the 2<sup>nd</sup> Defendant until 30/9/2021 and that the fake Mallam made the undertaking.

The following documents were admitted through the Claimant witnesses;

Statement of account of FCMB admitted as exhibit A admitted through CW1, other documents admitted through CW2 are Seven Million Naira Re application for loan, Eight Million Re: application for loan, Evaluation Report of Plot No. (313) 4 bedroom semi-detached duplex, Letter of agreement dated 30/9/2021, Claimant Zenith Bank Statement of Account, Claimant's First Bank Statement of Account, Letter of Transfer from Abubakar Zuwaretu to the Claimant and receipt of litigation fee as Exhibits B-H.

With the testimony of CW1 and CW2, the Claimant closed his case and the Defendants were allowed to open their case.

The 1st Defendant, testifying as DW1, stated that he is a former employee of the Claimant's brother and a cab driver. He knows the 2nd Defendant from providing him with cab services. During one such engagement, the 2nd Defendant mentioned that he offers prayers and spiritual support to businessmen or politicians seeking success. DW1 informed the Claimant about the 2nd Defendant,



and the Claimant agreed to meet him. DW1 facilitated their meeting, and after exchanging phone numbers, the Claimant and the 2nd Defendant communicated directly without involving him, except when they needed his services. He asserted that the sole purpose of introducing the Claimant to the 2nd Defendant was for spiritual cleansing related to the Claimant's political career and denied any knowledge of any business agreement or the 3rd Defendant. DW1 also stated that he personally informed the Claimant's brother when he noticed the way the Claimant was giving money to the 2nd Defendant, which led to a police investigation of both parties.

Under cross-examination he stated that he usually communicates with the Claimant in Hausa language and denied complaining to the Claimant's brother about the way the Claimant was parting with money to the 2<sup>nd</sup> Defendant. He also denied being invited by the police.

Samuel Onwurumba who is the Managing Director of the 3<sup>rd</sup> Defendant testified as DW3. He stated on oath that he never met the Claimant except on the day he approached the 3<sup>rd</sup> Defendant for a loan. He also denies having any relationship with the other Defendants, he stated that after the Claimant approached them for a loan and they received his request letter, the Claimant was issued the terms of the loan to study and it was after he studied and appreciated the terms that he entered into the agreement. He also stated that the Claimant was not pressured, coerced or deceived in any manner prior to obtaining the loan.

Under cross-examination, he stated that the 3rd Defendant is registered in Nigeria with the FCTA and certified to provide loans to their registered members.

He testified that he met the Claimant in October 2021, and on the same day, as the branch manager, he approved a loan for the Claimant. He confirmed that the Claimant received a loan of N8,000,000.00 and did not approach him to sell the house. Additionally, he stated that the 2nd Defendant is neither a trustee nor the alter ego of the 3rd Defendant. While he could not specify the number of directors or trustees of the 3rd Defendant, he affirmed that the 2nd Defendant is not one of them. He also mentioned that the Claimant's property might be worth N150,000,000.00 today but was worth less at the time the loan was taken.

The following documents were admitted through DW2; Membership Application form, Loan Application form, Re: Application for Loan and FCTA Acknowledgment Letter of Re-certified Cooperative Societies as DWA to DWD respectively.

It is noteworthy that the 2<sup>nd</sup> Defendant entered appearance and filed a Statement of Defence and Counterclaim. The Counsel representing the 2<sup>nd</sup> Defendant however withdrew his representation for the 2<sup>nd</sup> Defendant. Consequently, the 2<sup>nd</sup> Defendant did not enter his defence nor cross-examine the other witnesses despite being given the opportunity to do so.

In his written address learned Counsel to the Claimant formulated 4 issues for the determination of the Court to wit;

1. Whether the Claimant has established its case by cogent, credible and compelling evidence; thus entitling it to the reliefs claimed.
2. Whether from the nature of the transactions, the 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants exerted any form of undue influence on the Claimant.

