IN THE HIGH COURT OF JUSTICE, EDO STATE - NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP: HON. JUSTICE J.O. OKEAYA-INNEH,

(JUDGE) DELIVERED ON TUESDAY THE 11TH DAY OF

NOVEMBER, 2014

BETWEEN: **SUIT NO. B/886/2010**

MR. IDEHEN MONDAY … **CLAIMANT**

AND

1. **UBA METROPOLITAN LIFE INSURANCE LTD**
2. **MR. ENYIGWE**
3. **MR. JAMES EDOKPOLOR**
4. **MR. FREDRICK EDANABUOHIEN**

…DEFENDANTS

J U D G M E N T

The Claimant filed this suit by way of a Writ of Summons dated 23rd day of November, 2010 and a Statement of Claim dated 23rd day of November 2010. The Defendant filed a Memorandum of Appearance dated 1st day of March, 2011 and Statement of Defence dated 29th day of March, 2012. The Claimant filed a Reply to the Defendantôs Statement of Defence dated 8th day of June, 2012. The Defendant filed an Amended Statement of Defence dated 4th day of June of 2013 and a further Amended Statement of Defence dated

11th day of October, 2013. The Claimant filed an Amended Statement of Claim dated 18th day of November, 2013. Both parties also filed their witness depositions, List of Documents to be relied upon during trial.

Claimant testified by stating that his name is Monday Idehen. He lives at No. 1 Iyomon Street, off Agbonma by Ekenwan Road, Benin City. He is a clergyman and knows the Defendant in this case. Claimant stated that he remembers making a Written Statement on Oath on the 18th day of November, 2013 in respect of this case and states that he wants to adopt the Statement as his evidence before the Court in respect of this case. Claimant stated that on the 26th day of April, 2014 he further Amended his Written Statement on Oath. The Amended Written Statement on Oath was shown to him, he identifies the Amended Statement on Oath and states that he also wants to further rely and adopt the Amended Statement on Oath as his evidence before this Court.

CLAIMANT FURTHER AMENDED DEPOSITION ON OATHS

I, **MONDAY IDEHEN**, Male Christian residing at No. 1, lyomon Street, Off Agbonma by

Ekenwan Road, Benin City do hereby make oath and state as follows:

1. That I am the complainant in this case and a pastor by profession.

2. That I know the Defendants in this case. The 1st Defendant being a corporate body registered in Nigeria, the 2nd, 3rd and 4th Defendants being representatives, employees and agents of the 1st Defendant resident in Benin City.

3. That sometime in 2006, I went to UBA, the 1st Defendant to make some enquiries and I met the 3rd and 4th Defendants who introduced themselves as agents of the 1st Defendant.

4. That James and Frederick, the 3rd and 4th Defendants asked me to invest in the company and enlightened me on all the benefits if I invest.

5. That I would get 8% of whatever I invest per annum and that I could also borrow from what I invest as long as what I borrow does not exceed my investment.

6. That I told them I would think about it and I gave them my card.

7. That a few days later the 3rd and 4th Defendants came to my house and further enlightened me about the business like they did before and I told them I would get back to them.

8. That few days later I called the 4th Defendant that I was coming to meet them at the Bank.

9. That the 4th Defendant told me he was not at the Bank and that I should hand the money I want to invest to the 3rd Defendant.

10. That when I got to the Bank, the 4th Defendant was not there so I handed the money to the 3rd Defendant.

11. That the money was N100,000.00 and the 4th Defendant called to confirm that he received the sum of N100,000.00 from the 3rd Defendant and that they invested same with 1st Defendant and brought a receipt which he said was issued by the 2nd Defendant.

12. That the 4th Defendant brought the certificate of the company along side with receipt to me.

13. That sometime in 2007, Miss Faith Eghosa Idehen, my only daughter was so sick so I called the 4th Defendant to tell him that I needed to borrow some money about N 70,000 because he had told me I could borrow.

14. That the 4th Defendant came and said I should forward all the documents to Lagos. I gave them to him and he told me he had forwarded the documents to Lagos and later I started receiving Phone

calls from Lagos, though I do not know if its true, that I should come down to Lagos.

15. That I told them that I could not come to Lagos and that the business was done here in Benin.

16. That later one of them called and said I should scan my receipt to him through an E-MAIL number. I told the 4th Defendant and he gave me the receipt which I scan to the E-mail address.

17. That thereafter I got a letter from U.B.A. Life Insurance that the money I paid did not get to them and I should hold the people I paid to responsible.

18. That my baby later died and I had to report to the police and the 3rd and 4th Defendants were arrested. I was later told the 3rd Defendant absconded.

19. That the 4th Defendant was subsequently charged to court in charge No.**MEV/82CI2008** where he admitted that to his knowledge I Invested the sum of N100,000 with the 1st Defendant through the 2nd, 3th and 4th Defendants

20. That by a letter dated October 5th 2007 the 1st Defendant admitted that one of its agents that duped me was its staff/representatives at the time I invested

21. That apart from me the 2nd Defendant who misappropriated my money also duped another client in its name.

22. That I placed my trust on the 1st Defendant as a corporate body hence I invested in it through its staff agents or representatives

23. That I shall seek to rely and tender at the trial of this suit on all documents letters, Receipts, Record of proceeding in charge No **MEV/82C/2008,** Death certificate and all other relevant materials and documents which may be necessary and pertinent to the just and equitable determination of my claim whether same has been expressly pleaded herein or not.

24. That at the Oredo Magistrate Court in charge No **MEV/82CI2008** I tendered the letter dated October 5th 2007, the certificate and the receipt dated 28th July, 2006.

25. That I applied through my lawyer to the ACR for the release of the exhibits including the original copy of the letter from the 11th Defendant dated October 5th 2007.

26. That the ACR ordered a search as a follow up to my application but could not find any of the exhibits owing to the fact that the exhibit keeper as at then has resigned. For ease of reference I shall tender the letter from the ACR at the trial of this suit.

27. That in view of paragraph 26 above I shall seek to rely and tender at the trial of this suit the photocopies of the said exhibits including the photocopy of the letter dated October 5th 2007.

28. As a result of the matter aforesaid I claim against the 1st - 4th Defendants jointly and severally as follows:

(a) The sum of N50, 000, 000. 00 (Fifty Million Naira) being general damage for the mental anguish and trauma I suffered as a result of the denial of the use of my money to save the life of my only child.

b) The sum of N100, 000. 00 (One Hundred Thousand Naira) being the money invested in the 1st Defendant through the 2nd - 4th Defendants in 2006.

c) An order that the Defendants pay me 8% interest yearly from 2006 till the money I invested is fully paid.

