

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, THE HONOURABLE JUSTICE V.O. EBOREIME, JUDGE  
SITTING IN HIGH COURT NO. 10, BENIN CITY  
ON MONDAY THE 23RD DAY OF NOVEMBER, 2015

SUIT NO: B/664/2011

B E T W E E N:-

1. MR. ALEXANDER OKIYE }  
2. LEXOK NIGERIA LIMITED }                   ..í                   CLAIMANTS

AND

1. BARR. TONY UZOR  
2. MR. TONY OKPERE  
3. MR. FRANCIS JEGEDE  
4. THE ASSISTANT INSPECTOR GENERAL OF POLICE }  
5. SGT. EDISON }                   DEFENDANTS  
6. COMMISSIONER OF POLICE, EDO STATE COMMAND }  
7. SGT. JOHN ALEDEKWU }

**J U D G M E N T**

This Judgment was originally adjourned to the 30<sup>th</sup> day of January, 2015. However, the Judiciary Staff Union of Nigeria, Edo State Branch (JUSUN) started Workersø Strike on the 5<sup>th</sup> day of January, 2015 which ended on the 6<sup>th</sup> day of July, 2015 and work started on the 9<sup>th</sup> day of July, 2015. Obviously, during the said period, the Courts were not open. However, before the resumption of Workers from the Strike, this Court went on National Assignment where I served in the Election

Petition Tribunal. In view of all the above, this Judgment is delivered outside the 90 days period when a judgment ought to be delivered.

In the case of SAVANNAH BANK OF NIG LTD VS STARITE INDUSTRIES OVERSEAS CORPORATION (2009) NSCQR Vol. 37 page 816 where the Supreme Court held as follows:

“Judgment delivered outside the three months cannot be impugned if party does not suffer miscarriage of Justice.”

The above is the intendment of the 1999 Constitution of the Federal Republic of Nigeria where Section 294 (5) Provide as follows:

“The decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsection (1) of this section unless the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof.”

In this case, there is no miscarriage of justice as at today that the Judgment is being delivered.

The Judgment is in respect of the Writ of Summons filed by the Claimants on the 28<sup>th</sup> day of September, 2011. In their Statement of Claim, they prayed this Honourable Court for the following reliefs as per paragraph 43 therein:

“43. **WHEREOF** the Plaintiffs claim against the Defendants jointly and severally as follows:

- (a) A declaration that the purported agreement dated 12/2/2010 is null and void the said agreement being tainted with fraud and obtained illegally.
- (b) An order of perpetual injunction restraining the 1<sup>st</sup> ó 3<sup>rd</sup> Defendants, their agents, servants and/or privies from further intimidating and harassing the 1<sup>st</sup> Plaintiff and his family either by themselves or in conjunction with the police or by any means whatsoever.
- (c) An order directing the 1<sup>st</sup> ó 3<sup>rd</sup> Defendants to pay the Plaintiffs **special damages assessed at N20,000,000.00 (Twenty Million Naira)** for loss of use of Plaintiffø two petroleum trucks illegally withheld by the 1<sup>st</sup> ó 3<sup>rd</sup> Defendants:
- (i) Plaintiffø truck with Registration No. XC 221 DGE illegally detained by 1<sup>st</sup> - 3<sup>rd</sup> Defendants from 19/11/2009 to 1/3/2010 (15 weeks) 15 weeks x N200,000.00 (Accruable weekly income from truck). = N3,000,000.00
- (ii) Plaintiffø truck with Registration No. XQ 468 AGL detained by 1<sup>st</sup> ó 3<sup>rd</sup> Defendants from 19/11/2009 to 1/3/2010 (15 weeks) 15 weeks x N200,000.00 (Accruable weekly income from truck). = N3,000,000.00

