

**IN THE COURT OF APPEAL**  
**IN THE LAGOS DIVISION**  
**HOLDEN AT LAGOS**

**APPEAL NUMBER: CA/ /2025**  
**SUIT NUMBER: IKD/ADR/150/2024**

**BETWEEN:**  
**FREEQUEST NIGERIA LIMITED**  
Claimant/1<sup>st</sup> Defendant to Counter Claim/  
Appellant

**AND**  
**UNITED BANK FOR AFRICA PLC**  
Defendant / Counter Claim /Respondent

**NOTICE OF APPEAL**

TAKE NOTICE that the Appellant, being dissatisfied with the decision of the High Court of Lagos State per the decision of HON. JUSTICE Y.G. OSHOALA delivered on the 11th Day OF February, 2025, in Suit No. IKD/ADR/150/2024, doth hereby appeal to the Court of Appeal upon the basis and on the grounds set out in paragraphs 2 and 3 respectively.

TAKE FURTHER NOTICE that at the hearing of the appeal, the Appellant will seek the reliefs stated in paragraph 4, while the particulars of the parties affected by the appeal are detailed in paragraph 5.

**2. PART OF THE DECISION COMPLAINED OF:**

The Appellant appeals against the whole decision of the trial Court except where the decision is in favour of the Appellant.

### **3. GROUNDS OF APPEAL:**

#### GROUND ONE

The learned trial judge erred in law by failing to set aside the counter-claimant's unilateral amendment of the case title, through which two additional parties were inserted as the 2nd and 3rd defendants to the counterclaim without any formal application or order of the court.

#### PARTICULARS OF ERROR

- 1) The refusal by the trial judge to address the issue and the refusal of the lower court to set aside the offending unilateral amendment contravenes established legal principles governing the joinder of parties in a suit.
- 2) Furthermore, the trial court failed to consider or properly address the material arguments raised in the notice of preliminary objection challenging this irregularity, thereby rendering the ruling perverse and leading to a substantial miscarriage of justice.
- 3) The learned trial judge failed to appreciate that a counterclaim constitutes an independent and distinct action and is thus governed by procedural rules applicable to the initiation of fresh claims including the requirement to obtain the leave of court before new parties could be joined.
- 4) Any amendment or joinder even in a counterclaim must strictly comply with the applicable rules of court.

- 5) The counter-claimant, without making a formal application or obtaining a court order, arbitrarily amended the case title to introduce two additional defendants to the counterclaim.
- 6) These added parties — who were merely guarantors to the present defendant to the counterclaim — were joined in contravention of the settled principle in *Dada v. Dosunmu (2006) 18 NWLR (Pt. 1010) 134*, which unequivocally requires a party seeking joinder of non-claimant defendants to do so through a formal application supported by an affidavit stating the necessity of their inclusion.
- 7) The trial court failed to uphold the position that a counterclaim against a third party who was not an original claimant in the main suit must be preceded by a motion on notice for joinder.
- 8) This requirement is imperative under the relevant Civil Procedure Rules, which mandate that all necessary parties to an action must be properly before the court before any judicial determination can be made against them.
- 9) The trial court overlooked the crucial fact that the purported joinder of the guarantors — who had no direct claims in the original suit — was done without the order of court.
- 10) The counter-claimant failed to bring the application for joinder where they would have demonstrated that the presence of the persons that were unilaterally joined was necessary for the just determination

of the counterclaim, thus the failure to give the court this decision makes the processes filed in consequence liable to be struck out.

- 11) The learned trial judge neglected to address the material contention raised in the notice of preliminary objection to the effect that the newly added guarantors were not properly before the court due to the absence of a formal joinder application.
- 12) The failure of the trial court to resolve this issue constitutes a fundamental error, amounting to a denial of fair hearing as guaranteed under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- 13) By allowing the counter-claimant to unilaterally and irregularly join the guarantors without a court order and strict adherence to due process, the trial court sanctioned a procedural anomaly that is highly prejudicial to the claimant.
- 14) The joinder serves no legitimate purpose other than to pressure, annoy, and harass the claimant while sidestepping the core issue in the main claim, where the bank's customer challenges the validity of the debt.
- 15) The trial court's ruling is perverse as it disregards well-settled legal principles which mandate that a court must have all necessary parties properly before it before assuming jurisdiction over them.

- 16) The decision is unsafe as it condones the unilateral amendment of a case title, undermining the court's authority over its processes and enabling litigation by stealth.

## GROUND TWO

The learned trial judge erred in law when the court below held that:

**'Similarly, it has been held that service of process on counsel is good service on his client. If a counsel fails to bring the fact to the notice of his client, this failure cannot affect the propriety of the service. It may be good reason to extend the Court's indulgence to the client in a proper Application or ground a cause of action against counsel.'**

### PARTICULARS OF ERROR

- 1) The learned trial judge failed to properly distinguish between the service of originating processes, which must be served directly on the party concerned, and the service of interlocutory processes, which may, in appropriate circumstances, be served on counsel representing a party already before the court.
- 2) The trial court erred in applying the principle that service on counsel constitutes valid service without considering that such a principle applies only to interlocutory processes after a party has already entered an appearance through a known legal representative.

- 3) The counterclaim, being an originating process, ought to have been personally served on the defendants to the counterclaim, as required by procedural rules, since a claimant cannot unilaterally determine who a defendant's counsel will be at the time of initiating an action.
- 4) The trial court failed to recognize that service of an originating process on a party's counsel, without prior authorization or proof of representation at the time of service, is defective and does not vest jurisdiction in the court over the party allegedly served.
- 5) The trial judge erroneously relied on general principles of substituted service through counsel without considering the fundamental distinction that service of an originating process is a jurisdictional prerequisite that cannot be waived or presumed.
- 6) By upholding defective service of the counterclaim, the trial court's ruling resulted in a substantial miscarriage of justice, as the affected parties were denied the procedural right to be properly notified and given an opportunity to respond to the claims against them in accordance with due process.
- 7) The decision of the trial court is perverse as it disregards established legal principles that require strict compliance with service of originating processes, thereby rendering any proceedings conducted on the basis of such defective service null and void.

### GROUND THREE

The trial court misdirected itself when the trial judge held that:

**'It is equally settled that where a Defendant has filed a statement of defense to an action, it will be straining the Rule on proof of service to hold that a Defendant who filed a defense to a statement of claim was not served with the writ of summons because there was no bailiff endorsement on the writ'.**

#### PARTICULARS OF ERROR

- 1) The trial court misdirected itself by failing to recognize that proof of service of an originating process is a jurisdictional requirement, and the mere filing of a defense or response by a third party does not cure a fundamental defect in service, as established in settled Nigerian case law.
- 2) The trial court erred in holding that the absence of a bailiff's endorsement on the writ of summons (or in the record of the case before the court) was immaterial, despite the fact that such endorsement is the primary evidence of proper service, and its absence raises more than just a mere presumption of non-service.
- 3) The trial court failed to appreciate that the 2nd and 3rd defendants to the counterclaim did not submit to the counter-claim because not being served they could not possibly submit to the counter claim. and cannot be deemed to have waived their right to challenge jurisdiction simply because of a few passing references in the claimant's reply to the 2<sup>nd</sup>

and 3<sup>rd</sup> Defendants to counterclaim, which was neither an express nor an unequivocal submission to the court's jurisdiction.

- 4) The learned trial judge erred in adopting an approach that would require the court to descend into the arena of dispute by investigating whether alleged typographical errors in the claimant's reply to the counterclaim could be construed as evidence of acceptance of jurisdiction, an approach that is both unsafe and legally unsound.
- 5) The trial court misdirected itself by failing to recognize that a party's submission to jurisdiction must be clear, voluntary, and unequivocal, and an inadvertent or contested reference in another party's pleading cannot, in law, operate as an acceptance of jurisdiction by the affected defendants.
- 6) By failing to insist on strict compliance with service requirements and instead relying on implied submission, the trial court's decision contravened the well-established principle that a defect in service of an originating process is not a mere irregularity but a fundamental flaw that renders the proceedings null and void.
- 7) The ruling of the trial court is perverse, as it disregards settled legal principles that mandate strict proof of service before jurisdiction can be assumed, and by placing reliance on passing references in another party's pleading, the court created an unsafe precedent that could undermine procedural fairness and due process.



## GROUND FOUR

The trial court misdirected itself when the trial judge held that:

**'As a matter of fact, this Court could not see any proof of service of the process in its file and none was confirmed by counsel to be in Court's file nor on Court record has having been served. However, this Court having the right to look into its record to confirm any issue relating to determination of issue joined by parties in this suit, has observed that even though Leaned Counsel denied service on the 2nd & 3rd Defendants to Counterclaim; he has however proceeded to file defense on behalf of all the Defendants which includes the 1st, 2nd & 3rd Defendants to the Counterclaim. It will therefore not lie within the mouth of such Counsel to alleged non service of the originating process on parties he has filed Defense on behalf. It is only those parties that can contest his representation by placing otherwise fact before this Court'.**

### PARTICULARS OF ERROR

- 1) The trial court misdirected itself by relying on an alleged defense filed on behalf of the 2nd and 3rd defendants to the counterclaim as a basis for assuming valid service, rather than requiring direct proof of service in accordance with established legal principles.
  
- 2) The alleged defense that is claimed to be filed on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant is clearly titled in the record of court as 'CLAIMANT'S

REPLY TO THE DEFENDANT'S STATEMENT OF DEFENSE STATEMENT  
OF DEFENSE TO COUNTER CLAIM'.

- 3) The trial court wrongly shifted the burden of proof by suggesting that it was incumbent upon the 2nd and 3rd defendants to counterclaim to personally contest their legal representation, rather than placing the onus on the counterclaimant to establish proper service as a jurisdictional prerequisite.
- 4) The court erred in holding that counsel's filing of a defense on behalf of the 'defendants' amounted to an acceptance of jurisdiction, when the fundamental issue of whether the court had acquired jurisdiction over the 2nd and 3rd defendants was still in dispute and remained unresolved due to the lack of proof of service.
- 5) The trial judge's approach is flawed, as it would require the court to descend into the arena of dispute by examining the contents of pleadings for typographical errors or ambiguities that might mistakenly imply submission to jurisdiction—an unsafe and legally unsound approach that runs contrary to the principle that jurisdiction cannot be conferred by inference or assumption.
- 6) The trial court failed to appreciate that a party's submission to jurisdiction must be clear, voluntary, and unequivocal, and cannot be inferred from passing references or inadvertent statements in a claimant's reply to a counterclaim.

- 7) The ruling of the trial court is perverse because it disregards the fundamental rule that jurisdiction is conferred by due process of law, including proper service of originating processes, and not by conduct, presumption, or inference.
- 8) The decision of the trial court creates a dangerous precedent by allowing courts to overlook procedural defects in service based on assumptions drawn from pleadings, rather than insisting on strict proof of compliance with service requirements.

#### GROUND FIVE

The trial court misdirected itself when the trial judge held that:

**'Such facts to deny representation of Counsel is presently not before this Court and this Court can rightly hold that Counsel was served and he has the authority of the 2nd and 3rd Defendants to defend them and file necessary processes on their behalf. This has earlier stated, the position of law that service on Counsel is a good service which Counsel has duty to bring same to the attention of the 2nd and 3rd Defendants. Having filed the defense with facts on their behalf, this Court can presume Counsel was served and has accordingly briefed the 2 and 3rd Defendants to so file the defense and they are so binded'.**

#### PARTICULARS OF ERROR

- 1) The trial court misdirected itself by presuming that service on the counsel for the 1st Defendant to the counterclaim (the Claimant in the original suit) constituted valid service on the 2nd and 3rd Defendants to the counterclaim — who were never parties to the original suit — without requiring proof that they had appointed counsel at the time the originating counterclaim was purportedly served.
- 2) The trial court erred in concluding that the mere filing of a defense on behalf of the claimant who is the 1<sup>st</sup> defendant to the counterclaim amounted to an acceptance of jurisdiction that binds 2nd and 3rd Defendants to the counterclaim — who were never parties to the original suit — when the core issue of proper service had not been established.
- 3) The trial court improperly shifted the burden of proof by assuming that counsel must have been authorized to act for the 2nd and 3rd defendants, rather than requiring the counterclaimant to establish, through concrete proof evidenced by the filing of a memorandum of appearance for example, to show that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were properly served and had unequivocally submitted to the court's jurisdiction.
- 4) The presumption that counsel to the 1st defendant had the authority to represent the 2nd and 3rd defendants to the counterclaim, without any direct evidence from the parties themselves, contradicts established principles of jurisdiction, which require clear and unambiguous submission by the party concerned.

- 5) The trial judge's reliance on a passing reference in the claimant's reply to the counterclaim as an indication of the 2nd and 3rd defendants' submission to jurisdiction is legally flawed and unsafe, as courts should not descend into the arena by scrutinizing pleadings for typographical errors or ambiguous wording that may give a false impression of voluntary submission.
- 6) The court erred in treating jurisdiction as a procedural formality, rather than a fundamental requirement that must be strictly established by proper service of originating processes, without which no valid proceedings can be maintained against a party.
- 7) The trial court's decision creates a dangerous precedent by allowing jurisdiction to be inferred from the action of counsel to a co-defendant rather than the other defendant's express consent.

## GROUND SIX

The trial court erred when the trial judge held that:

**'It is thus a well consider view of this Court that the parties in this suit have all be duly served and I so hold'.**

### PARTICULARS OF ERROR

- 1) The learned trial judge failed to require the counter claimant to establish proper proof of service on the 2nd and 3rd Defendants to the counterclaim, relying instead on a general presumption that all parties

had been duly served, without any supporting evidence on the court's record.

- 2) The court erroneously inferred acceptance of jurisdiction by the 2nd and 3rd Defendants based on passing references in the Claimant's reply to the counterclaim, instead of requiring direct evidence of valid service in accordance with procedural rules.
- 3) The trial court's reliance on possible typographical errors or vague references in the Claimant's reply to the counterclaim to conclude that the 2nd and 3rd Defendants had been served and had submitted to jurisdiction is unsafe, speculative, and contrary to established principles of fair hearing.
- 4) The trial judge failed to recognize that jurisdiction cannot be assumed by implication or inference but must be grounded on clear and unambiguous proof of service, particularly when a party expressly protests the claim.
- 5) By treating passing references in a pleading as a substitute for proper service, the court effectively engaged in speculative reasoning and descended into the arena of dispute, rather than applying the settled principle that service of process is a fundamental requirement for jurisdiction.
- 6) The ruling ignored the principle that a party cannot be deemed to have submitted to jurisdiction simply because their name appears in

subsequent court filings, especially when they have consistently challenged the validity of service.

- 7) The trial judge's holding, in the absence of proof of proper service on the 2nd and 3rd Defendants, resulted in a serious miscarriage of justice by depriving them of their right to be heard before the court assumed jurisdiction over them.

#### GROUND SEVEN

The decision of the learned trial judge is against the weight of evidence.

#### **4. RELIEFS SOUGHT FROM THE COURT OF APPEAL:**

- 1) An order allowing the appeal.
- 2) An order setting aside the ruling of the trial Court delivered on February 11, 2025.
- 3) An order striking out the 2<sup>nd</sup> and 3<sup>rd</sup> defendants from the counter claim.
- 4) An order striking out the counter-claim.
- 5) Any other consequential orders as may be just.
- 6) Such further or other reliefs as the Court of Appeal may deem fit to grant in the circumstances.

## **5. PERSONS AFFECTED BY THIS APPEAL:**

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Dated February 14, 2025



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**IN THE COURT OF APPEAL**  
**IN THE LAGOS DIVISION**  
**HOLDEN AT LAGOS**

**SUIT NUMBER: IKD/ADR/150/2024**

**APPEAL NUMBER: CA/LAG/CV/271/2025**

**BETWEEN:**  
**FREEQUEST NIGERIA LIMITED**  
*Claimant/1<sup>st</sup> Defendant to Counter  
Claim/ Appellant*

**AND**  
**UNITED BANK FOR AFRICA PLC**  
*Defendant / Counter Claimant  
/Respondent*

**APPELLANT'S BRIEF**

**INTRODUCTION**

1. The Appellant is dissatisfied with the ruling of the High Court of Lagos State, delivered by Hon. Justice Y.G. Oshoala on February 11, 2025, in Suit No. IKD/ADR/150/2024, as recorded on pages 221–230 of the record of appeal.

