IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA DIVISION
HOLDEN AT COURT 12, JABI
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 17TH DAY OF OCTOBER, 2024

SUIT NO: FCT/HC/CV/1055/2018

BETWEEN:

HERITAGE BANK PLC ---------- PLAINTIFF

AND

1. **HON. ABDULLAHI BELLO**
2. **THE CLERK OF THE NATIONAL ASSEMBLY FEDERAL REPUBLIC OF NIGERIA**

---------- DEFENDANTS

BARNABAR B. JIYA *for the Claimant.*
AISHA O. ABDULSALAM *for the Defendant.*

JUDGEMENT

In the writ of summons and statement of claim, dated the 25th of February, 2018, the Plaintiff seeks for the following reliefs:

a) The sum of **N129,807,974.70 (One Hundred and Twenty Nine Million, Eight Hundred and Seven Thousand, Nine Hundred and Seventy Four Naira, Seventy Kobo)** only together with the accrued interest being the amount owed the Plaintiff as at 31st October, 2017.
b) 20% interest on the sum of **N129,807,974.70 (One Hundred and Twenty Nine Million, Eight Hundred and Seven Thousand, Nine**

Hundred and Seventy Four Naira, Seventy Kobo) only per annum, beginning from 1st November 2017until final liquidation.

c) 10% interest on the judgment sum on the final liquidation.

d) 10% of the judgment sum being the cost of this action.

The above claim arose out of an alleged bridge of contractual relationship of banker-customer between the Claimant and the 1st Defendant. The 1st Defendant was a former member of the National Assembly who was said to have applied for a personal loan of **N120,000,000 (One Hundred and Twenty Million)** from the Plaintiff, filed an application letter dated 2nd November 2015,(Exhibit A1) and was offered same on 11th November 2015 (Exhibit A2) subject to the terms and conditions contained in the offer letter.

The 1st Defendant undertook to domicile his salary and allowances in the accounts operated with the National Assembly branch of the Plaintiff. The acceptance and irrevocable letter of undertaking dated 3rd July, 2015 to domicile his salary and allowances addressed to the Managing Director of the Plaintiff was admitted in evidence as Exhibit A12 while the letter from the National Assembly dated 4th of July, 2015, confirming the domiciliation of the 1st Defendant's salary and allowances is marked as Exhibit A6. The Plaintiff alleged that contrary to the undertaking of the 1st Defendant, he diverted his salaries and allowances from his account without the National Assembly alerting the Plaintiff or dissociating itself from such action, or

rather aided and abetted the 1st Defendant in diverting his salary and allowances from the Plaintiff's National Assembly complex branch.

Furthermore, the Plaintiff stated that after several appeals, the 1st Defendant sometimes between June and July, 2016, made two separate deposits of **10,000,000 (Ten Million Naira)** each to cover for the monthly repayment of May, June, July, and partly August 2016. And that since this payment the 1st Defendant has failed and or neglected to liquidate the outstanding debt. Exhibits A5, A6, and A7 are the various letters of demands addressed to the 1st and 2nd Defendants by the Plaintiff's Solicitor, which the Plaintiff claimed were not honored by the Defendants, hence the institution of this action.

In response, the 1st Defendants filed a statement of defense and counter-claim, dated 31st May 2018. He denied diverting his salary and allowances from the account with the Claimant but rather that as a result of a legal judgment of the Court of Appeal dated 8th December 2015, he ceased to be a member of House of Representatives. According to the 1st Defendant, the loan was given to him after his victory at the Election Petition Tribunal and the officers and agents of the Plaintiff were aware of the pendency of the suits at the appellate court which upturned the judgment of the Election Tribunal. That as a result of the aforementioned judgment, the salaries and allowances in which the loan was tied to was stopped by the 2nd Defendant. He admitted paying the sum of **N20,000,000 (Twenty Million Naira)** only into the account of Claimant between the

month of June and July 2016 on his own volition. Contrary to the Plaintiff's claim that the 1st Defendant have refused and or neglected to honor his demand letters, the Defendant claimed that the Plaintiff had been sending letters to the state government and its various agencies in Kogi State rather than his personal address which is well known to the Claimant, and that in doing so, the Plaintiff bridged the banker-customer confidential relationship which exists between them. That the action of the Plaintiff disclosing his indebtedness to the Executive Governor of Kogi State and the Chief of Staff was to cause mischief and undermine his integrity as he was not at that time, a sitting or serving government officials when the letters were sent to and copied to the Governor and other staff of the Kogi State Government.

In further denial of the sum of **N129,807,974.70 (One Hundred and Twenty Nine Million, Eight Hundred and Seven Thousand, Nine Hundred and Seventy Four Naira, Seventy Kobo)** only claimed by the Claimant, the Defendant asserted that only the sum of **N75,000,000 (Seventy Five Million Naira)** is outstanding because of the terms and conditions of the loan agreement. He contended that the Claimant have been charging exorbitant fees and interest with the sole intention of taking advantage of him as a sitting member of the House of Representative. That this suit was actuated by malice and greed on the part of the Claimant. He also alleged that contrary to the Plaintiff's claim that he or member of his family refused to collect the letter of demand sent by the Plaintiff, the Plaintiff's officers have

been going to his house to harass, intimidate, and embarrass his family members, thereby creating a degrading scene. That this ignoble act was pioneered by one **Segun N. Okeh**, the Group Head of the Debt Recovery team of the Plaintiff. He denied ever seeing any courier message from FedEx or refused to sign same.

In the counter-claim, the 1st Defendant complained that the Claimant/Respondent's act of deliberately forwarding and addressing the letters in respect of his transaction with the Plaintiff to the State Governor of Kogi and the Chief of Staff has not only exposed him to ridicule, but was calculated to lower his estimation by individuals of the society. That the exposure and betrayal have affected him politically and his company have also not received any patronage from the government. The Defendant/Counter-Claimant therefore claims against the Plaintiff/Respondent as follows:

1. The sum of **N500,000,000 (Five Hundred Million Naira)** as general damages for defamation, breach of fiduciary duties, and the unauthorized exposure of the 1st Defendant/Counter-Claimant as a customer to the bank, thereby causing severe damage to the 1st Defendant/Counter-Claimant's person and reputation as a retired civil servant and politician of good repute.
2. The sum of **N30,000,000 (Thirty Million Naira)** as Solicitor's fee for defending this action.