- (iii) Plaintiffs' truck with Registration No. XQ 468 AGL detained by 1<sup>st</sup> & 3<sup>rd</sup> Defendants from 1/3/2010 to 30/6/2011 (70 weeks).  
70 weeks x N200,000.00 (Accruable weekly income from truck). = N14,000,000.00
- Total accruable income = N20,000,000.00
- (d) An order directing the 4<sup>th</sup> & 7<sup>th</sup> Defendants to release forthwith to the Plaintiffs (in good condition), the Plaintiffs Petroleum truck with Registration No: XQ 468 AGL which has been unlawfully detained by the 4<sup>th</sup> & 5<sup>th</sup> Defendants since 30<sup>th</sup> July, 2011 till date.
- (e) An order directing the 1<sup>st</sup> & 7<sup>th</sup> Defendants to pay **N20,000,000.00 (Twenty Million Naira) as general damages** to the 1<sup>st</sup> Plaintiff for the unlawful arrest and detention of the 1<sup>st</sup> Plaintiff and his family (wife and children including a breastfeeding baby) by the 4<sup>th</sup> & 7<sup>th</sup> Defendants at the instance of the 1<sup>st</sup> & 3<sup>rd</sup> Defendants.

It should be noted that the Claimants instituted this action under the Old Rules of this Court prior to the coming into effect of the extant Rules of Court in 2012. The 2<sup>nd</sup> Defendant filed its Statement of Defence also under the Old Rules of this Honourable Court.

Having waited for the Claimants to comply with the extant Rules to no avail, the 3<sup>rd</sup> Defendant filed its Statement of Defence and Counter Claim on the 27<sup>th</sup> day of November, 2013 with the accompanied List of Witnesses and List of Documents.

The various parties were served and this Court issued and served hearing notices on the parties too. (See proofs of service at pages 115 to 117, page 118 and pages 132 to 137 of the case file).

In the 3<sup>rd</sup> Defendant's Counter claim, he prayed this Court for the following reliefs at paragraphs 9 and 10 therein:

**COUNTER CLAIM:**

9. The 3<sup>rd</sup> Defendant repeats and adopts paragraphs 1-8 above in proof of his Counter Claim.

10. WHEREOF the 3<sup>rd</sup> Defendant Claim against the Claimants as follows:-

- a. The sum of N503,000.00 being the Claimants' indebtedness to him.
- b. 25% interest of the total debt owed the 3<sup>rd</sup> Defendant from August 2009 to when judgment is delivered.
- c. 10% interest on the judgment sum from when judgment is delivered to when judgment sum is paid.
- d. N100,000.00 damages for unlawful arrest, detention and hardship.

On the 20<sup>th</sup> day of October, 2015, the 3<sup>rd</sup> Defendant testified and adopted his written statement on oath as his evidence before this Court. In the course of the hearing, five (5) exhibits were admitted in evidence as follows:

1. Exhibit ðAö ó Oceanic Bank Overdraft Facility titled **INDICATIVE OFFER** for N1,000,000.00 in favour of the 3<sup>rd</sup> Defendant dated April 8, 2009.
2. Exhibit ðBö ó 2<sup>nd</sup> Defendant's UBA cheque No. 0030000604 for N503,000.00 in favour of the 3<sup>rd</sup> Defendant dated 30/12/09.
3. Exhibit ðCö ó 3<sup>rd</sup> Defendant's Letter to the Commissioner of Police titled **OBTAINING MONEY UNDER FALSE PRETENCE/INSURANCE (sic) OF DUD CHEQUE BY MR. ALEX OKIYE** dated 11/02/2010.
4. Exhibit ðDö ó A Hand Written Agreement Signed by Tony Okpere, Jegede Francis, Tony Uzor and Alex Okiye dated 12-2-2010.
5. Exhibit ðEö ó Invitation Letter from the Nigeria Police of Tony Okpere dated 2-06-2011.

The evidence of the 3<sup>rd</sup> Defendant at pages 106-108 of the case file is reproduced as follows:

1. That I am the 3<sup>rd</sup> Defendant in this case.
2. That I know the 1<sup>st</sup> Claimant in this case. I also know the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
3. That the 1<sup>st</sup> Claimant was indebted to me to the tune of N503,000.00 and subsequently issued me a post dated cheque dated 30/12/2009 which was found to be a dud cheque.