2. The Appellant filed the Notice of Appeal on February 18, 2025, appearing on pages 231–248 of the record of appeal. The appeal was subsequently entered in the registry of the Court of Appeal on March 12, 2025.
  
3. The reliefs sought on appeal, as stated in the Notice of Appeal and recorded on pages 246–247 of the record of appeal, include:
  - 1) An order allowing the appeal.
  
  - 2) An order setting aside the ruling of the trial Court delivered on February 11, 2025.
  
  - 3) An order striking out the 2nd and 3rd defendants from the counter claim.
  
  - 4) An order striking out the counter-claim.
  
4. The trial court's ruling, which dismissed the Notice of Preliminary Objection, is recorded on pages 34–48 of the record of appeal.
  
5. The specific reliefs sought in the Preliminary Objection are detailed on pages 34–35 of the record, as follows:

**“AN ORDER of this Honorable Court striking out the Counterclaim in its entirety on the grounds that the Counterclaimant failed to obtain leave of the Court to join the 2nd and 3rd Defendants to the Counterclaim.**

**AN ORDER striking out the names of the Additional Defendants (the 2nd and 3rd Defendants to the Counterclaim) on the grounds that they were added without the leave of court, as required by the High Court Civil Procedure Rules.**

**AN ORDER striking out the names of the Additional Defendants on the grounds that they were not served with the Counterclaim, thereby infringing on their right to fair hearing and premises considered this Honorable Court, therefore, lacks jurisdiction to entertain a claim against parties who were not properly served.**

**AN ORDER striking out the Counterclaim on the grounds that this Honorable Court lacks jurisdiction.”**

6. As stated in the Notice of Appeal and further elaborated in the Appellant’s Brief, Freequest Nigeria Limited contends that the lower court lacks jurisdiction to entertain the Counterclaim filed by the Respondent Bank.

### **BRIEF FACTS**

7. The Appellant initiated the original suit against the Respondent Bank, seeking, among other reliefs, the disclosure of true particulars of an alleged debt, which the Claimant in the original suit disputes.

8. The Respondent Bank, as the Defendant, filed a Counterclaim against the Appellant and additional parties who were not original claimants in the suit. The Bank's intent in doing so was to overreach the original suit by improperly including guarantors who are neither necessary nor desirable parties.
9. The Appellant challenged the competence of the Counterclaim by filing a Notice of Preliminary Objection, arguing that the Counterclaim was improperly constituted and procedurally defective.
10. On February 11, 2025, the Lower Court dismissed the Preliminary Objection, allowing the Counterclaim to proceed, which led to the present appeal.

### **ISSUES FOR DETERMINATION**

11. Counsel on behalf of the Appellant submits two issues for determination in this appeal:
  - 1) Whether the learned trial judge erred in law by failing to set aside the unilateral amendment of the case title by the counter-claimant, through which the 2nd and 3rd defendants were added to the counterclaim without a formal application or court order. (Distilled from Grounds One and Four)
  - 2) Whether the trial court was right in holding that the 2nd and 3rd defendants to the counterclaim were duly served, despite the absence of proof of service

in the court's records, and whether the trial court's reliance on the presumption of valid service through counsel was a misdirection that invites appellate review by the Court of Appeal. (Distilled from Grounds Two, Three, Five and Six)

## **LEGAL ARGUMENT**

### **PRELIMINARY POINT**

12. By way of a preliminary point, we note that the ruling of the High Court of Lagos State, as recorded on page 230 of the record of appeal, dismissed the Appellant's Notice of Preliminary Objection in the following terms:

**“Finally, the Application/motion of the Claimant/Applicant challenging the Defendant/Counterclaimant's Defense is misconceived, unmeritorious, and same is dismissed with cost of ₦30,000. This is the Ruling of this Court.”**

13. A plain reading of this ruling suggests that the trial court dismissed the Appellant's objection on the mistaken premise that it was directed at the Defendant/Counterclaimant's defense rather than the competence of the Counterclaim itself.
14. However, the Appellant's Notice of Preliminary Objection was never filed in opposition to the Defense but rather to challenge the procedural competence and jurisdictional propriety of the Counterclaim.

15. This misapprehension by the lower court raises a fundamental issue: Did the lower court properly consider and determine the real question before it?
16. Submit that the trial court erred in dismissing the Preliminary Objection on the mistaken assumption that it was directed at the Defense rather than at the competence of the Counterclaim itself. The failure of the lower court to properly examine the jurisdictional challenge constitutes a fundamental error, warranting appellate intervention.

### ISSUE ONE

17. The Appellant relies on the following portions of the record of appeal:
  - 1) The full terms of the writ of summons filed by the Appellant (pages 3–14).
  - 2) The Counterclaim filed by the Respondent (page 90).
  - 3) The court's record of proceedings (pages 217 and 219).
  - 4) The ruling of the lower court (page 221).
18. These records establish that the original parties to the suit were Freequest Nigeria Limited (Claimant) and United Bank for Africa Plc (Defendant). However, at page 90, UBA Plc unilaterally

introduced additional parties (guarantors) through its Counterclaim without obtaining leave of court.

19. The Supreme Court in *Waziri v. Bello (2023) 12 NWLR (Pt. 1898) 345* held that all processes before an appellate court must reflect the same title as in the trial court. The case title remains sacrosanct unless varied by leave of court, ensuring consistency from inception to conclusion. Here, the Counterclaim's unilateral introduction of additional parties without a formal application violates this fundamental principle and renders the amendment procedurally irregular.
  
20. Furthermore, in *Adedeji v. Adeoba (2011) 10 NWLR (Pt. 1255) 316 at 325, paras F-G*, the Court of Appeal clarified that the term "additional" signifies uniting one thing with another to form an aggregate. The Respondent's Counterclaim, by adding new parties, effectively modified the original suit's structure without adherence to procedural requirements.
  
21. A counterclaim is an independent and distinct action governed by procedural rules for initiating fresh claims. It requires the court's leave before joining new parties. The trial court failed to recognize that the purported joinder of guarantors—who had no direct claims in the original suit—occurred without a court order.
  
22. In *Uchendu v. Ogboni (1999) 5 NWLR (Pt. 603) 337 at 351-352, paras. E-A*, the Supreme Court emphasized that when a court orders the joinder of a party not originally included in a suit, a notice must be issued and duly served. This ensures procedural fairness and due process.



23. Here, the Respondent sidestepped this requirement, further solidifying the procedural defect.

24. In the ruling appealed against, specifically at pages 226 – 227 the lower court introduced the following reasoning:

**“It is therefore clear that in line with Order 15 Rule (4), (7) and (8) of the High Court Rules of Lagos State the Defendant/Counter Claimant has the right to join the 2nd and 3rd Defendants to this suit without the leave of this Court and could accordingly add those names to the subtitle within the main Claimant's suit. For the avoidance of doubt Order 15 Rule 4(1) provides that:**

**‘Any person against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative may be joined as Defendant.’**

**Order 15 Rule 7 provides that:**

**‘A Claimant may at his option join as parties to the same action all or any of the persons severally, or jointly and severally liable on any one tract including parties to bile of exchange and promissory notes.’**

**Order 15, rule 8 provides that:**

**'Where a Claimants in doubt as to the person against whom he is entitled to claim redress, he may join one or more Defendants in such manner as may be presented by these Rules of an Order of the Court.'**

**The extent to which any of the Defendants is liable shall be determined by the Judge.**

**Particularly Order 17 Rule (2) provides that:**

**'A Defendant shall file his statement of Defense, setoff or Counterclaim within 42 days of receiving the Claimant's originating process & accompany documents.'**

**Order 17 Rule (3) states that:**

**'A Counterclaim shall have the same effect as a cross action, to enable the Court pronounce a final Judgment in the same proceedings.'"**

25. Thus, in the ruling appealed against (pages 226–227), the lower court relied on Order 15, Rules 4, 7, and 8 of the Lagos State High Court Rules to conclude that the

Defendant/Counterclaimant could add new parties without leave of court.

26. However, this reasoning is, we respectfully submit, erroneous, as it ignores explicit provisions within the same High Court (Civil Procedure) Rules, 2019.
27. Order 15, rules 17(1), 18(1) and 19(1) of the Lagos State High Court (Civil Procedure) Rules, 2019 which are controlling in this situation provide respectively as follows:

Order 15, rule 17 (1):

**“Any application to add, strike out, substitute or vary the name of a Claimant or Defendant may be made to a Judge by motion on Notice.”**

Order 15, rule 18 (1):

**“Where a Defendant is added or substituted the Claimant shall amend the originating process accordingly.”**

Order 15, rule 19 (1):

**“Where it appears to a Judge that any person not being a party to the proceedings may bear eventual liability either wholly or in part, the Judge may upon an application ex-parte stating the grounds for believing that such Third Party may bear liability allow the person to be joined as a Third Party by any of the Defendants.”**

28. Thus we submit further that:

- 1) Order 15, Rule 17(1) requires that any application to add, strike out, substitute, or vary a party's name must be made by motion on notice.
- 2) Order 15, Rule 18(1) requires it that where a defendant is added or substituted, the claimant must amend the originating process accordingly.
- 3) Order 15, Rule 19(1) requires that a judge may permit joinder of a third party by a defendant only upon an ex parte application stating the grounds for believing that such a party may bear liability.

29. In the present case the counterclaimant failed to file a joinder application, which would have required them to justify the necessity of the new parties. This procedural lapse renders the affected filings liable to be struck out, as the Defendant improperly amended the title of the case without leave of court.

30. The trial judge neglected to address the preliminary objection, which challenged the improper joinder of guarantors due to the absence of a formal application. This omission constitutes a fundamental error, amounting to a denial of fair hearing as guaranteed under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

31. By permitting the counterclaimant to unilaterally join the guarantors without due process, the trial court sanctioned a procedural anomaly prejudicial to the claimant. The improper joinder served no legitimate purpose other than to exert undue pressure on the claimant and divert attention from the primary claim, which challenges the validity of the debt.
32. The trial court's ruling is perverse, as it disregards established legal principles requiring that all necessary parties be properly before the court before it can assume jurisdiction over them.
33. The Appellant contends that the Counterclaim improperly introduced additional parties — guarantors — who were not part of the original proceedings. This contravenes the principle in *Oyenehin v. Akinkugbe (2010) 4 NWLR (Pt. 1184) 265*, which holds that a Counterclaim cannot be used to introduce new parties who were never part of the original suit.
34. In light of these errors, the appellate court's intervention is necessary to correct the procedural irregularities and uphold the principles of fair hearing and due process.

#### ISSUE TWO

35. Order 19, Rule 8(1) of the Lagos High Court (Civil Procedure) Rules 2019 states:

**“Where the person referred to in Rule 7 of this Order is not a party to the action, he shall be summoned to appear by being served with a copy of the Defense and Counter-Claim, and such**

**service shall be in accordance with the provisions of these Rules in respect of Originating Process.”**

36. Order 19, Rule 8(2) provides:

**“The Defense and Counter-Claim so served shall be indorsed in Form 12 with such modifications or variations as circumstances may require.”**

37. Order 19, Rule 9 states:

**“Any person not already a party to the action who is served with a Defense and Counter-Claim as provided in Rule 8 of this Order must enter an appearance as if served with an Originating Process.”**

38. Order 19, Rule 10 provides:

**“Any person not already a party to the action who is named in a Defense as a party to a Counter-Claim shall deliver a defense in the manner prescribed under this Order.”**

39. Thus. Order 19, Rule 8(1) of the Lagos High Court (Civil Procedure) Rules 2019 provides that where a person is not already a party to the action, they shall be summoned to appear by being served with a copy of the Defense and Counter-Claim

in accordance with the provisions for service of an Originating Process. Sub-rule (2) further requires endorsement of the Defense and Counter-Claim in Form 12, with modifications as necessary.

40. Furthermore, Order 19, Rule 9 mandates that any non-party served with a Defense and Counter-Claim must enter an appearance as if served with an Originating Process, while Rule 10 requires such a person to file a defense in accordance with the Rules.

41. It is undisputed that the 2nd and 3rd Defendants to the Counter-Claim were not served with the Counter-Claim. The trial court acknowledged this at page 229 of the Record of Appeal:

**“This Court could not find any proof of service in its file, nor was any confirmed by counsel as being on record. However, the Court observed that although learned counsel denied service on the 2nd and 3rd Defendants, he proceeded to file a defense on behalf of all Defendants. Therefore, it does not lie in his mouth to allege non-service.”**

42. Despite this clear finding of non-service, the trial court erred by relying on:

- 1) A presumption of substituted service based on a purported defense filed on behalf of the 2nd and 3rd Defendants.

2) Inference rather than direct proof of service, in violation of established legal principles.

3) The improper assumption that a different parties' filing of a defense could cure the fundamental defect of non-service on another party.

43. The Supreme Court has consistently held that service of court processes is fundamental to the jurisdiction of the court. In *Habib Nigeria Bank Ltd. v. Opomuiero* (2000) 15 NWLR (Pt. 690) 315, 330, the Court stated:

**"Service of process of court on the person affected or to be affected is very fundamental to any judicial proceedings. Non-service or failure of service of process is a fundamental vice which is capable of robbing the court of its jurisdiction over the party who was not served."**

44. Similarly, in *Auto Import Export v. Adebayo* (2002) 18 NWLR (Pt. 799) 554, the Supreme Court emphasized that service of a writ of summons or other court process is a condition precedent to the exercise of jurisdiction by the court. Proceedings conducted without proper service are a nullity.

45. In *M.G.F. Nig. Ltd. v. Gwus International Ltd* (2001) 9 NWLR (Pt. 718) 413, 428, the Court reaffirmed that:

**"Failure to effect service of a process of court, a writ of summons, motion etc., goes to the very**



**root of the jurisdiction of the court and any proceedings not preceded by proof of service at all, or in the prescribed method, is null and void.”**

46. The trial court’s decision effectively allowed jurisdiction to be assumed by inference, contrary to the principles in *Integrated Builders v. Domzaq Vent. (Nig.) Ltd. (2005) 2 NWLR (Pt. 909) 97, 119*, where the court held that:

**“A court can only exercise jurisdiction in respect of any matter when the case comes before it by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. Proceedings in a trial court conducted without due process being served on the parties or one of the parties amount to a nullity.”**

47. The trial court wrongly shifted the burden of proof by suggesting that the 2nd and 3rd Defendants had to contest their representation, instead of requiring the Counter-Claimant to establish service as a jurisdictional prerequisite. The court further erred in holding that:

- 1) Filing a defense by a co-defendant equated to acceptance of jurisdiction by a protesting other defendant, despite unresolved issues of service.

2) A defendant cannot claim non-service merely because no bailiff's endorsement does not exist to state the absence of service.

48. The legal position is clear that jurisdiction cannot be inferred by conduct least of all by conduct of a co-Defendant, as reaffirmed in *Integrated Builders v. Domzaq Vent. (Nig.) Ltd. (2005) 2 NWLR (Pt. 909) 97*, which held that failure to serve a process where required renders any order made against the party null and void.

49. The trial court wrongly assumed that service on counsel for the 1st Defendant constituted valid service on the 2nd and 3rd Defendants, who were never parties to the original suit. The principle that "service of process on counsel is good service on his client" does not apply to originating processes such as a Counter-Claim. In *Auto Import Export v. Adebayo (2002) 18 NWLR (Pt. 799) 554*, the Supreme Court held that service of originating processes must be personally effected on the concerned party unless substituted service is properly ordered.

50. The trial court erroneously applied the principle of substituted service without an order authorizing it. We submit by parity of reasoning that as established in *Habib Nigeria Bank Ltd. v. Opomuiero (2000) 15 NWLR (Pt. 690) 315, 330*, substituted service cannot be presumed; it must be expressly granted by the court.

51. The trial court's decision sets a dangerous precedent by overlooking a fundamental jurisdictional defect. Jurisdiction is

conferred by due process and proper service, not by presumption, inference, or inadvertent filings. The erroneous ruling resulted in a miscarriage of justice, depriving the 2nd and 3rd Defendants of their right to be heard.

