IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS TUESDAY, THE 4TH DAY OF FEBRUARY, 2025

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE

SUIT NO: CV/3609/2021

BETWEEN

1. YOUNG STALLION NIGERIA LTD
2. O-GEE SEALAND OIL & GAS LTD } **……CLAIMANTS**
3. CHIEF PETER O. AKUDIGWE

AND

ACCESS BANK PLC……...DEFENDANT

JUDGMENT

By a Writ of Summons and Statement of Claim dated 30th December, 2021 and filed same date, the Claimants prayed for the following Reliefs:

(a) A declaration that the detention of the 1st and 2nd Defendants title documents by the Defendant on account of a debt long settled after several repeated demands is illegal, unlawful and unconscionable.

(b) An order of this court compelling the Defendant to release and return the title documents of ORION FARMERS CO-OPERATIVES and FADAMA DEV. VENTURES belonging to the Claimants known as Plot 1030 and Plot 33 located within Gwagwalada Area Council, Abuja with file number FCT/GAC/RLA/MISC 4003 and FCT/GAC/RLA/97/505 detained BY THE Defendant.

(c) The sum of ₦200,000,000(Two Hundred Million Naira) only as general damages for the wrongful detinue and deprivation of the Claimants' title documents.

(d) N10,000,000.00(Ten Million Naira) as cost of maintaining this suit.

(e) Interest of 10% on the Judgment sum from the date of Judgment till same is liquidated.

In the alternative, the Claimants claim the following:

(f) The sum of N450,000,000(Four Hundred and Fifty Million Naira), being the present value of the two lands of Plot 1030 and Plot 33 located within Gwagwalada Area Council, Abuja title documents detained by the Defendant.

(g) N10,000,000(Ten Million Naira) as cost of maintaining suit.

The Defendant filed a Statement of Defence dated 9th January, 2023 and in response the Claimants filed a Reply to the Statement of Defence on 31st January, 2024.

In proof of their case, the Claimants called only one (1) witness. **Chief Peter O. Akudigwe, the 3rd Claimant** and Managing Director of 1st and 2nd Claimants testified as **PW1.** He made two(2) witness depositions dated 30th December, 2021 and 31st January, 2024 which he adopted at the hearing and tendered in evidence the following documents:

1. Two(2) copies of Certificates of Occupancy (customary) in the name of
   i) Orion Farmers Cooperative and
   ii) Fadama Dev. Venture

were admitted as **Exhibits P1a and P1b.**

2. Letter from the Law Firm of Deeplaw Associates dated 11th February, 2011 was admitted as **Exhibit P2.**

3. Letter by Young Stallion Group (Nig) Ltd dated 6th April, 2011 to the Law Firm Deeplaw Associates was admitted as **Exhibit P3.**

4. Letter by Intercontinental Bank dated 28th June, 2011 to the Managing Director, Young Stallion Nig Ltd was admitted as **Exhibit P4**

5. Letter by Deeplaw Associates dated 30th June, 2011 with an attached letter by Intercontinental Bank dated 30th June, 2011 was admitted as **Exhibits P5a and P5b.**

6. Letter from "O-Gee Sealand Oil And" dated 11th September, 2011 to the Branch Manager, Intercontinental Bank Plc was admitted as **Exhibit P6.**

7. Two(2) letters by Young Stallion Group (Nig) Ltd dated 29th September, 2011and 7th December, 2011 to the Branch Manager Intercontinental Bank was admitted as **Exhibits P7a and Pb.**

8. Letter by the Law Firm of Val Igboanusi & Associates dated 30th September, 2013 to the Managing Director, Access Bank Plc was admitted as **Exhibit P8.**

9. (2) copies of statement of account of 1st Claimant were admitted as **Exhibits P9a and b**

10. Certificate of Incorporation of 2nd Claimant dated 1st April, 2024 together with the C.T.C of its particulars of Directors admitted as **Exhibits P10a and P10b.**

11. Certificate of Incorporation of 1st Claimant dated 7th February, 2001 together with the C.T.C of its particulars of Directors admitted as **Exhibits P11a and P11b.**

12. (3) Receipts of payment in the name of 1st Claimant made to Defendant in the total amount of N10,000,000 made as follows:

    i) First Bank teller in the sum of N2,000,000 dated 29th September, 2011

ii) Bank cheque issued by 1st Claimant in the sum of N4,000,000 dated 7th July, 2011

iii) Managers cheque in the sum of N4,000,000 dated 1st August, 2011;

were admitted as **Exhibits P12a, b and c.**

The PW1 was then cross-examined by Counsel to the Defendant and with his evidence, the Claimants closed their case.

The Defendant on its part also called only one witness **Chisom Ifeoma Elochukwu**, a staff of Defendant testified as **DW1**.

She deposed to a witness Statement on Oath dated 9th January, 2023 which she adopted at the hearing. She did not tender any documentary evidence. She was then cross-examined by counsel to the Claimants and with her evidence, the Defendant closed its case.

At the close of the case, the Court then ordered for the filing of final written address.

In the address of Defendant dated 10th June, 2024, one issue was raised as arising for determination:

Whether or not the Claimants have by any iota of evidence proved their case?

