

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO**

**ON THIS 16<sup>TH</sup> DAY OF JANUARY, 2025**

**BEFORE: HIS LORDSHIP HON. JUSTICE JUDE O. ONWUEGBUZIE**

**SUIT NO: FCT/HC/CV/1604/2022**

**BETWEEN:**

**FIRST BANK OF NIGERIA LIMITED..... CLAIMANT**

**AND**

**1. CRYSTAL TELEVISION LIMITED } ..... DEFENDANTS  
2. MR. NNAMDI NWOBU }**

**JUDGMENT**

**INTRODUCTION**

By an Amended Originating summons dated 11<sup>th</sup> day of January, 2024 and filed on 12<sup>th</sup> day of January, 2024, Claimant is seeking for the determination of the following question;

Whether the claimant, having regard to the following specific provisions *IN THE OFFER LETTER* dated 4<sup>th</sup> January, 2013 and the *OFFER LETTER* dated 4<sup>th</sup> March, 2013 and *THE DEFENDANTS HAVING BREACHED THE INSTRUMENTS AND THE CLAIMANT HEREIN IS ENTITLED TO JUDGMENT* against the Defendants for failure to discharge their obligations to liquidate their total outstanding debt in the sum of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) plus /and all accrued interest as at 30<sup>th</sup> day of April, 2022, from loan facility granted to the

1<sup>st</sup> Defendant by the Claimant bank. Upon the determination of the question, the Claimant seeks the following reliefs:

1. An Order that the 1<sup>st</sup> Defendant herein by virtue of the above mentioned clauses in the instrument is bound by the terms contained in the offer letter dated 4<sup>th</sup> day of January, 2013 and the offer letter dated 4<sup>th</sup> March, 2013 and is in default thereof of the agreement of parties in the offer letter dated 4<sup>th</sup> day of March, 2013 duly accepted by the 1<sup>st</sup> Defendant.
2. Judgment in favour of the Claimant in the sum of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) against the defendant from loan facility granted to the 1<sup>st</sup> defendant by the claimant being the outstanding indebtedness plus/and accrued interest as at 30<sup>th</sup> day of April, 2022 owed to the claimant by the defendant which arose from loan facilities availed to the 1<sup>st</sup> defendant by the claimant.
3. An order of perpetual injunction restraining the defendants their privies, agents and servants howsoever described from having access to any sum standing to the credit of the defendants within the Nigerian banking system to wit: First Bank of Nigeria Ltd, Guaranty Trust Bank Plc, Heritage Bank Plc Access Bank Plc, City Bank Plc, Standard Chartered Bank Limited United bank for Africa Plc, Zenith Bank Plc, Fidelity Bank Plc, Stanbic IBTC Bank Plc, Sterling Bank until the total sum of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) as at 30 day of April, 2022 which arose from loan facility availed to the 1<sup>st</sup> Defendant And Transferring All Sums Standing To The Credit Of The Defendant To The High Court Of Federal Capital Territory Abuja for immediate payment to the Claimant bank.

4. 22% interest on the outstanding debt of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) as at 30<sup>th</sup> day of April, 2022 till the date judgment is given in this suit.
5. The cost of the action/suit in the sum of N3,000,000.00 (Three Million Naira)
6. 10% interest on the entire judgment sum per annum from the date of judgment until the entire judgment sum is completely liquidated.
7. **AND FOR SUCH FURTHER** or other reliefs as this Honourable Court may deem fit to make in the circumstance of the case.

In support of the Amended Originating Summons is a 43 paragraphs Affidavit deposed to by Olugbenga Falana the Team Lead of Remedial and Classified Assets Management of First Bank Limited.

#### THE CLAIMANT'S CASE

The deponent averred that the Claimant is a Commercial Bank duly regarded in Nigeria under the companies and allied matters act 2020 (CAMA) (as amended and carries out banking and allied business. That the 1<sup>st</sup> defendant is a company duly incorporated under part A of the companies and allied matters act. That the 2<sup>nd</sup> Defendant is signatory to the account of the 1<sup>st</sup> Defendant and act as the managing director of the 1<sup>st</sup> Defendant company. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are customers of the Claimant bank. That the 1<sup>st</sup> Defendant applied for various credit/loan facilities from the Claimant herein vide their account number 2022332068 and was granted credit facility by the Claimant to enable the 1<sup>st</sup> Defendant to part finance the setting up of a Radio and television network, vide the offer and accept once letter of 4<sup>th</sup> day of January, 2013 in the sums of N601,960.000.00k (Six Hundred and One Million Nine Hundred and Sixty