52. The failure to serve the Counter-Claim renders the trial proceedings a nullity and should be set aside in accordance with the settled principles of law on service of court processes.

### **CONCLUSION**

53. In conclusion, the Appellants respectfully requests that the appeal should be upheld BECAUSE:

- 1) The lower court mistakenly assumed the objection was directed at the Statement of Defense rather than the Counterclaim's procedural competence raising the possibility that the entire preliminary objection was not properly considered by the learned trial judge.
- 2) The Respondent (UBA Plc) improperly introduced additional parties (guarantors) in its Counterclaim without obtaining leave of court, violating established procedural rules.
- 3) Any amendment to the case title requires formal application and judicial approval.
- 4) The trial court erroneously relied on Order 15 of the Lagos State High Court Rules while ignoring other

provisions mandating a motion on notice for joinder.

- 5) This oversight resulted in a fundamental error and denial of fair hearing, contrary to Section 36 of the 1999 Constitution.
- 6) The Appellant seeks appellate intervention to correct these irregularities and ensure due process in the proceedings.
- 7) The trial court erred in assuming jurisdiction over the 2nd and 3rd Defendants to the Counter-Claim despite clear evidence of non-service, violating fundamental principles requiring personal service of court processes as a jurisdictional prerequisite.
- 8) The lower court improperly relied on presumptions and inferences, including the mistaken notion that a defense filed by a co-defendant cured the defect of non-service, contradicting Supreme Court decisions that emphasize proper service as a condition precedent to valid proceedings.
- 9) Given the settled legal position that failure to serve a necessary party renders proceedings null and void, the appellate court should set aside the trial court's decision, which resulted in a miscarriage of justice by depriving the affected parties of their right to be heard.

RESPECTFULLY SUBMITTED

Dated March 14, 2025



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## **LIST OF AUTHORITIES**

### **CASES**

Waziri v. Bello (2023) 12 NWLR (Pt. 1898) 345

Adedeji v. Adeoba (2011) 10 NWLR (Pt. 1255) 316

Uchendu v. Ogboni (1999) 5 NWLR (Pt. 603) 337

Oyeneyin v. Akinkugbe (2010) 4 NWLR (Pt. 1184) 265

Habib Nigeria Bank Ltd. v. Opomuiero (2000) 15 NWLR (Pt. 690) 315

Auto Import Export v. Adebayo (2002) 18 NWLR (Pt. 799) 554

M.G.F. Nig. Ltd. v. Gwus International Ltd (2001) 9 NWLR (Pt. 718) 413

Integrated Builders v. Domzaq Vent. (Nig.) Ltd. (2005) 2 NWLR (Pt. 909) 97

### **RULES OF COURT**

Order 15, rule 17 (1) of the Lagos State High Court (Civil Procedure) Rules, 2019

Order 15, rule 18 (1) of the Lagos State High Court (Civil Procedure) Rules, 2019

Order 15, rule 19 (1) of the Lagos State High Court (Civil Procedure) Rules, 2019

Order 19, Rule 8(1) of the Lagos High Court (Civil Procedure) Rules 2019 states:

Order 19, Rule 8(2) of the Lagos State High Court (Civil Procedure) Rules, 2019

Order 19, Rule 9 of the Lagos State High Court (Civil Procedure)  
Rules, 2019

Order 19, Rule 10 of the Lagos State High Court (Civil Procedure)  
Rules, 2019



**IN THE COURT OF APPEAL**

**HOLDEN AT ABUJA**

**CA/ABJ/CV/1205/2022**

**NICHABJ/284/2016**

**Between:**

- 1. Nigeria Army**
- 2. Nigeria Army Council**
- 3. Chief of Army Staff**
- 4. Armed Forces Council**
- 5. Chief of Defense Staff**
- 6. Brig Gen Mansur Mohammed Alli  
(Retired))**
- 7. Lt Gen Tukur Yusuf Buratai**
- 8. Maj Gen Mohammed Hong Garuba**

Appellants

**-and-**

- 1. Lt Col Abdulfatai Mohammed**
- 2. Attorney General of the  
Federation & Minister for Justice**

Respondents

**FIRST RESPONDENT'S REPLY BRIEF**

**Introduction**

1. This appeal by statutory employers, in our respectful submission, does not raise any substantive, complex, or recondite issue regarding how the National Industrial Court should adjudicate a case involving an employee under an employment contract with statutory flavor. The employer -Defendants have wholly failed to justify the grounds and basis for the termination of employment in accordance with relevant statutes and regulations and as such the appeal should be dismissed.

2. The judgment of the National Industrial Court, Abuja, delivered by Hon. Justice R. B. Haastrup, is recorded on pages 653 – 673 of the appeal record.
  
3. The trial court addressed the central issue of whether the claimant's compulsory retirement complied with legal provisions. It found that the claimant's employment was statutorily protected under the Armed Forces Act (AFA) and related conditions of service. The court highlighted several key points:
  - 1) There was no evidence of a court-martial, disciplinary proceedings, or confinement against the claimant, a Lieutenant Colonel, as required by law.
  
  - 2) The defendants failed to provide evidence of adherence to statutory disciplinary procedures, with the sole defense witness confirming this failure.
  
  - 3) The 2nd set of defendants did not file a statement of defense, relying solely on unsubstantiated arguments in their final address, which the court deemed inadmissible as evidence.
  
  - 4) The Army Council's reliance on the Harmonized Terms and Conditions of Service was dismissed as baseless and unsupported by evidence.

- 5) The court reiterated that any disciplinary action outside the statutory framework is void and emphasized that uncontroverted evidence is deemed admitted.
  - 6) The court ruled in favor of the claimant, holding that his compulsory retirement was unlawful and affirming his entitlement to the reliefs sought. This decision underscores the necessity of strict compliance with statutory and procedural safeguards in disciplinary actions involving statutory employment.
4. The Notice of Appeal against the final decision delivered by Hon. Justice R. B. Haastrup of the National Industrial Court, Abuja, on January 14, 2020, in Suit No. NICN/ABJ/284/2016, between Lt. Col. Abdulfatai Mohammed (Retired) and the Nigerian Army & 8 Others, is located on pages 679 –687 of the appeal record.
5. Key Points of the Appellants' Complaints per the grounds and particulars of error in the Notice of Appeal are:
- 1) The Appellants claim the suit was premature, arguing the 1st Respondent failed to exhaust administrative remedies under the Harmonized Terms and Conditions of Service (HTACOS).
  - 2) They also challenge the trial court's dismissal of their preliminary objection on this ground. (Ground 1)

- 3) They contend that admitting documents (CW1, CW3, CW5, CW6, and CWM7) violated the Evidence Act 2011, as they were uncertified public documents and improperly admitted secondary evidence. (Ground 2)
- 4) They argue the trial court erred by relying on uncertified documents despite a Notice to Produce, thus improperly applying precedent. (Ground 3)
- 5) The Appellants assert the National Industrial Court misused its discretion under Section 12 of the NIC Act to admit evidence contrary to the Evidence Act. (Ground 4)
- 6) They challenge the court's invalidation of the termination letter (Exhibit CW4), claiming it wrongly found a breach of employer-issued regulations. (Ground 5)
- 7) They argue that costs constitute special damages requiring specific pleading and proof, which was absent in awarding ₦200,000 to the 1st Respondent. (Ground 6)
- 8) They contend the judgment was against the weight of evidence. (Ground 7)

9) The Appellants seek to overturn the entire judgment, including all findings, orders, and costs awarded to the 1st Respondent.

6. 1st Respondent's rebuttal will show that:

1) Ground 1 relies on Harmonized Terms and Conditions of Service (HTACOS), but the facts of the case show that the employer failed to comply with this same document which is binding within the military, and that the employer also failed to comply with relevant statutes and statutory rights to court access, a fundamental justice issue.

2) Ground 2 demands strict certification but ignores Section 12 of the National Industrial Court Act, which permits evidentiary flexibility essential for specialized courts.

3) Ground 3 claims misapplied case law but fails to show actual prejudice or impact on the judgment.

4) Ground 4 assumes the Evidence Act supersedes the National Industrial Court Act, though the latter was designed for specialized judicial needs.

- 5) Ground 5 cites HTACOS but neglects broader considerations of the Armed Forces Act, natural justice and fairness in the trial court's ruling.
- 6) Ground 6 challenges cost awards but overlooks procedural fairness and equity justifications.
- 7) Ground 7 lacks specific instances where the trial court is said to have misapprehended or ignored evidence but without demonstrating this charge.
- 8) The National Industrial Court's procedural flexibility is justified in achieving substantive justice.
- 9) The appeal focuses on technicalities rather than the trial court's actual factual holdings and the broader equitable considerations.

### **BRIEF FACTS**

7. At trial, the 1st Respondent (Claimant) proved that the Appellants imposed punitive measures on him without justification or due process, violating his constitutional and Armed Forces Act protections.
8. Lt. Colonel Abdulfatai Mohammed was a highly regarded officer in the Nigerian Army, known for his service and commitment to national security.

9. The 1<sup>st</sup> Respondent (as a Major) attended the prestigious Indian Staff College in Wellington, a distinction shared by former President General Muhammadu Buhari. At page 237 of the record of appeal it is recorded about the 1<sup>st</sup> Respondent whilst at Wellington, as follows:

**“General Report. Major Mohammed is a professionally competent, sincere and hardworking officer endowed with a high intellect and perceptive mind. He displayed sound knowledge of employment of all arms and services as well as of joint operations. He takes active part in discussions and articulates his views clearly. His academic performance has been good. The officer secured first place in the order of merit among international officers. He remains calm and composed under stress. A forthright officer, he expresses his opinions freely and with conviction. He conducts himself in an upright and dignified manner and is popular among colleagues.”**

10. A decorated infantry officer, 1<sup>st</sup> Respondent played a key role in countering Boko Haram, particularly during the 2019 Presidential Elections in the North-East. He received two commendations for bravery, recognizing his leadership under direct enemy fire.
11. At page 265 of the record of Appeal, the 1<sup>st</sup> Respondent’s Commanding Officer wrote about him in the following words:

## **"COMMENDATION FOR BRAVERY**

**1. During the advance to contact and subsequent offensive operation conducted by 26 Task Force Brigade along Road KONDUGA - KAWURI in which your battalion (195 Bn) was the follow up unit, your conduct was most outstanding. You had the arduous task of ensuring the rear of the two leading battalions were not only protected but occasionally provided flank protection during the several occasions that the Boko Haram Terrorist (BHT) attempted out flanking movements. I observed during the battle of Bulaburi which was very fierce by all accounts, the role you played which helped to stabilize our force when a gap opened up. You, without prompting personally led your troops forward to within meters of the BHT and sealed up the gap thus restoring balance to our force. Your action thus averted a potential negative consequence and significantly contributed to the comprehensive success we achieved by inflicting significant defeat on the enemy.**

**2. I am delighted to observe that your action during the offensive operation of that day is worthy of commendation as you not only exhibited uncommon courage but exemplary leadership which encouraged many of the troops including my humble self I am particularly honored and privileged to have engaged in combat alongside**



**such. brave and courageous officer and gentleman like you. You have proved by your action that you are an asset to the Nigerian Army and the Country at large. Keep it up.”**

Then also at page 267 - 268 of the record of appeal:

**“COMMENDATION FOR GALANTRY**

**1. On night 12 December 2014, the defensive position of 26 Task Force (TF) Brigade and 21 Brigade which forms the covering force of 7 Division in Konduga front came under Boko Haram Terrorist (BHT). The attack lasted for five hours. The assault was preceded by sustained bombardment for about one hour in which anti-aircraft guns and other heavy caliber weapons were fired at own position followed by six waves of ground offensive utilizing vehicle borne improvised explosive devices (VBIEDs) amongst others assets. At the end of the battle at about 0130 hrs, BHT suffered heavy casualties over 200 estimated killed and a great deal more injured as attested by strewn corpses and trails of blood stains all over the battlefield. In sum, BHT was resoundingly defeated.**

**2. The troops of the two Brigades put up a remarkable performance as only one soldier was killed. The victory achieved was to a large extent attributable to the gallantry exhibited by the**

**troops, top of which was by you. I observed all through the encounter how you professionally handled the forward troops, which was the main focus of the BHT offensive. Throughout the period, you gave firm and effective orders over the radio which ensured that the troops in the trenches as well as the armoured vehicles were well positioned to meet any and every BHT onslaught. You equally employed the artillery and mortar in a manner that led to serious degradation of the BHT and in the process also destroyed. You skillfully integrated most of the battlefield operating systems into cohesive and effective fighting machine. I was most impressed by your leadership as you displayed effective command and control of the troops during the battle. Your calmness and composure over the radio reassured the command and elicited the right response from the troops who met the enemy attack with Confidence and morale. You equally exhibited rare and uncommon courage as you moved about the battlefield without minding the physical danger that you were exposed to. You were undoubtedly my hero of the night. I salute your courage, exemplary leadership and professional competence.**

**3. It is thus my singular honor and privilege to commend you for conducting yourself in a most professional manner in the face of a determined**

**BHT offensive. You are Indeed a credit, not only to your Unit, the Brigade but also to the whole of Konduga Sector. Well done and keep it up.”**

12. After the 2019 elections, while stationed in Kaduna, he traveled to the U.S. on Army duty. Upon return, he unexpectedly received a termination letter via email, triggering this dispute. He had never been indicted, charged, or disciplined before his termination. Initially dismissed as a mistake, the issue has led to ongoing victimization of a distinguished officer.

### **ISSUES FOR DETERMINATION**

13. Counsel on behalf of the 1<sup>st</sup> Respondent finds it expedient to argue the issues as proposed in the Appellants brief:
- 1) Whether the Trial Court was right to have dismissed the Preliminary Objection raised by the Appellants challenging the competence of the Suit (Ground One).
  - 2) Whether the Trial Court was right to have admitted in evidence exhibit CW1, CWM3, CWM5, CWM6, and CWM7 which are uncertified secondary evidence of public documents (Grounds Two, Three and Four).
  - 3) Whether the trial court was right in its evaluation of Exhibit C4 and its ruling that same was issued in breach of the Harmonized Terms and Conditions of

Service of Officers 2012 (Revised) (Ground Five of the Notice of Appeal).

- 4) Whether the Learned Trial Judge was right to have awarded the cost of filing the Suit in favour of the 1st Respondent (Ground Six of the Notice of Appeal).

### **LEGAL ARGUMENT**

14. The 1st Respondent respectfully submits that the Appellants' reliance on the cited cases of Madukolu v. Nkemdilim (1962) (1962) 2 SCNLR 341, Mrs. Josephine Dakour & Ors V. Lagos State Urban Renewal Board & Ors (2015) LPELR-24806(CA), Magbagbeola v. Akintola (2018) Alh. Maroof Adekunle Magbagbeola & Ors Alh. Prince Moroofo Oladimeji Akintola & Ors (2018) LPELR-46085(SC) and University of Ilorin v. Oluwadare (2006) 14 NWLR (1000) 751 at 781-782 do not support their case and all the cases are distinguishable.
15. In this present case, the trial court explicitly found that the 1st Respondent had fulfilled all conditions precedent to initiating the action.
16. On administrative remedies, the 1st Respondent complied with all required steps, including appealing to the President regarding his compulsory retirement. The Defendants' failure to respond does not bar the Claimant from seeking legal redress.

17. The circumstances of this case differ, as the trial court confirmed the 1st Respondent had exhausted all available administrative remedies.

### **ISSUE ONE**

18. The Appellants argue that the 1st Respondent failed to exhaust administrative remedies before filing suit. However, the Trial Court correctly dismissed this objection and assumed jurisdiction.
19. Upon receiving his compulsory retirement letter dated June 9, 2016 (see pages 71-73 of the Record of Appeal), the 1st Respondent appealed to the President through the Chief of Defense Staff (see pages 63 - 66 of the Record of Appeal), and with a follow up request from the 1<sup>st</sup> Respondent's lawyer (see pages 69 of the Record of Appeal).
20. The President's failure to respond within a reasonable time was a cynical attempt to stall internal redress. The law does not require an aggrieved party to wait indefinitely where administrative silence frustrates justice.
21. The Appellants cite authorities on the exhaustion doctrine, but these do not apply where an aggrieved party has fulfilled all requirements, yet the administrative body fails to act. University of Ilorin v. Oluwadare (2006) 14 NWLR (1000) 751 at 781-782 is inapplicable to this scenario.

