IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI ABUJA

CLERK: MRS VICTORIA SILAS ADINOYI
COURT NO. 9

SUIT NO: FCT/HC/CV/3449/2013
Date: 6/2/2025

BETWEEN:

DAN DEVELOPMENT CO. LTD
(Suing through its Lawful Attorney
DAN ANAEBO NIGERIA LIMITED) ……..CLAIMANT

AND

ACCESS BANK PLC.....DEFENDANT

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

By an Amended Writ of Summons and Statement of Claim dated and filed on the 18th day of March, 2015 the Plaintiff commenced this action claiming the following reliefs against the Defendant;

a. The sum of **N1,282,412.50** only made up as follows:
   i. N930,000.00 paid as Solicitors' fee
   ii. N80,000.00 paid as valuation fee, and
   iii. N272,412.50 paid as insurance fees

b. **N6,402,865.12** being the profit lost by the Plaintiff for not participating in the 2012 end year bonanza of Nigerian Breweries.

c. Ten Percent interest on the judgment sum from the date of the judgment till the judgment debt is liquidated.

d. Cost of this suit.

The Plaintiff called a sole witness PW1 – Sir Dan Anaebo Okeke Nta, the Managing Director of the Plaintiff.

Through this PW1, the following documents were admitted in evidence;

i.	Letter dated 7/11/12	-	Exhibit A
ii.	Offer of banking facility dated 4/12/12	-	Exhibit B
iii.	Diamond Bank Cheque dated 14/12/2012	-	Exhibit C
iv.	Diamond Bank Cheque dated 18/12/2012	-	Exhibit C1
v.	Diamond Bank Cheque dated 19/12/2012	-	Exhibit C2
vi.	Diamond Bank Cheque dated 19/12/2012	-	Exhibit C31
vii.	Solicitor's letter dated 30/4/2013	-	Exhibit D
viii.	Access Bank Letter of Offer dated 28/9/2012	-	Exhibit E
ix.	A visitor's form of World Gate Group Limited	-	Exhibit F
x.	Statement of Account	-	Exhibit G
xi.	Diamond Bank Letter of Offer of Credit Facility Dated28/9/2012	-	Exhibit H
xii.	A letter on the letter headed paper of Dan Anaebo	-	Exhibit I
xiii.	Diamond Bank Plc: letter head "failure to release fund to Dan Anaebo Nig. Ltd leading to loss of N6,402,865.12	-	Exhibit J

Upon service of the writ and statement of claim, the Defendant filed her statement of defence. The Defendant's Amended Statement of defence was filed on the 6th of July, 2020. By a Motion on Notice dated 14th April, 2022, filed on 21st April, 2022 with Motion No. M/4691/2022; the Defendant on the 9th November, 2022 was granted leave to substitute her witness and to file a new witness Statement on Oath of Oyetola Muhammed.

STATEMENT OF FACTS

The Plaintiff is a Limited Liability Company registered under the Laws of Nigeria. The Defendant is a duly registered Financial Institution formerly known as "Diamond Bank Plc" then subsequently as "Access Bank Plc" and carries on its business of banking with its offices/branches all over Nigeria including the Federal Capital Territory, Abuja.

On 7th November, 2012, Nigerian Breweries Plc wrote to the Plaintiff inviting it to participate in their "2012 year Bonanza" aimed at enabling their customers including the Plaintiff grow their profits within the peak period of 2012. The Plaintiff not having enough money to participate in the Bonanza donated a Power of Attorney to Dan Anaebo Nigeria Ltd to participate in the Bonanza who then applied to the Defendant for over draft facility to finance their participation in the said Bonanza.

The Defendant approved the Plaintiff's Attorney's application in principle and requested the Plaintiff to Mortgage their properties covered by C of O No. NG 14819 and db6uw-b030z-6e8er-79zu-10 to the Defendant as collateral for the proposed facility. The Defendant further requested the Plaintiff's Attorney to insure the Plaintiff's business against fire and extraneous perils, based on which the Defendant deducted the sum of Two Hundred and Seventy-Two Thousand, Four Hundred and Twelve Naira, Fifty Kobo (N272,412.50) only from the account of the Plaintiff on 7th December, 2012 for insurance, the sum of Eighty Thousand Naira (N80,000.00) only as cost of valuation of the properties to be mortgaged and Nine Hundred and Thirty Thousand Naira (N930,000.00) only as solicitors fee for perfecting the Mortgage.