Submissions were made on the above issue which forms part of the Record of Court. The thrust of the submissions made is that the Claimants have not on the evidence proffered at the trial led credible, cogent and sufficient evidence to warrant the grant of any of the Reliefs sought and accordingly that the case is bound to fail.

On the part of the Claimant, their final address is dated 30th September, 2024. In the address three (3) issues were raised as arising for determination to wit:

(a) Whether the Claimants established that there was a loan transaction.

(b) Whether in the circumstances of this case, the Claimants have on the balance of probabilities proved their case and are entitled to judgment in their favour.

(c) Whether the Claimants discharged the burden of proof on the balance of probabilities and are entitled to judgment?

Submissions were made on the above issues which forms part of the Record of Court. The case made by Claimants is simply that on the evidence led by them, they have fulfilled or proved their case on the balance of evidence to entitle them to all the Reliefs claimed.

I have set out above issues as distilled by parties. The issues in substance are in *pari materia*. The Claimant may have split the issues into three (3) and even proferred submissions on the tort of detinue but the issues raised can be conveniently accommodated by the single issue raised by Defendant. Having regard to the pleadings which has precisely streamlined the facts and issues in dispute and the evidence led by parties, I am of the view that the issues raised can be better postulated for brevity and ease of understanding under the following single issue:

Whether on a preponderance of evidence or balance of probabilities, the Claimants have prove their case to entitle them to all or any of the reliefs sought against the Defendant?

I had at the beginning of this judgment stated the Reliefs of Claimants. I had also similarly situated the defence filed by Defendant. The crux of the complaint or grievance submitted by the Claimants and the response by Defendant presents no difficulty. The case of Claimants in summary is that they are customers of the Defendant bank and that on or about 2005 and 2008, the 1st and 2nd Claimants were granted a syndicated loan to execute various projects on certain defined conditions or terms including the furnishing of title documents as security for the loan.

The Claimants contend that they furnished two title documents for the syndicated loan and that they have since paid the loans but that the Defendant has refused to release these title documents despite several demands made.

The Defendant on their part wholly denied these material representations or averments situating the grievance of the Claimants. The case of Defendant is not that it did not give the Claimants any loan but that the loan they gave claimants which they made a demand for payment of the outstanding sum had nothing to do with the alleged title documents Claimants pleaded and that no loan was offered by them and secured by the said titles or any title documents related to the subject matter of this suit. The Defendant therefore completely absolved itself of any wrongdoing in the circumstances and contends that the Claimants are not entitled to any relief(s) in the circumstances.

It is therefore to the pleadings which has streamlined the facts and issues in dispute, the evidence led and the laws on the issue that we must now beam a critical judicial search light. Indeed in the resolution of this dispute, there is no better template to situate the respective position of parties than the pleadings and evidence on record. These are the two critical elements that will be pivotal in the resolution of the extant dispute. The respective cases of parties can only be properly considered in the light of the pleadings and ultimately the quality of the evidence led.

In this case, the claimants filed a **twenty eight (28) paragraphs Statement of Claim and a ten (10) paragraphs Reply to the Statement of Defence**. The evidence of the sole witness was largely within the structure of the averments in these pleadings. The defendant on its part filed an **Eleven (11) paragraphs statement of defence**. The evidence of its sole witness was similarly within the confines or purview of the facts pleaded in the defence.

As alluded to already, it is in the light of these precisely defined facts/issues streamlined on the pleadings and evidence that the crux of this dispute and the contested assertions shall be shortly determined.

Before doing so, let me briefly highlight some principles that will guide our consideration of the pleadings and evidence led. It is settled principle of general application by virtue of **Section 131 (1) of the Evidence Act,** that 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. By **Section 132 of the Evidence Act** 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. Also by **Section 133(1) of the Evidence Act,** in civil cases, the burden of first proving 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.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing Co. Ltd. V. Bon Ltd. (2002) 11 NWLR (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 NWLR (pt 316)182 at 200.**

I must also add that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was

adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

It is also important to note at the onset that a very critical important relief which underpins the claims of Claimants is a Declaratory Relief.

Relief (a) seeks for **a declaration** that the detention of 1st and 2nd Claimants title documents by the Defendant on account of a debt long settled after several demands is illegal, unlawful and unconscionable. (underlining supplied)

The above relief is clear and self explanatory. It is difficult to therefore factually and legally situate the contention of counsel to the Claimants that this is not a declaratory relief and that the claims of Claimants seek for only **"ORDERS"** of court. Counsel had full liberty and clearly formulated this relief (a) as a declaratory Relief and it is clearly the main pivot of the action. It is too late in the day to seek to alter through the conduit of an address the clear import of the Relief as formulated.

The other **reliefs** for an order to compel release of the title documents, damages, cost of action are all ancillary and dependent on the success of the principal declaratory relief sought that the detention, *abinitio* of the title documents is illegal and unlawful.

Without a clear affirmative finding with respect to Relief (a), the success of the other Reliefs are compromised or undermined. The fairly settled legal principle is that once the principal is taken away, its adjunct is also taken away. See **Adegoke Motors V. Adesanya (1989)3 N.W.L.R (pt.109)250 at 269.** The belated attempt to therefore seek disguise or gloss over the obvious effect of Relief (a) as framed will not fly.