4. That paragraph 21 of the Statement of Claim is not true as it was the agreement of the 1<sup>st</sup> Claimant and the 1<sup>st</sup> to 3<sup>rd</sup> Defendants to go to the police station to settle this matter.
5. That paragraph 18 &19 of the Statement of Claim is not true as the 1<sup>st</sup> Claimant and 1<sup>st</sup> to 3<sup>rd</sup> Defendants held a meeting at the instance of the 1<sup>st</sup> Claimant at Sizzlers Fast Food Restaurant at Ikpoba Hill Benin City and that the 1<sup>st</sup> Claimant attended the meeting with his wife and children.
6. That I did not arrest or cause the arrest of the 1<sup>st</sup> Claimant's wife and children. And that I did not intimidate or harass the 1<sup>st</sup> Claimant and his family with the police.
7. That sometime in 2009, I was given an overdraft facility of N1,000,000.00 (One Million Naira) at the interest rate of 25% by my bank, Oceanic Bank Plc, to trade on Petroleum Products at the NNPC Depot in Benin City and this was to the knowledge of the 1<sup>st</sup> Claimant. I can identify a copy of the offer letter from Oceanic Bank.
8. That sometime in July, 2009 the 1<sup>st</sup> Claimant approached me to borrow him the sum of N503,000.00 out of the money I had borrowed from Oceanic Bank Plc to enable him purchase Petroleum Products.

9. That I borrowed the 1<sup>st</sup> Claimant the said money with the a (sic) understanding that the interest chargeable on the said loan by Oceanic Bank Plc would be paid by him but the 1<sup>st</sup> Claimant refused to pay back the loan and interest as agreed despite my repeated demands for it.
10. That as a result of the refusal of the 1<sup>st</sup> Claimant to pay me my money, I was out of business and impecunious as I was no longer doing business at the NNPC Depot Ikpoba Hill, Benin City. I thereafter resorted to borrow money at a neck-breaking interest rate from elsewhere to service the loan I took from the bank and I suffered damages and financial hardship.
11. That the 1<sup>st</sup> Claimant switched off his phone and was no longer coming to the Depot and so it became difficult to reach him.
12. That in December, 2009, the 1<sup>st</sup> Claimant sent me a text message inviting me to a meeting in his house at Idubor Street, Off Gapiona Avenue, G.R.A. Benin City which I attended and that a cheque for the sum of N503,000.00 was given to me with the promise to pay the interest on the loan sum at a later date.

13. That I paid the cheque into my account with Oceanic Bank Plc and the cheque bounced. I can identify the copy of the said cheque.
14. That I immediately called the 1<sup>st</sup> Claimant to inform him of the bounced cheque and also went to his house at Idubor Street to look for him but was surprised that he was no longer living there as he has parked out of the house.
15. That sometime in the last week of January, 2010 the 1<sup>st</sup> Claimant sent a message through the 2<sup>nd</sup> Defendant inviting me, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to a meeting at Sizzlers Fast Food Restaurant at Ikpoba Hill, Benin City which I attended where he explained that he has relocated to Uromi and that within one week he will pay me my money.
16. That on the 11<sup>th</sup> February, 2011, we met again at Sizzlers Fast Food Restaurant at Ikpoba Hill, Benin City at the instance of the 1<sup>st</sup> Claimant with the hope that my or our money was now ready but again he gave excuses for his inability to make the payment but this time he was arrested based on the petition of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
17. That the police prevented me from making statement based on the petition of 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

18. That I only made a complaint to the police about a criminal breach of the 1<sup>st</sup> Claimant and the way the police does their duty is no longer within my power. I shall tender a photocopy of the complaint/petition. The counterpart copy having been misplaced as a result of movement from one place to the other. All possible search for it proved abortive.
19. That on the 12<sup>th</sup> February, 2010, we (1<sup>st</sup> Claimant, 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants) meet at the instance of the 1<sup>st</sup> Claimant, discussed and were able to amicably settle this case within ourselves and the document dated 12-2-2010 was made and signed by all parties voluntarily and without duress. I can identify a photocopy of the said document as it was only one handwritten copy that was made and every one of us photocopied from it.
20. That the Investigating Police Officer (I.P.O) was then informed that the parties have settled and a copy of the agreement was given to him.
21. That paragraph 28 of the Statement of Claim is not true as it was the 1<sup>st</sup> Claimant that initiated the settlement and voluntarily signed the agreement dated 12/2/2010 and was not

slapped, rough handled or forced by the 7<sup>th</sup> Defendant or anybody to sign it.

