

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON THIS ..... DAY OF MARCH, 2025

BEFORE HIS LORDSHIP HON. JUSTICE J.O ONWUEGBUZIE

SUIT NO: CV/674/23

JUDGMENT

BETWEEN:

PEACE MICROFINANCE BANK(FCMB) .....APPLICANT

AND

1. FIRST CITY MONUMENT BANK
2. JAIZ BANK
3. OPAY
4. PALM PAY
5. MONIEPOINT MFB
6. UNITED BANK FOR AFRICA
7. BENVIX GATE INTEGRATED SERVICES LTD
8. BEST FOR YOU GLOBAL CONCEPT
9. MANNIR LAWAL ABDULLAHI
- 10.KOYINSOLAMI BALQEES ABDULLRAUF
- 11.JAMIU AYINLA AKANBI
- 12.DUNIYA BA HUTU GENERAL SERVICES
- 13.AUWAL ADAMU ENTERPRICES POS 1
- 14.AYODOKUN ANKINTUNDE EMMANUEL

RESPONDENTS

## JUDGMENT

Before this Honourable Court is an Originating Motion dated the 19<sup>th</sup> day of December, 2023 and filed on the 20<sup>th</sup> day of December, 2023. The application is brought pursuant to Section 257 (1), 6 (6) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended), Order 2 Rules 6 of the FCT High Court (Civil Procedure) Rules 2018 and Under the Inherent Jurisdiction of this Honourable Court.

The Applicant seeks the following Reliefs:

1. AN ORDER of Court freezing the sum of money in the under-listed bank accounts in custody of the 1<sup>st</sup> to 6<sup>th</sup> Respondent banks as contained in the table below:

S/NO	BANK	ACCT. NAMES	ACCOUNT NUMBER	AMOUNT
1	FCMB	BEST FOR YOU GLOBAL CONCEPT	5497553012	N432,500.00
2	FCMB	BEST FOR YOU GLOBSL CONCEPT	5497553012	N1,000,000.00
3	JAIZ BANK	MANNIR LAWAL ABDULLAHI	0011529406	N915,000.00
4	JAIZ BANK	MANNIR	0011529406	N950,000.00

		LAWAL ABDULLAHI		
5	JAIZ BANK	MANNIR LAWAL ABDULLAHI	0011529406	N1,000,000.00
6	Opay	Koyinsolami balqees	7044937758	N1,000,000.00
7	Opay	Koyinsolami balqees abdulrauf	7044937758	N1,000,000.00
8	Opay	Koyinsolami balqees abdulrauf	7044937758	N1,000,000.00
9	Opay	Koyinsolami balqees abdulrauf	7044937758	998,000.00
10	Opay	Koyinsolami balqees abdulrauf	7044937758	N1,000,000.00
11	Opay	Koyinsolami balqees abdulrauf	7044937758	N550,000.00
12	Opay	Koyinsolami balqees abdulrauf	7044937758	N950,000.00

13	Opay	Koyinsolami balqees abdulrauf	7044937758	N1,000,000.00
14	Opay	Koyinsolami balqees abdulrauf	7044937758	N1,600,000.00
15	Palmpay	Jamiu ayinla akanbi	9550812260	N320,000.00
16	Palmpay	Jamiu ayinla akanbi	9550812260	N330,000.00
17	Palmpay	Jamiu ayinla akanbi	9550812260	N280,000.00
18	Moniepoint mfb	Duniya ba hutu general services	5327977522	N453,500.00
19	Moniepoint mfb	Auwal adamu enterprises pos 1	8277192506	N183,000.00
20	UBA	Benvix gate integrated services ltd	1026066069	N5,860,000.00
21	UBA	Benvix gate integrated service ltd	1026066069	N6,806,000.00

2. AN ORDER of Court directing the 1<sup>st</sup> to 6<sup>th</sup> Respondents to reverse to the Applicant the various sums of money freeze pursuant to prayer one above

which are lodged in the accounts maintained by the 7<sup>th</sup> to 13<sup>th</sup> Respondents as shown in the table of prayer one.