This being so, it must be underscored that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible, cogent and convincing evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Emeka (1981)1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.**

The point is that it would be futile when a declaratory Relief is sought to seek refuge on the stance or position of the adversary taken in the pleadings. The court must be put in a commanding height by credible and convincing evidence at the hearing of the Claimants entitlement to the declaratory Relief.

Now on the pleadings and the evidence led, it is common ground vide paragraph 5 of the claim which the Defendant admitted vide paragraph 3 of its defence that the Claimants were customers of the Defendant and that they maintain a banker/customer relationship. Such a relation in law is essentially contractual. No authority need be cited on this.

Now this case in essence as earlier alluded to, calls into question the failure of the Defendant to release securities allegedly given to secure a syndicated loan that Claimants contend they have since paid. The Defendant as already indicated denied these assertions. I note that in the address of Claimants, submissions were made that the action is not predicated on contract but on the tort of detinue and submissions were made to that effect.

I am not sure that in the context of the clearly contested assertions in the pleadings, and they are fairly straightforward and simple, that the classification with respect to the genre of tort has any or much legal traction. It appears to me to be like blowing hot air over nothing. The issues that this court is called to resolve must be issues upon facts which are relevant for pleading purposes, in the sence that they go to the substance of the matter calling for a decision.

Any matter or issue outside the confines of the facts pleaded in the pleadings, will largely lack any value or at best be of peripheral significance. The parties essentially must only plead in such a way as to prevent suprise. See **Eke V. Okwaranyia (2011)12 N.W.L.R (pt.326)181 at 203 G-H.**

This case will thus be decided solely on the basis of the issues streamlined on the pleadings without slavish adherence to a particular genre of tort. In any event, the principle is settled that where a cause of action and a relief is properly claimed, a claimant cannot be refused simply because he has not stated or wrongly stated the head of the law under which he is seeking the remedy. In other words, a wrong must not necessarily be remediable under a known head of law before it is justiciable. It is a well know legal truism that where there is a wrong, there is a

remedy and the courts nowadays are propelled more by the imperatives of doing substantial justice unfettered by technicalities which only serve to subvert the case of justice. In **S.P.D.C Nig V. Okodeno (2008)9 N.W.L.R (pt.1091)85 at 118 C-F,** the Court of Appeal instructively stated as follows:

"**In the instant case, the learned trial judge was right when he held that the nomenclature of torts will not be allowed to blur its consideration of the clear averred facts of the case before it. That it is irrelevant in the determination of this case whether the claim is based on tort of detinue or is based on tort of trespass. I do not see this pronouncement as an abdication of lawful duties to make findings on the issue by the learned trial judge as submitted by the learned senior counsel for the appellant. The stand of the learned trial judge cannot be faulted. The court today is concerned with doing substantial justice on the matter before it, rather than place reliance on hard rules of technicality based on the principle of law that where there is a right, there is a remedy. The maxim being *ubi jus, ibi remedum*. The distinction that the trial court is called upon to make and subtitles have no substance and justification in them, but are nothing more than a dangerous inheritance from the days when forms of action and of pleadings held the legal system in their clutches."**

I need not add to the above.

In every trial, pleadings and the evidence adduced determine ultimately the outcome of the trial, for parties are bound by the case they put before the court. The main reason for the insistence of filing of pleadings in all cases is to ascertain with as must certainty as possible the issues in controversy between the parties and to create a situation where none of the parties is taken by surprise. See **Agbu V. Civil Service Comission Nasarawa State (2011)1 N.W.L.R (pt.1229)544.**

Having laid out the above template, we now come to the crux of the dispute. I had earlier emphasized on the pivotal role or importance of pleadings of parties. That is the first critical element and then obviously the quality and probative value of evidence to support the pleaded facts which is the second important element. I must repeat again that anything outside the purview of the pleadings cannot be relevant.

In resolving the issues raised by the present inquiry, there is no better template to situate the respective grievance or position of parties than the pleadings. The case made out by the Claimants as situating the building blocks of the loan transaction, the securities they allegedly gave and payments made can be situated in the following **paragraphs 7-12 and 27 of the Statement of Claim**:

"**7. The 1st and 2nd Claimants sometime on or about 2005 and 2008 syndicated a loan with the Defendant to execute their various projects/contracts awarded to them.**

8. The Claimants avers that the Defendant gave conditions for the grant of the various loans, amongst which the Defendant requested that they provide landed properties as collateral or security to guarantee the said loan to be granted to them.

9. To satisfy the condition, the 3rd Claimant, as Chairman/Managing Director of the 1st and 2nd Claimants released the title documents of landed properties of ORIENT FARMERS CO-OPERATIVE and FADAMA DEV. VENTURES belonging to third party collaterals.

10. The Claimants avers that the title documents of the landed properties of third party collaterals deposited by them with the Defendant and kept as collaterals by the Defendant are:

(a) Customary Rights of Occupancy of ORIENT FARMERS CO-OPERATIVE, of Plot No. 1030 with File No. FCT/GAC/RLA/MISC4003, issued by Gwagwalada Area Council, Abuja measuring 1410.18 meters square, dated 4th August, 2003. Notice is hereby given to the Defendant to produce the original.