29. That I swear to this affidavit in good faith believing same to be true and correct in accordance with oath Act 2004.

SGD (22/4/2014)
DEPONENT

The letter from ACR dated 7th day of April, 2014 was admitted in evidence and marked as Exhibit **"A".** The letter dated 5th day of October, 2007 was admitted in evidence and marked as Exhibit **"B".** Certificate/receipts was admitted in evidence and marked as Exhibits **"C &**

C1". The Death Certificate from National population Commission was admitted in evidence and marked as Exhibit **"D".**

Under Cross-Examination Claimant stated that he visited the UBA Bank as stated and that he has proof to show which is the Receipt given to him. Claimant stated that he met the 3rd & 4th Defendants in the Bank and the transaction was finalized inside the UBA Bank. He stated that they came to his house to enlighten him about the investment. He did not approach any staff of the UBA Bank before he made payment to the 3rd Defendant. He stated that he gave N100,000 to the 3rd Defendant inside the Bank in the 3rd Defendant's office. Claimant stated that Exhibit **"C"** was brought to him later and he was not asked to sign. He stated that the 2nd, 3rd & 4th Defendants are staff of the 1st Defendant Bank and he met them inside the Bank. He stated that he is not aware that when investment is issued it comes with Terms and conditions and that he did not make any inquires. He was told about the investment by the 2nd, 3rd & 4th Defendants. The investment was for a Fixed Term of 3 years. Claimant stated that he filled and signed the form in the Bank and the forms were taken from him in the Bank.

Claimant stated that he trusted the 1st Defendant. The name of the investment was a Life Insurance Investment. Claimant stated that he was asked to go to Lagos.

Claimant stated that there was no formal application for loan and that he does not have the Hospital Report of his daughter's illness.

When asked if he was a man of means. Claimant stated that he was broke and because of his investment with the Bank and being broke at that time he alerted the 1st Defendant.

There was no Re-Examination.

Defendant testified by stating that her name is **Blessing Idada.** She is a staff of the 1st Defendant and remembers making a Written Statement on Oath on the 11th day of October, 2013. A copy of the Written Statement on Oath was shown to her, she identifies the Written Statement on Oath and states that she wants to rely and adopt the Written Statement on Oath as her evidence before Court in respect of this case.

1ST DEFENDANT WITNESS STATEMENT ON OATH

I, **BLESSING IDADA,** female, Christian, Nigerian, of **United Bank for Africa Plc**, do hereby make

Oath and state as follows:

1. That I am an employee of the 1st Defendant.
2. That by virtue of my position aforesaid, I am quite at home with the facts of this matter.
3. That I have the authority and consent of the 1st Defendants to depose to this Statement.
4. That 1st Defendant got a Complaint from the Claimant sometime in 2007.
5. That the 1st Defendant is a corporate body registered in Nigeria with head office at Victoria Island, Lagos.
6. That the 2nd Defendant is neither 1st Defendantôs employee nor its representative in Benin City or anywhere else.

7. That the 3rd and 4th defendants are not 1st Defendantôs employees and or agent and would not know if the 3rd and 4th Defendant are agents of the 2nd Defendant.

8. That the 1st Defendant is not in a position to neither know nor confirm the benefit or interest agreed upon between the Claimant, the 2nd , 3rd and 4th Defendants in the alleged investment as they acted in their personal capacities.

9. That at no time did the claimant invest any money with the 1st Defendant. The Claimant is put to the strict proof of same.

10. That any money given to the 3rd and 4th Defendants in the name of investment as alleged by the Claimant; was given to them in their personal capacities.

11. That a certificate of insurance usually issued by the 1st Defendant has its terms and conditions on it. A copy of the 1st Defendant Certificate of insurance is relied upon.

12. That the 1st Defendant is not aware of any arrangement between the 3rd and 4th Defendants as they acted in their personal capacities.

13. That the 1st Defendant was not made to be aware of the Claimantôs daughterôs illness, neither was the sickness of the Claimantôs daughter made a fundamental term of the alleged insurance agreement (if at all)

14. That it is the 1st Defendant procedure that application for loan on investments are usually directed in writing to the Head Quarters in Lagos and such loans are disbursed in Lagos and not Benin.

15. That the normal procedure for such loan applications is for the customer to come over to Lagos to collect the money (loan) applied for, after approval.

16. That a condition precedent to any customer receiving loan on an investment is for such a customer to come to Lagos and this Claimant fragrantly failed to comply with.

17. That the refusal of the Claimant to come to Lagos for his money caused doubts and suspicion in the minds of the officers of the 1st Defendant

and it was as a result of this doubt and suspicion that made Mayosore Olaniyan to advice the Claimant to scan his certificate of insurance.

18. That on enquiry, it was discovered that the certificate of insurance was falsified and did not emanate from the 1st Defendant. This position was communicated to the Claimant by a letter dated October 5, 2007 which letter is relied upon.

19. That the original of the letter mentioned in Paragraph 18 above was sent to the Claimant and the 1st defendant kept photocopy of the said letter.

20. That the Notice to produce the original was given to the Claimant and the 1st Defendant has not received the said original letter up till this moment.

21. That the 1st Defendant relies on the photocopy of the said letter dated October 5, 2007

22. That the position of the 1st Defendant is that such a falsified certificate clearly indicates that the purported investment was not invested with the 1st Defendant.

23. That the Claimant did not deal with the 1st Defendant but with the 3rd and 4th Defendants. The corporate integrity of the 1st Defendant is intact and firm.

24. That the Claimant is not entitled to any damages against it as 1st Defendant did not in anyway cause or contribute to the cause of death of his daughter.

25. That the 1st Defendant urges this Honourable Court to dismiss this action with cost as same is, baseless and an attempt to reap where he did not sow

26. That I make this solemn declaration conscientiously believing the same to be true and by virtue of the provision of the Oath Act

SGD (11/10/2013
DEPONENT

Under Cross-Examination Defendant stated that she had worked with the 1st Defendant for about 7 years now. Defendant stated that she knows the 2nd

Defendant who was a staff of the 1st Defendant. She does not know the 3rd & 4th Defendant. She confirmed paragraphs 18 of her Statement on Oath and stated that the communication was verbal. Defendant stated that she does not know Wasu Amao and Amogoru Olaniyan. She also does not know who communicated to the Claimant. She further stated that she does not know if she lied as stated in her paragraph 18 which states that she wrote a letter to the Claimant. She does not have a copy of the letter dated 5th day of October, 2007 as stated in paragraph 18 of her Written Statement on Oath. She further confirms Exhibit ñBò but is not aware if the representatives of the Bank duped other clients.

There was no Re-Examination.