In response to the defense/counter-claim, the Plaintiff filed a 16 paragraphed reply and defense to the counter-claim. At the close of pleadings, the matter went into trial with the Plaintiff's sole witness **Morris Nweke** (PW1), the Experienced Center Manager of the Plaintiff, adopting his witness statement of oath, which is a replica of the statement of claim on the 20th September, 2023. The under listed documents were tendered through him and admitted by the court as exhibits:

1. Exhibits A1 - Letter of Application for Loan.
2. Exhibit A2 - Letter of Offer granted the loan.
3. Exhibit A3 - Instrument of Irrevocable Domiciliation of Member Salary.
4. Exhibit A4 - Letter of Engagement dated 10/11/2017.
5. Exhibits A5 - Letter of Demand and courier receipt dated 6/12/2017.
6. Exhibits A6 – Letter of Demand.
7. Exhibits A7 - Another Letter of Demand.
8. Exhibit A8 - Statement of account of the 1st Defendant.
9. Exhibit A9 - Judgment of the Court of Appeal with No. CA/A/EPT/648/2015

The witness also adopted his reply to the statement of defense and counter-claim. Under cross-examination, the PW1 testified that he did not sign any of the documents admitted as exhibits, but he was in the branch when the customer request was brought. He confirmed that from the loan agreement (Exhibit A2), the source of loan repayments was from the borrower's salary and allowance, and that the loan was given to the customer because he was

the serving member of the House of Representatives. He further confirmed that the loan was insured. He however did not know that at a point the customer was removed as a result of the judgment of the Court of Appeal, and did not know whether the customer lasted from 2015-2019 in the House. In the same vein, the Defendant, **Hon. Abdullahi Bello** adopted his witness statement on oath on 23rd October, 2023 and tendered three documents.

1. The original copy of Letter of Offer - Exhibit D1.
2. A Demand Notice - Exhibit D2.
3. Judgment of the Court of Appeal- Exhibit P10.

And under cross-examination, the 1st Defendant testified and admitted that the loan facility was granted and disbursed to him on 2/12/2015. And that six days after being 8/12/2015, he was removed as an elected officer at the National Assembly. The Defendant also confirmed that he had paid certain amount of money in partial settlement of the loan. He admitted that he defaulted repayment and servicing of the loan facility around September 2016. And that his company has been out of business since 2015 as a result of insecurity and lack of capital. He admitted being indebted to the Plaintiff to the tune of **N75,000,000 (Seventy Five Million Naira)**. He further affirmed that there existed one **Hon. Abdullahi Bello** who bears the same name with him, and they are both from the same Local Government that is said **Abdullahi Bello** was a party chairman to the Local Government, having served in different government capacities and offices.

At the close of the Defendant's case, the parties in accordance with the rules of Court filed and exchanged their final written addresses. The Defendant Counsel's final written address though filed out of time was brought in by an application for extension of time dated and filed on 21/11/2023. It is on record that Learned Counsel representing the Plaintiff, **A. C. Nwosu** objected to the validity of the application and urged the court who declare it incompetent because one **Mohammed Abdullahi**, a lawyer in the firm of **Abdul A. Ibrahim SAN**, Counsel for the Defendant deposed to the affidavit in support of the application for extension of time. It is a fact that the filing of the final written address on behalf of parties to an action is that of the Counsel. The cause of delay in filing of the final address may therefore be facts within the knowledge of the party or that of his Counsel. In the instant case, the undisputed and uncontroverted fact that emerged from the affidavit of the deponent, **Mohammed Abdullahi**, are facts within his personal knowledge or information he came about in the course of his work. He further averred in paragraph 5 of the affidavit that the time to file the address elapsed because he was in charge of coordinating Election Petition matter and did not get the opportunity of going down to Gwagwalada to file the process. These averments in my view, did not cross the threshold of Section 115 of the Evidence Act which provides that; *"Every affidavit used in 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."*

Furthermore, the averments contained in the affidavit of the said **Mohammed Abdullahi** are non-contentious and thus does not rob him of the competence to depose to the said affidavit. See the case of **SEABULK OFFSHORE OPERATORS NIGERIA LIMITED V AUGUSTA OFFSHORE S. P. A. (2019) LPELR 50510 CA**, on the instance when a Counsel can depose to an affidavit on behalf of her client, the court held:

"Let me hasten to state that the facts deposed to are what will ordinarily be in documents made available to a Counsel upon a dispute arising from a business relationship. The facts are not contentious matters of facts and do not cross the threshold of matters where it would be appropriate for a Counsel to depose to the affidavit."

See also the case of **MUSA V A. G. TARABA STATE & ORS (2014) LPELR 24183 CA.** In the instant case, the application for extension of time filed by the Defendant is non-contentious and a routine application. The dependent, **Mr. Mohammed Abdullahi**, a Counsel in the office of the Defendant's chambers is therefore competent to depose to the affidavit in support, and I so hold. The objection of the Plaintiff's Counsel is therefore of no moment. It is lacking in merit, and hereby discountenanced.

Now to the final written address; The Defendant's Counsel in the adopted written address settled by **Abdul A. Ibrahim S.A.N** formulated a sole issue for determination to wit:

Whether the Claimant had led credible evidence before this Honourable Court to be entitled to the relief sought.

The Learned Senior Counsel while arguing the sole issue formulated for determination, while arguing the sole issue for determination, argued that the Claimant's allegation against the Defendant as contained in paragraph 11 of the witness statement on oath where the deponent averred that the Defendant had diverted his salaries and allowances from his account without his employer, the National Assembly alerting the Plaintiff or dissociating itself from such action but rather aided and abetting the Defendant in his salaries and allowances is a bare allegation since the said witness was unable to state and provide the account the Defendant's salaries and allowances were diverted to during cross examination.

He further argued that where the commission of a crime by a party is directly in issue in any civil or criminal proceedings, it must be proved beyond reasonable doubt. The Learner Senior Counsel relied on the terms and condition of the contract agreed to by the parties as captured in the offer letter dated 11th November 2015 (Exhibit A2). He submitted that parties are bound by the terms of their agreement, that where parties have entered into an agreement voluntarily and there's nothing to show that same was obtained by fraud, mistake or deception; they are bound by the terms of the agreement. It relied on the authority of **ABDULAZIZ V GARBA (2021) 3 NWLR (PT. 1764) PG 379 @ 392 PARAS E-F –** Per **ABOKI JCA** where the Court held:

"It is also trite that parties are bound by the terms of their agreement. See A. G. RIVERS V A. G. AKWA IBOM (2011) NWLR (PT. 1248) where it was held inter-alia as follows; Where parties have entered into a contract or an agreement voluntarily, and there is nothing to show that same was obtained by fraud, mistake, deception, or misrepresentation, they are bound by the provisions or terms of the contract or agreement."