Thousand Naira. That upon receipt of the offer letter of 4<sup>th</sup> day of January, 2013 by the Defendants. The 1<sup>st</sup> Defendant wrote the letter dated Friday, February, 08, 2013 wherein they made some modifications to the offer of January, 4<sup>th</sup>, 2013. That the 1<sup>st</sup> Defendant applied for and was granted credit facility by the Claimant in line with the modification in the 1<sup>st</sup> defendant's letter of Friday, February, 08, 2013 to enable the 1<sup>st</sup> Defendant finance the setting up of Radio and television Network and acquisition of a newspaper printing press vide the offer and acceptance letter of 4<sup>th</sup> day of March, 2013 and same was duly accepted by the defendant with all the terms and conditions clearly stated therein in the sums of N1,219,865,900.00 (One Billion, Two Hundred and Ninety Million, Eight Hundred and Sixty Five Thousand, Nine Hundred Naira only. That the 1<sup>st</sup> defendant also enjoyed a N50,000,000.00k (Fifty Million Naira) overdraft credit facility granted by the claimant to the 1<sup>st</sup> defendant for working capital requirements on the same terms and condition above (as contained in the offer and acceptance letter of 4<sup>th</sup> day of March, 2013) and the 1<sup>st</sup> defendant duly accept the credit facility granted them by the claimant as shown in the 1<sup>st</sup> defendant acceptance of offer letter of March, 07, 2013. That further to the above the defendants undertake to provide its operational license issued to it by the National Broadcasting Commission by its letter dated March 07, 2013. That in furtherance of the loan applications, the parties agreed that the claimant should have a lien on all equipment financed by the loan as a further security for the loan. That the 1<sup>st</sup> defendant upon acceptance of the offer of the said credit, all material time and utilized same as they deem fit. That the 1<sup>st</sup> defendant upon drawdown and utilization of the said credit/loan facilities granted by the claimant, has neglected, failed and refused to completely liquidate the debts on the said loan facilities and/or the accrued interest therein and/or comply with the terms and conditions of grant of loan facilities as agreed between the claimant and the 1<sup>st</sup> defendant despite repeated demands and notwithstanding

the promise the service the loan that despite the demands made by the claimant to the defendants to repay their indebtedness or service same the defendants have blatantly debts with interest which continues to accrued as agreed by the parties. That the 1<sup>st</sup> defendant account (Account No. 2022332068) has continued to accrued interest and other bank charges as stated in the offer letter as a result of their continuous failure to fully liquidate the outstanding sum plus/and accrued interest. That the defendant indebtedness to the claimant is held in the 1<sup>st</sup>defendants account No. 2022332068 in the sum of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) from loan facilities granted to the 1<sup>st</sup> defendant by the claimant bank, being the outstanding indebtedness plus/and accrued interest as at 30<sup>th</sup> day of April, 2022. That the total outstanding indebtedness of the defendant compromise of both the principal sum, interest and other bank charges as agreed in the offer letters now standing in the sum of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) from loan facility granted to the 1<sup>st</sup> defendant by the claimant bank, being the outstanding indebtedness plus/and accrued interest as at 30<sup>th</sup> day of April, 2022 as clearly shown in the statement of account of the 1<sup>st</sup> defendant. That it is a banking custom and practice that customers will always take liability any contract freely entered into with the bank as an in situation and not personal relationship with any staff of the bank. That sometimes, on the 28<sup>th</sup> day of April, 2014 the defendant received the sum of N840,613,092.28 in the 1<sup>st</sup> defendants account No. 2022332068 in issue in this case as payment of their indebtedness to the claimant and the money came from Global Offshore but later on the Economic and Financial Crimes Commission (EFCC) notified the claimant that the fund transferred to the 1<sup>st</sup> defendant's account vide Global offshore be reversed as same is illicit fund obtained from the Federal Government of Nigeria

Coffers ( from Ministry of Aviation) which was a subject of criminal investigation and later as subject of criminal proceedings in which the 1<sup>st</sup> defendant is one of the accused person defendant together with its Shadow Director Chief Mrs. Stella Adaeze Oduah the beneficial owner of the 1<sup>st</sup> defendant and others. That as a consequence of the EFCC investigation and furling's that the said fund is Federal Government of Nigeria (Ministry of Aviation) money where Mrs. Stella Adaeze Oduah was a Minister at the material time and also a subject of criminal proceeding and that same be reversed. Same was reversed accordingly and the action was communicated to the defendants and they filed nothing to challenge the allegation against them by the Federal Government of Nigeria and same is an unearned fund/money and that the defendants did nothing, no contract or any service to merit such payment and same was not the defendants money. That the Federal Government of Nigeria have charge the defendants and their arrow head Chief Mrs. Stella Adaeze Oduah and others to court for criminal charges relating to the said fund. That the claimant notified the defendants of this development of the Federal Government claim to the money and EFCC position that same be reversed being an illicit fund that the defendants did not earn the money from money. The claimant further to their notification and information to the defendant also by the claimant's letter dated 28<sup>th</sup> day of November, 2022 informed the defendants in detail of the reversal made and demanded that the defendants indebtedness to the claimant be paid the EFCC investigation reversal made in line with of the money used to settled the 1<sup>st</sup> defendant indebtedness at as 28<sup>th</sup> day of April, 2014 was done on the 31<sup>st</sup> day of December, 2021 in the sum of N840,613,092.00 and this immediately reversed the 1<sup>st</sup>defendants account No. 2022332068 with the defendants bank to a negative balance of N840,583,145.00 and the claimant notified the 1<sup>st</sup> defendant and demanded for the payment of their outstanding indebtedness as at the date. That the debt position interest and other bank's charges