22. If the 1st Respondent had passively awaited a response, his claim could have become statute-barred under the Public Officers Protection Act. Okomalu v. Akinbode (2006) 9 NWLR (Pt. 985) 338 does not support barring access to justice when administrative inaction prevents redress.
23. The exhaustion doctrine must not be rigidly applied to deny timely legal recourse. In Lieutenant Colonel David Emmanuel Garba (Rtd) V. Nigerian Army & Ors (2019) LPELR-47390(CA), the Court of Appeal affirmed conditions precedent for litigation but did not require indefinite waiting to hear from an employer determined to ride out the time as is the present case.
24. The Appellants cite Chapter 9(a) and (e), paragraph 09.02 of the Armed Forces of Nigeria Harmonized Terms and Conditions of Service for Officers (HTCOS), 2012 (Revised), arguing that the 1st Respondent was required to await the President's decision. However, this interpretation would allow indefinite delays, rendering justice unattainable. The HTCOS does not mandate such an outcome and equity and justice will not support such an outcome.
25. A reasonable reading of HTCOS aligns with administrative law principles, requiring decisions within a reasonable time. The authorities' failure to act within three months was designed to frustrate the 1st Respondent's right to justice.

26. Submit that the legal maxim ***lex non cogit ad impossibilia*** applies: the law does not compel a person to do the impossible, such as waiting indefinitely for a response that may never come.
27. Per *Madukolu v. Nkemdilim (1962) 2 SCNLR 341*, jurisdiction is established when the Court is properly constituted; the subject matter falls within its jurisdiction; and the case complies with due process and conditions precedent. The 1st Respondent met these criteria, and the Trial Court correctly assumed jurisdiction.
28. We urge this Honorable Court to affirm the Trial Court's decision. The exhaustion doctrine is satisfied when an employee has taken all required steps, but the employer's administrative inaction obstructs justice. The President's failure to act within a reasonable time cannot bar the 1st Respondent's recourse to the Court.
29. We submit that the Trial Court's assumption of jurisdiction was proper and should be upheld. We draw the Court's attention to the learned trial judge's final judgment recorded on pages 667 - 668 of the record of appeal, where the judge stated:

**"The 2nd set of defendants argued that the claimant's suit is premature, pre-emptive, and incompetent, and cannot be maintained while his appeal is pending before the President, Commander-in-Chief of the Armed Forces, Federal Republic of Nigeria, for consideration. My take is that the defendants are not in law permitted to**

**revisit this issue, as the court already determined and dismissed the preliminary objection in its ruling delivered on 13th November 2017.”**

30. The interlocutory ruling delivered on November 13, 2017, is located on page 430 - 441 of the record. We draw the Court of Appeal’s attention to page 439, where the trial judge further stated:

**“The claimant has complied with the administrative remedies by submitting his appeal to the President for consideration of his case on compulsory retirement. The failure of the defendants to respond cannot be used against the claimant to preclude him from seeking judicial redress.”**

31. The 1st Respondent submits that the proper course for the Appellants, if dissatisfied with any interlocutory ruling, was to file a Notice of Interlocutory Appeal. However, the Appellants have failed to do so within the prescribed time and have neglected to seek leave or an extension of time to appeal the interlocutory decision of November 13, 2017.

32. The Appellants cannot now claim that the trial court made an appealable decision in the final judgment of January 14, 2020, which could form the basis for Ground 1 of the present Notice of Appeal. In other words, there is nothing in the final decision of the trial court that justifies the complaint raised in Ground 1 of the Appeal.



## **ISSUE TWO**

33. My Lords, contrary to the Appellants' submissions, we respectfully submit that the Trial Court correctly admitted Exhibits CW1, CWM3, CWM5, CWM6, and CWM7 into evidence.
34. The Appellants' contention that these exhibits are uncertified secondary copies of public documents is unfounded and inconsistent with established legal principles.
35. Notably, Exhibits CWM3, CWM5, CWM6, and CWM7 are irrelevant to the issues in this appeal. Even if excluded, their absence would not materially affect the Trial Court's decision.
36. However, Exhibit CW1 is central to this case and warrants detailed consideration.
37. First, Exhibit CW1 is not a public document. Second, it was properly tendered and admitted in its original and in accordance with the Evidence Act, 2011. The original employment letter of the 1st Respondent was presented at trial before being substituted with a photocopy.
38. Even at that section 89 of the Evidence Act permits secondary evidence when the original is in the possession of an adverse party who fails to produce it after being put on notice.

39. In paragraph 13 of his Statement of Facts, the 1st Respondent notified the Appellants and other Defendants to produce the full records of his military service.
40. The Appellants' failure to comply justified the admission of the 1st Respondent's copies of Exhibits CWM3, CWM5, CWM6, and CWM7.
41. We note again that Exhibit CW1 was tendered in its original form.
42. Back to the prevailing thesis of argument. A party cannot object to documentary evidence when given the opportunity to produce the original but fails to do so.
43. The Appellants cannot now challenge the admissibility of these documents after failing to produce the originals when required.
44. Section 86(1) of the Evidence Act defines primary evidence as the document itself, presented for court inspection.
45. Section 102 categorizes public documents as official records of:
- 1) Sovereign authority.
  - 2) Official bodies and tribunals.
  - 3) Public officers (legislative, judicial, executive)

46. Section 103 clarifies that all other documents are private documents.
47. The key issue is whether an Army Officer's employment letter qualifies as a public document under Section 102 of the Evidence Act.
48. We submit that employment-related documents such as appointment letters, confirmations, and handbooks do not fall under this category. If the Appellants' argument were accepted, every government employee would require a Certified True Copy (CTC) of their employment documents for litigation, creating an impractical burden.
49. Labor or contractual agreements between individuals and government agencies are not inherently public documents.
50. If an employment contract remains in the private possession of the individual and is not officially recorded in government custody, it does not automatically become a public document. See *Ministry of Internal Affairs v. Sunday Ehindero (2018)*.
51. Under Section 86 of the Evidence Act, the best evidence rule applies — an original document is always the best proof. Since the 1st Respondent possessed the original employment contract, he was entitled to tender it as evidence.
52. In *Ogbuanyinya v. Okudo (1990) 4 NWLR (Pt. 146) 551*, the Supreme Court affirmed that originals are the primary proof unless

lost. If the 1<sup>st</sup> Respondent only has a photocopy (not the original), then he must obtain a Certified True Copy from the government office where the document is officially stored. However, in this case, the 1st Respondent had the original, so no certification was necessary.

53. If the government alleged forgery or alteration, a Certified True Copy might be required for validation, but no such claim was made here at trial by the employers.

54. The Supreme Court's decision in *Mannir Abdullahi v. FRN (2016) LPELR-40101(SC)* held that documents from the record of public institutions require certification. However, this applies only when the documents in question qualify as public documents under the Evidence Act. Exhibit CW1, being an employment letter in its original in the hand of the employee, does not fall within this category and was properly admitted at trial.

55. The Appellants seek to undermine the 1st Respondent's case by claiming that his employment letter constitutes a public document. If accepted, this argument would set a dangerous precedent, requiring all government employees to obtain CTCs of employment letters before litigating. This would impose an undue burden, forcing individuals contracting with the government to obtain CTCs for documents already in their possession before enforcing contractual rights.

56. Assuming (without conceding) that the appointment letter and related documents are public records, Section 12 of the National

Industrial Court Act, 2006 grants the court discretion to depart from the strict application of the Evidence Act in the interest of justice.

57. The Trial Court relied on this provision, as reflected at page 667 of the Record of Appeal:

**“Before I proceed any further, it may be necessary to first of all deal with the issue raised by counsel to the 1<sup>st</sup> set of defendants regarding Exhibits CW1, CWM3, CWM5, CWM6 and CWM7, to the effect that documents are inadmissible and ought to be expunged. I have looked at the documents in line with the pleading of the claimant. It is clear that Exhibits CW1, CW3, CWM5, CWM6 and CWM7 are all in their original forms and addressed to the claimant. The claimant relied on these documents in support of his case, which were also pleaded and relevant to the case of the claimant. The defendants have not convinced the Court the documents have nothing to do with the defendants or that some of the documents did not emanate from the defendants. More so, the claimant had in paragraph 13 of his statement of facts given all defendants notice to produce the full record of claimant’s military service, which would have helped the defendants' case where they are in doubt regarding these documents relied upon by the claimant. The defendants have not tendered any documents in**

**evidence despite the Notice to Produce given to them. It is trite Law that where a party on whom a notice to produce is served falls to produce document, it is the duty of the party serving the notice to adduce secondary evidence of the document in question. See *Jurassic Communications (Nig) Ltd vs. Adeyeye (2019) LPELR-46498(CA)*.**

58. In *Awoqu v. TFG Real Estate (2018) NICN/LA/262/2013*, Kanyip, J., President of the National Industrial Court explained (and this is offered by way of explanation only of the explanation of the rationale behind section 12 of the National Industrial Court Act):

**“A labor court understands the difficulty employees face in accessing documents to prove their case. This is why the NIC is permitted under Section 12 of its enabling Act to be flexible and informal, provided justice is served.”**

59. The Court of Appeal in *Adegboye v. United Bank for Africa [2022] LPELR-58778 (CA)* reaffirmed this discretion of the under section 12 of the National Industrial Court Act.

60. The Appellants must convince this Court that an employment letter of a government employee is a public document and that all contractual documents involving the government require certification. Such an argument is legally unsustainable. Submit that Exhibit CW1 is

not a public document. Its custody was in private hands, reinforcing its non-public status. Section 12 of the National Industrial Court Act allows the court to admit such evidence in the interest of justice.

61. The Appellants have not raised any objection to Exhibit CW3, either at the trial stage or on appeal. Exhibit CW3, found on page 58 of the record of appeal, is the oath of office taken by the 1st Respondent following his acceptance of Exhibit CW1 (the employment letter). We submit that Exhibit CW3 is a natural consequence of the employment and, as such, its existence in written form substantially confirms and proves the 1st Respondent's employment, even if Exhibit CW1 were not found.

62. In light of the foregoing submissions, we respectfully urge this Court to affirm the Trial Court's ruling on the admissibility of Exhibit CW1.

### **ISSUE THREE**

63. We respectfully submit that the trial court correctly evaluated Exhibit CW4 (pages 60 - 61 of the record of appeal) and rightly ruled that the document was issued in violation of Exhibit CW5 (the Harmonized Terms and Conditions of Service for Officers (2012) (Revised)). The Appellants' contention that the trial court erred in its decision is unfounded and fails to account for the material irregularities surrounding the purported compulsory retirement of the 1st Respondent.

64. It is a fundamental principle of Nigerian employment law that an employer must strictly adhere to the terms and conditions of service when disciplining or terminating an employee. The 1st Respondent's employment, being statutorily regulated, required the Appellants to act in accordance with the Armed Forces Act (AFA) and other relevant statutory provisions.

65. The Appellants' reliance on the Harmonized Terms and Conditions of Service for Nigerian Army Officers (2012) (Exhibit CW5) is misleading and logically flawed. Contrary to their arguments, the trial court correctly held that the Appellants failed to comply with the provisions of both the Armed Forces Act and the Harmonized Terms and Conditions of Service governing disciplinary actions in the Nigerian Army.

66. The Appellants have misrepresented the basis of the 1st Respondent's compulsory retirement by omitting the specific reason for termination stated in Exhibit CW4. The termination letter at page 60 of the record of appeal states:

**"1. In pursuance of the provisions of Paragraph 09.02c (4) of the Harmonized Terms and Conditions of Service for Officers 2012 (Revised), the Army Council vide Reference A approved your Compulsory Retirement from the Nigerian Army with effect from 9 Jun 16."**



67. Reference to the **Harmonized Terms and Conditions of Service for Officers 2012 (Revised)** is reference to Exhibit CW 5 particularly at pages 125 and 126 of the record of appeal. At page 125 of the record of appeal reads:

**“ 09.02. Compulsory retirement or resignation may be effected for any of the following reason(s):”**

Sub-paragraph (c) provides:

**“An officer may be compulsorily retired from service by the Army Council/Navy Board/Air Force Council for any of the following specific reasons:”**

Item (4) of the sub paragraph reads:

**“On disciplinary grounds i.e. Serious offence(s).”**

68. Thus the evidence on the record (per the reading of Exhibit CW4 and CW5) is that the 1st Respondent was dismissed on disciplinary grounds for serious offenses. However, at no point was the employee subjected to a court martial or afforded due process before his purported compulsory retirement. The Appellants' deliberate exclusion of this critical fact constitutes an attempt to mislead this honorable Court.

69. After thoroughly reviewing the evidence and submissions, the trial court correctly determined that the core issue was whether the compulsory retirement complied with legal provisions.

70. The 1st Respondent demonstrated, and the trial court agreed with the Claimant that:

1) He was never tried before a court martial for any alleged misconduct.

2) There was no verdict from the Army Council confirming any disciplinary action against him.

3) No prior query, warning, or disciplinary hearing was conducted before the issuance of Exhibit CW4.

71. Section 183 of the Armed Forces Act mandates that disciplinary actions must strictly comply with statutory procedures. The trial court rightly held that the Army Council's decision to retire the 1st Respondent without following due process constituted a gross violation of the law.

72. The Appellants' argument that they possessed inherent powers to compulsorily retire the 1st Respondent under Paragraph 09.02(c) of the Harmonized Terms and Conditions of Service is untenable, as such powers must be exercised in strict accordance with statutory due process.

73. The Appellants also failed to provide evidence at trial — as noted by the trial judge - that the 1st Respondent had served for 18 years, a requirement under the Harmonized Terms and Conditions of Service.
74. In *Chabasaya v. Anwasi (2010) LPELR-839 (SC)*, the Supreme Court held that an employer seeking to justify termination must provide clear and convincing evidence supporting its decision. The Appellants failed to meet this standard.
75. It is well established that in cases of wrongful termination, the burden of proof lies on the employer to demonstrate that the dismissal was in accordance with applicable disciplinary rules. In *Okomo Oil Palm Co Ltd v. Iserhienrhien (2001) 6 NWLR (710) 660 at 673-674*, the Supreme Court held that where an employee alleges wrongful termination, the employer must establish that the termination complied with contractual and statutory provisions. The Appellants failed to do so at trial.
76. Given the foregoing, the trial court's evaluation of Exhibit CW4 was correct, as was its finding that the Appellants acted in breach of the Harmonized Terms and Conditions of Service. Accordingly, the decision should be upheld, and this issue resolved in favor of the 1st Respondent.

#### **ISSUE FOUR**

77. My Lords, we most respectfully submit that the Learned Trial Court was right to have awarded costs in favor of the 1st Respondent because it is a well-established principle of law that costs follow the

event, and such an award is within the discretionary powers of the trial court, exercised judiciously and judicially.

78. Contrary to the assertions of the Appellants, an award of costs is distinct from a claim for special damages and does not require strict proof through specific pleading or evidence.

79. The he Appellants' reliance on *Lonestar Drilling Nigeria Limited V. New Genesis Executive Security Ltd (2011) LPELR 4437* is misplaced. The principle governing the award of special damages is not applicable to the award of costs in litigation. The courts have consistently distinguished between costs, which serve as indemnification for litigation expenses, and special damages, which require strict proof.

80. The Appellants' reliance on *Lonestar Drilling Nigeria Limited v. New Genesis Executive Security Limited (2011) LPELR-4437* and *Miss Funmilayo Ayotola Ayodele Williams v. GlaxoSmithKline Consumer Nigeria Plc (2019) LPELR-47498(CA)*, as cited in paragraphs 7.2 and 7.4 of their Brief and the arguments advanced in paragraphs 7.1 to 7.6 of the Appellants' Brief suffer from the following analytical flaws:

- 1) A failure to recognize the trial court's discretion to award costs against a losing party.
- 2) A conflation of special damages with costs, despite the latter being discretionary and awarded separately by the trial court.

3) An omission to specifically challenge the ₦200,000 (Two Hundred Thousand Naira) costs awarded against them as excessive.

4) A failure to appreciate that the lower court's cost award was both justified and modest.