(b) Customary Certificate of Occupancy of FADAMA DEV. VENTURES of Plot No.33 (Commercial Plot), with File number FCT/GAC/RLA/MISC/97/505 issued by Gwagwalada Area Council, Abuja measuring 34 Hectares. The said Rights of Occupancy and Certificates of Occupancy (Customary) of the said lands are hereby

pleaded. Notice is hereby given to the Defendant to produce the original.

11. The 1st and 2nd Claimant avers that the Defendant accepted the said title documents deposited by the Claimants are security or collateral for the loan granted to the Claimants.

12. The Claimants avers that the loans granted to the 2nd Claimant by the Defendant was in 2005 and was paid off in 2007, while that of the 1st Claimant was granted in 2008 and was paid off in 2011 respectively.

27. The Claimants avers that they have been deprived of the use of the title documents to procure other loans to do their turkey projects, and have suffered serious loss and business set back occasioning special damages to tune of N200,000,000(Two Hundred Million Naira).

The **Defendant** as stated earlier wholly denied these averments and joined issues with Claimant in the defence thus:

"**5 The Defendant denies paragraphs 7, 8, 9, 10,11, 12 and 27 of the Statement of Claim and states that it never syndicated any loan in 2005and 2008 or any date whatsoever relating to the subject matter of this suit with the Claimants for the execution of projects, contracts, turnkey projects or any contract howsoever described awarded to them or anybody related or connected to them and therefore never requested for, accepted nor detained the titles to the landed properties known as Orient Farmers Co-operative and Fadama Dev. Ventures belonging to the Claimants or a third party as collaterals or securities for the loan. The Claimants are challenged to provide the Offer of Loan Letter or Letters issued by the Defendant to them containing the terms of the offer, the amount offered and the details of the purported collaterals captured in the Offer of Loan Letters secured with the said collaterals. The Claimants are challenged to the strict proof of the facts stated therein.**

6 With specific reference to paragraphs 11, the Defendant avers that it never accepted any title document(s) from the Claimants and further states that

the purported acknowledgment on the face of Certificate of Occupancy No. FCT/GAC/RLA/97/MISC/505 of Fadama Dev. Ventures by one Nwzuda Essen or howsoever described or pronounced bears no stamp or address of the Defendant which was and is customary, as the said Nwzuda Essen is not known to the Defendant. The Claimants are challenged to the strictest proof the facts stated in that paragraph.

7 **The Defendant particularly denies paragraph 10 of the Statement of Claim and avers that it never received nor kept in its custody the Customary Right of Occupancy in respect of Orient Farmers O-Operative of Plot No.1030 with File No. FCT/GAC/RLA/MISC 4003 issued by Gwagwalada Area Council, Abuja measuring 1410.18m2 dated 14th August, 2003 AND the Customary Right of Occupancy in respect of Fadama Dev. Ventures of Plot No.33 (Commercial) with File No. FCT/GAC/RLA/MISC/97/505 issued by Gwagwalada Area Council, Abuja measuring 34 hectares and once more challenges the Claimants to provide the Letters of Offer for the purported Loan where the title documents were captured as securities for a loan or facility granted to them.**

As alluded to earlier, the Claimants filed a reply to the above which served to accentuate the positions earlier made by Claimants and to further define the contested assertions. These are now matters of proof by evidence. The defence of Defendants as highlighted in the paragraphs above are without any shadow of doubt clear specific denials of all essential and material allegations constituting the case of Claimants.

The point to underscore is that the Defendant having situated a proper traverse in law, clear issues of facts have now been raised requiring evidence and or proof. Indeed since parties have clearly joined issues on these averments, a template has clearly arisen making proof mandatory. The remit of the court now is to simple situate whether the required proof has been met within the legal threshold earlier defined.

The first point to determine relates to the contested issue of a syndicated loan which Claimants said was given to 1st and 2nd Claimants in 2005 and 2008 on conditions including the deposit of title deeds which the Defendant denied.

These clear elements of the grievance on the pleadings of Claimants is a function of an agreement with Defendant but nothing unfortunately was tendered by Claimants containing or situating the terms and conditions as averred in paragraphs 8 and 9 of the claim.

If there was a syndicated loan in **2005** and **2008** to 1st and 2nd Claimants which by **Exhibits P10 and P11** are registered companies on clear and precisely defined terms, nothing was tendered to situate this relationship. In **paragraph 6 of the Reply,** the Claimant said that the Defendant have the letters of grant and they pleaded and put them on notice to produce copies of the letter of grant of the loans. In the light of this averment and the Defendant's position on this transaction, the Claimants however did not tender any secondary copy having giving the Defendant notice to produce the letters of grant. The law is that where notice to produce is given and effect is not given to it by the adversary, the person giving the notice is at liberty to produce secondary evidence. **Section 89(a)(i) and (ii) of the Evidence Act.**

The affirmative contents of this agreement as projected and relied on by Claimants cannot therefore be a matter for guess work or conjecture. However under cross-examination, PW1, conceded he does not have in evidence the loan application made; he also conceded that he does not have copies of the loan agreement or offer letters for the loan which would have contained and provided the terms and conditions of the agreement.