as agreed in the instruments and signed by the parties. That the 1<sup>st</sup> defendant did not only accept the credit/loan facilities but accept the terms and condition of the grant but is now in default of its repayment obligation despite repeated demands. That considering the criminal twist of this case, the claimant wrote a petition/letter dated November, 8, 2021 against the 1<sup>st</sup> defendant to the chairman of EFCC to investigate the owner of the company and its activities in relation to the loan facility which was granted to them and credited to account No. 2022332068 and the security for the loan and the activities of the board of directors of the 1<sup>st</sup> defendant and their whereabouts that the EFCC Commence their investigation and uncovered that a different individual who is not a director on record to the 1<sup>st</sup> defendant the 2<sup>nd</sup> defendant is in control of the 1<sup>st</sup> defendant's account where the credit facility in issue was credited into as a signatory to the 1<sup>st</sup> defendant account that the 2<sup>nd</sup> defendant herein (Nwobu Emmanuel Nnamdi) volunteer copious statements to the EFCC at different material times of the investigation where he admitted that the 1<sup>st</sup> defendant took the loan and also admitted that the loan still remains unpaid after the reversal of the N840,613,092.00k on the 31<sup>st</sup> day of December, 2021 sequel to EFCC investigation that the fund belongs to 1- see security project account (of the Federal Government of Nigeria and that the money was directed fund to the 1<sup>st</sup> defendant account number. That the EFCC filed a counter- affidavit in suit No. FHC/ABJ/CS/612/2022 to the processes filed by the defendants and other co-plaintiffs in that suit elucidating the case scenario on the 20<sup>th</sup> day of June, 2022. That the defendants have breached the provisions in the instruments (offer letters) signed by the 1<sup>st</sup> defendant and the defendants are in default of the loan repayment obligation. That the defendants is liable to pay the outstanding indebtedness in the sum of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) plus/and accrued interest as at 30<sup>th</sup> day of April, 2022 to the

claimant which they have utilized as they deem fit. That the defendants upon acceptance of the offer of the said loan facility drew down the said sum at all materials times and utilized same as they deem fit. That the defendants upon drawdown and utilization of the said loan facilities granted by the claimant bank have neglected, failed and refused to completely liquidate the debts on the said loan facilities and/or the accrued interest there an and/or comply with the terms and loaditions of grant of the loan facilities as agreed between the claimant and the 1<sup>st</sup> defendant despite repeated demands and notwithstanding the promise to service the loan. That despite the demand made by the claimant, the defendants have blatantly refused neglected to defray the outstanding debts with interest which continues to accrue interest.

That the 2<sup>nd</sup> defendant having personally admitted being in control of the account and a signatory to the account where the credit facility was credited to is together liable to guarantee the payment of same to the claimant. That the 1<sup>st</sup> defendant in a bid to evade her obligations under the offer letters have abandoned her account with the claimant and ceased to operate or fund her banking account despite her undertaking to pay the debt to the claimant, an act which is capable of prejudicing the interest of the claimant as a financial institution. That the grant of this application will not prejudice the defendant in any way, but will ensure that the claimant does not lose its depositors money loaned to the 1<sup>st</sup> defendant and guaranteed distress on the claimant more occasion financial distress on the claimant as a financial institution. That there is conclusive evidence against the defendants by the claimant and this matter can be heard and determined on the construction and interpretation of the documents to wit; the offer letter and the other document attached. Attaché to the affidavit are 15 exhibits marked as follows:

1. Exhibit FBN 1 (offer letter of 4<sup>th</sup> day of January, 2013)
2. Exhibit FBN 2 (the claimant letter of February 8, 2013)
3. Exhibit FBN 3 (offer and acceptance letter of 4<sup>th</sup> day of March, 2013)
4. Exhibit FBN 4 acceptance of offer letter of 7<sup>th</sup> day of March, 2013)
5. Exhibit FBN 5 (the claimant's letter of undertaking dated 7<sup>th</sup> day of March, 2013)
6. Exhibit FBN 6 and 7 (The Certified True Copy of the statement of Account of the 1<sup>st</sup> defendant extracted from the books of the Banks and certificate of compliance in line with the Evidence Act)
7. Exhibit FBN 8, FBN 9 and FBN 10 (the letter of invitation from EFCC date 16<sup>th</sup> day of September, 2021, the claimant's letter dated 7<sup>th</sup> day of October, 2021 and the EFCC letter dated 13<sup>th</sup> day of October, 2021 forwarding account number for the reversal of the fund)
8. Exhibit FBN 11 (A certified True Copy of the charge sheet in charge No. FHC/ABJ/CA/316/2020 and the proof of evidence showing that the defendants and Chief Mrs. Stella AdaezeOduah are parties in the criminal case where the Federal Government of Nigeria is accusing them of conspiracy, fraud and diversion of the said fund together with others)
9. Exhibit FBN 12 (the letter of the claimant to the defendant dated 28<sup>th</sup> day of November, 2022).
10. Exhibit FBN 13 (the said letter of the claimant to EFCC dated November, 8, 2021)
11. Exhibit FBN 14 (2<sup>nd</sup> defendant's statement made to the EFCC)
12. Exhibit FBN 15 (the said EFCC counter-affidavit filed on the 20<sup>th</sup> day of June, 2022).

Also filed is a 34 paragraph further affidavit deposed to by one Olugberga Falana a staff of the claimant. Attached to the said affidavit are 3 Exhibits marked as

Exhibits A1 to A3. Also attached is a written address and reply on points of law. In the written address, learned counsel for the claimant adopted the question for determination contained in the amended originating summons as the sole issue for determination learned counsel in summary submitted that parties are bound by their agreement and the court is bound by the terms of the parties agreement or contract and it is not the duty of the court to make agreements for the parties or to charge the terms of the agreement they have made. The court is only to give effect to the intention of the parties as contained in the agreement of parties. Learned counsel submitted that the claimant bank having establish through the attached Exhibit FBN 1-FBN4 and the fact deposed in the affidavit in support of the amended originating summons, that there is/are no dispute (s) whatsoever as to the following facts;

- a. That the claimant bank granted loan facilities to the 1<sup>st</sup> defendant who drew down and utilized.
- b. That the said loan facilities were granted to the 1<sup>st</sup> defendant Account under the control and signatory of the 2<sup>nd</sup> defendant.
- c. That the defendants have defaulted in the repayment of the said loan facilities which were for tenor/period as stated in the offer letter thus the outstanding debt.