Learner Counsel for the 1st Defendant in his written address formulated three (3) issues for determination to wit:-

1. **Whether the Claimant has been able to prove his Claim against the 1st Defendant on the balance of probability/preponderance of evidence to entitle him to his Claims against the 1st Defendant.**
2. **Whether Exhibits 'A-D' were wrongly admitted and should be expunged from the Records of the Court.**
3. **Whether the Claimant is entitled to the damages he is claiming against the 1st Defendant.**

Arguing issue one, Counsel submitted that the Claimant is relying on a letter purported to have emanated from the Assistant Chief Registrar of

the Oredo Magistrate Court. Benin City dated the 27th day of April, 2014 to lay a foundation for tendering Exhibits B-D which are photocopies of documents in the custody of a Public Officer. In the letter, the Registrar alleges that "Officer Mr. Omekeò who handled the original documents as Exhibits in Charge No.MEV/820/2008 had retired and every effort to recover the said Exhibits proved abortive. Counsel submitted that the Registrar was not called to testify and as such could not be cross-examined as to the content of the letter. Counsel noted that the content of the Registrarôs letter was not made under oath.

Counsel urged court to consider **Section 83(1) (a)_(l) (b) of the Evidence Act. 2011 Laws of the Federal Republic of Nigeria** which requires the Registrar to be called as a Witness in the proceeding. The section provides thus:

> **“83 (1) in a proceeding where direct oral evidence of a fact would be admissible, and Statement mode by a person in a document which seems to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied-**
>
> **a) If the maker of the statement either-**
>
> **i) Had personal knowledge of the matters dealt with by the Statement, or**

ii) Where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matter dealt with by it are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had or might reasonably be supposed to have personal knowledge of those matter; and

b) If the maker of the statement is called as a witness in the proceeding:

provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Nigeria and it is not reasonably practicable to secure his attendance, or if all reasonable efforts have been made without success."

Counsel submitted that none of the conditions stated above was satisfied to explain the absence or failure to call the registrar as a witness. Counsel further submitted that the Claimant has failed or refused to prove that the alleged letter emanated from the Chief Registrar or that the contents thereof are true and correct as a Statement in a document cannot be deemed to have been made by a person unless the document or the material part of it was written, made or produced by him with his own hand, or was signed or initialed by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible.

Counsel again commended **Section 83 (4) of the Evidence Act 2011** (as amended) where it was stated that:

> **"for the purpose of this Section a Statement in a document shall not be deemed to have been made by a person unless the document or the material part of it was written, made or produced by him with his own hand or was signed or initialed by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible"**

Counsel contended that Claimant having not shown that the signature in Exhibit A is that of the Registrar as required of him by Section 93(1) of the Evidence Act 2011 (Supra), cannot therefore expect this Court to act on same. The section reads thus:

> **"If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting MUST BE PROVED to be in his handwriting"**

Counsel urged court to consider the above submission from the legal point expressed in the case of **ARIJE V. ARIJE (2011) 11 WRN 146 PG 164** where the Court held that:

> **" The purpose of witnessing the signing of a document is for corrobation of the signatures therein in case of a dispute and the contents"**

Counsel submitted that Exhibit A is a worthless piece of paper which this court should ignore and expunge even as same amount to hearsay. Counsel referred court to **Section 37 (a) of the Evidence Act 2011 (Supra)** which provides thus:

"Hearsay means a Statement -

> **“(a) Oral or written made otherwise than by a Witness in a proceeding.”**

Counsel also referred court to the case of **CHIME V. EZEA [2009]34 WRN PG 71-72** lines 4-25 where the Hon, Justice Adekeye, JCA held that:

> **“Hearsay evidence is not admissible under the evidence Act, being on facts relying on information by another person. This offends against Section 77 of the Evidence Act, 2011 which stipulates that oral evidence must be direct. Hearsay evidence is inadmissible evidence which must be expunged from the records of the Court”**

Counsel argued that Exhibit `A` being a letter purportedly emanating from a public officer of the status of a Court Registrar, and having written same in the aforementioned capacity, same is a public document by reason of **Section102 (a) (iii) of the Evidence Act,** 2011 (as Amended) and as such, Exhibit óAô needed to be certified. Counsel submitted that only a certified copy if it is admissible.

Counsel referred court to the case of case of **LAWSON v. AFANI CONT CO. LTD (2002) 2 NWLR 585p. 612 paras D-H**, where the Court while interpreting a pronouncement similar to Section 88 and 89 of the Evidence Act 2011 as amended held as follows:

> **"An examination of the provisions of Section 96 and 97 (now 88 and 89) of the Evidence Act, Cop 112 Laws of the Federation of Nigeria. 1990 does not make the original of public document admissible. These sections along with Section 111 of the Evidence Act effectively exclude admissibility of primary evidence of a public document. Therefore, only certified copies and not the original of documents which qualify as acts of public officers within the contemplation of Section 109 of the Evidence Act are admissible. The tendering in evidence of the original of such Public document is erroneous and should be expunged where admitted".**

Counsel argued further that it remains a fact yet to be satisfactorily disputed by probable evidence that the originals of Exhibits B-D as admitted by the Claimant are in possession or custody of the court officials who are in all sense of the word, Public Officers.

Counsel urged court to consider the case of **LAWAL v. MAGAJI (2010) 8 WRN 102 PJ56-158**, where the Court held inter-alia,

> **" ..... where the document to be proved is a public document or one, a certified copy of which is permitted by the Act , a certified copy of the document, and no other kind of secondary evidence is admissible"**

Counsel submitted that on the 27th day of January, 2014, Claimant tried to tender in evidence a letter dated the 5th day of October, 2007 but withdrew same upon the objection raised by the opposing Counsel and subsequently tried to tender same on the 27th day of March. 2014. Counsel submitted that the Court having rejected the document, on the 27th day of March 2014, the Claimant was estopped /foreclosed from tendering the same document again on the 28th day of May 2014 which was admitted and marked as Exhibit B. Counsel contended that Exhibit B is apparently an inadmissible evidence and recommended the case of **ADDISON UIWTED (NIG) LTD v. LION AFRICA INS. LTD [2010/52 W.R.N 104 P.119 R.132.,** where Nwodo, J.C..A, while referring to the Supreme Courtøs decision in the case of **UBN v. OZIGI (1994) 3 NWLR (Pt. 333)** held thus:

> **"The supreme Court held that the document once rejected should be marked as rejected and not as an Exhibit and such document is irrelevant and the contents cannot be used for the determination of any issue in the case in the light of the settled law, the learned trial Judge cannot rely on any document marked rejected .... "**

Counsel argued that it is trite law that where inadmissible evidence has been wrongly admitted, it is the duty of the Court not to act upon it not withstanding that the admission of the evidence was as a result of the consent of the opposite party or that partyøs default in failing to object at the proper time.

Counsel urged court to considered the cases of **ABUBAKAR V. JOSEPH [2008] 3 NWLR PT (1109) 315 R. 8; NWAOGU V. ATUMA {2003} 11 NWLR (PT 1364) R. 1 AND 2**

Counsel prayed court to expunge Exhibits A-D (particularly B) from the record of the court as they are inadmissible.

On issue two Counsel submitted that the Claimant has failed woefully to prove his case on the preponderance of evidence and/or the balance of probability as required by law and therefore not entitled to the reliefs sought as against the 1st Defendant.