3. AND FOR such further Order(s) as the Court may deem fit to make in the circumstances.

The GROUNDS upon which the application is brought are:

1. The 14<sup>th</sup> Respondent forged the documents marked as exhibits Pe1, Pe3, and Pe5 to the affidavit in support of this application which he relied upon to unlawfully withdrawn the total sum of N12,665,000.00 (Twelve Million, Six Hundred and Sixty five Thousand Naira) only belonging to the Applicant.
2. The 14<sup>th</sup> Respondent deposited two dud cheques described as exhibit Pe4 to the supporting affidavit into the Applicant's Fidelity and Zenith Banks accounts numbers 5080008455 and 1016178668 respectively to draw the total sum of N12,665,000.00 (Twelve Million, Six Hundred and Sixty five Thousand Naira) only from the Applicant before the Cheques were dishonored.
3. That the sums of money unlawfully withdrawn by the 14<sup>th</sup> Respondent from the Applicant where traced to the various accounts domiciled with 1<sup>st</sup> to 6<sup>th</sup> Respondents in the manner contained and listed in the table of prayer one (1) above and contained in exhibit Pe6 to the Affidavit supporting this application.
4. That the 7<sup>th</sup> to 13<sup>th</sup> Respondents were the recipient of the various sums listed in the table of prayer one above that were unlawfully withdrawn from the Applicant and unlawfully distributed to various banks accounts maintained by the 7<sup>th</sup> to 13<sup>th</sup> Respondents with the 1<sup>st</sup> to 6<sup>th</sup> Respondents.

5. That the 1<sup>st</sup> to 6<sup>th</sup> Respondents require an Order of Court to reverse the sums salvaged on Applicant's behalf from the unlawful transactions initiated by the 14<sup>th</sup> Respondents on Applicant's bank account.
6. That the 1<sup>st</sup> to 6<sup>th</sup> Respondents have demanded for an Order of Court to enable them effect a reversal of the sums salvaged to the Applicant.

The application is supported by a 34 paragraph affidavit deposed by one Aneke Francisca Chiamaka, the operational staff of head office branch Peace Micro Finance Bank the Applicant herein. The affidavit is attached with Exhibits Pe1 to Exhibit Pe5 respectively. In compliance with the rules of this Court, the Applicant filed a written address as its legal argument in support of its application.

In a way of response the 1<sup>st</sup> Respondent (First City Monument Bank) filed a Five (5) paragraph Counter-Affidavit deposed to by one Jackson Godwin Esq. a Legal Officer in the Legal Unit of the 1<sup>st</sup> Respondent (FCMB). The Counter affidavit is attached with 'Exhibit A'. In compliance with the rules of court the 1<sup>st</sup> Respondent filed a written address as its legal submission in opposition to the application.

The 3<sup>rd</sup> Respondent OPAY as well filed a Seven (7) paragraph Counter-Affidavit in opposition to the application, deposed to by one Anita Nyeche Enyi a Client Service Executive in the law Firm of the 3<sup>rd</sup> Respondent's Counsel. The 3<sup>rd</sup> Respondent attached Exhibit A' to the Counter affidavit. In compliance also she filed a written address in opposition to the application.

The 5<sup>th</sup> Respondent MoniePoint MFB also filed Counter Affidavit of Five (5) paragraphs in opposition to the application, deposed to by one Erinyanga Eyakndue an Associate in the office of the 5<sup>th</sup> Respondent's Counsel.

The 6<sup>th</sup> Respondent UBA PLC filed a Twelve (12) paragraph Counter-Affidavit in opposition to the application, deposed to by one Emmanue Sadibo the Regional

Legal Officer of the 6<sup>th</sup> Respondent. The Counter affidavit of the 6<sup>th</sup> Respondent is attached with 'Exhibit A & B'

The 2<sup>nd</sup>, 4<sup>th</sup> 7<sup>th</sup> to 14<sup>th</sup> Respondents did not file any Counter-Affidavit in opposition to this Application.

#### THE APPLICANT'S CASE

...3. That the Applicant is a financial institution that carries on the business of Micro-finance Banking with its registered office at Plot 481, Ajose Adeogun Street, Utako District, Abuja.

4. That on the 7/8/2023, the 14<sup>th</sup> Respondent walked into the banking hall and was directed to our office as he intends to open a bank account with the Applicant.