The Learned Counsel posited that Exhibit A2, spells out the terms of the contract between the parties, the condition precedent for drawing down, and the security for the loan which are basically defined as follows:

1. Letter of undertaking from the borrower to domicile is monthly salary, allowances, entitlements and terminal benefits to the lender, throughout the tenure of the facility.
2. Letter from the National Assembly signed by the Clerk and Director of Finance undertaking to irrevocably domicile the borrower's salary, allowances and entitlements with the lender.
3. Credit assurance policy from.

The lenders approved the insurance brokers noting the lenders has first loss payee for the duration of the facility. He argued that the PW1 under cross-examination affirmed that the loan was to be repaid from the Defendant's salary and allowances and other perquisite of office and the said loan was also insured. He submitted that the documentary evidence is the best form of evidence, and no oral evidence can contradict the provision of a written

document. He further asserted that the tenure of the Defendant as a member of the Federal House of Representatives was cut short by Exhibit P10, (Court of Appeal Judgement) and that this act of law frustrated the contract.

The Senior Counsel referred to the term *"frustration"* as stated in the celebrated case of **NWAOLISAH V NWAOBUFOR (2011) 14 NWLR (PT. 1268) PG 600 @ 630-631 PAR G-A** as follows:

"Frustration in its ordinary simple and straightforward meaning is the prevention or hindrance of the attainment of a goal. Frustration in the law of contract occurs whenever the law recognizes that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which the performance is called for would render it radically different from what was undertaken by the contract."

He argued that the contract has been translated into the class of debt that is not ordinarily recoverable except upon compliance with certain conditions;

1. The Plaintiff has not demonstrated before the court that they have gone after the insurance company to indemnify the Plaintiff against risk since it was an insured venture.
2. There is no express or renewed undertaking in re-negotiation of the agreed terms. And since parties are bound by their agreement, the

Court is to construe strictly the terms and condition applicable to the contract.

On the documents tendered by the PW1, the Senior Counsel for the Defendant argued that the lack of probative value as the witness merely tended and identified the documents but failed to speak to them or demonstrate his case by linking those documents. The documents he further argued were not tended by the maker and therefore amount to documentary hearsay. The case of **OKEREKE V UMAHI (2016) 11 NWLR (PT. 1524) PG 428@ 472 @ A-E** was relied on where the court held;

"Weight can hardly be attached to documents tendered in evidence by a witness who cannot or is not in a position to answer questions on the document. Such a person is adjudged in the eyes of the law as ignorant of the contents of the document."

Relying on the **TERAB V LAWAN (1992) 3 NWLR (PT. 231) 560 PARAS G-P** Senior Counsel argue that the witness merely dumped the documents on the Court and asked it to embark on fishing expedition.

Furthermore, it was argued on behalf of the 1st Defendant that all payments made subsequent to the vacation of the Defendant's seats ought to be recorded and deducted. That the general rule is that party cannot just toss and dump before the court, statement of account in proof of its case without demonstrating through oral evidence how the entries were arrived at. The case dictum of **Abiru, JSCA** as he then was in the case of

NAGEBU & CO (NIG) LTD V UNITY BANK PLC (2014) 7 NWLR (PT. 1405) 42 @ 84 PAR G-H was relied on by the Defendants Counsel thus:

"Where there is a dispute on indebtedness the party cannot just toss and dump before the court the statement of account in proof of the indebtedness of the customer for the overall debt balance therein. It must demonstrate through oral evidence given by an official who is familiar with their accounts, how the debit balance was arrived at."

The Senior Counsel submitted that no evidence has been offered before this Court to show that the statement of account and the entries made therein consists of accrued interests on the facility or that there is evidence that the debtor was in constant receipt of the statement of account to be deemed that the debtor has admitted to the debit balance in the account. He posited that a Claimant and the documents tendered in Court to show the alleged indebtedness are at variance and that it is not the duty of the court to grant the claim.

The Claimant is also said to have breached the secrecy it owed the Defendant by sending letters to the Government House, Kogi, expressing the indebtedness of the Defendant to the Claimant, thereby causing ridicule and affecting the business of the Defendant. That the Claimant is liable to pay the Defendant damages for the breach. Counsel relied on the case of **OMNI PRODUCTS (NIG) LIMITED V UBN PLC (2021) 10 NWLR (PT. 1783) PT. 92 @ 111 PAR D-G; DHL INT'L NIG LTD V EZE UGOAMAKA (2020) 16 NWLR**

(PT. 1751) PG 445 @ 465-466; NWOSU V ZENITH BANK (2015) 19 NWLR (PT. 1464) 314 @ 334 PAR A-D where **Orji Abadua JCA**, held:

"It is well established that bankers, of course, owe their customers duties to recover money, checks and other instrument. To pay checks and other withdraw authorities properly drawn by the customer during banking hours at the branch where the account is kept or elsewhere as agreed. To maintain secrecy concerning the customer's accounts and other affairs."

Finally, on the failure of the Claimant to pursue the 1.62% of the loan deducted upfront from the credit assurance policy as disclosed in the offer letter, Learned Senior Counsel argued that this has affected the rights of the Claimant to approach the Court because the action became premature. And that the implication of the deduction of insurance premium of the 1.26% is that insurance becomes payable in any events of frustration or loss. That it behooves the Claimant as the first loss payee to furnish the Court with what was salvaged as a result of the insurance policy or the risk the Claimant nominated and approved by the insurance brokers.

The Court was prayed to dismiss the Claimant's suit for lacking in merit for the following reasons;

1. That the contract is unenforceable as it has been frustrated.
2. That the Claimant failed to prove the alleged diversion of funds.
3. That the Claimant breached the Defendant's secrecy.
4. That the Claimant failed to pursue the insurance policy.

The Plaintiff on the other hand, formulated two issues for determination in their final written address to wit:

Whether the Plaintiff has adduced enough evidence and proved its case to be entitled to the reliefs sought/judgment of the court in its favour.

Whether the Defendant is fraudulent and guilty of concealment, misrepresentation and suppression of material facts.