Counsel further submitted that the Claimant in trying to prove his case alleged that the 2nd Defendant is a staff and representative of the 1st Defendant in Benin City and that the 3rd and 4th Defendants are the employees and the agents of the 2nd and 1st Defendants ï an assertion the Claimant failed woefully to prove. Counsel submitted that the 3rd and 4th Defendants were never at any time staff, or agents or employees of the 1st Defendant as alleged by the Claimant.

It is Counselôs further contention that the 2nd Defendant was NOT a staff or an agent or employee of the 1st Defendant as at 2006 when the alleged Insurance transaction purportedly took place and stated that the 2nd Defendant who had ceased to be a staff of the 1st Defendant could not have acted for or

represented the 1st Defendant in the alleged fraudulent transaction at the material time. Counsel further argued that the Claimant has failed to show by any compellable or probable evidence that as of 2006 when the alleged transaction took place, the 2nd Defendant was still in the employment or worked as agent of the 1st Defendant as alleged by him or that the 2nd and 3rd Defendants are or were employees or agents of the 1st Defendant.

Counsel submitted that it is trite law that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. Counsel further noted that the law is that whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist and recommended the cases of **ABUBAKAR & ANOR v. JOSEPH & ANOR [2008] 50 WRN1**; **CHINEKWE v. CHINEKWE [2010] 37 WRN P.37 PP. 69**,

Counsel further argued that there is no compellable or probable evidence to substantiate that the Claimant had dealings with the 2nd or 1st Defendant. Counsel stated that in Claimantôs pleadings and under cross examination. Claimant maintained that his dealing were with the 3rd and 4th Defendants who according to him visited him in his house to discuss the investment proposal with him. Counsel submitted that Claimant failed to prove that he ever met the 2nd , 3rd and 4th Defendant in the 1st Defendantôs premises in Benin City as alleged by him

Counsel submitted that the alleged sum of N100,000.00 (One Hundred Thousand Naira) which Claimant claims he invested with the 1st Defendant was paid to or given to the 3rd Defendant.

Counsel submitted that it is clear that (if at all) the Claimant only had his dealings with the 3rd and 4th Defendant only and that in the light of the above, the Claimant`s averment that he invested in the 1st Defendant cannot stand just as the assertion that he made the payment to the 3rd Defendant in trust for the 1st Defendant has no legal substance.

Counsel submitted that the Claimant clearly admits that as against the usual Bank practice of paying monies meant to be kept by the Bank directly into the Bank account, he gave the money to the 3rd Defendant which shows that he never at any time invested with the 1st Defendant.

Counsel further submitted that Claimant also failed to prove that the alleged receipt evidencing the payment of N100.000.00 (One Hundred Thousand Naira) and the alleged Certificate were issued to him by the 1st Defendant and argued that the Claimant having failed to prove this fact had failed in his responsibility to prove his case.

Counsel stated that the Claimant admitted that he did not apply to the 1st Defendant to enter into the alleged insurance contract and that he

does not have a copy of the application form he allegedly filled and submitted that the Claimant never at any time filled any application form and argued that this leads to the question whether the Claimant established any legal or contractual relationship with the 1st Defendant.

Counsel further submitted that amidst the labyrinth of the Claimant`s case, he asserts that he lost his daughter and that it is in doubt that the person named in Exhibit D tendered in this proceedings is the daughter or ward of the Claimant.

Counsel further contended that the Claimant has not shown by way of any evidence or sound argument that if he had access or was given the sum of N70,000.00 (Seventy Thousand Naira) allegedly requested, it would have been sufficient to prevent the death of his daughter. Counsel also stated that the cause of Claimantôs daughterôs death was deliberately kept away from Court and that no medical report of the cause of death was tendered. Counsel stated that it is not enough for the Claimant to merely aver that his daughter died due to lack of funds to cater for her medical treatment and maintained that this court cannot speculate on this point.

Claimant also argued that no document or agreement whatsoever exist to show or substantiate that Claimantôs daughter would be made a beneficiary of the purported investment transaction or that Claimant could access any given

amount of money as loan from the alleged investment upon the ailment of Claimantôs daughter before the expiration of the alleged three (3) years fixed period.

Arguing issue three (3) as formulated, Counsel submitted that the onus is on the Claimant to prove that he is entitled to damages. Counsel further submitted that damages be it general or special must be proved not by speculative claims or scanty evidence. Counsel further argued that Claimant must show by evidence that he actually suffered the loss complained of and referred court to the case of **SMITHKLINE PLC v. FARMEX LTD [2009] 51 WRNN 94 P.116** where the court held that:

> **"General damages are always presumed by law to be the direct natural probable consequence of the act complained of and the onus is on the Respondent/ cross Appellant to prove that he is entitled to them. General damages must on no account be awarded on speculative claims and scanty evidence. A claim for damages is no longer considered when the wrong alleged was not established or the claim fails"**

It is Counselôs further contention that having failed to prove by compelling /probable evidence that the deceased was his daughter and that she died for lack of inadequate medical care and more importantly that the 1st Defendant was in breach of any agreement whatsoever to provide him with loan as alleged or that he actually invested N100,000.00 (One Hundred Thousand

Naira) with the 1st Defendant, the Claimantôs claim for damages must therefore fail.

Counsel submitted that from the foregoing, the Claimant has failed to prove his case on the preponderance of evidence and is not entitled to the reliefs sought from this Honourable Court and urged this court to dismiss the Claimantôs claim with cost..

Claimantôs Counsel formulated three (3) issues for determination in this suit to wit:-

1) Whether the Claimant has been able to prove his claim that the 2nd, 3rd and 4th Defendants are agents of the 1st Defendant to entitle him to his claims against the Defendants.
2) Whether Exhibits A - D were wrongly admitted.
3) Whether the Claimant is entitled to the damages he is claiming against the 1st, 2nd, 3rd and 4th Defendants.

Arguing issue one above Counsel submitted that Claimantôs Claim is that he invested on demand, in the 1st Defendant through the 2nd, 3rd and 4th Defendants who are its agents the sum of N100,000 (One Hundred Thousand Naira) through the 3rd Defendant on the order of the 4th Defendant who later sent the receipt and certificate signed by the 2nd Defendant on behalf of the 1st Defendant Counsel submitted that when Claimant needed part of his

money to save the life of his only daughter Faith, it dawned on him that he was duped and his complaint got to the 1st Defendant who in a letter dated October 5th 2007 admitted that the 2nd Defendant who misappropriated the Claimantôs money was its representative, agent, servant /staff.

Counsel argued that it does not lie in the mouth of the counsel to the 1st Defendant to say that the 3rd and 4th Defendants were never at anytime staff, or agents or employees of the 1st Defendant. Counsel also submitted that it is also not for Counsel for the 1st Defendant to also say that the 2nd Defendant was not a staff or agent or employee of the 1st Defendant. Counsel contended that the 2nd, 3rd, and 4th Defendants had opportunity to refute such claim but they chose to stay away from court to conduct their defence.