Having complied with all conditions given by the Defendant for the Plaintiff to draw down the facility the Plaintiff issued four (4) cheques for the transfer of funds to the account of Nigerian Breweries Plc to enable the Plaintiff buy beverages from Nigerian Breweries Plc for participation in the Bonanza, but the Defendant did not remit the money as requested by the Plaintiff, thereby causing the Plaintiff to loss the sum of Six Million, Four Hundred and Two Thousand, Eight Hundred and Sixty-Five Naira, Twelve Kobo (N6,402,865.12) only for not participating in the 2012 end year bonanza.

When the Plaintiff realized that they have been effectively prevented from participating in the "2012 end year bonanza" by the Defendant, it wrote to the Defendant on 3rd January, 2013 requesting them to return the certificate of occupancy the plaintiff had deposited with them and demanded for the refund of the sum the Defendant caused Plaintiff to pay out to professionals engaged by the Defendant to carry out assignments which they did not carry out.

ISSUE FOR DETERMINATION:

The Plaintiff and the Defendant submitted the same sole issue for determination of this suit, to wit:

> ***"Whether having regards to the state of pleadings and evidence led by the parties in support of their respective contentions, the Plaintiff is entitled to the claims sought?***

LEGAL ARGUMENTS AND COURT'S DECISION ON THE SOLE ISSUE FOR DETERMINATION

In answer to the Defendant's question raised in paragraph 2.0 of the Defendant's final written address and the argument in paragraphs 2.9, 2.10, 2.11, 2.12, 2.13, 2.14, 2.15, 2.16, 2.17 and 2.18 of the Defendant's

final written address, Counsel to the Plaintiff submitted that from the pleadings and evidence of the Claimant, it is without doubt that the Claimant indeed informed the Defendant of its intention to participate in the 2012 end of year bonanza and same was the basis of the facility sought from the Defendant by the Claimant and eventually given to the Claimant, titled "offer of Banking Facility" dated 4th December, 2012.

That the Defendant's Counsel in paragraph 2.9 of their final written address fragmented the Claimant's reply to the statement of defence and picked out paragraph one (1) only and read it in isolation. The law is well settled beyond any iota of doubt that pleadings are read holistically in order to discern the gist of a case of a party, they are not construed in fragments or isolation. In dealing with pleadings, a court must read all the paragraphs together to get a flowing story of the parties and not a few paragraphs in isolation. It is the totality of the pleading, whether it is the statement of claim or the statement of defence, that states the case of the party and it will be injustice to invoke only a few paragraphs to come to a conclusion. The above was the decision of the Court of Appeal in **STERLING BANK PLC VS. FALOLA (2015) 5 NWLR (Pt. 1452) 405 at page 427 – 428, paragraphs G – A.** See also **KOFA VS. KAITA (20111) LPELR 8952.**

Infact the Supreme Court of Nigeria in ONYIORAH VS. ONYIORAH (2019) 15 NWLR (Pt. 1695) 227 at 243, paragraph B – C, made it clear thus, ***"it is fundamental that a Court considers the totality of the pleadings filed by both sides as doing so enables the judge to properly understand issues joined in the pleadings. Paragraphs in pleadings should not be considered in isolation. It is only after pleadings are properly read and understood as a whole that, it can be said that, formal admissions of facts in the pleadings need no further proof and the court would be free to act on such admission"***.

The Court of Appeal in **ECONET WIRELESS (NIG) LTD V. ECONET WIRELESS LTD (2014) 7 NWLR (Pt. 1405) 1 at 23, paragraphs F – G** stated it in mandatory terms, thus "In dealing with pleadings, a Court must read all the paragraphs together to get a flowing story of a party and not a few paragraphs in isolation, and it is the totality of the pleadings that states the case of the party".

The paragraphs of the statement of claim and Claimant's reply to the statement of defence, paragraphs 3 – 10 of the statement of claim and paragraphs 3 – 8, 13 and 14 are very clear to the fact that the Defendant were informed and knew that the Claimant needed the loan to enable him participate in the 2012 end year bonanza organized by the Nigerian Breweries Plc. More particularly, the Claimant's pleaded and gave evidence to the fact that his account officer with the Defendant's Bank in Area 1, Garki, Abuja Shipping Centre Branch of the Defendant came to his office with Mr. Charles his Branch Manager on 9th November, 2012 and demanded for a copy of the letter from Nigerian Breweries Plc, which he said will assist him in getting an approval for the loan facility. And that at all material times before the issuance of the letter of offer of 4th December, 2012, that is, Exhibit B, the Defendant through MARK IFASHE, MARTIN OLENU AND ABUBAKAR MOHAMMED knew that the Plaintiff needed the facility for its participation in the "2012 end year Bonanza" of the Nigerian Breweries Plc. See paragraph 6 and 9 of the Claimant's witness Statement of Oath in support of the reply to the Defendant's Statement of Defence.