81. It is pertinent to emphasize that the Appellants' argument is not only legally flawed but also indicative of their continuous victimization of the 1st Respondent. Their insistence on contesting this award is yet another demonstration of bad faith and an attempt to deprive the 1st Respondent of reasonable compensation for the legal expenses incurred due to the Appellants' actions.

82. The sum of ₦200,000 awarded as costs is, in fact, meager when considered against the substantial expenses incurred by the 1st Respondent in filing and prosecuting this matter since 2016. The 1st Respondent has borne immense financial burdens in the pursuit of justice, which have been further exacerbated by the Appellants' unrelenting attempts to frustrate and prolong litigation.

83. We urge this Honorable Court to uphold the well-settled principle that costs follow the event and that a successful litigant is entitled to reasonable compensation for expenses incurred in seeking justice. The award of costs by the trial court was both necessary and justified, and we humbly pray that this Honorable Court affirms the decision of the lower court in this regard.

## **CONCLUSION**

84. In conclusion, the 1st Respondent requests the dismissal of the Appellants' appeal for the following REASONS amongst others:

- 1) Issues 1 and 2, as formulated by the Appellants, are based on flawed and incompetent grounds of appeal.
- 2) Ground 1 does not challenge the trial court's judgment, while Grounds 2, 3, and 4 mischaracterize facts and fail to address substantive findings, making them academic.
- 3) The Appellants did not present any arguments to support Ground 5, which should therefore be considered abandoned.
- 4) The Appellants' attempt to challenge the issue of exhausting administrative remedies is improper, as this matter was resolved by the interlocutory ruling by the trial of November 13, 2017, which remains unchallenged.
- 5) The trial court determined that the 1st Respondent's compulsory retirement violated statutory procedures outlined in the Armed Forces Act (AFA) and the Harmonized Terms and Conditions of Service (HTACOS), as no court-martial or disciplinary process was conducted.

- 6) The Appellants ignored statutory protections governing the 1st Respondent's employment, rendering the dismissal unlawful.
- 7) The trial court acted within its discretion under Section 12 of the National Industrial Court Act to admit evidence, ensuring substantive justice.
- 8) The Appellants' reliance on precedents, including cases addressing public documents in the context of secondary evidence; also on the cases of *Madukolu*, *Dakour*, and *Garba*, is misguided. These cases are either unrelated to the admission of primary evidence or statutory employment protections, or they are inapplicable to the specific facts of this case.
- 9) The trial court's award of ₦200,000 in costs was appropriate, within its discretion, and aligned with procedural fairness.

Respectfully submitted.

November 27, 2024



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

**SUIT NUMBER: CV/322/2022**

**BETWEEN:**

**DR. ABUBAKAR GAGARAWA YA'U**  
CLAIMANT/ DEFENDANT TO  
COUNTER-CLAIM

**AND**

**NANA AISHA HASSAN**  
DEFENDANT /COUNTER-CLAIMANT

**DEFENDANT / COUNTER-CLAIMANT'S**  
**FINAL WRITTEN ADDRESS**

**INTRODUCTION**

1. My Lord, this is the Final Written Address on behalf of the Counter Claimant, Nana Aisha, in support of her counterclaim against the Claimant/ Defendant to the Counter Claim, Dr. Abubakar Gagarawa Ya'u.
  
2. It is the Counter Claimant's position that:
  - 1) The Defendant to the Counter Claim committed medical negligence which led to serious harm to Nana Aisha Hassan.

- 2) The Defendant to the Counter Claim breached medical confidentiality by bringing the Nana Aisha Hassan's medical records into the public domain without lawful justification when the Defendant to the Counter Claim instituted a frivolous and malicious defamation action against the Nana Aisha Hassan, causing her financial loss, emotional distress, and reputational harm.
- 3) The Defendant to the Counter Claim failed to defend the counterclaim, meaning that the facts and evidence presented by the Claimant remain unchallenged and uncontroverted before this Honorable Court.

### **STATEMENT OF FACTS**

3. The Counter Claimant, Nana Aisha Hassan, was a patient under the care of the Defendant to the Counter Claim, Dr. Abubakar Gagarawa Ya'u, who negligently mismanaged her treatment, resulting in severe physical harm, preventable post-surgical complications, and additional financial burdens.
4. Specifically, Dr. Ya'u performed a hernia repair surgery at National Hospital, Abuja, inserting a medical mesh. Due to his negligence, the surgical site became infected, and post-surgical care was grossly inadequate.
5. Dr. Ya'u prematurely removed medical drains, causing severe infections and complications. Consequently, the Counter Claimant, seeking better medical attention, was compelled to transfer to Dr. Ya'u's private facility, Newpoint Surgeries, expecting improved care.

6. At Newpoint Surgeries, the Counter Claimant suffered neglect as Dr. Ya'u was frequently absent, leaving her without proper medical attention for extended periods. Despite multiple scheduled remedial surgeries, Dr. Ya'u failed to appear on five occasions without justification.
7. The Counter Claimant, facing deteriorating health conditions, sought urgent corrective medical intervention at Nisa Premier Hospital, incurring substantial expenses due to the Defendant to the Counter Claim's negligence.
8. Dr. Ya'u engaged in financial exploitation, billing the Counter Claimant excessive fees, including ₦1,040,000 for drugs he never supplied and falsified consultation charges. Furthermore, he refused to release her medical records despite written requests, thereby obstructing her right to access her own health information.
9. Upon realizing the Defendant to the Counter Claim's medical negligence, the Counter Claimant engaged her legal representative, who issued a privileged demand letter requesting corrective action. Instead of addressing the malpractice claims, Dr. Ya'u instituted a defamation suit against her, using the privileged communication as a pretext to harass and dissuade her from seeking legal redress.
10. In the course of the baseless litigation, Dr. Ya'u unlawfully disclosed the Counter Claimant's confidential medical records in open court, despite the fact that she had never waived her right to medical

confidentiality. Notably, this disclosure was not made in defense of any allegations against him, but was a deliberate and preemptive violation of medical ethics and patient privacy laws.

11. The Defendant to the Counter Claim ultimately abandoned his defamation suit and failed to defend the Counter Claimant's counterclaim for negligence, thereby admitting liability under the law.

12. As a direct result of Dr. Ya'u's gross negligence, the Counter Claimant suffered severe physical pain, emotional distress, and permanent disfigurement, including the loss of her umbilicus.

### **MATERIALS PRESENTED**

13. The Defendant to the Counter Claim did not file a defense to the counter claim at all. However, the Counter Claimant adopted her Witness Statement Number 1 in support of her case and she also tendered the following documents:

1) **EXHIBIT D1**: Viewpoint Surgery medical bill dated 27/08/2022 referred in paragraph 31 of the Witness statement.

2) **EXHIBIT D2**: Viewpoint Surgery medical bill dated 11/09/2022 referred in paragraph 32 of the Witness statement.

3) **EXHIBIT D3**: Letter of request for medical bill and medical report dated September 27, 2022 referred in paragraph 33 of the Witness statement.

- 4) **EXHIBIT D4**: Access Bank proof of payment to Viewpoint Surgery dated August 16, 2022 referred in paragraph 40 of the Witness statement.
- 5) **EXHIBIT D5**: Access Bank proof of payment to Viewpoint Surgery dated 30/08/2022 referred in paragraph 40 of the Witness statement.

### **ISSUES FOR DETERMINATION**

14. Submit that the following four issues arise for determination before this Honorable Court in this action:
  - 1) Whether this honorable court should enter judgment for the Counter Claimant in the absence or default of pleading and defense.
  - 2) Whether the Defendant was negligent in his treatment of the Claimant, thereby rendering him liable for medical malpractice.
  - 3) Whether the Defendant unlawfully breached the Claimant's medical confidentiality by exposing her medical records in court when the Defendant to the Counter Claim filed (and abandoning a baseless defamation suit) amounting of itself to an abuse of court process and malicious litigation.
  - 4) Whether the Claimant is entitled to general, aggravated, and punitive damages for the Defendant's actions.
15. The issues are argued together.

## **LEGAL ARGUMENTS**

### **ISSUE ONE**

16. The Defendant to the Counter Claim has not filed any process in opposition to the counter claim. By settled legal principles, facts pleaded and not denied are deemed admitted as held by the Supreme Court in *C.B.N. v. Dinneh (2021) 15 NWLR (Pt. 1798) 91 at 121, paras. C-D:*

**“Facts pleaded and not denied are deemed admitted. In this case, the respondent pleaded facts on when he can be summarily dismissed from the appellant’s employment, but the appellant did not deny the facts pleaded. In the circumstances, the facts pleaded by the respondent are deemed admitted by the appellant.”**

17. Applying this principle to the present case, the failure of the Defendant to the Counter Claim to file any process in opposition amounts to an admission of the facts contained in the counter claim. Consequently, the court is urged to enter judgment in full against the Defendant to the Counter Claim.

### **ISSUE TWO**

18. My Lord, to establish medical negligence, the Counter-Claimant must prove the following essential elements:

- 1) That the doctor owed her a duty of care as her medical practitioner.
  - 2) That the doctor breached that duty by failing to exercise the reasonable standard of care expected in his profession.
  - 3) That the Counter-Claimant suffered harm as a direct result of the Defendant's actions.
19. We refer to and rely on all the provisions section 28 of the Code of Medical Ethics in Nigeria, which binds all doctors and which is reproduced below for ease of reference:

**“Medical practitioners and dental surgeons owe a duty of care to their patients in every professional relationship. The particular skill which training and eventual recognition and registration bestowed on a practitioner, is to be exercised in a manner expected of any practitioner or any other member of the professions of his experience and status. It is required that a practitioner upgrades his skill as best as possible in the light of advancing knowledge in the profession. To this end, regular participation in programmes of continuing medical education is a necessary condition for the practitioner to remain relevant in practice and to achieve renewal of his practicing license based on the guidelines that are released by the Council from time to time.**

**A practitioner must see and attend to all patients on admission under his care, as frequently as their conditions demand.**

**In an emergency, for instance at the scene of a road traffic accident, a doctor passing by is under no inherent duty to stop and render first aid to the victims; but if he decides to stop and render care, he is bound by the ethics to exercise a degree of reasonable care, that is, to do everything that a competent and reasonable registered practitioner would do in the circumstance.**

**In Nigeria there are, outside the control of medicine and dentistry, peculiar social problems which create obstacles to the full manifestation of the degree of skill that is expected; this situation does not preclude the practitioner from acting within the degree of reasonable care that is possible under the circumstances.**

**Thus a registered practitioner who fails to exercise the skill or act with the degree of care expected of his experience and status in the process of attending to a patient is liable for professional negligence.**



**The following among others constitute Professional Negligence:**

**(A) Failure to attend promptly to a patient requiring urgent attention when the practitioner was in a position to do so.**

**(B) Manifestation of incompetence in the assessment of a patient.**

**(C) Making an incorrect diagnosis particularly when the clinical features were so glaring that no reasonable skillful practitioner could have failed to notice them.**

**(D) Failure to advise, or proffering wrong advice to, a patient on the risk involved in a particular operation or course of treatment, especially if such an operation or course of treatment is likely to result-in serious side effects like deformity or loss of organ.**

**(E) Failure to obtain the consent of the patient (informed or otherwise) before proceeding on any surgical procedure or course of treatment, when such a consent was necessary.**

**(F) Making a mistake in treatment e.g. amputation of the wrong limb, inadvertent termination of a pregnancy, prescribing the wrong drug in error.**

**(G) a correctly diagnosed ailment, etc. Failure to refer or transfer a patient in good time when such a referral or transfer was necessary.**

**(H) Failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient.**

**(I) Failure to see a patient as often as his medical condition warrants or to make proper notes of the practitioner's observations and prescribed treatment during such visits or to communicate with the patient or his relation as may be necessary with regards to any developments, progress or prognosis in the patient's condition."**

20. Relying on the above, and given the facts of this case, we submit that the courts have also consistently affirmed the duty of care owed by medical practitioners to their patients. In *Otti v. Excel-C Medical Centre Ltd (2019) 16 NWLR (Pt. 1698) 274, 316, paras. E-F*, the Court held that:

**“A medical doctor or a hospital owes a patient a duty of care with regard to the procedure for the medical treatment of the patient.”**

21. Furthermore, we submit that the term care as interpreted in *Kabo Air Ltd. v. Mohammed (2005) 5 NWLR (Pt. 1451) 38, 72, paras. A-B*, requires a medical practitioner to exercise serious attention, caution, and diligence in attending to patients. The court held:

**“Care means serious attention or heed. Under the law of negligence or of obligation, it means the conduct demanded of a person in a given situation. Typically, this involves a person's giving attention both to possible dangers, mistakes, and pitfalls and to ways of minimizing those risks.”**

22. The Supreme Court, in *Okonkwo v. Medical and Dental Practitioners Disciplinary Tribunal (2001) 7 NWLR (Pt. 711) 206*, also emphasized that a medical practitioner who fails to exercise the standard of care required of a reasonable doctor is liable in negligence.

23. The Counter-Claimant, Nana Aisha Hassan, underwent surgery for hernia repair at the National Hospital, Abuja, under the care of the Dr. Ya’u. The procedure involved the insertion of a medical mesh.

24. Due to the grossly substandard medical management by Dr. Ya’u and his team:

- 1) The surgery site became infected due to inadequate postoperative care.
  - 2) The doctor negligently removed the drainage mechanism prematurely, thereby preventing proper evacuation of waste and exacerbating the infection.
  - 3) The doctor resorted to crude and unprofessional methods of waste evacuation, including cutting stitches prematurely and using gauze.
25. The Counter-Claimant suffered excruciating pain, severe discomfort, and an unnecessarily prolonged recovery period as a direct consequence of the Claimant's negligence.
26. Submit that the relationship between a doctor and a patient is one of trust and confidence, as emphasized in *Abatan v. Awudu (2003) 10 NWLR (Pt. 829) 451, 462, para. H*, where the court held:
- "The relationship between a doctor and his patient is one of trust and confidence; a relationship where one has the power and duty to treat and restore the other to mental and physical well-being. Thus, the two of them can never have equal bargaining power."**
27. In the present case, the doctor abused this trust by failing to uphold the professional duty of care expected of a competent medical

practitioner. The unchallenged evidence before this Honorable Court establishes that:

- 1) The doctor's post-surgical treatment even in the estimation of an ordinary member of the public fell far below safe and reasonable standards.
  - 2) The avoidable complications suffered by the Counter-Claimant were a direct result of the doctor's negligence.
28. The doctor's failure to exercise due care in treating the Counter-Claimant amounted to a clear breach of medical ethics and professional responsibility.
29. In view of the foregoing, this Honorable Court is urged to find Dr. Abubakar Gagarawa Ya'u liable for medical negligence and grant appropriate reliefs in favor of the Counter-Claimant.

### ISSUE THREE

30. Confidentiality is a fundamental principle in medical practice and Dr. Abubakar Gagarawa Ya'u had no lawful basis to expose the Counter-Claimant's medical records in court, particularly since the defamation claim was frivolous and unjustified. Such an action contravenes established legal precedents on the sanctity of medical confidentiality.

31. In *McInerney v. MacDonald (1992) 2 SCR 138*, the United States court held that medical confidentiality is sacrosanct and cannot be breached without legal justification.
32. The unauthorized disclosure of the Counter-Claimant's medical information by Dr. Abubakar Gagarawa Ya'u constitutes a clear violation of medical confidentiality and ethical obligations, amounting to a tortious breach.
33. Furthermore, the means of this publication which is the spurious defamation claim against the Counter-Claimant was maliciously contrived to harass and intimidate her, thereby constituting an abuse of court process. This Honorable Court is urged to hold Dr. Abubakar Gagarawa Ya'u accountable for professional negligence, judicial misconduct, and vexatious litigation, awarding substantial damages in favor of the Counter-Claimant.
34. Section 8(B) of the Code of Medical Ethics in Nigeria provides:
- "A physician shall preserve absolute confidentiality on all he knows about his patient even after the patient has died."**
35. Thus, a physician who discloses patient information without authorization breaches this ethical and legal duty.
36. In *Ejikoye v. Ajoku (2024) 16 NWLR (Pt. 1963) 191 at 195*, the court held that unauthorized disclosure of privileged or confidential

information constitutes an actionable tort. This principle applies equally to medical and legal confidentiality.