It is their contention and submission that from the above undisputed facts establish by the affidavit evidence and the attached exhibits where are documents that speak for themselves that this matter is non-contentious and it is determinable by originating summons and the defendant should be estopped from denying the facts as disclosed by the exhibits. Learned counsel further contented that where the terms of a contract agreement have been reduced into writing, the best evidence acceptable to the court is the production of the documents. Learned counsel argued

that the claimant in the instant case has clearly shown through exhibit FBN 1 and FBN 2 (offer letters) that there is a valid contract between the claimant and the defendants. Exhibit FBN 6 and FBN 7 which are the Certified True Copy of the statement of account of the defendants vividly brought out their outstanding indebtedness to the claimant which stood in the sum of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) as at 30<sup>th</sup> day of April, 2022. Learned counsel submitted that this suit was brought by originating summons, which is in line with the Rules of this (Honourable Court. Originating summons processing's clearly provided under order 2 Rules 3 of the High Court of Federal Capital Territory (Civil Procedure Rules) 2018 states;

**Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for declaration of the rights of the persons interested”.**

Learned counsel submitted that the claimant has demonstrated beyond equivocation that it is entitled to judgment against the defendants and urged the court to accordingly resolve the sole issue for the determination in favour of the claimant and make pronouncement in favour of the claimant as per the whole reliefs as claimed in the amended originating summons. Counsel relied on the following authorities amongst others; AFRICA REINSURANCE CORPORATION VS. PATUFAYE (1986) 1 NWLR PT. 14, 113, ADETOUN OLUDEJI NIGERIA LIMITED VS. N.B PLC ODUYE VS. NIGERIA AIRWAYS LIMITED (1987) 2 NWLR (PT. 55) 126, UNITED BANK FOR AFRICA VS. EUROPHINA NIGERIA LIMITED (1991) 12 NWLR (PT. 176) 677, AMINU ISHOLA INVESTMENT LTD VS. AFRICAN NIGERIA PLC (2013) MRSCJ 97; AG OF RIVERS STATE VS. AG OF AKWA IBOM STATE (2011) ALL FWLR (PT579) 1023 AT

INAKOJU VS.ADELEKE (2007) ALL FWLR PART 353 PAGE 1 AT 202  
PARAS B-D (RATIO 55).

#### THE DEFENDANTS' CASE

The Defendants' counsel filed their 39 paragraph Counter Affidavit in opposition to the amended originating summons deposed to by Nwobu Emmanuel Nnamdi wherein deponent averred that the dates of transactions on the annexed exhibit FBN1 and FBN 3 are 4<sup>th</sup> of January, 2013 and 4<sup>th</sup> of March, 2013 respectively. This suit was not filed until 17<sup>th</sup> May, 2022. That the cause of action in a transaction like this expire after six (6) years of accrual. The cause of action is loan recovery. That the transaction in the letter dated 4<sup>th</sup> January 2013 for N601,960.000.00k is for 12 months ending 3<sup>rd</sup> of January, 2013 the transaction in the letter dated 4<sup>th</sup> March, 2013 for N1,291,865,900.00k is for 18 months ending 3<sup>rd</sup> September, 2014 six (6) years from the expiration of the tenors for each of the transactions end on 3<sup>rd</sup> January, 2020 and 3<sup>rd</sup> September, 2020 respectively. That the reliefs and question in this suit No CV/1604/2022 have become statute barred as at 4<sup>th</sup> January, 2020 and 4<sup>th</sup> September 2020 regarding the transactions in letters dated 4<sup>th</sup> January, 2013 and March, 2013 respectively, or any other loan transaction in 2013. That the originating process in this suit was filed on the 17<sup>th</sup> day of May 2022. The process was never served on the defendant at any time, and the life span of the originating summons has expired. The defendants applied for and obtained certified True Copy of court processes. That paragraph 5 is not true. That he is not the managing director nor the acting managing director of the 1<sup>st</sup> defendant. The claimant is being malicious and not truthful with words. That paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 25, 26, 31, 32, 33, 35, 36, 37 and 38 of the affidavit of the claimant are not true. That the 1<sup>st</sup> defendant is not indebted to the claimant in anyway. The 1<sup>st</sup> defendant has completely paid all its indebtedness to the claimant