On issue No. 1 Plaintiff's Counsel Barnabas Jiya Esq submitted that the Defendant (DW1) admitted to have applied for and was granted the sum of **N120,000,000 (One Hundred and Twenty Million Naira)** and further admitted to be indebted in the sum of **N75,000,000 (Seventy Five Million Naira)** being the outstanding principal unpaid. Counsel referred to paragraph 24 of the statement of defence and submitted that it amounts to a admission of facts of indebtedness by the Defendant and this materially corroborates the evidence of the Claimant. He also submitted that the testimony of the Plaintiff in support of their claim was not contradicted under cross-examination of the Defendant and also deemed to be admitted. He buttressed his submission with the case of **OYETOLO V SODIQ (2009) WFN 52 @ 78 LINE 35-40, ASATA FOOD FACTORY LTD V ALRAINE NIG LTD & ANOR (2002) LPELR SC 51/1999 (PP 28-29, PARS F-G)** and Section 123 of the Evidence Act.

The Plaintiff Counsel further referred to various payments made by the Defendant between January-July 2016 as stated in the statement of

account which amounted to **N38,192,747.19 (Thirty Eight Million One Hundred and Ninety Two Thousand Seven Hundred and Forty Seven Naira, Nineteen Kobo)** and urged that this amount be subtracted from **N120,000,000 (One Hundred and Twenty Million Naira)** loan facility granted. That it would leave a balance of **N81,807,252.81 (Eighty One Million Eight Hundred and Seven Thousand Two Hundred and Fifty Two Naira, Eighty One Kobo)** still unsettled by the Defendant as against the **N75,000,000 (Seventy Five Million Naira)** previously admitted. He also submitted that document tendered in court is the best proof of the content of such document and no oral evidence will be allowed to add, vary, discredited or contradict the contents thereof except in cases where fraud is pleaded. He referred to the case of **AGBAREH V NIMRA (2008) 12 WNR 1 @ LINE 45-10 –**Per **Ogbuagu JSC**.

With respect to issue No. 2, the Plaintiff's Counsel submitted that the Defendant did not disclose the status of his candidacy as at the time he applied for the loan. That the Defendant being fully aware that he stands a chance of removal as an elected member of the National Assembly, fraudulently using his allowances and monthly salary as security for the facility granted by the Plaintiff. That the Defendant was removed from office six days after he was granted the loan facility, and that he has a duty of disclosing material fact as it affects the security of the facility granted. That under cross-examination, the Defendant admitted that he never informed the Plaintiff's branch at the National Assembly Complex but

fictitiously averred that he informed an unknown branch of the Plaintiff situated at the branch which the Plaintiff does not maintain an account. That the law is settled that a person cannot benefit from his own wrongdoing. He relied on the case of **TEMBA V ADEYEMO (2010) 47 WRN 155 @ 175-176 LINE 45-3, -** Per **Tabai JSC** the court held;

"A person cannot benefit from his wrongs, faults, adjudicatory function. Court has a duty to prevent injustice, in any given circumstances to avoid rendering a decision which enable a party escape from his obligation under a contract by his wrongful act."

He also submitted that in the case of **BANJOKO & ORS V OGUNLANA & ORS (2013) LPELR CA/1/150/7** where the Court defined fraud as follows:

"Black Law's Dictionary 7th Edition, page 690 defines fraud as: A knowing misrepresentation of the truth or concealment of the material fact to induce another to act to his or her detriment. The Oxford Advanced Learners Dictionary 7th Edition defines fraudulent as intended to cheat, usually in order to make money urgently." – Per **Uwa JCA**.

The Plaintiff also relied on exhibit A2, the covenants 4 and 10 thereof which provides that the lender reserves the rights to withhold further disbursement, recall or cancel the facility for reason of default or non-compliance with the covenant hereunder and the occurrence of any or all of the following events;

"4) If it is discovered that there was a material misrepresentation of facts by the borrower with regards to the purpose, liquidation of the facility and collateral.

10) If any situation occurs or threatens to occur which may in the opinion of the lender adversely implicate the ability of the borrower to perform or meet the obligation thereof."

He urged the Court to hold that the willful suppression and failure to bring to the knowledge of the Plaintiff, pending law suit which sought to determine the candidacy of the Defendant was fraudulent and amounts to material concealment, suppression and misrepresentation. And this amounts to breach of contract entered into by the Defendant.

With respect to the defense of frustration of contract put up by the Defendant, the Plaintiff's Counsel argue that this does not avail the Defendant because from the statement of account, the Defendant was dismissed in December but commenced payment of the loan in January 2016 to September 2016, a period after which the loan was frustrated. This act he argued, constitute a waiver or affirmation and thus revived and sustained the contract. That in the case of **THADAIN & ANOR V NAATIONAL BANK OF NIG LTD & ANOR (1972) ISC 75,** the Court held;

"The principle of acknowledgement or part-payment founded on the theory that by so doing the debtor establish a fresh contractual

relationship so that the cause of action then start to run from the date of fresh contractual relationship."

That the frustration was self-induced, contemplated and self-inflicted by the Defendant. He argued further that a common feature of all the definition of frustration has been that the frustrating event must have occurred without the default of either party to the contract. That any event rendering a contractual obligation incapable of being performed if brought about by the act of the party is no frustration and same will amount to self induced frustration. He relied on the case of **WESTERN NIGERIA FINANCE CORPORATION V WEST COST BUILDERS LTD (1971) UILR 93605-606, OCEAN TRAMP TANKERS COPORATIVE V V. O. SORFRACTURE (1964) 2 QB226 (1984) IAER 161.**

On the counter-claim of the Defendant, the Plaintiff posited that the Defendant have admitted in paragraph 34 of the statement of defense that he has occupied and held various position, which include Member of the Kogi State House of Assembly, Speaker of the State House of Assembly, and Acting Governor of Kogi State and several other political positions. That it is evidently clear that the Defendant is a household name and having occupied this positions maintains a known address at the aforementioned places and that the Defendant have failed to state the period during which he occupied the above positions. That all effort to reach the Defendant was unsuccessful. That the letter complained of was simply a demand notice addressed to the Defendant in its official capacity as a Senior Special

Adviser to the Governor of Kogi State and could not have portrayed the Defendant in a bad light. And that on the face of the letter, it was also clear it was neither submitted nor received by the then Governor of Kogi State. And that it is a well settled principle of law that unless actual damages are proved, a breach of this duty will not constitute damages. That duty of secrecy does not arise where the interest of the bank requires disclosure and where disclosures made by express or limited consent of the customer as in this case.