5. That I was detailed to attend to him and in accordance with the cooperate practice of our bank, I gave him the requisite account opening forms comprising of General Information/Know Your Customer (KYC) Form, Specimen Signature Form etc. after his enquiries and he settled for a savings account.

6. That I am aware that the 14<sup>th</sup> Respondent complied with the requisite procedure for opening account thus he was assigned with the account number 1100553292.

7. The 14<sup>th</sup> Respondent demanded for a POS machine and ATM card that qualified him to fill the banks indemnity form, POS forms and his account was profiled for online banking. To cover the cost of processing an ATM card, he deposited the sum of N25, 000.00 (Twenty-five Thousand Naira) only.

8. That on the 11/8/2023, the 14<sup>th</sup> Respondent called me on phone around 13.37hrs while I was at work and informed me that he has received the sum of N5, 860,000.00 (Five Million, Eight Hundred and Sixty-thousand Naira) only transferred into Applicant's Bank account number 5080008455 domiciled with Fidelity Bank.

9. That to support his claim as stated in paragraph 8 above, the 14<sup>th</sup> Respondent forwarded to my phone number 07069173595 a successful transfer receipt purportedly issued to him by the 6<sup>th</sup> Respondent (UBA bank) showing that the sum of N5, 860,000.00 was successfully transferred to the Applicant's account No. 5080008455 domiciled with Fidelity Bank. The Transfer Receipt issued by 6<sup>th</sup> Respondent which the 14<sup>th</sup> Respondent forward to my phone through Whatsapp is annexed as exhibit Pe.1

10. That the 14<sup>th</sup> Respondent demanded that the said sum of N5, 860,000.00 transferred at his instance to the Applicant be credited into his account number 1100553292 immediately as he has urgent need for the said sum.

11. That I know of the fact that as a Microfinance Bank, the Applicant maintains series of accounts with various commercial Banks through which customers easily make payments that are routed to their personal or corporate accounts.

12. That owing to the persistent demand by the 14<sup>th</sup> Respondent that the money which he claimed was transferred to the Applicant's account at his instance as stated in paragraphs 7,8 and 9 above be credited into his account, I informed my supervisor (Mr. Ehimigbai G. Iriabija) who quickly checked the Applicant's Fidelity Bank account and observed that a Credit sum of N5, 860,000.00 was reflected on Applicant's fidelity Bank account No. 5080008455 corresponding with the claims of the 14<sup>th</sup> Respondent; but by inadvertence, my supervisor did not notice that it was an non-cleared effect (Cheque) yet to attract real value. That an approval was given for a credit posting of the said amount into 14<sup>th</sup> Respondent's account.

13. That I am aware that the 14<sup>th</sup> Respondent who had earlier applied and was programmed for online banking with our bank immediately initiated series of online funds transfers and quickly withdrew the entire some credited.

14. That the 14<sup>th</sup> Respondent initiated 3 consecutive online fund transfers totaling the sum of N2, 865,000.00 (Two Million, Eight Hundred and Sixty-five Thousand Naira) only into account number 0011529406 in the name of the 9<sup>th</sup> Respondent, which said account is domiciled with the 2<sup>nd</sup> Respondent. He equally made another transfer of the sum of N183, 000.00 (One Hundred

and Eighty-three Thousand Naira) only to account No. 8277192506 in favour of 13<sup>th</sup> Respondent's account domiciled with the 5<sup>th</sup> Respondent.

15. That I am aware that the 14<sup>th</sup> Respondent in the same vain transferred the total sum of N4100, 000.00 (Four Million and One Hundred Thousand Naira) only to account No. 7044937758 in the name of 10<sup>th</sup> Respondent domiciled with the 3<sup>rd</sup> Respondent and yet another sum of N280, 000.00 (Two Hundred and Eighty Thousand Naira) only to account number 9550812260 belonging to the 11<sup>th</sup> Respondent and domiciled with the 4<sup>th</sup> Respondent.

16. That all funds transfers as stated in paragraphs 13 and 14 above were carried out on the 11/8/2023 and same is contained in 14<sup>th</sup> Respondent's Statement of Account with the Applicant dated the 16/8/2023. The Statement of account together with a Statement of Identification made pursuant to the evidence Act is annexed as exhibit Pe.2.