I hold the view that the evidence of the Plaintiff during cross-examination, "that Exhibit B and H does not mention "2012 end year Bonanza" does not detract or disprove or contradict the evidence of the Plaintiff that the Defendant know that the Plaintiff needed the Loan facility to participate in the "2012 end year Bonanza". Moreso, the Plaintiff does not seek to use the evidence in paragraph 9 of the witness statement on Oath to vary the content of Exhibit B.

Under cross-examination, when the Plaintiff's witness was presented with Exhibit B and asked if the Exhibit mentioned "2012 end year Bonanza, "the witness had to answer the obvious fact as the document speaks for itself and did not mention "2012 end year bonanza". Infact the question was even unnecessary since the document speaks for itself. See **N.B.C. PLC VS. ORESANYA (2009 16 NWLR (Pt. 1168) 564 at 581, paragraphs G – H.**

The evidence of the Plaintiff that the Defendant knew that the Plaintiff needed the facility for its participation in 2012 end year bonanza of the Nigeria Breweries Plc which was never challenged or contradicted by the Defendant and also stand on its own and must be deemed admitted. See: **OBMIAMI BRICK & STONE (NIG.) LTD VS. A.C.B. LTD (1992) 3, NWLR (Pt. 229) 260 at 293 – 294. CHIME VS. CHIME (2001) 3 NWLR (Pt. 701) 527 at 554, paragraph E – G.**

This is because the Plaintiff being a Limited liability Company can only participate in the 2012 end year bonanza of the Nigeria Breweries Plc through its working capital hence the need to augment their working capital as stated in Exhibit B. I refer my lord to paragraphs 2 and 3 of the Plaintiff's reply and paragraphs 3 and 4 of the Plaintiff's witness statement on Oath in support of the reply. The evidence is clear that the Plaintiff had rejected the offer of credit facility earlier but when Nigerian Breweries Plc wrote to the Plaintiff about the "2012 end year bonanza", they saw the need to take an over-draft facility to participate in the bonanza.

It is most unreasonable and illogical to expect Exhibit B to state "2012 end year bonanza", since the evidence of the Plaintiff via paragraphs 4,5,6,7,8,9 of the witness statement on oath in support of the reply to statement of defence does not subtract, contradict or detract from Exhibit B, It cannot be said that those piece of evidence seeks to vary the content of Exhibit B. see: **DUROJAIYE VS. CONTINENTAL**

FEEDERS (NIG.) LTD (2001) 10 NWLR (Pt. 722) 657 at 666, paragraph A; INUA V. F.B.N. PLC (2016) 1 NWLR (Pt. 1495) 89 at 112, paragraph D.

I hold that the "2012 end year bonanza" was within the contemplation of the parties when Exhibit B was created and the Defendant knew that the Plaintiff needed it to augment its working capital to enable it participate in the "2012 end year bonanza" and that is why the Defendant demanded for the copy of the letter from the Nigerian Breweries Plc written to the Plaintiff about the "2012 end year bonanza".

On the relief of the sum of One Million, Two Hundred and Eighty-Two Thousand, Four Hundred and Twelve Naira, Fifty Kobo (N1,282,412.50) only made up of Nine Hundred and Thirty Thousand Naira (N930,000.00) only paid as solicitor's fee, Eighty Thousand Naira (N80,000.00) only paid as valuation fee and Two Hundred and Seventy-Two Thousand, Four Hundred and Twelve Naira, Fifty Kobo (N272,412.50) only paid as insurance fees, I hold that the evidence before this Court supports the grant of those reliefs.

The argument of the Defendant's Counsel in paragraphs 2.23 and 2.24 of the Defendant's final written address supports the established evidence before the Court vide paragraph 12 of the Plaintiff's witness statement on Oath, and paragraph 14 of the Plaintiff's witness statement on Oath in support of the Plaintiff's reply to the statement of defence, to wit: "...that the Defendant deducted the sum of N272,412.50 from the account of the Plaintiff on 7th December, 2012 for insurance, the sum of N80,000.00 as cost of valuation of the properties to be Mortgaged and the sum of N930,000.00 as Solicitors fees for perfecting the mortgage" and "that all payments made to professionals engaged in the process of perfecting the overdraft facility was based on the promise of the Defendant to give them an overdraft facility to participate in the "2012 end year bonanza" of Nigerian Breweries Plc and those payments have now

turned out to be wasted monies which they are entitled to recover from the Defendant for making the Plaintiff to rely on the Defendant to the detriment of Plaintiff".