Counsel further submitted that Claimant testified to the effect that the 4th Defendant was charged to Court in charge No MEV/82C/2008 where he introduced himself as agent of the 1st Defendant and admitted that to his Knowledge the Claimant invested the sum of N100,000.00 with the 1st Defendant through the 2nd , 3rd and 4th Defendants.

Counsel further submitted that from Exhibit B, it is clear that the servant and master relationship between the 2nd, 3rd, 4th and 1st defendants is not in

doubt. Counsel urged court to jettison the submissions of the 1st Defendant on this issue.

Arguing issue two, Counsel submitted that the 1st Defendantõs counsel made heavy weather out of the foundation that was laid by the Claimant in tendering Exhibits B - D. It is Counselõs further submission that Exhibit A, the letter from the Assistant Chief Registrar of the Oredo Magistrate Court, Benin City amounts to mere surplus to requirement. Counsel stated that admissibility is governed by relevance and that Exhibit B is the hob and pivot of the entire proceedings germane to both parties. Counsel submitted that the only witness called by the 1st Defendant during cross examination told Court she would identify the said letter if seen and she so identified same as the photocopy of the letter emanating from the 1st Defendant. Counsel noted that in paragraph 21 of her 1st Defendantõs witness deposition on oath, she said ñThe 1st Defendant relies on the photocopy of the said letter dated October 5, 2007ò

Counsel further submitted that Exhibit B was tendered as a secondary evidence and that by virtue of **Section 87 (C) of the Evidence Act, 2011,** Secondary evidence includes. ñCopies made from or compared with the originalò Counsel argued further that the witness to the 1st Defendant identified Exhibit B as a copy made from the original letter emanating from the 1st Defendant and referred court to **Section 89 (C) of the evidence Act 2011** which states that ñSecondary evidence may be given of the existence, condition or contents of a document when the original has been destroyed or lost and in the later case all possible search has been made for itò

Counsel submitted that Exhibit A was only tendered to emphasize the fact that ñpossible searchò has been made to recover the missing original copies of Exhibits B, C & D. Counsel stated that Exhibits B, C and D were addressed to the Claimant and the Claimant made photocopies of same before tendering the original copies at the Magistrate Court in charge No MEV/82C/2008. Counsel further contended that the photocopies were in custody of the Claimant and not in custody of any public officer and that the Claimant searched and could not find the original copies he tendered earlier in court, hence he resorted to tendering the photocopies in compliance with sections 87 (C) and 89 (C) of the Evidence Act 2011 Laws of the Federal Republic of Nigeria.

Counsel argued that it is not true that any exhibit or document was marked ñrejected". Counsel argued further that Exhibit B is a photocopy and not a Certified True copy and that same was tendered on the 28th day of May 2014, and was identified by the witness to the 1st Defendant, admitted and marked as Exhibit B. Counsel urged court to discountenance the submission of the 1st Defendant in respect of same.

Arguing issue three (3) Counsel submitted that Claimant has no daughter named Mary Idehen and that it is trite that counselôs address cannot take the place of evidence.

Counsel submitted that in proof of the death of Faith Eghosa Idehen, the Claimant tendered Exhibit D and that Claimant does not need an autopsy or post mortem examination to ascertain the course of death of her daughter as it is done in criminal trial. Counsel contended that Claimant deposed to the fact that in 2007 his only daughter Faith fell sick and in line with his arrangement with the Defendants, he demanded for the sum of N70,000.00 being part of the money he invested to enable him foot the bills for the treatment of his sick daughter, but instead, the Defendants started tossing him and that in the midst of the confusion, his only child died in May 2007.

It is Counsel's further submission that there is nothing on the side of the Defendants, especially from the 2nd, 3rd and 4th Defendants to convince the Court otherwise that the Claimant is not entitled to the claim he has sought from this Court. Counsel stated that evidence which goes one way like an uncontested case requires minimum proof and relied on the cases of **ATTORNEY GENERAL OF OYO STATE VS FAIRLAKES HOTELS (1989) 5 NWLR (PT 121) 255 AT 260 RATIO 12; KARIMU OLUJINDE VS BELLO ADEAGBO (1988) 4SC 1 AT 23.**

Counsel further submitted that a Claimant is entitled to judgment if the evidence adduced is unchallenged by the defendant and also stated that the law also is that where a defence is weak it tends to strengthen the case of the

Claimant. Counsel stated that in the instant case there is no defence at all on the part of the 2nd, 3rd, and 4th, Defendants and urged court to enter judgment for the Claimant based on the uncontroverted and uncontradicted evidence of the Claimant against the 2nd, 3rd, and 4th Defendants. Counsel referred court to the case of **JUDICIAL SERVICE COMMITTEE V OMO (1990) 6 NWLR PT 157 PG 407 AT PG 416 RATIO 15**

Counsel submitted that to succeed against the 1st Defendant in the instant case, the duty of the Claimant is to: .

(a) Establish the liability of the 2nd, 3rd, and 4th Defendants

(b) Prove that 2nd, 3rd, and 4th Defendants are servants of the 1st Defendants and;

(c) That the 2nd, 3rd, and 4th Defendants acted in the course of their employment with the 1st Defendant.

On the authority of **IFEANYI CHUKWU CO LTD VS SOLEH BONEH (NIG) LTD (2000) 76 LRCN 614,** Counsel argued that the liability of the master defendant to the plaintiff depends on the plaintiff being able to establish the servantôs liability for a wrong and also that the servant is not only the masterôs servant but that he also acted in the course of his employment.

Counsel contended that in the instant case, the 2nd, 3rd and 4th Defendants as servants were on duty in the premises of the 1st Defendant and they acted in the course of their employment with the 1st Defendant.

Counsel urged court to hold that from the totality of the evidence placed before court, Claimant has established his claim that the 2nd, 3rd, and 4th Defendants are agents of the 1st Defendant and as such the 1st Defendant is vicariously liable for the act of the 2nd, 3rd and 4th Defendants

Counsel submitted that by a memorandum of appearance dated 15th March, 2011 Obaro Umeh & Co of No 83, Ekenwan Road, Benin City entered appearance for UBA Metropolitan Life Insurance Ltd, Mr. Enyigwe, Mr. James

Edokpolor, Mr. Fredick Edanabuohien, 1st, 2nd, 3rd and 4th Defendants respectively and filed a Statement of Defence on the 29th day of March, 2012 but never for once appeared in court to conduct their defence. Counsel submitted further that their counsel abandoned them midway and opted for the 1st Defendant. Counsel further noted that the 2nd, 3rd, and 4th Defendants were deliberately absent throughout the length and breadth of this trial and further argued that it is not the business of this court to find out or inquire why the 2nd, 3rd and 4th Defendants have refused to come to court particularly when all necessary steps had been taken on the part of the Claimant to bring them before the Court.

Counsel urged court to grant the claim of the Claimant and disregard the submissions of the defence counsel as being frivolous and vexatious.