3. Whether the 3<sup>rd</sup> Defendant can hold itself out as a certified money lender to claim interest from the Claimant in view of the facts and circumstances of this case.
4. Whether the Claimant reached a consensus ad idem with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in respect of power of Attorney and Notice of sale of the 4 bedroom duplex from the circumstances and nature of the transaction.

The Claimant argued that the actions of the Defendants, particularly the 2nd and 3rd Defendants, exerted undue influence on him, causing him to sign a loan agreement for N8,000,000.00 despite receiving only N7,000,000.00. He stated that exhibits A-H presented before the court demonstrate how he was manipulated, with particular emphasis on the 2nd Defendant, who he claimed is the alter ego of the 3rd Defendant.

They argued that the Claimant relied on the spiritual prowess of the 2<sup>nd</sup> Defendant which gave him an undue influence over the Claimant. The 2<sup>nd</sup> Defendant connived with the 3<sup>rd</sup> Defendant to manipulate and defraud the Claimant. They relied on the case of LLOYDS BANK LTD vs BUNDY (1973) 3 ALL ER 757. They argued that the evidence required to prove a claim before the court must be evidence that is credible, valuable and of such a quality as to have probative essence. They referenced the cases of DIBIAMAKA vs OSAKWE (1980) 1 NWLR (PT 107) 101 at 113 and 114, ONWUKA vs EDIALA (1989) 1 NWLR (Pt 96) 182 at 208-209. They reiterate the trite principle of presumption in law that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it and relied on the cases of STATE v SALAWU (2011)

LPELR-8252 (SC) and INCAR NIGERIA LTD v ADEGBOYE (1985) 2 NWLR (Pt.8) 453 at 60.

On issue 2, Learned Counsel for the Claimant argued that undue influence could arise from confidential or fiduciary relationship and relied on the cases of BUA v DAUDA (2003) 43 WRN 1 at 15 and FIRST BANK v AKINSOYE (2005) 5 NWLR (Pt 918) 340 at 381 on the definition of undue influence and stated that for a claim of undue influence to succeed five mandatory requirement must be established;

1. That the other party to the transaction had the capacity to influence the complainant.
2. That the influence was exercised.
3. That the exercise was undue
4. That the exercise brought about the transaction in question.
5. That the transaction was to the manifest disadvantage of the claimant.

He opined that all the requirements have been established by the evidence at the trial.

On issue 3, the learned Counsel to the Claimant argued that the 3<sup>rd</sup> Defendant cannot hold itself out as a certified money lender to claim interest from the Claimant in view of the circumstances and facts of this transaction, he relied on the cases of EBONI FINANCE AND SECURITIES LTD v WOLE-OJO TECHNICAL SERVICES LTD & 2 ORS, Section 2 to 15 Money Lenders Act Cap 525 Laws of FCT Vol 3 2007.

On issue 4, learned Counsel for the Claimant argued that there is no meeting of the minds between the Claimant and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and the entire

contract lacks all the ingredients of a valid contract and relied on the cases of SUMMIT FINANCE COMPANY LTD v IRON BABA & SONS LIMITED (2003) 48 WRN 81 at 97, MINONTECKS ASSOCIATES v MARCO CONSTRUCTION CO. LTD (1991) 2 NWLR (Pt. 174) 411 at 427, KABO AIR v RICKEY TARFA (2004) 6 WRN 134 at 149.

The Written Addresses of the learned Counsel to the 1<sup>st</sup> Defendant and that of Counsel to the 3<sup>rd</sup> Defendant though filed separately raised the same issue and canvassed same arguments in respect of the issue so I will take them together.

Both Addresses raised a sole issue for the determination of the Court which is “whether the Claimant has proven or established a case against the (1<sup>st</sup>/3<sup>rd</sup>) Defendant to enable this Honourable Court grant the reliefs sought.”