17. That I equally know of the fact that the 11/8/2023 was a Friday, which culminated into a weekend. On Monday the 14/8/2023, the 14<sup>th</sup> Respondent again called me that he has received another funds credited into Applicant's Zenith Bank account No. 1016178668 at his instance and demanded that same be posted into his account.

18. To buttress his assertion, the 14<sup>th</sup> Respondent forwarded to me by Whatsapp a fund transfer receipt of N6, 805,000.00 (Six Million, Eight Hundred and Five Thousand Naira) only which he alleged was credited to Applicant's account No. 1016178668 domiciled with Zenith Bank. The said transfer Receipt is marked Exhibit Pe.3

19. That I also informed my supervisor who checked through Applicants account No. 1016178668 with Zenith Bank and saw that that a credit transaction of N6, 805,000.00 (Six Million, Eight Hundred and Five Thousand Naira) only was reflected thus approval was given to post the said sum into his account.

20. That soon after the credit balance was posted into 14<sup>th</sup> Respondent's account, he immediately effected an online fund transfer to account No. 5327977522 in favour of 12<sup>th</sup> Respondent domiciled with the 5<sup>th</sup> Respondent.

The 14<sup>th</sup> Respondent equally made 5 consecutive fund transfers totaling N4, 988,000.00 to account number 7044937758 in the name of 10<sup>th</sup> Respondent domiciled with the 3<sup>rd</sup> Defendant.

21. That I know of the fact that the 14<sup>th</sup> Respondent further transferred the total sum of N1, 432,500.00 (one Million, Four Hundred and Thirty-two Thousand, Five Hundred Naira) only to account No. 5327977522 in the name of 8<sup>th</sup> Respondent domiciled with the 1<sup>st</sup> Respondent; and transferred the sum of N650, 000.00 (Six Hundred and Fifty Thousand Naira) only to account No. 9550812260 in favour of 11<sup>th</sup> Respondent's account domiciled with 4<sup>th</sup> Respondent

22. That soon after the fund transfers by the 14<sup>th</sup> Respondent which were made in the early hours of 14/8/2023, our office was alerted by Fidelity Bank Plc. that a cheque deposited into our account on the 11/8/2023 bounced and was returned uncleared. That I had to crosscheck and it dawned on me that the 14<sup>th</sup> Respondent had not made any fund transfers into Claimants account but had instead lodged in dud cheques, which the Applicant inadvertently believed to be fund transfers.

23. That later on the same 14/8/2023, Zenith Bank equally notified us that 14<sup>th</sup> Respondents cheque No. 011074498 purportedly credited to the Applicant was equally dishonoured. That both Banks (Zenith and Fidelity Banks) stated on the face of the cheque that the drawer's account (Bevnix Gate Integrated Services) is 'attached due to legal or regulatory restriction'. The UBA cheques Nos. 00000048 and 00000054 are annexed as exhibit Pe4.

24. That I know of the fact that we applied to both Fidelity and Zenith bank and were given the two dud cheques which belonged to the 7<sup>th</sup> Respondent. It then became clear to us that the 14<sup>th</sup> Respondent had deposited the 7<sup>th</sup> Respondent's dud cheques to Applicant's account through which he was able to fraudulently obtain cash from the Applicant.

25. That when I ran through 14<sup>th</sup> Respondent's books, it was discovered that he had withdrawn all the funds totaling N12, 665,000 (Twelve Million and Six Hundred and Sixty-five Thousand Naira) only which was erroneously credited into his account on the 11/8/2023 and 14/8/2023.

26. That I have come to realized and verily believe that the two-fund transfer receipt, which the 14<sup>th</sup> Respondent forwarded to me, were forged. The said fund transfers receipts together with a Certificate of identification have been exhibited at paragraphs 9 and 18 above.

27. That since the fraud of the 14<sup>th</sup> Respondent was discovered; his telephone number 08104927801 has remained switched off. That I have also visited his address, which he supplied in his account opening, form as well as attempted to verify the utility bill he submitted and uncovered that his residential address is non-existent and the utility bill is forged. The utility bill and form is annexed as exhibit Pe5.