22. That in line with the agreement made on 12/2/2010, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sent the vehicle with Registration No. XQ 468 AGL for servicing and discovered that it was faulty and they could not use it to work. And that I did not use the vehicle or receive any money from the use of same.
23. That I was arrested by the Police to the A.I.G Zone 5, Benin City based on the petition of the Claimants. I made statement and was detained. Later, I employed the services of a lawyer who pleaded for my bail and I incurred expenses and suffered damages. I can identify a photocopy of the invitation letter. The original is with the other Defendants.
24. That after investigation, the Police discovered that the allegations in the Claimants petition were untrue and the Claimants quickly filed this suit to avoid prosecution by the police for false information and advance fee fraud.
25. That I did not on the 19/11/2009 or any date either alone or in conjunction with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants forcefully tow away the Claimants Petroleum trucks with Registration Nos. XC 221 DCE and XG 468 AGL.

26. That I am (sic) not liable to the Claimants claims or any amount whatsoever and shall contend that the Claim is misconceived, totally devoid of merit and ought to be dismissed with substantial cost.
27. That I now counter claim against the Claimants for my unpaid money, unlawful arrest, detention and hardship I suffered in the police station.
28. I want the court to grant my reliefs in my counter claim as contained in paragraph 10 of my counter claim.
29. That I make the witness statement on oath in good faith believing same to be true in accordance with the Oaths Act.

On the 5<sup>th</sup> day of November, the 3<sup>rd</sup> Defendant filed his Written Address which was also served on the parties including the hearing notice issued out for service on 21/10/14. (See proofs of service at pages 138 to 146 of the case file).

In the 3<sup>rd</sup> Defendant's Final Written Address prepared by P.O. Uwaya, Esq. of O.W. Idahosa & Co., learned counsel canvassed an issue for determination as follows:

öWhether the 3<sup>rd</sup> Defendant/Counter Claimant has not proved his case against the Claimants/Defendants to Counter-claim on preponderance of evidence to be entitled to the reliefs claimed.ö

Learned counsel submitted on this issue that he who asserts must prove which the 3<sup>rd</sup> Defendant has fulfilled. He cited Section 131, Evidence Act, 2011; STRABAG CONSTRUCTION (NIG) LTD VS IBITOKUN (2010) ALL FWLR (part 535) page 203, particularly at page 240 paragraph G or at page 211 ratio 8.

Learned counsel submitted further that this Court is enjoined to act on the unchallenged and uncontroverted evidence of the 3<sup>rd</sup> Defendant and Exhibits ðÄö, ðBö, ðCö, ðDö & ðEö on the authority of NASIR VS CIVIL SERVICE COMMISSION, KANO STATE (2010) ALL FWLR part 515 page 195 particularly at page 205 paragraph E; OMEGA BANK (NIG) PLC VS O.B.C. LTD (2005) ALL FWLR part 249 page 1964 particularly at page 1990 paragraphs F-G.

Learned counsel also submitted that Courts are enjoined to take judicial notice of its own records and proceedings on any matter and take notice of their *contents* although they may not be formally brought before the Court by parties. He cited *Section 122 (2) (m) of the Evidence Act 2011; ISYAKU MAGAJI & ANO VS HABIBU SALEH & ORS (2009) ALL FWLR part 455 page 1809 particularly at page 1820 paragraphs C-D or Ratio 1; GOVERNOR OF EKITI STATE & ANO. VS CHIEF GEORGE FEMI OJO & ORS (2006) ALL FWLR part 331 page 1298 particularly at page 1317 paragraphs E-F or Ratio 15.*