They argued that it is trite law that a person who seeks to convince the Court to accept a certain state of affairs must prove same and referred to the case of ABDULLAHI v HASHIDU (1994) 4 NWLR (Pt 600) p 638-649. They argued further that the Claimant has not established either through his pleadings or his Witness Statement on Oath how the 1<sup>st</sup> /3<sup>rd</sup> Defendants caused him an injury that resulted to this suit. They relied on the cases of ADEJUGBE v ADULOJU (2020) 3 NWLR Part 181 Page 136, ADESINA v AIR FRANCE (2022) 8 NWLR Pt 1833 Page 527. They argued further that a Plaintiff must succeed on the strength of his case and not on the weakness of the defence or because no vital document or evidence were pleaded in court by the Defendant and cited the cases of ABALAKA v AKINSETE (2023) 13 NWLR Pt 1901 and OWAKAH v R.S.H & P.D.A (2022) 12 NWLR Page 480. They urged the court to strike out the claim of the Claimant in its entirety against the respective parties.

I have formulated a sole issue for the determination of this court to wit;

Whether from the nature of the transactions and dealings between the Claimant and each of the parties there was undue influence on the Claimant.

Before delving into the issue, it is important to note that although the 2nd Defendant entered an appearance and filed a Statement of Defence, the law is clear that a Witness Statement on Oath not adopted in court is deemed abandoned. In SANI V. ISYAKU RABI'U & SONS LTD & ANOR (2002) LPELR-57479 (CA) (Pp. 41 paras. A), Per Lamido, J.C.A held that:

*"It is true that the 1st Respondent failed to adopt his written statement on oath in defence of the counter-claim and the law is settled that where a witness statement on oath is not adopted by a witness, it is deemed abandoned and the deposition therein becomes useless. See ZUBAIRU & ANOR VS. MOHAMMED & ORS. (2009) LPELR 5124; HUSSAINI VS. SAMBO & ORS (2018) LPELR 46882 and OBEYA VS. OKPOGA MICROFINANCE BANK LTD (2019 LPELR 47615. The 1st Respondent to my mind did not put any defence to the Appellant's counter-claim having failed to adopt its written statement on oath."*

The 1<sup>st</sup> Defendant, who is said to be a former driver to the Claimant or his brother was approached by the Claimant due to his predicament as stated in paragraphs 7 and 8 of the Amended Statement of Claim, the relevant portion is produced hereunder.

*Paragraph 7*

*“ the Claimant avers that due to his active participation in the 2019 general election he became financially incapacitated and destabilized which affected every aspect of his life”*

#### *Paragraph 8*

*The claimant avers that upon the disclosure of his financial predicament to the 1<sup>st</sup> Defendant, he informed him of the 2<sup>nd</sup> Defendant’s endowment as a powerful Islamic cleric, who prays for people in similar circumstances and also intimidated him that the 2<sup>nd</sup> Defendant will be able to handle his financial issues spiritually”*

From the paragraphs, above it is clear that the Claimant was the one that approached the 1<sup>st</sup> Defendant with his problem and he in turn facilitated the meeting with the 2<sup>nd</sup> Defendant whom he thinks would be of help. They however differ on the nature of help the Claimant sought. During the 1<sup>st</sup> Defendant’s examination in chief and in Paragraph 3 of his Amended Statement of Defence, he stated that the only reason he introduced the Claimant to the 2<sup>nd</sup> Defendant was for spiritual cleansing in respect of his political career. There is no evidence to suggest that other than facilitating the meeting between the Claimant and the 2<sup>nd</sup> Defendant he colluded with the 2<sup>nd</sup> and/or 3<sup>rd</sup> Defendant or benefited or that he is involved in the transactions between the Claimant and the 2<sup>nd</sup> Defendant or the 3<sup>rd</sup> Defendant. The 1<sup>st</sup> Defendant signed Exhibit B as a witness but in his absence, the Claimant got another person to sign as witness to Exhibit C.

On the part of the 2<sup>nd</sup> Defendant who is the Islamic cleric, the Claimant did not adduce any evidence as to the LPO for the supply of AGO agreement or anything to show that such a business arrangement existed. However, Exhibits A, F and G

are bank statements that evidences the transfer of monies to the 2<sup>nd</sup> Defendant at different times. In the absence of any other plausible explanation and in view of the unchallenged evidence of the Claimant in respect of the 2<sup>nd</sup> Defendant, I am more inclined to belief that there was an arrangement between the Claimant and the 2<sup>nd</sup> Defendant beyond spiritual cleansing.