28. That I am aware that as soon as we discovered the fraud, my supervisor Mr. Ehimigbai G Iriabije informed me and I verily believe him that he ran an analysis of the movement of the funds and quickly sent emails to the banks and payment gateway organizations in the persons of 1<sup>st</sup> to 6<sup>th</sup> Respondent where in the 14<sup>th</sup> Respondent had sent the monies unlawfully withdrawn from his account.

29. That my supervisor Mr. Ehimigbai G Iriabije informed me on the 15/8/2023 around 9.00hours at our office at Utako and I verily believe him that the 1<sup>st</sup> to 6<sup>th</sup> respondent upon receiving his email requested for a Court Order to effect reversal of the funds in their custody and/or to sustain the Post-no-debit restriction on the accounts that the 14<sup>th</sup> Respondent used to fleece the Applicant.

30. That I am equally aware that this incident was promptly reported to the FCT Police Command, which has commenced prompt investigation into the matter.

31. That it is in the interest of justice to grant this application to enable the Applicant to salvage whatever sum she is able to salvage through the 1<sup>st</sup> to 6<sup>th</sup> Respondent who insists on a Court Order to effect any reversal of funds in their custody.

32. That the actions of the 7<sup>th</sup> and 14<sup>th</sup> Respondents are highly prejudicial and injurious to the business of the Applicant. The 7<sup>th</sup> and 14<sup>th</sup> Respondents has

fraudulently swept away micro-depositors funds with the Applicant hence an Order of this Honourable Court can remedy the injustice done to the customers of the Applicant who are micro-depositors and very low income earners of the society.

33. That it is in the interest of justice to grant this application, as the Respondents will in no way be prejudiced by an Order of this Honourable Court made in the manner prayed.

#### THE 1<sup>ST</sup> RESPONDENT'S CASE

a. That I have thoroughly perused the Applicant's Motion on Notice, Affidavit in support, Exhibits attached and discovered that they are entirely misconceived against the 1<sup>st</sup> Respondent.

b. That the 1 Respondent is not privy to the transaction and facts deposed to in paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 30 of the Affidavit in support of the Motion on Notice and put the Applicant to the strictest proof of same.

c. That the 1 Respondent admits the fact that the 8th Respondent operates an Account No. 5497553012 with her.

d. That running through the account of the 8th Respondent with the 1 Respondent revealed a credit balance in the sum of N2, 607.83 (Two Thousand Naira, Six Hundred and Seven Naira. Eighty Three Kobo) only. A copy of the Statement of account for the period of 1 Dec., 2023 to 27th Dec., 2023 is shown to me and marked as Exhibit A.

e. That the credit balance in the account of the 8th Respondent with the 1<sup>a</sup> Respondent cannot satisfy the sum of N432, 500 (Four Hundred and Thirty Two Thousand Five Hundred) and N1, 000, 000.00 (One Million Naira) only as sought in the Order against her.

f. That the 1<sup>st</sup> Respondent was not privy to all or any of the purported transactions that transpired between the Applicant and the 8<sup>th</sup> Respondent. The Applicant is put to the strictest proofs of same.

That it will be in the interest of justice to dismiss the Applicant's prayers and Order sought against the 1<sup>st</sup> Respondent on account of the 8<sup>th</sup> Respondent.

That I Jackson Godwin depose to this affidavit in good faith. Conscientiously, believing same to be true and in accordance with oath Act. 2004.

### THE 3<sup>RD</sup> RESPONDENT'S CASE

I have read the Applicant's affidavit in support of its Motion on Notice, sworn to by one Aneke Francisca Chiamaka, (hereinafter referred to as "Affidavit").