Replying on points of law, 1st Defendantôs Counsel submitted that the Claimant`s testimony which is to the effect that the 4th Defendant was charged to Court where he introduced himself as agent to the 1st defendant and admitted that to his knowledge, the Claimant invested the sum of

N100,000.00 (One Hundred Thousand Naira) with the 1st Defendant has no legal consequence on the position of the 1st Defendant and cannot be a valid basis to hold the 1st Defendant liable in law. Counsel referred court to the case of **ABUBAKAR V YAR'ADUA [2009] 5 W.R,N 1 AT P.135** where the Supreme Court held that::-

> **"admission by a set of Respondents cannot in law affect another set of Respondents "**

Counsel further submitted that the admission by the 4th Respondent is therefore of no moment and contended that the 1st Defendant has persistently challenged the assertion that the 2nd ï 4th Defendants are not its agents, staff, or Manager.

Counsel argued that Exhibit ôBô (assuming but without conceding that it is admissible) has not in any way established that the 3rd and 4th Defendants were at any time staff or agents of the 1st Defendant. Regarding the 2nd

Defendant, Counsel stated that Exhibit B only affirms that whereas the 2nd Defendant used to be a staff and agent of the 1st Defendant, he had ceased to be so at the material time in 2006 when the alleged fraudulent transaction took place. Counsel urged court to consider the case of **BUHARI V. INEC [2009] 7 W.R.N L P. 184** where the Supreme Court held per Tobi, J.SC (as he then was) as follows:

> **"in the law of pleadings, admission must be unequivocal, nor speculative or based on conjecture. The adverse party admitting must leave the Court in no doubt as to the fact admitted"**

Counsel further submitted that the 2nd ï 4th Defendant did not act as agents of the 1st Defendant but as agents of the Claimant who admitted to have given the sum of N100,000.00 (One Hundred Thousand Naira) to the 3rd and 4th Defendants as against the usual banking practice of paying such monies into the Bankôs specified account. Counsel urged court to consider the case of **Salome v. Union Bank (Nigeria)** Limited (I985-1989) 4 N.B.L.R. 132 Pp where the Court of Appeal held that a senior Staff of a Bank who was requested by a customer of the same Bank to lodge money into his account acted for that purpose as an agent of the customer and not that of the Bank.

On the authority of the case of **Onilolo v. A.G. Lagos State /2005] 18 W.R.N. 34 Pp. 70 - 71** Counsel further submitted that in civil proceedings, the

Claimant must succeed on the strength of his own case and not on the seeming weakness of the defence.

Counsel urged court to treat as a mere typographical error and a misnomer the reference to "Mary Idahosa" instead of "Miss. Faith Eghosa Idehen" in the Defendant's Written Final Address; which can be corrected with the leave of this court.

Concluding, Counsel urged court to resolve the issues of Law raised in favour of the 1st Defendant.

I have carefully considered this suit and the final written submissions of both learned Counsel. I must commend them for their painstaking effort to put across their well researched and detailed arguments. I now turn to the issues for determination as formulated by both Counsel. I find that the three issues for determination as formulated by both Counsel are substantially the same and I intend to address the issues together. 1st Defendant's issue one queries whether the Claimant has been able to prove his claim against the 1st Defendant on the balance of probability/preponderance of evidence to entitle him to his claims against the 1st Defendant.

It is the cardinal principle of our laws that facts upon which the courts are called upon to adjudicate must be proved to entitle the Claimant to the relief sought. Generally, the burden of establishing facts upon which legal rights and liability depends, in accordance with **sections 131-132**, Evidence Act,

2011, is on the person who asserts the fact(s). Section 131(1) of the Act provides that:-

> **"whoever desires any court to give judgment as to any legal right which liability is dependent on the existence of facts which he asserts must prove that those facts exist."**

This was also the position of the law as enunciated in the case of **WOMILOJU V. ANIBIRE (2010) 10 NWLR (PT. 1203) 545** where my Lord Muhammad, J.S.C stated the law thus:-

> **"He who asserts must prove. The language of section 135(1) of the Evidence Act, Chapter E14 LFN, 2004 is that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See: *Adegoke v. Adibi* (1992) 5 NWLR (Pt.242) 410; *Amodu v. Amode* (1990) 5 NWLR (Pt.150) 356"**

In other words, the Claimant must establish and prove the entire or reasonable portion of his case before a court of law that can rule in his favour. A party can prove or establish its case as set up in the pleadings by oral evidence, or documentary evidence, or a combination of oral and documentary evidence

The nub of Claimant's case is that 2nd, 3rd and 4th Defendants being agents and/or servants of the 1st Defendant received the sum of N100,000.00 (One Hundred Thousand Naira) on behalf of the 1st Defendant being the amount he invested with the 1st Defendant. Now, how is and agency relationship

established or determined? In **THE REGISTERED TRUSTEES OF THE ASSEMBLIES OF GOD MISSION V. MANCHIN (2013) LPELR-20778(CA)** my Lord Bdliya, J.C.A reasoned thus:-

> ñ**How is agency determined? In Best (Nig.) Ltd. vs. Black Wood Ltd. (1998) 10 NWLR Pt.569 p.253 @ 269, the Court held that it is an elementary principle of law that agency arises when one Party, called the principal, appoints another called, the 'agent', to stand in its stead. An agency can be created by any of the following, (i) Agreement whether contractual or not between the parties (ii) Ratification by the principal of the acts done on his behalf. (iii) Operation of law under the doctrine of agency of necessity. In Nigeria Progress Ltd. vs. NEI Corp. (1989) 3 NWLR Pt.102 68 @ 92 Nnamani, J.S.C. (of blessed memory) said: "A relation of agency is generally said to exist whenever one person called the "agent" has authority to act on behalf of another called the "principal" and consents to act, whether that relationship exists in any situation depends not on the precise-farminology employed by the parties to describe their relationship, but on the true nature of the agreement, or the exact circumstances of the relationship between the alleged principal and the agent. There is, therefore no doubt that an agency can arise impliedly from the nature and condition of the parties or from the circumstances of the case."**

The key point and operative word in the definition of an agent and how the agency is determined is the authority conferred on another to so act for the principal. On the authority of **THE REGISTERED TRUSTEES OF THE ASSEMBLIES OF GOD MISSION V. MANCHIN (SUPRA)** it is evident that agency can arise impliedly from the nature and condition of the parties or from the circumstances of the case. Subject to what will be said later, Exhibit ñBò in this proceeding would appear to rest the question of whether the 2nd Defendant is an agent of the 1st Defendant. I need not say anything further on Exhibit B until the admissibility of same, as has been done, is determined as has been urged on this court by 1st Defendantôs Counsel.

In determining the issues raised by both counsel in the issue above, I think a resolution of the questions in issue two as raised by both counsel is at the core of the answer to issue one. Issue two questions whether Exhibits A-D were wrongly admitted and should be expunged from the records.