It is trite that where evidence is unchallenged, the Court should act on it.

This was the decision of the Apex Court in the case of NIGERIAN ARMY v. YAKUBU (2013) LPELR-20085(SC) Per JOHN AFOLABI FABIYI, JSC (Pp 11 - 11 Paras D - E) as follows:

*"It is basic that unchallenged evidence stands. The Court should accept same and act on it. The Court below was on a firm ground in the stand taken by it. See: Omoregbe v. Lawani (1980) at 117, Fasoro v. Beyioku & Ors. (1988) 2 NWLR (Pt. 76) 263 at 271."*

In view of the foregoing, I hold that the Claimant is entitled to a refund of N11,680,000.00 (Eleven Million Six Hundred and Eighty Thousand naira) from the 2<sup>nd</sup> Defendant being the balance of the monies given to the 2<sup>nd</sup> Defendant by the Claimant.

The transaction between the Claimant and the 3<sup>rd</sup> Defendant is clearly a loan agreement, the Claimant filled the membership form of the 3<sup>rd</sup> Defendant, applied for a loan and obviously presented his title document as security for the loan. In both Exhibits B and C tendered by the Claimant, it is stated on the second page that the collateral is the "POWER OF ATTORNEY between ABUBAKAR ALI and ALHAJI IDRIS UMAR with regards to the property of 4-bedroom semi-



detached duplex (BLOCK SDX/D 74) at our System Property Development Consortium Estate, Plot No. G (313), Galadimawa District, Abuja”.None of the parties tendered the said Power of Attorney. The Claimant signed the Re: Application for loan(N8,000,000.00) which indicates that he consented to the N1,000,000.00 transferred to the 2<sup>nd</sup> Defendant. Exhibits B, C, DWA and DWB are evidence that the Claimant entered into a loan agreement with the 3<sup>rd</sup> Defendant.

The Claimant has failed to establish to the satisfaction of the Court that there is a link between the 2<sup>nd</sup> Defendant and the 3<sup>rd</sup> Defendant to enable the Court connect the loan advanced to him with the business arrangement he had with the 2<sup>nd</sup> Defendant that failed.

The law is trite that parties are bound by agreement they freely and willingly entered. See *OLUDE v. ADEESO* (2015) LPELR-25587(CA) (Pp. 29-30 paras. D), *B.J. EXPORT & CHEMICAL PROCESSING CO. LTD & ANOR v. UBN* (2019) LPELR49712 CA (Pp. 17 paras. B), *FUNTAJI INT'L SCH. LTD V. GTB PLC*(2022) LPELR-58143 (CA) (Pp. 26-27 paras. D).

In legal contexts, "undue influence" refers to a situation where one party exerts significant pressure on another party, affecting their ability to make independent decisions. This influence can invalidate contracts or transactions if it can be shown that the influenced party did not act of their own free.

It was decided in *PAN BISBILDER (NIG) LTD v. FBN LTD*(2000) LPELR-2900(SC)Per GODFREY OKAY ACHIKE, JSC (Pp 21 - 21 Paras A - D)

"Undoubtedly, a party who is a victim of undue influence, or even fraud, can recover back money or property transferred under such circumstances. See Smith

v. Cuff (1817) 105 ER 1203; Atkinson v. Derby 6 H & N 778 and Hughes v. Liverpool Society (1916) 2 K B 482. I would like to emphasise the point that an assertion that a party to an illegal contract acted under pressure or undue influence is a further extension of the exception that if the parties to an illegal contract are not in *pari delicto* so that the party on whom superior power or influence was operated may well recover money or property exchanged in such circumstances. Reliance on the exception of undue influence must be established by positive evidence or strong inference that can be drawn from the surrounding circumstance." (Underlined for emphasis).