I have been informed by Ms. Adedolapo Arisoyin, a Legal Counsel in the employment of the 3<sup>rd</sup> Respondent in this suit on Wednesday, 13<sup>th</sup> of March 2024 at about 2:00pm at our office at Plot 17A Ladipo Omotosho Cole Street, Lekki Peninsula Scheme 1, Lagos, which information I verily believe to be true and correct as follows:

a. That she has read and understood the facts deposed to by the Applicant in its Affidavit in support of the Originating Motion, sworn to at the Registry of High Court of the Federal Capital Territory, Abuja on the 20<sup>th</sup> day of December 2023 (hereinafter referred to as "Affidavit").

b. That the 3<sup>rd</sup> Respondent is not in a position to confirm or deny the facts contained in paragraphs 1-14 of the Affidavit.

c. That in response to paragraphs 15 and 20 of the Affidavit, upon becoming aware of the Applicant's complaint, the 3<sup>rd</sup> Respondent investigated the alleged fraudulent transactions.

d. That its investigation revealed that the 10<sup>th</sup> Respondent (Koyinsolami Balqees Abdulrauf) with Account Number - 7044937758 only received the total sum of N7,488,000.00 (Seven Million, Four Hundred and Eighty Eight Thousand Naira) from the 14<sup>th</sup> Respondent, but the said total sum had already been dissipated by the 10<sup>th</sup> Respondent, leaving the account with a zero balance. Attached herewith and marked Exhibit A is the Statement of Account of the 10<sup>th</sup> Respondent.

e. That the 3<sup>rd</sup> Respondent is not in the position to confirm or deny the facts contained in paragraphs 16-19, and 21-32 of the Affidavit.

f. That the funds in the account of the 10<sup>th</sup> Respondent had already been dissipated before the Order of the Court was served on the 3<sup>rd</sup> Respondent.

g. That the account of the 10<sup>th</sup> Respondent is currently not funded to enable a reversal.

#### THE 5<sup>TH</sup> RESPONDENT'S CASE

a. That the 5<sup>th</sup> Respondent is a financial technology company and body corporate, duly registered under the laws of the Federal Republic of Nigeria and licensed by the Central Bank of Nigeria to carry on the business of provision of payment solutions through the instruction of technology as well as to provide financial services to unbanked and underbanked individuals across the Country.

b. That in providing the above financial services, the 5<sup>th</sup> Respondent engages the services of independent Agents who mount POS terminals in various communities in Nigeria to provide mini-banking services such as Cash Withdrawals and Cash Deposits.

c. That further to Paragraph b above, the 5<sup>th</sup> Respondent processes over 500,000 (Five hundred Thousand) transactions daily in all such POS terminals across the Country.

d. That like all commercial banks, the 5<sup>th</sup> Respondent has the same mode of operation regarding withdrawals, and for a withdrawal to be effected from one account to another, personal details of such account holder such as the Personal Identification Number (PIN) which consists of certain digits generated by the account holder, and which is known to the said account and card holder alone must be provided for any transaction to be initiated and or completed.

e. That the 5<sup>th</sup> Respondent attention was recently drawn to the Order of this Honourable Court made on 29<sup>th</sup> December 2023, directing the 5<sup>th</sup> Respondent to place a post no debit (PND) on the accounts contained in the table attached to the Applicant's Motion.

f. That in compliance with the court order, the 5<sup>th</sup> Respondent has placed a PND on the accounts maintained by the bank.

g. That further to the above paragraph, the 5<sup>th</sup> Respondent also conducted a thorough search of its records to ascertain the credit balance in the accounts provided:

## THE 6<sup>TH</sup> RESPONDENT'S CASE

I, EMMANUEL SADIBO, adult, male, Christian, Nigerian citizen of UBA PLC, 18, Adetokunbo Ademola, Wuse, Abuja do hereby make oath and state as follows:

1. That I am the Regional Legal officer of the 6<sup>th</sup> Respondent and by virtue of which I am conversant with the facts in this matter.
2. That I have the consent of the 6<sup>th</sup> Respondent to depose to this Counter Affidavit.
3. That I have read the 34 paragraphs affidavit deposed to by Aneke, Francisca Chiamaka in Support of the Originating Motion on Notice and discovered that the facts stated therein do not represent the true state of facts in this matter.
4. That the 7<sup>th</sup> Respondent (Benvix Gate Integrated Services Limited) is a customer of the 6<sup>th</sup> Respondent and maintains Account No. 1026066069 domiciled with the 6<sup>th</sup> Respondent.
5. That Account No. 1026066069 belonging to Benvix Gate Integrated Services Limited the 7<sup>th</sup> Respondent as at 4th April, 2024 has a closing debit balance of -N419, 166.82. A copy of the statement of account of the 7<sup>th</sup> Respondent and certificate of compliance is filed as Exhibit A and B
6. That Account No. 1026066069 belonging to Benvix Gate Integrated Services Limited the 7<sup>th</sup> Respondent is not funded.
7. That Account No. 1026066069 belonging to Benvix Gate Integrated Services Limited the 7<sup>th</sup> Respondent is not funded to cover the various amounts sought to be reversed.