Again under cross-examination, PW1 interestingly added that a **deed of tripartite legal mortgage** was executed to situate the transaction, but that he does not have this critical and important document. Again in the absence of this document, how will the court be in any position to situate the terms and what was mortgaged or offered as security?

PW1 said he lost these important documents when he was involved in a serious road accident but nothing was proferred in evidence to situate 1) this accident and when it happened, and 2) the loss of any documents during this accident relating to this transaction.

When questioned with respect to whether he wrote to the bank or the police to report the loss of these documents, he answered in the negative. It is really strange

that the PW1 who appears to be enlightened did not take any steps to at least report the loss of these important documents to the Defendant and to make a report at the police station to incident the accident and loss of the documents or to swear to an affidavit of loss or to even make a publication of the lost items in a widely circulating newspaper. What this does is to give credibility to the loss. The Claimants never took any of these defined steps making the narrative of PW1 incredible and or improbable. Even if the PW1 was seriously incapacitated as argued and this incapacitation was not established at all by a medical report, by **Exhibits P10b and P11 b,** the particulars of directors of 1st and 2nd Claimants (situating in total, about seven (7) directors), shows clearly that these basic actions to situate loss of these important documents should and could have been made by other directors and or staff of the two Registered Companies besides the PW1. The contention that the other directors are all family members taking care of him and as such could not have written or taken steps to report the loss clearly lacks conviction and will not fly.

Now what is interesting is that the PW1 that claimed that these critical documents were lost when he was involved in an accident was however able to tender in evidence documents vide **Exhibit P1a-P12** all related to the same transaction. It is really curious that the letters of offer for the loan, the mortgage deed are lost but copies of collaterals allegedly collected by Defendant's staff in 2007 (**Exhibits P1a and P1b);** evidence of payment of the loan vide teller, cheque, manager's cheque **(Exhibit P12a, b and c)** made at different months in 2011; C.T.C of particulars of Directors of 2nd Claimant **(Exhibit P10b)** made in 2004, the exchange of correspondence between Claimants, Defendant and their agents vide **Exhibits P2-P7** all written at different times in 2011 are all available. It appears to me that the PW1 for the Claimants was deliberate in the choice of documents he has presented, to suit his narrative and this for me has affected his credibility and the probative value of the Claimants case.

Credible evidence particularly in this connection means the evidence worthy of belief and for evidence to be worthy of belief, it must not only proceed from a credible source, it must be credible in itself in the sence that it should be natural, reasonable and probable in view of the entire circumstances. See **Agbi V. Audu Ogbeh (2006)11 N.W.L.R (pt.990)85 at 108.**

The evidence of PW1 on the failure to take any steps to report the loss of these important documents of the loan transaction clearly appears with respect to be an affront to reason and intelligence and no credibility ought to be accorded to it. See **Fatunbi V. Olantoye (2004)12 N.W.L.R (pt.887)229 at 247C.**

Now as stated earlier in evidence, PW1 tendered copies of the title documents he said he left with Defendant vide **Exhibits P1a and P1b** and learned counsel to the Claimant made submissions in his address that the Defendant acknowledged receipt of same. PW1 could not establish or show in evidence that Defendant acknowledged receipt of these two title documents. There is no stamp of the bank situating or acknowledging receipt. The contention that the person who collected the originals was his accounts officer and presumably a staff of Defendant was denied by Defendant. The Claimants did not proffer any iota of evidence of any kind to show that the person is an accounts officer and a staff of Defendant. The person who signed the documents was not produced in court and nobody was produced to situate that he was a staff of the Bank at the material point in time. In the absence of evidence, the averment clearly has not been proved or established.

The contention of learned counsel to the Claimants, that the Defendant did not tender any document as company policy showing the requirement that acknowledgement or receipt of any document or correspondence must be stamped and signed by its staff and as such that they have proved that the title documents were submitted with profound respect will not fly. The law has always been that he who asserts must prove and 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. See **Sections 131(1) and 132 of the Evidence Act.** The attempt to alter the time honoured burden of proof must fail.

The Defendant having categorically denied that collaterals were given to its staff, the Claimants have the burden to prove that these collaterals were indeed given and collected by a staff of Defendant to secure the loans given. The threshold on the evidence was not crossed.

The bottom line as I have demonstrated at some length is the complete absence of anything to situate the syndicated loans to 1st Claimant and 2nd Claimant in 2005 and 2008 and the terms and conditions situating the terms of the loan, particularly

the principal amount, the interest component, the tenor and no less important the **securities** given for the loan, and that for me is fatal.