He also submitted that once a Defendant admits the indebtedness or receipt of the loan, the burden as to repayment or as to reason for non-payment is on the Defendant. Counsel relied on the case of **FEDERAL MILITARY GOVERNMENT OF NIGERIA V SANI (1990) 7 SC (PT. 11) 89, (1990) NWLR (PT. 147) 668, EZEKIEL OKOH V MOREAB FINANCE NIG LTD SC 199 @ 145 - 146 LINE 30-25 SC.** Finally, Counsel argued that the Defendant have failed to cite any known legislation or case law which absolves the Defendant of liability to pay for reason of the loan being insured. He urged the court to consider the arguments of the Defendant as being misleading and dismissed the counter-claim.

In the reply on points of law, Counsel for the Defendant argued that the Plaintiff cannot claim that the Defendant admitted the sum of **N75,000,000 (Seventy Five Million Naira)** as his indebtedness, and then claimed the sum of **N125,000,000 (One Hundred and Twenty Five Million)**. That there was the need for the Plaintiff to demonstrate by evidence the sum of

N125,000,000 (One Hundred and Twenty Five Million) he claims in the suit. That a party is not allowed to plead two different positions in relation to the same issue. He relied on the case of **ABUBAKAR V YARADUA (2008) 19 NWLR (PT. 1120) PG 1 @ 154 PARA A-B**. He further submitted that for evidence to be unchallenged, it must be relevant to the issue in controversy and in line with the pleadings. That the case of **OYELOWO V SADIQ Supra** and **ASATA FOOD FACTORY V AL'RAINE Supra** cited by the Plaintiff do not avail him.

With respect to the documentary evidence, Senior Counsel for the Defendant submitted that documentary evidence in question must demonstrate and related to the relevant part of the pleading. On the essence of the 1.62% of the loan deductible to cover the insurance policy, the Defendant's council argued that the Plaintiff had the duty to disclose whether or not the insurance was recovered instead of demanding the full sum of this loan from the defendant.

On issue two of the Plaintiff's final written address, to wit; *fraudulent concealment and misrepresentation of facts by the defendant*, the defendant's Counsel argued that material facts necessary to prove same must be pleaded specifically by virtue of provision of Order 50, Rule 3 of the High Court of Federal Capital Territory Rules 2018, and also case of **BELGORE V AHMED (2013) 8 NWLR (PT. 1355) PS 60 @ 94 PAR C-E** where the Court held:

"In all cases in which the party pleading relied on any misrepresentation, fraud or breach of trust, willful default or undue influence and in all other cases in which particulars may be necessary particulars (with dates), items in necessary shall be stated in the pleadings."

That a look at the pleading will show that assertions related to fraudulent misrepresentation and concealment was raised for the first time in the Plaintiff's final written address. It was not pleaded, nor evidence led to prove same. That being a criminal allegation increases the burden of the Plaintiff's exponentially as the standard of proving criminal allegation is beyond reasonable doubt. On the breach of confidentiality, defendants Counsel argued that it is a legal one arising out of contract and therefore give rise to claim for damages. That the letter to the Governor of Kogi states and his Chief of Staff who had no business with the transaction with the transaction between the parties is a breach of confidentiality, as the defendant never authorized any disclosure of his state of affairs to those persons. On the claim for damages, Defendant's Counsel relied on the case of **U. T. C. (NIG) LTD V. PETERS (2022) 18 NWLR (PT. 1862) PG 297 @ 317 PAR G** where the Court held:

"That general damages are such as the law will presume to be the direct, natural, and probable consequence of the act complained of."

Finally on the issue of acknowledgement of the debt, and the case of **THADANI & ANOR V NATIONAL BANK OF NIGERIA LTD Supra** cited by the Plaintiff's Counsel in his final written address, Defendant's Counsel argued that the acknowledgement and part-payment of debt has treated in the case is in relation to the acknowledgement of debt after the time limited for the institution of action to recover debt has passed. That it is also a requirement that such acknowledgement must be in writing. The defendant placed reliance on the case of **N. S. I. T. F. M.B V KUFCO, NIG LIMITED (2010) 13 NWLR (PT. 1211) PG 315 @ 329, PAR A-D** and urged the court to dismiss the Plaintiff's claim.

I have considered the oral and documentary evidence adduced by the parties in support of their claim, defense and counter-claim. And also the arguments of Learned Counsel for the parties as encompassed in their respective final written addresses. In my own view, the issues that are thrown up for determination are three, and they are:

1. Whether the Plaintiff have been able to prove his case based on the preponderance of evidence and balance of probabilities.
2. Whether there was concealment or misrepresentation and suppression of material facts by the Defendant.
3. Whether the Defendant was able to prove his counter-claim on the strength of his evidence.

RESOLUTION OF ISSUES:

The fulcrum of the contractual relationship between the parties emanated from Exhibit A2, the letter of offer which spelt out the tenor of the loan, the condition precedent to the drawn down which includes the securitization of the loan. Both parties agreed that the repayment of the loan was from the salary and allowances of the Defendant domiciled with the Plaintiff's branch at the National Assembly. The PW1, **Morris Nweke** admitted under cross-examination that the loan was secured. From the Writ of Summons and Statements of Claim, the sum claim including the interest is **N129,807,974.70 (One Hundred and Twenty Nine Million, Eight Hundred and Seven Thousand, Nine Hundred and Seventy Four Naira, Seventy Kobo)** In a claim for refund of loan with interest, the burden of proof is on the Claimant to establish through both documentary and oral evidence the existence of the loan and the interest owed. On what is a loan, the Court in the case of **OLOWU V BUILDING STOCK LTD (2018) 1 NWLR (PT. 16)** held:

"A loan is essentially a sum of money lent at interest, and a loan agreement includes applicable interest rate, fees, and how the loan will be repaid and over what period. Loan terms are conditions and requirements included in a loan agreement that specify the loan amount, term, interest rate, and other enforceable condition agreed to by the borrower and lender. See NWABOSHI V FEDERAL REPUBLIC OF NIGERIA (2023) 16 NWLR (PT. 1911) 539."