Learned counsel also referred this court to paragraphs 10, 11, 12 (c) and 15 of the Claimantsø Statement of Claim of the admission of indebtedness to the 3<sup>rd</sup>

Defendant; that a fact admitted by a party in pleadings should be taken as established without any further proof required. He referred to ZENITH PLASTICS INDUSTRY LIMITED VS SAMOTECH LTD (2008) ALL FWLR part 427 page 176 particularly at page 197 paragraphs A-C or Ratio 14; CHIEF EDUMUND I. AKANINWO &ORS VS CHIEF O.N. NSRIM & ORS (2008) ALL FWLR part 410 page 610 particularly at page 663 paragraphs A-B and E or Ratio 13 and 15. Learned counsel further submitted that an admission against interest is the best evidence which the courts are enjoined to act upon. He cited PRINCE VAL BASEY ADAM III VS ITA OFFIONG OHKO &ORS (2008) ALL FWLR part 415 page 1732 particularly at page 1732 paragraphs E-G or ratio 7.

Learned counsel further submitted that a Counter Claim, when filed and served, requires the Defendant to file his defence; that where there is a failure in that regard, the facts averred to in the counter claim would be regarded as admitted. He referred to ADMIRAL MIKE AKHIGBE (RTD) & ORS VS PAULOSA (NIG) LIMITED & ANOR. (2008) ALL FWLR part 1412 particularly at 1421 paragraphs A-C.

The learned counsel also submitted that a party who holds on to the money of another for a long time without any jurisdiction and thus deprived that other person of the use of such funds for a period should be liable to pay compensation by way of interests, even where interest is not claimed in the writ, as a consequential order. He

referred to A.G. FERRERO &CO VS HENKEL CHEMICALS (NIG) LTD (2011) ALL FWLR part 587 page 647 particularly at pages 657-678 paragraphs G-A.

Learned counsel therefore urged this Court to answer the lone issue in against the Claimants/Defendant to Counter Claim.

**COURT:**

I have considered the case file in this matter and all the pleadings, the evidence of the 3<sup>rd</sup> Defendant/Counter Claimant, his Final Written Address and the authorities cited by his learned counsel. I am of the view that the single issue to be determined in this case is whether this Court can, in the circumstances of this case, grant the reliefs sought by the 3<sup>rd</sup> Defendant/Counter Claimant.

As noted earlier, the Claimant initiated this suit under the old Rules of this Court and subsequently abandoned it. Despite the fact that the 3<sup>rd</sup> Defendant filed his defence and counter claim under the extant Rules of Court and served all processes on the parties, including the Claimants, the Claimants refused to file a reply to the counter claim. The law is trite that a refusal by a Claimant to file a reply to a counter claim is deemed to be an admission of the allegation contained in the counter claim. See MAOBISON INTER-LINK ASSOCIATED LTD v. U.T.C. (NIG) PLC (2013) VOL. 219 LRCN (PT.1) PAGE 27 where Ariwoola, JSC held at page 38, Paras EEJJ thus:

“On the necessity or otherwise of a reply to counter claim, it is true that it is necessary for a plaintiff to file and serve defence to a counter claim to join issues with the counter claimant. If the Plaintiff fails to file a defence to properly traverse the material averments in the counter claims, then there will be no issues joined between the parties on the subject matter of the counter claim, and the allegation contained in the counter claim will be regarded as admitted. See: *Nigerian Housing Development Society Limited v. Yaya Mumuni* (1972) 2 SC 57 at 58-86.”

The above provision of the law becomes very cogent and potent where the Claimant fails to prove his case, otherwise the counter claim would be useless. See also ALLOYSIUS AKPA v. FRANCIS UDEMBA (2007) NSCQLR VOL. 37 PAGE 158 where I.F. Ogbuagu, JSC held at page 179 thus:

“This is also settled that where a plaintiff fails to or neglects to file a defence or a Reply to a counter-claim, it is of no moment and it is not fatal to the claim. This is because if the plaintiff succeeds in his claim, the counter-claim is useless. It is not that the Plaintiff is deemed to admit the counter-claim as stated at page 116 of the Records by the court below. It is only so where it relates to the failure of the defendant to file a Statement of Defence.”