37. We submit that the effect of the decision in *Ikeme v. Anakwe (2003) 10 NWLR (Pt. 829) 548 at 574*, is that the court affirmed that (both medical and) legal practitioners are liable for breach of confidentiality when unauthorized disclosure results in injury.
38. In *Omoregie v. Idugiemwanye (1985) 2 NWLR (Pt. 5) 41*, the court held that instituting a case without legitimate basis and later abandoning it constitutes vexatious litigation and an abuse of court process. And this applies to Abubakar Gagarawa Ya'u's disclosure of Nana Aisha Hassan's medical history in open court constitutes a severe breach of professional ethics and medical confidentiality. This unauthorized disclosure caused humiliation, emotional distress, and reputational harm to the Counter-Claimant, meeting the threshold for actionable conduct.
39. Medical professionals, much like legal practitioners, owe an absolute duty of confidentiality to their patients, as enshrined in Section 8(B) of the Code of Medical Ethics. The decision in *Ikeme v. Anakwe* (supra) confirms that such breaches amount to professional negligence, making Dr. Abubakar Gagarawa Ya'u liable for the damages suffered by the Counter-Claimant.
40. Additionally, Dr. Abubakar Gagarawa Ya'u's defamation claim was maliciously designed to intimidate and suppress the Counter-Claimant's right to seek legal redress for medical malpractice. The

letter in question, dated November 1, 2022, was a legally privileged document, and under Egbue v. Araka (supra), Nigerian courts recognize legal privilege as inviolable. Bringing a defamation action based on a privileged legal communication is an abuse of court process.

41. Moreover, as held in Omoregie v. Idugiemwanye (supra), initiating baseless litigation and subsequently abandoning it constitutes vexatious litigation. The facts of the present case indicate that Dr. Abubakar Gagarawa Ya'u's claim lacked merit from the outset, reinforcing the need for judicial intervention to deter the misuse of litigation as a tool of oppression.
42. The Counter-Claimant has endured severe financial hardship, emotional distress, and reputational damage due to Dr. Abubakar Gagarawa Ya'u's actions. The misuse of judicial proceedings in this manner undermines the integrity of the legal system and necessitates appropriate judicial redress.
43. In light of the legal authorities and facts presented, this Honorable Court is urged to uphold the sanctity of medical confidentiality, legal privilege, and protection against vexatious litigation. Dr. Abubakar Gagarawa Ya'u's professional negligence and judicial misconduct warrant strong judicial condemnation.
44. Accordingly, the Counter-Claimant is entitled to substantial damages as compensation for the harm suffered, and punitive



measures should be imposed to deter future breaches of confidentiality and abuse of judicial processes.

#### ISSUE FOUR

45. The Counter-Claimant urges this court to hold that she is entitled to substantial damages in view of Dr. Abubakar Gagarawa Ya'u's gross misconduct, which includes professional negligence, breach of medical confidentiality, and the institution of unjustified litigation.
46. Specifically, we submit that premises considered the Counter-Claimant is entitled to:
- 1) General damages for the pain, suffering, and emotional distress directly resulting from Dr. Abubakar Gagarawa Ya'u's malpractice.
  - 2) Aggravated damages to reflect the exceptional nature of the breach of medical confidentiality, which exacerbated the Counter-Claimant's distress and violated fundamental ethical and legal obligations.
  - 3) Exemplary, punitive, or vindictive damages in accordance with established judicial precedents, to deter reckless and malicious conduct by medical practitioners and prevent similar future infractions.
47. The Supreme Court in *Mekwunye v. Emirates Airlines (2019) 9 NWLR (Pt. 1677) 191, 225, paras. D-E* affirmed that exemplary

damages apply where a defendant's conduct is wanton, fraudulent, malicious, or demonstrates contumelious disregard for the plaintiff's rights. Dr. Abubakar Gagarawa Ya'u's actions, particularly the breach of medical confidentiality and subsequent vexatious litigation, meet this threshold and justify the imposition of punitive damages.

48. In Williams v. Daily Times (1990) 1 NWLR (Pt. 124) 1, 30-31, paras. E-A, the court held that exemplary damages should be awarded in cases where the defendant's conduct was outrageous, scandalous, or undertaken with guilty knowledge, particularly where the defendant calculated that the economic advantage of wrongdoing outweighed the potential consequences.

49. Given the deliberate and unethical nature of Dr. Abubakar Gagarawa Ya'u's breach, the Counter-Claimant urges this Honorable Court to make an example of Dr. Abubakar Gagarawa Ya'u's to deter such misconduct in the medical profession.

50. In Onagoruwa v. I.G.P. (1991) 5 NWLR (Pt. 193) 593, the court outlined three grounds for awarding exemplary damages:

- 1) Express authorization by statute.
- 2) Oppressive, arbitrary, or unconstitutional actions by government servants.
- 3) Conduct calculated by the defendant to yield financial gain exceeding potential compensation.

51. While the present case does not involve government action per se, Dr. Abubakar Gagarawa Ya'u's conduct falls squarely within the third category, as the wrongful disclosure of medical information and institution of vexatious proceedings appear intended to intimidate the Counter-Claimant into silence or submission.
52. The principle that "tort does not pay", as emphasized in *First Bank of (Nig.) Plc. v. Ibennah*, is particularly relevant here. Dr. Abubakar Gagarawa Ya'u's actions were wanton, oppressive, and undertaken with reckless disregard for the Counter-Claimant's rights, justifying an award of exemplary damages to punish the doctor, deter future violations, and compensate for the Counter-Claimant's distress, shame, and emotional anguish.
53. In line with *Rookes v. Barnard (1964) AC 1129*, where the court emphasized that punitive damages should be awarded in cases of oppressive or unconstitutional conduct, this Honorable Court is urged to impose exemplary damages against the Claimant, considering the severity of the misconduct, the need for deterrence, and the duty of medical practitioners to uphold the highest ethical standards.
54. The court is further urged to take judicial notice of the vexatious nature of Dr. Abubakar Gagarawa Ya'u's actions and issue an order reflecting the seriousness of the misconduct, ensuring that the Counter-Claimant is adequately compensated while reinforcing the principle that reckless breaches of professional and legal obligations will not be condoned.

55. Given the totality of Dr. Abubakar Gagarawa Ya'u's misconduct, including gross negligence, breach of confidentiality, and abuse of legal process, this Honorable Court is respectfully urged to award substantial damages, including aggravated and exemplary damages, as a necessary remedy and deterrent.

### **CONCLUSION**

56. The medical negligence is established, and Dr. Abubakar Gagarawa Ya'u having directly caused Nana Aisha Hassan's pain, suffering, and financial losses.

57. The failure of Dr. Abubakar Gagarawa Ya'u to provide the Counter Claimant with a copy of her medical records, despite a formal request, constitutes a breach of her legal right to access personal medical information.

58. Dr. Abubakar Gagarawa Ya'u baseless lawsuit in these proceedings and subsequent abandonment of his claim constitute an abuse of court process. Furthermore, this action by Dr. Abubakar Gagarawa Ya'u in exposing the Counter Claimant's medical records in the public space without a legally justifiable reasons amount to a grave violation of patient confidentiality and privacy rights.

59. Dr. Abubakar Gagarawa Ya'u's failure to provide essential medical services and prescribed drugs while charging for them constitutes a breach of professional and contractual obligations.

60. Nana Aisha Hassan is entitled to full compensation for the physical, financial, and emotional harm suffered, as well as the legal costs incurred in seeking redress by this court:

- 1) Declaring that Dr. Abubakar Gagarawa Ya'u is liable for medical negligence, having failed to provide care that meets the standard of an average, reasonable, and prudent medical professional.
- 2) Declaring that Dr. Abubakar Gagarawa Ya'u breached the Claimant's right to access her medical records by failing to comply with a written request.
- 3) Declaring that Dr. Abubakar Gagarawa Ya'u breached the duty of medical confidentiality by unlawfully disclosing the Claimant's medical records.
- 4) Awarding Nana Aisha Hassan general damages of ₦20 million for pain, suffering, and emotional distress resulting from the Defendant's negligence.
- 5) Awarding special damages, including the reimbursement of ₦140,000 for drugs not supplied and compensation for all other specific unprovided services that were charged.
- 6) Awarding exemplary and punitive damages of ₦500 million for the Defendant's reckless disregard for medical ethics and patient rights.

- 7) Awarding the full cost of this action, including attorney's fees and legal expenses, on a full indemnity basis.
- 8) Granting any further relief this Honorable Court deems just and equitable in the circumstances.

March 13, 2025



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**IN THE KOGI STATE HIGH COURT**  
**IN THE ISANLU JUDICIAL DIVISION**  
**HOLDEN AT ISANLU**

**SUIT NUMBER: KGS/IHC/1/2025**

**IN THE MATER OF SECTIONS 18(1), 18(2), 19, 20 AND 70 OF THE**  
**EVIDENCE ACT; IN THE MATTER OF SECTION 36(1) OF THE**  
**CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA AND IN**  
**THE MATTER OF THE IFE OLUKOTUN CHIEFTANNCY**  
**DECLARATION OF 1998**

<p style="text-align:center"><b>BETWEEN</b></p> <p><b>1. HRH OBA MOSES AJISAFE</b> (The Okohi of Ohi for Himself and on Behalf of All Members of Ohi Clan in Ife Olukotun)</p> <p><b>2. HRH OBA ALIYU MOHAMMED</b> (The Obaro of Oke Ife for Himself and on Behalf of All Members of Koko Clan in Ife Olukotun)</p> <p style="text-align:center"><b>AND</b></p> <p><b>1. CHIEF P. K. AIYEDONA</b> <b>2. ELDER SUNDAY SAMUEL</b> <b>3. KOGI STATE COUNCIL OF CHIEFS</b> <b>4. CHAIRMAN, YAGBA EAST</b> <b>TRADITIONAL COUNCIL</b> <b>5. YAGBA EAST LOCAL GOVERNMENT</b> <b>COUNCIL</b> <b>6. COMMISSIONER FOR LOCAL</b> <b>GOVERNMENT AND CHIEFTANCY</b> <b>AFFAIRS, KOGI STATE</b> <b>7. ATTORNEY GENERAL AND</b> <b>COMMISSIONER OF JUSTICE, KOGI</b> <b>STATE</b> <b>8. EXECUTIVE GOVERNOR OF KOGI</b> <b>STATE</b> <b>9. HRH OBA AKIBU SALIU</b></p>	<p style="text-align:center"><u>Claimants</u></p>
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**(The Obaro of Ero for Himself and on Behalf of All Members of Ero Clan in Ife Olukotun)**

**10. HRM OBA SHUAIB AIYEGBAJEJE MUHAMMED**

**(The Olukotun of Ife Olukotun for Himself and also for All the Members of Otun Clan in Ife Olukotun)**

**11. HRH OBA RAIMI SULE**

**(The Agbana Nla of Ona for Himself and on Behalf of All Members of Ona Clan in Ife Olukotun)**

Defendants

## **CONSOLIDATED REPLY ON POINTS OF LAW**

### **INTRODUCTION**

1. This Reply on Points of Law by the Claimants speaks to the different situations of all the Defendants.
2. The Claimants did not file a further affidavit in response to the counter-affidavit of the 1st, 2nd, and 11th Defendants.
3. Since the 3rd, 4th, 5th, 6th, 7th, and 8th Defendants have chosen not to file a counter-affidavit to the originating summons, there is no basis for filing an additional further affidavit addressing them.
4. However, the Claimants have submitted a further affidavit specifically in response to the statements contained in the counter affidavit deposed to by HRM Oba Shuaib Aiyegbajeje Muhammed, which was filed on behalf



of the 9th and 10th Defendants. The Claimants fully rely on all the 3 paragraphs of their said Further Affidavit for full terms and legal effect.

5. Additionally, the Claimants hereby submit the following consolidated Reply on Points of Law, which addresses the distinct legal positions of all the Defendants as follows.

**ADMISSIONS BY THE 1ST, 2ND, AND 11TH DEFENDANTS AND THEIR LEGAL CONSEQUENCES**

6. The counter-affidavit filed on behalf of the 1st, 2nd, and 11th Defendants in this originating summons, specifically at paragraphs 2, 3, 4, 5, 6, 7, and 8, expressly admits all the facts presented in support of the originating summons and by virtue of the well-established principle that "facts admitted need no further proof" as affirmed by the Supreme Court in *Banke v. Akure North Local Govt. (2015) 6 NWLR (Pt. 1455) 400 at 417, para. G* and as such we submit that this honorable court is at liberty to enter judgment in full against the 1st, 2nd, and 11th Defendants.
7. It is noteworthy that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants held key positions (as the Main Secretary and as the Minor Secretary respectively) of the community appointed committee that midwifed **EXHIBIT DDECLARATION** and that the 10th Defendant was the Main Chairman of that committee. All the three of them had significant work done within the Declaration Committee, and that is to say the group that assisted the Ife Olukotun Community in establishing **EXHIBIT DECLARATION** in these proceedings.

8. The 1st Defendant did not deny his signature which appears on page 21 of **EXHIBIT DECLARATION** (corresponding to page 44 of the originating summons bundle), and similarly, the signature of the 2nd Defendant found on the same page of **EXHIBIT DECLARATION** (page 44 of the bundle) is not denied by the 2<sup>nd</sup> Defendant.

**ADMISSIONS BY THE 3<sup>RD</sup>, 4<sup>TH</sup>, 5<sup>TH</sup>, 6<sup>TH</sup>, 7<sup>TH</sup> AND 8<sup>TH</sup> DEFENDANTS AND THEIR LEGAL CONSEQUENCES**

9. The 3rd, 4th, 5th, 6th, 7th, and 8th Defendants have not filed any process in opposition to the originating summons. By settled legal principles, facts pleaded and not denied are deemed admitted as held by the Supreme Court in *C.B.N. v. Dinneh (2021) 15 NWLR (Pt. 1798) 91 at 121, paras. C-D*:

**“Facts pleaded and not denied are deemed admitted. In this case, the respondent pleaded facts on when he can be summarily dismissed from the appellant’s employment, but the appellant did not deny the facts pleaded. In the circumstances, the facts pleaded by the respondent are deemed admitted by the appellant.”**

10. Applying this principle to the present case, the failure of the 3rd, 4th, 5th, 6th, 7th, and 8th Defendants to file any process in opposition amounts to an admission of the facts contained in the originating summons. Consequently, the court is urged to enter judgment in full against these Defendants.

**FAILURE OF THE 9<sup>TH</sup> AND 10<sup>TH</sup> DEFENDANTS TO CERTIFY EXHIBITS B - K TO THEIR COUNTER AFFIDAVIT**

11. My Lord, the exhibits referenced in the counter-affidavit of the 9th and 10th Defendants as EXHIBITS B, C, D, E, F, G, H, I, and K are public documents submitted in support of a substantive claim rather than an interlocutory application. However, these documents have not been certified in accordance with the provisions of the Evidence Act, 2011.
  
12. The following exhibits fall under this category:
  - 1) EXHIBIT B (paragraph 17): An affidavit deposed in the Registry of the Area Court of Kogi State on September 18, 2000 (13 pages).
  
  - 2) EXHIBIT C (paragraph 17): An affidavit deposed in the Registry of the Area Court of Kogi State on September 18, 2000 (13 pages).
  
  - 3) EXHIBIT D (paragraph 17): An affidavit deposed in the Registry of the Area Court of Kogi State on September 18, 2000 (13 pages).
  
  - 4) EXHIBIT E (paragraph 17): An affidavit deposed in the Registry of the Area Court of Kogi State on September 18, 2000 (7 pages).
  
  - 5) EXHIBIT F (paragraph 17): An affidavit deposed in the Registry of the Area Court of Kogi State on September 18, 2000 (12 pages).
  
  - 6) EXHIBIT G (paragraph 18): An affidavit deposed in the Registry of the Kabba Divisional Court of Kogi State on May 4, 1981 (3 pages).
  
  - 7) EXHIBIT H (paragraph 20): A 10-page document purporting to be minutes of the official deliberations of the Yagba East Local Government Traditional Council.