## COURT'S ANALYSIS

Now, I have read and carefully considered the application, the affidavit evidence, as well as the Counter Affidavits of the 1<sup>st</sup> Respondent, 3<sup>rd</sup> Respondent, 5<sup>th</sup> Respondent and the 6<sup>th</sup> Respondents and the Exhibits annexed thereto including submissions made out in the respective written addresses of all the counsels.

I think the sole issue calling for consideration in this instance is

- 1 Whether from the Affidavit evidence before this court the Applicant has succeeded in proving her case on the preponderance of evidence to entitle her the reliefs sought in this application.**

By the provisions of Sections 135-137 of the Evidence Act 2011 which provides thus:

### **Section 135(1)**

**“Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those exist”**

### **Section 135(2)**

**“When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”**

### **Section 136**

**“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side”**

### **Section 137 (1)**

“in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side regard being had to any presumption that

may arise on the pleadings. In *Nwanze Augustine Okidegbe Vs. Mallam Mahmoud Mohammed & Ors (2021) LPELR – 55191(CA)* it was held thus:

“It is axiomatic that proof in civil causes is on a balance of probabilities. It is proof that is on the preponderance of evidence. Under Section 136(1), (2) of the Evidence Act 2011, the burden of proof prescribed by law is said to be as follows: 136(1). The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person but the burden may in the course of a case be shifted from one side to the other. (2) In considering the amount of evidence necessary to shift the burden of proof, regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.

In the case of *Ekweozor & Ors Vs. Reg. Trustee of the Saviours Apostolic Church of Nig (2020) LPELR-49568(SC) Peter Odili, JSC*, held extensively at pp39 to 40 para B-4 as follows: “To untie the puzzle it needs reiteration that the burden of proof in civil cases has two distinct facets; the first is the burden of proof as a matter of law and pleadings normally termed as the legal burden or the burden of establishing a case. The second is the burden of proof in the sense of adducing evidence usually described as the evidential burden. While the legal burden of proof is always static and never shifting the other type being evidential burden of proof shift or oscillates constantly as the scale of evidence of preponderates. In resolving the issue, the primary onus of proof in a civil case such as the present one lies on the Applicant who happen to have shown it through an affidavit evidence. I rely heavily on the following cases: *Anachuna Nwokafor & Ors Vs. Nwamkwo Udegbe & Ors (1963) 1 All N.L.R 107; Mogaji & Ors Vs. Odofin & Anor (1978) 4 SC 91; Bello Vs. Emeka (1981) 1 SC 101 AT 117-120.*

In **Okidegbe Vs. Mohammed** (Supra) it was stated thus:

**It needs to be said that the onus of proof does not exist in vacuum. The onus or burden of proof is the legal duty or obligation to prove or establish facts in relation to an issue. There cannot be any burden of proof where there are no issues in dispute between the parties for example, if the plaintiff's claim is admitted. There will generally be no onus on the plaintiff to go into proving of his claim. Similarly, if a particular averment of the plaintiff is admitted there will no longer be an onus to prove what has been admitted by the opposite party, therefore, to discover where the onus lies in any given case, the court has to look critically at the pleadings. Per Stephen Jonah Adah, JCA pp.31-34 para E-B.**

Let it be expressly stated here that the requirement of our law on the evidential burden and standard of proof in the civil cases has not changed. The required proof is on the balance of probabilities. I take my guide from the case of *Emeka v. Chuba-Ikpeazu & Ors*(2017) 15 NWLR(P.T. (1589)345 and particularly the case of *Ngene Vs. Igbo & ANOR*(2000)4NWLR (PT.651) 131 where the supreme court held as follows: “

**In land matter, as in other civil matters, proof is on the balance of probabilities. It is the law that once plaintiff in a civil matter shows a prima facie case, the balance of probabilities will be in his favour unless the defendant's case tilts that balance. This is implicit in the case of *Aromire Vs. Awoyemi*(1972)2 SC 1 AT 10-11**