In the instant case, the Claimant has abandoned his claim which automatically means that he has not proved his claim. The counter claim of the 3<sup>rd</sup> Defendant therefore becomes relevant requiring a Reply which the Claimants have failed to do.

It is also the law that a counter claim, like the main claim, has to be proved on the balance of probability as failure to so do would lead to the dismissal of the counter claim. See ALHAJI BUBA USMAN v. MOHAMMED TAMINU GARKE (2003) NSCQLR VOL. 15 PAGE 24 where Niki Tobi held at page 46 thus:

“A counter-claim like the main claim or plaintiff’s claim must be proved on the balance of probability as any other civil matter. Where the defendant fails to prove his counter claim, his action stands dismissed and will be dismissed.”

The 3<sup>rd</sup> Defendant/Counter Claimant prayed this Court for the sum of N503,000.00 (Five Hundred and Three Thousand Naira) payable to him by the Claimants being the latter’s indebtedness to him and 25% interest of this debt from August, 2009 to when judgment is delivered and 10% interest on the judgment sum from when the judgment is delivered to when the judgment sum is paid.

The 3<sup>rd</sup> Defendant/Counter Claimant in attempting to prove the above sum and the 25% interest testified by himself that he took an overdraft of N1,000,000.00 (One Million Naira) at the interest rate of 25% out of which he borrowed N503,000.00 (Five Hundred and Three Thousand Naira) to the 1<sup>st</sup> Claimant with the understanding that he would pay the interest charged on the overdraft facility. He also testified that

the cheque issued to him by the 1<sup>st</sup> Claimant in respect of the sum bounced; that he had suffered as a result of the failure of the 1<sup>st</sup> Claimant to pay him the said sum. The evidence of the 3<sup>rd</sup> Defendant/Counter Claimant is covered at paragraphs 3, 7, 8, 9, 10, 12 and 13 of his evidence on oath at pages 106 and 107 of the case file. They are reproduced as follows:

- õ3. That the 1<sup>st</sup> Claimant was indebted to me to the tune of N503,000.00 and subsequently issued me a post dated cheque dated 30/12/2009 which was found to be a dud cheque.
7. That sometime in 2009, I was given an overdraft facility of N1,000,000.00 (One Million Naira) at the interest rate of 25% by my bank, Oceanic Bank Plc, to trade on Petroleum Products at the NNPC Deport in Benin City and this was to the knowledge of the 1<sup>st</sup> Claimant. I can identify a copy of the offer letter from Oceanic Bank.
8. That sometime in July, 2009 the 1<sup>st</sup> Claimant approached me to borrow him the sum of N503,000.00 out of the money I had borrowed from Oceanic Bank Plc to enable him purchase Petroleum Products.
9. That I borrowed the 1<sup>st</sup> Claimant the said money with the a (sic) understanding that the interest chargeable on

the said loan by Oceanic Bank Plc would be paid by him but the 1<sup>st</sup> Claimant refused to pay back the loan and interest as agreed despite my repeated demands for it.

10. That as a result of the refusal of the 1<sup>st</sup> Claimant to pay me my money, I was out of business and impecunious as I was no longer doing business at the NNPC Depot Ikpoba Hill, Benin City. I thereafter resorted to borrow money at a neck-breaking interest rate from elsewhere to service the loan I took from the bank and I suffered damages and financial hardship.
12. That in December, 2009, the 1<sup>st</sup> Claimant sent me a text message inviting me to a meeting in his house at Idubor Street, Off Gapiona Avenue, G.R.A. Benin City which I attended and that a cheque for the sum of N503,000.00 was given to me with the promise to pay the interest on the loan sum at a later date.
13. That I paid the cheque into my account with Oceanic Bank Plc and the cheque bounced. I can identify the copy of the said cheque.ö

In the course of the hearing, Exhibits "A" and "B" were admitted in evidence. Exhibit "A" which was from OCEANIC BANK INTERNATIONAL PLC to the 3<sup>rd</sup> Defendant/Counter Claimant. The content is reproduced as follows:

"April 8, 2009

Mr. Jegede Francis Igberaese,  
10, Awka Etití Street,  
Kirikiri Industrial Estate,  
Lagos.