as at 2<sup>nd</sup> of June, 2014 when the first bank of Nigeria (the claimant) used the money in the 1<sup>st</sup> defendant's account to defray the balance of the loan. That to the 1<sup>st</sup> Defendant's dismay, the Claimant debited the 1<sup>st</sup> Defendant's account number: 2022332068 with sum of N840,613,092.00 on 31<sup>st</sup> December, 2021 and n20,703,678.00 on 30<sup>th</sup> January, 2022 without any authorization by the 1<sup>st</sup> Defendant, or an order of a competent court. The 1<sup>st</sup> Defendant has indicated an action in suit No CV/750/2022 seeking to declare the all of the Claimant debiting the account of the 1<sup>st</sup> Defendant as breach of contract, illegal and void. That on the 2<sup>nd</sup> of June, 2014 after the 1<sup>st</sup> Defendant totally liquidated its loans with the Claimant, the balance in its account stood at 0.00k to show that there was no liability. That further, on 4<sup>th</sup> July, 2014, the account stood at N30,215.00 as positive balance in credit it further showed there was no debt on the 1<sup>st</sup> Defendant. There was no and is no any further loan transaction or grant between the claimant and the 1<sup>st</sup> defendant after 2<sup>nd</sup> June, 2014 when all the loans were totally liquidated. That the Defendants are not liable under the letters of 4<sup>th</sup> January, 2013, 4<sup>th</sup> March, 2013 and or any personal guarantor form alleged by the Claimant that even if the suit is not statute barred, there is serious dispute that needs oral evidence to determine and best the veracity of the freshly asserted indebtedness after completion of payment since June 2014. That paragraphs 20, 21, 23 and 24 of the claimant's affidavit are misleading and maliciously not true. That the money in the account of the 1<sup>st</sup> Defendant which was used by the Claimant to defray the 1<sup>st</sup> Defendant's indebtedness was not a proceed of any crime and was not gotten from illegal source. There is a pending criminal case in charge No FHC/ABJ/CR/316/2020 where everything will be explained and proved. That Chief Mrs. Stella Adaeze is not the principal of the 1<sup>st</sup> Defendant and not a director (shadow or not) or a shareholder, or arrowhead of the 1<sup>st</sup> Defendant. The Claimant by banking policy, has copies of the 1<sup>st</sup> defendant's incorporation documents to

know the principal officer, shareholders and directors of the 1<sup>st</sup> Defendant. That contrary to paragraphs 21, 23 and 24, the Claimant did not reverse any transaction but illegally tampered with the 1<sup>st</sup> Defendant's account. This is because;

- a. Reversal of a transaction can be done only to the specific source and original account and not a different account as in this case.
- b. It is unreasonable and against every sense of possibility and conscience to reverse a transaction of 2014 in 2021 (after more than 7 years) that even if it was a reversal, there is no any court order allowing the claimant to reverse a transaction of more than 7 years or tamper with the account of the 1<sup>st</sup> Defendant.

That the Claimant knows or ought to know and is deemed to know that it cannot follow administrative directive to tamper with an account of a customer in the name of reversal without a court order. The claimant has legal unit comprising of lawyers and as well as external solicitors to get directions and legal opinion. That there was no official, unofficial, verbal or written communication at any time to the 1<sup>st</sup> Defendant challenging or requesting it to explain source of any fund. That the Claimant's letter of 28<sup>th</sup> November, 2022 was only in response to the 1<sup>st</sup> Defendant's letter dated 21<sup>st</sup> November, 2022, complaining about the illegal tampering with its account. That the 1<sup>st</sup> defendant has not been found guilty of any crime and there is no any order for any reversal or tampering with the 1<sup>st</sup> defendant is proving its innocence and has not been found guilty. That in the course of investigation leading to the pending criminal case in FHC/ABJ/CR/316/202, the Economic and Financial Crime Commission (EFCC) approached the Federal High Court through an ex-parte application and obtained an interim order of forfeiture against some assets of the 1<sup>st</sup> defendant on the ground that the money used to pay its loan with the claimant was from an illicit source. That the 1<sup>st</sup> defendant

challenged set aside the interim forfeiture order at page 14 and 15 of the Judgment. That in response to paragraph 22 of the affidavit, the 1<sup>st</sup> defendant was charge alongside others in 2020 more than one year before the purported reversal or the acclaimed directive of the EFCC. That the 1<sup>st</sup> defendant has not been found guilty and no any subsisting forfeiture order. That the claimant ought not to follow any administrative directive without court order and particularly during the pendency of charge in paragraph 22 of the claimant's affidavit, which directly relates to the loan payment. That the claimant was and is aware of the inconclusiveness in the investigation and/or the pendency of the criminal charge on the subject matter. That was why the claimant wrote a letter/caveat dated the 7<sup>th</sup> October, 2021 to the EFCC starting at third paragraph "while we appreciate the discussions on the matter with you in your office on Wednesday October 6, 2021, we count on your commission's assurance that any payment made by first bank under this arrangement shall be refunded by the FBN to the defendant (directly or through your commission) in the event that the outcome of your investigations confirm that same does not form part of monies belonging to the FBN" that the proper thing for the claimant to do is to recover its money from EFCC to whom it credited. That the defendants have filed an action challenging the malicious criminalization of a simple civil and loan transaction which has been concluded about a decade ago. The suit No.FHC/ABJ/CS/612/2022 is still pending before the Federal High Court Abuja. That contrary to paragraph 39 of the affidavit, he knows as a fact that contract of guarantor-ship must be in writing and specific. The claimant has not shown any such contract between it and the defendant. That even if there is the defendant was not liable to pay anything. The 1<sup>st</sup> defendant has paid the loan completely. That paragraph 40 of the affidavit of the claimant is misleading. The 1<sup>st</sup> defendant has nor closed the account. If the defendant has closed the account any time after 2<sup>nd</sup> June 2014 and December, 2021, the claimant would not be able to

unlawfully reverse any so called transaction. The 1<sup>st</sup> defendant has not been able to function again since EFCC exposed its assets to vandalization after the initial interm forfeiture. That paragraph 41, 42 and 43 are not true. It is in the interest of justice to dismiss this suit. Annexed to the counter affidavit are 4 exhibits marked as exhibit D1 to D4. Attached also to the counter affidavit is further counter affidavit and further written reply besides the defendants counsel main written address wherein counsel raised two (2) issues for determination to wit:

1. Whether the court have jurisdiction on the suit.
2. Whether the claimant is entitled to the reliefs sought.

Summarily learned counsel on issue one argued that the matter is statute barred the gate of transactions on the physically annexed Exhibits FBN1 and FBN3 are 4<sup>th</sup> of January, 2013 and 4<sup>th</sup> of March, 2013 respectively. That the reliefs and questing in this suit No CV/1604/2022 have become statute barred as at 4<sup>th</sup> day of January, 2020 and 4<sup>th</sup> day September, 2020 regarding 2013 and 4<sup>th</sup> March 2013. That the suit is incompetent and the Honourable court lack jurisdiction to determine or enforced a statute barred and stale issue. On issue two whether the claimant is entitled to the reliefs sought, learned counsel in their argument stated that the claimant is not entitled to the reliefs claimed. The only evidence before the court are letters of 4<sup>th</sup> January, 2013 (physically marked FBN1) and that of 4<sup>th</sup> March, 2013 Physically marked FBN3) the letter of 4<sup>th</sup> March, 2013 is not admissible or reliable. No sign of authorship or execution. That a look at the two letters physically marked as exhibits FBN 1 and FBN 3 represent the agreement between the parties and the reliefs sought by the claimant flow from the various obligation in this letter. That the claimant advanced a loan transaction to the 1<sup>st</sup> defendant as contained in the letter payable within 12 months and 18 months. The trend of the loan and repayment history is contained in FBN 6, which is the statement of account of the

1<sup>st</sup> defendant in the custody of the claimant from exhibit FBN 6, it is obvious that as at 2<sup>nd</sup> of June, 2014, the 1<sup>st</sup> defendant has fulfilled its obligation by paying off the loan. That is a complete performance and there is no any breach of contract to warrant any liability. Claim for damages in contract can only flow from its breach learned counsel submitted that the performance has already been done as at 2<sup>nd</sup> of June, 2014 when the loans were completely paid. There is nothing or any evidence, not even a baseless allegation of any further loan transaction request or applied for by the 1<sup>st</sup> defendant and granted by the claimant after 2<sup>nd</sup> of June, 2014. Learned counsel further submitted there is no any evidence of personal guaranty of the loan by the 2<sup>nd</sup> defendant. This Honourable Court cannot speculate anything or go on voyage of discovery. Learned counsel submitted that it is not dispute, by paragraph 20 of the claimant affidavit that the loan of the 1<sup>st</sup> defendant was liquidated. The only dispute and the determining factor is the legality of the claimant's reversal/debit of a payment after more than 7 years without court order and during pending of a criminal charge relating to the issue. Learned counsel in conclusion submitted that a bank cannot hide under administrative directive to tamper with the account of its customers not even to freeze let alone to debit without a court order and that the claimant is not entitled to the reliefs sought. Learned counsel placed reliance on the following authorities amongst others ***IBRAHIM VS. JUDICIAL SERVICE COMMITTEE KADUNA STATE (1998) 14 NWLR (PT. 584) 1SC SHIJA VS.APC & ORS (2023) LPELR-59568(CA), SOCIETE COMMERCIAL DEL-OUEST AFRICAN NIG PLC VS.OZOH & ORS (2013) LPELR-21888 (CA); RUBICON PROPERTIES AND DEVELOPERS 820 (CA) MOKA AND ANOR VS. UNITED BANK FOR AFRICA PLC (2012) LPELR-19837 (CA); GUARANTY TRUST BANK PLC VS. MR. AKINSISU ADEDAMOLA & ORS (2019) LPELR- 47310; GTB PLC VS.ETUWEWE & ANOR (2021) LPELR***

**-56768 (CA) AND SAVANNAH & CHEMICAL IND VS.EFCC & ANOR (2020)  
LPELR - 5-398 (CA)**

**COURT'S ANALYSIS**

I have carefully read and digested the affidavits evidence of parties to the suit and the annexed exhibits. I have also given due consideration to the written addresses of their respective counsel. It is not in dispute between the parties that there exist a contract of loan sums of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) for the purpose of setting up of a Radio and Television Network and acquisition of a newspaper printing press and a further over credit facility of N50,000,000.00 (Fifty Million Naira) to finance working capital requirement such as import duty payments between the claimant and the defendants. What however is in dispute is whether the 1<sup>st</sup> defendant had liquidated its loan with the claimant and the claimant reversal of such transaction to a different account without obtaining a valid court order authorizing same. Therefore, after a careful consideration of the submissions of counsel and the affidavits evidence and attached exhibits before the court, in my humble view and in order to remain focus on the care dispute between the parties, I find the following issues for determination:

- 1. *WHETHER* the defendant are bound by the terms and conditions as contain in *OFFER LETTER* dated 4<sup>th</sup> January, 2013 and the *OFFER LETTER* dated 4<sup>th</sup> March, 2013 and/or whether the failure of the defendants to liquidate the outstanding sum of N1,015,565,494.70k (One Billion Fifteen Million, Five Hundred and Sixty Five Thousand, Four Hundred and Ninety Four Naira Seventy Kobo) as at 30<sup>th</sup> April 2022 arising from credit facilities granted to the 1<sup>st</sup> defendant is justified.**