It needs be emphasized that the duty of court is to decide between the parties or the basis of what has been demonstrated, canvassed and argued in court. This important duty is not a function of the final address of parties. See **Onibudo V. Akibu (1982)7 SC 60 at 82.**

A court does not equally decide issues on speculation no matter how close what it relies on may seen to be to the facts. Speculation in law is not an aspect of inference that may be drawn from facts that are laid before the court. Inference is a reasonable deduction from facts whereas speculation is a mere variant of imaginative guess which, even when it appears plausible should never be allowed by a court to full any hiatus in the evidence before it. See **Overseas Construction Co Ltd** V. **Greek Ent. Ltd (1985)3 N.W.L.R (pt.13)409.**

Now in the face of this rather fluid and unclear dynamics of the facts of the case, the Claimants have sought to rely on a letter by Deep Law Associates vide **Exhibit P2** to situate this transaction and their grievance. The question here is whether these documents and other documents provides the elements to support the claim and the Reliefs sought. Now in **paragraphs 12-17 of the Statement of Claim**, the Claimants pleaded as follows:

"12 The Claimants avers that the loans granted to the 2nd Claimant by the Defendant was in 2005 and was paid off in 2007, while that of the 1st Claimant was granted in 2008 and was paid off in 2011 respectively.

13 The Claimants avers that as at February, 2011, only the 1st Defendant had an outstanding repayment balance of ₦30,956,657.57 to the Defendant which accrued as a result mounting interest rate.

14 The 1st Claimant avers that it received a letter from the Defendant's appointed Solicitors, DEEPLAW ASSOCIATES, who wrote it a demand letter dated February 11, 2011 with its appointment letter attached, demanding for the outstanding payment of the sum of N30,956,657.57 and also invited it for a meeting on February 17, 2011 at 3:30p.m. The said

Defendant's Solicitors and appointment letters are hereby pleaded and will at the hearing of this suit be tendered and relied upon.

15 The 3rd Claimant avers that he attended the meeting on behalf of the 1st Claimant on the said meeting of 17th February, 2011, and made a request for interest waiver and a proposal to pay the sum of N10,000,000 as full and final payment for the 1st Claimant which he was asked to reduce into writing and he did on the 6th April, 2011. The said letter of proposal is hereby pleaded.

16 The Claimants avers that they received a letter from the Defendant dated June 28, 2011 and another letter from the Defendant's Solicitors dated June 30th, 2011 accepting the sum of N10,000,000 as full and final payment from the 1st Claimant. The said Defendant and its Solicitor's letters are hereby pleaded and shall at the hearing of this suit be relied upon.

17 The 1st Defendant avers that it demonstrated good faith and made the N10Million payment as full and final payment."

The Defendant again vehemently denied the above averments in **paragraph 8** of the Statement of Defence thus:

8. The Defendant admits paragraphs 13, 14, 15, 16 and 17 of the Statement of Claim only to the extent that the events narrated therein took place but avers that the demand for the payment of N30,956,657.57 had nothing to do with the alleged pleaded titles of the Claimants and neither was there any loan offered or secured by the said titles or any title(s) at all belonging to the Claimants or anybody whatsoever, relating to this suit. The Claimants are challenged to provide the Offer of Loan Letter or Letters issued by the Defendant to them where the demanded sum was as a result of an outstanding from a loan or loans offered and secured by the said title documents.

The above contested assertions are clear. Because of the way the Claimants made submissions in the final address, it is important to state that the position of the Defendant is not that the Claimants were not given any loan; that is not the crux or

pivot of their defence as can be seen in **paragraph 8** above. The paragraph and the tenor of the defence of Defendant is that the demand they made for the Claimants to pay back the sums of **₦30,956,657.57** has nothing to do with the pleaded titles which Claimant said it gave to them as security and that neither did they give Claimant any loan secured by the said title documents belonging to Claimant. The defence here is again clear and unambiguous. The contention that the Defendants admitted the loan transaction secured with the title documents **Exhibits P1a and P1b** is wholly inaccurate. It is true that admission in pleadings basically puts an end to proof but this is not the case here at all. The Claimants, I am afraid must prove that any particular loan was given by Defendant and secured by those specified title documents.

The cross-examination of DW2 for Defendant further delineated the position of Defendant on the issue of the loan given to Claimants and whether it had any nexus or link with any title documents.

Under cross-examination, DW2 made the point that when they received the letter, for return of collaterals vide **Exhibit P7b,** there was no collateral in this case, so there was nothing to return to Claimants and that this position was conveyed orally to the Claimants.

She also added that when the letter of demand by Counsel to Claimants for return of collaterals vide **Exhibit P8** was received, it was again sent to the legal department and they investigated and found that the loan was not tied to any facility. She also added that she is not aware that the issue of collateral was acknowledged by two of their staff. It is therefore difficult to situate any binding admission in the circumstances.

Let us perhaps go back to the pleadings again and evaluate the evidence proferred on the issue. It must be noted that all these documents were tendered by Claimant. By paragraph 12 of the claim, the Claimants projects two loans- that the first loan to the 2nd Claimant was in 2005 and paid back in 2007. The **second loan** to 1st Claimant was in 2008 and paid off in 2011. As stated earlier, no iota of evidence was supplied to situate any of the above loan transactions or averments. There is nothing evidencing the grant of these specific loans and evidence of payment. The letter by Deeplaw Associates vide **Exhibit P2** while alluding to the indebtedness of

₦30,956,657.57 did not on its face however mention or specify any of the two loan tranches or transactions and did not mention any collateral given by the Claimants and for which loan. I am not sure that the tenor or character of this letter can be expanded or altered to suit a particular purpose. See **Section 128 of the Evidence Act.**

I have equally read the response of Claimants vide **Exhibit P3** dated 6th April, 2011 and in the letter, the Claimants did not allude to two loans given to them and which they had paid or fully liquidated one of the loans. There is nothing in this letter situating any nexus with any of the two loans for which any collateral was given. All this letter is praying for is for concession to pay N10Million in full and final settlement of a loan. There is again nothing situating this particular loan in the light of the position of Defendant in paragraph 8 above and the court cannot speculate.