- 8) EXHIBIT I (paragraph 21): A record purportedly forming part of the official records of the Ife Olukotun Traditional Council, but not issued by or addressed to the council by the 9th or 10th Defendants.
- 9) EXHIBIT J (paragraph 21): Another document allegedly forming part of the official records of the Ife Olukotun Traditional Council, but similarly not issued by or addressed to the council by the 9th or 10th Defendants.
- 10) EXHIBIT K (paragraph 23): A record purportedly forming part of the official records of the Kogi State Ministry of Local Government and Chieftaincy Affairs.
13. Claimants submit that the law regarding the admissibility of public documents is clear. Public documents may be proved by either primary or secondary evidence, but the only admissible form of secondary evidence is a Certified True Copy. *Section 104 of the Evidence Act, 2011* provides that:
- “Every public officer having the custody of a public document shall, upon demand and payment of legal fees, issue a certified copy of such document. The certified copy must be dated, signed, and where applicable, sealed by the officer. Only officers with official custody of such documents can certify them.”**
14. The courts have consistently held that only certified true copies of public documents are admissible as secondary evidence.

15. In *Alhaji Ahmadu Kubau v. Mallam Shehu Rilwanu (2013) LPELR-22346(CA)*, the Court of Appeal affirmed that "the only type of secondary evidence permissible for public documents is a certified true copy and none other."
16. The Supreme Court in *Hon. Justice E. O. Araka v. Hon. Justice Don Egbue (2003) LPELR-532 (SC)* emphasized the strict requirement for certification.
17. Similarly, in *Dr. Imoro Kubor & Anor v. Hon. Seriake Henry Dickson & Ors (2012) LPELR-9817(SC)*, the Court held that uncertified secondary copies of public documents are inadmissible, regardless of whether they are physical or electronic copies.
18. In *Mannir Abdullahi v. Federal Republic of Nigeria (2016) LPELR-40101 (SC)*, the Supreme Court clarified that uncertified public documents are not admissible in evidence.

See also *Oboh v. Nigeria Football League Ltd (2021) MWLR (Pt. 1) 132 at 165.*

19. We submit that while uncertified public documents may be attached to affidavits in interlocutory applications, they remain inadmissible in substantive proceedings. The distinction arises because interlocutory applications primarily address procedural matters, whereas substantive proceedings determine the final rights and liabilities of parties. In interlocutory matters, courts may consider uncertified public documents

attached to affidavits, but such documents cannot be relied upon in determining substantive claims.

20. The Supreme Court in *Nwaogu v. Atuma (2013) 11 NWLR (Pt. 1364) 117 at 137, paras. C-D*, held emphatically that:

**“A public document which is not certified is inadmissible in law. And an uncertified public document should not be countenanced for any reason whatsoever or under any guise. In the instant case, exhibit EA3 was a public document which was not certified. It was inadmissible in law.”**

21. This position is further reinforced by the decision in *Okose v. Udum (2022) LPELR-58725(CA)*, where the Court of Appeal emphasized that:

**“The settled position of the law is that the essence of certification of a public document is for the confirmation of its source; admitting the copy of a public document (uncertified) without recourse to its authenticity will not amount to compliance with the Evidence Act on the issue.”**

22. Similarly, in *N.F.V.C.B. v. Adegboyega (2019) 4 NWLR (Pt. 1662) 283 at 309-310, paras. H-A*, the Supreme Court reiterated that in actions commenced by originating summons, the court relies solely on affidavit evidence and any documents attached thereto. However, uncertified public documents, if tendered for the purposes of deciding the substantive case, and as such must remain inadmissible as they fail to meet the strict evidentiary requirements of the Evidence Act.

23. Furthermore, in Suleja v. Abubakar & Ors (2019) LPELR-47899(CA), the Court of Appeal held that:

**“Public documents attached to affidavits cannot be objected to until the substantive action comes up for hearing.”**

24. This underscores that while such documents may be considered at interlocutory stages, their admissibility in substantive proceedings is subject to compliance with the Evidence Act.

25. The Supreme Court, in Simon Ezechukwu & Anor v. I.O.C. Onwuka (2016) 6 SCM 71 at 97 E-H, reaffirmed that only certified copies of public documents are admissible in legal proceedings and any objection to their admissibility can be raised during trial and we are at this trial at the moment at the hearing of this originating summons.

26. Accordingly, since the said exhibits referenced in the counter-affidavit of the 9th and 10th Defendants have not been certified in compliance with the Evidence Act, this Honorable Court cannot safely rely on them in determining the substantive claim since these documents are being tendered to prove substantive rights and it is apparent that they are fundamental to the defense, and as such, Okonkwo v. C.C.B. (Nig) Plc (2003) 8 NWLR (Pt. 822) 347, is applicable to the effect that where uncertified documents were held inadmissible in substantive claims.

27. We, therefore, urge this Honorable Court to reject these exhibits in their entirety since EXHIBITS B - K are public documents intended to

prove substantive rights at trial and they have not been certified, so that they cannot be relied upon to establish any substantive claim under Nigerian law.

**EXHIBITS B, C, D, E, F, G, H, I, J AND K WERE MERELY DUMPED BY THE 9<sup>TH</sup> AND 10<sup>TH</sup> DEFENDANTS ON THE COURT AND THUS MUST BE IGNORED**

28. Even if the court were to overlook the certification requirements for the for these public documents, they remain unusable because the 9th and 10th Defendants have merely presented or indeed dumped them without any accompanying analysis because the failure on the part of the 9<sup>th</sup> and 10<sup>th</sup> Defendants to analyze or contextualize the documents amounts to dumping it on the court, a practice that the Supreme Court has consistently condemned.

29. The Supreme Court in *A.P.G.A. v. AlpMakura & Ors (2016) LPELR-47053(SC)* reaffirmed the settled principle that courts are not expected to sift through documents in search of their relevance or significance when the Court held:

**“It is trite that documents apart from what they contain, do not speak. Therefore, a document cannot serve any useful purpose in the absence of oral evidence explaining its essence. The fact that a document has been admitted in evidence from the bar or by consent of parties does not necessarily mean that significant weight or any weight at all, should automatically be attached to it without further proof. It is the duty of the party tendering documents to relate each document tendered**



**to that part of the case he intends to prove. This will enable the opposing party to ask appropriate questions. It does not lie in the Court to fish for evidence for the party tendering from the bar, from those documents.”**

30. In the present case, the 9th and 10th Defendants have wholly failed to provide any explanation or analysis in the written address in support of their counter affidavit linking all the exhibits to any material issue in this matter. Their conduct falls squarely within the mischief identified by the Supreme Court in *Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330 at 360*, that when a party decides to rely on documents to prove his case, there must be a link in oral evidence or in the written address showing the link between the document and the specific areas of the position canvassed. The 9<sup>th</sup> and 10<sup>th</sup> Defendants have the obligation to relate each document to the specific area of their case for which the document was tendered. On no account must counsel dump documents on a trial Court. No Court would spend precious judicial time linking documents to specific areas of a party's case.

31. The Supreme Court in *Obasi Brothers Ltd V. Merchant Bank of Africa Securities Ltd (2005) 2 SC (Pt.1) 51 at 68* firmly established that a party is under an obligation to tie his documents to the facts or evidence admitted in open Court or even through counsel's oral or written address. It is not the duty of the Court to embark on an inquiry outside the Court, not even by examination of documents which were in evidence, when the documents had not been examined or analyzed as in the instant case by the party who tendered them.

32. The exhibits in question span 90 pages, yet the 9th and 10th Defendants have left it entirely to the court to scrutinize these voluminous documents without guidance or explanation. This attempt to overwhelm the court and opposing parties with indiscriminate filings, without establishing their significance or probative value, renders the exhibits legally worthless.

33. Accordingly, we submit that these documents should be disregarded in their entirety, as they fail to contribute to any serious issue in this matter.

**EXHIBIT A TO THE 9TH AND 10TH DEFENDANTS' COUNTER AFFIDAVIT HAS DIMINISHED PROBATIVE VALUE**

34. The Claimants respectfully submit that Exhibit A, tendered by the 10th Defendant, lacks the necessary credibility for judicial reliance. This submission is based on the following key considerations:

- 1) First, EXHIBIT A exhibits internal inconsistencies, including discrepancies in formatting and composition, which raise concerns about its authenticity.
- 2) Second, the 9th and 10th Defendants have merely placed EXHIBIT A before this Honorable Court without any effort to establish its relevance, explain its terms, or clarify its legal implications.

3) Third, EXHIBIT A does not directly displace or contradict the substantive document before the court — **EXHIBIT DECLARATION** — in any decisive manner.

35. A close examination of EXHIBIT A reveals notable inconsistencies in its composition: while the initial portion (pages 1–12) appears manually typewritten, the latter section (pages 13–16) is distinctly typeset using modern word-processing software or personal computer. This abrupt shift in formatting raises serious concerns about potential alterations, interpolations, or post-execution modifications, thereby rendering the document suspect.

36. Submit that a document presented as evidence must be ex facie reliable before it can be accorded probative value. In *Afolabi v. Adekunle (2019) LPELR-47855(CA)*, the Court of Appeal held that where a document contains apparent inconsistencies, it must be subjected to strict scrutiny, and if doubts remain unresolved, the document's evidentiary weight is significantly diminished.

37. The principle of ***falsus in uno, falsus in omnibus*** (false in one thing, false in everything) applies to the present circumstances. A document that exhibits post-execution modifications or unexplained discrepancies cannot be safely relied upon for determining any material fact in issue. This Honorable Court is urged to apply judicial caution when assessing the reliability of Exhibit A.

38. The Evidence Act, 2011, provides that a document's authenticity must be established by the party relying on it. Specifically, Section 146(1) of

the Evidence Act places the burden on the proponent of a document to prove that it has not been altered or manipulated in a way that affects its integrity.

39. Where the authenticity of a document is in doubt due to material inconsistencies, the burden lies on the party relying on it to dispel such doubts with cogent and credible evidence. In *Olujimi v. State (2021) LPELR-56123(SC)*, the Supreme Court reaffirmed that where inconsistencies in a document create doubt, the party tendering it must clarify its legitimacy or risk having it accorded little or no weight.
40. In the present case, the 10th Defendant has made no effort to explain the apparent formatting discrepancies in EXHIBIT A — neither in the counter-affidavit nor through any supporting evidence. This failure to address material inconsistencies further diminishes the document's probative value.
41. This Honorable Court is urged to adopt the prudent judicial approach enunciated in *Onochie v. Odogwu (2020) LPELR-49523(CA)*, where the Court of Appeal held that when the authenticity of a document is questionable, the appropriate course is to reject it outright or attach minimal evidential weight.
42. The Claimants emphasize that they are not alleging forgery in respect of Exhibit A. Rather, the submission is that the document, on its face, fails to meet the threshold of judicial reliability due to internal inconsistencies. The standard for proving forgery is beyond reasonable doubt (*Adeleke v. State (2015) 14 NWLR (Pt. 1480) 538*), but that burden does not arise in

this instance. The issue before the court is not forgery but evidential credibility.

43. In light of the foregoing, the Claimants respectfully urge this Honorable Court to hold that EXHIBIT A lacks the necessary reliability due to its internal inconsistencies, the absence of any credible explanation for such irregularities, and the failure of the 10th Defendant to discharge the evidentiary burden of proving its authenticity. Consequently, EXHIBIT A should not be accorded any evidential weight in resolving the issues before this Court.

**FURTHER LEGAL POINTS TOUCHING ON THE SUBSTANCE OF  
EXHIBITS A, B, C, D, E, F, G, H, I, J AND K TO THE 10<sup>TH</sup>  
DEFENDANTS COUNTER AFFIDAVIT**

44. If the Honorable Court finds it appropriate and necessary to delve into all the exhibits that have been dumped as documents, the Claimants further submit in the case as follows:

1) Counsel on behalf of the Claimants notes that despite the fact that the 1st and 2nd Defendants have unreservedly admitted the authenticity of **EXHIBIT DECLARATION**, the 10th Defendant, HRM Oba Shuaib Aiyegbajeje Muhammed, whose signature appears as that of "Mallam Shuaib A. Muhammed" on page 21 of **EXHIBIT DECLARATION** (see page 44 of the originating summons bundle), has chosen to oppose this case even though he does not deny his signature too.

- 2) This honorable court is invited to also note that the 10th Defendant's inconsistent position (signing **EXHIBIT DECLARATION** and yet opposing the case) raises an estoppel issue because the 10<sup>th</sup> Defendant cannot be permitted approbate and reprobate.
  
- 3) Submit that the court is empowered to determine whether **EXHIBIT DECLARATION** as a true reflection of the town's customs. Submit further that EXHIBIT A, upon a full review does not and cannot contradict **EXHIBIT DECLARATION** in any material respect.
  
- 4) All the exhibits attached to the counter-affidavit are self-serving, of doubtful probative value, and do not in any way displace the clear and unambiguous documentary evidence relied upon by the claimants.
  
- 5) The materials contained in the defendants' counter-affidavit are intended to be misleading, and an attempt to overcomplicate a simple issue.
  
- 6) Submit that the court's duty in this case is to construe **EXHIBIT DECLARATION**. The defendants' 11 exhibits are extraneous. The court should disregard unnecessary materials that distract from the real issue. This case can be determined purely on **EXHIBIT DECLARATION** before the court and based on the decision in the case of *Union Bank of Nigeria Ltd v. Ozigi (1994) 3 NWLR (Pt. 333)*

- 385 the Supreme Court held that in interpreting a document, the court must limit itself to the document's content and must not introduce extraneous matters.
- 7) Also in the case of LSDPC v. Nigerian Land and Sea Foods Ltd (1992) 5 NWLR (Pt. 244) 653 it was held that the function of the court in construing a document is to ascertain the intention of the parties as expressed in the document itself.
  - 8) In Union Bank of Nigeria Plc v. Astra Builders (WA) Ltd (2010) 5 NWLR (Pt. 1186) 1 the court reiterated that where a case is centered on the construction of a written document, oral or extraneous evidence cannot be used to alter or contradict its terms.
  - 9) In the case of Koiki v. Magnusson (1999) 8 NWLR (Pt. 615) 492 the court held that a written document should be interpreted based solely on its contents, and extrinsic evidence should only be allowed where ambiguity exists.
  - 10) On rejecting evidence that introduces unnecessary distractions, in the case of Bongo V. Governor of Adamawa State (2013) 2 NWLR (Pt. 1339) 403 the court held that parties must not introduce evidence that is irrelevant to the sole issue for determination.
  - 11) Similarly, in the case of Olanlege v. Afro Continental (1996) 7 NWLR (Pt. 458) 29 the Supreme Court emphasized that courts

should resist attempts to derail proceedings by introducing voluminous but irrelevant materials.

- 12) We respectfully request the court to exclude the 11 exhibits in the counter affidavit filed on behalf of the 9th and 10th defendants and focus solely on the proper construction of **EXHIBIT DECLARATION**.
- 13) The court should focus strictly on the construction of **EXHIBIT DECLARATION** and resist the 9th and 10th defendants' attempt to introduce extraneous materials through their 11 exhibits.
- 14) The sole question before the court is the interpretation and effect of **EXHIBIT DECLARATION**. Urge this court to hold that where an originating summons is based on the construction of a single document, the court's duty is limited to interpreting that document alone and that the 9th and 10th Defendants' 11 exhibits are extraneous and irrelevant to the construction of **EXHIBIT DECLARATION** because a court cannot import external materials to modify or interpret a clear document unless there is ambiguity. The 11 exhibits introduce facts outside the memorandum, you can object on the basis that they are inadmissible in an action strictly requiring construction of a document.
- 15) **EXHIBIT DECLARATION** is a memorandum with legal implications, and its construction must be confined to its contents and the intention of the parties as expressed therein. The court should discountenance the defendants' exhibits as they introduce



factual disputes that are outside the scope of a proper interpretation exercise.