Dear Sir,

**INDICATIVE OFFER**

Further to your request dated April 08, 2009 and subject to the approval of our Board of Directors, Oceanic Bank International Plc is willing to offer you an Overdraft Facility under the following terms and conditions below:

Borrower:	Jegede Francis Igberaese.
Lender:	Oceanic Bank International Plc.
Type of Facility:	Overdraft Facility.
Amount:	N1,000,000.00 (One Million Naira Only)
Tenure:	365 days (90 days cycle).
Purpose:	To purchase Petroleum Products locally.
Security:	Personal Guarantee.

Pricing:

Interest rate: 22% p.a

Mgt fee: 1.5% Flat

Processing fee: 1.5% Flat

Thank you for your patronage.

Yours faithfully,

**For: OCEANIC BANK INTERNATIONAL PLC**

**AUTHORIZED SIGNATURE AUTHORIZED SIGNATURE”**

Exhibit 5B was 2<sup>nd</sup> Claimant UBA Cheque No. 00000091 dated 30/12/09 issued in favour of the 3<sup>rd</sup> Defendant/Counter Claimant for the sum of N503,000.00 (Five Hundred and Three Thousand Naira).

The above evidence of the 3<sup>rd</sup> Defendant/Counter Claimant on oath and the exhibits pertaining to the sum owed him by the 1<sup>st</sup> Claimant remain unchallenged. The law is trite that such unchallenged evidence should, if credible, should be accepted by a court and acted upon. See MRS. ESTHER IGHREERINIOVO v. S.C.C. NIGERIAN LIMITED & 2 ORS (2013) NSCQR VOL. 54.3 PAGE 1547 where Fabiyi, JSC held at page 1561 thus:

“It is the law that unchallenged evidence which is credible stands and should be accepted and acted upon by the court.”

See also INEGBEDION v. SELO-OJEMEN & ANOR (2013) VOL. 216 LRCN PAGE 53 where Alagoa, JSC held at page 69F thus:

“An averment which remains uncontroverted must be acted upon by the Court.”

On the issues of interest however, there were two heads. While one head was for 25% interest, the other head was 10% interest. These two are distinguishable as the former is pre judgment interest while the latter is interest on judgment sum to take effect after the decision of a Court is reached in favour of a claimant or counter claimant. The pre judgment interest must be pleaded and proved by evidence. The law on this is trite. See A-G. FERRERO & CO. LTD v. HENKEL CHEMICALS (NIG) LTD (2011) NSCQLR VOL. 46 PAGE 823 where W.S.N. Onnoghen, JSC held at pages 839-840 thus:

“The principle relevant to the issue under consideration has been laid down in a number of cases thereby becoming settled law that a claim for prejudgment interest may be made by a plaintiff as a right where it is either expressly provided for in or is contemplated by the agreement between the parties or under a mercantile custom, or under a principle of equity such as breach of fiduciary relationship. It follows that before a party can claim prejudgment interest, he has to plead not only his entitlement to the interest but the basis of the entitlement ó either by statute or contract/agreement between the parties, or mercantile custom or principle of equity such as breach of

fiduciary relationship. It is not for the court to speculate or conjecture or assume the facts relevant to the claim. The relevant facts must be pleaded, as facts not pleaded ground to no issue.ö

See also G.K.F. INVESTMENT NIGERIA LTD v. NIGERIA TELECOMMUNICATIONS PLC (2009) NSCQR VOL. 39 PAGE 426 where I.F. Ogbuagu, JSC held at page 462 thus:

öAs to the issue on award of interest, it need be stressed that a Judgment debt is a debt or damage or other monetary award, which has been pronounced upon by a court of competent jurisdiction. It begins when the court has pronounced on its judgment in favour of the plaintiff. Interest on a judgment debt is therefore interest after adjudication. It cannot be before that incident. So, to award interest on the judgment debt from the date of accrual of the cause of action is a contradiction in terms.ö

While the 10% claimed by the 3<sup>rd</sup> Defendant/Counter Claimant cannot be faulted, this Court holds that the Claimants are indeed indebted to him, the 25% interest claimed by him, being a prejudgment interest, however has to be proved by pleadings and evidence to establish any of the three conditions enumerated in the above case being as follows:

1. Expressly provided for in or is contemplated in by the agreement between the parties, or
2. Under a mercantile custom, or
3. Under a principle of equity such as breach of fiduciary relationship.