Indeed, it is trite law, that a trial court is under an onerous duty to admit and act upon only on an evidence which is properly admissible within the purview of the provisions of the Evidence Act and other relevant statutory provisions. Where, however, the trial court inadvertently admits such an inadmissible evidence, the court is under a duty not to act on it. **See KANJAL v. IFOP (2013) LPELR-22158(CA)** ; **OWOYIN V. OMOTOSHO (1961) 1 ALL NLR, 304**; **OLUKADE V. ALADE (1976) 2 SC, 183 AT 187-8**; **UMAR V. BAYERO**

UNIVERSITY (1988) 4 NWLR 85; **IGBODIN V. OBIANKE (1976) 1 NWLR, 212**

The nucleus of learned counsel to the 1st Defendantôs objection to the admissibility of Exhibit A-D and upon which counsel has urged this court to expunge the said Exhibits from the record is the fact that Exhibits A-D are public documents within the meaning of **Section 102 of the Evidence Act, 2011** and that they ought to have been certified as a consequence same were wrongly admitted. Section 102 of the Evidence Act states thus:

> **"102. The following documents are public documents—**
>
> ***(a)* documents forming the official acts or records of the official acts of—**
>
> **(i) the sovereign authority,**
>
> **(ii) official bodies and tribunals, or**
>
> **(iii) public, officers, legislative, judicial and executive, whether of Nigeria or elsewhere: and**
>
> ***(b)* public records kept in Nigeria of private documents."**

Exhibit A is a letter said to have emanated from the Assistant Chief Registrar of the Oredo Magistrates Court, Benin City, intimating Counsel to the Claimant that ñé a search has been conducted in the exhibit room as a follow up to the application made by counsel and all efforts to recover the said exhibit proved abortiveé ò

I think it is pertinent to also ascertain what a public document means. In **PROFESSOR FOLARIN SHYLLON & ANOR. V. UNIVERSITY OF IBADAN (2006) LPELR-7721(CA)** my Lord Augie, J.C.A stated thus:-

> **A public document must be brought into existence and preserved for public use on a public matter and must be open to public inspection - see Modern Nigerian Law of Evidence by Nwadialo (supra). In other words, for a document to be admissible as a public document, it should not only be available for public inspection, but should also have been brought into existence for that purpose.**
>
> **See also the following commentary in Stroud's Judicial Dictionary: 4th Ed.**
>
> **"The principle upon which a public document is admissible is that there "should be a public inquiry, a public document, and made by a public officer. I do not think that 'PUBLIC, there is to be taken in the sense of meaning the whole world. I think an entry in the books of a manor is 'public,' in the sense that it concerns all the people interested in the manor. And an entry, probably, in a corporation book concerning a corporate matter or something in which all the corporation is concerned, would be 'public' within that sense. But it must be a public document, and it must be made by a public officer. I understand a 'public document' there to mean a document that is made for the purpose of the public making use of it, and being able to refer to it. It is meant to be where there is a judicial, or quasi judicial duty to inquire as might**

be said to be the case with the 'bishop acting under the writs issued by the Crown; that may be said to be quasi judicial. He is acting for the public when that is done; but I think the very object of it must be that it should be made for the purpose of being kept public, so that the persons concerned in it may have access to it afterwards"

It is granted that Exhibit A in this proceeding was made by a public officer and as such satisfied the requirement of **Section 102 of the Evidence Act, 2011**. For same to be tendered in evidence, the requirements of Section 104 of the Evidence Act, 2011 has to be met. Same was not met and as a consequence, Exhibit A in this proceeding is hereby discountenanced and same is expunged from the records.

However, on the authority of **PROFESSOR FOLARIN SHYLLON & ANOR. V. UNIVERSITY OF IBADAN (SUPRA), I** am unable to agree with learned Counsel for the 1st Defendant that Exhibits ñBò, ñCò, ñC1òare public documents that needed to be certified for them to be admissible. Still on the authority of **PROFESSOR FOLARIN SHYLLON & ANOR. V. UNIVERSITY OF IBADAN** there is nothing public about them. They were not made for the purpose of the public making use of them, or for the purpose of being able to be referred to by the public. I am satisfied that Exhibits B, C, and C1 are not public documents. They are each private documents of correspondences between private persons. None of them required any certification before being admitted in evidence.

Exhibit ñDòwhich is the Death Certificate issued by the National Population Commission is a Public Document which should have been certified in order for same to be tendered in evidence as contemplated by **Section 104 of the Evidence Act, 2011**. Having not be been certified, same is hereby discountenanced and expunged from the courtôs record.

Now, Exhibit ñBòhaving been properly admitted appears to provide the answer on whether the 2nd Defendant is an agent of the 1st Defendant. The age-long legal axiom that a document speaks for itself still holds sway in our adjectival law in deserving circumstance such as this. The 1st Defendant by Exhibit ñBò admitted that the 2nd Defendant was their staff. The exact time he was their staff and when he left their employment was not stated. Claimant on the other hand contends that as at the time the transaction took place, 2nd Defendant was a staff of the 1s Defendant company. Was the assertion by the 1st Defendant company materially disproved? I think not. It is the law that a denial in a statement of defence that the defendant denies a paragraph in the statement of claim and put the plaintiff to the strictest proof thereof amounts to insufficient denial or insufficient traverse to put the matter thus denied in issue. See **U.B.N. PLC V. CHIMAEZE (2007) ALL FWLR (PT. 364) 303 AT 319 PARAS.G - H (CA)** per Abba-Aji JCA.

It is on the foregoing that I answer issue two as formulated by both Claimant and Defendant Counselôs in the affirmative and to the extent that Exhibits ñAò

and ñDòin this proceeding were wrongly admitted. As was stated in **ESIEGBUYA SOLOMON & ORS v. ETSEDE MONDAY & ORS (2014) LPELR-22811(CA)** Per YAKUBU, J.C.A.

> It is not in doubt that where a public document is not certified in accordance with the provision of Section 104 of the Evidence Act, such a document cannot be admissible in evidence. See **FEDERAL AIRPORTS AUTHORITY OF NIGERIA V. WAMMAL EXPRESS SERVICES (NIG) LTD (2011) 1 SCNJ 133 AT 143 - 144**; **AREGBESOLA V. OYINOLA (2009) ALL FWLR (PT. 472) 1147 AT 1180 (CA); AGAGU V. DAWODU (1990) 9 NWLR (PT. 160) 56"**

However, Exhibits B, C, and C1 were rightly admitted same not being public documents within the meaning of Section 102, Evidence Act 2011 and on the authority of **PROFESSOR FOLARIN SHYLLON & ANOR. V. UNIVERSITY OF IBADAN (SUPRA)**

Having determined issue two as formulated by both counsel in their final written addresses, I think it is fitting to address issue one as formulated by both counsel which as I earlier mentioned are substantially the same.