Thus true to the Defendant's Counsel argument in paragraph 2.23 of their final written address, the obligation placed on the shoulders of the Defendant was to make the overdraft facility available to the Claimant upon the fulfilment of the conditions which the Plaintiff indeed fulfilled.

Exhibit 4, Exhibit X6, X8 and X9 referred to by the Defendant's Counsel in paragraph 2.26 further shows, that the Plaintiff fulfilled the conditions required of it by the Defendant. Thus the failure of the Defendant to honour the cheques issued in the sum of N31,000,000.00, N10,000,000.00; N40,000,000.00 and N30,000,000.00 to be transferred to the account of the Nigerian Breweries Plc was a breach of agreement between the Plaintiff and the Defendant. Indeed, the Plaintiff is entitled to the refund of its money.

It is my view that the excuses given by the Defendant in paragraphs 21, 23, 24 and 31 of the re-sworn witness statement on Oath are all lame excuses which must be disregarded by this Court. Going by the lame excuses of the Defendant, the Insurance Policy was concluded on 17th December, 2012 and the valuation payment was concluded on 11th day of December, 2012. Yet the three (3) cheques issued on 18th and 19th December, 2012 were not honoured. We must not forget that those payments were automatically deducted from the Plaintiff's account.

Contrary to the argument of the Defendant's Counsel in paragraph 2.31 of the Defendant's final written address, the evidence of the Defendant in paragraph 31 of the re-sworn witness statement on oath has been disproved by the evidence of the Plaintiff in paragraph

12 of the Plaintiff's witness statement on Oath in support of the Plaintiff's reply to the Defendant's statement of defence. Thus the Defendant for some reasons known to them only refused to ensure that the perfection and the up stamping of the facility was concluded on time despite the invitation by the Registrar of Deeds.

For me to hold that the Defendant has fulfilled all of its obligations under Exhibit B would amount to allowing the Defendant benefit from its wrong after deducting the Plaintiff's money and yet causing the Plaintiff unnecessary and avoidable loss. The law is trite that a party should not be allowed to benefit from his own wrong. See: **KANO TEXT PLC VS. G. H (NIG.) LTD (2002) 2 NWLR (Pt. 751) 420 at 450, paragraphs B – D.**

The Defendant should not be allowed to benefit from its failure to fulfil its duty of ensuring timely disbursement of the credit facility, having deducted the money for the fulfilment of the condition precedent for drawn down automatically from the Plaintiff's account. It was incumbent on the Defendant having commenced deduction of the Plaintiff's money for the fulfilment of the loan condition to timeously carried out those purposes for which the money were deducted and more so, since it is the Defendant that brought the professionals.

See the Supreme Court of Nigeria's decision in **ENEKWE VS. I.M.B. (NIG) LTD (2006) 19 NWLR (Pt. 1013) 146 at 181, paragraphs A – B.**

In **B. MANFAG (NIG) LTD VS. M.S.O.I LTD (2007) 14 NWLR (Pt. 1053) 109 at 153, paragraph G – H,** the Supreme Court of Nigeria in following its decision in **ENEKWE V. I. M. B (NIG) LTD (SUPRA)** held, "the Court will not oblige a party to benefit from its own wrong or mischief".

In **VINZ INT'L (NIG.) LTD VS. MOROHUNDIYA (2009) 11, NWLR (Pt. 1153) 562 at 579, paragraphs C – D,** the Court of Appeal puts it thus, "A party should not be permitted to benefit from his own default or wrong".

In the main, I hold that the Plaintiff is entitle to recover its money from the Defendant.

On the relief for the sum of N6,402,865.12 being the profit lost by the Plaintiff for not participating in the 2012 end year Bonanza of Nigeria Breweries, I hold that the Plaintiff's item of special damage is the said sum of N6,402,865.12 and the relevant particular of loss was pleaded in paragraph 16 of the Plaintiff's statement of claim. The Plaintiff also led comprehensive and credible evidence via paragraph 17 of the Plaintiff's witness statement on oath and strictly proved its entitlement by Exhibit A, that is the letter dated 7th November, 2012 written by the Nigerian Breweries Plc to the Plaintiff.