It is important also to state that apart from the loan agreement the statement of account of the customer must be tended by a bank official who will align the entries in the statement of account of the customer with the claim contained in the Writ of Summons and the Statement of Claim. In essence, the witness must carefully analyze the figures that summed up both the principle and the interest items in relation to the sum claimed. In the instant case, the testimony of PW1 in his adopted witness statement of oath is; *"That the Defendant was offered a personal loan of* ***N120,000,000 (One Hundred and Twenty Million Naira)*** *Exhibit P1 and that the Defendant between June and July 2016 made two separate deposits,* ***N10,000,000 (Ten Million Naira)*** *totaling* ***N20,000,000 (Twenty Million Naira)*** *and has since then not made any further payments despite the repeated demands. The PW1 here by tender the statement of account of the Defendant."* And of course, that is the testimony of the PW1. This is testimony of the PW1 without demonstrating to the Court how the figures contained in the statement of account were arrived at and how it relates to the claim. It is on this premise that I agree with the Defendant's Counsel that the statement of account was dumped on the court. See the case of **AKPABIO V Union Bank (2021) LPELR 54301 CA** where the Court of Appeal held:

"The rule of evidence which required demonstration of documents tendered done improve of the case arose in the case of DURUMINYA V COP (1962) NWLR 70 where Balej said that a trial is not an investigation and investigation is not a function of a court. That a trial is

the public demonstration and testing of the case of contesting parties. That the demonstration is by presentation of evidence and that the testing is by cross-examination of witness. Since then trial judges frown on the dumping of document as it were in court, without linking same to the particular facts and or relief sought by the parties to the case. Thus, in the case of OGBOOR V UDUGHAN (2011) 2 NWLR (PT. 1232) 538 580, 581; "A party relying on document as part of his case must specifically relate each of such documents as part of his case in respect of which the document is tendered… … …"

Furthermore, the Plaintiff's Counsel in paragraph 5.1 of the written address stated that the Defendant made a refund of **N38,192,747.19 (Thirty Eight Million One Hundred and Ninety Two Thousand Seven Hundred and Forty Seven Naira, Nineteen Kobo)** and urged the Court to hold that what the Defendant is entitled to refund is **N81,807,250 (Eighty One Million Eight hundred and Seven Thousand Two Hundred and Fifty Naira)** as against **N75,000,000 (Seventy Five Million Naira)** which the Defendant admitted as the amount owed the Plaintiff. These figures were calculated by the Plaintiff's counsel in his address, but they were never pleaded by the Plaintiff in their statement of claim and at variance with the testimony of the PW1, who claimed that the Defendant also refunded the **N20,000,000 (Twenty Million Naira)** so far. These submissions by the Plaintiff's Counsel are in his imagination and are of no consequence. Evidence elicited under cross-examination which was not pleaded by a party is of no consequence to

the party's case. Issues are joined on pleadings and not in the written address of Counsel. It is not the duty of a Counsel to turn himself into a witness for his client as done by the Plaintiff's Counsel in this case. And as rightly pointed out by the Defendant's Counsel, parties should be consistent while presenting their case. The court cannot be made to pick and choose which version of the Plaintiff's claim or case to believe. The burden is on the Plaintiff to prove how the sum of **N120,000,000 (One Hundred and Twenty Million Naira)** personal loan granted the Defendant transmogrified into **N129,807,924.70 (One Hundred and Twenty Nine Million Eight Hundred and Seven Thousand Nine Hundred and Twenty Four Naira, Seventy Kobo)** as stated in the Writ of Summons or the **N81,807,250 (Eighty One Million Eight hundred and Seven Thousand Two Hundred and Fifty Naira)** as suggested by the Plaintiff's counsel in his address.

On the meaning of the burden of proof, Section 131 of the Evident Act states:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist."

See **DAGA OF DERE & ORS V DAGACIGEEWS & 1OR (2006) LPELR (911) SC; BLACKSTONE CRUSHING COMPANY LTD (2020) LPELR 51129 CA; UCHE V IGWE & 1 OR (2012) LPELR 1443 CA.**

On the contention of the Plaintiff's Counsel that the Defendant admitted in paragraph 24 of his statement of defence that he owed the Plaintiff the sum of **N75,000,000 (Seventy Five Million Naira)** and urged the Court to so hold. The said paragraph reads: *"The 1st Defendant avers that the sum he owed the Claimant is far below the above stated sum alleged and is only the sum of **N75,000,000 (Seventy Five Million Naira)** which is still in dispute because of the loan agreement."* On the meaning of admission, the court in the case of **SALAM & ANOR V YUSUF & OR (2007) LPELR 2988 SC** stated:

"An admission by a party is evidence of the party as asserted against him"

Also on the types of admission and the effect of each, the Court in the case of **NWANKWO V NWANKWO (1994) 5 NWLR (PT. 394) 153** held;

"Admissions are either formal or informal.

(a) Formal admission are those made by party to a civil proceeding, so as to relieve the other party of the necessity of proving the matter admitted. They are usually contained in pleadings, as facts admitted in a pleading need no further proof, but are taken as established. Formal admissions must also take the form of clear admission filed or made by party to a civil proceeding or by counsel in the course of the trial of a civil suit. However, in the case of a formal admission in a civil proceeding, the court has a discretion to require the admitted fact to be proved by some other evidence other than by the admission itself.

(b) Informal admission do not necessarily or strictly speaking, bind their maker and may therefore be explained or contradicted."

Also in **POLARIS BANK V FORTE OIL PLC (2022) LPELR 58598 SC** the Courts relying on the case of **OMISORE & ANOR V AREGBESOLA & ORS (2015) LPELR 24803 SC** also held:

"Admission has been defined also as voluntary acknowledgement made by a party of the existence of the truth of certain facts which are in consistent with his claim in an action."

See also the case of **ADESEI V ADEBAYO (2012) 3 NWLR (PT. 1288) 524**, which defined admission further as:

"A concession or voluntary acknowledgement made by a party of the existence of a fact, a statement made by party which is relevant to the cause of the adversary."

It is also important to state that an admission must also be direct and on equivocal. Paragraph 24 of the 1st Defendant's statement of defense, in my view, cannot be construed as an admission because it was not direct, and unequivocal admission. I agree with the Defendant's Counsel submission that with the inconsistent and unascertained sum claimed by the Plaintiff, this court will find it difficult to determine which of the sums can be said to have been admitted by the Defendant. An acknowledgement of part payment of debt owed by a customer to a bank suggests that there is still a

continuance of the action. In the case of **A. C. B. LTD V GWAGWADA (1994) LPELR** the Supreme Court held per **Olatawura JSC** held that:

"An admission relied upon by a party is not ipso facto accept it to be taken as truth by the court once it is not in accordance with the truth of the case. It is the duty of the court to decide the case in accordance with the facts pleaded and proved to be true."