In answering the question posed herein, the principle of vicarious liability will be considered here. The doctrine means that one person takes the place of

another so far as liability for the tort is concerned. In **IFEANYI CHUKWU (OSONDU) (LTD) V SOLEH BONEH LTD (2000) LPELR-1432(SC)**, my Lord, Ogundare, J.S.C quoting the learned authors of **Clerk and Lindsel on Tort 14th Edition paragraph 237 at page 238** said:-

> ñ**…where the relationship of master or servant exists, the master is liable for the torts of the servant so long only as they are committed in the course of his employment. The nature of the tort is immaterial and the master is liable even where liability depends on a specific state of mind and his own state of mind is innocent"**

In **NATIONAL BANK OF NIGERIA LTD. V. TRANS ATLANTIC SHIPPING AGENCY LTD. (1996) 8 NWLR (PT468) 511 AT 519-520**, My Lord Mukhtar, J.C.A (as she then was) held that:-

> **"…A bank is vicariously liable vide its servant where there has been non-compliance and failure to strictly adhere to the banking regulations and rules relating to the procedure and documents required for the opening of a bank account by a corporate body as such amounts to negligence."**

Perhaps the authority that best captures the liability or otherwise of the principal on behalf of his agent is that as enunciated in the case of **IYERE V. BENDEL FEED AND FLOUR MILL (2008) 7-12 SC 151** where My Lord Muhammad, J.S.C said:-

"The general disposition of the law is that an employer is liable for the wrongful acts of his employee authorized by him or for wrongful modes of doing authorized acts if the act is one which, if lawful, would have fallen within the scope of the employee's employment, as being reasonably necessary for the discharge of his duties or the preservation of the employer's interests or property, or otherwise incidental to the purposes of his employment, the employer must accept responsibility in as much as he has authorized the employee to do that particular class of act and is therefore precluded from denying the employee's authority to do the act complained of…"

My Lord reasoned further quoting Halsbury's Laws of England, Vol 45(2) 4th Edition, Paragaph 817 that:-

"Where an employer expressly authorizes his employee to do a particular act which is in itself a tort or which necessarily results in a tort, the employer is liable to an action in tort at the suit of the person injured. His liability is equally clear where he ratifies a tort committed by his employee without his authority. Where the act which the employee is expressly authorized to do is lawful, the employee does the act in such a manner as to occasion injury to a third person, the employer cannot escape liability on the ground that he did not actually authorize the particular manner in which the act was done, or even on the ground that the employee was acting on his own behalf and not on that of his employer. "

It is however not given all claims that a Defendant is vicariously liable for the wrong of its agent must succeed. In **IFEANYI CHUKWU (OSONDU) (LTD) V SOLEH BONEH LTD (SUPRA)** it was held that a Plaintiff must prove the following to establish an action of vicarious liability:-

1. The liability of the wrongdoer
2. That the wrong doer is servant of the master
3. That the wrong doer acted in the course of his employment with the master.

In this proceeding, I am of the view that the liability of Mr. Enyigwe (hereinafter referred to as the wrong doer) is not in doubt. This is all too clear given the fact that his principal, the 1st Defendant tacitly and by virtue of Exhibit ñBò admitted that the 2nd Defendant was a staff/agent of the 1st Defendant. As earlier stated, the 1st Defendant has not sufficiently disproved the fact that at the time the investment transaction took place, the 2nd Defendant was not its staff/agent. This must be seen as an admittance of liability by the wrong doer (Mr. Enyigwe) and by extension the master, the 1st Defendant..

By the principle of an action founded on vicarious liability of a master for the acts of its agent, I am of the view that the master is answerable for the wrong of the servant as is committed in the course of employment.

I therefore answer issue one as formulated by both Claimant and Defendantôs Counsel in favour of both Claimant and Defendantôs Counsel by saying that

Claimant has been able to prove his claim against the 1st Defendant on the balance of probability/preponderance of evidence.

Issue three as formulated by both Claimant and 1st Defendant's Counsel queries whether the Claimant is entitled to the damages he is claiming against the 1st Defendant.

Having resolved issue one in favour of the Claimant, it follows therefore that the award of damages must of necessity flow from the wrong done to the Claimant by the Defendants and as my Lord Muhammad, J.S.C opined in **UNION BANK OF NIGERIA PLC. v. CHIMAEZE (2014) LPELR-22699(SC**)

> **"The object of an award of damages is to give compensation to the plaintiff for the damages, loss or injury which he has suffered. However, before damages can be recovered by a claimant, there must be a wrong committed. In other words, recoverable damages by a plaintiff must be attributable to the breach of some duty by the defendant."**

It is the law that general damages such as the law will presume to be the natural or probable consequence of the defendant's act need not be specifically pleaded. It arises by inference of law and need not therefore be proved by evidence and may be averred generally. See **BRITISH AIRWAYS v. ATOYEBI (2014) LPELR-23120 (SC)** per Kekere-Ekun, J.S.C

An award of damages usually follows a breach of contract so as to compensate the injured party for loss following naturally and within the

contemplation of the parties. Damages are attached to a breach following an enforceable contract. see **BEST NIGERIA LTD. v. BLACKWOOD HODGE NIGERIA LTD. (2011) LPELR-776(SC)** Per Adekeye, J.S.C.

I therefore resolve issue three as formulated by Claimant and 1st Defendant Counsel in favour of the Claimant by saying that Claimant is entitled to damages against the 1st Defendant.

It must be noted that the 3rd and 4th Defendants were served with all the court processes in this suit and they chose not to defend the claims against them. The ready inference is that the 3rd and 4th Defendants are deemed to have admitted the case of the Claimant as presented as there are no contrary positions on which to urge this Court. The law is trite that failure to defend a suit is an implied admission of the case presented by the adverse party. See **EFET VS. INEC (2011) ALL FWLR (PT. 565) 203** The law is well settled that any fact which has not been categorically denied by a party is deemed admitted in law by the other party. **NZERIBE VS. DAVE ENGR. CO. LTD (1994) 8 NWLR (PT. 361) 124.**

In the final analysis, Claimants succeeds against the Defendants and I enter judgment in favour of the Claimant in the following terms:-

(a) The sum of N100, 000. 00 (One Hundred Thousand Naira) is awarded in favour of the Claimant and against the Defendants jointly and severally

being the money invested in the 1st Defendant through the 2nd - 4th Defendants in 2006.

(b) 8% interest per annum on the sum of N100,000 (One Hundred Thousand Naira) from 2006 until judgment and until the sum is fully paid.

(c) The sum of N1, 500, 000. 00 (Fifty Million Naira) is awarded in favour of the Claimant and against the Defendants jointly and severally being general damage for the breach of contract.

This is the judgment of the court.

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HON. JUSTICE J. O. OKEAYA-INNEH
JUDGE
é é /é ../2014

COUNSEL

(1) **O. L Ogbebor**é é é é é . Counsel for the Claimant

(2) **J. O. Ukpedor** é . é é é Counsel for the 1st Defendant