From the evidence before me, I am unable to find any undue influence on the Claimant from the 3<sup>rd</sup> Defendant and there does not appear to be any evidence of coercion or improper pressure exerted by the 3<sup>rd</sup> Defendant that influenced the Claimant's decisions or actions in a way that would invalidate a contract.

The contention of the Claimant that the 3<sup>rd</sup> Defendant is not a licensed or registered Money Lender is flawed as he cannot benefit from an act and try to absolve himself from it bearing in mind the principle of '*pari delicto*' which translates to "in equal fault" or "in equal wrongdoing.". Simply put, it is a principle that a Plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing. See the case of NEKPENEPEN v. EGBEMHONKHAYE(2014) LPELR-22335(CA).

In addition, the Claimant was unable to challenge the evidence of the 3<sup>rd</sup> Defendant that it is a Cooperative Society registered with the Federal Capital Territory Administration that gives loans to its members of which the Claimant is

one. The 3<sup>rd</sup> Defendant in proof of the membership of the Claimant tendered in evidence the Claimant's membership form.

For emphasis, it is settled law that parties to a contract are bound by the terms of the contract. In determining the rights and obligations of the parties to the contract, the Court must respect its sanctity.

It was held in *ADABANYA v. AIR FRANCE* (2018) LPELR-49894(CA) by UGOCHUKWU ANTHONY OGAKWU, JCA (Pp 21 - 21 Paras E - F)

*"The essence of the doctrine of sanctity of contracts is that where parties have entered into a contract they are bound by the provisions of the contract: ARJAY LTD v AIRLINE MANAGEMENT SUPPORT LTD (2003) LPELR (555) 1 at 67 (SC)."*

In relation to the case at hand, the sanctity of the loan agreement must be preserved. See *YALO & ANOR. VS BUHU* (2021) LPELR-55601(CA).

It is crucial to state that this suit was instituted on 1<sup>st</sup> November, 2021 before the maturity date of the said loan on 22<sup>nd</sup> November, 2021, leaving 21 days left to the maturity date. Order 4 Rule 9 of the FCT High Court Civil Procedure Rules 2018 this Court makes states as follows:

*Every Originating process shall contain an endorsement by the Registrar that parties maintain status quo until otherwise ordered by the Court.*

By implication, this means that the parties are required to maintain the status quo and the situation that currently exists at the filing of the suit. This rule is intended

to preserve the rights and positions of the parties as they were at the time the legal action was initiated, preventing any party from altering their stance or taking any actions that could affect the subject matter. See OGWA & ANOR v. OKPECHI & ORS(2019) LPELR-48978(CA).

The Notice of sale and transfer of the property situate at Plot No. G (313) with the 4-bedroom semi-detached duplex (Block SDX/D 74) at System Property Development Consortium Estate Galadimawa District Abuja is revoked as the tenure of the said loan is subsisting and begins to once again run at the determination of this suit.

On the whole this Court enters judgment in favour of the Claimant in part and hereby makes the following orders:

1. An order that the Notice of sale and transfer of the property situate at Plot No. G (313) with the 4-bedroom semi-detached duplex (Block SDX/D 74) at System Property Development Consortium Estate Galadimawa District Abuja belonging to the Claimant alongside the Irrevocable Power of Attorney are revoked.
2. An order directing the 2<sup>nd</sup> Defendant to refund to the Claimant the sum of N11,680,000.00 (Eleven Million Six Hundred and Eighty Thousand naira) being the balance of the monies given to the 2<sup>nd</sup> Defendant by the Claimant.
3. An order directing the Claimant to pay to the 3<sup>rd</sup> Defendant the sum of N8,000,000.00 (Eight Million Naira) being the amount given to him as loan by the 3<sup>rd</sup> Defendant.

Parties shall bear their cost

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HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimant; D.I. Onoja, Esq. and A.I. Aroye, Esq.

For the 1st Defendant; Ahmed K. Lambe, Esq.

For the 2nd Defendant; No representation

For the 3rd Defendant; David Ikoro, Esq.