Did the 3<sup>rd</sup> Defendant/Counter Claimant establish any of the three conditions above to be entitled to the 25% prejudgment interest sought by him? What was pleaded and proved was that the 3<sup>rd</sup> Defendant/Counter Claimant borrowed N1,000,000.00 from a bank at the rate of 25% interest. Thereafter, the 1<sup>st</sup> Claimant approached him for the sum of N503,000.000 from the money with the understanding the he would pay the 25% interest on the total loan borrowed by the 3<sup>rd</sup> Defendant/Counter Claimant. It was also proved that the 1<sup>st</sup> Claimant issued a cheque for the N503,000.000 to the 3<sup>rd</sup> Defendant/Counter Claimant which bounced. This claim of 25% interest was contemplated by the parties in their oral. It was pleaded and evidence was also led on it.

From the above, I am fully in agreement with the 3<sup>rd</sup> Defendant/Counter Claimant that the 1<sup>st</sup> Claimant should be responsible for the 25% interest on the N1,000,000.000 (One Million Naira) loan of which the 1<sup>st</sup> Claimant got N503,000.00 (Five Hundred and Three Thousand Naira).

The 3<sup>rd</sup> Defendant/Counter Claimant also claim N100,000.00 for unlawful arrest, detention and hardship. The learned counsel to the 3<sup>rd</sup> Defendant/Counter Claimant referred this Court to the unchallenged evidence of the 3<sup>rd</sup> Defendant/Counter

Claimant in paragraphs 10, 23 and 24 of his evidence on oath. They are reproduced as follows:

10. That as a result of the refusal of the 1<sup>st</sup> Claimant to pay me my money, I was out of business and impecunious as I was no longer doing business at the NNPC Depot Ikpoba Hill, Benin City. I thereafter resorted to borrow money at a neck-breaking interest rate from elsewhere to service the loan I took from the bank and I suffered damages and financial hardship.
23. That I was arrested by the Police to the A.I.G Zone 5, Benin City based on the petition of the Claimants. I made statement and was detained. Later, I employed the services of a lawyer who pleaded for my bail and I incurred expenses and suffered damages. I can identify a photocopy of the invitation letter. The original is with the other Defendants.
24. That after investigation, the Police discovered that the allegations in the Claimants petition were untrue and the Claimants quickly filed this suit to avoid prosecution by the police for false information and advance fee fraud.

What can be logically deduced from the above unchallenged evidence is that the 3<sup>rd</sup> Defendant/Counter Claimant is not asking for special damages.

In conclusion therefore, I answer the lone issue for determination in the affirmative and hold in favour of the 3<sup>rd</sup> Defendant/Counter Claimant against the Claimants in the following terms:

- a. The sum of N503,000.000 (Five Hundred and Three Thousand Naira) being the Claimants' indebtedness to him.
- b. 25% interest of the total debt owed the 3<sup>rd</sup> Defendant from August 2009 to today when this Judgment is delivered.
- c. 10% interest on the judgment sum from today to when the judgment sum is paid.
- d. N20,000.00 (Twenty Thousand Naira) damages.

The claim and suit of the Claimants are accordingly dismissed by me.

HON. JUSTICE V.O. EBOREIME  
JUDGE

23<sup>rd</sup> November, 2015

Counsel:

CLEMENT AGBONKHESE FOR THE CLAIMANTS

P.O. UWAYA FOR THE 3<sup>RD</sup> DEFENDANT/COUNTER CLAIMANTS