## **2. WHETHER the claimant is entitled to the reliefs sought.**

In a civil trial, it is a generally accepted principle of law that the burden of proof is on the balance of probabilities and the preponderance of evidence. I call in aid **SECTION 134 OF THE EVIDENCE ACT 2011 AS AMENDED; ALAHJI AMINU ISHOLA VS. UNION BANK OF NIGERIA LIMITED (2005) LPELR-1550 (SC) MARIO JOSE ENTERPRISES LTD & ANOR VS. DANGADO (2021) LPELR- 53215 (CA)**; The ultimate burden of establishing a case is as disclosed on the pleadings. The onus is on the claimant as distinct from the defendant to prove his case on a balance of probabilities. I take my guide from the case of **CYEDIRAN VS. ALEBIOSU II (1992) 6 NWLR PART 249 PAGE 550** where the claimant has successfully proven his case on the preponderance of evidence then he is said to have discharged the onus on him by the law, and then the onus shifts to the defendant and it continues to shift for it is not static **ORJI VS. DTM (NIG) LTD (2009) 18 NWLR (PT. 1173) 467 SC**. The law is quite settled that where parties have voluntarily entered into an agreement they are bound by the terms thereof and a court will not allow anything to be read into the agreement that is not contained therein I placed reliance on **MR. BASIL CHIDI NKAZI VS. STANBIC IBTC BANK PLC (2018) LPELER- 491513 (CA)**. in law, what constitutes an agreement is very clean it is consensus ad idem it is the agreement of the parties on terms and conditions to which they both are bound that constitutes an agreement. I agree it may be oral or written or inferred from correspondences but, in all and in whatever form; there must be shown the terms as ad idem between the parties. Therefore, where these constituent elements are absent the court cannot import them by inference or by ingenuity of reasoning in its judgment I call in aid **UBA PLC VS. WAD OF SOFTWARE CONSULTING LTD (2017) LPELR-5025 (CA)** in support of the principle of law. Also in **OLANLEGE VS. AFRO**

*CONTINUED NIG LTD (1996) 7 NWLR (PT 458) 29 AT O. 46* where the court stated inter alia thus:

**One of the fundamental principles of the law of contract is that parties must reach a consensus ad idem in respect of the terms thereof a term of an agreement rest squarely on the party asserting such a term. It is a matter of evidence which has to be established by the party who asserts it. Failure to establish a vital term of a contract where its existence is a condition *sine quanon* towards the successful prosecution of a suit which renders the contract liable dismissal.**

In this case, I reiterate that, it is not in dispute between the parties that there exist a contract the claimants affidavit bear credence to it. It is therefore pertinent in the instant case that the burden of proof first lies on the claimant who contends that the 1<sup>st</sup> defendant has not offset the loan facilities granted to it vide **OFFER LETTER** dated 4<sup>th</sup> January, 2103 and the **OFFER LETTER** dated 4<sup>th</sup> March, 2013 marked as Exhibit FBN 1 and FEB 3 respectively. The claimant however stated in paragraph 20 of it affidavit attached to the amended originating summons ‘that sometimes on the 28<sup>th</sup> day of April, 2014 the defendant received the sum of N840,613,092.28 in the 1<sup>st</sup> defendant’s account No 2022332068 in issue in this case payment of their indebtedness to the claimant and the money came from Global offshore; but later on the economics and Financial Crimes Commission (EFCC) notified the claimant that the fund transferred to the 1<sup>st</sup> defendant’s account vide Global offshore be reversal same is illicit fund obtained from the Federal Government of Nigeria coffers (from Ministry of Aviation) which was a subject of criminal investigation and later a subject of criminal proceedings in which the 1<sup>st</sup> defendant is one of the accused person/defendant together with its shadow director chief Mrs. Stella Adaeze Odua the beneficial owner of the 1<sup>st</sup> defendant and other” the burden of proof as it was shifted to the defendants who in their counter-affidavit in opposition to the claimant’s originating summons

controverted the averment by the claimant. “That the 1<sup>st</sup> defendant is not indebted to the claimant in anyway. The 1<sup>st</sup> defendant has completely paid all its indebtedness to the claimant as at 2<sup>nd</sup> of June, 2014 when the first bank of Nigeria (the claimant) used the money in the 1<sup>st</sup> defendant’s account to defray the balance of the loan. The money in the account of the 1<sup>st</sup> defendant which was used by the claimant to defray the 1<sup>st</sup> defendant’s indebtedness was not a proceed of any crime and was not gotten from illegal source. That there is a paroling, criminal case in charge No. FHC/ABJ/316/2020 where everything will be explained and proved. That chief Mrs. Stella Adaeze Odua is not the principal of the 1<sup>st</sup> defendant share holder or arrow head and not a director(shadow or not). That claimant by banking policy has copies of the 1<sup>st</sup> defendant’s incorporated documents to know the principal officer shareholder and director of the 1<sup>st</sup> defendant”.