The Plaintiff in the instance case have failed to adduce sufficient evidence, either orally or documentary in proof of his claim to the principle sum and the interest owed by the Defendant. A statement of accounts is not a conclusive proof of fact in issue. See **NAGEBU CO. (NIG) LTD V UNITY BANK PLC (2014) 7 NWLR (PT. 1405) 42** where the court held:

"As a general rule, a statement of account cannot on its own amounts to sufficient proof to fix liability on the customer for the overall debit balance shown in the account. Any person who is claiming a sum of money on the basis of overall debit balance in the statement of account should adduce both documentary and oral evidence explaining clearly the entries therein to show how the overall debit balance was arrived at. COOPERATIVE BANK LTD V OTAIGBE (1980) NCLR 215, HABIB (NIG) BANK LTD V GIFTS UNIQUE (NIG) LTD (2004) 15 NWLR (PT. 1869)"

See **OGBOJA V ACCESS BANK PLC (2016) NWLR (PT. 1496) 291. YEMOLE NIG LTD V ACCESS BANK PLC (2020) 17 NWLR (PT. 1752) 75**. When the PW1 was

asked under cross-examination as to the highest amount on the statement of account, he said **N120,000,000 (One Hundred and Twenty Million)**.

Furthermore, on the admissibility of the statement of account of the Defendant, Exhibit A4 and A10, both documents are photocopies, they are entries in Bankers book. See Section 89(h) of the Evidence Act. Their admissibility is based on the provision of Section 90(e) of the Evidence Act which provides the condition for the admissibility of secondary evidence as:

i. The book in which the entries copied were made was at the time of making one of the ordinary books of the bank.
ii. The entries were made in the usual and ordinary course of business.
iii. The book is in control and custody of the bank, which proof may be given orally or by affidavit by an officer of the bank.
iv. The copy has been examined with the original entry and is correct, which proof must be given by some person who has examined the copy with the original entry and may be given orally or by affidavit.

On condition for admissibility of secondary evidence of bank statements of account, the Court held in the case of **AZUBUIKE V DIAMOND BANK PLC (2014) 3 NWLR (PT. 1393)** 116 thus:

"By virtue of Section 90(i) (e)iv of the Evidence Act 2011 copies of the documents which are entries in the banker's book are admissible in

evidence only when the copies have been examined with the original entry and found correct, and proof must be given by some person who has examined the copy with the original entry and may be given orally or by affidavit."

In the instance case, Exhibits A4 and A10 photocopies of the statements of account tendered by the Claimant and the Defendant runs foul of the provisions of Section 90(e) of the Evidence Act, They are wrongly admitted and are therefore expunged from the record of the court.

Consequently, I hold that the Claimant have failed to adduce sufficient evidence in proof of the claim to the sum of **N129,000,000 (One Hundred and Twenty Nine Million)** being it the principal and accrued interest stated in their claim above. This issue is therefore resolved in favor of the Defendant.

On issue number 2, the Plaintiff contended that the Defendant failed to disclose the status of his candidacy as at the time he applied for the loan. He further maintained that the Defendant diverted his salary and allowances from its branch. These allegation of fraud, diversion of salary and concealment of fact raised by the Plaintiff is criminal in nature. Under cross-examination, the Plaintiff's witness testified that he was not in possession of any accounts into which the Defendant diverted the salary and allowances. It is settled that where allegations of fraud are raised in civil matter, the person alleging must plead the particulars of fraud and prove

same. The Plaintiff also did not tender any evidence or form which the Defendant filled in the bank and have refused to disclose the status of his candidacy. See **AKPONUNU V BEKAERT OVERSEE (1994) 5 NWLR (PT. 39342), UDOGUN V OKI (1990) 5 NWLR (PT. 153) 72**, **JIBRIL V MILTARY ADMIN RIVERS STATE (2007) 3 NWLR (PT. 102) 357.** Also, a party who alleges crime in a civil matter must prove the crime beyond reasonable doubt. See the case of **EYA VERSUS QUDUZ (2001) 13 NWLR, TENOGBADE V OBADINA (1994) 4 NWLR (RT. 338) 326**. I agree with the Defendant's Counsel that the allegation of fraud was not proved by the Plaintiff and that the issue of fraudulent misrepresentation were raised for the first time by the Plaintiff's Counsel in his final written address. It is law that address of a Counsel is based on pleaded facts and where facts are not pleaded, Counsel cannot introduce them in his written address. The Plaintiff's allegation of fraud misrepresentation and concealment are unproved. This issue also is resolved in favor of the Defendant.

DEFENCE

The Defendant raised the Defence of frustration of contract between him and the Plaintiff. It is obvious that the Defendant was offered the loan on 2nd of December 2015, and on 8th December, the Defendant's election was nullified by the Court of Appeal, thus making it impossible for his salary and allowances to be domiciled as agreed with the Plaintiff. Frustration of contract is defined by the Court in the case of **ODUM V CHIBUEZE (2015) LPELR 40895 CA** thus:

"It is settled law that under the principle of frustration in law of contract, a contract entered into with mutual consent may be discharged after its formation, events occur making its performance impossible or when supervening events destroy some basic assumption on which the parties had contracted."

See also the case of **REVENUE MOBILIZATION, ALLOCATION AND FISCAL COMMISSION V UNITS ENVIRONMENTAL SCIENCES LTD (2011) 9 NWLR (PT. 1252) 379**. A contract discharged by the principle of frustration is automatically brought to an end by the operation of law, notwithstanding the wishes of the parties. See the case of **DRAGETAWZ CONSTRUCTION NIG LTD V FAB MACH VENTURES LTD (2011) 16 NWLR (PT. 1273) 308 – PER ASIRU JCA. KLM ROYAL DUTCH AIRLINES V IDEHEN (2017) LPELR 43575 CA, CCB V ONYEKWELU (1999) LPELR 12630 CA** where a Defendant sets up a defense of frustration of contract and the plaintiff alleges that such a frustration was due to the fault of the Defendant, the onus is on the Plaintiff to prove such fact. The Plaintiff argued that the defense of frustration raised by the Defendant was self-induced. A self-induced frustration must have been foreseen by the Defendant as at the time the contract was entered into. Could it have been said that the Defendant in this case foresaw that this election was going to be nullified by the Court as at the time he entered into the contract with the Plaintiff? I do not think so. No party goes to court with the intention of losing its case, but to win. The argument of the Plaintiff that the Defendant did not disclosed his status when offered the

loan is therefore not tenable. The law is that once a Defendant admits indebtedness or receipt of loan the burden as to the reason for non-repayment or the repayment of the loan is on the Defendant. See the case of **RITE TIME AVIATION & TRAVEL SERVICES LIMITED & ANOR V SPRING BANK PLC (2018) LPELR 46992 CA, ASIKPO V ACCESS BANK (2015) LPELR 25845 CA**.