Therefore, by the plethora of cases as well as the statutory provision x-rayed above, the court has come to an inevitable conclusion that the Applicant in this

instant case have effectively proved both the legal and evidential burden placed on her and I so hold. From paragraphs 8 to 29 of the Applicant's affidavit in support, the Applicant has successfully convinced this court on how the 14<sup>th</sup> Respondent who was served with the originating process of this case and refused to file any response; defrauded the Applicant in total sum of N12,665,000 (Twelve Million, Six Hundred and Sixty Five Thousand Naira.

The depositions in paragraphs 3 (a) to 3 (f) of the 1<sup>st</sup> Respondent counter affidavit in opposition to this application especially in paragraph 3 (f) does not have any weight to controvert the depositions of the applicant in the affidavit in support. Likewise the averments of the 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents in their Counter affidavits. More importantly Exhibit Pe1 to Pe5 has swayed the mind of the court in favour of the Applicant. I find and so hold. The deposition in paragraphs 3 to 8 of the 6<sup>th</sup> Respondent Counter affidavit has not placed doubt in the mind of the court as not to grant this application.

It is trite that the trial court is vested with the primary duty of evaluating evidence and ascribing probative value to same. This primacy is the court's responsibility arising out of the fact of the advantage it has of seeing and observing the witnesses making impression as they testify. The case of *Ajibulu Vs Ajayi (2013) LPELR-21860(SC)* gives credence to the above . The Court's discretion is to calculate what sum of money will be reasonable in circumstance, I derive my support from the case of *OlajogunOrs Vs. Agoro(2014) LPELR -24040*

The law is trite that a court is at liberty to accept and act on unchallenged and uncontroverted evidence. There is a qualification to that principle of law, for the court to accept and act on unchallenged and uncontroverted evidence, the evidence must in itself be admissible and must be credible and not capable of creating

doubts in the mind of the Court, the court will neither accept nor act on such evidence. See Godwin *Onyekwelu Okafor Vs. Cecilia and Ors. (2014) LPELR-23561 (CA) Per MisituraOmoDere Bolaji Yusuf JCA (Pp. 43-44, Per as (FA).*

It does appear to me that a distinction has not always been drawn in the manner in which evidence is challenged or controverted. “Unchallenged and uncontroverted” have most been used as meaning the same thing. See for instance *Egbun Ike Vs. A. C. B. Ltd. (1995)2 NWLR (Pt. 375) 34 SC* where it is stated that in a strict Sense “Unchallenged and uncontroverted” may not mean same thing. To challenge is to object or render doubtful. To controvert is to dispute or deny, oppose or contest. For both definitions see Black’s Law Dictionary 6<sup>th</sup> Edition.

Notwithstanding the distinction in most cases the consequence would be the same whether evidence is unchallenged or whether it is uncontroverted. Where evidence is challenged and rendered doubtful or without weight by cross-examination by contrary evidence will not render it cogent or weighty. On the other hand, the fact that contrary evidence has not been adduced to controvert the evidence of a witness on a particular matter weaken any suggestion that the evidence is not true. See the case of *OforLete Vs. State (2000) LPELR- 2270- (SC)* in the instant case before this Honourable court, despite the fact that the writ of summons, statement of claim as well as several hearing notices were served on all the defendants, they did not file any defence to the suit brought against them. This in effect connotes that the evidence of the plaintiff remains unchallenged and uncontroverted as it is the position of the law that in civil litigation generally, any evidence unchallenged or uncontroverted whether contain in an affidavit or as oral testimony on oath affords the court credible material to rely on in deciding the case at hand. I take my guide from the case of *Nanna Vs. Nana (2006) 3 NWLR (Pt. 966)*

## **COURT'S DECISION**

In the light of the above analysis therefore, and from the Affidavit evidence before this court the Applicant has succeeded in proving her case on the preponderance of evidence to entitle her the reliefs sought in this application. I so hold.

Consequently, the application has considerable merit and is hereby granted as prayed on the face of the motion paper.

This is the judgment of the Court.

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**Hon. Justice Jude O. Onwuegbuzie**