The principle that should guide the court in resolving conflicts in affidavits evidence were reaffirmed and restated by the supreme court in *GBILEVE VS. ADDING 1 (2014) 16 NWLR (PT. 1433) 394 AT 417 C-G* where the Court held thus:

**where proceedings in court are by affidavit evidence, it is important that conflicts in such affidavits are not glassed over; the court is enjoined to look at the nature of the conflict when facts are deposed in an affidavit, the purpose of a counter- affidavit is to contradict those facts and not to merely set up a distinct fact as defence.**

In the instant case before the court, defendants in their counter affidavit have challenged and contradicted all the material facts put toward by the claimant so much so that the 1<sup>st</sup> defendant is justified of having paid the credit facilities granted to it and I so hold. I therefore resolve the first issue in savour of the defendants. See *ZAKIRAI VS. MOHAMMED & ORS (2015) LPELR=40387 (CA)* having determine the first issue; I will now proceed to the 2<sup>nd</sup> issue. And it is:

***“Whether the claimant is entitled to the reliefs sought”.***

As stated somewhere earlier in this judgment FBN 1 and FBN 3 are documentary evidence that bear credence to the loan facilities agreement that exist between the parties to the suit. I aligned myself with the submissions of the learned counsel to the defendants to the reality that the claimant advanced a loan transection to the 1<sup>st</sup> defendant as contained in the letters, payment within 12 months and 18 months. The trend of the loan and repayment is contained in FBN6, which is the statement of account of the 1<sup>st</sup> defendant in the custody of the claimant. From exhibit FBN 6, it is apparent that as at 2<sup>nd</sup> of June, 2014. The 1<sup>st</sup> defendant has fulfilled its obligation by paying off the loans which makes it a complete performance as such that there is no any breach of contract to warrant any liability because claim for damages in contract emanate from its breach. In a claim for damages for breach of contract, the court is concerned only with damages which are natural and probable consequence of the breach or damages within the contemplation of the parties at the time of the contract. The essence of damages in breach of contract cases is based on the principle of *restitutio in integrum*. It is to restore the plaintiff to a position as if the contract has been performed. The measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the breach. There is no room for damages which are speculative. ***PER EKANEM, JCA (P.17 PARAS A-D).***In the case of ***BELLO & ORS VS.OKUNEYE& ANOR 92023) LPELR- 60197 (CA).***

In the instant case, the obligation has already been performed as at 2<sup>nd</sup> of June, 2014 when the credit facilities were completely paid off to the effect that there is nothing in the affidavit evidence before the court to indicate of any further loan agreement after the 2<sup>nd</sup> of June, 2014.

It is not in dispute, by paragraph 20 of the claimant affidavit that loan of the 1<sup>st</sup> defendant was liquidated I reiterate, the only dispute and the determining factor is the legality of the claimant's reversal of payment made than 7 years without court order and during pendency of a criminal charge relating to the issue which has not been determined by a court of coordinate jurisdiction.

Admittedly, the weight of authorities has crystallized in the principle that “the bank has no right to transfer money be it assets or liabilities from one account to another without prior notice and assent of the customer” per *DENNIS ONYEJIFE EDOZIE, JCA (P. 23 paras, C-E in EKWJAFFA & ORS VS. BANK OF THE NORTH LIMITED.* Also in *GUARANTY TRUST BANK PLC VS. MR. AKINSIKU ADEDAMOLA & ORS (2019) PLELR-47510 (CA) PAGES 21-24.* The court held; per Abubakar, JCA (as he then was) that:

**The Economic and Financial Crimes Commission has no powers to give direct instructions to bank to freeze the account of a customer without an order of court so doing constitutes a flagrant disregard and violation of the rights of a customer. I must add that, the judiciary has the onerous duty of preserving and protecting the rule of law, the principles of rule of law are that both the governor and the governed are subject to rule of law. The courts must rise to the occasion speak and frown against arrogant display of powers by an arm of government. It is in the interest of both government and citizens that laws are respected, as respect for the rule of law promotes order, peace and decency in all societies, we are not an exception. Our financial institutions must not be complacent and appear toothless in the face of brazen and reckless violence to the rights of their customers. Whenever there is a specific**

**provision regulating the procedure of doing a particular act, that procedure must be follow.**

Therefore, in applying the above principles of law to this case, I found from the claimant's affidavit evidence that a valid court order was not obtained before transferring money from the 1<sup>st</sup> defendant's account no-2022332068 to the Economic and Financial Crime Commission on the directive of the said Agency which in the mind of the court ought not to be so.

It is also the principle of law that a person cannot benefit from his own wrong. In its adjudicatory function, the court has a duty, to prevent in justice in any given circumstance and avoid rendering a decision which enables a party to escape from his obligation under a contract by his own wrongful act or otherwise profit by his own wrongful act. I call in aid the case of ***KAMBA ENGINEERING SERVICES CO. LTD & ORS VS. FIRST CHOICE PROPERTIES LTD & ORS.***

The claimant (first Bank of Nigeria limited) cannot in this instant benefit from its own wrongful act when it reversed/transferred the money used in settling the loan facilities by the 1<sup>st</sup> defendant to the EFCC without a court order and turned round to claim against the defendants of not liquidating their indebtedness to it and I so hold.

#### COURT'S DECISION

From the foregoing principle of law analysed above, the Claimant in my considered view is in breach of the bank/customer relationship that exist between the Claimant and the Defendant and as such, this suit fails as the claimant is not entitled to the reliefs sought.

Consequently, this suit is hereby dismissed for lack of merit. I make no order as to cost.

This is the judgment of this court.

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Hon. Justice Jude O. Onwuegbuzie

Appearnaces:

1. Vincent Omeike Esq., for the Claimant.
2. Odion Peter Odia Esq., with E.O Godwin Esq., for the Defendants.