The letter by Intercontinental Bank vide **Exhibit P4** dated 28th June, 2011 may have agreed to the proposal of Claimants to pay N10Million as full and final payment but again no where did this letter link the payments to any loans for which security by way of documents of title were given by Claimants. The same position holds true for the letter written by Deeplaw Associates, the loan recovery agent of Defendant to Claimants vide **Exhibit P5a** dated 30th June, 2011 which called on the Defendant to keep to the commitments to pay of the outstanding indebtedness of **₦30,956,657.57** within one month given to the Claimant by Defendant. Again, there is nothing in this letter situating this loan or any particular loan secured with any collateral or the title documents relied on by Claimants.

I incline to the view that if this loan was linked to any collateral, these letters would have alluded to it but they did not. Now what is interesting is that in the letter agreeing to the proposal of Claimant, the Defendant by its letter dated 28th June, 2011 gave Claimant one month from the receipt of the letter for the Claimant to pay the **₦10,000,000** after which the proposal shall become null and void.

Indeed by the letter of the Defendants Agent, Deeplaw Associates to Claimants vide **Exhibit P5a,** they informed Claimants the payment must be on or before July, 30th 2011. In evidence however the payments made by **Exhibits P12a, b ad c** situates that the payments made by Claimants were made as follows:

1) First payment of N4000,000 was made on 7th July, 2011.

2) Second payment of N4,000,000 was made on 1st August, 2011 and

3) The final payment of N2,000,000 was on 29th September, 2011.

It is again clear that going by the clear contents of **Exhibit P5a**, the Claimants did not even meet up with the time sensitive tenor of one (1) month for the payment of the outstanding indebtedness of **₦30,956,657,57**.

It is obvious that even with respect to this outstanding loan, the Claimants did not meet up with the time frame for payment. In addition, on the evidence, this payment was not even creditably linked to the two different loans Claimants said was given to them and secured by two (2) title documents.

To further make the case of Claimants unclear and blurry, after these payments which were clearly not made within the one month duration, they wrote this letter vide **Exhibit P6** dated 11th September, 2011. It reads thus:

"**Re: <u>REQUEST FOR RELEASE OF COLLATERAL</u>**

Reference is made to our several letters for the release of collateral used as security for the facility granted us since 2007.

The said facility has been paid since then, hence our request for the release.

Thanking you in anticipation.

Yours faithfully

Signed

Peter Akudigwe
MD/CEO"

This letter did not situate or mention any particular collateral and the loan secured with it. Now it must be noted that in paragraphs 12 and 13 of the claim and the pivot of this action and for which they gave the securities in question, they pleaded thus:

12 The Claimants avers that the loans granted to the 2nd Claimant by the Defendant was in 2005 and was paid off in 2007, while that of the 1st Claimant was granted in 2008 and was paid off in 2011 respectively.

13. The Claimants avers that as at February, 2011, only the 1st Defendant had an outstanding repayment balance of ₦30,956,657.57 to the Defendant which accrued as a result (sic) mounting interest rate.

When these paragraphs are juxtaposed with **Exhibit P6,** it will be clear that the request for collateral made vide **Exhibit P6** for a facility granted in 2007cannot be the same with the subject of this case which deals with facilities allegedly granted **in 2005 and paid in 2007** and the facility granted in **2008 and paid in 2011**.

It may also be relevant to refer to Claimants letter vide **Exhibit P7a** dated 29th November, 2011 to the Defendant wherein after the final payment of ₦2,000,000, it wrote praying that the Defendant writes to them indicating that they don't owe the bank anymore.

Now in this letter, there is nothing situating which of the two loan transactions the letter is dealing with it and strangely there is no request for return of any collateral given for any loan.

Exhibit P7b by Claimants dated 7th December, 2011 requesting for a letter of no indebtedness and release of security document was equally silent with respect to the indebtedness out of the two it was dealing with and the nature of the security furnished. It is clear that this case suffers from insurmountable evidentiary challenges.

The Claimants may have elaborately pleaded clear constituent elements of their case in their pleadings but the critical evidence to support the pleadings were lacking and pleadings can never be so construed as evidence. The Claimants may have pleaded a syndicated loan, but absolutely nothing was furnished to situate the loan and its terms. If a tripartite legal mortgage was executed and securities given, there was no evidence of any kind to situate the agreement and to support giving of any collateral and that to me is fatal.