The said Exhibit A is a documentary evidence which speaks for itself and by paragraph 1 (iii) of Exhibit A, it is clear that any company that pre-qualities for 20% growth on average weekly volume will get N100 reward rate on limitless reward volume and by paragraph 2, companies that fall in this category 3 of 20% growth, after purchase of 150% volume, can buy as much as it wants and will still be entitled to reward on every carton. Lastly by the Bonanza as shown in Exhibit A, the Plaintiff's 20% growth on average weekly volume calculated on the N100 reward rate will earn him N6,402,865.12 once the Plaintiff purchased 150% volume.

It is my firm view that Exhibit A before the Court is a concrete evidence as to how the Plaintiff came about the sum of N6,402,865.12. The Plaintiff through Exhibit A showed the precise calculation of the profit of N6,402,865.12 which he lost as a result of the Defendant failure to honour the cheques issued by the Plaintiff in

favour of the Nigerian Breweries Plc., which cheques was for the purchase of the 150% volume the Plaintiff needed to earn its N6,402,865.12.

The Plaintiff by the documentary evidence Exhibit A and the unchallenged averment in paragraph 17 of the Plaintiff's witness statement on Oath, proved strictly with credible evidence that it is entitled to the sum of N6,402,865.12 as profit loss by the Plaintiff for not participating in the 2012 "end year bonanza" of Nigerian Breweries.

The Law is settled that the nature of proof of special damage must be dictated by the peculiar circumstances of the available evidence and in the circumstance of this case, the Plaintiff lost the amount it would have earned from the bonanza had he participated based on its pre-qualification as shown in Exhibit A. It is also important to note that Exhibit A and paragraph 17 of the Plaintiff's witness statement on Oath are unchallenged and uncontradicted and must be deemed admitted and acted upon by the Honourable Court.

In **NEPA VS. ALLI (1992) 8 NWLR (Pt. 259) 279 at 297, paragraph E – F,** the Supreme Court of Nigeria held thus, "Items of special damages are required to be proved strictly. However, strict proof of special damages means no more than such proof as would readily lend itself to quantification and the nature of proof in a given case must be dictated by the peculiar circumstances of the available evidence".

In **CROSS LINES LTD VS. THOMPSON (1993) 2 NWLR (Pt. 273) 74 at 84, paragraph H,** the Court of Appeal held, thus, "Strict proof in the context of special damages mean no more than proof as would readily land itself to quantification or assessment. Thus, if a Plaintiff who has peculiar knowledge of facts of special damages gives evidence and the evidence is uncontradicted, this amount to proof".

In view of the uncontradicted evidence of the Plaintiff, I hold that the Plaintiff has proved the lost of earing of the sum of N6,402,865.12.

The Court of Appeal in **A. M. CO. (NIG.) LTD V. VOLKSWAGEN (NIG.) LTD (2010) 7 NWLR (Pt. 1192) 97 at 125, paragraphs E – F,** held that "strict proof however does not mean unusual proof or proof beyond reasonable doubt. What is required is that the party claiming should establish his entitlement to that category of damages by credible evidence of such character as would suggest that he indeed is entitled to an award under that head".

I repeat, based on the credible and uncontradicted evidence before the Court, the Plaintiff has proved his case and is equally entitled to relief b.

I now turn to the evidence of the Defendant's sole witness which is inadmissible being a hearsay evidence and does not in any way challenge any aspect of the Plaintiff's case.

DW1 – OYETOLA MUHAMMED by paragraph 2, of his witness statement on Oath averred thus "that I am the current Account Office of Dan Anaebo Nigeria Limited and by virtue of which I am conversant with the Facts of this case".

Under cross-examination on 25th of January, 2023, DW1 – OYETOLA MUHAMMED stated that – "He become the Account Officer of the Claimant on 4th January, 2021 when he was transferred to Area 1 Branch, that he was employed by the Defendant in 2013.

Further under cross-examination, DW1 answered, "I have a briefing on it from our legal unit".

The entire evidence of DW1, is a narration of what he was told.

It is Crystal clear that DW1 who claimed to be conversant with the facts of this case does not know anything about the case but only relied on and narrated what he was told by the Legal Unit but did not state anywhere in his witness statement on Oath that he received information from the Legal Unit. Obviously the evidence of DW1 is therefore a hearsay evidence and is inadmissible.