**REBUTTAL TO THE 9<sup>TH</sup> AND 10<sup>TH</sup> DEFENDANTS'S WRITTEN ADDRESS**

45. The Claimants respectfully submit the following rebuttals to the arguments advanced in support of the counter-affidavit of the 9th and 10th Defendants:

- 1) The Kogi State Chiefs (Appointment, Deposition, and Establishment of Traditional Councils) Law 2006 (the 'Chiefs Law') governs chieftaincy matters like appointment, deposition, and recognition of chiefs and since none of these issues are before the court, the law is irrelevant.
- 2) Submit that in this case the court is called to determine the proof of customary law based on **EXHIBIT DECLARATION** rather than the Chiefs Law.
- 3) This case does not challenge the 10th Defendant's position as king, making appointment, succession, or government recognition irrelevant.
- 4) Since this case is about proving a custom, it falls under the Evidence Act, not the Chiefs Law because the Chiefs Law applies only where there is a vacancy, appointment, or deposition of a chief. Since the stool is occupied, the law does not apply.

- 5) In any case, our submission is that *Adigun v. A-G Oyo State (1987) 1 NWLR (Pt. 53) 678*, establishes that a chieftaincy declaration's validity depends on compliance with customary law, not just registration.
- 6) The present case concerns proving a community's customary law, which is justiciable under the Evidence Act and case law and the courts can entertain evidence of a community's agreement on chieftaincy matters, even without a registered declaration, if proven through witnesses or historical records.
- 7) Section 8(9) of the Chiefs Law (2006) when validly triggered (but it has not been triggered in this case) can only deny an unregistered declaration from official government recognition but does not render it void. The absence of registration does not invalidate a chieftaincy declaration or strip the court of jurisdiction.
- 8) We further submit that *Oyewunmi v. Ogunesan (1990) 3 NWLR (Pt. 137) 182 (SC)* confirms that an unregistered declaration can serve as evidence of existing customs if sufficiently proved.
- 9) Courts interpret customary law based on judicial principles, recognizing both registered and unregistered declarations and an unregistered one can still serve as proof of tradition.
- 10) Customary law can be proved through judicial notice or witness testimony, even if the declaration is unregistered. Submit that Nigerian jurisprudential framework recognizes both registered and

- unregistered declarations, provided they are properly proved thus the Defendants' claim that courts cannot validate unregistered declarations contradicts legal precedents.
- 11) Section 18(1) of the Evidence Act allows courts to take judicial notice of well-established customs.
  - 12) We submit that case law, including Agbai v. Okogbue (1991) 7 NWLR (Pt. 204) 391 (SC) confirms that uncodified customs can still be proved in court.
  - 13) Submit further that customary law proof can include community meeting minutes, elder testimonies, prior court judgments, and historical records and that the courts can determine customary law through evidence, even without a registered declaration.
  - 14) Submit that the Supreme Court has consistently holds that customary law can be proven without a registered declaration and that the Evidence Act (2011) provides a structured framework for proving customary law, recognizing it as a legal source.
  - 15) Where there is no registered chieftaincy declaration, the Evidence Act allows proof through oral evidence, historical records, and community agreement.

### **CONCLUSION**

46. The Defendants' submissions seeking to invalidate the Ife Olukotun Chieftaincy Declaration should fail BECAUSE:

- 1) The 10th Defendant, HRM Oba Shuaib Aiyegbajeje Muhamed, signed EXHIBIT DECLARATION as 'Mallam Shuaib A. Muhamed' yet opposes this case has by his failure to deny his signature creates an inconsistency that undermines his opposition to the grant of the reliefs sought by the Claimants
- 2) The court has the power to recognize and enforce customary law, regardless of formal registration status.
- 3) The Defendants' forgery allegations are baseless and unsupported by evidence.
- 4) The ouster clause has already been argued in the Preliminary Objection, and rearguing it in the main case is an abuse of process.
- 5) The Court is respectfully urged to uphold the principle that customary law remains justiciable and enforceable, irrespective of registration status, provided it is sufficiently proven.

Dated February 1, 2025



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**FOR SERVICE ON:**

Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 11<sup>th</sup> Defendants

KOGI STATE COUNCIL OF CHIEFS  
c/o Kogi State Council of Chiefs  
Lokoja, Kogi state  
C/o Their Counsel

CHAIRMAN, YAGBA EAST TRADITIONAL COUNCIL  
c/o Yagba East Traditional Council Secretariat  
Isanlu, Kogi State  
C/o Their Counsel

YAGBA EAST LOCAL GOVERNMENT COUNCIL  
Local Government Secretariat  
Isanlu, Kogi State  
C/o Their Counsel

COMMISSIONER FOR LOCAL GOVERNMENT  
AND CHIEFTANCY AFFAIRS, KOGI STATE  
Kogi State Ministry of Local  
Government and Chieftaincy Affairs  
Lokoja, Kogi State  
C/o Their Counsel

ATTORNEY GENERAL AND  
COMMISSIONER OF JUSTICE  
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Kogi State Ministry of Justice  
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EXECUTIVE GOVERNOR OF KOGI STATE  
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C/o Their Counsel  
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**IN THE HIGH COURT OF LAGOS STATE**  
**IN THE IKEJA DIVISION**  
**HOLDEN AT IKEJA**

**SUIT NUMBER: IKD/ADR/150/2024**

**BETWEEN:**  
**FREEQUEST NIGERIA LIMITED**  
Claimant/Applicant

**AND**  
**UNITED BANK FOR AFRICA PLC**  
Defendant /Respondent

**MOTION ON NOTICE FOR ACCOUNT**

BROUGHT PURSUANT TO ORDER 14 OF THE LAGOS STATE HIGH COURT CIVIL PROCEDURE RULES 2019 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honorable Court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 2025, at the hour of 9:00 o'clock in the forenoon or so soon thereafter as Counsel for the Claimant/Applicant may be heard, praying this Honorable Court for the following reliefs:

1. An Order directing the Defendant/Respondent to render a full and proper account of all transactions between the Claimant/Applicant and the Defendant/Respondent concerning the alleged debt of ₦40,750,085.45.
  
2. An Order directing the Defendant/Respondent to furnish the Claimant/Applicant with the following documents within thirteen (13) days of the Order:

- 1) A detailed account statement showing all transactions leading to the alleged debt, including full and complete statements of the Claimant's business and loan accounts relevant to this suit.
  - 2) Copies of any agreements or contracts forming the basis of the alleged debt.
  - 3) A comprehensive breakdown of all fees, interest, penalties, and charges applied to the account.
  - 4) Any correspondence or documentation previously sent to the Claimant/Applicant regarding this debt. Any relevant Central Bank of Nigeria (CBN) circulars, guidelines, or directives governing the imposition of charges, penalties, and interest rates on the account.
3. An Order directing that Messrs. Uzodinma, Samonye & Co., or, failing them, any other forensic investigative accounting firm nominated by the Claimant/Applicant, shall be heard and permitted to submit reports and/or memoranda upon the taking of the account and/or inquiry.
  4. Any Further or Other Orders as this Honorable Court may deem fit in the circumstances.

**GROUND'S UPON WHICH THIS APPLICATION IS BROUGHT**



1. The Claimant/Applicant disputes the validity of the alleged debt of ₦40,750,085.45 and has repeatedly requested supporting documentation from the Defendant/Respondent, which has not been provided.
2. The Defendant/Respondent, through its agents, has engaged in improper and illegal debt collection practices by issuing threats to individuals allegedly standing as sureties for the debt.
3. The Defendant/Respondent has imposed excessive and unauthorized charges, penalties, and interest, contrary to the terms of the loan agreement and relevant CBN regulations.
4. A forensic audit and loan account reconciliation by an independent expert are necessary to determine the actual indebtedness of the Claimant/Applicant, as preliminary findings indicate significant discrepancies between the amounts claimed by the Defendant/Respondent and the actual lawful debt.
5. The Defendant/Respondent has, at different times and in different written communications issued by the bank and/or its agents, asserted varying amounts as the debt, as evidenced by the records of this Honorable Court in this case.
6. The Defendant/Respondent has filed its defense to the claims and, in addition, a counterclaim, in which it claims an amount different from what was initially asserted against the Claimant/Applicant.
7. On the basis of its counterclaim, the Defendant/Respondent has filed:

- 1) An application for a Mareva injunction; and
  - 2) An application for summary judgment against the Claimant/Applicant.
8. Pursuant to Order 14 of the Lagos State High Court Civil Procedure Rules 2019, the Claimant/Applicant is entitled to seek an account at any time after the prescribed period for the defense has elapsed.
  9. The Defendant/Respondent did not raise any preliminary challenge to the Claimant/Applicant's claim in the main suit.
  10. The involvement of forensic accounting expertise will provide an objective and fact-based analysis to assist this Honorable Court in making a fair determination of the actual debt position, ensuring that the Claimant/Applicant is not subjected to unlawful and unjust financial impositions.
  11. It is in the interest of justice to grant the reliefs sought.

Dated March 22, 2025



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**FOR SERVICE:**

C/O OLUSEYI OLUKOGA FCIP  
THE DEFENDANT'S COUNSEL  
COVENANT CHAMBERS  
OLUWANI HOUSE  
NO 2 MARTINS STREET  
OFF OJUELEGBA ROAD  
SURURLERE, LAGOS  
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**IN THE CHIEF MAGISTRATE COURT**  
**OF THE FEDERAL CAPITAL TERRITORY**  
**IN ABUJA DIVISION**  
**HOLDEN AT ABUJA**

**CASE NUMBER: DCC / 07/2025**  
**MOTION NUMBER: MN/ /2025**

**BETWEEN:**

**SALEM DIMIMU IFABIYI**

Complainant/ Applicant

**AND**

**1. GBOYEGA NELSON IFABIYI**

**2. MODUPE AGBOOLA IFABIYI**

**3. ADEYEMI IFABIYI**

Defendants/ Respondents

**AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE**  
**TO DISQUALIFY SURETIES**

**I, SALEM DIMIMU IFABIYI, Male, Adult, Nigerian Citizen, businessman, formerly residing at No. 1 Komoe Street, Maitama, Abuja, and currently residing at No. 1 Samuel Ifabiyi Close, Amilegbe, Ilorin, Kwara State, do hereby make this affidavit and state as follows:**

1. That I am the Complainant in this suit and have personal knowledge of the facts stated herein.

2. In this affidavit I will refer to and rely on a bundle of SEVEN documents bundled together and paginated at the left bottom corner as pages E1 – E43 (the exhibit bundle) and which are listed as follows:

- 1) **EXHIBIT PROCEEDINGS** which appears at pages E1 – E2 of the exhibit bundle is the record of proceedings in this case of March 18, 2025.
- 2) **EXHIBIT ONE OF FIRST** the recognizance of GRACE BUNMI IFABIYI as surety for the 1st Defendant appears at pages E3 – E12 of the exhibit bundle.
- 3) **EXHIBIT TWO OF FIRST** the recognizance of UDO UBONG OKON as surety for the 1st Defendant appears at pages E13 – E19 of the exhibit bundle.
- 4) **EXHIBIT ONE OF SECOND** the recognizance of OLUDAMILOLA IFABIYI as surety for the 2nd Defendant appears at pages E24 – E23 of the exhibit bundle.
- 5) **EXHIBIT TWO OF SECOND** the recognizance of ASIODU ANTHONY as surety for the 2nd Defendant appears at pages E24 – E30 of the exhibit bundle.
- 6) **EXHIBIT ONE OF THIRD** the recognizance of OLAPEJU BUKOLA IFABIYI as surety for the 3rd Defendant appears at pages E31 – E36 of the exhibit bundle.

7) **EXHIBIT TWO OF THIRD** the recognizance of OCHE FRIDAY OCHE as surety for the 3<sup>rd</sup> Defendant appears at pages E37 – E43 of the exhibit bundle.

3. That on the 18th day of March 2025, this Honorable Court granted bail to the 1st, 2nd, and 3rd Defendants under specific conditions, as recorded in the court proceedings marked as **EXHIBIT PROCEEDINGS**, at pages E1 – E2 of the exhibit bundle particularly at page e2 of the exhibit bundle n the following specific terms:

**'The Defendants shall respectively produce two sureties in like sums of N2,000,000 one of the two sureties must be an adult family member.**

**The sureties shall be persons of means, living within the jurisdiction of this Court, have a verifiable living and business or office address.**

**The sureties shall also submit copies of their active bank statements, National means of identification and phone numbers.'**

4. That the 1st, 2nd, and 3rd Defendants presented sureties before this Honorable Court in purported compliance with the bail conditions granted on the said date.

5. That upon verification, the sureties presented by the Defendants failed to meet the stipulated requirements of this Honorable Court in the following manner as set forth below.

**FOR THE 1ST DEFENDANT**

6. Crave leave of court to refer to the recognizance of Grace Bunmi Ifabiyi, marked as **EXHIBIT ONE OF FIRST**, which appears at pages E3 – E12 of the exhibit bundle.
7. At page E3, Grace Bunmi Ifabiyi confirmed that she owns no landed property, and at page E12, her bank statement reflects a total savings of ₦99,876.72.
8. Refer to the recognizance of Udo Ubong Okon, which is marked as **EXHIBIT TWO OF FIRST**, appearing at pages E13 – E19 of the exhibit bundle.
9. At page E13, Udo Ubong Okon confirmed that he has no landed property, his salary is ₦120,000, and his bank balance is ₦500,000. However, at page E18, his actual savings stand at ₦5,843.99.

**FOR THE 2ND DEFENDANT**

10. The recognizance of Oludamilola Ifabiyi, marked as **EXHIBIT ONE OF SECOND**, appears at pages E20 – E23 of the exhibit bundle.
11. At page E20, Oludamilola Ifabiyi confirmed that she owns no landed property, her salary is ₦100,000, and her bank balance is ₦900,000.

12. Seek permission to refer to the recognizance of Asiodu Anthony, marked as **EXHIBIT TWO OF SECOND**, appearing at pages E24 – E30 of the bundle.
13. At page E24, Asiodu Anthony confirmed that he owns no landed property, his salary is ₦187,000, and his bank balance is ₦1, 339.94.
14. Further, as shown at page E30, Asiodu Anthony's savings are in Opay, which is not a conventional bank.
15. Asiodu Anthony failed to supply his bank statement.

#### **FOR THE 3RD DEFENDANT**

16. Refer to the recognizance of Olapeju Bukola Ifabiyi, marked as **EXHIBIT ONE OF THIRD**, which appears at pages E31 – E36 of the exhibit bundle.
17. At page E31, Olapeju Bukola Ifabiyi confirmed that she owns no landed property, and at page E36, her savings amount to ₦1,715.34.
18. The recognizance of Oche Friday Oche, marked as **EXHIBIT TWO OF THIRD**, appears at pages E37 – E43 of the exhibit bundle.
19. At page E37, Oche Friday Oche confirmed that he owns no landed property, and at page E42, his savings amount to ₦164,283.17.

#### **SUITABILITY OF SURETIES**



20. That the bank statements of all the sureties reveal balances far below the required amount, with at least three sureties having bank balances of less than ₦2,000.
21. As shown on **EXHIBIT TWO OF FIRST, EXHIBIT TWO OF SECOND** and **EXHIBIT TWO OF THIRD** respectively, Udo Ubong Okon (at page E14 of the exhibit bundle), Asiodu Anthony (at pages E25 and E26 of the exhibit bundle) and Oche Friday Oche (at page E38 of the exhibit bundle) provided their proof of their respective employment.
22. However, there are no proof of employment in **EXHIBIT ONE OF FIRST, EXHIBIT ONE OF SECOND** and **EXHIBIT ONE OF THIRD** and these three pertain to the following sureties namely Grace Bunmi Ifabiyi, Oludamilola Ifabiyi and Olapeju Bukola Ifabiyi are who are to my knowledge not gainfully employed. Two of these sureties (Grace Bunmi Ifabiyi and Olapeju Bukola Ifabiyi) are homemakers, and one (Oludamilola Ifabiyi) is currently seeking employment, making their financial capacity unreliable.
23. That the sureties' financial insufficiency poses a significant risk to the administration of justice, as they are incapable of fulfilling their obligations should the Defendants abscond.
24. That it is in the interest of justice to disqualify the sureties presented by the Defendants and order them to provide new sureties who meet the bail conditions set by this Honorable Court.

25. That I swear to this affidavit in good faith, believing the same to be true and correct, and in accordance with the Oaths Act.

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**DEPONENT**

**SWORN TO at the Magistrate Court Registry, Abuja, This \_\_\_\_\_ day  
of \_\_\_\_\_, 2025.**

**BEFORE ME**

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**COMMISSIONER FOR OATHS**