It is trite law that pleadings, however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must be led to prove the facts relied on to sustain the allegations raised in pleadings. See **Union Bank Plc V. Astra Builders (W/A) Ltd (2010)5 NWLR (pt.1186)1 at 27 F-G**

It will therefore be wrong for any court to treat averments in a pleading, without evidence as evidence of matters averred therein. See **Omo-Agege V. Oghojafor (2011)N.W.L.R (pt.1234)341 at 353 G-H.**

This case apart from glaringly suffering from an abysmal lack of evidence appears to be one largely contested on the basis of speculations and the address of counsel. Learned senior counsel, I am afraid tried so much and so hard to construct a scenario of a case not based on the structive of the pleadings and the evidence led in this case. And cases are decided on pleadings and evidence led in support not by address of counsel. An address of counsel is no more than a land trend in adjudication and cannot take the state of the hard facts required to constitute credible evidence. No amount of brilliance in a final address can made up for lack of evidence to prove and establish or disprove and demonstrate points in issue. See **Iroegbu V. Mr. Calabar Carrier (2008)5 N.W.L.R (pt.1079)147 at 107; Michiica Local Govt V. N.P.C (1998)11 N.W.L.R (pt.573)201.**

This unfortunately is the reality or this case.

At the risk of sounding prolix, none of the Exhibits from **P1-P12** tendered by Claimants situated any clear identifiable syndicated loan secured by two title documents. Indeed apart from counsels letter **Exhibit P8,** none of the letters of demand referred to or mentioned any of the securities i.e the **Exhibits P1a and P1b.**

Again there is nothing on the evidence to support that these securities were given to the bank at any time or that any staff of the Bank acknowledged receipt of the 2 land titles documents as security for any loan. Counsel to the Claimants as stated earlier may enjoy liberties to make the submissions made in clear and obvious denial of the contents of the documents tendered but a court of law qua justice enjoy no such liberties.

Any finding of fact which is made having regard to the existence of documentary evidence, such as tendered by Claimants in this case, cannot be seen to fly in the face of the accepted relevant document or documents by the court. If it is, it will be contradictory and perverse. See **Atolagbe V Shorun (1985)4 SC 250 at 285.**

A trial judge will not be entitled to assume as Claimants counsel has done here that it is within his exclusive province to make findings of fact(s) when such findings depend much or entirely on documentary evidence. His findings must reasonably reflect the contents of the document(s) in question as a whole so as to be seen as a true understanding and interpretation of the contents or terms thereof. A court cannot however draw inference in *vacuo* or in a vacuum but in relation to facts which justify such inference. And since inference is an act of deducing or drawing a conclusion from existing premises by way of acts, the facts upon which the inference is deducted or drawn must be in close proximity with the inference. An inference cannot therefore be at large, otherwise it cannot perform the inferential function of drawing conclusion from premises. See **Boniface Ezeadukwa V. Peter Maduka& Anor (1997)8 NWLR (pt.518)635 at 663.**

The documentary evidence in this case did not support the conclusions sought to be placed on them by counsel to the Claimants. The documentary evidence did not also go both ways; if anything it unflinchingly projects a failure by the Claimants to establish their case. I say no more.

The above findings provide legal and factual basis to determine whether **the Reliefs** claimed by Claimants are availing.

Relief (a) on the basis of the findings, demonstrated at length above, must fail. There is absolutely nothing on the evidence to support that any loan was given to Claimants and secured by any title documents. With the failure of **Relief (a),** the principal claim, **Relief (b)** for an order to compel return or release of the title documents which on the evidence has not been established to have been deposited with Defendant for any loan must equally fail. **Reliefs (c), (d) and (e)** for general damages, cost and interest must all fail. As stated earlier, the legal principle is that once the principal is taken away, its adjunct is also taken away. With the failure of **Relief (a), Reliefs (b)-(e)** have no foundation and must collapse.

Now the Claimants also have an alternative claim praying for:

(f) The sum of N450,000,000(Four Hundred and Fifty Million Naira), being the present value of the two lands of Plot 1030 and Plot 33 located within Gwagwalada Area Council, Abuja title documents detained by the Defendant.

(g) N10,000,000(Ten Million Naira) as cost of maintaining suit.

The law is settled that where a claim is in the alternative, the trial court will first of all consider whether the principal or main claim ought to have succeeded. It is only after the court has found that it could not for any reason grant the principal claim that it would consider the alternative claim. See **Newbreed Organisation Ltd V. Erhomosele (2006)5 N.W.L.R (pt.974)499 at 544 D-C**

Now with the failure of the principal Reliefs or claims, the court can now properly consider the alternative claim which has to be established by credible evidence and on the same legal standard of proof.

In this case, it is clear that following the failure of the Claimants to establish that it left or gave any title documents to defendant to secure any loan, it is clear that the alternative claim is similarly compromised. It is logical to hold that you cannot factually and legally claim value for something which it has not been established by evidence that you gave to the other who has held on to it unfairly.

Relief (f) of the alternative claim thus fails along with Relief (g) for cost of action.

As I round up, the point must be made that the whole trial process, and whatever its imperfections is entirely evidence driven; evidence with the required cogency and probative value. Where a case is not backed up by evidence or where the evidence is tenous, lacking value and credibility, that would amount to a failure of proof.

On the whole, the single issue raised is answered in the negative in favour of Defendant. The Claimants have not established that they are entitled to any of the Reliefs prayed for.

This action unfortunately wholly lacks merit and is dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. Ananti Val Igboanusi, Esq., for the Claimants

2. C.J. Akunnakwe, Esq., with G.N Onwushalu, Esq for the Defendant