I am satisfied that the 1st Defendant have adduced sufficient reason for non-repayment of the loan by tendering the judgment of the Court of Appeal, Exhibit A10 which nullified his election as a member of the House of Representatives representing Okene/Ogori Federal Constituency of Kogi State thus discharging the burden placed on him by law. Furthermore, I also hold that the contract between the parties was frustrated by the said judgment of the Court of Appeal.

On whether subsequent repayments constitute a waiver or acknowledgement of debt by the Defendant, it is elementary to state that parties are bound by their written agreement and it is not for the court to rewrite an agreement for parties. It can only be said that there was a waiver if the terms of the agreement contained in the offer letter as to the terms of repayment of the loan was renegotiated by the parties and they are ad-idem on the new terms. An acknowledgement of the debt or waiver of the rights of the 1st Defendant must also be in writing. The case **THADANI & ANOR V NATIONAL BANK OF NIGERIA Supra** cited by the Plaintiff in paragraph 9.12 of the written address is of no relevance to the Plaintiff's

case. It is in relation to the acknowledgement of debt after the limitation for the institutional action to recover debt has elapsed as provided for in the Statute of Limitation. See **PHCN & ANOR V ATLAS PROJECTS LTD (2017) LPELR 43622 CA, NBC V INTERGRATED GAS (NIG) LTD & ANOR (2005) LPELR 2016 SC**.

I cannot therefore see from the entire fact place before this Court that there was an agreed variation of the terms and mode of repayments of the loan by the parties. What then is the option open to the Claimant to recover the debt owed by Defendants or at best to minimize the effects of the non-repayment? I concede that recourse must be had to the insurance clause which in accordance with paragraph 2, clause 3 at page 2 of the offer letter, (Exhibit A8); *"The agreement provides for securitization of the loan by Credit Assurance Policy from the lender's approved insurance brokers, and the deduction of 1.62% flat payable upfront once (payable for the Credit Assurance Policy)."*

The essence of the credit insurance policy is to protect a customer from defaulting in the event of an emergency, loss of income, or unexpected change of circumstance. The credit insurance policy will kick-in and pay all or some of the portion of an outstanding debt when any of the events outlined in the Credit Policy takes place. In the case at hand, the 1.62% was paid off and deducted from the 1st Defendant as the premium on the insurance, thus establishing a contract between the Plaintiff and the insurance company. The implication of this is that with the payment of the premium,

there is an insurance cover with respect to the loan offered the Defendant by the Plaintiff which the Plaintiff can resort to the insurance policy when any of the risk insured occurred. See the case of **AJAOKUTA STEEL CO LTD V CORP INSURANCE LTD (2004) 16 NWLR (PT. 899) 369**. I agree with the Defendant's counsel that this action is premature for failure of the Claimant to take steps in ensuring that the insurance payment was effected before the initiation of this case. I am also not mindful of the fact of the 1st Defendant in his statement of defense and witness statement on oath of his desire to settle or negotiate with the Claimant. I hold that the Claimant is obliged to seek the nominated insurance company to salvage the assured sum as the first loss payee.

In conclusion, the Plaintiff's claim fails for the following reasons:

1. For lack of sufficient evidence in proof of the claim.
2. The said contract was frustrated by the judgment of the Court of Appeal.
3. Failure of the Plaintiff to seek the insurance company for the assured sum.

Consequently, I hereby dismiss the claim of the Plaintiff.

COUNTER-CLAIM

A counterclaim is an independent action, which success is not dependent on the success of the Plaintiff's claim. The burden of proof on the counter-claim

is akin to that on the Plaintiff's claim. The body of proof on the Counsel claim is akin to that on the Plaintiff based on the preponderance of evidence and balance of probabilities. See the case of **ACCESS BANK V OGBOJA (2022) 1 NWLR (PT. 1812) 547 SC** where the Supreme Court defines counter-claim thus:

"A counter-claim is an independent and separate action. It stands on its own as such the counter-claimant like a Plaintiff in the suit has the burden of proving the counter-claim on the balance of probabilities and preponderance of evidence if he desires judgment to be entered in his favour. Usman V Garke (2023) 14 nwlr (pt. 840) 261."

The Defendant/Counter-Claimant averred and testified that a demand notice dated 5/4/2017 Exhibit D1 was sent to the Governor of Kogi State and the Chief of Staff to the Executive Governor of Kogi State thereby causing embarrassment, loss of repute and the loss of his entitlement and allowances due to him as former Governor. His Learned Counsel also submitted that the act of the Claimants constitute a breach of confidentiality between a banker and a customer, and this entitles the Defendant to damages for defamation and breach of fiduciary duties to him by the Plaintiff.

Defamation is defined as any imputation which may tend to lower the Plaintiff in the estimation of the right thinking member of the society, generally, and expose him to hatred, contempt, or ridicule. The

Court of Appeal in the case of **VANGUARD MEDIA LIMITED V BRIGHT WATERS ENERGY LIMITED & ORS (2022) LPELR 5856 CA** succinctly define that defamation as the act of damaging the good reputation of someone generally consisting of libel and slander. The essential elements that must be proved by a Claimant in establishing the tort of libel include:

i. Publication of a statement in a permanent form.
ii. The statement referred to him.
iii. The statement was defamatory of his person in the sense that;
    i. It exposed him to hatred, ridicule or contempt.
    ii. It lowered him in the estimation of right thinking member of the community or society.
    iii. It injured his reputation in his office, trade or profession.
iv. It injured his finance and credit.

All these ingredients must be established and where any of the ingredients remains of unproven, the action fails. See **GANIYU V OSHOAKPEMHE & ORS (2021) LPELR 53222 CA**. The Plaintiff in order to succeed in a claim for defamation, be it libel or slander, must call the evidence of a third party who read the alleged published defamatory statement. There must be proof of the reaction of the third party after reading the published material or publication. See **SKETCH PUBLISHING COMPANY LIMITED V AJAGBEMOKETORI (1989) 1 NWLR (PT. 100) 678**. It is therefore not the opinion of the Claimants about himself that constitute the acts of defamation but what others think about him and the effects of such

publication in the mind of the third party that read it. The third party must be named and identifiable; the publication must therefore not only be pleaded, it must be clearly proved. The Defendant/Counter-Claimant in the instant case have failed to meet the standard of proof required of an allegation of defamation and therefore cannot sustain his claim for damages. The counter-claim fails and it is hereby dismissed.

SIGN

HON. JUDGE
17/10/2024