As at 2013 when the DW1 was employed, all the facts giving rise to this suit have all happened. Also as at 4th January, 2021 when DW1 was transferred to Area 1 branch, the Branch of the bank where the Plaintiff's account is domiciled, the facts giving rise to this suit have all happened and in fact this suit have been filed and is on-going in the Court.

The DW1, therefore knows nothing about what transpired between the Plaintiff and the Defendant and thus cannot give any evidence of what he does not know.

This explains why DW1 when asked under cross-examination, about the transaction always answered, "I don't know".

The law is settled as provided in **section 115 (1), (2), (3) and (4) of the Evidence Act, 2011** as amended thus:

(1) Every affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

(2) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

(3) When such belief is derived from information received from another person, the name of his information shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.

(4) When such belief is derived from information received from another person, the name of his information shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.

In **ONOVO VS. MBA (2014) 14 NWLR (Pt. 1427) 391 at 417, paragraphs C – F,** the Supreme Court of Nigeria held, "hearsay evidence is not admissible where a witness in his evidence narrates what he was told, the evidence is Hearsay evidence. Such evidence has no probative evidence".

The situation at hand is similar to that of the case of **OMISORE VS. AREGBESOLA (2015) 15 NWLR (Pt. 1482) 205 at 323, paragraphs C – D,** where the Supreme Court held thus, "Hearsay evidence lacks probative value. In the instant case, PW1 gave evidence for all the seventeen (17) Local Governments being challenged by the appellants and his evidence was based on reports received from his party agents. The totality of his evidence was nothing more than Hearsay which is trial tribunal rightly found to lack probative value".

DW1 gave evidence for the Defendant based on what he was told by the Legal Unit. It is hearsay. **In OMIDIRAN VS. OWOLABI (1994) 6 NWLR (Pt. 350) 361 at 371, paragraph G,** the Court of Appeal held, "Hearsay evidence is inadmissible in law and any such evidence should not be relied upon but be expunged from this record of the Court".

In **KAKIH VS. P.D.P (2014) 15 NWLR (Pt. 1430) 374 at 418 – 419, paragraphs H – A,** the Supreme Court held, "Once it is found that a deposition is laced with hearsay, the Court cannot ascribe probative value to it. To do otherwise, is like asking the Court to sieve the oral evidence (in the form of written statement on Oath) of witnesses to determine which part of it is Hearsay or not so as to give probative value to the aspect of the evidence that is not hearsay".

In consequence, and on the strength of the foregoing authorities I reject and discountenance the entire evidence of DW1.

On the other hand, on the effect of contravention of Sections 115 (1) (3) and (4) of the Evidence Act (2011) as amended, the Supreme Court of Nigeria **in AHMED VS. C.B.N (2013) 11 NWLR (Pt. 1365) 352 at 368, paragraphs C – D,** held, "Depositions in an affidavit which did not meet the conditions stipulated in Section 115 (1) of the Evidence Act, 2011, go to no issue because such depositions are incurably defective and unusable".

In **LAGOS STATE GOVERNMENT VS. N.D.I.C. (2021) 2 NWLR (Pt. 1760) PAGE 297 AT 315, PARAGRAPHS C-E,** the Court of Appeal held, "Any paragraph of an affidavit which offends against the provisions of Section 115 of the Evidence Act 2011 may be struck out. If it is not struck out, no weight should be attached to it. Any paragraph of an affidavit which offends the Section ought not to be acted upon, it is liable to be discountenanced, and struck out".

Also in the case of **SAMBO VS. NIG. ARMY COUNCIL (2017) 7 NWLR (Pt. 1565) 400 AT PAGES 417, PARAGRAPHS E-F; 418, PARAGRAPHS B-D** the Court of Appeal stated the law thus, "under Section 115 of the Evidence Act, 2011 (as amended) a deponent's deposition could be derived either from information which he believed to be true where a deponent to an affidavit deposes of facts which are not within his personal knowledge but from information not necessary obtained

from a party to the suit, and he believes such fact to be true, once the particulars as specified in Section 115 of the Evidence Act are disclosed, such deposition can be relied upon by the Court. It is only when a deponent withholds the source of his information that such an affidavit can be termed to be an hearsay and therefore inadmissible as being contrary to the Evidence Act. Therefore DW1 witness statement on Oath is inadmissible been in contravention of Section 115 of the Evidence Act 2011 (as amended).

In conclusion, I grant prayers (a), (b) and (c) of the Claimants claims while claim (d) is refused for lack of evidence.

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S. B. Belgore
(Judge) 6/2/2025